

# MAINE STATE LEGISLATURE

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Annual Report  
on the Status of  
the Maine  
Workers'  
Compensation  
System

Submitted to the  
129<sup>th</sup> Maine  
Legislature

February  
2020

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STATE OF MAINE  
**WORKERS' COMPENSATION BOARD**  
27 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0027

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February 14, 2020

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We are pleased to submit to the Governor and the 129<sup>th</sup> Legislature, Second Regular Session, the **Annual Report on the Status of the Maine Workers' Compensation System** as required by Title 39-A § 358-A(1).

The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system – the Workers' Compensation Board, the Bureau of Insurance, and the Department of Labor, Bureau of Labor Standards.

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## EXECUTIVE SUMMARY

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed in the Workers' Compensation Act, Title 39-A, at §358-A(1) to submit an annual report on the status of the workers' compensation system to the Governor, the Joint Standing Committee on Labor and Housing and the Joint Standing Committee on Insurance and Financial Services by February 15th of each year.

### WORKERS' COMPENSATION BOARD

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The Maine Workers' Compensation Board's "mission is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the worker's compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation, and facilitating labor-management cooperation." 39-A M.R.S.A §151-A.

The agency is managed by the Executive Director and a Board of Directors. The Board of Directors has seven members: three represent labor, three represent management, and the seventh is the Executive Director. The Directors meet on a regular basis, usually monthly, to discuss issues affecting the agency and the workers' compensation system. The Directors try to reach a consensus on issues. If that is not possible, the Executive Director can cast a tie-breaking vote.

During 2019, there were notable successes along with identification of areas where improvement is both desirable and possible. In terms of success, Governor Mills, during the First Regular Session of the 129th Maine Legislature, worked with Democrats, Republicans and stakeholders representing employees, employers and insurers to craft and unanimously enact workers' compensation reforms. That law, P.L. 2019, c. 344 (L.D. 756), is discussed in more detail later in this report.

Also, in 2019 the Board developed standards to review the performance of Independent Medical Examiners (IMEs) – a review that has not occurred for several years. The standards will ensure that an objective review of IMEs will occur on a regular basis. The Board will also try to increase participation of health care providers so that the list of approved examiners will include IMEs in the specialties most frequently used by injured workers.

The number of cases entering the Board's dispute resolution process has been relatively stable in recent years. This includes 2019 when approximately 15,500 filings were assigned to Troubleshooters; 2,400 cases were assigned to Mediators and 1,600 cases were assigned to Administrative Law Judges. The same is true in terms of the amount of time it takes a case to move through each stage of dispute resolution: averaging 22 days for troubleshooting, 66 days for mediation, and 10 months for formal hearing in 2019.

The Board continued to provide training and actively monitor cases to ensure obligations are being met in a timely and accurate fashion. As an example, 5,754 Memorandum of Payment forms were reviewed for accuracy by the Claims Management unit in 2019. This review helps identify and correct issues early – before they become more difficult to resolve.

However, even with the effort of Board staff, overall industry compliance with benchmarks has been trending downward. The Board will be looking at ways to reinvigorate the Monitoring, Auditing, and Enforcement units to ensure prompt payment of benefits, compliance with regulatory mandates, and

efficient administration of the Workers' Compensation Act. The Board will also continue to work with the Department of Labor to minimize the impact of employee misclassification. Misclassification of an employee as an independent contractor negatively impacts the affected worker and employers that are complying with the law. In addition, the Board will look to increase coordination with the Department of Labor's Bureau of Labor Standards. This will enhance the production of timely data for use by policy makers.

The Worker Advocate Division continues to be busy and continues to experience difficulties associated with high turnover rates among its staff. The Board, in 2020, will be looking for ways to ensure the program continues to perform its intended function of providing representation when an injured worker does not have an attorney.

Another major focus and, possibly, challenge, for the Board in 2020 will be its technology infrastructure. For many years, the Office of Information Technology (OIT) recommended the Board migrate to a new database. The Board indicated its agreement with this recommendation in 2019 and began the process of searching, with OIT's assistance, for an alternative. The Board is hoping to make substantial progress on this work in 2020. Migrating to a new database should enhance the Board's ability to gather and analyze data.

Finally, in 2020, the Board will begin its next periodic update to its medical fee schedule. The Board will review whether the current conversion factors and baserates continue to ensure broad access to health care at a reasonable cost.

## BUREAU OF INSURANCE

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This portion of the report examines different measures of market conditions. Workers' compensation insurance in Maine operates in a prior approval rating system:

- The National Council on Compensation Insurance (NCCI), the state's designated statistical agent, files annual advisory loss costs on behalf of insurers for approval with the Superintendent. Advisory loss costs represent the portion of the rates that accounts for losses and loss adjustment expenses.
- Each insurer files factors called loss cost multipliers for the Superintendent's approval. These multipliers account for company experience, overhead expenses, taxes, contingencies, investment income and profit. Each insurer reaches its rates by multiplying the advisory loss costs by the loss cost multipliers. Other rating rules, such as experience rating, schedule rating, and premium discounts, also affect the ultimate premium amount paid by an individual employer.

NCCI filed with the Superintendent and received approval for an overall 7.5% decrease in the advisory loss costs effective April 1, 2019.

Maine Employers' Mutual Insurance Company (MEMIC) actively competes in the voluntary market and is the insurer of last resort in Maine. MEMIC's market share rose from 59% in 2011 to 67% in 2018, a 13.6% increase. The workers' compensation insurance market is very concentrated with much of the business being written by a small number of companies. Twenty-four insurers wrote more than \$1 million each in annual premium in 2018. The top 10 insurance groups wrote over 77% of the workers' compensation insurance in the state in 2018. Employers that maintain a safe work environment and control their losses should continue to see insurers competing for their business.

The number of insurance companies with workers' compensation authority has increased during the past several years, but the number of companies actively writing this coverage has not changed significantly. Rates have remained relatively steady, although some insurers have lowered their rates in hope of attracting business. One company of note began the process of leaving the Maine market in 2017. Great Falls Insurance Company (GFIC), a domestic insurer previously with the second largest percentage of the workers' compensation market (3.4%), received approval for a voluntary dissolution plan in September 2017. As part of the dissolution plan, Eastern Alliance Insurance Company purchased certain renewal rights of GFIC and GFIC's former employees are now part of Eastern Alliance. Eastern Alliance now has the second largest percentage of workers' compensation market (2.6%) in 2018.

Insurers, other than MEMIC, do not have to offer coverage to employers and can be more selective in choosing which employers to underwrite. However, even when an employer secures coverage, to be eligible for lower rates an employer needs to have a history of few or no losses, maintain a safe work environment, and follow loss control recommendations. New businesses and businesses with unfavorable loss experience have limited options available in the voluntary market.

Self-insurance continues to be a viable alternative to the insurance market for employers. Self-insured employers represented 36% (as measured by standard premium) of the overall workers' compensation market in 2018.

## BUREAU OF LABOR STANDARDS

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Title 26 MRSA § 42-A charges the Maine Bureau of Labor Standards with establishing and supervising safety education and training programs to help employers comply with OSHA requirements and maintain best practices for the **prevention** of work-related injuries and illnesses. Additionally, the Bureau is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor standards laws and the related rules, including child labor laws and occupational safety and health standards in the public sector (state and local government employers). (The U.S. OSHA, Occupational Safety and Health Administration, enforces safety and health standards in the private sector—non-state and local employers).

Preventing injuries and illnesses is, no doubt, the most efficient and humane way to minimize the economic and social costs of work-related injuries and illnesses and to keep workers from having to enter the WC system. As the state reaches full employment, the need for being vigilant to prevent the loss of workdays due to work-related injuries and illnesses becomes most important towards maintaining the productivity of a limited workforce.

A dedicated state special revenue fund called the Safety Education and Training Fund, or SETF, provides funding for the Bureau's non-enforcement prevention services. Due to the collective prevention efforts of the Bureau, U. S. OSHA, insurers, employers, the Workers' Compensation Board and the Bureau of Insurance, both the number and rate of injuries and illnesses have decreased over time, which means less Workers' Compensation payouts, and, therefore, fewer SETF fees generated. Moreover, programs and efforts that have reduced injury/illness-case durations and costs (secondary and tertiary prevention efforts), have also driven down the workers' compensation benefits paid out by the insurers and self-insured employers. As a result, the cap on the SETF fund that pays for the non-enforcement services has generally declined over time. The Bureau must watch to be sure to not exceed the funding that the SETF fund can provide as the expenses rise to meet the cap.

Since 2015 the Bureau's public sector (state and local government) enforcement and consultation activities have been match-funded (50/50) through a U.S. Occupational Safety and Health Administration (U.S. OSHA) "23g" cooperative agreement, with matching funds from the SETF for the consultation portion of the work. (The state general fund provides the match for the enforcement activities.) A number of other cooperative agreements with U.S. OSHA, U.S. Bureau of Labor Statistics (U.S. BLS) and the U.S. Mine Safety and Health Administration (U.S. MSHA) continue to provide non-enforcement training, consultation, and funding. The SETF provides the match funding for those agreements and programs and is an important component providing resources to fund the prevention activities. The Bureau watches for opportunities to partner with others to leverage its activities with other prevention groups and resources.

SafetyWorks! provides public and customized occupational safety and health training, consultations and outreach (non-enforcement), indoor air quality assessments and accident prevention activities within the Bureau of Labor Standards (BLS). Under its umbrella, a variety of free education, consultations, and outreach services are made available to Maine employers, employees, and educators. Some of these services are routinely provided by the Bureau while others may be provided only at the request of the employer. The design and scope of individual services and responses to requests is typically based on research and real-time injury and illness data from the Maine Workers' Compensation Board (WCB); and

summary data and research from the U.S. Bureau of Labor Statistics and/or from U.S. OSHA. Maine employers seeking to avoid enforcement activity are encouraged to utilize and request these services and meet rigorous SHAPE and SHARP standards.

While programs and resources for voluntary prevention activities are effective, there is still a need for some non-voluntary compliance activities and for compliance assurance measures to verify that voluntary processes are actually carried out. To do so, the Bureau implements several enforcement programs fully outside of SafetyWorks! to distinguish them from those which are voluntary. Enforcement activities are typically triggered by focused random inspections, by complaints and/or long-running issues, or through discovery through analysis of data sources (as outlined in Section 3 of this report). These are meant as a last resort and should result in no violations if the voluntary services are used in good faith.

The Bureau takes its prevention role seriously and recognizes the efforts of other parties in that role and seeks to work with others in all prevention efforts. Ultimately, preventing the workplace injuries and illnesses lowers costs, increases productivity, and gives the state workforce overall an economic and productive advantage.



**SECTION A**

**WORKERS' COMPENSATION BOARD**



# Section A: Workers' Compensation Board

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# 1. INTRODUCTION

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The mission of the Workers' Compensation Board "is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation." 39-A M.R.S.A. §151-A.

To achieve this mission, the Board is specifically tasked with; resolving disputes; ensuring compliance with the requirements of the Act and the Board's rules; regulating medical costs; and providing representation to injured workers who are unable to obtain the services of private attorneys. The Board must accomplish its objectives without exceeding its allocated revenue. The Board is not a General Fund agency. It is financed through an assessment on employers directly, or if self-insured, through their insurers as provided in the Act. 39-A M.R.S.A. §154.

Each of these, and other related, areas are discussed in detail in the various sections of this report. A brief summary of the main functions is provided here.

In order to ensure compliance with the Act, employers and insurers are required to file information with the Board. The Board monitors the information that is filed to ensure it is accurate, complete, and timely. The goal is to identify and resolve cases at the first available level. When this is not possible, the cases move on to the next level of dispute resolution. This information also provides a foundation for the Audit Division. Specifically, auditors take a more in-depth look at an entity's compliance and payment accuracy. Additionally, auditors can provide training and guidelines to employers to facilitate compliance.

The Board also uses this information to ensure employers have workers' compensation coverage for their employees. A critical aspect of this effort is to prevent employers from misclassifying employees as independent contractors. Employers that misclassify employees not only place these employees at risk of not having any recourse if injured on the job, they also gain an unfair competitive advantage vis-a-vis employers that properly classify their workforce.

When employers and employees cannot agree on whether an injury is work-related or whether certain costs are related to a work injury, the Board provides a forum to resolve these issues. Dispute resolution starts with troubleshooting and progresses through mediation and if necessary, on to formal hearing. Since August 2012, parties can also appeal formal hearing decisions to the Board's Appellate Division.

The Advocate Division was established in 1997 to provide representation to employees who cannot obtain the services of a private attorney. The Advocate Division has grown significantly over the years. It continues to provide services to many employees who would otherwise have to represent themselves – a nearly impossible task for most injured workers.

Pursuant to P.L. 2019, c. 344, the Board was tasked with producing three reports for consideration during the Second Regular Session of the 129th Maine Legislature.

- A study of the Worker Advocate program to examine advocate pay and resources in light of the changed and more demanding nature of the program.

- A study of additional protections for injured workers whose employers did not properly secure workers' compensation coverage identified two main topics of discussion; contractor-under liability and a fund to pay claims of injured workers whose employers do not have workers' compensation coverage.
- A study was conducted to evaluate issues related to work search and vocational rehabilitation requirements for injured workers.

Finally, in accordance with 39-A M.R.S.A. §209-A the Board maintains a medical fee schedule that regulates medical costs within the workers' compensation system while ensuring access to care for injured employees. The medical fee schedule is updated annually. A comprehensive review of the medical fee schedule is performed every three years. The next comprehensive review is set to begin in 2020.

## 2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION

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### I. ENABLING LEGISLATION

On January 1, 1993, Title 39, the Workers' Compensation Act of 1991, and all prior Workers' Compensation Acts, were repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. Title 39-A M.R.S.A. § 101, et seq. (Maine Workers' Compensation Act of 1992).

### II. REVISIONS TO ENABLING LEGISLATION

The following are legislative changes enacted since 1993.

- **§ 102(4)**. Clarified that, for injuries on and after January 1, 2020, fringe benefits that do not continue during incapacity must be included in the average weekly wage to the extent that the inclusion does not result in a weekly benefit amount greater than 2/3 of 125% of the state average weekly wage at the time of injury. Previously, the benefit cap was 2/3 of the state average weekly wage at the time of injury.
- **§ 102(11)(B-1)**. Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 102(13-A)**. Tightened definition of independent contractor and made it the same as the definition used by Department of Labor.
- **§ 113**. Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A**. Added the Board's mission statement.
- **§§ 151, Sub-§1**. Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors. Changed the composition of the Board from eight to seven members.
- **§ 153(9)**. Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A**. Established the worker advocate program.
- **§ 201(6)**. Clarified rights and benefits in cases which post-1993 work injuries aggravate, accelerate, or combine with work-injuries that occurred prior to January 1, 1993.
- **§ 205(2)**. If a notice of controversy is not filed within 14 days of when an employer has notice that a work-related injury occurred, then payments must begin. But if the insurer's failure to pay is due to factual mistake, act of God or unavoidable circumstances, then insurers are excused from paying the penalty for failing to pay within that 14-day period. If a notice of controversy is not filed within 45 days of notice of the occurrence of the injury, then benefits may only be stopped pursuant to the 21-day discontinuance process in § 205 (9) (B) (1) unless the failure to file a notice of controversy was due to an act of God.

- **§ 211.** Increased maximum weekly benefit level to 125% of the state average weekly wage for injuries occurring on and after January 1, 2020. For injuries before that date, the weekly maximum was 100% of the state average weekly wage.
- **§§ 212 and 213.** Changed benefit determination to 2/3 of gross average weekly wages from 80% of after-tax wages for dates of injury on and after January 1, 2013.
- **§212 (4).** Provides cost-of-living adjustments in cases of total incapacity after payment of 5 years of benefits.
- **§ 213(1)(C).** Establishes 624 weeks as the maximum duration for partial incapacity benefits for dates of injury on and after January 1, 2020.
- **§ 213(1-A).** Defines “permanent impairment” for the purpose of determining entitlement to partial incapacity benefits.
- **§ 213(1-B).** Establishes an 18% whole person impairment threshold, along with additional tests, for entitlement to long term benefits. It applies to dates of injury from January 1, 2013 through and including December 31, 2019.
- **§215 (1-B).** Grants the 500 week death benefit to parents of deceased employees who leave no dependents and whose injuries occur on and after January 1, 2020. Previously, payments were made to the Employment Rehabilitation Fund.
- **§ 217(9).** Establishes that an injured worker participating in employment rehabilitation is protected from having his/her case reviewed except under certain limited circumstances involving either a return to work or because the employee reached the durational limitation for partial incapacity benefits.
- **§221 (1) (B)** states that as a general rule, the coordination of benefits section applies to paid time off.
- **§221 (3) (A) (2)** provides that workers’ compensation benefits should be reduced by the after-tax value of paid time off income received by claimants during periods of incapacity.
- **§221 (3) (H)** creates an exception and disallows a reduction in workers’ compensation benefits for paid time off if the paid time off benefit payment is mandated by an employer or paid to an employee upon separation from employment.
- **§ 224.** Clarified annual adjustments made pursuant to former Title 39, §§ 55 and 55-A.
- **§ 301.** Notice changed to 30 days from 90 days for injuries on and after January 1, 2013 and, for injuries on and after January 1, 2020, notice deadline was changed to 60 days.
- **§§ 321-A & 321-B.** Reestablished the Appellate Division within the Board.
- **§ 325 (6)** sets the maximum attorney's fees at 10% in lump-sum settlements for cases with injuries that occurred on or after January 1, 2020.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.

### **III. STATE AGENCY HISTORY**

The original agency, the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

#### **The Early Years of Workers' Compensation**

A transition from the common law tort claim system into the statutory structure we know today occurred on January 1, 1916. Under our common law tort system, an injured worker had to sue his employer and prove negligence to obtain any remedy. Workers' compensation was conceived as an alternative to the tort system for those injured at work and because of their work. Instead of litigating negligence, under this "new" system, injured workers would receive statutorily mandated benefits for lost wages and medical treatment. Employers correspondingly lost legal defenses such as assumption of risk or contributory negligence. Injured workers gave up remedies beyond lost wages and medical treatment such as pain and suffering and punitive damages. This "grand bargain," as it has come to be known in the national literature, remains a fundamental feature of today's workers' compensation system. Perhaps as a sign of the times, in Maine financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance. Workers' compensation disputes still arise in this no-fault system. For example, disputes address whether an employee's incapacity is related to work; the amount of weekly benefits due the injured worker; and what, if any, earning capacity has been lost. Maine, like most other states, established an agency to process these disputes and perform other administrative responsibilities. Disputes under this system became simpler. Injured workers rarely had lawyers. Expensive, long term, and medically complicated claims, such as cumulative trauma and chemical exposures, were decades away.

#### **Adjudicators as Fact Finders**

In 1929, the Maine Federation of Labor and an early employer group, "Associated Industries", opposed a Commissioner's re-nomination. Testimony from both groups referred to decision reversals by the Maine Supreme Court. This early feature of Maine's system, review of decisions by the Supreme Court, still exists, although today these appeals are discretionary. The Supreme Court decides legal issues; it does not conduct de novo hearings. In Maine, our state agency adjudicator, today an Administrative Law Judge (ALJ), is the final fact finder.

In the 1980s, Commissioners became full time and an informal conference process was introduced in an attempt to resolve disputes early in the claim cycle, before need for a formal hearing. Additionally, the agency expanded its physical presence, opening regional offices in Augusta, Bangor, Caribou, Lewiston, and Portland all supported by the central administrative office in Augusta. In 1987, three full-time Commissioners were added, bringing the total from 8 to 11, in addition to a Chair. In recent years, the Board has reduced the number of staff hearing claims to nine, from a high of 11.

Until 1993, Commissioners, (those who now are ALJs), were gubernatorial appointments, subject to confirmation by the Legislature's judiciary committee. The need for independence of its quasi-judicial function was one of the reasons why the agency was established as an independent, free-standing institution, rather than as a part of a larger administrative department within the executive branch. The small scale of state government in 1916 no doubt also played a role in this structural decision.

## **Transition to the Modern Era**

During the 1970s, Maine, along with several other states, made changes to their workers' compensation laws in an effort to ensure that the laws were functioning equitably. These changes included: Making coverage compulsory for most employers; increasing the maximum weekly benefit; removing durational limitations for total and partial benefits; and, making it easier for injured workers to secure legal services.

Statutory changes and evolving medical knowledge also brought a new type of claim into the system. The law no longer required an injury happen "by accident." Doctors began to connect repetitive overuse conditions to a claimant's work and thus brought these conditions within the workers' compensation coverage. Gradual, overuse injuries frequently recover more slowly. This requires benefit payments for longer periods than many accidental injuries. These claims were also more likely to involve litigation. Over the course of time, rising costs transformed workers' compensation into a contentious political issue in the 1980s and early 1990s.

The political environment of the 1980s and early 1990s was extraordinary for Maine's workers' compensation system. Contentious legislative sessions directly related to workers' compensation occurred in 1982, 1985, 1987, 1991, and 1992. In 1991, the governor tied a veto of the state budget to changes in the Workers' Compensation Act. The consequence of this action was a state government shutdown that lasted three weeks.

In 1992, the Legislature created a Blue Ribbon Commission to examine our system and recommend changes. The Commission's report made a series of proposals which were ultimately enacted. Inflation adjustments for both partial and total wage loss benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial incapacity. These changes represented benefit reductions for injured workers, particularly those with long term incapacity. Additionally, the provision of the statute concerning access to legal representation was changed. This made it exceedingly difficult for injured workers to secure legal representation.

Maine Employers' Mutual Insurance Company (MEMIC) was also created at this time. It replaced the assigned risk pool and offered a permanent coverage source. Despite differing views on the nature of the problems within the system, virtually all observers agree MEMIC played a critical role in helping stabilize Maine's workers' compensation system.

Based on a recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created to directly involve labor and management representatives in the administration of the agency.

The Board of Directors was initially comprised of four Labor and four Management members, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and the Maine Chamber of Commerce. The eight Directors hired an Executive Director who was responsible for the day to day operations of the agency. During the late 1990s, the Board of Directors deadlocked on important issues such as the appointment of Hearing Officers, adjustments to the partial benefit structure under § 213, and the agency budget. By 2002, this became a matter of legislative concern. Finally, in 2004, legislation was enacted making the Executive Director a tie-breaking member of the Board as well as its Chair. The Executive Director is a gubernatorial appointment, subject to confirmation by a legislative committee and the Senate. With this arrangement, gridlock due to tie votes is no longer an issue. The

Executive Director casts deciding votes when necessary. However, the objective is still to foster cooperation and consensus between the Labor and Management caucuses. This now occurs regularly.

The agency was criticized in the late 1980s and early 90s for not doing more with its data gathering. The Board installed a relational database in 1996, with modern programming language; the result was an improvement in data collection. Today, filings of First Reports and first payment documents are systematically tracked and benchmarked. Significant administrative penalties have been pursued in some cases. Better computer applications and the Abuse Unit have improved the task of identifying employers, typically small employers, with no insurance. Now coverage hearings are regularly scheduled. The Board mandated the electronic filing of First Reports beginning on July 1, 2005. The Board has also mandated the electronic filing of claim denials; this became effective in June 2006. We are presently considering other areas where electronic filing would be appropriate as part of our EDI effort.

## 3. DISPUTE RESOLUTION

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### I. INTRODUCTION

The Workers' Compensation Board has five regional offices throughout the state. These offices manage and process disputed claims. The regional offices are where troubleshooting, mediation and formal hearings take place. Our regional offices are located in Augusta, Bangor, Caribou, Lewiston and Portland.

### II. FOUR TIERS OF DISPUTE RESOLUTION

Title 39-A, the Maine Workers' Compensation Act, establishes a four-tiered dispute resolution process: troubleshooting, mediation, formal hearing, and the Appellate Division. The Appellate Division is discussed in section 14 of this report.

#### Troubleshooting

Troubleshooting is the initial stage of the Dispute Resolution process. During troubleshooting, a Claims Resolution Specialist, frequently called a Troubleshooter, calls employees and employers and attempts to resolve the parties' disagreement. Many times, additional information, such as medical reports, must be obtained to facilitate a resolution. Our Claims Resolution Specialists are neutral; they provide assistance and information to all parties. If the parties are not able to resolve their dispute, the claim is referred to the next step, mediation.

#### Mediation

Claims unresolved at troubleshooting are scheduled with a mediator in one of our regional offices. Parties attend in person at a regional office or by other electronic means. The Board agreed to allow parties to use the services of Court Call, a California remote appearance platform, for mediations. The party who requests this video conference service pays the cost. This service has been used extensively in the Caribou Regional Office since its inception. The results have been positive. The Board intends to continue to allow the use of Court Call and monitor its effectiveness.

In a typical case, the mediator asks the party seeking benefits to provide an explanation and rationale for the benefits being sought. The mediator then requests that other parties explain their concerns and identify what benefits they are willing to pay or why they are not prepared to do so. In addition to asking for proposals from the parties, the mediator may suggest a resolution in an attempt to find an acceptable compromise. If mediation resolves the claim, the mediator completes a formal agreement that is signed by the parties. The terms of the agreement are binding on those involved. If the case is not resolved at mediation, the next step is the formal hearing process. Even if a voluntary resolution is not reached at mediation, participation at mediation often benefits the parties by narrowing the issues that require formal adjudication.

