



Compliance Services  
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## **Introduction**

As part of its 1992 workers' compensation reform legislation, the Minnesota Legislature directed the commissioner of the Minnesota Department of Labor and Industry (DLI) to submit an annual report about the assessment and collection of fines and penalties under workers' compensation law (Minnesota Statutes §176.222).

Fines and penalties are found throughout the workers' compensation statutes. Employers may be penalized for failing to obtain workers' compensation insurance, falsifying insurance information, failing to post a required poster and for late filing of injury reports with their insurance companies. Insurance companies and self-insured employers may be penalized for a variety of reasons including: failure to commence benefit payments to an injured worker or to deny liability for a claimed injury in a timely manner; failure to pay benefits when ordered to do so by the DLI commissioner or a compensation judge; failure to file required reports with DLI; and denying benefits without notice or reason. Insurance companies, self-insured employers and third-party administrators may be penalized for violations of the prohibited practices section of the statute. These violations include failing to respond within 30 days to the department's written request for information about a claim or failing to pay pursuant to an order within 45 days. Vocational rehabilitation providers are subject to sanctions, including penalties, for failure to follow the rehabilitation rules, such as the professional conduct standards. Certified managed care plans and health care providers are subject to sanctions, including penalties, for failure to provide services as required by statute, rule or in accordance with the managed care plan as certified. Any party to a claim may be penalized for failing to release requested existing medical data in a timely fashion.

The workers' compensation statutes allow DLI to use its discretion in assessing penalties for violations of workers' compensation law. This gives the department the flexibility to monitor all cases for violations that inflict the greatest damage to injured workers, employers and the system as a whole. Other violations may result in penalties when they are reported to the department by a party to a claim or by the general public.

Under workers' compensation law, penalties are paid to one of three recipients, depending on the nature of the violation. Most penalties are paid to the Assigned Risk Safety Account, created in 1992 by the Minnesota Legislature. Through this account, matching grants or loans are awarded to employers to improve the safety of their workplaces. A few penalties are paid to the Special Compensation Fund to assist in financing the entire workers' compensation system. Finally, some penalties are paid directly to injured workers when their monetary benefit payments have been unreasonably delayed by the insurer.

The DLI Financial Services unit collects all workers' compensation penalties payable to the Assigned Risk Safety Account and the Special Compensation Fund. The Compliance Services unit monitors the payment of penalties to injured workers.

This report presents fine and penalty information in its appendix table for fiscal-years 1999 through 2002. Each fiscal year (FY) begins July 1, ends the following June 30, and is named for

the year in which the 12-month period ends. For example, the fiscal year beginning July 1, 2001, and ending June 30, 2002, is "FY 2002."

This report focuses on penalties issued and collections made during FY 2002. Although warnings are also technically defined as penalties, only penalty assessments that involve monetary fines are included in the appendix table.

## **Assessment and collection procedures**

When a potential penalty situation is identified by DLI's internal monitoring system or by an external customer, department staff members carefully review the facts and determine whether a penalty should be assessed. If so, a penalty notice is sent to the violator, describing the infraction and the dollar amount of the penalty. A stipulated consent agreement, containing the same information, is used to assess most penalties against managed care organizations, rehabilitation providers and medical providers. All penalty information is entered into a DLI database.

When a penalty is assessed for an employer's failure to obtain workers' compensation insurance, the employer may challenge the penalty by filing a written objection with the department within 10 days. Objections to all other penalty notices must be filed within 30 days of the assessment.

If a timely objection to a penalty notice is received by the department, the penalty recipient and the department may attempt to settle the penalty. If these attempts are unsuccessful, a settlement conference and/or hearing is conducted at the Office of Administrative Hearings (OAH) to determine whether the penalty was appropriate.

If a stipulated consent agreement cannot resolve a penalty issue involving a managed care organization, rehabilitation provider or medical provider, the commissioner may initiate a contested case hearing at OAH. An administrative law judge then issues a recommendation regarding the appropriateness of the penalty, which is considered by the Rehabilitation Review Panel (Minnesota Statutes §176.102) or the Medical Services Review Board (Minnesota Statutes §176.103). The panel or the board then makes the final decision whether to assess the penalty.

Appeals from OAH, the Rehabilitation Review Panel and the Medical Services Review Board are heard by the Minnesota Workers' Compensation Court of Appeals and may be appealed to the Minnesota Supreme Court.

A penalty becomes final when it is assessed and no objection or appeal is filed. If an objection or appeal has been filed by its deadline, the penalty becomes final when it is settled or when an order is issued by a judge and it is not appealed.

