

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**Liberty Mutual Group
Engagement Date: July 26, 2021
Issue Date: November 9, 2022**

Office of Monitoring, Audit & Enforcement

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SUMMARY

Liberty Mutual Group (Liberty) provides a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined thirty-three (33) claim files where indemnity benefits were paid for the period under examination (2020) as well as fifty-nine (59) medical payments for the period under examination (2020) to determine compliance with statutory and regulatory requirements in the following areas:

- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of Liberty's 2020 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Liberty's 2020 medical payments for those claims in the sample.

Liberty handles its Maine workers' compensation claims primarily in Bala Cynwyd, Pennsylvania. Liberty also utilizes the services of Rhonda Huff as its claims agent within the State, although none of the claims under review were adjusted by Ms. Huff.

The audit work was conducted as a desk audit.

The compliance tables found on pages 9 through 11 of this report are representative of Board findings as of July 26, 2021. Since that time, the Audit Division has received additional information, missing form filings, form corrections, indemnity payments and adjustments. Based on this information, the Detailed Claims Information provided as an appendix of this report is representative of Board findings as of the issuance of this report.

Following is a discussion of the aforementioned compliance tables and of the steps taken since July 26, 2021 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Timeliness of benefit payments**

- Title 39-A M.R.S.A. Section 205(2) provides the time requirements for indemnity payments.
- When there is not an ongoing dispute, failure to pay weekly compensation benefits or accrued weekly benefits within 30 days after becoming due and payable is a violation of Title 39-A M.R.S.A. Section 205(2) and subject to penalty under Section 205(3).
- Initial Indemnity Payments:
 - Twenty-five (25) initial indemnity payments were made timely, and two (2) claims received “salary continuation” from their respective employers.
 - Liberty’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 73%, which is below the Board’s performance benchmark of 87%.
 - Ten (10) initial indemnity payments were made late.
 - Three (3) late initial indemnity payments were made later than 30 days after they became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
 - Four hundred seventy-eight (478) subsequent indemnity payments were made timely.
 - Fifty-one (51) subsequent indemnity payments were made late.
 - Board Rules and Regulations Chapter 5 states in part, “The employer/insurer shall pay the health care provider’s charge or the maximum allowable payment under this fee schedule, whichever is less, within 30 days of receipt of a bill unless the bill or previous bills from the same provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider’s bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider.”
 - Fifty-eight (58) medical payments were made timely.
 - One (1) medical payment was made late.
- Title 39-A M.R.S.A. Section 324(1) provides the requirements for compensation payments per an approved agreement, order or decision. Board Rules and Regulations Chapter 8, Section 18.2 provides the requirements for compensation payments per a Consent Between Employer and Employee (WCB-4A).
 - One (1) Lump Sum Settlement was paid timely.

In response to notice of these problem areas, Liberty has taken steps to improve future compliance by providing additional staff training regarding those actions necessary to ensure timely payments.

◆ **Accuracy of indemnity payments**

- Title 39-A M.R.S.A. Section 102(4) and Board Rules and Regulations Chapter 1, Section 5 provide the requirements for calculating average weekly wages (AWWs). Title 39-A M.R.S.A. Section 102(1) and Board Rules and Regulations Chapter 8, Section 9 provides the requirements for determining weekly compensation rates (WCRs). Title 39-A M.R.S.A. Sections 212, 213, and 215 provide the requirements for compensation for total incapacity, partial incapacity, and death benefits.
- The accuracy of indemnity payments was reviewed for thirty-three (33) claims.
- Average Weekly Wage:
 - Thirty-three (33) AWWs were correct.
- Weekly Compensation Rate:
 - Thirty-three (33) WCRs were correct.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for nine (9) claims.
 - The method used to calculate partial benefits was incorrect for nine (9) claims.
- Amount Paid:
 - Eleven (11) claims were compensated correctly, and two (2) claims received “salary continuation” from their respective employers.
 - Eleven (11) claims were underpaid (\$31,456.77 aggregately).
 - Since July 26, 2021, Liberty paid (\$29,184.72) of the amounts due.
 - Nine (9) claims were overpaid (\$2,937.28 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$28,519.49 to injured workers.

In response to notice of these problem areas, Liberty has taken steps to improve future compliance by providing additional staff training regarding those actions necessary to ensure accurate payments.