#### Formal Hearing

At the formal hearing stage, parties are required to exchange information, including medical reports, and answer Board discovery questions concerning the claim. After required discovery has been completed, the parties file a "Joint Scheduling Memorandum." This document lists the witnesses and estimates the hearing time needed. Medical witness depositions are often scheduled to elicit or dispute expert testimony. At the hearing, witnesses for both parties testify and other, usually documentary,

evidence is submitted. In most cases, the parties are represented either by an attorney or a worker advocate. Following the hearing, position papers are submitted, and the Administrative Law Judge thereafter issues a final written decision.

### III. TROUBLESHOOTING STATISTICAL SUMMARY

The following table shows the number of filings assigned and disposed at troubleshooting, the average number of filings pending at the end of each year, and the amount of time a case remained in troubleshooting for the period 2009 through 2019.

<b>Troubleshooting</b>				
Filings Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at TS
2009	7,960	7,913	723	29
2010	8,546	8,303	919	27
*2011	13,660	13,438	697	28
2012	14,526	14,514	685	24
2013	13,351	13,358	678	26
2014	14,035	14,067	646	32
2015	14,663	14,819	490	32
2016	14,936	14,741	685	25
2017	15,697	15,608	664	26
2018	15,872	15,624	921	22
2019	15,494	15,792	569	22

\*Beginning in 2011, the Board changed the way cases are counted. In the past, our count was based on the number of parties. In 2011, we started counting the "disputed issues." This change was made to more accurately report on the work of the Board, not just the number of participants within our system.

#### IV. MEDIATION STATISTICAL SUMMARY

The following table shows the number of filings assigned and disposed at mediation, the average number of cases pending at the end of each year, and the amount of time a case remained in mediation for the period 2009 through 2019.

<b>Mediations</b>				
Cases Assigned, Disposed, and Pending				
<b>Year</b>	<b>Assigned</b>	<b>Disposed</b>	<b>Pending 12/31</b>	<b>Av Days at MDN</b>
2009	2,220	2,239	424	57
2010	2,928	2,868	452	59
2011	2,231	2,362	583	66
2012	2,766	2,738	555	50
2013	2,522	2,556	521	61
2014	2,755	2,789	487	57
2015	2,534	2,513	487	48
2016	2,449	2,509	406	55
2017	2,644	2,597	473	57
2018	2,500	2,488	472	64
2019	2,384	2,428	487	66

## V. FORMAL HEARING STATISTICAL SUMMARY

The following table shows the number of filings assigned and disposed, along with the number of lump sum settlements approved, the number of cases pending at the end of each year, and the average time a case was pending before a decree was issued for the period 2009 through 2019.

Formal Hearing					
Cases Assigned, Disposed, and Pending					
Year	Assigned	Disposed	† Lump Sum Settlements	Pending 12/31	Av Months to Decree
2009	1,602	1,546		1,136	9.1
2010	1,561	1,486		1,211	8.5
2011	1,440	1,445		1,206	* 10.8
2012	1,398	1,427	667	1,144	* 12.1
2013	1,321	1,311	702	1,154	* 9.7
2014	1,333	1,376	734	1,111	* 10
2015	1,272	1,281	556	1,102	* 10.9
2016	1,424	1,299	600	977	* 10.7
2017	1,741	1,821	874	889	* 10.5
2018	1,755	1,917	700	686	* 9.2
2019	1,581	1,597	920	669	9.8

\* This figure represents all cases within the system. In prior years, certain cases were excluded. Claims processing has been slowed by a shortage of IME physicians in certain specialties, awaiting Medicare approval, and staff retirements.

† These figures were not recorded in prior years, but they are a significant part of the formal hearing process, so they will be included going forward.

## **4. OFFICE OF MONITORING, AUDIT & ENFORCEMENT**

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### **I. HISTORY**

The Maine Legislature, in 1997, established the Office of Monitoring, Audit and Enforcement (MAE). The multiple goals of this office are: (1) monitoring and auditing payments and filings; (2) providing timely and reliable data to policymakers; and (3) identifying those insurers, self-administered employers, and third-party administrators (collectively “insurers”) who are not in compliance with minimum standards established under our Act.

### **II. TRAINING**

Our Board in recent years has made education a priority. In early 2012, and thereafter, the Board confirmed this commitment by dedicating additional human and other resources to this training program for insurers, self-insured employers, claim adjusters, and administrators who manage Maine workers’ compensation claims.

The Board offers a two day “open training” three times a year in April, June, and October. These sessions provide a general overview of the Board and its divisions, as well as specific training in claims-handling techniques such as form filing, average weekly wage (AWW) calculations, and calculation of benefits due in a wide variety of scenarios a claim handler is likely to encounter. These sessions are very popular, both for those new to Maine claims, and as a review and update for the seasoned claims handler. Thirty adjusters, employers, providers, and others involved in workers’ compensation attended the 2019 sessions. In addition, open training modules are available on the Board’s website. Training newsletters are emailed to approximately 800 subscribers. The newsletter is also available on the Board’s website. These writings address a broad range of claims-handling topics and report on Board activities that impact claims management.

The Board offers on-site training sessions which provide the entity being trained the opportunity to experience customized and specific-to-their-needs training. The six hour session focuses on the core of the open training sessions – form filing, average weekly wage calculation, and benefit calculation. These presentations provide the opportunity to review the entity’s recent compliance and audit results and address specific problems and issues they may have encountered. Forty-five claims handlers from six different insurers/administrator groups received on-site training in 2019.

The Board also offers a two-day session on its Medical Fee Schedule, one day for claims administrators/payers and one day for medical providers. In 2019, the Medical Fee Schedule sessions had 62 attendees.

In 2017, the Board began offering employer-specific training, focusing on employer obligations under the Workers’ Compensation Act, and how to facilitate prompt claims handling with their insurer/claim administrator. These continued in 2019, with two half day sessions in March and September. They remain very popular, with 63 employers attending the two sessions. The course will be offered again in March and September of 2020. A number of employers have already registered.

The Board participated in the annual Maine Human Resources Convention where there were more than 900 in attendance.

The Board provides training at the annual Comp Summit, including participation in the “Comp 101” session held each year for those new to the Maine workers’ compensation system. A “Comp 102” session was added in 2017 to address more complex issues and was again offered in 2019. The Board also maintains a booth at the Summit where it provides information on training and other Board resources to attendees, which numbered 337 in 2019.

Finally, the Board continues to provide access and assistance by telephone and email to claim handlers who have specific questions on difficult or unusual claims. The Board receives an average of 12 - 15 such calls/emails a week through which it provides guidance on proper claims-handling.

### **III. MONITORING**

This section of the report, because of a data collection lag, provides information from the prior calendar year. On August 26, 2019, the Maine Workers’ Compensation Board of Directors approved the 2018 Annual Compliance Report (January 1, 2018 through December 31, 2018). The results, set forth in more detail below, show that compliance with the Board’s benchmarks is trending in a negative direction. The Board will be looking for ways to increase compliance with its benchmarks in 2020.

#### **A. Lost Time First Report Filings**

- There is compliance with the lost time first report filing obligation when a lost time first report is filed (accepted Electronic Data Interchange (EDI) transaction, with or without errors) within seven days of the employer receiving notice or knowledge of an injury causing an employee to lose a day’s work.
- When a medical-only first report is received and later the claim is converted to a lost time first report, if the date received minus the date of the employer’s notice or knowledge of incapacity is less than zero, the filing is considered compliant.
- The Board’s benchmark for lost time first report (FROI) filings within seven days is 85%.
- Benchmark Not Met. Eighty-three percent (83%) of lost time FROI filings were within seven days.

#### **B. Initial Indemnity Payments**

- Compliance with the Initial Indemnity Payment obligation occurs when an indemnity check is mailed within the later of: (a) 14 days after the employer’s notice or knowledge of incapacity, or (b) the first day of compensability plus six days.
- The Board’s benchmark for initial indemnity payments within 14 days is 87%.
- Benchmark Exceeded. Eighty-eight percent (88%) of initial indemnity payments were within 14 days.

#### **C. Initial Memorandum of Payment Filings**

- Compliance with the Initial Memorandum of Payment (MOP) filing obligation occurs when the MOP is received within 17 days of the employer’s notice or knowledge of incapacity.
- The Board’s benchmark for initial Memorandum of Payment filings within 17 days is 85%.
- Benchmark Exceeded. Eighty-seven percent (87%) of initial MOP filings were within 17 days.

#### **D. Initial Indemnity Notice of Controversy Filings**

- Measurement excludes filings submitted with full denial reason codes 3A-3H (No Coverage).
- Compliance with the Initial Indemnity Notice of Controversy filing obligation occurs when the NOC is filed (accepted EDI transaction, with or without errors) within 14 days of the employer receiving notice or knowledge of the incapacity or death.
- The Board's benchmark for initial indemnity Notice of Controversy (NOC) filings within 14 days is 90%.
- Benchmark Exceeded. Ninety-four percent (94%) of initial indemnity NOC filings were within 14 days.

#### **E. Wage Information**

- Sixty-eight percent (68%) of Wage Statements and sixty-seven percent (67%) of the Fringe Benefit Worksheets that were due were filed within 30 days.
- Compliance with the Wage Statement and Fringe Benefit Worksheet occurs when the wage information is filed within 30 days of the employer receiving notice or knowledge of incapacity.
- The Board adopted benchmarks for these filings on May 21, 2019. These benchmarks went into effect on July 1, 2019. The Board's newly adopted benchmark is 75% for Wage Statements and 75% for Fringe Benefits.

### **IV. AUDIT**

The Board conducts compliance audits of insurers, self-insurers and third-party administrators to ensure all obligations under the Workers' Compensation Act are met. The functions of the audit program include but are not limited to: ensuring that all Board reporting requirements are met, auditing the timeliness of benefit payments, auditing the accuracy of indemnity payments, evaluating claims-handling techniques, and determining whether claims are unreasonably contested.

The Board is reviewing its audit procedures with the goal of making the process more efficient. Hopefully, a more efficient audit process will play a role in raising compliance with benchmarks and other requirements of the Act.

## A. Compliance Audits

The following audits were completed in 2019:

Auditee (alpha order)	Penalties
Bath Iron Works	\$ 3,000.00
Cherokee Insurance Company	\$ 2,700.00
Electric Insurance Company	\$ 3, 500.00
Great American Insurance Group	\$1,150.00
National Interstate Insurance Group	\$ 6,900.00
Nationwide Mutual Insurance	\$ 8,450.00
Old Republic Insurance Company	\$ 14,225.00
T. H. E. Insurance Company	\$ 625.00

## B. Complaints for Audit

The audit program has a Complaint for Audit process. Through this process, a complainant requests the Board conduct an investigation to determine if the insurer, self-administered employer or third-party administrator violated 39-A M.R.S.A. §359 by engaging in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims and/or has violated §360(2) by committing a willful violation of the Act, committing fraud, or making intentional misrepresentations. The complainant also asks that the Board assess all applicable penalties. In 2019, the Board received seven audit complaints.

## C. Employee Misclassification

The misclassification of an employee presents a serious problem for affected employees, employers, and our state economy. Misclassified employees are often denied access to the critical benefits and protections to which they are entitled under our Act. Employee misclassification also generates substantial losses to our state Treasury, Social Security and Medicare, as well as to state unemployment insurance.

In 2009, our Legislature established an allocation of funds to enhance the enforcement of laws prohibiting the misclassification of workers. In 2019, the MAE program completed 7 employee misclassification audits. Completing this type of audit has proven to be difficult because of the continued lack of cooperation from employers.

## V. ENFORCEMENT

The Board's Abuse Investigation Unit handles enforcement of the Workers' Compensation Act. The report of the Abuse Investigation Unit appears at Section 12 of the Board's Annual Report.

# 5. OFFICE OF MEDICAL/REHABILITATION SERVICES

## I. MEDICAL FEE SCHEDULE

### A. Background

The goal of the Board’s medical fee schedule is “to ensure appropriate limitations on the cost of health care services while maintaining broad access for employees to health care providers in the State.” 39-A M.R.S.A. § 209-A(2).

### B. Methodology

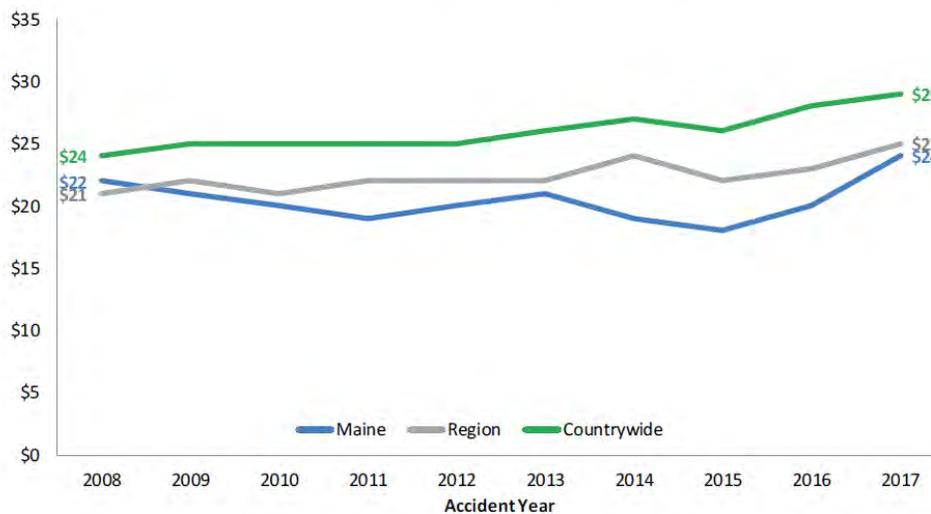
The Board’s medical fee schedule reflects the methodologies underlying the federal Centers for Medicare and Medicaid Services’ (“CMS”) inpatient, outpatient and professional services payment systems. In particular, the fee schedule uses procedure codes, relative weights or values (together “relative weights”) and conversion factors or base rates (together “conversion factors”) to establish maximum reimbursements.

In the case of both procedure codes and relative weights, the Board does not exercise discretion in assigning codes to procedures or relative weights to coded services. The Board, in an effort to simplify our rule, incorporated the codes and weights underlying the federal CMS inpatient facility, outpatient facility and professional services payment systems.

The Board’s rule contains the final element of the equation to determine the maximum reimbursement for a service, i.e. the applicable conversion factor. Separate conversion factors exist for anesthesia, all other professional services, inpatient and outpatient acute care facilities, inpatient and outpatient critical access facilities and ambulatory surgical centers.

According to the National Commission of Compensation Insurers (NCCI), Maine’s overall medical average cost per lost-time claim is lower than the region and countrywide averages.

Overall Medical Average Cost per Lost-Time Claim (in 000s)



Source: NCCI’s Calendar-Accident Year Call for Compensation Experience. Region includes CT, DC, MD, NH, RI, and VT. Countrywide data AK, AL, AR, AZ, CO, CT, DC, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NC, NE, NH, NM, NV, OK, OR, RI, SC, SD, TN, TX, UT, VA, VT, and WV.

### C. Annual and Periodic Updates

The Act requires two types of updates: annual updates by the Executive Director and periodic, more comprehensive, updates undertaken by the Board. Annual updates are completed during the last quarter of each calendar year. Periodic updates are required every three years beginning in 2014.

### D. Education and Training

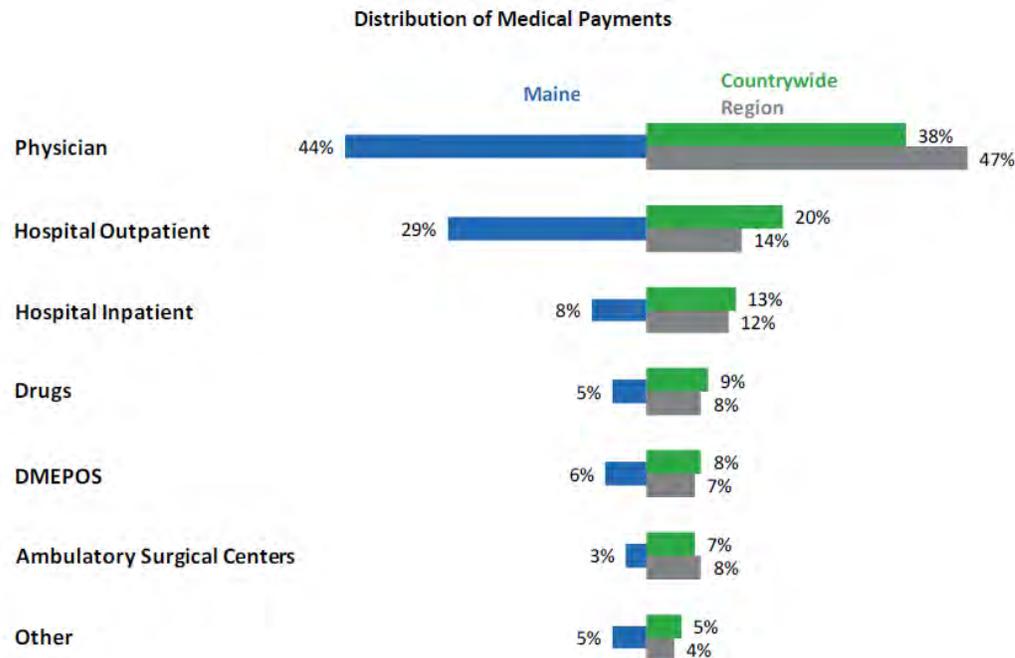
The Board offers two “open training” sessions on Board Rule Chapter 5, aka the Medical Fee Schedule: one for claim administrators/medical bill reviewers and one for health care providers/provider billing and office staff. These sessions provide a general overview of the fee schedule, as well as specific training in workers’ compensation billing and reimbursement.

Sixty-two adjusters, employers, providers, and others involved in workers’ compensation attended the 2019 sessions. In addition, open training modules are available on the Board’s website. Training newsletters are emailed to approximately 800 subscribers. The newsletter is also available on the Board’s website. These writings address a broad range of medical fee schedule topics and report on Board activities that impact claims management. The Board also offers on-site training sessions which provide the entity being trained the opportunity to experience customized and specific-to-their-needs training.

Finally, the Board continues to provide access and assistance by email to any who have specific questions regarding the fee schedule or have difficult/unusual medical bills. The Board receives an average of 12 - 15 such emails a week.

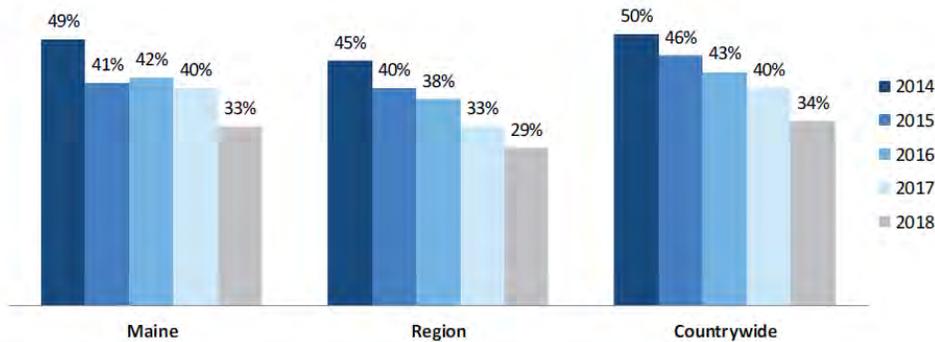
## II. MEDICAL UTILIZATION REVIEW

The Board does not currently have approved treatment guidelines. In its October 2019 Medical Data Report, NCCI compares Maine’s distribution of medical payments by type of service to region and countrywide data as follows:



The issue of opioid use and misuse by injured workers is a major concern in the workers' compensation community as well as to society in general. In 2016 the Maine legislature passed LD 1646, An Act To Prevent Opiate Abuse by Strengthening the Controlled Substances Prescription Monitoring Program. This legislation applies to all opioid prescribing in Maine. NCCI is monitoring the legislation's impact on opioid prescribing in workers' compensation. According to data from NCCI, the opioid prescribing patterns for workers' compensation claims have decreased approximately 16% from 2014 to 2018 for Maine, the region, and countrywide.

Share of Drug Claims With at Least One Opioid Prescription by Service Year

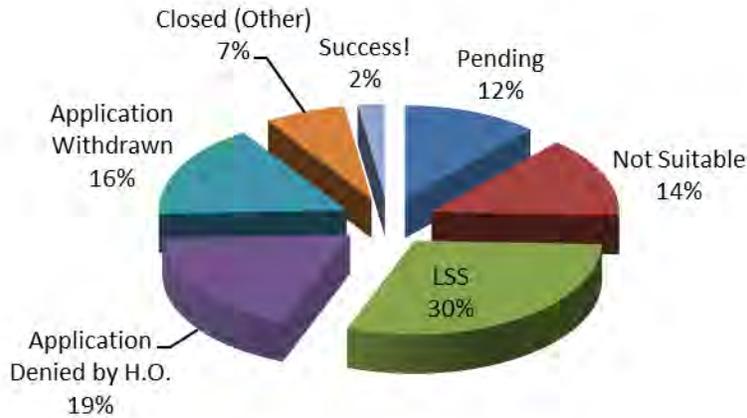


### III. EMPLOYMENT REHABILITATION

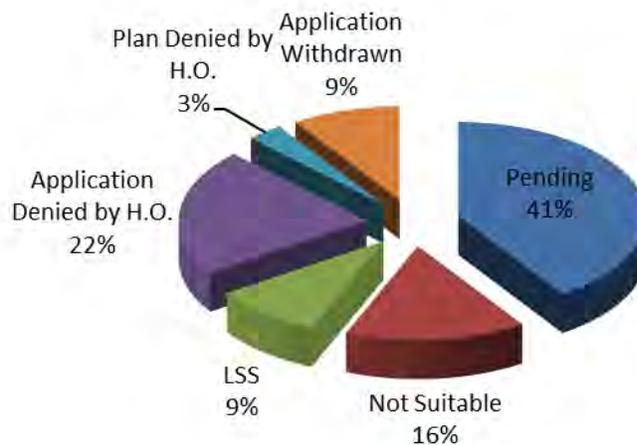
The Board's employment rehabilitation services program is governed by Title 39-A M.R.S.A. §217 and Board Rule Chapter 6. In 2018, the Board rewrote Chapter 6. The changes became effective September 1, 2018. The new rules bring clarity to the vocational rehabilitation process and provide guidelines for providers. In addition, under the new rule providers are now appointed by the Board of Directors.

The Board has eight employment rehabilitation providers. These rehabilitation professionals provide service, treatment or training necessary and appropriate to return an employee to suitable employment. In 2019, the Board received 32 applications for employment rehabilitation services, which represents a decrease compared to recent years. Of the requests, 26 were from injured workers, three were from employers/insurers, and three were from Administrative Law Judges. The charts below show the status of 2018 and 2019 applications as of December 31, 2019.

### Status of 2018 Applications



### Status of 2019 Applications



#### IV. INDEPENDENT MEDICAL EXAMINERS

Pursuant to 39-A M.R.S.A. §312, an independent medical examiner can be appointed and tasked with providing an opinion regarding medical questions that arise in disputed cases. The Board receives approximately 417 requests for independent medical exams per year.

The Board recently completed a periodic validation of the list of independent medical examiners; 18 of the 26 examiners on the list have agreed to continue to serve in this capacity.

For the remaining examiners, the Board developed annual review criteria that will be used to oversee “the quality of performance and the timeliness of the submission of medical findings by the independent medical examiners”.

## **6. WORKER ADVOCATE PROGRAM**

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### **I. INTRODUCTION**

The Worker Advocate Program provides legal representation without cost to injured workers pursuing claims before the Workers' Compensation Board. In order for an injured worker to qualify for Advocate representation, the injury must have occurred on or after January 1, 1993; the worker must have participated in the Board's troubleshooter program; the worker must have failed to informally resolve the dispute; and finally, the worker must not have retained private legal counsel.

Traditional legal representation is the core of the program; the Advocate staff have broad responsibilities to injured workers, which include: attending mediations and hearings; conducting negotiations; acting as an information resource; advocating for and assisting workers to obtain rehabilitation, return to work and employment security services; and communicating with insurers, employers and health care providers on behalf of the injured worker.

### **II. HISTORY**

As noted earlier in this report, the Maine Legislature in 1992 re-wrote the Workers' Compensation Act. They repealed Title 39 and enacted Title 39-A. One of the most significant changes impacting injured workers was the elimination of the attorney fee "prevail" standard. Under Title 39, attorneys who represented injured workers were entitled to Board ordered fees from employers/insurers if they obtained benefits for their client greater than any offered by the employer, i.e., if they "prevailed." Since the enactment of Title 39-A (effective January 1, 1993 for claims after that date), the employer/insurer no longer has liability for legal fees regardless of whether the worker prevails, and, in addition, fees paid by injured workers to their attorneys are limited to a maximum of 30% of accrued benefits with settlement fees capped.

These changes made it difficult in many instances for injured workers to obtain legal counsel—unless they had a serious injury with substantial accrued benefits or a high average weekly wage. Estimates suggest upwards of 40% of injured workers did not have legal representation after this change was enacted. This presented challenges for the administration of the workers' compensation system. By 1995, recognition there was a problem prompted the Workers' Compensation Board of Directors to establish a pilot "Worker Advocate" program.

The pilot program was staffed by a non-attorney Advocate and was limited to the representation of injured workers through mediation. The pilot was a success and the Board expanded the program to five non-attorney Advocates, one for each regional office; however, representation remained limited to mediations. Ultimately, in recognition of both the difficulties facing unrepresented workers and the success of the pilot program, the Legislature in 1997 amended Title 39-A and formally created the Worker Advocate Program.