When a penalty is final, it must be paid within 30 days. The Department of Labor and Industry initiates collection procedures when parties have not paid their penalties by the deadline. If necessary, the department uses the Minnesota Collection Enterprise (MCE) to obtain payment of the penalty. DLI may take a penalty case to district court as long as the action is filed within two years of the date the penalty becomes final.

## General appendix table information

The penalties contained within Minnesota Statutes §176 are listed on the left of the appendix table at the end of this report. The table is divided into columns describing the total number and dollar amount of penalties assessed and collected during each fiscal year for each penalty type.

Assessments in a fiscal year do not correspond to collections during the same fiscal year for various reasons:

- If a penalty is challenged, any subsequent settlement or withdrawal of the penalty may reduce the number and/or amount of penalties to be collected.
- Litigation and/or collection procedures can delay the collection of a penalty for one or more years after the assessment.
- The Department of Labor and Industry does not collect penalty payments made to injured workers. Although these penalty numbers and dollar amounts are included in the “Assessed” column, they are not included in the “Collected” column.

## Penalty descriptions

Late filing of the First Report of Injury form (M.S. §176.231)

**Description:** The *First Report of Injury* (FROI) form is a document completed by the employer when he or she receives notice that a workplace injury or illness has occurred. The employer has 10 days to file this report with its workers’ compensation insurance company for all claimed work-related injuries resulting in disability that extends beyond three calendar-days (lost-time claims). The insurance company has an additional four days beyond this 10-day period, a total of 14 days, to file the FROI with the department. Self-insured employers have 14 days to file the FROI with the department (the 10-day period does not apply).

The department considers the prompt filing of first reports by employers and insurers to be essential in keeping the costs of the workers’ compensation system as low as possible. An employer’s delay in filing the first report with the insurance company reduces the amount of time (the same 14 days) the insurer has to determine liability and meet its own filing deadline. A delay in the insurance company’s or self-insured employer’s filing of the *First Report of Injury* form with the department hinders DLI’s ability to monitor the claim and respond to questions about its status. Any delay in the provision of medical and monetary benefits caused by the late filing of a FROI can create mistrust between the injured worker and the employer and insurer, and can adversely affect the future of the claim.

All new lost-time claims are monitored to determine whether the *First Report of Injury* form has been filed in a timely manner. Penalties are assessed for late filings with the insurance company or with the department. If an objection is filed on a penalty, the department may settle the

penalty or refer the matter to the Office of Administrative Hearings for a settlement conference or a hearing before a compensation judge.

**Penalty payment:** These penalties are payable to the Assigned Risk Safety Account.

**Appendix table:** The number of penalties for late filing of the *First Report of Injury* form in FY 2002 declined 18 percent from FY 2001, and 11.5 percent from FY 2000. The biggest factor in this decrease appears to be improved claims-handling by several large insurers that had experienced reporting difficulties in the prior two fiscal-years.

#### Late first payment of benefits (M.S. §176.221 and 176.225)

**Description:** Every insurance company or self-insured employer that accepts liability for a lost-time claim, and the resulting disability, must begin payment of monetary benefits to the injured worker within 14 days of the date the employer receives notice of the loss of time or wages. Timely issuance of the first payment or explanation of the reason for nonpayment is critical to the smooth handling of a claim. A delay may motivate the injured worker to retain the services of an attorney and to view the insurance company or self-insured employer as an adversary, increasing the costs of the claim.

Each new lost-time claim is monitored to determine whether the first payment has been timely. Penalties are assessed for late first payments of claims. The insurance company or self-insured employer may object to any penalty assessed for this violation. Settlement and litigation procedures are identical to those for late filing of the *First Report of Injury* form.

**Penalty payment:** The penalty under M.S. §176.221 is payable to the Assigned Risk Safety Account. The penalty under M.S. §176.225 is payable to the injured worker.

**Appendix table:** The number of penalties for late first payment of benefits decreased approximately 16 percent in FY 2002, from the previous fiscal year. The biggest factor leading to this decrease appears to be the resolution of claims-handling difficulties caused by the merger of two large insurers and the ensuing increase in penalties during FY 2001.

#### Late denial of claims (M.S. §176.221)

**Description:** If an insurance company or self-insured employer denies primary liability for a lost-time claim or accepts liability for the injury but denies liability for the disability, it must notify both the injured worker and the department of its denial within 14 days after the employer receives notice of the lost of time or wages. It is important the insurer give this information to injured workers quickly; a timely denial gives the injured worker the opportunity to dispute the insurer's liability decision before his or her financial situation becomes severely damaged. Delays may affect the future relationship between the injured worker and the insurer, even if the claim is later accepted.