◆ **Accuracy of medical payments**

- Title 39-A M.R.S.A. Section 209-A and Board Rules and Regulations Chapter 5 provide the fee setting requirements for medical and ancillary services and products rendered by individual health care practitioners and health care facilities.
- The accuracy of fifty-nine (59) medical payments were reviewed among twenty-three (23) claims.
- Amount Paid:
 - Thirty-five (35) medical payments sampled were correct.
 - Twenty-four (24) medical payments sampled were incorrect.

In response to notice of these problem areas, Liberty has taken steps to improve future compliance by providing additional staff training regarding those actions necessary to ensure accurate payments.

◆ Other significant issues

- Box 22 (First Day Of Compensability After Waiting Period Is Met) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of the first compensable day that follows the completion of the 7-day waiting period. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 22 of the MOPs that were filed for three (3) claims.
- Boxes 23a (Date of Incapacity) and 23b (Date Employer Notified) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of incapacity and date that the employer was notified of the incapacity. Note: the Date of Incapacity reported in Box 23a and the Date Employer Notified in Box 23b must equal the Date of Incapacity (DN56) and Date Employer Notified (DN281) reported in box 43 of the WCB-1, Employer's First Report of Occupational Injury or Disease (First Report). See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Boxes 23a and/or 23b of the MOPs that were filed for five (5) claims.
- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date that the initial indemnity payment (for the incapacity addressed by the MOP) is sent to the employee. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 24 of the MOPs that were filed for thirteen (13) claims.
- Section 213 provides the requirements for partial incapacity benefits. Partial benefits must be calculated at a rate of 80% of the difference between the employee's pre-injury (after-tax) AWW and their post-injury (after-tax) weekly (based on payroll, i.e. Saturday through Friday) actual wages (not based on M-1). See Board Rules and Regulations Chapter 8, Section 8.
- It appears that post-injury wages were not reviewed to assess a potential obligation to pay partial benefits when two (2) employees returned to work on "modified duty".

◆ PENALTIES

◆ Penalties payable to providers and/or injured employees

Title 39-A M.R.S.A. Section 205(3)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within thirty (30) days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over thirty (30) days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Delays of initial indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Janet Berch-Perry vs. United Parcel Service Inc. Date of Injury: 2/20/20 Date ER Notified of Incapacity: 2/21/20 Claim #WC390-E38394 Board #20003823	No NOC was filed, and the initial indemnity payment for the 2 nd period of incapacity was made 10/23/20, which was 139 days after compensation became due and payable (6/6/20).	\$1,500.00
Jonathan Brouillet vs. United Parcel Service Inc. Date of Injury: 12/29/20 Date ER Notified of Incapacity: 12/30/20 Claim #WC390-E62541 Board #20025601	No NOC was filed, and the initial indemnity payment for the 2 nd period of incapacity was made 6/4/21, which was 31 days after compensation became due and payable (5/4/21).	\$50.00
Edward Lavorgna vs. ND Paper LLC Date of Injury: 5/26/20 Date ER Notified of Incapacity: 5/31/20 Claim #WC390-E44594 Board #20009297	No NOC was filed, and the initial indemnity payment was made 10/6/20, which was 73 days after compensation became due and payable (7/25/20).	\$1,500.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$3,050.00

Delays of “other” indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Dustin Allbritton vs. United Parcel Service Inc. Date of Injury: 1/2/20 Date ER Notified of Incapacity: 1/3/20 Claim #WC390-E34453 Board #20000051	Payment for the 7-day waiting period was made 4/21/22, which was 817 days after compensation became due and payable (1/25/20).	\$1,500.00