The 1997 legislation resulted in a substantial expansion of the existing operation. Most significantly, the new program required Advocates to provide representation at mediation and formal hearings. The additional responsibilities associated with this representation require greater skill and more work than previously required. Some of the new responsibilities include: participation in depositions, attendance at

hearings, drafting joint scheduling memorandums, drafting motions, drafting post-hearing position letters, working with complex medical reports, conducting settlement negotiations, and analysis and utilization of the statute, our Rules, and case law.

### **III. THE CURRENT WORKER ADVOCATE PROGRAM**

At present, the Board has 12 Advocates in our five regional offices. Advocates are generally required to represent all qualified employees who apply to the program. This contrasts with private attorneys who have more discretion regarding who they represent. The statute provides exceptions to this requirement where the program may decline to provide assistance. In 2014, the Board adopted a new Rule on Advocate representation allowing advocates to cease representation in cases where injured workers are uncooperative; e.g., refusing to respond to requests for meetings, information, etc. The Rule is based on the applicable Maine Bar Rules. While not frequently used, in the situations the Rule does apply, it helps advocates better manage their caseloads and spend time more productively with employees who need assistance, and less time chasing uncooperative clients. It is important to note relatively few cases are rejected.

Cases are referred to the Advocate Program only when there is a dispute—as indicated by the employee, employer, insurer, or a health care provider. When the Board is notified of a dispute, a Claims Resolution Specialist (commonly referred to as a “troubleshooter”) works to facilitate a voluntary resolution. If unsuccessful, the Board determines if the employee qualifies for the assistance of the Advocate Program, and, if so, a referral is made.

As reported in the dispute resolution section of this report, if troubleshooting is not successful, cases are forwarded to mediation. Advocates representing an injured worker at mediation must first obtain medical records and other evidence related to the injury and the worker’s employment. Advocates meet with the injured worker, to explore the claim and review issues. They also gather information from health care providers and others. Advocates are often called upon to explain the legal process (including the Act and Board Rules) to injured workers. They frequently discuss medical issues, review work restrictions and assist workers with unemployment and health insurance matters. Advocates provide injured workers with other forms of interim support, as needed. Many of these interactions produce evidence and information necessary for subsequent formal litigation, if the case proceeds to formal hearing.

At mediation, the parties appear before a Mediator, discuss the claim, present the issues, and work to secure a resolution. The Mediator facilitates, but has no authority to require the parties to reach a resolution or to set the terms of an agreement. If the parties resolve the claim, the agreement is reduced to writing in a binding record. A significant number of cases are resolved before, at, and after mediation; of every 100 disputes reported to the Board, approximately 75 are resolved by the end of the mediation stage of dispute resolution, and thus avoid formal hearings.

Cases not resolved at mediation typically involve factual and/or legally complex disputes. These claims usually concern circumstances where facts are unclear or there are differing interpretations of the Act and applicable case law. If a voluntary resolution fails at mediation, the case frequently proceeds to a formal hearing.

The hearing process is initiated when an Advocate files petitions (after assuring there is adequate medical and other evidence to support a claim). Before a hearing, the parties exchange information through voluntary requests and formal discovery. Preparation for hearing involves filing and responding to motions, preparing the employee and other witnesses, preparation of exhibits, analysis of applicable law and review of medical and other evidence. At a hearing, Advocates, like any lawyer, must elicit direct and cross examination testimony from the witnesses, introduce exhibits, make objections and motions, and, at the conclusion of the evidence, file position papers that summarize the facts and credibly argue the law in the way most favorable to the injured worker. Along the way, the Advocates also often attend depositions of medical providers, private investigators, and labor market experts. Eventually, a decision is issued or the parties agree on either a voluntary resolution of the issues or a lump sum settlement. In recent years, the average timeframe for the entire process is about 11 months, although it can be significantly shorter or longer depending on the complexity of medical evidence and the need for independent medical evaluations.

#### IV. CASELOAD STATISTICS

Injured workers in Maine have made substantial utilization of the Advocate Program. Advocates represented injured workers at approximately 63% of the cases at mediation in 2019. The following table reflects the number of Advocate cases mediated from 2009 through 2019. In 2016, the Advocate Division upgraded its case management and statistics software.

Year	Filings Assigned	Filings Disposed	Client Files Pending	Cases Pending at Board 12/31	% of All Cases Pending at Board
2009	1,205	1,195		221	52%
2010	1,006	1,156		271	60%
2011	975	896		246	42%
2012	1,703	982		294	53%
2013	1,465	1,540		270	55%
2014	1,688	1,486		307	64%
2015	1,621	1,410		326	66%
2016	1,608	1,089		228	56%
2017	1,831	1,075		311	66%
2018	1,908	1,122	786	260	47%
2019	2,271	1,661	920	307	63%

Note: Mediation “filings” are petitions, Notices of Controversy and Indications of Controversy. The Advocate Division opens one “client file” per date of injury. One Advocate Division “case” includes all filings and files pending before a mediator for an injured worker.

In 2019, the number of cases handled by Advocates at mediation represents an increase as compared to the number of cases taken to mediation in 2018. The Advocate Division handled 63% of all mediations in our system in 2019.

Since becoming fully staffed, the Advocate Program has represented injured workers in approximately 30% of all Board formal hearings. In some years, Advocates clear more formal cases than were pending at the start of the year. Given the much greater scope of responsibility inherent in formal hearing cases, Advocates have performed well in their expanded role. The following table represents the number of cases handled by Advocates at formal hearing from 2009 through 2019.

	Filings Assigned	Cases Disposed	Client Files Pending	Cases Pending at Board 12/31	% of All Cases Pending at Board
2009	564	511		362	32%
2010	463	515		306	26%
2011	438	374		242	20%
2012	444	289		338	29%
2013	476	281		377	31%
2014	461	293		305	26%
2015	503	275		326	29%
2016	693	382		333	34%
2017	808	306		324	36%
2018	821	399	422	246	30%
2019	813	331	378	230	34%

Note: Formal Hearing “filings” are petitions. The Advocate Division opens one “client file” per date of injury. One Advocate Division “case” includes all filings and files pending before an ALJ for an injured worker.

The Advocates handled roughly the same number of formal hearings in 2019 as in 2018. The Advocates were responsible for 34% of the formal hearings held across the state in 2019.

## **V. SUMMARY**

The Advocate Program was created to address a need in the administration of the workers’ compensation system. The statutory expansion of program duties in 1997 created needs in the program. In order to meet the obligations in the statute, the Workers’ Compensation Board has diverted resources from other divisions to the Advocate Program. Currently the program has 12 Advocates with a support staff of 16 (two of whom are part-time) and a supervising Senior Staff Attorney. Services are provided in five regional offices: Augusta, Bangor, Caribou, Lewiston, and Portland.

Over the years, the Program has proven its value by providing much-needed assistance to Maine's injured workers, albeit with limited resources. As a result of the limited resources, the Advocate Program has experienced periods of high caseloads which has led to staff turnover. In one 12-month period, (2006–2007) 42% of existing Advocate Program positions were vacant. More recently, from 2018 through 2019, the Advocate Program experienced 25% turnover. Nothing has greater potential to impact the quality of the services rendered to injured workers than insufficient staff. In response to ongoing concerns, the 123<sup>rd</sup> Legislature provided additional support for the Advocate Program. Qualifications for Advocates and paralegals were increased and, in conjunction, pay ranges were upgraded. Since that time Advocate turnover remains a problem, with both recruitment and retention efforts made more difficult by rising wages in the private sector.

## 7. TECHNOLOGY

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The Board's technology needs are overseen by the Board's Deputy Director of Information Management, who coordinates with the State of Maine Office of Information Technology (OIT). Two OIT employees are dedicated to fulfilling the Board's programming needs on the main database, Progress. The Advocate Program uses the software program Practice Master to manage caseloads.

### I. 2019 UPDATE

- **Microsoft Office 365**

In March, Board employees upgraded from Microsoft Office 2010 to 2016. This was done as part of a state-wide effort by OIT to move users onto the subscription-based version, Microsoft Office 365.

- **Windows 10 Project**

Beginning in May, OIT began replacing computers of every state employee. The replacement computers are refurbished and have been constructed with solid state drives and Windows 10 operating systems. The overall performance of these computers is a significant improvement over the old machines.

- **Recording Software Upgraded**

The Board was required to purchase a newer version of For the Record (FTR), a software program used to record Board proceedings, as the current version was not compatible with Windows 10. The installation of the software is required on more than 15 computers and is a work in progress.

- **VoIP**

All Board offices, except for Bangor, have had their phone systems upgraded to Voice over Internet Protocol (VoIP).

- **Network Upgrade**

The Board's Augusta, Lewiston, and Caribou offices have experienced network upgrades through OIT. The upgrade allows the Board to sponsor guests so they may have access to faster Wi-Fi during their visit.

- **Practice Master Server Upgrade**

OIT is in the process of migrating to newer servers. The server that hosts Practice Master, the software used by the Advocate staff, was upgraded in the fall.

- **CorVu Training**

A representative from Rocket Software met with staff at the Board to conduct a comprehensive training on CorVu, a program which the Board has used for a few years to produce reports and analyze data from its system.

- **Progress Manual Development**

An effort is underway to create a reference guide for the main database used by the Board, Progress. By meeting with programmers and staff, details of how data is collected, analyzed, and used is being documented.

## II. UPCOMING PROJECTS AND CHALLENGES

- **Employer Database**

One of the dedicated OIT programmers is working on an extensive project to improve the quality and functionality of the Board's employer database.

- **Server Upgrade**

As part of OIT's effort, Progress will be moving onto new servers in 2020.

- **Progress Update**

Once on the new servers, the programmers will upgrade Progress to version 12, as required by our license agreement.

- **Database Migration**

Resources for Progress programming and support are limited to the two OIT programmers assigned to the Board, or outside contractors. A major focus for 2020 will be on the Board's database. The Board will work with OIT to move from the current database, Progress, and onto a platform that will be easier to maintain. This should result in a system that can more easily produce data for use by policymakers.

- **Practice Master**

The advocate division will be analyzing storage issues on the software program used, Practice Master, to develop a solution that will help the program to run more efficiently.

- **Data Quality**

In the coming year, the agency will be focusing on ways to improve the quality of data it receives and processes.

## 8. BUDGET AND ASSESSMENT

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Since 1992, Board operations have been funded by a statutory assessment. The Board receives no General Fund support. Assessments are paid by Maine's employers, both insured and self-insured. By establishing a funding assessment, the Legislature intended the entities using the workers' compensation system pay for the system costs. The Legislature also placed an annual cap on the dollar amount that may be assessed, limiting the amount of revenue the Board is allowed to generate. This cap has been adjusted numerous times over the years. Most recently, in 2016, the Legislature increased the assessment cap to \$13,000,000.

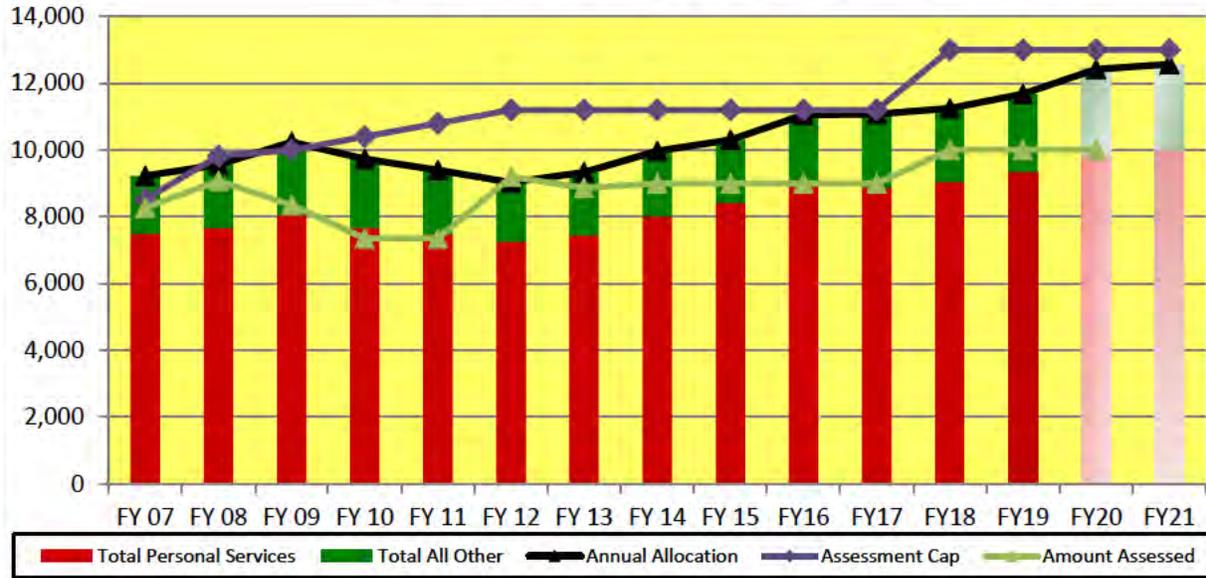
The Board's budget is limited to the revenue raised from the annual assessment. Other minor amounts of revenue are collected from the sale of publications and some fines and penalties; less than 1% of total revenue in FY 2019. The Board collects other fines and penalties not available for Board expenses; the Legislature has directed those amounts be paid into one of two dedicated accounts, the Rehabilitation Fund or the General Fund. The Board approved budget for the current biennium is \$12,420,066 for fiscal year 2020 and \$12,566,245 for fiscal year 2021.

The Board's funding mechanism also includes a reserve account. Reserve account monies may be used to assist in funding personnel and administrative expenditures, and other reasonable costs of administering the Workers' Compensation Act. A vote by the Board of Directors is required to authorize the use of reserve account funds and the Bureau of Budget and the Governor approve the resulting increase in the Board's allotted budget via the financial order process. The disbursement of reserve account funds must also be reported to the joint standing committee of the Legislature with jurisdiction over Labor matters.

The bar chart entitled "Actual and Projected Expenditures" shows actual expenditures through FY 2019 and projected expenditures for fiscal years 2020 and 2021. The chart also shows the assessment cap and the amounts actually assessed through FY 2020 (July 1, 2019 – June 30, 2020).

**Actual and Projected Expenditures  
Workers' Compensation Board Administrative Fund - 0183  
January 2020**

(figures for FY 20 and FY 21 are budget projections)



## 9. CLAIMS MANAGEMENT UNIT

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The Claims Management Unit (CMU) operates using a “case management” system. Individual claims managers process all submissions for an individual claim from start to finish. This ensures payments to injured workers are accurate and that proper forms are completed. Insurance carriers, claims administrators, and self-insured employers benefit from having a single contact in the unit.

The CMU coordinates with the Monitoring section of the MAE Program to identify carriers who fail to submit required filings on time. CMU staff also verifies the raw data that is later used to create our quarterly reconciliation reports. The CMU also participates in compliance and payment training workshops with the MAE Program on a quarterly basis.

Claims managers must consider all factors that can affect indemnity payments including the date of injury, Cost of Living Adjustments (COLAs), maximum benefits rates and fringe benefits. When incorrect information is filed, CMU staff must research prior filings, contact carriers for additional information and perform mathematical calculations to ensure payments are correct.

Electronic Data Interchange (EDI) for filing First Reports of Injury and Notices of Controversy helps carriers identify potential issues early in the life of a claim. Electronic filing reduces manual data entry which allows the unit to address more serious problems.

The CMU is responsible for annually producing the “State Average Weekly Wage Notice.” Insurance carriers use this information to determine the COLAs and maximum benefits allowed for the upcoming year.

The following is a brief description of the different steps taken to process the most-frequently filed claim information.

**Petitions** – Staff must locate or create the physical file. The relevant information is entered into the database and the file is sent to the appropriate regional office.

**Answers to Petitions** - The information is verified and entered in the database.

**Notices of Controversy (NOC)** - Initial NOCs are filed electronically. Corrections are submitted on paper and claims managers enter the revisions to the original NOC into the database system.

**Wage Statements** – Claims staff calculate the average weekly wage in accordance with the Statute, Board rules and Law Court decisions. The average weekly wage for the claim is entered into the database.

**Schedule of Dependent(s) and Filing Status Statements** - This information is required only for dates of injury between 1/1/93 and 12/31/12. The data submitted is entered into the database.

**Fringe Benefit Worksheets**- The received data is entered into the database.

**First Reports of Injury (FROI)** - Claims staff insures that the date of injury matches the First Report of Injury that has been filed via Electronic Data Interchange (EDI). If there is a discrepancy or the claim

cannot be located in the database, the claims manager contacts the appropriate carrier to resolve the issue.

**Memorandum of Payment, Discontinuance or Modification of Compensation, Consent between Employer and Employee** - The form is checked for accuracy. Dates, compensation rates and the average weekly wage are compared to information previously filed. If there is a discrepancy, the claims manager examines the file, contacts the appropriate insurance adjuster and may request amendments or new submissions be filed, if needed, to resolve the issue(s).

**21-Day Certificate or Reduction of Compensation** - The dates, the payment rate and the average weekly wage are compared to prior filings for accuracy. The claims manager verifies whether the suspension or reduction complies with Board rules. If there is an issue, the claims manager contacts the carrier to explain the error(s) and request a new certificate.

**Lump Sum Settlement** - The form and attached documents are reviewed to verify all required information has been provided. A claims manager contacts Board staff or parties to resolve any discrepancies or secure missing information.

**Statement of Compensation Paid** - The information on this form is compared to information previously reported. A large number of these forms contain errors requiring staff to research the file, contact the person who filed the form, and request corrected or missing forms.

**BREAKDOWN OF CLAIM FORMS FILED WITH THE WORKERS' COMPENSATION BOARD**

Information filed from January 1, 2019 to December 31, 2019

Information/Form	EDI	CMU	TOTAL
<b>Employer's First Report of Occupational Injury or Disease</b>	<b>31,874</b>	<b>34</b>	<b>31,908</b>
<b>Notice of Controversy</b>	<b>11,639</b>	<b>55</b>	<b>11,694</b>
<b>Petitions</b>		<b>4,223</b>	<b>4,223</b>
<b>Answers to Petitions</b>		<b>553</b>	<b>553</b>
<b>Wage Statement</b>		<b>10,229</b>	<b>10,229</b>
<b>Schedule of Dependent(s) and Filing Status Statements</b>		<b>2</b>	<b>2</b>
<b>Fringe Benefits Worksheet</b>		<b>9,844</b>	<b>9,844</b>
<b>Memorandum of Payment</b>		<b>5,754</b>	<b>5,754</b>
All other payment forms, including:		<b>15,188</b>	<b>15,188</b>
• Discontinuance or Modification of Compensation			
• Consent Between Employer and Employee			
• 21-Day Certificate of Discontinuance or Reduction of Compensation			
• Lump Sum Settlement			
<b>Statement of Compensation Paid</b>		<b>13,915</b>	<b>13,915</b>

Currently the Employer's First Report of Occupational Injury or Disease and the Notice of Controversy are filed electronically. All other required filings are submitted in paper form and are manually entered into the Board's case management database system.

## 10. INSURANCE COVERAGE UNIT

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The Insurance Coverage Unit is responsible for filings and records regarding workers' compensation insurance coverage. Board rules require employers doing business in Maine to file proof of a workers' compensation insurance policy (known as "coverage") with the Board. When an injured worker makes a claim for benefits, the claim must be linked to that employer's coverage policy.

The Coverage staff provides information to insurers, employers, insurance adjusters and the public regarding insurance coverage requirements. Staff matches insurance coverage to employers, creates and updates employer records, and researches the history of an employer's insurance coverage when there is a question regarding which insurer is responsible for paying workers' compensation benefits. Employers identified as needing but not having workers' compensation coverage are notified by letter and asked to contact the Coverage Unit. Coverage staff resolve the matter, when possible, or provide the employer additional information to correct records or complete filing. The Unit is also responsible for processing applications to waive the requirement to have workers' compensation coverage, maintain waiver records and rescind waivers upon request of the applicant or when applicants do not meet the statutory requirements.

In 2009, the Board implemented electronic filing for proof of workers' compensation insurance. The coverage reporting system was upgraded in November 2018. The advent of electronic filing has allowed Coverage staff to focus on research and resolution of problems. The majority of routine filings (initial proof of coverage, endorsements and renewals) flow through the electronic filing system without staff intervention while filings requiring research are routed to staff. Electronic filing has reduced data entry and enhanced identification of problems and trends with coverage filings. Changes to the Board's computer program associated with electronic filing have improved linking coverage to employers and claims and reduced the amount of research needed to identify whether there is coverage and the insurer responsible for a particular workers' compensation claim.

For the twelve (12) month period January 2019 through December 2019, the Board received and processed 50,838 proof-of-coverage filings. The Coverage Unit processed 1,079 waiver applications. Part of matching coverage to specific employers involves resolving instances of "no recorded coverage." 4,520 "no record of coverage" letters were sent to employers requesting information to verify if they were subject to the coverage requirement, and if so, whether they had workers' compensation insurance. Information received in response to these letters allowed Coverage staff to determine 1,497 employers fell under one of the exemptions to the coverage requirement.

The Coverage staff works closely with the Abuse Investigation Unit on problems associated with coverage enforcement. The Unit cooperates with the MAE program to identify carriers and self-insureds who consistently fail to file required information in a timely manner.

## 10A. PREDETERMINATION UNIT

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The Predetermination Unit processes applications for predetermination of employment status. These forms can be used to get a predetermination as to whether an individual (or in some cases a group of workers) is an independent contractor. The applications are filed by the worker alone; this makes it easier for the applicant to use the form with multiple hiring entities but makes it impossible to review each working relationship. Filing any of the three different predetermination forms, discussed below, is voluntary under the Maine Workers' Compensation Act.

The Legislature adopted a uniform "independent contractor" definition in 2012. This definition became effective on January 1, 2013. At that time, the Board reduced the number of predetermination forms from five to three and adopted a new form titled "Application for Predetermination of Independent Contractor Status to Establish A Rebuttable Presumption" (form WCB-266). This form replaced three old forms, WCB-264, WCB-265 and WCB-261. The Board also uses two other applications that are exclusive to wood harvesters. The "Application for Certificate of Independent Status" (form WCB-262) is used by a wood harvester so he or she can apply for a certificate of independent status. The "Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption" (form WCB-260) is a two-party application that is completed by a land owner and a wood harvester. Approval of either form WCB-260 or WCB-262 precludes a wood harvester from filing a workers' compensation claim if he or she is injured while harvesting wood.

In calendar year 2019, the Predetermination Unit received 6,584 applications. All complete applications were processed within 30 days of filing as required by the statute, and most were processed within several days of receipt. 6,204 applications were approved, both conclusive and rebuttable, and 6 were denied. 733 applications could not initially be processed because they were incomplete or used an outdated form. The applicants were contacted by phone or letter, asked for additional information or sent an updated form. Of that group, 359 applications were successfully processed but the remaining 374 applications were not completed because the applicant did not reply or provide the requested information.

# 11. COORDINATION WITH OTHER AGENCIES

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The Workers' Compensation Board is an independent agency charged with performing discrete functions within state government. Despite this, the Board coordinates and collaborates with other agencies. The Department of Labor (DOL) and Bureau of Insurance (BOI) are major collaborators; the Bureau of Human Resources (BHR), the Office of Information Technology (OIT), the Department of Health and Human Services (DHHS), and the Attorney General's Office are agencies the Board works with regularly.

## I. DEPARTMENT OF LABOR

The Board and the Department of Labor (DOL) used to share an employer database. The shared database was used by the Board to identify employers operating without required workers' compensation coverage. The Board and DOL no longer share a database. We are currently working together on a plan to ensure the Board continues to have access to the data it needs to perform its oversight function.

The Board, DOL and other interested parties worked together to create a single, uniform "independent contractor" definition used for both workers' compensation and DOL purposes. The new definition has been in effect since January 2013 and is working well. In an effort to improve the overall effectiveness of the new definition, the Board is reviewing the application process for requesting a predetermination of an individual's employment status. Concerns have been raised it may be too easy to receive an independent contractor predetermination, thus, potentially, undermining the goal of ensuring all employees are covered by required workers' compensation insurance. We are evaluating these concerns.

The Board also works with DOL's vocational rehabilitation staff. In order to return injured workers to suitable employment as quickly as possible, the Board refers injured workers to qualified employment rehabilitation specialists, who evaluate the workers and develop rehabilitation plans. Some of these referrals are made to DOL staff. DOL's staff does well ensuring plans for injured workers are tailored to the individual workers' abilities and needs. The Board and DOL continue to monitor how effective the plans are at returning injured workers to suitable employment.

The Bureau of Labor Standards (BLS), a division within DOL, uses claim information gathered by the Board to produce statistical reports on workplace safety in Maine. These reports are used by the Board, policy makers, and others to understand how well the system is working and where there is room for improvement. BLS is currently working with the Board to develop and define procedures for filing claim information electronically.

## II. BUREAU OF INSURANCE

While the Board has primary responsibility for implementing Maine's Workers' Compensation Act, the Bureau of Insurance (BOI) is responsible for overseeing certain aspects of Maine's system that require the two agencies to work cooperatively. A primary area of collaboration revolves around the Board's annual assessment. In order to ensure proper and adequate funding, the Board works with BOI to obtain information on premiums written, predictions on market trends, and paid losses information for

self-insured employers. This information is utilized by the Board when calculating the annual assessment figures.