Each new lost-time claim is monitored to determine whether the denial has been filed on time. Penalties are assessed for late denials of claims. The insurance company or self-insured employer may object to any penalty assessed for this violation. Settlement and litigation procedures are consistent with those already described in this report.

**Penalty payment:** These penalties are payable to the Assigned Risk Safety Account.

**Appendix table:** The number of penalties for late denials of claims decreased approximately 11.4 percent in FY 2002, from the previous fiscal year. The primary reason for the decrease appears to be the resolution of prior claim-handling difficulties due to the merger of two large insurers.

#### Prohibited practices (M.S. §176.194)

**Description:** Minnesota Statutes §176.194 describes nine types of conduct by insurance companies, self-insured employers and third-party administrators that are prohibited under workers' compensation law. These include:

- failing to reply within 30 days to written requests from the claimant for information about a claim;
- failing to either deny the claim or commence benefits within 45 days after a written request to do so;
- failing to pay or deny medical bills within 45 days of receipt of all information requested of the medical provider;
- failing to investigate a claim before denying liability;
- failing to pay weekly benefits in a timely manner;
- failing to respond within 30 days to DLI's written request for information about a claim;
- failing to pay, pursuant to an order, within 45 days;
- advising the injured worker not to obtain an attorney; and
- altering information on a document to be filed with the department, without the notice and consent of any person who previously signed the document (if that person would be adversely affected by the alteration).

The Department of Labor and Industry monitors the written requests it makes to insurance companies, self-insured employers and third-party administrators, and assesses penalties when a party fails to respond. Penalties are also assessed as a result of complaints made by parties to a claim alleging violations of the prohibited practice statute by insurance companies, self-insured employers and third-party administrators. Depending on the type of prohibited conduct, monetary penalties may either be assessed immediately or after five violations of that type of conduct have occurred within the previous 12 months. As with the preceding penalties, a prohibitive practices penalty may be settled or litigated before an administrative law judge after an objection is received.

**Penalty payment:** Monetary penalties are payable to the Assigned Risk Safety Account.

**Appendix table:** Although infrequent, prohibited practice penalties had increased annually since FY 1996, due to the department's increased monitoring of claims and more consistent follow-through when auditing files. However, in FY 2002, these penalties decreased dramatically. The decrease was 44.5 percent from FY 2001, and 15 percent from FY 2000. The primary reason for the decreases appears to be resolution of prior claim-handling difficulties due to the merger of two large insurers, plus better performance by the industry as a whole.

#### Rehabilitation provider discipline (M.S. §176.102)

**Description:** Minnesota Statutes §176.102 and Minnesota Rules Part 5220 provide minimum standards of performance and professional conduct for rehabilitation providers. These standards require each provider to follow the process specified in the statute and rules for the provision of vocational rehabilitation consultation and services. Each provider must also follow certain standards of conduct, objectivity and professional competence, and must not confuse the role of a provider with that of an insurer.

The department certifies rehabilitation providers and also monitors their performance. Members of the general public may file complaints with the department when they believe a rehabilitation provider has violated any of the performance or professional conduct standards. DLI investigates these complaints and may initiate a variety of disciplinary actions against the provider, including monetary penalties. Subsequent negotiations with the provider may result in a settlement of the penalty in the form of a stipulated consent agreement. If a settlement does not occur, the department brings the issue before an administrative law judge for a hearing. However, unlike other penalty processes, the judge's findings of fact and conclusions of law are submitted to the Rehabilitation Review Panel (RRP), which imposes the penalty. The RRP's decision may be appealed to the Workers' Compensation Court of Appeals.

**Penalty payment:** Monetary penalties are payable to the Special Compensation Fund.

**Appendix table:** Department monitoring of rehabilitation providers has resulted in penalties during each of the four fiscal-years listed in the appendix table.

#### Managed care organization discipline (M.S. §176.1351)

**Description:** Under Minnesota Statutes §176.1351, the Department of Labor and Industry certifies managed care plans. Minnesota Rules Parts 5218.0800 and 5218.0900 require the department to monitor the performance of these plans and investigate complaints.