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Xavon Atkins vs. Lloyd's Register Americas, Inc. Date of Injury: 8/28/20 Date ER Notified of Incapacity: 8/29/20 Claim #WC390-E52126 Board #20016789	The claimant's benefits were improperly discontinued on 8/29/20. Payment of accrued benefits was made 10/20/22, which was 768 days after compensation became due and payable (9/12/20).	\$1,500.00
Melissa Burnham vs. Rusty Lantern Markets LLC Date of Injury: 4/17/20 Date ER Notified of Incapacity: 4/18/20 Claim #WC823-C34753 Board #20007147	Payment for six (6) days of the 7-day waiting period was made 4/20/22, which was 718 days after compensation became due and payable (5/2/20).	\$1,500.00
Cory Clarcq vs. PODS, LLC Date of Injury: 10/8/20 Date ER Notified of Incapacity: 10/9/20 Claim #WC390-E54746 Board #20019236	Payment for the specific loss benefit was made 6/17/22, which was 347 days after it became due and payable (7/7/21).	\$1,500.00
Kurt Grindatti vs. United Parcel Service Inc. Date of Injury: 8/26/20 Date ER Notified of Incapacity: 8/27/20 Claim #WC390-E51444 Board # 20015911	Benefits were increased to the Maximum Benefit Level effective 7/1/21 on 10/21/22, which was 463 days after it became due and payable (7/15/21).	\$1,500.00
Edward Lavorgna vs. ND Paper LLC Date of Injury: 5/26/20 Date ER Notified of Incapacity: 5/31/20 Claim #WC390-E44594 Board #20009297	A provisional WCR was used to pay this period. Payment of accrued benefits was made 10/20/22, which was 514 days after compensation became due and payable (5/24/21).	\$1,500.00
Kevin Lesure vs. Brookfield Renewable Power Inc. Date of Injury: 12/8/20 Date ER Notified of Incapacity: 12/9/20 Claim #WC390-E60282 Board # 20024314	A provisional WCR was used to pay this claim. Payment of accrued benefits was made 10/20/22, which was 643 days after compensation became due and payable (1/15/21).	\$1,500.00
Michael Money vs. ND Paper LLC Date of Injury: 7/3/20 Date ER Notified of Incapacity: 7/4/20 Claim #WC390-E47380 Board #20012052	The claimant's benefits were improperly discontinued on 8/10/20. Payment of accrued benefits was made 10/20/22, which was 422 days after compensation became due and payable (8/24/20).	\$1,500.00
Bryon Richards vs. Core-Mark Holding Company, Inc. Date of Injury: 1/6/20 Date ER Notified of Incapacity: 1/6/20 Claim #WC390-E35079 Board #20000431	The claimant was totally incapacitated from 2/11/20 through 3/30/20. Payment for four (4) days of that incapacity (2/11/20 - 2/14/20) was made 10/20/22, which was 965 days after it became due and payable (2/28/20).	\$1,500.00
Total Penalties to Injured Employees for Delays of "Other" Indemnity Payments		\$13,500.00

◆ Penalties payable to the State General Fund

Title 39-A M.R.S.A. Section 359(2)

“In addition to any other penalty assessment permitted under this Act, the Board may assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The Board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the Board is exempt from the provisions of the Maine Administrative Procedure Act. The amount of any penalty assessed pursuant to this subsection must be directly related to the severity of the pattern of questionable claims-handling techniques or repeated unreasonably contested claims. All penalties collected pursuant to this subsection shall inure to the benefit of the General Fund. An insurance carrier’s payment of any penalty assessed under this section may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 359(2) and/or 360(2), Liberty must take corrective measures to address the following inadequacies:

- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

Title 39-A M.R.S.A. Section 360(2)

“The Board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The Board may also require that person to repay any compensation received through a violation of this Act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 360(2) and/or 359(2), Liberty must take corrective measures to address the following inadequacies:

- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

COMPLIANCE TABLES

Timeliness of Benefit Payments

A. Initial Payment of Indemnity Benefits

			2020	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	27	73%
15-44	Days		7	19%
45+	Days		3	8%
Total			37	100%

B. Subsequent Payment of Indemnity Benefits

			2020	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	478	90%
8-37	Days		51	10%
Total			529	100%

C. Medical Payments

			2020	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	58	98%
31+	Days		1	2%
Total			59	100%

D. Payment of Approved Agreements, Orders, Decisions

			2020	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	1	100%
Total			1	100%

◆ **Accuracy of Indemnity Payments**

E. Average Weekly Wage

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	33	100%
Total		33	100%

F. Weekly Compensation Rate

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	33	100%
Total		33	100%

G. Partial Benefits

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	9	50%
Incorrect		9	50%
Total		18	100%

H. Amount Paid

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	13	39%
Underpaid		11	33%
Overpaid		9	28%
Total		33	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2020	
		Number	Percent
Calculated:			
Correct	Compliant	35	59%
Incorrect		24	41%
Total		59	100%