The Board's Monitoring, Auditing, and Enforcement (MAE) Unit works directly with BOI on compliance and enforcement cases pursuant to 39-A M.R.S.A. § 359(2). When insurers, self-insurers and/or third-party administrators are found, after audit, to have failed to comply with the requirements of the Act, the Board certifies this information and forwards it to BOI. BOI must then take appropriate action to ensure questionable claims handling is addressed.

### **III. OTHER AGENCIES**

As the Board continues to shrink, it has entered into agreements with other agencies to provide services that used to be provided in-house. Several of these agencies are within the Department of Administrative and Financial Services (DAFS).

For instance, the Board's human resources needs are managed in conjunction with the Bureau of Human Resources. The Board and BHR have worked well together to address a number of personnel related issues.

The Board also works with the Office of Information Technology (OIT), another DAFS Bureau, with respect to computer hardware and software. OIT and the Board are currently working together on a major project; specifically, moving the Board to a new database.

The Board works with the Department of Health and Human Services (DHHS) to assist in recovering past due child support payments and to ensure MaineCare does not pay for medical services that should be covered by workers' compensation insurance.

The Board works with the Maine Health Data Organization to gather information regarding payments for medical services made by private 3rd-party payors. The Board uses this data to evaluate whether its medical fee schedule sets appropriate limits on payments for health care services while maintaining broad access to care for injured workers.

Finally, the Board works with the Attorney General's office on matters ranging from employee misclassification to representation on collection matters when penalties are assessed and not paid consistent with the judgement.

## 12. ABUSE INVESTIGATION UNIT

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The Abuse Investigation Unit (AIU) is responsible for enforcing the administrative penalty provisions of the Workers' Compensation Act. The AIU investigates allegations of fraud, illegal or improper conduct, and violations associated with mandatory filings, payments and insurance coverage. The Unit has six (6) professional staff and is supervised by the Board's Deputy General Counsel. AIU personnel conduct investigations, file complaints and petitions, represent the Board at administrative penalty hearings, and decide penalty cases.

AIU staff is also responsible for managing billing and penalty payments, and for initiating collection through Maine Revenue Services and the Attorney General's office in the form of civil and criminal actions. As part of this work, AIU is responsible for complying with requirements established by the Department of Administrative and Financial Services, and the Office of the State Controller.

The Unit's legal work is focused on enforcement of the coverage obligations in the Act. AIU staff investigates whether businesses have proper workers' compensation insurance; files complaints against businesses that are out of compliance; represents the AIU in administrative penalty hearings; and, when able, negotiates consent agreements resolving violations. The AIU investigates possible employment misclassification tips and coordinates with the Department of Labor and OSHA when necessary. The Unit is also responsible for defending appeals of "coverage" penalty decisions to the Board's Appellate Division. The AIU investigated and resolved over 1,300 potential "no coverage" cases in 2019.

AIU coordinates its work with the Board's Coverage Division and the Monitoring, Audit and Enforcement Program (MAE). It represents the MAE unit when a dispute arises as a result of an audit. AIU works with the Attorney General's office to enforce subpoenas, and to identify and refer cases for criminal prosecutions against employees and employers who have committed egregious or repeated violations of the Workers' Compensation Act.

## 13. GENERAL COUNSEL REPORT

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The Workers' Compensation Board is responsible for overseeing and implementing the Workers' Compensation Act. The Board, in performing these functions, can propose legislation and rules when it deems change is necessary. The Board has the authority, in limited situations, to act in adjudicatory and appellate roles.

### I. LEGISLATION

During the First Regular Session of the 129th Maine Legislature, the Labor & Housing Committee considered 26 workers' compensation related bills. The bills dealt with a number of different areas of workers' compensation law. They were all addressed during a single work session so the combined impact of the proposals could be considered at once. Ultimately, LD 756: An Act To Improve the Maine Workers' Compensation Act of 1992 was used to incorporate the amendments agreed upon by the committee. LD 756 does the following:

On or after January 1, 2020,

- Fringe or other benefits must be included in an employee's average weekly wage to if doing so does not result in a weekly benefit amount that is greater than 2/3 of 125% of the state average weekly wage at the time of the injury.
- Except for the reappointment of administrative law judges appointed prior to January 1, 2020, 5 of the 7 members of the Workers' Compensation Board must vote to contract for the services of or to employ administrative law judges.
- The maximum benefit level increases to 125% of the state average weekly wage.
- A cost-of-living adjustment must be made after 260 weeks of benefits have been received if benefits are being paid pursuant to § 212.
- The cap on benefits for partial incapacity is extended from 520 weeks to 624 weeks and the permanent impairment threshold is eliminated.
- If a deceased employee has no dependents, the employer must pay benefits to the parents of the deceased employee for a period of 500 weeks.
- The notice of injury requirement is extended from 30 days to 60 days.
- The maximum percentage of attorney's fees that may be awarded in a lump-sum settlement is 10%.

Effective September 19, 2019, LD 756 creates an exception to the requirement that the first payment must be made by an employer within 14 days after notice of the injury or death if the payment cannot be made due to a factual mistake, an act of God or unavoidable circumstances. It also creates a procedure where, in certain situations, benefit payments can be terminated when a Notice of Controversy is filed.

Pursuant to LD 756 (P.L. 2019, c. 344), the Workers' Compensation Board was also charged with the job of studying the board's worker advocate program and making recommendations to the legislature that will improve the program and enhance its ability to represent injured workers. The legislature also directed the board to convene working groups of stakeholders to examine issues related to work search and vocational rehabilitation for injured workers and to evaluate protections for injured workers whose

employers have wrongfully not secured workers' compensation benefits. The board completed the Advocate Study and will finish and submit the remaining reports to the Joint Standing Committee on Labor and Housing by the January 30, 2020 deadline.

## **II. RULES**

(1) As required in the Act, the Executive Director updated the medical fee schedule in 2018 by incorporating the most recent CPT codes, MS-DRGs and relative values used by Medicare to set prices for health care services. This will be reviewed for any needed updates in 2020.

(2) The Board completed its tri-annual comprehensive review of its medical fee schedule in 2018. As a result, conversion factors and base rates were amended. The new conversion factors and base rates were effective as of January 1, 2019. The next tri-annual review will get underway in 2020.

## **III. EXTREME FINANCIAL HARDSHIP CASES**

Benefits for weekly compensation are subject (with some exceptions) to a durational limitation pursuant to 39-A M.R.S.A. § 213(1). Once the durational limitation is reached, an employee is no longer entitled to partial incapacity benefits. Because this might work a hardship on an injured worker, the Board “may in the exercise of its discretion extend the duration of benefit entitlement ... in cases involving extreme financial hardship due to inability to return to gainful employment.” 39-A M.R.S.A. § 213(1).

When it decides these types of cases, the Board acts like an Administrative Law Judge. It must hear and accept evidence and argument on the standard contained in § 213(1) and then decide if an extension of benefits is warranted. The Board received two such petitions at the end of 2018. One petition was ultimately dismissed in 2019; the other was put on hold pending a decision by an Administrative Law Judge in a related case. A third petition was filed in 2019 and dismissed when the parties reached a settlement agreement.

Decisions are available at:

[http://www.maine.gov/wcb/Departments/boardofdirectors/section213\(1\)decisions.html](http://www.maine.gov/wcb/Departments/boardofdirectors/section213(1)decisions.html)

#### **IV. BOARD REVIEW PURSUANT TO 39-A M.R.S.A. § 320**

When the Workers' Compensation Act was amended in 1992, the Appellate Division, which was part of the Workers' Compensation Commission, was eliminated. As a result, the Board was given authority to hear and decide appeals from Hearing Officer decisions in limited situations. First, only an Administrative Law Judge can refer a case for possible review; second, the case must involve an issue of significance to the operation of the workers' compensation system; and third, the Board must vote to accept the case for review.

Over the years, the Board received a small number of requests for review. With the reinstatement of the Appellate Division, it is likely requests for review will be few and far between. However, the Board still is empowered to review decisions in appropriate cases. One case was filed with the Board in 2019 but it was dismissed. No cases under § 320 were heard in 2019.

Decisions of the Board pursuant to 39-A M.R.S.A. § 320 are available at:

<http://www.maine.gov/wcb/Departments/boardofdirectors/section320decisions.html>

## 14. APPELLATE DIVISION

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The Board's Appellate Division has completed its seventh full year of operation after being reinstated by the Legislature on August 30, 2012. The Appellate Division is authorized to hear and decide appeals from decisions issued by Administrative Law Judges (ALJs). With the renewed operation of the Appellate Division, the parties now have an automatic right of appeal from a decision issued by an ALJ.

Prior to August 30, 2012, a party aggrieved by a decision could ask for a referral to the Board of Directors for review, or they could file a petition for appellate review with Maine's Law Court. Requests for Board review were few in number and limited to cases of significance to the operation of the workers' compensation system. Appeals to the Law Court were (and still are) discretionary, and the Law Court accepted only a small percentage of cases for review.

Four Hundred and eight notices of intent to appeal have been filed since August 2012; 37 were filed in 2019. The Division has held oral arguments in 183 cases, (22 in 2019) including before nine *en banc* panels (none in 2019) and issued written decisions in 254 cases (41 issued in 2019). Ninety-nine appeals (ten in 2019) have been dismissed as a result of post-appeal settlement, withdrawal by the parties, or procedural default. The remaining cases are under consideration by Appellate Division panels or are in various stages of the briefing process.

Two administrative law judges and the clerk of the Appellate Division participated on a panel at the Comp Summit in Rockland, Maine, in August 2019, entitled "The Art of Appellate Advocacy." Approximately sixty attorneys and industry professionals attended to hear about best practices before the Appellate Division.

The Appellate Division addressed a variety of issues in 2019, including two decisions involving the division's jurisdiction when there are possible federal maritime claims under the Jones Act, *Wallace v. Cooke Aquaculture*, Me. W.C.B. No. 19-35 (App. D iv. 2019), and *Potter v. Cooke Aquaculture*, Me. W.C.B. No. 19-37 (App. D iv. 2019); and an *en banc* decision applying the firefighter cancer presumption found in 39-A M.R.S.A. § 328-B (Supp. 2018) and the applicable board rule, Me. W.C.B. Rule, ch. 1, § 10(1). *Morrison v. City of Sanford*, Me. W.C.B. No. 19-22 (App. Div. 2019).

Eighteen Petitions for Appellate Review were filed with the Law Court in 2019. Three remain pending. The Law Court did not accept any cases for review or issue any decisions on appeal from the Appellate Division in 2019.

Appellate Division decisions are available at:  
<http://www.maine.gov/wcb/Departments/appellate/appellatedecisions.html>



**SECTION B**

**BUREAU OF INSURANCE**



# Section B: Bureau of Insurance

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# 1. INTRODUCTION & BACKGROUND

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This report examines different measures of competition in the Maine workers' compensation insurance market. The measures are 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; 4) ease of entry into and out of the workers' compensation insurance market; and 5) comparison of variations in rates.

The tables in this report for accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for claims opened, the number of claims closed, and the number of claims reopened during the year. Other tables and graphs contain additional years of information.

On January 15, 2019, NCCI filed with the Superintendent for an overall 7.5% decrease in the advisory loss costs effective April 1, 2019. According to NCCI, the lost-time claim frequency has been relatively flat since 2006 and the average indemnity cost—a measure of severity—has been declining. The average medical cost has fluctuated more than indemnity, but it also has been generally declining. The Superintendent approved NCCI's filing effective April 1, 2019.

The decrease in the advisory loss costs is not evenly distributed across all five principal rating classifications, as seen below.

Industry Group	Percentage Change
Office & Clerical	-8.4%
Contracting	-10.1%
Manufacturing	-5.7%
Goods & Services	-6.9%
Miscellaneous	-7.1%

The change in loss costs for individual classification within each group varies depending on the experience of the classification.

These figures do not include changes that the Bureau approved after NCCI's "law only" filing, which it submitted after legislative changes to the benefit structure enacted with L.D. 756, "An Act To Improve the Maine Workers' Compensation Act." The Bureau approved a 3.9% average increase in loss costs to account for those changes. The increase will take effect January 1, 2020.

Although Maine's market has become quite concentrated and MEMIC writes a large volume of business, there are still many insurers writing workers' compensation coverage in Maine. Insurers, however, continue to be conservative in selecting businesses to cover or to renew. An insurer can decide to non-renew a business for any reason if it provides the policyholder with the statutorily required advance written notice. Self-insurance provides a viable alternative for some Maine employers.

## I. ACCIDENT YEAR, CALENDAR YEAR AND POLICY YEAR

Workers' compensation is a long-tail line of insurance. This means that payments for claims can continue for a long time after the year in which the injury occurred. Thus, amounts to be paid on open claims must be estimated. Insurers collect claim, premium and expense information to calculate financial ratios and assess whether they have collected enough premium to cover claims and expenses. This information may be presented on an accident year, calendar year, or policy year basis. This report primarily shows information on an accident year basis. A description of each method and its use in understanding workers' compensation follows:

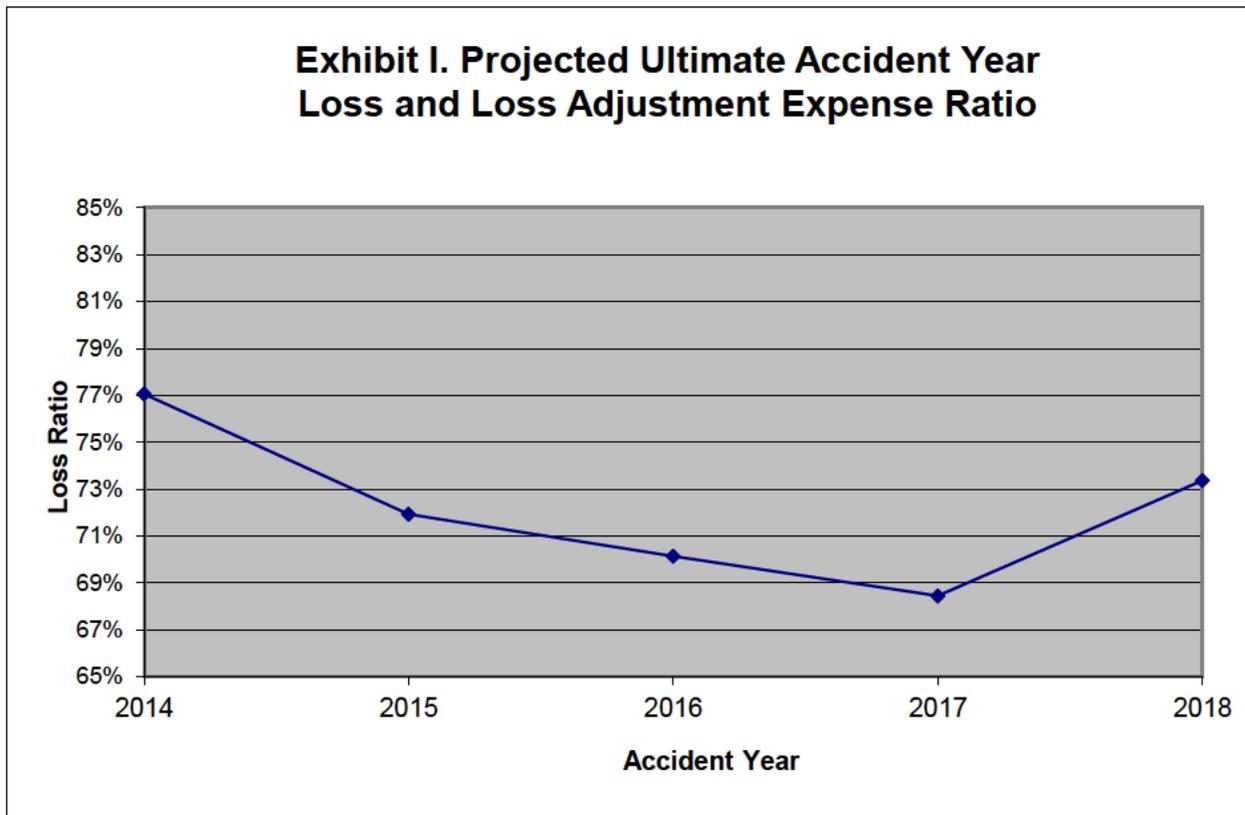
- **Accident year** experience as of a specific evaluation date matches 1) all paid losses and loss reserves as of the specific evaluation date for injuries occurring during a given 12-month period (regardless of when the losses are reported) with 2) all premiums earned during the same period (regardless of when the premium was written). The accident year loss ratio as of a specific evaluation date shows the percentage of earned premium that is expected to be paid out on claims. Therefore, the loss ratio for each accident year needs to be updated until the losses are finally settled.
- **Calendar year** experience matches 1) all paid losses and reserve change incurred within a given calendar year (though not necessarily for injuries occurring during that calendar year) with 2) all premiums earned during that year. Because workers' compensation claims are often paid out over a long period, only a small portion of calendar year losses is attributable to premiums earned that year. Many of the losses paid during the current calendar year are for claims occurring in past calendar years. Calendar year loss ratios also reflect aggregate reserve adjustments for past years. For claims expected to cost more, reserves are adjusted upward; for those expected to cost less, reserves are adjusted downward. Calendar year incurred losses are used primarily for financial reporting. Once calculated for a year, calendar year experience never changes.
- **Policy year** experience as of a specific evaluation date segregates all premiums and losses and loss reserves, as of the specific evaluation date, attributed to policies having an inception or a renewal date within a given 12-month period. The total value of all losses for injuries occurring during the policy year (losses paid plus loss reserves) is assigned to the period regardless of when the losses are reported. The losses are matched to the fully developed earned premium for those same policies. The ultimate policy year incurred loss result cannot be finalized until all losses are settled. Policy year data is used to determine advisory loss costs. Advisory loss costs are the portion of rates that accounts for losses and loss adjustment expenses.

## 2. RECENT EXPERIENCE

### I. PROJECTED ULTIMATE ACCIDENT YEAR LOSS AND LOSS ADJUSTMENT EXPENSE RATIOS

The accident year loss and loss adjustment expense ratio show the percent of earned premium used to fund losses and their settlement expenses. The loss and loss adjustment expense ratio does not include insurers' general expenses, taxes and contingencies, profit or investment income. Loss and loss adjustment expense ratios that exceed 100% mean that insurers are paying out more in benefits than they collect in premiums. A decrease in these ratios over time may reflect increased rates, improved loss experience, and/or decrease in reserves (i.e., the amount of money expected to be paid out on claims). Conversely, an increase in the loss ratios may reflect decreased rates, worsening loss experience and/or increase in reserves.

Exhibit I shows the projected ultimate accident year loss and loss adjustment expense ratios for the most recent five years. Ultimate loss and loss adjustment expense ratios in this report are based on more recent claim and loss adjustment expense data and may not match the projected ultimate accident year loss and loss adjustment ratios for the same accident years in prior reports. The accident year ultimate loss and loss adjustment expense ratio has ranged from 68% to 77% for the past five years. The 2018 ratio was 73.4%, indicating that \$73.40 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.



Source: NCCI

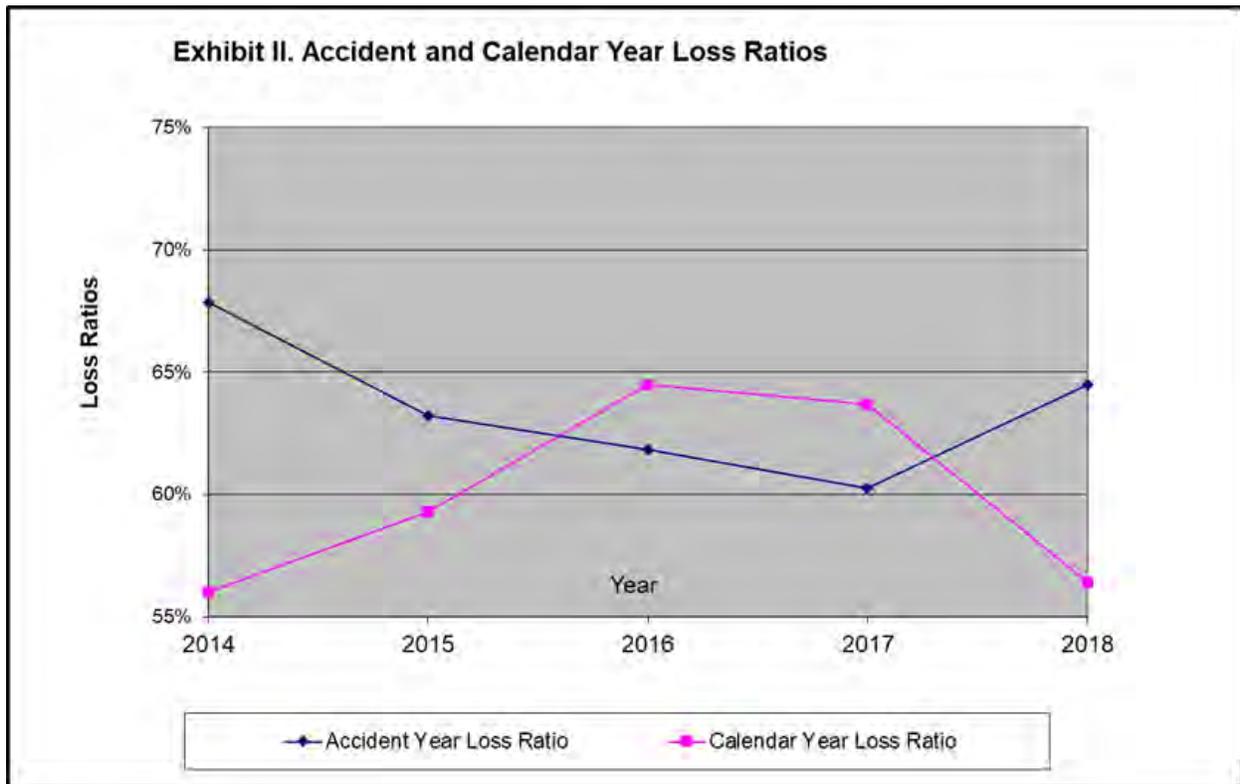
## II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

Calendar year loss ratios compare losses incurred with premium earned in the same year. Calendar year loss ratios reflect loss payments, adjustments to case reserves, and changes to IBNR (“incurred but not reported”) reserves, on all claims during a specific year, including those adjustments from prior injury years. Calendar year data is relatively easy to compile but can be distorted by large changes in case or IBNR reserves.

Accident year data is more useful in evaluating the claim experience during a particular period because it better matches the earned premium used to pay losses for injuries occurring in the year. In addition, the accident year experience is not distorted by reserve adjustments on claims that occurred in prior periods, possibly under a different law.

Fluctuations in calendar year loss ratios, in relation to accident year loss ratios, may reflect increases or decreases in reserves on prior accident years. Calendar and accident year ratios do not include amounts paid by insurers for sales, general expenses and taxes, nor do they reflect investment income.

Exhibit II shows calendar year and accident year loss ratios for the most recent five years. The calendar year loss ratios ranged between 56% in 2014 and 65% in 2016. Accident year loss ratios ranged from a low of 60% in 2017 to a high of 68% in 2014. Calendar year loss ratios show a downward trend in the last year, and accident year loss ratios show an upward trend.



Note: The Accident Year data points in Exhibit II above do not match those in Exhibit I on the previous page, because Unallocated Loss Adjustment Expense is not included in Exhibit II.

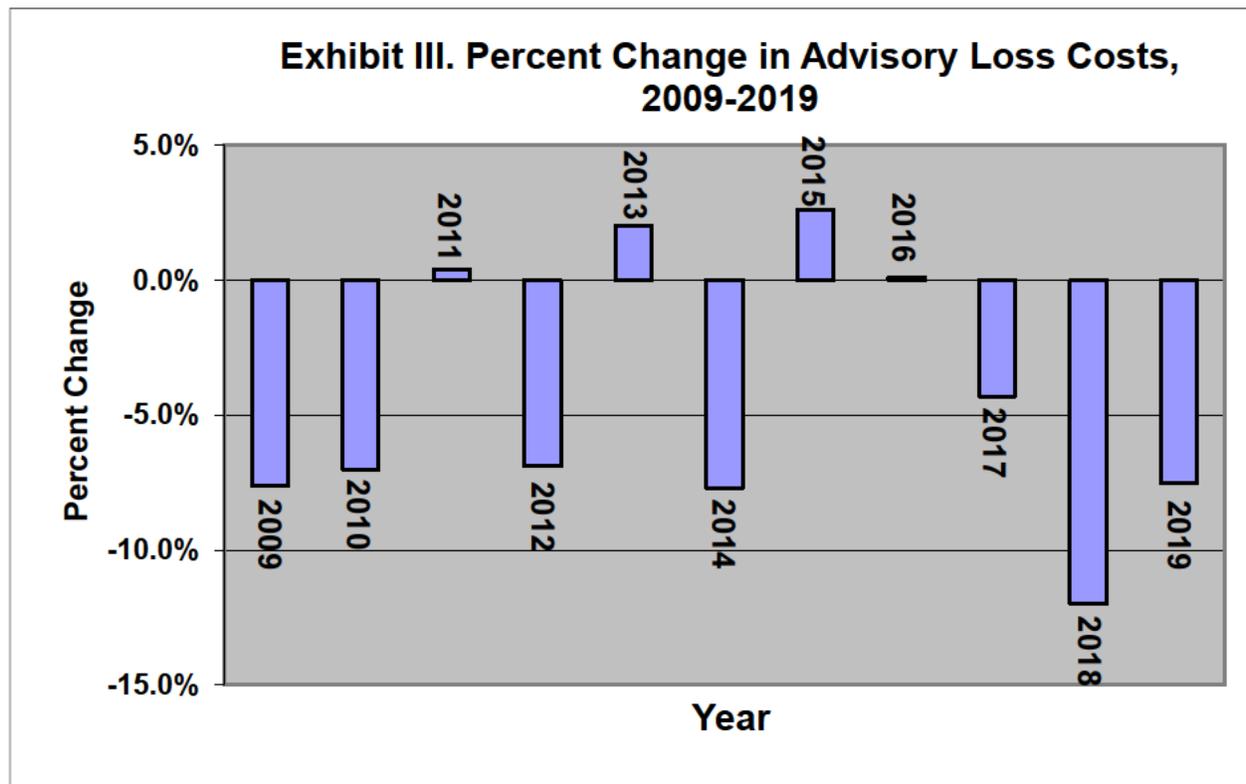
Source: NCCI.

