

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



Maine Employer's Mutual Insurance Company
Engagement Date: July 11, 2019
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Office of Monitoring, Audit & Enforcement

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SUMMARY

Maine Employers' Mutual Insurance Company (MEMIC) provides a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined sixty (60) claim files where indemnity benefits were paid for the period under examination (2018) as well as sixty (60) medical payments for the period under examination (2018) 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 MEMIC's 2018 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of MEMIC's 2018 medical payments for those claims in the sample.

Due to questionable claims-handling techniques identified early in the audit process, this audit was expanded to include a limited-scope audit of sixty (60) Consents between Employee and Employer forms. The sample for the limited-scope audit was drawn from the Board's records of reported MEMIC claims. Of the claim files audited, there were sixty (60) 2018 claims. The audit of those claims addressed the following issues:

- Misuse of WCB 4a Consent between Employer and Employee

The audit work was conducted as a desk audit.

The compliance tables found on pages 12 through 14 of this report are representative of Board findings as of July 11, 2019. Since that time, the Audit Division has received additional information, missing form filings, form corrections, indemnity payments and adjustments.

Following is a discussion of the aforementioned compliance tables and of the steps taken since July 11, 2019 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:
 - Forty-seven (47) initial indemnity payments were made timely and seven (7) claims received “salary continuation” from their respective employers.
 - MEMIC’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 82%, which is below the Board’s performance benchmark of 87%.
 - Twelve (12) initial indemnity payments were made late.
 - Four (4) 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:
 - Five hundred seventy-two (572) subsequent indemnity payments were made timely.
 - Thirty-four (34) subsequent indemnity payments were made late.
 - Three (3) late subsequent indemnity payment were made later than 30 days after it became due and payable in violation of Section 205(2) and subject to penalty under Section 205(3).
- 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-six (56) medical payments were made timely.
 - Four (4) medical payments were 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).
 - Five (5) mediation agreements were paid timely.

- One (1) mediation agreement was paid late in violation of Section 324(1) and subject to penalty under Section 324(2).

In response to notice of these problem areas, MEMIC 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 sixty (60) claims.
- Average Weekly Wage:
 - Fifty-seven (57) AWWs were correct.
 - Three (3) AWWs were incorrect.
- Weekly Compensation Rate:
 - Fifty-seven (57) WCRs were correct.
 - Three (3) WCRs were incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for fourteen (14) claims.
 - The method used to calculate partial benefits was incorrect for thirty-six (36) claims.
- Amount Paid:
 - Eighteen (18) claims were compensated correctly.
 - Sixteen (16) claims were underpaid (\$8,795.77 aggregately).
 - Since July 11, 2019, MEMIC paid the amounts due.
 - Twenty-six (26) claims were overpaid (\$7,854.37 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$941.40 to injured workers.

In response to notice of these problem areas, MEMIC 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 medical payments was reviewed for thirty (30) claims.
- Amount Paid:
 - Medical payments sampled for twenty (20) claims were correct.
 - Medical payments sampled for one (1) claim were incorrect.
 - Medical payments sampled for nine (9) claims were unknown.

In response to notice of these problem areas, MEMIC 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.
- 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 four (4) claims.
- Box 20a (Current Incapacity) and 20b (Date Employer Notified) of the WCB-9, Notice of Controversy (NOC) must accurately reflect the first qualifying day of disability in the current period of disability being denied and the date employer notified of such, respectively. If the date of the Current Incapacity is the same as the Initial Incapacity, this should be left blank. See the Board's Forms and Petitions Manual.
 - An incorrect date was reported in Box 20a and/or 20b of the NOC that was filed for one (1) claim.
- Section 213 provides the requirements for partial incapacity benefits. If the injured employee's date of injury is prior to January 1, 2013, 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). If the injured employee's date of injury is on or after January 1, 2013, partial benefits must be calculated at a rate of 2/3 of the difference between the employee's pre-injury AWW and their post-injury weekly actual wages. 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 the following employees returned to work on "modified duty" for three (3) claims.
- Box 19a (From Date) and 19b (To Return Date) of the WCB-4, Discontinuance or Modification of Compensation must accurately reflect the date the incapacity began or, respectively. See also the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 19a and/or 19b of the WCB-4, Discontinuance or Modification of Compensation forms that were filed for one (1) claim.