The department may refuse to certify, may suspend or may revoke certification of a managed care plan for failure to provide required medical services and for failure to provide those services in accordance with the terms of the certified plan. In lieu of suspension or revocation of certification, administrative penalties may be assessed. The commissioner may enter into a stipulated consent agreement with the managed care plan for corrective or preventive action or for the amount of the penalty to be paid. If there is no stipulated consent agreement and the

managed care plan objects to the penalty assessment, it may be brought before a compensation judge for a hearing.

**Penalty payment:** Monetary penalties are payable to the Special Compensation Fund.

**Appendix table:** One penalty against certified managed care organizations was assessed in FY 2002.

#### Health care provider discipline (M.S. §176.103)

**Description:** Under Minnesota Statutes §176.103, sanctions may be imposed against health care providers by the Medical Services Review Board (MSRB) for violating a workers' compensation statute or rule. Any member of the general public may initiate a complaint against a health care provider if he or she believes a violation has occurred. If DLI's investigation determines a complaint is substantiated, the commissioner may enter into a stipulated consent agreement with the health care provider for corrective or preventive action, including a monetary penalty. If a settlement does not occur, the department brings the issue before an administrative law judge for a hearing. The judge's findings of fact and conclusions of law are submitted to the MSRB, which imposes the penalty. The MSRB's decision may be appealed to the Workers' Compensation Court of Appeals.

**Penalty payment:** Monetary penalties are payable to the Assigned Risk Safety Account.

**Appendix table:** Three penalties were assessed against health care providers under this statute in FY 2002.

#### Failure to insure (M.S. §176.181)

**Description:** Under the provisions of M.S. §176.181, all employers covered by Minnesota workers' compensation laws must obtain insurance through a licensed insurance company or become self-insured. When an employer is suspected of operating without workers' compensation insurance, DLI conducts an investigation and assesses a penalty when the employer is found to be in violation of this law. The department uses a penalty matrix to determine the severity of each violation and the amount of the penalty. As with other penalties, a dispute may result in a settlement of the penalty or a hearing before an administrative law judge. Employers that fail to respond to a DLI penalty assessment may be taken to district court for judgment and collection.

**Penalty payment:** These penalties are payable to the Assigned Risk Safety Account.

**Appendix table:** The Department of Labor and Industry continues to closely monitor and investigate employers suspected of being uninsured. Cases are generated from tips provided by the public, information from *First Report of Injury* forms and a comparison of employers' unemployment insurance records against their workers' compensation insurance records. The

increase in penalties seen in FY 2002 reflects the department's continually increasing efforts to monitor employers via database comparisons. The increase in collection monies can be attributed to the attainment of judgments and the collection efforts of MCE.

#### Late filing of special fund and loggers' assessments (M.S. §176.129 and 176.130)

**Description:** The Special Compensation Fund, which is administered by the department, is funded primarily by semi-annual assessments of insurance companies and self-insured employers based on indemnity benefits paid in the previous six months. Minnesota Statutes §176.129 and Minnesota Rules Part 5220.2840 dictate filing and payment timelines and provide for the issuance of penalties when the timelines are not met.

A second workers' compensation statute, M.S. §176.130, imposes an annual assessment on Minnesota wood mills. This assessment is used to pay rebates to qualified employers in the logging industry and to fund a logger safety education program. Penalties provided under M.S. §176.130 may be imposed against wood mills for failure to pay their assessments by the statutory deadline.

These two penalties are combined in the appendix table under "Late filing of special fund assessment." Settlement and litigation procedures are consistent with those used for other DLI penalties.

**Penalty payment:** Both of these penalties are payable to the Assigned Risk Safety Account.

**Appendix table:** The number of penalties in FY 2002 for late filing of special fund assessments and logger assessments returned to FY 2000 levels.

#### Other penalties (M.S. §176.221, 176.225, 176.138, 176.231, 176.238 and 176.84)

**Description:** Situations resulting in these penalties most often include: late payment of medical, rehabilitation or monetary benefits; failure to file required reports; frivolous or nonspecific denials of claims; and the improper payment or discontinuance of benefits. Most penalties are assessed against insurers, but penalties for failure to file required reports are also assessed against employers and health care providers. These penalties occur either as a result of complaints from members of the general public or as a result of departmental monitoring of files. As with other penalties, these may be settled or litigated after the penalty is assessed.

**Penalty payment:** These penalties are payable to the Assigned Risk Safety Account, the Special Compensation Fund and/or the injured worker.

**Appendix table:** The number of these types of penalties decreased 41 percent in FY 2002, primarily due to improved compliance by the industry in responding to requests by the department to file required forms.