### 3. LOSSES IN WORKERS' COMPENSATION

#### I. CHANGES IN ADVISORY LOSS COSTS

NCCI files advisory loss costs on behalf of workers' compensation carriers. Advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what insurers pay for commissions, general expenses, taxes and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what to load into premium to cover those items.

Effective April 1, 2019, the Superintendent approved a 7.5% decrease in the workers' compensation advisory loss costs. Advisory loss costs are now more than 19% lower than they were ten years ago, and nearly 63% lower than when the major reform of the workers' compensation system took effect in 1993. Changes in the advisory loss costs tend to lag actual changes in statewide loss experience because of the time needed to accumulate and evaluate loss data.



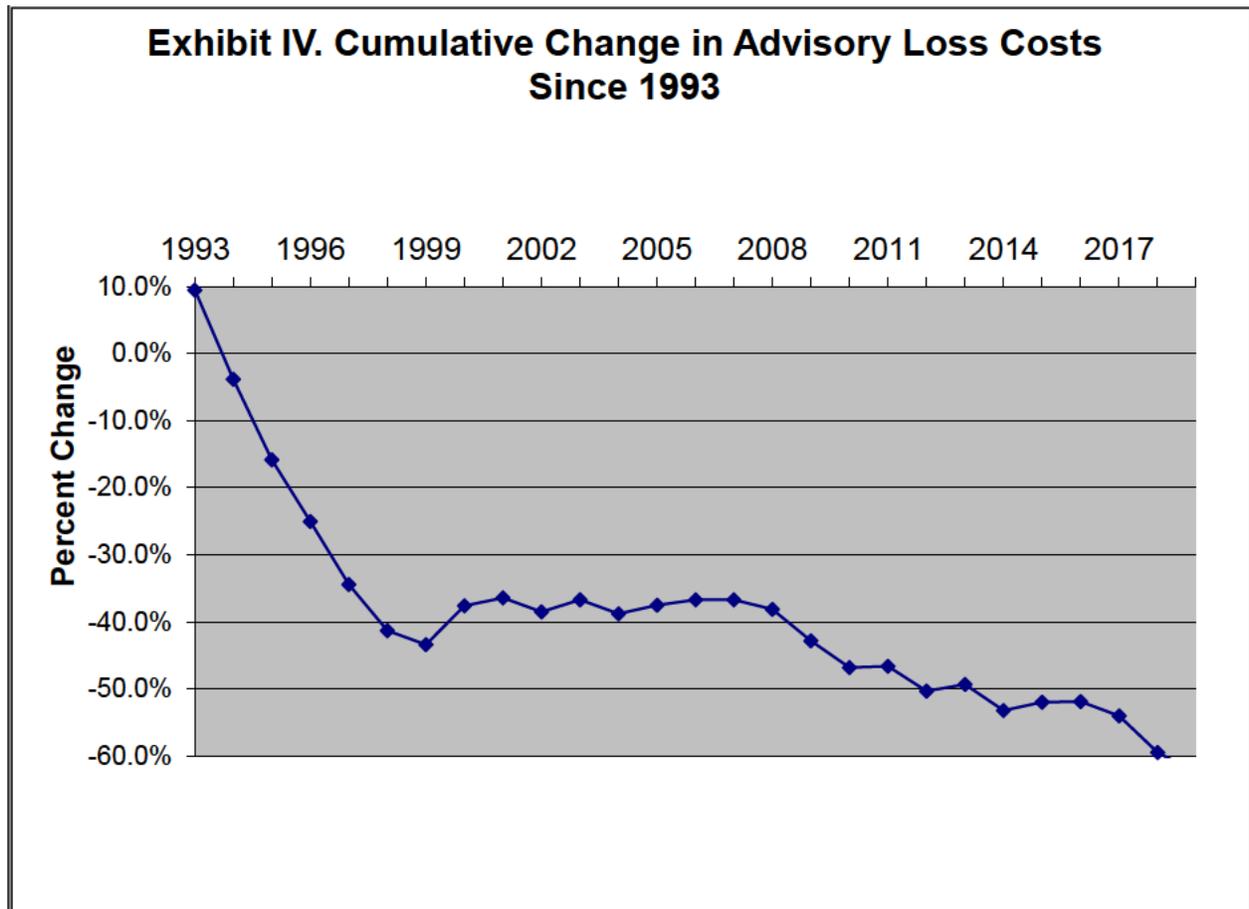
Source: NCCI

These figures do not include the loss cost increase prompted by the enactment of L.D. 756, "An Act To Improve the Maine Workers' Compensation Act of 1992." NCCI requested, and the Bureau approved, an increase in loss costs to account for the increase of benefits enacted in the new law. NCCI identified five elements of the law that necessitated an increase in loss costs as follows: (1) an expansion in the amount of fringe benefits that must be included in an employee's average weekly wage (0.1% increase); (2) an increase in the maximum weekly indemnity benefit from 100% to 125% of the state average weekly wage (1.4% increase); (3) the establishment of a cost-of-living adjustment for total incapacity

benefits (1.1% increase); (4) an increase in the durational limit for partial incapacity benefits from 520 to 624 weeks (1.0% increase); and (5) the establishment of parental fatality benefits when there are no dependents (0.1% increase). Cumulatively, NCCI determined that a 3.9% average increase in loss costs was necessary to account for these changes. That increase is an average and may vary by industry. Other elements of the legislative change, such as an extension in the notice period from 30 to 60 days, will be realized in future claims experience and reflected in future NCCI loss cost filings.

## II. CUMULATIVE CHANGES IN ADVISORY LOSS COSTS

Exhibit IV shows the cumulative changes in loss costs since 1993. Average loss costs have declined more than 19% over the past ten years.



Source: NCCI

## 4. MARKET STRUCTURE AND COMPETITION

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### I. MARKET CONCENTRATION

Market concentration is one measure of competition. Greater concentration means that there are fewer insurers in the market or that relatively few insurers are issuing a disproportionate amount of coverage. The result is less competition. Conversely, less concentration indicates greater competition.

As of October 1, 2019, 371 companies were authorized to write workers' compensation coverage. This number is not the best indicator of market concentration because some insurers have no written premium. In 2018 MEMIC accounted for 67% of the premium in the market. MEMIC is the insurer of last resort and writes voluntary business; other insurers can be more selective about which risks they accept. The following table shows the number of carriers that wrote workers' compensation insurance in 2018 by premium level.

<b>Amount of Written Premium</b>	<b>Number of Companies at That Level</b>
>\$10,000	162
>\$100,000	103
>\$1,000,000	24

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2018 was over \$229 million.

Market concentration alone does not give a complete picture of market competition because a significant portion of Maine's workers' compensation coverage is self-insured. See the Alternative Risk Markets section below for more complete information.

### II. HERFINDAHL-HIRSCHMAN INDEX

The Herfindahl-Hirschman Index (HHI) measures market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The annual Competition Database Report produced by the National Association of Insurance Commissioners compiles various data elements that measure the competitiveness of state insurance markets. The HHI is one data element.

According to the 2018 Competition Database Report, which was prepared in 2019, the HHI for workers' compensation insurance in Maine was 4,614. This measure is the third highest (i.e., most concentrated) for all commercial lines in Maine, behind financial guaranty and medical professional liability.

There is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guidelines for corporate mergers use 1,800 to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate moderately concentrated markets. A market with an HHI below 1,000 is considered not concentrated.

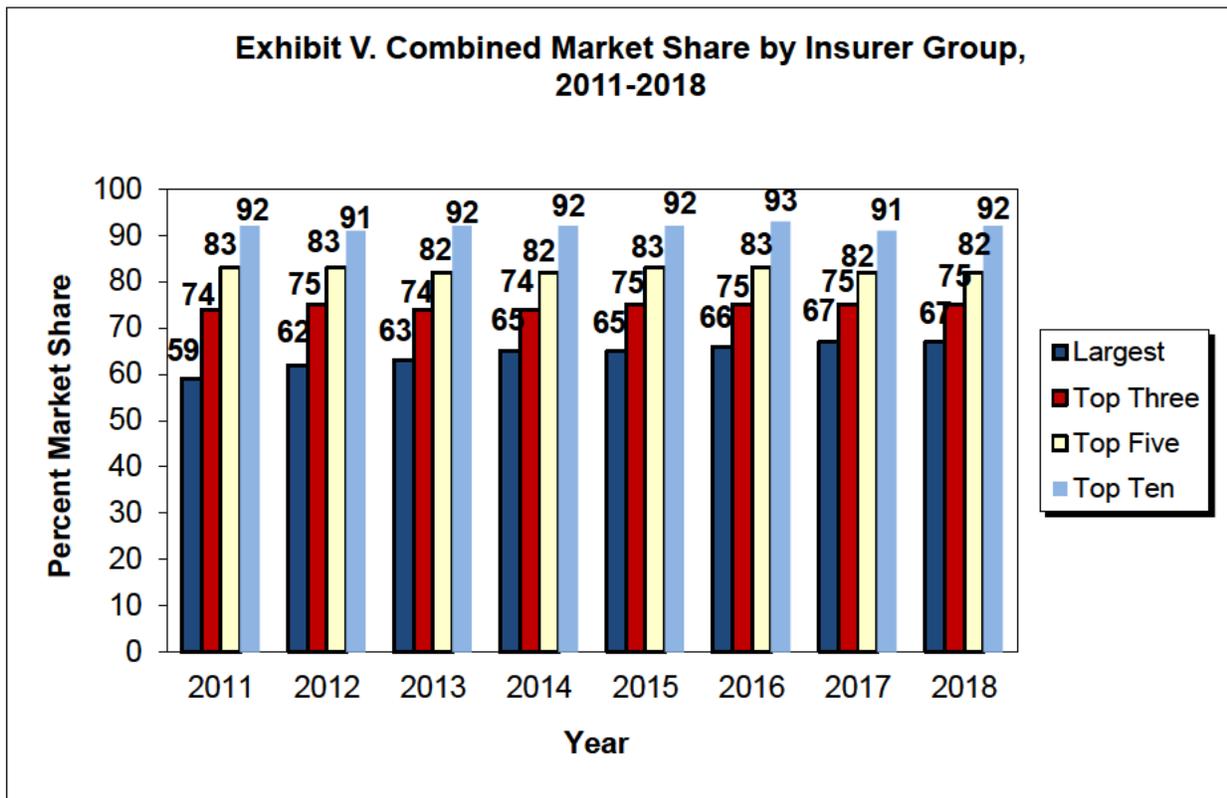
Applying the HHI to Maine's workers' compensation market does not give a complete picture of Maine's market concentration for two reasons. First, the Maine Legislature created MEMIC to replace a highly

concentrated residual market in which other insurers were reluctant to write actively in this state. Second, the market has a high percentage of employers who self-insure, either individually or in groups.

### III. COMBINED MARKET SHARE

An insurance group is one or more carriers under common ownership. Exhibit V illustrates the percent market share of the largest commercial insurance groups, in terms of written premium, as well as the percent market share for the top three, top five and top 10 insurer groups. This excludes self-insured premium.

The MEMIC group wrote over \$154 million in premium (67.4%) in 2018. The top three groups, including MEMIC, wrote over \$171 million in business (74.7%). The top five groups wrote over \$187 million (81.5%), and the top 10 groups had over \$210 million in written premium (91.6%). The reported amounts of written premium for the top 10 groups rose by over \$2 million from 2017 to 2018, while their overall market share increased by less than one percent.



Source: Annual Statements Filed with the Bureau of Insurance

#### IV. NUMBER OF CARRIERS IN MAINE'S WORKERS' COMPENSATION INSURANCE MARKET

The number of carriers in the workers' compensation market has increased in 17 out of the past 19 years, as shown in the table below. The number of carriers who may file rates and are eligible to write workers' compensation coverage has increased by over 76% since 2000. There currently are no significant barriers to entry.

<b>Year</b>	<b>Number of Carriers</b>	<b>Net Change (Percent)</b>
2019	371	4.8
2018	354	3.8
2017	341	4.3
2016	327	-1.8
2015	333	1.5
2014	328	-0.6
2013	330	0.3
2012	329	5.1
2011	313	6.8
2010	293	0.3
2009	292	3.6
2008	282	3.3
2007	273	2.3
2006	267	3.9
2005	257	1.1
2004	254	1.2
2003	251	4.2
2002	241	5.7
2001	228	8.6
2000	210	6.1

Source: Bureau of Insurance Records

Notes: Totals are based on the number of carriers licensed to transact workers' compensation insurance as of October 1, of each year.

## V. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE GROUPS

Table III shows market share for the ten largest insurance groups in 2018, and those groups' market share from 2011-2018. These groups wrote nearly 92% of business in 2018. Information by group is more relevant when assessing competition because carriers in a group are under common control and are not likely to compete with one another. The Maine Employers Mutual group maintained over 67% market share in 2018.

<b>Insurance Group</b>	<b>2018 Share</b>	<b>2017 Share</b>	<b>2016 Share</b>	<b>2015 Share</b>	<b>2014 Share</b>	<b>2013 Share</b>	<b>2012 Share</b>	<b>2011 Share</b>
Maine Employers' Mutual	67.4	67.4	65.9	64.6	64.8	62.6	62.3	59.4
Travelers Group	3.7	3.9	4.3	4.3	4.4	4.9	4.7	4.4
ProAssurance Corp Group	3.6	-	-	-	-	-	-	-
WR Berkeley Group	3.5	3.9	4.4	4.1	4.5	4.5	4.6	5.1
Hartford Fire & Casualty	3.3	3.1	3.1	3.2	3.4	3.5	3.5	3.1
Liberty Mutual Group	3.3	2.6	3.7	5.7	4.5	6.1	8.0	9.7
Chubb Ltd Group	2.2	2.0	2.0	-	-	-	-	-
Zurich Insurance Group	1.8	2.1	2.2	1.8	1.5	1.5	1.6	2.0
American International Group	1.5	1.8	1.2	1.7	3.1	2.8	1.7	4.2
Berkshire Hathaway Group	1.3	1.2	1.1	1.1	1.1	1.5	1.8	0.5

Source: Annual Statements Filed with the Bureau by Insurance Carriers

## VI. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE CARRIERS

Table IV shows the percent of market share for the ten largest carriers for each calendar year from 2011 through 2018. Throughout most of this period Maine Employers' Mutual Insurance Company (MEMIC) has had more than 62% of the market. The top 10 companies combined held 77% of the market in 2018.

<b>Insurance Carrier</b>	<b>2018 Share</b>	<b>2017 Share</b>	<b>2016 Share</b>	<b>2015 Share</b>	<b>2014 Share</b>	<b>2013 Share</b>	<b>2012 Share</b>	<b>2011 Share</b>
Maine Employers' Mutual	67.0	67.0	65.7	64.4	64.7	62.5	62.1	59.3
Eastern Alliance Ins Co	2.6	0.6	-	-	-	-	-	-
Zurich American Ins Co	1.4	1.6	1.7	1.5	0.9	0.8	0.9	1.1
Continental Western Ins Co	1.1	1.1	1.0	-	-	-	-	-
Charter Oak Fire Ins Co	1.1	1.1	1.2	0.9	1.1	1.3	1.3	1.1
Firemen's Ins Co of Wash DC	1.0	1.6	1.7	1.7	2.0	2.1	1.9	2.3
New Hampshire Ins Co	0.8	0.8	0.7	0.7	1.0	1.3	1.0	1.2
Eastern Advantage Assur Co	0.7	0.2	-	-	-	-	-	-
Arch Ins Co	0.7	0.9	0.8	-	-	-	-	-
Liberty Ins Corp	0.6	0.1	0.7	1.2	0.6	0.8	1.6	1.4

Source: Annual Statements Filed with the Bureau by Insurance Carriers

## 5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

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### I. RATE DIFFERENTIALS

There is a wide range of potential rates for workers' compensation policyholders in Maine, but most employers are not able to get the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such factors as prior-claims history, safety programs and classifications. An indication that the current workers' compensation market may not be fully price-competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers.

The Bureau of Insurance surveyed all the companies in the ten largest insurance groups, requesting the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. The table below shows the percentage of policies written at rates compared to the MEMIC Standard Rating tier (including MEMIC policies).

<b>Rate Comparison</b>	<b>2019 Percent</b>	<b>2018 Percent</b>
Below MEMIC Standard Rate	18.0%	24.2%
At MEMIC Standard Rate	60.8%	51.4%
Above MEMIC Standard Rate	21.1%	24.4%

Note: Based upon the results of a survey conducted by the Bureau of Insurance

Possible reasons that policyholders accept rates higher than MEMIC's Standard Rating tier are: 1) an insurer other than MEMIC that might not otherwise provide workers' compensation coverage provides it as part of a package with other lines of insurance at an overall competitive price to the insured; 2) an insurer other than MEMIC charges a higher rate but offers enough credits to lower the overall premium; or 3) the insured's poor loss history resulted in its being placed in MEMIC's High Risk Rating tier. It should be noted the enactment of PL 2017, c. 15, which eliminates the requirement that MEMIC maintain a high-risk program, may have an impact on rates moving-forward.

### II. ADDITIONAL FACTORS AFFECTING PREMIUMS

Some insurers offer employers other options that may affect their workers' compensation premium. Common options include:

- **Tiered rating** means that an insurer uses more than one loss cost multiplier, based on where a potential insured falls in its underwriting criteria. Tiered rating may apply to groups of insurers that have different loss cost multipliers for different companies in the group.
- **Scheduled rating** allows an insurer to consider other factors in setting premium that an employer's experience rating might not reflect. Factors including safety plans, medical facilities, safety devices and premises are considered and can result in a change in premium of up to 25%.

- **Small deductible plans** must be offered by insurers. These plans include medical benefit deductibles of \$250 per occurrence for non-experience-rated accounts and either \$250 or \$500 per occurrence for experience rated accounts. Insurers must also offer deductibles of either \$1,000 or \$5,000 per claim for indemnity benefits. Payments are initially made by the insurer and then reimbursed by the employer. Each insurer files a percentage reduction in premium applicable to each small deductible plan that it offers. The Bureau must review and approve these filings.
- **Managed Care Credits** are offered to employers who use managed care plans for workers' compensation injuries.
- **Dividend Plans** provide a return premium to the insured after the policy expires if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends are usually paid periodically after the insurer has accounted for changes in its incurred losses. Dividends are not guaranteed. In October 2018, MEMIC announced it would pay dividends totaling \$22 million to more than 17,000 qualified policyholders in November 2018. Including this payment, MEMIC will have returned approximately \$263 million to policyholders in the form of capital returns and dividends since 1998.
- **Retrospective rating** means that an employer's final premium is a direct function of its loss experience for that policy period. If an employer has lower than expected losses, it receives a reduced premium; conversely, if the employer has a bad loss experience, it receives an increased premium. Retrospective rating uses minimum and maximum amounts for a policy and is typically written for larger employers.
- **Large deductible plans** are for employers who do not want to self-insure for worker's compensation but have a discounted premium in exchange for assuming more of the risk than the statutory deductibles offer. Large deductibles can be in excess of \$100,000 per claim. The law requires that the insurer pay all losses associated with this type of policy and then bill the deductible amounts to the insured employer.
- **Maine Merit Rating Plan.** If an employer is not eligible for the experience rating plan, a merit rating plan must be offered by the insurer pursuant to 24-A M.R.S.A. § 2382-D.

While these options might lower an employer's premium, they may also carry some risk of greater exposure. Employers should carefully analyze these options, especially retrospective rating (retros) and large deductible policies, before opting for them.

## 6. ALTERNATIVE RISK MARKETS

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### I. PERCENT OF OVERALL MARKET HELD BY SELF-INSURED EMPLOYERS

Self-insurance plays an important role in Maine’s workers’ compensation market. Self-insured employers pay for losses with their own resources rather than by purchasing insurance. They may, however, choose or be required by the Bureau of Insurance to purchase insurance for losses that exceed a certain limit. One advantage of being self-insured may be better cash flow. Employers who self-insure anticipate that they would be better off not paying premiums. They are likely to have active programs in safety training and injury prevention. In 2018 nearly 36% of Maine’s total workers’ compensation insurance market, as measured by estimated standard premium, consisted of self-insured employers and groups.

The estimated standard premium for individual self-insured employers is determined by multiplying the advisory loss cost by a factor of 1.2 as specified in statute, multiplying that figure by the payroll amount, dividing the result by 100, and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

<b>Year</b>	<b>Estimated Total of All Standard Premiums</b>	<b>Percent of Workers' Comp. Market (in Annual Standard Premium)</b>
2018	\$127,713,174	35.7
2017	\$143,149,871	38.6
2016	\$149,945,345	40.1
2015	\$147,944,897	40.1
2014	\$147,295,090	41.5
2013	\$147,032,582	41.9
2012	\$159,230,371	44.6
2011	\$166,712,916	44.7
2010	\$171,478,611	47.5
2009	\$160,359,285	44.5
2008	\$179,280,965	44.6
2007	\$174,830,526	42.1
2006	\$167,535,911	40.9
2005	\$167,278,509	40.3
2004	\$171,662,347	41.7
2003	\$182,379,567	43.1
2002	\$167,803,123	43.0

Source: Annual Statements Filed with the Bureau of Insurance

Notes: Estimated standard premium figures are as of December 31 of the year listed.

The percent of the self-insured workers’ compensation market is calculated by dividing the estimated standard premium for self-insured employers by the sum of the estimated standard premium for self-insured employers and the written premium in the regular insurance market, and then multiplying the result by 100.

## II. NUMBER OF SELF-INSURED EMPLOYERS AND GROUPS

As of October 1, 2019, there were 18 self-insured groups representing 1,250 employees. The number of individual self-insured employers has remained at 57 for the past three years.

<b>Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 2000-2018</b>			
<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2019	18	1,250	57
2018	18	1,248	57
2017	18	1,263	57
2016	19	1,292	58
2015	19	1,327	60
2014	19	1,336	62
2013	19	1,363	58
2012	19	1,370	59
2011	19	1,378	59
2010	19	1,382	58
2009	19	1,459	58
2008	19	1,461	70
2007	19	1,478	70
2006	20	1,437	71
2005	20	1,416	80
2004	20	1,417	86
2003	19	1,351	91
2002	19	1,235	98
2001	19	1,281	92
2000	19	1,247	98

Source: Bureau of Insurance Records

Notes: For the purposes of self-insurance, affiliated employers are considered separate employers.

The number of individually self-insured employers and self-insured group information beginning in 2001 is as of October 1, of the year listed. Figures for 2000 are as of January 1.

## 7. A LOOK NATIONALLY

### I. OREGON WORKERS' COMPENSATION PREMIUM RATE RANKING

The State of Oregon ranks the states and the District of Columbia bi-annually by premium. The Oregon premium rate rankings focus on 50 classifications based on their relative importance as measured by their share of losses in Oregon. In 2018, Maine had the 19<sup>th</sup> highest workers' compensation premium rates in all industries. In 2016, Maine was 14<sup>th</sup> highest overall, in 2014, Maine was 13<sup>th</sup> highest overall, and Maine was 10<sup>th</sup> highest in 2012.

### II. AVERAGE LOSS COSTS BY STATE BASED ON MAINE'S PAYROLL DISTRIBUTION

NCCI reports average loss costs for 37 states and the District of Columbia, using the most recent loss cost filings for the states which have designated NCCI as the licensed rating and statistical organization. Maine had the 13<sup>th</sup> highest average loss cost in the most recent report. In last year's report, Maine had the 12<sup>th</sup> highest.

State	Average Loss Cost	Rank
Vermont	1.42	1
Connecticut	1.34	2
Georgia	1.29	3
Alaska	1.28	4
Illinois	1.25	5
Montana	1.22	6
Louisiana	1.22	6
Idaho	1.20	8
South Carolina	1.19	9
Rhode Island	1.19	9
Hawaii	1.17	11
Iowa	1.13	12
<b>Maine</b>	<b>1.12</b>	<b>13</b>
Florida	1.09	14
Missouri	1.08	15
Oklahoma	1.06	16
New Hampshire	1.01	17
Maryland	0.99	18
New Mexico	0.97	19
Nebraska	0.97	19

State	Average Loss Cost	Rank
Virginia	0.95	21
Alabama	0.93	22
Colorado	0.90	23
Mississippi	0.85	24
Kentucky	0.85	24
Arizona	0.85	24
South Dakota	0.82	27
D.C.	0.81	28
Oregon	0.81	28
North Carolina	0.78	30
Nevada	0.76	31
Kansas	0.75	32
Tennessee	0.67	33
Utah	0.65	34
Indiana	0.61	35
West Virginia	0.52	36
Arkansas	0.48	37
Texas	0.40	38

Countrywide                      0.98

Note: Average loss cost does not include expense and profit loading and is an average using all payrolls. The actual average for an employer will depend on the type of business and payroll mix.