◆ **Limited-Scope Audit**

- Due to questionable claims-handling techniques identified early in the audit process, this audit was expanded to include a limited-scope audit of sixty (60) 2018 indemnity claims that were reported to the Board with 4a Consents filed. Our audit of those claims addressed the following issues:
 - Improper use of the WCB-4a Consent between Employer and Employee

 - MEMIC used a 4a Consent between Employer and Employee to avoid paying employee for pre-planned vacation time, which is in violation of Section 106 of the Act for two (2) claims.

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
Ricky Creamer vs. FWC, Inc. Date of Injury: 12/6/18 Date ER Notified of Incapacity: 12/7/18 Claim # 18119635 Board # 18028652	No NOC was filed, and the initial indemnity payment was made 1/31/19, which was 34 days after compensation became due and payable (12/28/18).	\$200.00
Mark Cromwell vs. G & D Cromwell, Inc. Date of Injury: 5/1/18 Date ER Notified of Incapacity: 5/2/18 Claim # 19106741 Board # 19008907	No NOC was filed until 369 days after compensation became due and payable (5/15/18). The “mandatory payment” was made 5/3/19, which was 353 days after compensation became due and payable (5/15/18).	\$1,500.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$1,700.00

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Shawn Guitard vs. Marina Holdings, LLC. Date of Injury: 9/7/18 Date ER Notified of Incapacity: 9/18/18 Claim #18115051 Board #18022117	A subsequent indemnity payment was made 1/9/19, which was 84 days after the previous indemnity payment (10/17/18). A subsequent indemnity payment was made 5/14/19, which was 125 days after the previous payment (1/9/19).	\$1,500.00
Daniel Osborne vs. Jordan Custom Carpentry, Inc. Date of Injury: 7/30/18 Date ER Notified of Incapacity: 7/31/18 Claim # 18112157 Board # 18017449	A subsequent indemnity payment was made 5/16/19, which was 59 days after the previous indemnity payment (3/18/19).	\$750.00
Total Penalties to Injured Employees for Delays of Subsequent Indemnity Payments		\$2,250.00

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
James Batty III vs. Horch Roofing Inc. Date of Injury: 8/31/18 Date ER Notified of Incapacity: 9/5/18 Claim #: 18114574 Board #: 18021554	Failed to include fringe benefits after the employee was terminated. Payment of accrued benefits was made 8/24/21, which was 590 days after it became due and payable.(1/12/2020).	\$1,500.00
Joshua Boobar vs. Robinson Builders, Inc. Date of Injury: 12/28/18 Date ER Notified of Incapacity: 12/31/18 Claim # 19100009 Board # 18030556	A provisional WCR was used to pay this claim. Payment of accrued benefits has not yet been made.	\$1,500.00
Robert Cairns vs. HVAC Services, Inc. Date of Injury: 8/22/18 Date ER Notified of Incapacity: 8/30/18 Claim # 18114177 Board # 18020496	The claimant was totally incapacitated from 9/3/18 through 9/8/18. MEMIC filed unreasonable NOC based on pre-planned vacation. Payment for that incapacity was made 8/24/21, which was 1,031 days after it became due and payable (10/28/18).	\$1,500.00
Ricky Creamer vs. FWC, Inc. Date of Injury: 12/6/18 Date ER Notified of Incapacity: 12/7/18 Claim # 18112751 Board # 18028652	MEMIC failed to track post-injury wages 12/12/18 through 2/10/19. Payment for those weeks was made on 8/25/21, which was 912 days after it became due and payable (2/25/19).	\$1,500.00
Auburn Hart vs. TJ’s Pizzeria, Inc. Date of Injury: 7/21/18 Date ER Notified of Incapacity: 7/22/18 Claim # 18112086 Board # 18017310	A provisional WCR was used to pay this claim. Payment of accrued benefits has not yet been made.	\$1,500.00
Katrina Lowe vs. The Bethel Commodore Corp Date of Injury: 9/2/18 Date ER Notified of Incapacity: 9/4/18 Claim # 18114379 Board # 18020856	A provisional payment was used to pay benefits for week ending 9/22/18. Payment of accrued benefits was made on 8/21/21, which was 1,050 days after it became due and payable (10/6/18).	\$1,500.00
Cindy Nichols vs. Care & Comfort Date of Injury: 7/27/18 Date ER Notified of Incapacity: 8/1/18 Claim # 18112343 Board # 18017688	Wages earned by the claimant from concurrent employer were not included in AWW calculation. Payment of accrued benefits has not yet been made.	\$1,500.00**

