



FISCAL-YEAR 2006

**COLLECTION AND ASSESSMENT
OF FINES AND PENALTIES**

IN THE WORKERS' COMPENSATION SYSTEM

Workers' Compensation Division
Minnesota Department of Labor and Industry
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Table of contents

Introduction	1
Penalty procedure and allocation	1
Observations	2
Conclusion	3
Appendix table	

Introduction

Minnesota Statutes §176.222 directs the commissioner of the Department of Labor and Industry to submit an annual report regarding the assessment and collection of fines and penalties under the workers' compensation law.

Fines and penalties are found throughout the workers' compensation statutes and are directed at the following entities for the below mentioned reasons.

- **Employers**
 - Failure to obtain workers' compensation insurance
 - Failure to post required posters
 - Late filing of first reports of injury
 - Falsifying insurance information

- **Self-Insured employers, insurance companies and third-party administrators**
 - Failure to pay benefits to an injured employee or file a timely denial of liability
 - Failure to pay benefits when ordered to do so by the commissioner or a compensation judge
 - Failure to file required reports
 - Denying benefits without notice or reason
 - Failure to respond within 30 days to the department's request for information
 - Failure to pay pursuant to an order within 45 days
 - Late filing or payment of assessments (also can be assessed against wood mills)

- **Vocational rehabilitation providers**
 - Failure to follow the rehabilitation rules

- **Certified managed care plans and health care providers**
 - Failure to provide services as required by statute or rule, or in accordance with the managed care plan as certified

- **Any party to a claim**
 - Failure to release requested existing medical data in a timely fashion

Under the workers' compensation law, penalties are paid either to the Assigned Risk Safety Account or directly to injured employees. This report illustrates a comparative analysis for state fiscal-years 2003 through 2006 (July 1 through June 30).

Penalty procedure and allocation

When a potential penalty situation is identified a penalty notice is sent describing the infraction and the dollar amount. An objection to the penalty must be filed in writing within 30 days, except for failure to obtain workers' compensation insurance, which is within 10 days. Upon

Minnesota Department of Labor and Industry Fiscal-year 2006 Collection and Assessment of Fines and Penalties
timely objection to a penalty, attempts are made to settle. If a settlement cannot be obtained the matter is brought forth to the Office of Administrative Hearings (OAH) and can be appealed to the Minnesota Workers' Compensation Court of Appeals and the Minnesota Supreme Court. In certain cases appeals are heard by the Rehabilitation Review Panel (Minnesota Statutes §176.102) or the Medical Services Review Board (Minnesota Statutes §176.103) prior to being heard by the Minnesota Workers' Compensation Court of Appeals and the Minnesota Supreme Court.

While the majority of penalties are paid to the Assigned Risk Safety Account, injured employees may also receive the penalty, particularly in the case where there is a late payment of benefits.

The Assigned Risk Safety Account was created in 1992 by the Minnesota Legislature to finance safety programs within the department. A primary emphasis is on providing matching grants or loans to employers for the purpose of improving the safety of their workplaces.

Observations

Failure to insure

Unlike other areas within the department, the mandatory coverage or failure to insure penalties area has a wider range of unknown factors when a penalty is issued. The initial penalty amount presented to the uninsured employer is first assessed based on the known information at the time of the referral. Using the employer's payroll, assigned risk rate and experience modification rate, an estimated evaded premium (EEP) is calculated. Various factors are applied to the EEP to derive the assessed penalty. Upon notification of a penalty, the employer may furnish the department with additional information, including actual risk rates, exempt payroll or, possibly, a policy that was unknown to the investigator. The penalty administrator will then calculate a true evaded premium based on this more accurate information or may also dismiss the assessment if coverage was indeed in place.

Therefore, the initial penalty amount is a starting point. The reduced penalty amount shows what the penalty administrator is actually trying to collect. The disparity between the reduced penalty amount and the collected amount is the result of problems throughout the collection process due to employer bankruptcy, lack of assets or the inability to locate the employer.

In 2003, budgetary constraints led to the reduction of 1.5 full-time-employee positions from those investigating mandatory coverage compliance by employers in the state of Minnesota. Since that time, steps have been taken to revamp investigatory efforts from reactionary to a more proactive stance. Current efforts revolve around regular review of database matches with other state departments, enhancing reporting access with promoting "tips" of potential uninsured employers and review of potential uninsured claims.

In fiscal-year 2006, a significant jump in the amount of penalties assessed occurred when investigators conducted an investigation of home health care providers using a list obtained from the Minnesota Department of Human Services Web site. Twenty-seven percent of the penalties assessed in fiscal-year 2006 resulted from investigations of home health care providers. Of the

Minnesota Department of Labor and Industry Fiscal-year 2006 Collection and Assessment of Fines and Penalties
other penalties assessed in fiscal-year 2006, 17 percent of the total penalties assessed involved uninsured employers in the construction trades. Five percent of the total penalties assessed involved the trucking industry.

Other penalties

The increase in the quantity of the “other penalties” category is primarily due to review of all denials of primary liability. In November 2005, the department implemented a review of denials for conformity with statutory requirements. All lost-time denials are reviewed for specificity (Minnesota Statutes §176.221 and 176.84) and for evidence of proper investigation and other elements (Minnesota Statutes §176.225). This effort is designed to improve the quality and consistency of denial notices throughout the industry. It is anticipated this category will reduce from this year’s levels as the claims handling community improves the quality of the primary liability denials filed with the department.

Conclusion

The Workers’ Compensation Division wants to increase compliance with statutory regulations through proactive measures and an increased enforcement of fine collections and penalties. Its intent is to define problem compliance areas and promote continued education to affected entities. Then, its compliance efforts will move from reactionary to a regular way of doing business. The goal is that all entities will be in compliance with the workers’ compensation laws.