**SECTION C**

**BUREAU OF LABOR STANDARDS**



# Section C: Bureau of Labor Standards

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# 1. INTRODUCTION

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## I. ORGANIZATION OF THIS REPORT

The report summarizes the Department of Labor, Bureau of Labor Standard's ("the Bureau") ongoing efforts to prevent occupational injuries and illnesses, including enforcement activities.

**Part 1, Introduction**, includes a summary of the Bureau's role, activities and outcomes.

**Part 2, Prevention Services Available**, describes the workplace injury and illness prevention activities of the Bureau and its partners in the occupational safety and health (OSH) community, including outreach, advocacy, and enforcement.

**Part 3, Research and Data Available**, presents research programs of the Bureau and some resulting data and conclusions.

**Part 4, Challenges and Opportunities**, discusses how current information gathering and sharing can be improved and initiatives to do so.

**Part 5, 2019 Developments**, outlines the 2019 developments and prospects for the future.

## II. ROLE OF THE BUREAU OF LABOR STANDARDS IN PREVENTING INJURIES AND ILLNESSES IN MAINE WORKPLACES

Title 26 MRSA § 42-A charges the Maine Bureau of Labor Standards with establishing and supervising safety education and training programs to help employers comply with OSHA requirements and maintain best practices for the **prevention** of injuries and illnesses. Additionally, the Bureau is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor standards laws and the related rules, including child labor laws and occupational safety and health standards in the public sector (state and local government employers).

The dark gray areas in Table C-2 illustrate the purview of the Maine Bureau of Labor Standards. The Bureau's **non-enforcement** (research, outreach, education, and consultation) services are typically offered under the Bureau's SafetyWorks! brand to distinguish them from the enforcement activities such as formal inspections and investigations.

**Table C-2: Workplace Injury and Illness Prevention and Response**

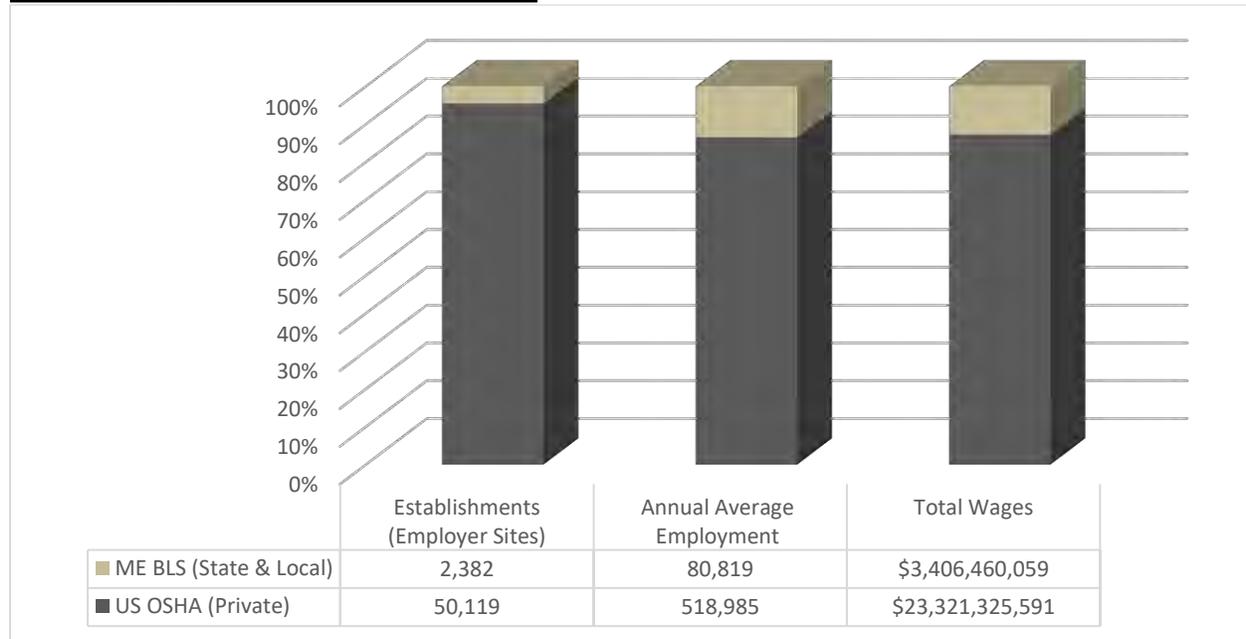
<b>Maine Workers' Compensation System</b>			
Function		State and Local Government	Private Sector Employers
Prevention	Research	Maine SafetyWorks!	
	Outreach and Education	Maine SafetyWorks!	
	Employer Consultation	Maine SafetyWorks!	
	Safety Standards Enforcement	Maine BLS*	U.S. OSHA
	Child Labor Enforcement	Maine BLS	
Administration		Maine Workers' Compensation Board	
Insurance Market		Maine Bureau of Insurance	
<b>Outside of Maine Workers' Compensation System</b>			
Exempt (self-employed, some agriculture, forestry, and fishing)			
U.S. Government and Special Federal Jurisdictions			

\*Starting in 2015 U.S. OSHA has been funding part of the state and local enforcement process, 50/50. It is still administered by Maine BLS.

Table C-2 includes certain areas or types of activities that are outside the Workers' Compensation system because there can be some overlap, although that overlap is unlikely. For instance, self-employed individuals may elect to buy WC insurance coverage for themselves, and workers under the federal Longshore and Harbor Workers' Compensation Act can elect to claim through the Maine WC system. Likewise, the table and this report do not cover federal government employees because the Maine workers' compensation law has no jurisdiction over them.

While both the state and federal governments share the employer safety enforcement load in Maine, the bulk of the enforcement burden falls on U.S. OSHA who handles the private (non-government) employers. The numbers and proportions of establishments, workers, and wages are shown in Figure C-3 below.

**Figure C-3: Establishments, Annual Average Employment, and Total Wages by Enforcement Jurisdiction (Excludes U.S. Government)**



Source: <http://www.maine.gov/labor/cwri/qcew1.html>, annual average, year-ending 2nd quarter, 2019.

While the enforcement burden of the Bureau is small compared to U.S. OSHA, it is important to note that the Bureau does provide non-enforcement outreach and education services for all the non-federal workplaces in Maine. (the total of the two groups above). Prevention before the injury occurs is the primary focus.

**Data Sources**

The data in this publication come from the Maine Workers’ Compensation Board database for reportable injuries and illnesses, and from the Maine Bureau of Labor Standards case management systems for all outreach, education, and consultation activities and public-sector (state and local government) employers and child-labor enforcement activities, as well as from publicly available data provided by the U.S. Bureau of Labor Statistics. More detailed explanations of, and statistics for the enforcement activities that the Bureau provides are explained in the individual items in this report.

**Safety Education and Training Fund (SETF) and Relationships to Other Funding**

A dedicated state special revenue fund called the Safety Education and Training Fund, or SETF, provides funding for the Bureau’s non-enforcement services. This fund is collected from insurers and self-insured employers and employer groups, with a cap defined in law as one percent of the total benefits paid out by insurers in the workers’ compensation system in the given year. Individual fees are based on the proportion the employer/insurer paid out in workers’ compensation benefits less medical payments. This fund allows the Bureau to provide the services at no additional charge to individual establishments and trainees.

For certain types of employer consultations, the SETF funding is substantially augmented by a “21d” cooperative agreement with the U.S. Occupational Safety and Health Administration (U.S. OSHA). This

program is funded 90/10 federal/state funding but there are size requirements on what businesses qualify for the service. Businesses that do not qualify can request and receive the same service funded entirely under the SETF. There are neither direct charges for the consultations nor fines for violations of the standards as a result of the findings of these consultative services. There is, however, a commitment on the employer's part to abate any problems uncovered in the consultation services.

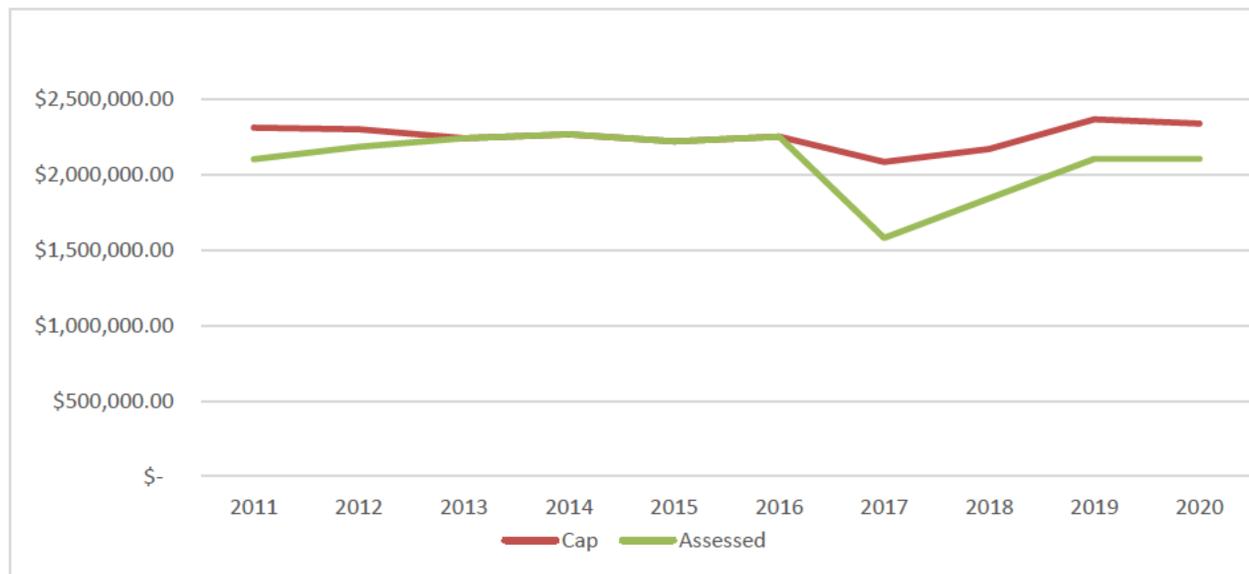
Since 2015 the Bureau's public sector (state and local government) enforcement and consultation activities have been match-funded (50/50) through a U.S. OSHA "23g" cooperative agreement, with matching funds from the SETF for the consultation portion of the work. (The state general fund provides the match for the enforcement activities.)

Lastly, the SETF provides 50/50 match-funding for the U.S. Bureau of Labor Statistics statistical cooperative agreement, required as part of the 23g agreement.

In all, the SETF funding provides the match for almost \$1.4 million in funding from the U.S. Department of Labor. Without the SETF matching funding, the services to Maine employers and workers provided by the cooperative agreements would be not exist and, if they did, would need to be funded through the general fund, where competition for funding is great and emphasis is on enforcement.

Due to the collective prevention efforts of the Bureau, OSHA, insurers, employers, the Workers' Compensation Board and the Bureau of Insurance, both the number and rate of injuries and illnesses have decreased over time, which means less Workers' Compensation payouts, and, therefore, fewer SETF fees generated. Moreover, programs and efforts that have reduced injury/illness-case durations and costs (secondary and tertiary prevention efforts), have also driven down the workers' compensation benefits paid out by the insurers and self-insured employers. As a result, the cap on the SETF fund that pays for the non-enforcement services has generally declined over time. Figure C-4 below illustrates the gaps and when the cap and assessment total merge.

**Figure C-4: Safety Education and Training Fund Cap and Assessed Amounts**



The gap between the two lines represents assessment dollars the Bureau could have collected but did not. The amount the Bureau has needed to sustain its programs fluctuates because of holdovers—savings from one year carried over to the next. In the period from 2012-2015 the Bureau had to charge at the cap to pay for a major software upgrade. For state fiscal years (SFY) 2017-20120, the Bureau had holdovers and lower expenses, respectively, allowing for assessments under the statutory cap. The pattern will continue as the situation requires.

**A. What services were provided?**

Table C-5 provides a summary of the services most recently provided by the Bureau. Note that time frames for the reports vary due to availability of the data at the time of publication. While much of the activity appears to be funded through the state General Fund, that revenue source accounts for only eight full-time equivalent positions out of 35 in the Bureau. The SETF and federal matching funds account for the most funding of positions and activities.

**Table C-5: Summary of Prevention Services and Activities**

Service	Jurisdiction / Funding Source	Activity Measures
SafetyWorks! Training Institute	State SETF / U.S. OSHA and MSHA* Cooperative Agreement	126 classes with 1,797 workers trained (FFY) 2018 and 111 classes with 1,764 workers trained in CY 2019
Employer OSH Data Profiles	State SETF / U.S. Bureau of Labor Statistics Cooperative Agreement	74 employer profile/data requests answered in CY 2019
On-site Consultations	State SETF / U.S. OSHA and MSHA* Cooperative Agreement	735 employer onsite consultations and reports which identified 5,066 serious hazards (FFY) 2019
Youth Employment Permit Enforcement	State General Fund	4,884 work permit applications received 4,767 work permits approved 117 work permits denied in SFY 2019
Wage & Hour Enforcement, Random Inspections	State General Fund	820 random employer inspections 120 inspections found violations 45 total child labor violations involving 13 employers in SFY 2019
Wage & Hour Enforcement, Complaint Investigations	State General Fund	320 complaint investigations 104 complaints found 226 law section violations in SFY 2019 279 child labor violations involving 7 employers
Public Sector Safety Enforcement	State General Fund / U.S.OSHA, 50/50	107 employers 447 total violations, 169 serious violations \$90,100 in initial penalties issued FFY 2019
OSHA Recordkeeping Employer Outreach	State SETF / U.S. Bureau of Labor Statistics Cooperative Agreement	9 sessions in CY 2019 178 attendees in CY 2019 9 sessions planned in CY 2020

\*MSHA—U.S. Mine Safety and Health Administration SFY State Fiscal Year (July 1 through June 30)  
FFY Federal Fiscal Year (October 1 through September 30) CY Calendar Year

**B. What are the outcomes of the services provided?**

While changes from year to year may not be striking, over the longer term there are clear improvements in the numbers, rates and indicators of disabling injuries and illnesses and fatalities. This is highlighted by the data in Table C-6.

**Table C-6: Summary of Data Activities and Significant Measures**

Data Programs	Funding	Result Measures
Workers' Compensation Case Data	State SETF / U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 13,811 disabling cases coded in calendar year 2018               <ul style="list-style-type: none"> <li>○ Increase of 9 total cases from 2017</li> <li>○ Decrease of 16,504 (54.4%) from the high of 30,315 in 1989</li> </ul> </li> </ul>
Survey of Occupational Injuries and Illnesses (SOII)	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 4.8 Total OSHA recordable case incidence rate in CY 2018               <ul style="list-style-type: none"> <li>○ Consistent with CY 2017</li> <li>○ Decrease of 19% from CY 2008</li> <li>○ Decrease of 48% from CY 1998</li> </ul> </li> <li>• 2.7 Days Away, Restricted or Job Transfer case incidence rate in CY 2018               <ul style="list-style-type: none"> <li>○ Consistent with CY 2016</li> <li>○ Decrease of 18% from 2008</li> <li>○ Decrease of 43% from 1998</li> </ul> </li> <li>• 1.3 Days Away From Work case incidence rate in CY 2018               <ul style="list-style-type: none"> <li>○ Consistent with CY 2017</li> <li>○ Decrease of 19% from CY 2008</li> <li>○ Decrease of 46% from 1998</li> </ul> </li> </ul>
Census of Fatal Occupational Injuries (CFOI)	State SETF/US Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 17 fatalities in 2018               <ul style="list-style-type: none"> <li>○ Decreased fatality count from 2017 (18)</li> <li>○ Highest in CY 1999 with 32</li> <li>○ Lowest in CY 2005 and 2015 with 15</li> </ul> </li> </ul>
Employer Substance Abuse Testing	SETF	<ul style="list-style-type: none"> <li>• 5.8% total positive tests for CY 2018               <ul style="list-style-type: none"> <li>○ Low of 3.3% in CY 2014</li> <li>○ High of 5.8% in CY 2018</li> </ul> </li> <li>• 5.8% applicants positive for CY 2018               <ul style="list-style-type: none"> <li>○ Low 3.1 % in CY 2014</li> <li>○ High of 5.8% in CY 2017 and 2018</li> </ul> </li> <li>• 51.4% probable cause positive for CY 2018               <ul style="list-style-type: none"> <li>○ Low of 6.8% in CY 2013</li> <li>○ High of 80% in CY 2007 (only 5 tests conducted)</li> </ul> </li> <li>• 3.5% random positive for CY 2018               <ul style="list-style-type: none"> <li>○ Low of 1.9% in CY 2011</li> <li>○ High of 4.4% in CY 2009</li> </ul> </li> </ul>

### III. INJURY PREVENTION AND COST CONTAINMENT

Preventing injuries and illnesses is, no doubt, the most efficient and humane way to minimize both direct and indirect costs of injuries and illnesses and to keep workers from having to enter the WC system. Studies over three separate time periods on the 100 most-costly Maine WC cases\* found that almost any injury/illness case can evolve into a high-cost case due to complications and the intricacies of the medical and WC systems. In fact, studies have pointed to different cases where first reports that were almost exactly alike and yet some devolved into the highest-cost cases while others were at low or no cost.

\*See the 2011 publication at:

[http://maine.gov/labor/labor\\_stats/publications/Maine%27s%20100%20Most%20Costly%20Workers%27%20Compensation%20Claims%202002-2006.pdf](http://maine.gov/labor/labor_stats/publications/Maine%27s%20100%20Most%20Costly%20Workers%27%20Compensation%20Claims%202002-2006.pdf)

## 2. PREVENTION SERVICES

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### I. SAFETYWORKS!

SafetyWorks! provides public and customized occupational safety and health training, consultations and outreach (non-enforcement), indoor air quality assessments and accident prevention activities within the Bureau of Labor Standards (BLS). Under its umbrella, a variety of free education, consultation, and outreach services are made available to Maine employers, employees, and educators. Some of these services are routinely provided by the Bureau while others may be provided only at the request of the employer. The design and scope of individual services and responses to requests is typically based on research and real-time injury and illness data from the Maine Workers' Compensation Board (WCB); and summary data and research from the U.S. Bureau of Labor Statistics and/or from OSHA.

SafetyWorks! instructors may customize their safety training programs for individual establishments or groups, based on industry profiles generated from data from the WCB *First Report of Occupational Injury or Disease* and other sources. By analyzing the WCB data, SafetyWorks! consultants can see what types of injuries and illnesses are prevalent in different industry sectors in Maine, which allows them to tailor outreach and education activities to meet specific employer needs.

#### A. Employer and Employee Training and Education

**General OSH Training** - SafetyWorks! staff develop and offer industry-specific and problem-specific training and certain Bureau staff provide OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different courses are offered, ranging in scope from 30-hour OSHA compliance courses to such tightly focused efforts as video display terminal (VDT) operator training requiring as little as two hours. This includes free training in OSHA recordkeeping—rare, if not unique to the state of Maine—and critical to collecting accurate federal data and complying with its requirements.

In federal fiscal year 2019, BLS scheduled public training was usually provided at the SafetyWorks! Training Institute or at local Department of Labor CareerCenters. The training institute is a state-of-the-art training facility with realistic, safety mock-ups for experiential, adult learning. Customized training may also be delivered at an employer's worksite if requested by an employer.

**B. Youth Employment Education** - The Bureau places a special emphasis on the education of young workers. The Wage & Hour Division carries out substantial outreach and education by working with Technical schools and Co-operative Education programs that are geared toward helping our youth understand employment standards as they enter the workforce.

#### C. Employer Consultation

**Employer Profiles** - Using the data from the WCB's *First Report of Occupational Injury or Disease* and the Survey of Occupational Injuries and Illnesses (SOII), the Research and Statistics Unit (R&S) of the Bureau can provide a Maine employer with a profile of that employer's injury and illness experience over several years. Such a profile shows the type of disabling injuries or illnesses that have been experienced by the company's workers. This profile also describes the nature of the injury or illness and the event or exposure that led to each incident. The employer

uses this information to detect patterns while developing and refining the company safety program. In calendar year 2018, 64 employer profile/data requests were answered.

**On-Site Consultation and Training** - Also under SafetyWorks!, the Workplace Safety and Health (WS&H) Division of the Bureau provides consultation services to public and private sector employers at their request. In the private sector, the Bureau provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National OSHA and Regional OSHA both identify employers for LEPs and National Emphasis Programs (NEPs) based on summary data from the WCB and the OSHA Data Initiative (ODI). Consultations are also provided in both the public and private sector upon employer request.

An employer consultation may include:

- An evaluation of training records from the employer, including an analysis of the employer's Workers' Compensation cases and/or the OSHA Forms 300, 300A, and 301.
- An environmental evaluation (walk-through).
- Examination of mandated written safety programs and employer policies.
- An examination of work processes. Consultations are non-advisory, confidential, and cooperative in nature. In fiscal year 2019, 735 employer on-site consultations were requested and completed.

For more on the services offered by the SafetyWorks! program, go to: [www.safetyworksmaine.gov](http://www.safetyworksmaine.gov).

## **II. ENFORCEMENT**

While programs and resources for voluntary prevention activities are effective, there is still a need for some non-voluntary compliance activities and for compliance assurance measures to verify that voluntary processes are actually carried out. To do so, the Bureau implements several enforcement programs fully outside of SafetyWorks! to distinguish them from those which are voluntary. Enforcement activities are typically triggered by focused random inspections, by complaints and/or long-running issues, or through discovery through analysis of data sources (as outlined in Section 3 of this report).

### **A. Youth Work Permits**

To protect workers under the age of 16, the Wage and Hour Division (W&H) reviews and approves or denies work permit applications. The approval process involves school verification of the young worker's age and that the young worker is passing class expectations. The work duties and environment are then reviewed to ensure the work being offered is appropriate or non-hazardous for the age group. From July 1, 2018 to June 30, 2019, W&H approved 4,767 work permits and denied 117 permits for these young workers.

## **B. Wage and Hour Enforcement**

The Wage and Hour Division also inspects employers for compliance with Maine wage and hour and youth employment laws, which have an occupational safety and health component. The Division can use age data from the WCB *First Report of Occupational Injury or Disease* to select industries and employers for inspection. Employers are also identified for inspections based on combinations of administrative criteria and complaint history. From July 1, 2018, to June 30, 2019 the W&H division conducted 820 self-directed inspections finding 120 separate violations and responded to 320 complaints finding 226 violations. The W&H division found 324 total child labor violations involving excessive hours worked, working at times of the day outside of the range allowed under state labor laws, hazardous occupations, and failure to obtain required minor work permits.

## **C. Public-Sector Site Safety Inspections**

Having been awarded a 23g cooperative agreement with the U.S. OSHA, as a “state plan state”, the Workplace Safety and Health (WS&H) Division of the Bureau enforces safety regulations based on U.S. OSHA standards *in the public sector* and is therefore responsible for the health and safety of employees of state and local governments and quasi-state/municipal agencies. The Board of Occupational Safety and Health, whose members are appointed by the Governor, oversees public sector safety and health enforcement. WS&H prioritizes state and local agencies for inspection based on reports of deaths or serious injuries requiring overnight hospital stays, complaints from employees or employee representatives, the agencies’ injury and illness data from the WCB, and the results of the Survey of Occupational Injuries and Illnesses (SOII). WS&H compliance officers conduct randomly selected, unannounced inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; however, this shutdown is not mandatory.

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to occupational safety and health (OSH). This knowledge is gained by OSH research, focused studies, and through continuous injury surveillance programs.

## 3. RESEARCH AND DATA

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### I. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS

The Research and Statistics Unit in the Workplace Safety and Health Division of the Bureau of Labor Standards is responsible for the administration and maintenance of the following data sources:

- Maine Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*
- U.S. Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII)
- U.S. Bureau of Labor Statistics Census of Fatality Occupational Injury Program (CFOI)
- Occupational Fatality Reporting Program
- Employer Substance Use Testing Program

Combined, the results of these surveys and censuses provide a useful profile of occupational injuries and illnesses in Maine. The following are program overviews and data summaries generated by these programs.

