

# COMPLIANCE AUDIT REPORT

STATE OF MAINE  
WORKERS' COMPENSATION BOARD



**Macy's Retail Holdings, Inc.**  
**Engagement Date: May 10, 2019**  
**Issue Date: January 26, 2021**

**Office of Monitoring, Audit & Enforcement**

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## SUMMARY

Macy's Retail Holdings Inc. (Macy's) is a self-insured, self-administered Maine employer comprised of department stores in Maine and several other states.

The Audit Division of the Maine Workers' Compensation Board (Board) examined five (5) claim files where indemnity benefits were paid for the period under examination 2016-2018 as well as fifty-nine (59) medical payments for the period under examination 2016-2018 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 Macy's 2016-2018 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Macy's 2016-2018 medical payments for those claims in the sample.

Macy's handled its Maine workers' compensation claims through third-party administrator Sedgwick, which operates primarily in South Portland, Maine.

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 May 10, 2019. Since that time, the Audit Division has received additional information and form corrections.

Following is a discussion of the aforementioned compliance tables and of the steps taken since May 10, 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:
  - Five (5) initial indemnity payments were made timely and one (1) claim received “salary continuation” from their respective employer.
    - Macy’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 86%, which is below the Board’s performance benchmark of 87%.
  - One (1) initial indemnity payment was made late.
- Subsequent Indemnity Payments:
  - One hundred (100) subsequent indemnity payments were made timely.
  - Ten (10) 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-two (52) medical payments were made timely.
  - Seven (7) 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).
  - One (1) Decision was paid timely.

*In response to notice of these problem areas, Macy’s 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 five (5) claims.
- Average Weekly Wage:
  - Four (4) AWWs were correct.
  - One (1) AWW was incorrect.
- Weekly Compensation Rate:
  - Four (4) WCRs were correct.
  - One (1) WCR was incorrect.
- Partial Benefits Calculation Method:
  - The method used to calculate partial benefits was correct for zero (0) claims.
  - The method used to calculate partial benefits was incorrect for four (4) claims.
- Amount Paid:
  - Zero (0) claims were compensated correctly and one (1) claim received “salary continuation” from their respective employer.
  - Four (4) claims were overpaid (\$2,409.89 aggregately).
  - Collectively, the aforementioned errors resulted in a net overpayment of \$2,409.89 to injured workers.

*In response to notice of these problem areas, Macy’s 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 five (5) claims.
- Amount Paid:
  - Medical payments sampled for five (5) claims were correct.

◆ **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 date was reported in Box 22 of the MOP that was filed for one (1) claim.
  
- 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 and/or Boxes 43a and/or 43b of the FROIs that were filed for four (4) claims.
  
- Additional payments were made since the "Final" WCB-11, Statement of Compensation Paid was filed for one (1) claim.

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Virginia Griffin vs. Macy’s Date of Injury: 5/30/16 Date ER Notified of Incapacity: 5/31/16 Claim # 20160530136766 Board # 16011170	Wages earned by the claimant from Social Security were improperly offset to pay this claim. Payment of accrued benefits has not yet been made.	\$1,500.00*
<b>Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments</b>		<b>\$1,500.00</b>

\*Case settled by Lump Sum Settlement

◆ **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 3<sup>rd</sup>-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), Macy’s 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), Macy’s 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

			<b>2016-2018</b>	
			Number	Percent
Check Issued Within:				
0-14	Days	<b>Compliant</b>	6	86%
45+	Days		1	14%
Total			7	100%

### B. Subsequent Payment of Indemnity Benefits

			<b>2016-2018</b>	
			Number	Percent
Check Issued Within:				
0-7	Days	<b>Compliant</b>	100	91%
8-37	Days		10	9%
Total			110	100%

### C. Medical Payments

			<b>2016-2018</b>	
			Number	Percent
Check Issued Within:				
0-30	Days	<b>Compliant</b>	52	88%
31+	Days		7	12%
Total			59	100%

### D. Payment of Approved Agreements, Orders, Decisions

			<b>2016-2018</b>	
			Number	Percent
Check Issued Within:				
0-10	Days	<b>Compliant</b>	1	100%
Total			1	100%

◆ Accuracy of Indemnity Payments

E. Average Weekly Wage

		<b>2016-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	4	80%
Incorrect		1	20%
Total		5	100%

F. Weekly Compensation Rate

		<b>2016-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	4	80%
Incorrect		1	20%
Total		5	100%

G. Partial Benefits

		<b>2016-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	0	0%
Incorrect		4	100%
Total		4	100%

H. Amount Paid

		<b>2016-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	1	20%
Overpaid		4	80%
Total		5	100%

◆ **Accuracy of Medical Payments**

**I. Amount Paid**

		<b>2016-2018</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	5	100%
Total		<u>5</u>	<u>100%</u>