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Chantal Smeland vs. College of the Atlantic Date of Injury: 7/11/18 Date ER Notified of Incapacity: 7/12/18 Claim # 18110981 Board # 18015590	A provisional WCR was used to pay this claim. Payment of accrued benefits was made 8/20/21, which was 1,034 days after it became due and payable (10/21/18).	\$1,500.00
Jeffrey Stevenson vs. Fine Lines Construction, Inc. Date of Injury: 10/22/18 Date ER Notified of Incapacity: 4/2/19 Claim # 18117052 Board # 18024859	Claimant was totally incapacitated from 4/2/19 through 4/14/19. Payment for one (1) day of that incapacity (4/13/19) was made on 8/25/21, which was 850 days after it became due and payable (4/28/19).	\$1,500.00
Stephanie Valentini vs. John F. Murphy Homes, Inc. Date of Injury: 12/17/18 Date ER Notified of Incapacity: 12/18/18 Claim # 18120279 Board # 18029645	Claimant was on salary continuation from 12/23/18 through 4/7/19, and MEMIC failed to track post-injury wages. Payment for those weeks was made on 8/24/21, which was 856 days after it became due and payable (4/21/19).	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$15,000.00

** This claim has been settled by Lump Sum and the Audit Division is not pursuing penalties (on behalf of the corresponding employee) arising from the violation cited.

◆ **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), MEMIC must take corrective measures to address the following inadequacies:

- Failure to file or timely file forms with the Board
- 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), MEMIC must take corrective measures to address the following inadequacies:

- Failure to file or timely file forms with the Board
- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

COMPLIANCE TABLES

◆ Timeliness of Benefit Payments

A. Initial Payment of Indemnity Benefits

			2018	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	54	82%
15-44	Days		10	15%
45+	Days		2	3%
Total			66	100%

B. Subsequent Payment of Indemnity Benefits

			2018	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	572	94%
8-37	Days		34	5%
38+	Days		3	1%
Total			609	100%

C. Medical Payments

			2018	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	56	93%
31+	Days		4	7%
Total			60	100%

D. Payment of Approved Agreements, Orders, Decisions

			2018	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	5	83%
10 +	Days		1	17%
Total			6	100%

◆ Accuracy of Indemnity Payments

E. Average Weekly Wage

		2018	
		Number	Percent
Calculated:			
Correct	Compliant	57	95%
Incorrect		3	5%
Total		60	100%

F. Weekly Compensation Rate

		2018	
		Number	Percent
Calculated:			
Correct	Compliant	57	95%
Incorrect		3	5%
Total		60	100%

G. Partial Benefits

		2018	
		Number	Percent
Calculated:			
Correct	Compliant	14	28%
Incorrect		36	72%
Total		50	100%

H. Amount Paid

		2018	
		Number	Percent
Calculated:			
Correct	Compliant	18	30%
Underpaid		16	27%
Overpaid		26	43%
Total		60	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2018	
		Number	Percent
Calculated:			
Correct	Compliant	36	60%
Incorrect		2	3%
Unknown		22	37%
Total		60	100%