#### A. Maine Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*

Since 1973, the Maine Bureau of Labor Standards has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the U.S. Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding and is now called the Census of Case Characteristics. The Bureau data are directly linked to the WCB administrative data for each case and provide a wealth of information on individual cases and case aggregations. The database includes:

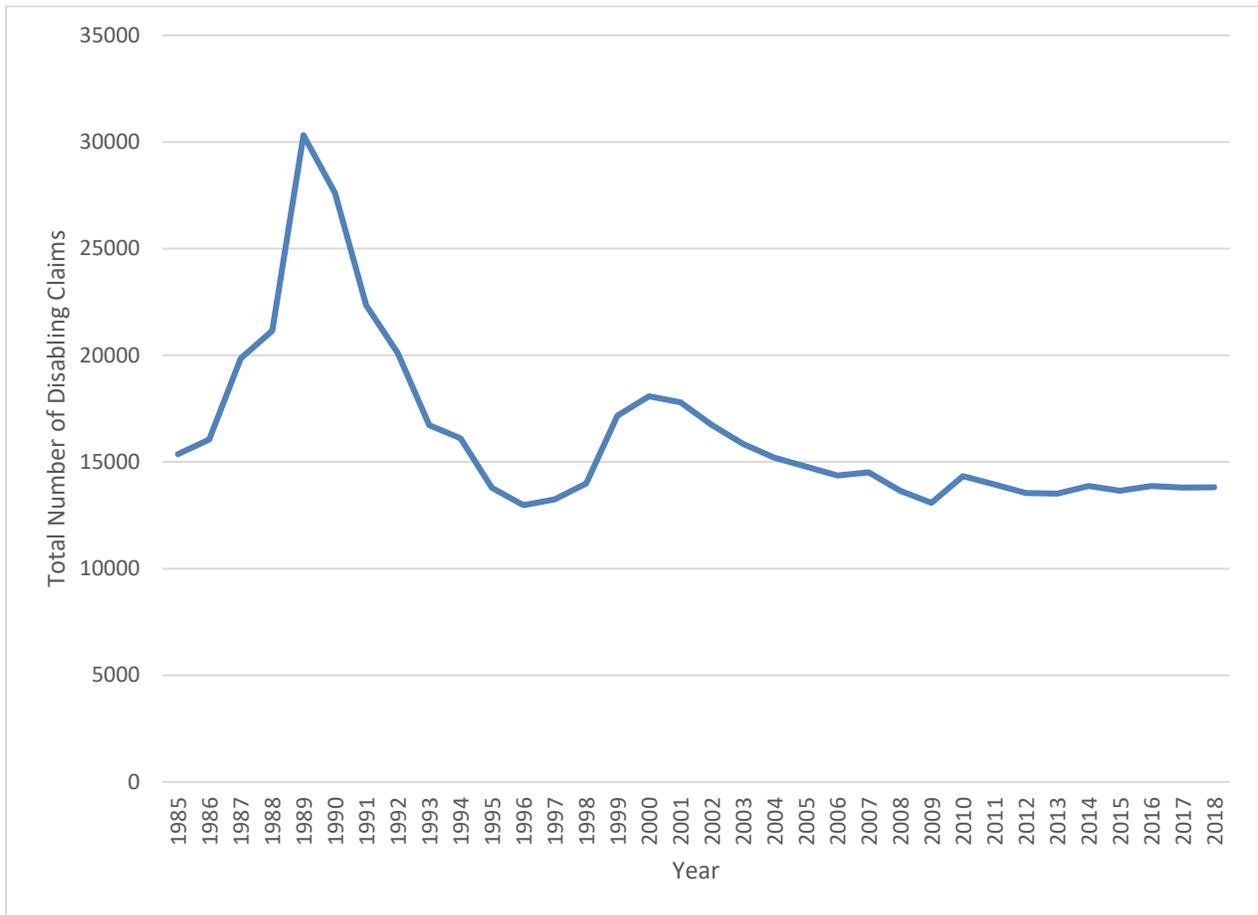
- 1) Characteristics of the employer
- 2) Characteristics of the employee
- 3) Characteristics of the workplace
- 4) Characteristics and results of the incident
- 5) Characteristics and results of the workers' compensation claim including costs

The Bureau analyzes the WCB data and provides injury profiles to employers and safety professionals to use in prevention and training activities. The consistency and completeness of WCB administrative data is critical to the accuracy and effectiveness of these prevention programs. The following is a summary of the data from the WCB claims and corresponding First Reports.

#### *i. Thirty-Year Pattern of Disabling Cases, Maine (1985–2018)*

In 2018 there were 13,811 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure C-12 shows the 34-year trend of disabling cases and the 1989 peak baseline.

**Figure C-12: Thirty-Four-Year Pattern of Disabling WCB Cases, 1985–2018**



Source: Workers' Compensation Board *Employer's First Reports of Occupational Injury or Disease*

There has been very little change in the total number of disabling claims since 2011, with a low of 13,517 in 2013 and a high of 13,940 in 2011, yielding a range of only 423 cases (3.1%) within the last 8 years.

**ii. Geographic Distribution of Disabling Cases, Maine (2016–2018)**

Geographic distribution data can be useful in health and safety related planning and setting respective enforcement and consultation priorities by region. Table C-13 provides the number of disabling cases statewide and by county for calendar years 2016 through 2018 and respective injury rates for each. These rates are based on numbers of employees in the respective regions and are not based on employee-hours worked.

Generally, the county incidence rates fluctuate from year to year. As shown in Table C-13, from 2016 through 2018, 9 out of 16 counties had consistently lower injury rates than the state average (Franklin, Hancock, Lincoln, Oxford, Penobscot, Somerset, Waldo, Washington, and York), 5 out of 16 counties were consistently higher than the state average (Androscoggin, Cumberland, Kennebec, Knox, Sagadahoc) and 2 counties fluctuated around the state average (Aroostook and Piscataquis).

**Table C-13: Geographical Distribution of Disabling Cases, Maine (2016–2018)**

County	2016			2017			2018		
	Cases	Workforce	Rate Per 1,000	Cases	Workforce	Rate Per 1,000	Cases	Workforce	Rate Per 1,000
Androscoggin	1158	55,265	21.0	1126	55,567	20.3	1151	55,449	20.8
Aroostook	636	31,428	20.2	614	31,536	19.5	598	31,085	19.2
Cumberland	3553	161,752	22.0	3466	164,595	21.1	3429	165,409	20.7
Franklin	188	14,427	13.0	199	14,447	13.8	179	14,471	12.4
Hancock	458	29,139	15.7	519	29,334	17.7	463	29,407	15.7
Kennebec	1389	62,216	22.3	1357	62,732	21.6	1383	62,541	22.1
Knox	419	20,683	20.3	431	20,730	20.8	440	20,584	21.4
Lincoln	261	16,992	15.4	249	17,056	14.6	251	16,988	14.8
Oxford	386	26,532	14.5	382	26,843	14.2	376	26,683	14.1
Penobscot	1485	76,882	19.3	1422	76,982	18.5	1378	77,127	17.9
Piscataquis	109	7,466	14.6	122	7,503	16.3	157	7,467	21.0
Sagadahoc	636	19,165	33.2	536	19,403	27.6	538	19,440	27.7
Somerset	363	23,453	15.5	365	23,084	15.8	399	22,888	17.4
Waldo	280	20,836	13.4	271	21,169	12.8	271	21,250	12.8
Washington	244	13,989	17.4	261	14,059	18.6	236	13,961	16.9
York	1388	111,002	12.5	1449	113,381	20.3	1491	113,999	13.1
Unknown*	916	-	-	1,033	-	-	1,071	-	-
<b>Maine</b>	<b>13,869</b>	<b>691,227</b>	<b>20.0</b>	<b>13,802</b>	<b>698,421</b>	<b>19.8</b>	<b>13,811</b>	<b>698,749</b>	<b>19.8</b>

\* "Unknown" represents WCB First Reports with missing location information.

Sources: The case data are from the Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*. The employment data are from the Maine Department of Labor's Center for Workforce Research and Information; Annual Labor Force Estimates, found at <https://www.maine.gov/labor/cwri/laus1.html>

### iii. Disabling Cases by Occupational Groups, Maine (2016–2018)

Ten occupational groups accounted for more than 80 percent of all reported disabling injuries in 2018. Table C-14 lists those top ten occupational groups, with their corresponding rates.

**Table C-14: Disabling Cases by Occupational Groups, Maine (2016–2018)**

Occupational Groups	2016		2017		2018	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving	2173	15.7	2111	15.3	2475	17.9
Construction and Extraction	1236	8.9	1197	8.7	1249	9
Production Occupations	1241	8.9	1201	8.7	1158	8.4
Office and Administrative Support	961	6.9	1247	9	1142	8.3
Food Preparation and Serving	976	7	964	7	1159	8.4
Installation, Maintenance, and Repair	1028	7.4	987	7.2	920	6.7
Building/Grounds Cleaning/Maintenance	815	5.9	826	6	898	6.5
Healthcare Support	793	5.7	779	5.6	927	6.7
Healthcare Practitioners and Technicians	826	6	772	5.6	750	5.4
Personal Care and Service	570	4.1	563	4.1	552	4
All Other Occupational Groups	3250	23.4	3155	23	2580	18.7
<b>Total</b>	<b>13,869</b>	<b>100</b>	<b>13,802</b>	<b>100.0</b>	<b>13,811</b>	<b>100.0</b>

Source: Workers' Compensation Board *Employer's First Reports of Occupational Injury or Disease*

Transportation and Material Moving, which includes occupations such as manual laborers, truck drivers (including oil delivery drivers) and bus drivers, have accumulated 6,759 disabling injuries over the last 3 years, accounting for 16.3% of all work-related disabling injuries. This is more than the bottom 11 occupation categories combined, which includes occupations such as firefighters, special education teachers, and social service specialists. While these jobs are numerous throughout Maine, the prevalence of injuries throughout these occupations merits further study.

#### ***iv. Age of Injured Worker, Maine, 10-year Comparisons***

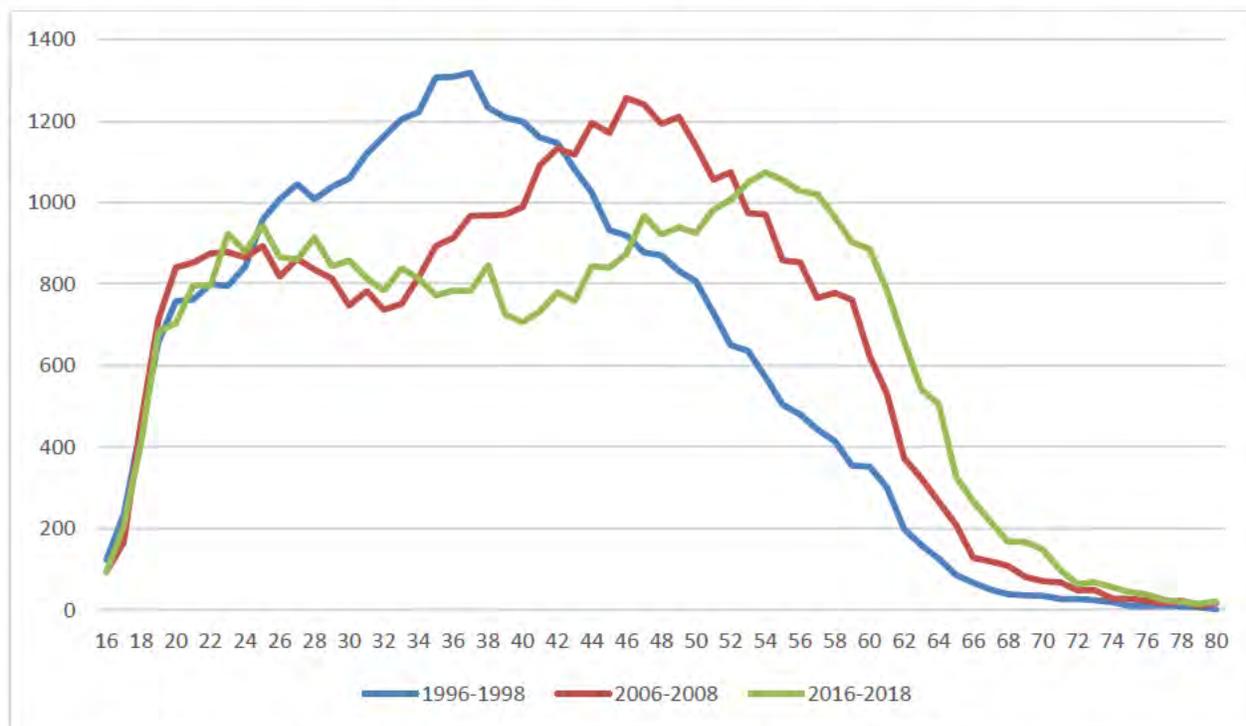
Over the past 20 years, several trends in injury data have been identified with regards to the age of the injured worker. Figure C-15 displays the total number of disabling injuries suffered by 3 groups of 3-year cohorts.

For the 1996-1998 group, the peak number injuries were suffered by 37-year old workers, which totaled 1,318 over the 3-year span. 10 years later, the peak number of injuries shifted 9 years to 46-year old workers, which totaled 1,256 over the 3-year span. In the most recently collected 3-year span of data, the peak number of injuries has shifted 7 years to 54-year-old workers, who totaled 1,074 disabling injuries. These

datapoints point toward a reduction in injuries in the workplace but are also a strong indicator of Maine's aging workforce.

Over time, the right-side tails of the graphs are slowly making their way farther right, indicating more employees remaining in the workforce later in life. Twenty years ago, there was a gradual decrease in injuries as workers aged. As time has progressed, this gradual decrease has become much sharper as the "baby boom" generation reaches the precipice of retirement. Interestingly, there does not seem to be a swell of injuries within the millennial generation who comprise the next largest segment of the workforce.

**Figure C-15: Number of Disabling WC Claims by Worker Age, Maine (1996-1998, 2006-2008, 2016-2018)**

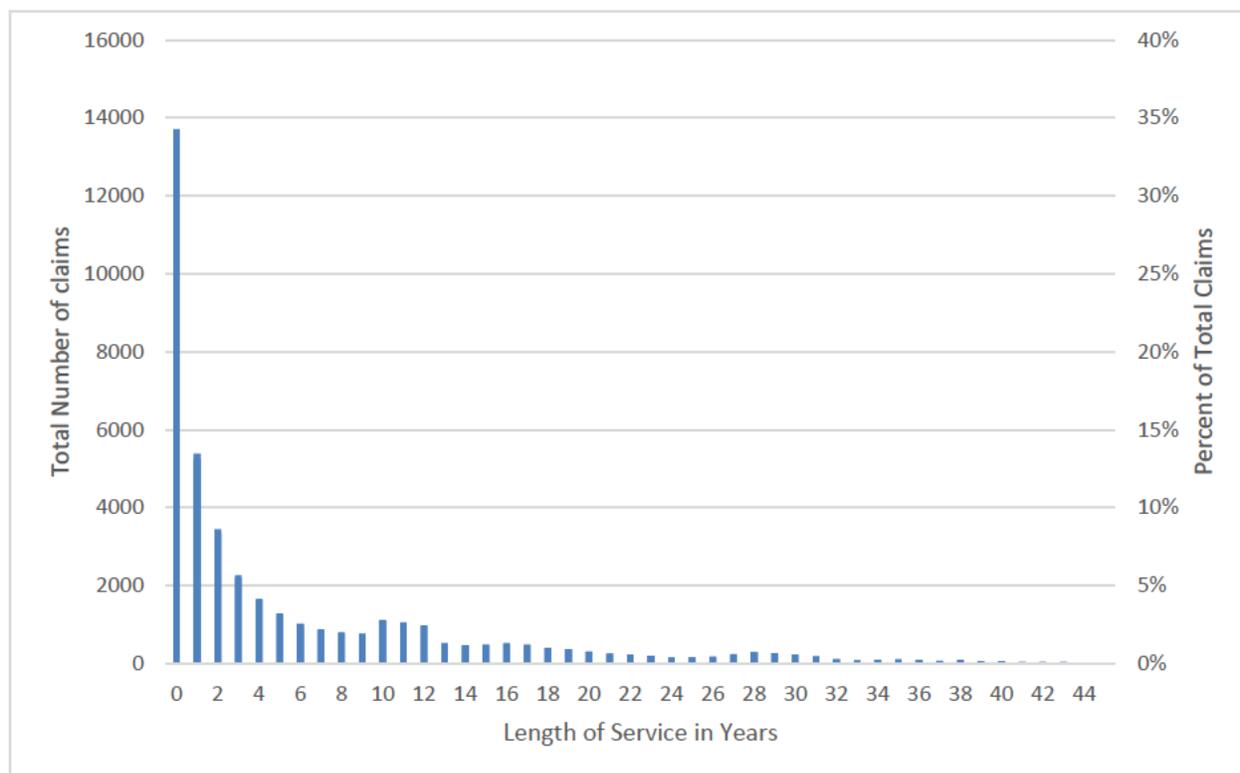


Source: Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*

**v. Length of Service of Injured Worker, Maine, 2016-2018**

Figure C-16 below shows a trend where new hires incur significantly more injuries than employees who have been with their employers longer, suggesting that programs and efforts to assure the safety of new employees are still warranted.

**Figure C-16: Count/Percentage of Disabling WCB Cases by Years of Service Completed by Injured Worker, Maine (2016–2018)**



Source: Workers' Compensation Board Employer's First Reports of Occupational Injury or Disease

Between 2016 and 2018, the number of lost time cases by length of service can be broken up into three groups; 33.34% had been working for their employer less than one year, 34.12% had put in between one and five years of service, and 32.54% of employees had completed more than five years of service. Over half of all disabling cases (54.81%) were to employees who had not yet completed three years of service with their employer.

## **B. U.S. Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses (SOII) OSHA Recordable Cases**

Since 1972, the Maine Bureau of Labor Standards has partnered with the U.S. Bureau of Labor Statistics through a cooperative agreement to collect data through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published annually on the U.S. Bureau of Labor Statistics website at this link:  
<http://www.bls.gov/iif/oshstate.htm#ME>.

The data are generated from a random sample stratified by industry and establishment size. There are more than 3,000 work establishments in the sample in any given year. For the year 2018, the Maine Bureau of Labor Standards surveyed 2,622 private establishments and 502 public-sector establishments, asking these businesses about their injury experience with OSHA recordable injuries and illnesses. In addition, employers report their average employment and total hours worked at the reporting worksite. From this information, the U.S. Bureau of Labor Statistics estimates incidence rates for both the nation and the participating states. The incidence rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year and taking into account part-time and overtime exposure hours. Figures C-17 and C-18 display results from the 2018 SOII.

While derived from the same injury and illness cases, WCB and SOII data sets are different and are not interchangeable. WCB injury and illness data lend themselves well to providing total *numbers* of incidents and incident characteristics because the data set is in fact a census of all disabling injury and illness cases. While SOII data can be used to estimate total numbers, they are less suited for that because the SOII data set is from a survey – a sample of all cases- rather than a census. On the other hand, SOII data are better suited than WCB data for providing statistically valid estimates of injury *rates* – because, the surveys also collect data on the number and amount of time employees are working.

Data collected from SOII are also incomparable with the WCB data because:

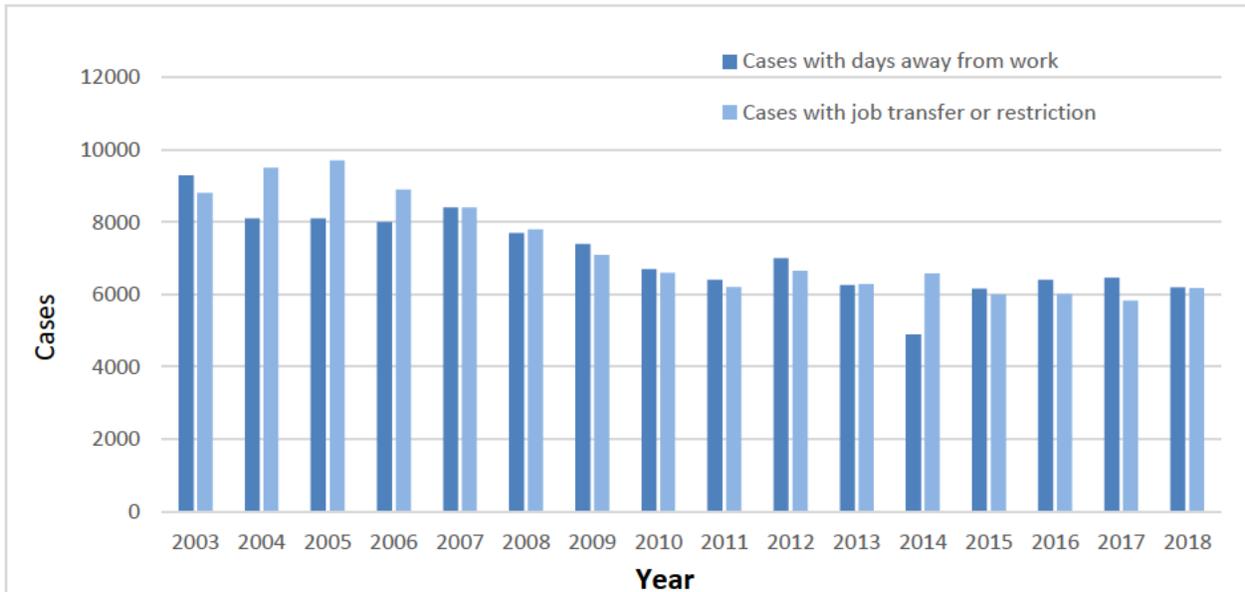
- The two systems record cases based on different definitions of “work-related” and other factors.
- WCB data (coupled with employer data available to the Bureau) can be used to generate employment-based rates but those rates are not the same as the rates published through SOII. The SOII rates are based on hours worked converted into full-time equivalents (FTEs) whereas the WCB rates can only be based on employee numbers.

The WCB data set is a census of disabling injuries and illnesses while the SOII data are from a statistical sample. The SOII data are therefore subject to sampling errors.

### ***i. OSHA Recordable Case Numbers and Rates***

Figure C-17 provides the SOII estimated number of recordable cases while Figure C-18 depicts the rates. The rates consider the number of hours workers were exposed to workplace risks. The exposure hours vary from industry to industry and year to year, and the rates take that into account.

**Figure C-17: Lost Workday and Restricted Work Activity Estimated Cases (2003–2018)**

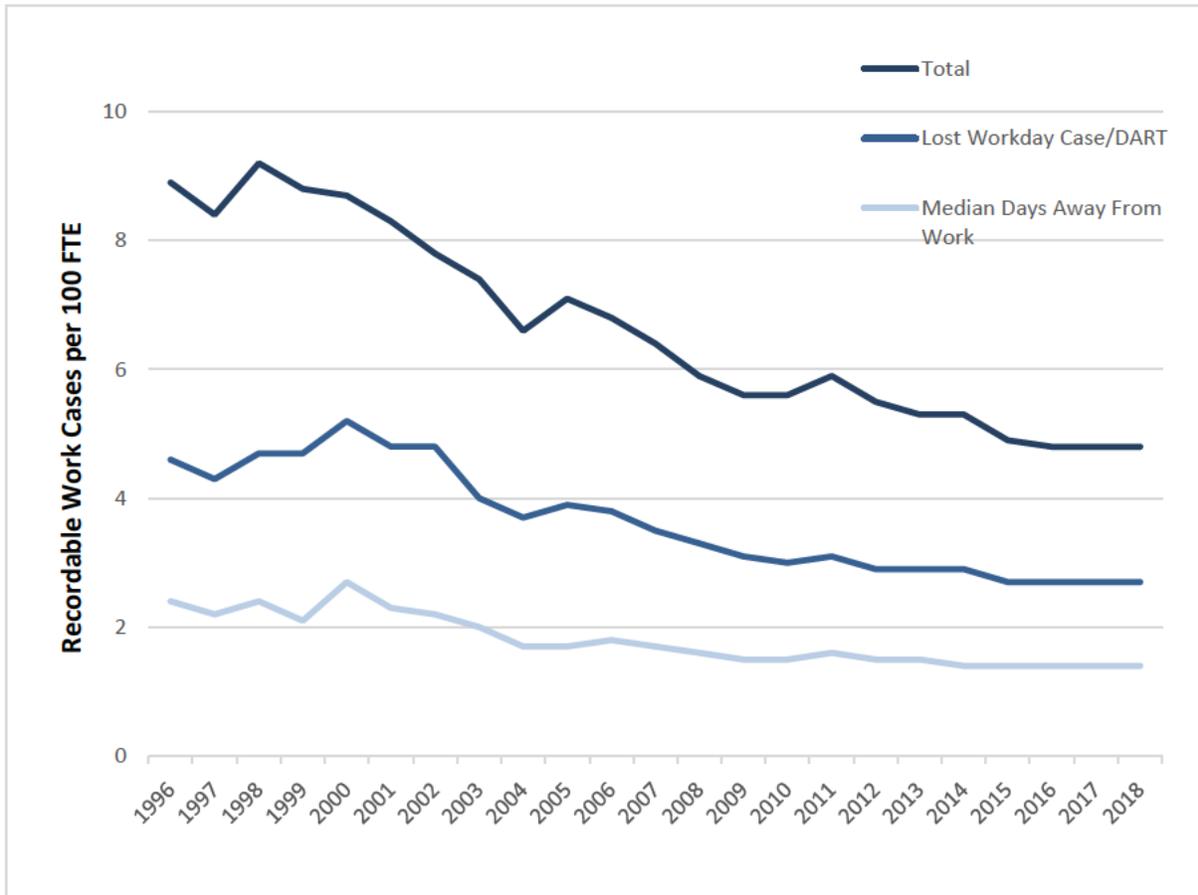


For 2018, there were an estimated total of 12,367 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total it was estimated that 6,195 cases resulted in at least one day away from work and 6,172 cases resulted in job transfer or restriction without any days away from work.

**ii. OSHA Recordable Case Rates**

A complement to the numbers generated from the WC and SOII data are the rates that, as mentioned, take into account differences in the hours worked and exposed.

**Figure C-18: Total Recordable, Lost Workday or DART and Days Away from Work Cases per 100 FTEs (1996–2018)**



Note: DART = Days Away from Work, Restricted Work Activity, or Job Transfer

Figure C-18 shows the general decline in the rate of injuries and illnesses reported. This table is per 100 full-time equivalents (FTEs) computed from employer-reported total hours worked.

