

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**State of Maine Office of Workers' Compensation
Engagement Date: July 23, 2019
Issue Date: December 17, 2021**

Office of Monitoring, Audit & Enforcement

John C. Rohde
Executive Director

CONTENTS

SUMMARY	1
◆ Timeliness of benefit payments	2
◆ Accuracy of indemnity paymnts	4
◆ Accuracy of medical payments	5
◆ Other significant issues	6
PENALTIES	7
◆ Penalties payable to providers and/or injured employees	7
Title 39-A M.R.S.A. Section 205(3)	7
◆ Penalties payable to the State General Fund	9
Title 39-A M.R.S.A. Section 359(2)	9
Title 39-A M.R.S.A. Section 360(2)	9
COMPLIANCE TABLES	10
◆ Timeliness of Benefit Payments	10
A. Initial Payment of Indemnity Benefits	10
B. Subsequent Payment of Indemnity Benefits	10
C. Medical Payments	10
D. Payment of Approved Agreements, Orders, Decisions	10
◆ Accuracy of Indemnity Payments	11
E. Average Weekly Wage	11
F. Weekly Compensation Rate	11
G. Partial Benefits	11
H. Amount Paid	11
◆ Accuracy of Medical Payments	12
I. Amount Paid	12

SUMMARY

State of Maine Office of Workers' Compensation (OWC) is a self-insured, self-administered Maine employer.

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 OWC's 2018 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of OWC's 2018 medical payments for those claims in the sample.

The audit work was conducted as a desk audit.

The compliance tables found on pages 10 through 12 of this report are representative of Board findings as of July 23, 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 23, 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:
 - Thirty-five (35) initial indemnity payments were made timely and nineteen (19) claims received “salary continuation” from their respective employers.
 - OWC’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 81%, which is below the Board’s performance benchmark of 87%.
 - Thirteen (13) initial indemnity payments were made late.
 - Two (2) 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 twenty-eight (428) subsequent indemnity payments were made timely.
 - Thirty (30) 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-six (56) medical payments were made timely.
 - Two (2) medical payments were made late.
 - Two (2) medical payments could not be measured as OWC’s records contained insufficient information.

- 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) mediation agreement was paid timely.

In response to notice of these problem areas, OWC 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-nine (59) AWWs were correct.
 - One (1) AWW was incorrect.
- Weekly Compensation Rate:
 - Fifty-nine (59) WCRs were correct.
 - One (1) WCR was incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for thirty-seven (37) claims.
 - The method used to calculate partial benefits was incorrect for twenty-one (21) claims.
- Amount Paid:
 - Thirty (31) claims were compensated correctly and eight (8) claims received “salary continuation” from their respective employers.
 - Fourteen (14) claims were underpaid (\$3,209.05 aggregately).
 - Since July 23, 2019, OWC paid the amounts due.
 - Seven (7) claims were overpaid (\$2,430.19 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$778.86 to injured workers.

In response to notice of these problem areas, OWC 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 sixty (60) medical payments was reviewed among thirty-three (33) claims.
- Amount Paid:
 - Fifty-seven (57) medical payments sampled were correct.
 - One (1) medical payment sampled was incorrect.
 - Two (2) medical payments sampled were unknown.

◆ **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 eight (8) 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 and/or Boxes 43a and/or 43b of the FROIs that were filed for two (2) 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 seven (7) claims.
- Box 19b (To (Return Date)) of the WCB-4, Discontinuance or Modification of Compensation must accurately reflect the date the incapacity ended. See also Board's Forms and Petitions Manual.
- Incorrect dates were reported in Box 19b of the WCB-4, Discontinuance or Modification of Compensation forms that were filed for four (4) claims.
- Additional payments were made since the "Final" WCB-11 Statement of Compensation Paid was filed 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
Kandice Fleming vs. State of Maine Date of Injury: 4/9/18 Date ER Notified of Incapacity: 6/22/18 Claim # 1801378 Board # 18023557	No NOC was filed, and the initial indemnity payment was made 10/17/18, which was 48 days after compensation became due and payable (8/30/18).	\$900.00
Jonathan Williams vs. State of Maine Date of Injury: 1/29/18 Date ER Notified of Incapacity: 3/21/18 Claim # 1801037 Board # 18013564	No NOC was filed until 84 days after compensation became due and payable (4/7/18). The payment was made 08/20/18, which was 135 days after compensation became due and payable.	\$1,500.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$2,400.00

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Joan Auger vs. State of Maine Date of Injury: 6/14/18 Date ER Notified of Incapacity: 11/20/18 Claim # 1801765 Board # 18027656	While claimant was partially incapacitated, OWC failed to track post-injury wages. Payment of accrued benefits was made 11/30/21, which was 934 days after compensation became due and payable. (5/11/19)	\$1,500.00
Gayle Koyanagi vs. State of Maine Date of Injury: 6/19/18 Date ER Notified of Incapacity: 6/20/18 Claim # 1801740 Board # 18013998	Claimant was on Salary Continuation from 6/20/18 through 9/11/18 and OWC failed to track post-injury wages. Payment of accrued benefits was made 12/3/21, which was 1,165 days after compensation became due and payable. (9/25/18)	\$1,500.00
Samuel Moore vs. State of Maine Date of Injury: 9/25/18 Date ER Notified of Incapacity: 9/28/18 Claim # 1900372 Board # 18023486	While the claimant was partially incapacitated, OWC failed to track post-injury wages. Payment of accrued benefits was made 10/1/19, which was 290 days after compensation became due and payable. (12/15/18)	\$1,500.00

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Myong Randall vs. State of Maine Date of Injury: 1/23/18 Date ER Notified of Incapacity: 1/24/18 Claim # 1800960 Board # 18001741	Claimant was on Salary Continuation from 1/24/18 through 6/4/18 and OWC failed to track post-injury wages. Payment of accrued benefits was made 11/30/21, which was 1,261 days after compensation became due and payable. (6/18/18)	\$1,500.00
Meghan Thibodeau vs. State of Maine Date of Injury: 9/1/18 Date ER Notified of Incapacity: 9/4/18 Claim # 1900275 Board # 18020547	Payment for part of the 7-day waiting period was made 7/24/19, which was 298 days after compensation became due and payable. (9/27/18)	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$7,500.00

◆ 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), OWC 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), OWC 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

			2019	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	54	81%
15-44	Days		11	16%
45+	Days		2	3%
Total			67	100%

B. Subsequent Payment of Indemnity Benefits

			2019	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	428	93%
8-37	Days		30	7%
Total			458	100%

C. Medical Payments

			2019	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	56	94%
31+	Days		2	3%
Unknown	Days		2	3%
Total			60	100%

D. Payment of Approved Agreements, Orders, Decisions

			2019	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	1	100%
Total			1	100%

◆ Accuracy of Indemnity Payments

E. Average Weekly Wage

		2019	
		Number	Percent
Calculated:			
Correct	Compliant	59	98%
Incorrect		1	2%
Total		60	100%

F. Weekly Compensation Rate

		2019	
		Number	Percent
Calculated:			
Correct	Compliant	59	98%
Incorrect		1	2%
Total		60	100%

G. Partial Benefits

		2019	
		Number	Percent
Calculated:			
Correct	Compliant	37	64%
Incorrect		21	36%
Total		58	100%

H. Amount Paid

		2019	
		Number	Percent
Calculated:			
Correct	Compliant	39	65%
Underpaid		14	23%
Overpaid		7	12%
Total		60	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2019	
		Number	Percent
Calculated:			
Correct	Compliant	57	95%
Incorrect		1	2%
Unknown		2	3%
Total		60	100%