

FISCAL-YEAR 2011



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**COLLECTION AND ASSESSMENT  
OF FINES AND PENALTIES**

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**IN THE WORKERS' COMPENSATION SYSTEM**

Workers' Compensation Division  
Minnesota Department of Labor and Industry  
443 Lafayette Road N.  
St. Paul, MN 55155

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## Introduction

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

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

- **Employers:**
  - failure to obtain workers' compensation insurance;
  - failure to post required posters;
  - late filing of First Report of Injury forms;
  - 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.
  
- **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 2008 through 2011, which begin July 1 and end June 30.

## **Penalty procedure and allocation**

When a potential penalty situation is identified, a penalty notice is sent describing the infraction and the penalty to be paid. An objection to the penalty must be filed in writing within 30 days, except for penalties for failure to obtain workers' compensation insurance, which must be filed within 10 days. Upon timely objection to a penalty, attempts are made to reach a negotiated settlement. 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.

## **Observations**

### **Failure to insure**

Unlike other areas within the department, the mandatory coverage or failure to insure penalties areas have a wider range of unknown factors when a penalty is assessed. The initial penalty amount is based upon an estimated evaded premium (EEP). To determine the EEP the department must make assumptions regarding the type of business and payroll. These assumptions are based on information submitted to the Department of Labor and Industry by the employer. Upon notification of a penalty, the employer may furnish the department with additional information to calculate a true evaded premium, which is then used to determine the actual penalty. Therefore, the initial penalty amount is a starting point and the final penalty amount is what the department intends to collect.

The disparity between the final penalty amount and the collected amount is the result of problems throughout the collection process due to employer bankruptcy or lack of assets, or the department's inability to locate the employer.

The department has continued to improve its efforts to find employers that have never obtained or fail to maintain workers' compensation coverage. This has included increased efforts to ensure canceled policies are investigated within six months of the cancellation. Additionally, in response to the Legislative Auditor's findings in a report issued in February 2009, the department has developed a means to investigate employers that should have obtained workers' compensation insurance but never did so. Both of these efforts have dramatically increased the number of penalties issued and subsequent collections.

### **Late filing of special fund assessment penalties**

There was an increase in the number of penalties due to late filing and payment of the special fund assessment, back to levels similar to 2006, 2007 and 2008. The amount assessed has leveled off due to fewer days payments were late; penalties increase the later assessments are paid.

### **Claim-related penalties**

Most claim-related penalties have trended downward since fiscal-year 2007, paralleling the gradual decline in the number of lost-time claims and gradual increase in the timeliness of the insurer's first action (making the first payment of wage-loss benefits or denying liability) during the same time period.

Fluctuations in the number of penalties for late filing of the first report usually come from reporting problems with large insurance companies, which occur periodically and are later resolved.

The increase in the "other" penalties category in fiscal-year 2011 is primarily due to the implementation of a process to routinely review the timeliness of payments for awards on stipulation and the issuance of penalties for late payments, which occurred during the year.

### **Department outreach and educational efforts**

During the past year, the department has made efforts to proactively contact new employers and give them information regarding their potential obligation for needing workers' compensation insurance, to assist with better understanding and compliance. Also, in response to employers, the department is revamping the penalty process to include correspondence that is clearer and more comprehensible to the employer. Letters are being designed to address specific situations, such as family farms, versus having language that impacts varying scenarios all contained in one letter template. The department has also continued its educational outreach with the insurance industry, providing periodic training for new adjusters that leads to better compliance with Minnesota workers' compensation laws.

### **Conclusion**

Penalties for failure to insure have continued to increase during the three previous years due to changes in technology that allow the department's staff to electronically identify employers that do not have current workers' compensation insurance by accessing wage data maintained by the Minnesota Department of Employment and Economic Development. It is anticipated this uptick will level off during the coming fiscal-year. Additionally, the increased outreach to new business owners should correlate with an overall decline in businesses found without insurance over time. Claim-related penalties continued their downward trend, which is reflective of the decline in numbers of lost-time claims and the increase in timeliness of insurer's first action. The increase in "other" penalties was primarily due to a change in process review and should stabilize as the process is incorporated into everyday operations going forward.

**Appendix table: Workers' Compensation Division penalty statistics**

Penalty type	FY2008				FY2009				FY2010				FY2011			
	Assessed		Collected		Assessed		Collected		Assessed		Collected		Assessed		Collected	
	Total #	\$ amount	Total #	\$ amount	Total #	\$ amount	Total #	\$ amount	Total #	\$ amount	Total #	\$ amount	Total #	\$ amount	Total #	\$ amount
Late filing of first report (M.S. 176.231)	796	\$343,750	670	\$284,104	694	\$309,250	624	\$268,592	553	\$227,875	430	\$178,641	611	\$263,875	514	\$215,744
Late first payment (M.S. 176.221, .225)	985	\$393,589	970	\$348,555	811	\$353,198	800	\$319,224	688	\$344,738	658	\$273,112	670	\$300,682	628	\$260,044
		\$138,753				\$121,273				\$110,667				\$103,699		
Late denial (M.S. 176.221)	298	\$158,500	243	\$113,985	310	\$208,750	272	\$142,480	289	\$187,500	232	\$121,020	227	\$154,500	170	\$90,750
Prohibited practices (M.S. 176.194)	36	\$153,000	46	\$134,299	27	\$81,000	17	\$45,588	56	\$183,000	49	\$138,437	38	\$117,000	33	\$92,975
Rehab provider discipline (M.S. 176.102)	1	\$16,500	1	\$11,000	9	\$4,850	11	\$10,850	3	\$1,350	5	\$2,700	5	\$2,650	8	\$4,000
Managed care org discipline (M.S. 176.1351)	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0
Health care provider discipline (M.S. 176.103)	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0
Failure to insure (M.S. 176.181)	295	\$4,078,020	240	\$769,097	505	\$4,457,262	451	\$1,056,021	661	\$3,161,394	825	\$1,385,416	1,095	\$4,199,216	1,149	\$1,658,946
		\$3,420,825				\$2,955,804				\$2,151,051				\$2,107,626		
Late filing of special fund assessment (M.S. 176.129, .130)	62	\$90,711	57	\$61,244	28	\$112,075	29	\$54,803	31	\$93,894	37	\$70,866	79	\$108,161	31	\$42,498
Other penalties (M.S. 176.221, .225, .138, .231, .238, .84)	281	\$116,100	241	\$89,141	268	\$124,156	242	\$86,954	235	\$102,916	216	86,811	277	\$103,990	219	\$74,476
		\$48,831				\$28,852				\$53,811				\$126,362		
<b>Totals</b>	<b>2,754</b>	<b>\$4,880,559</b>	<b>2,468</b>	<b>\$1,811,425</b>	<b>2,652</b>	<b>\$4,299,208</b>	<b>2,446</b>	<b>\$1,984,512</b>	<b>2,516</b>	<b>\$3,456,802</b>	<b>2,452</b>	<b>\$2,257,004</b>	<b>3,002</b>	<b>\$2,821,039</b>	<b>2,752</b>	<b>\$2,439,433</b>

The differences between the penalties assessed and collected is a result of: rescinded and settled penalties, timing delays and data for penalties paid to employees not being collected by the department.  
 The assessed penalty amounts for late first payment and other penalties show the amount payable to the department first and the amount payable to the employee second.  
 The assessed penalty amounts for failure to insure penalties show the estimated amount first and the reduced amount second.