The Total Recordable incidence rate has declined by 19% since 2008 and by 48% since 1998. The Lost Workday Case / DART rate has decreased by 18% from 2008 and by 43% from 1998. The Days Away from Work Rate has declined by 19% from 2008 and by 46% since 1998. Note that there was a change in this time period between the years 2001 and 2002, when OSHA recordkeeping rules and definitions were changed. In any case, this is a significant decrease, seen only as small decrements looking at them from year to year.

Again, more Maine SOII rate data from 1998–2018 are published on the U.S. Bureau of Labor Statistics website at this link: [http://www.bls.gov/iif/state\\_archive.htm#ME](http://www.bls.gov/iif/state_archive.htm#ME)

**iii. Industry Sector Data**

According to the 2018 SOII (private sector), Continuing Care Retirement Communities recorded the highest total recordable incidence rate of 14.0 per 100 FTEs. Table C-19 describes the top-ten private-industry total recordable rates.

**Table C-19: Publishable\* Industries with the Top-Ten Total Recordable Rates, Maine, 2018**

<b>Industry Group</b>	<b>Cases per 100 FTEs</b>
Continuing Care Retirement Communities	14.0
Nursing Care facilities (skilled nursing facilities)	13.7
Other residential care facilities	12.9
Waste Management and Remediation Services	12.9
Fuel Dealers	12.7
Bakeries and tortilla manufacturing	11.7
Wood container and pallet manufacturing	10.1
Boat building	9.7
Other wood product manufacturing	9.5
Electrical contractors and other wiring installation contractors	9.1
<b>All Private Industries</b>	<b>4.8</b>

Source: U.S. Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*

\*The link at <http://www.bls.gov/iif/oshstate.htm#ME> has rates for most of the major industries. Some industries are not publishable due to confidentiality concerns and/or reliability.

### **C. U.S. Bureau of Labor Statistics, Census of Fatality Occupational Injury Program (CFOI)**

The Census of Fatal Occupational Injuries (CFOI), part of the Bureau of Labor Statistics (BLS) Occupational Safety and Health Statistics (OSHS) program, is a count of all fatal work injuries occurring in the U.S. during the calendar year. The CFOI uses a variety of state, federal, and independent data sources to identify, verify, and describe fatal work injuries. This ensures counts are as complete and accurate as possible. For the 2018 data, over 24,800 unique source documents were reviewed across the country as part of the data collection process. Since 1992, the Maine Bureau of Labor Standards has worked in partnership with the U.S. Bureau of Labor Statistics to administer the CFOI for Maine.

The CFOI program was established to determine a true count of work-related fatalities in the United States. Prior to CFOI, estimates of work-related fatalities varied because of differing definitions and reporting sources. The CFOI program collects and compiles workplace-fatality data that are based on consistent guidelines throughout the United States.

A workplace fatality must meet the following criteria to be included in CFOI:

1. It must have resulted from a traumatic injury
2. The incident that led to the death must have occurred in the United States, its territories, or its territorial waters or airspace
3. It must be related to work

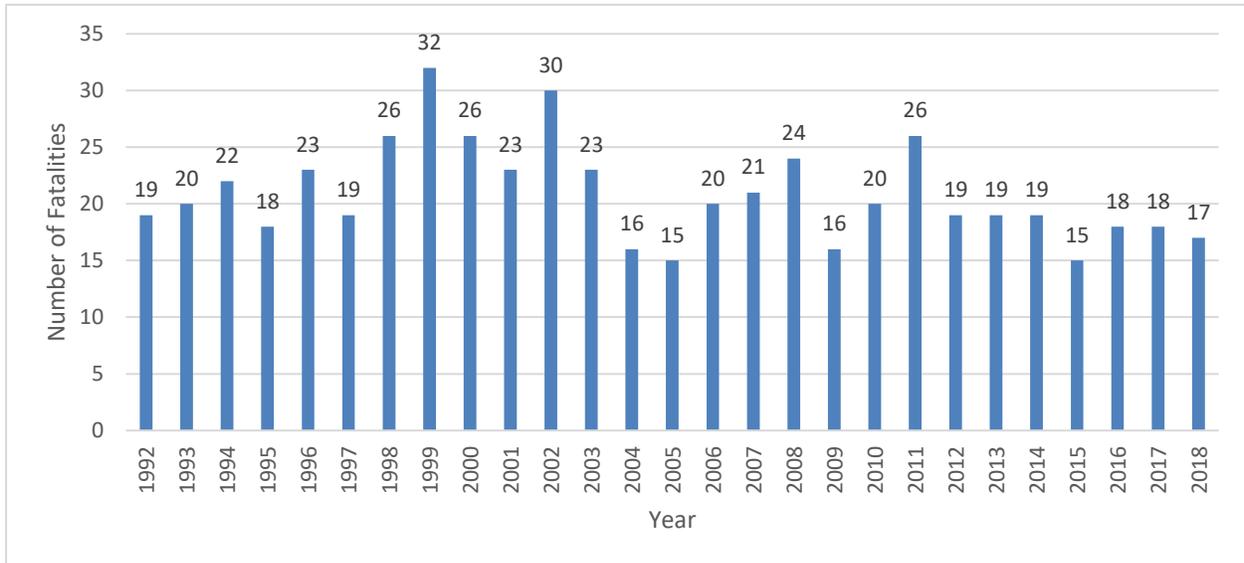
Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable. Private and public sector (state, local, and county government) are included.

Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include the *WCB Employer's First Reports of Occupational Injury or Disease*, and fatality reports from the following agencies and sources: 1) death certificates from Maine Center for Disease Control and Prevention, 2) the Chief Medical Examiner's Office, 3) investigative reports and motor vehicle accident reports from the Maine State Police, 5) investigative reports from the local police and sheriff's department, 6) the U.S. Coast Guard; 7) OSHA reports, and 8) newspaper clippings and other public media.

***i. Fatal Occupational Injuries, Maine (1992–2018)***

Figure C-20 shows the numbers of work-related fatalities recorded in Maine from 1992–2018.

**Figure C-20: Work-Related Fatalities, Maine (1992–2018)**



**Source:** Maine Census of Fatal Occupational Injuries

***ii. Fatal Occupational Injuries by Classification***

In a separate report to the U.S. Bureau of Labor Statistics, the Maine Bureau of Labor Standards has summarized previous years' data by several categories: year, occupation, type of fatal event, primary source (mostly vehicle accidents), and age of the victim. The nature of these reports is tightly restricted by the U.S. BLS, and the final form of the report must be approved by that agency. Thus, rather than publishing this information in two separate places, the reader is referred to the original document. Please see:

[http://www.maine.gov/labor/labor\\_stats/publications/cfoi/index.html](http://www.maine.gov/labor/labor_stats/publications/cfoi/index.html) .

**D. OSHA Data Initiative (ODI)**

From 1993 through 2012, the Bureau received a grant from U.S. OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information was used by OSHA to target establishments with high incidence rates for intervention through consultation or enforcement.

Usually the regional office of OSHA initiates this activity under the U.S. OSHA LEP. Due to the federal sequester in fiscal year 2013, the ODI initiative was not funded and has not been funded since.

### **E. Occupational Fatality Reports**

BLS piloted a fatality assessment, control and evaluation (FACE) program designed after the U.S. FACE program conducted by the National Institute for Occupational Safety and Health (NIOSH). The program consisted of a series of publications regarding work-related fatalities, the conditions that contributed to them, and measures that should or could have been taken to prevent them. With federal funding unavailable to continue the FACE program, BLS implemented its own Occupational Fatality Reporting Program (OFR) and published nine OFR reports through 2008 to draw attention to the work environments and behaviors resulting in worker fatalities.

In late 2012, the Bureau renewed this effort and is preparing a new OFR series that will identify fatality hazards in order to motivate employers and employees to embrace recommended safety practices and behaviors. The first report of the new OFR series entitled “Dying Alone on the Job,” January 2013, explores the causes of death while working alone and makes practical and industry-oriented recommendations for increased safety.

Possible future OFR topics include fatalities due to electrocution from direct or indirect contact with energized sources, tree cutting accidents, climbing/falling accidents and the general practices of situational awareness.

### **F. Worker’s Memorial Day**

Worker’s Memorial Day is observed every year on April 28, the day of OSHA’s establishment in 1971. In a number of Maine locations, community leaders, families of fallen workers, and employers gather to discuss the ongoing commitment to eliminate on-the-job fatalities by providing safe and healthy workplaces for all of Maine’s working men and women. The Bureau of Labor Standards supports these commemorations and provides workplace fatality information to assist in their preparation. Through its workplace safety inspections and consultations, its SafetyWorks! training and education, and its research and analysis of injuries and illnesses data, the Bureau continues to work hard to ensure the objectives of safer workplaces are constantly advanced.

### **G. Employer Substance-Use Testing**

Under the Maine Substance Use Testing Law, the Bureau of Labor Standards reviews and approves or denies proposed drug testing policies of Maine employers who want to have a substance use testing program. Employers can either use a model policy template available from the Bureau or develop their own drug testing policy that complies with Maine drug testing laws (The Maine Substance Use Testing Law, Title 26 MRSA, Section 680 *et seq.*).

The Maine Substance Use Testing Law is intended to protect the privacy rights of employees yet allow an employer to administer testing for several purposes: 1) to ensure proper testing procedures, 2) to improve workplace safety, and 3) to eliminate drug use in the workplace. Regulation of testing for use of controlled substances has been in effect under Maine law since September 30, 1989.

The administration of this law is the collaborative effort of the following agencies:

- The Maine Department of Labor (MDOL), which:
  - Reviews and approves substance use testing policies;
  - Conducts the annual survey of substance use testing;
  - Analyzes testing data and publishes the annual report; and
  - Provides templates for Applicant and Employee Testing Policies.
  
- The Maine Department of Health and Human Services (DHHS), which licenses testing laboratories, and the Division of Licensing and Certification within DHHS, which reviews and approves employee assistance programs (EAPs) for employers who conduct probable cause or random and arbitrary testing. (Any employer with more than 20 full-time employees must have a functioning EAP prior to testing their employees under the current statute.)

In 2018, the annual survey indicated that a total of 25,113 tests were administered by employers with approved policies and 1,455 (5.8%) of these tests were positives. Of the 23,999 job applicants tested, 1,399 (5.8%) tested positive for illegal substances. Table C-22 shows the total tests and applicant test results for the last ten years while Table C-23 describes the corresponding results for probable cause and random testing.

For a full report, visit: [https://www.maine.gov/labor/labor\\_laws/substance\\_abuse\\_testing/](https://www.maine.gov/labor/labor_laws/substance_abuse_testing/). Survey data for 2019 will be available by April 1, 2020.

**Table C-23: Results of Overall and Applicant Substance Use Testing (2009–2018)**

Year	Approved Policies	Total Tests			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
2009	412	17,399	666	3.8	16,719	631	3.8
2010	433	21,388	931	4.4	20,267	897	4.4
2011	436	16,439	545	3.4	15,580	532	3.4
2012	452	17,229	634	3.7	15,938	602	3.8
2013	487	24,225	1,100	4.5	23,284	1,068	4.6
2014	461	20,864	698	3.3	19,536	609	3.1
2015	534	26,258	1,308	5.0	25,059	1,257	5.0
2016	541	21,020	1,019	4.8	19,956	962	4.8
2017	543	25,310	1,441	5.7	23,835	1,372	5.8
2018	552	25,113	1,455	5.8	23,999	1,399	5.8

**Table C-24: Results of Probable and Random Substance Use Testing (2009-2018)**

Year	Approved Policies	Probable Cause Testing			Random Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
2009	412	16	6	37.5	664	29	4.4
2010	433	39	6	16.2	1,082	29	2.6
2011	436	12	3	25.0	847	16	1.9
2012	452	20	3	15.0	1,271	30	2.4
2013	487	44	3	6.8	897	29	3.2
2014	461	11	5	45	1,317	33	2.5
2015	534	45	11	24.4	1,153	40	3.5
2016	541	24	13	54.2	1,040	44	4.2
2017	543	54	14	25.9	1,421	55	3.9
2018	552	35	18	51.4	1,079	38	3.5

## II. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT

### A. OSHA Recordkeeping Employer Outreach Initiative

The Survey of Occupational Injuries and Illnesses depends on the accuracy of data tabulated from the OSHA Recordkeeping process. To ensure the accuracy of the data and to help employers comply with OSHA recordkeeping guidelines and avoid enforcement actions, the Research and Statistics Unit provides formal training, consultation, and outreach to Maine employers. In 2019, the BLS Research and Statistics training staff conducted classes in various locations in the state via SafetyWorks! In 2019, nine sessions were offered from Portland to Presque Isle.

### B. Special Projects

Using information from the Maine Workers' Compensation Board's *Employer's First Report of Occupational Injury or Disease*, the Research and Statistics Unit conducted the following special research projects in 2012 - 2017: (<http://www.maine.gov/labor/bls/techserv.html>)

- Tableau: An Interactive Workers' Compensation Database
- Hospital OSHA Recordkeeping Study
- Slipping and Falling on Ice
- Injuries Incurred by Maine's EMTs (and others)
- *Injuries and Illnesses Due to Workplace Chemicals and Related Hazards*
- *Roofing and Exterior Worker Falls in Maine, 2011 – 2013*

**i. *Tableau Interactive Web Database for Workers' Compensation Injury Data***

In response to requests to publish characteristics of Workers' Compensation annual injury data, it was determined that the most effective method of graphic presentation would be via the interactive database software Tableau on the Department of Labor's website. This method of data presentation allows data seekers easy access to Workers' Compensation injury data that the Bureau updates annually. It is available at: [http://www.maine.gov/labor/labor\\_stats/workinjuries.html](http://www.maine.gov/labor/labor_stats/workinjuries.html).

**ii. *OSHA Recordkeeping Establishments at Maine Hospitals***

Over the years, Bureau staff has come across a number of SOII survey reports by hospitals that included injuries from associated offices and clinics among their totals. Thus, the Bureau has been concerned that there may be over-reporting of injuries by hospitals leading to higher reported injury rates for that industry. In 2016, the Bureau hired a Margaret Chase Smith intern to examine the separate offices and practices associated or affiliated with major hospitals in Maine and determine which fall under the hospital's OSHA recordkeeping responsibilities and which are considered separate establishments. Of the 216 associated practices and offices examined, the Bureau found that 175 are actually separate establishments that were not under the OSHA recordkeeping responsibilities of their parent hospitals. The Bureau also determined that all but 2 of the 175 are ordinarily exempt from OSHA recordkeeping based on their NAICS codes. This information has enabled those hospitals to be more accurate in carrying out their OSHA recordkeeping and reporting requirements, which should lead to more accurate calculations of hospital injury rates.

**iii. *Slipping and Falling on Ice: A Serious Workplace Hazard***

Snow and ice cover Maine for most of the cold months, transforming our state into a true "winter wonderland" that is enjoyed by thousands. However, those same forms of frozen water pose serious hazards for work-related and other activities. Slipping and falling on ice may seem a common and inevitable nuisance in the winter, it may even seem comical at times; however, people sustain serious injuries from winter slips and falls. Each year, hundreds of Maine workers get hurt and lose valuable work time by slipping or falling on ice and snow. Indeed, the frequency of these incidents should raise more concern for everyone, employers and workers in particular.

Using information provided by the Maine Workers' Compensation Board (WCB) illness and injury claims database, this report examines the nature and extent of injuries occurring due to slipping and falling on snow and ice. It includes data about the physical effects the injured employees sustain; the financial burdens injuries place on employees, employers and insurance carriers; and factors that might affect the frequency of these accidents. This report aims to better define and examine the problem and its causes in the hope of guiding further work to foster effective measures that reduce these kinds of injuries to Maine workers.

iv. ***Injuries Incurred by Maine's EMTs, EMT/Firefighters and Paramedics***

This report presents 2012 data pertaining to injuries incurred by Maine's emergency medical technicians (EMTs), EMT/firefighters and paramedics where a significant number of similar injury events were recorded. Research and data analysis resulted in findings that 35 percent of injury events were due to overexertion while lifting, transporting or assisting injured or ill persons. Findings also show that sprain and strain injuries accounted for 93.6 percent of the overexertion injuries and that the back was the body part injured most often, accounting for 44.7 percent of the cases. These injuries occurred with and without the use of mobility or lift assistance equipment.

v. ***Injuries and Illnesses Due to Workplace Chemicals and Related Hazards***

This report presents data from Maine's 2012 – 2013 Workers' Compensation injury and illness claims resulting from direct or indirect exposure to injurious chemicals or workplace environmental hazards, such as poor indoor air quality resulting from microbiological (mold and fungus) growth. These exposures present occupational health and safety hazards to workers that can result in acute injuries as well as acute or chronic respiratory, allergenic, and other types of illnesses.

vi. ***Roofing and Exterior Worker Falls in Maine, 2011 – 2013***

This report focuses on fall injuries among Maine's roofing and building exterior construction workers, the factors that may have contributed to them and the regulatory/enforcement efforts to reduce them. From 2011 through 2013, 34 Maine roofing and exterior workers were injured as a result of falls from roofs, falls onto roofs, and falls from ladders, scaffoldings, and staging. Four others died as a result of their falls.

The report provides data on the causes of these incidents, the kinds of injuries incurred by the workers, and the associated Workers' Compensation costs. It also provides information regarding federal regulations and standards enforced by OSHA and the Maine Department of Labor, pertaining to fall protection safety in the construction industry and penalties levies for violations of those standards.

## 4. CHALLENGES AND OPPORTUNITIES

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The following items are challenges and opportunities identified this year or ones that continue from previous years.

### I. SAFETY EDUCATION & TRAINING FUNDING

The Bureau's prevention efforts are funded through federal cooperative agreements that match to the state Safety and Education Training Fund (SETF) and state funds. The strategy is to maximize federal funding that is aligned with Bureau prevention purposes. Even absent the funding, the Bureau is typically aligned with federal requirements and activities.

As explained earlier, the SETF fund is currently capped by statute at 1 percent of the payouts from Workers' Compensation claims. That total declined in recent years due to fewer injuries and declining compensation costs which means that fund objectives are being achieved. As of now the fund provides adequate resources but does create an issue should there be a need to fund a major project like the computer software change in 2015. What the Bureau has learned to do is to anticipate the need and plan the project so that the costs are spread out over several years. As long as the Bureau can do so, the SETF will be adequate.

### II. ELECTRONIC DATA INTERCHANGE AND DATA QUALITY

The Workers Compensation Board's administrative computer system is a major source, and in some ways the most significant source, of workplace injury and illness data in Maine. The Bureau relies on that system for its data rather than keeping a separate repository of injury and illness data. In fact, the Bureau codes the information from Workers' Compensation First Reports and directly enters that coded data back into the Workers' Compensation system, from which it can then pull the stored data as needed for research or responding to inquiries. Bureau data is therefore directly linked to the WCB administrative data, one-for-one at that level. Minimizing the change of duplication or misalignment as happens with linked systems.

As of January 1, 2005, all filings of the *Employer's First Report of Occupational Injury or Disease* (FROIs) were required to be submitted to the WCB through electronic data interchange (EDI), computer-to-computer, using the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3.0 EDI format. This standard requires data be thorough and timely which sometimes sacrifices details. Some employers and insurers have adopted coded systems that get the data through the system quickly but removes details important for coding the cases. It is something the Bureau is analyzing and monitoring.

Because the Bureau's coders are the typically the first humans to view some electronic data, and they frequently access the data for research and inquiries, they are often the first to notice data quality patterns and problems. In its experience with the FROI EDI changeover, the Bureau's staff has identified data problems of three distinct types that they will need to monitor for the SROI changeover to EDI:

1. **Ambiguity and coding uncertainty:** The Bureau’s coders follow strict rules about coding items where uncertainty exists. In some cases, specific information is identified in the report that is not in the coding system and must be coded as “Not Elsewhere Classified” or “NEC.” In other cases, not enough information is provided in the report to accurately determine a code and must be coded as “Unspecified” or “UNS.” Still in other cases the information suggests that multiple codes be selected. Based on the prevalence of “Unspecified” codes, the Bureau can identify topics, situations, specific employer groups, and even EDI system filters where the information submitted in the First Reports is not sufficient for accurate coding and classification.

The number of “Unspecified” codes went down over time with the FROIs, which suggests that the data quality overall improved by the EDI process. This is probably because EDI systems consistently require responses and are tied to a tight employer-identity system. However, it was also clear that data quality with EDI varies widely, and the reasons for that were not always understood. Some entries were consistently complete and precise enough for accurate coding whereas at times some entries were missing or were far too vague to be coded accurately. This may be due to changes in reporting instructions to employers and insurers, changes in programming, and/or changes in the involved personnel. The problems may occur anywhere in the injury Illness reporting system — from the way employees report events to their employers at the beginning of the process to the way drop-down menu choices are used in the EDI data FROI systems to coding conventions and choices that the Bureau’s staff can make in its own process. BLS will need to be vigilant with the SROI system changeover to try to catch situations early in the process to minimize impact on the quality of the WCB data.

2. **Software glitches:** While overall the data was better with the FROI EDI process, Bureau staff saw some patterns that suggested it was the systems not passing data on or doing so in a way that removed needed details. In such cases, significant effort is required by system managers and others to correct the problems, and BLS will work to identify such sources and correct the data gaps if they are discovered with the SROI EDI process. This may be harder for BLS to detect where BLS does not see specific cases for all SROI submissions as is with the FROIs. (BLS may only see updated FROIs that result from change in data that the SROI EDI programming flags. )
3. **Patterns that indicate a lack of attention:** The coders sometimes realize that all reports of a particular source use the same code or the same pattern of coding. Unless the situation is common, this may indicate that the source has learned that the pattern gets the report through the system, accurate or not. These cases are the hardest to detect and correct because they make it through automated screening systems, and only if the pattern is unusual or used so often as to call attention to it, is it even detected. As with the other two issues it relies on human detection and pattern recognition and the Bureau must watch for that.

### III. RETURN-TO-WORK DATA

Returning to work for the same employer is the most favorable of the outcomes of a Workers' Compensation claim. Once open and closed cases are determined, dates can be defined and, in turn, duration and lost productivity can be derived as well. These measures augment counts and costs and can be aggregated to prioritize and call attention to certain injury sources and events. Consequently, it is important to accurately quantify and characterize return-to-work data so that tertiary prevention programs and activities are properly managed, reducing the social and economic cost of injuries or illnesses after they occur.

In years past, the Bureau has keyed on the entry of the "return to work" date in the *First Report of Occupational Injury* and whether or not that date was missing from reports. Over the years, between 18 and 20 percent of the cases with "incapacity" dates have lacked a "return-to-work" date, which means uncertainty about whether the cases were actually resolved. A few years ago, Bureau staff and the Monitoring and Enforcement Unit at the Workers' Compensation Board identified how to locate that information in the system when it is not on the *First Report*. Consequently, the Bureau determined that only 5 to 15 percent of the cases are actually unresolved or "open" and therefore legitimately lack a return-to-work date. All the other cases are resolved or "closed," even though they may not necessarily have a recorded return-to-work date.

The data shows that for almost two-thirds of the cases that occurred in the last five years, the injured worker has returned to work for the same employer. This suggests that major progress has been made in prevention and in determining the economic and social costs of workplace injuries and illnesses. These data are in the process of commitment to an EDI process, which should improve its tightness. As it is, many exceptions and corrections are necessary to categorize cases that may not actually reflect individual situations

**Table C-29: Status of Lost Time Claims, Maine, 2015–2019**

Claim Status	Year of Injury or Illness Report					Total
	2015	2016	2017	2018	2019	
Lost Time (LT) Claims	5,294	5,246	5,001	4,654	3,835	24,030
Open LT Claims	338	404	492	712	1,366	3,312
% Open	6.4%	7.7%	9.8%	15.3%	35.6%	13.8%
Closed LT Claims	4,956	4,842	4,509	3,942	2,469	20,718
Resumed Work	3,084	3,199	3,190	2,931	2,027	14,431
% Resumed Work	58.3%	61.0%	63.8%	63.0%	52.9%	60.1%

Source: Workers' Compensation Board *Employers First Report of Occupational Injury and Disease* and subsequent payment reports as of 1/9/2020

From "Weekly Data Warehouse Check" Spreadsheet:

Open, Closed from "Lost Time Status" tab

Resumed Work from the "Last Payment Episode; Closed/Set Reason" tab.

#### **IV. COST DATA**

The Bureau now uses individual-case cost data from the WC system to compare and contrast groups of injury cases, similar to how it uses other case characteristic counts. Like the return-to-work and days-lost data, cost data are limited in that they stem from "snapshots" of each case at a point in time (when the data entry is made). Some of the cases do not accumulate further expenses beyond that, while others are open and continue to accumulate cost data. To address this, the Bureau and WCB have established how to define "open" and "closed" cases and therefore how to tabulate cost data so that reviewers and researchers can distinguish between the two situations.

Now that data are available to determine ranges in duration and cost of injury/illness cases, there are many new possibilities for directing case management. These data can tell the Bureau which groups and types of cases have more uncertainty in their outcomes. This, in turn, may allow the Bureau to focus on classes of cases where the medical treatment and case management are more a factor in what happens over the life of the case and its ultimate cost. This is supported by research the WCB and the Bureau have done on the 100 costliest cases\*, where findings show that some of the costliest cases are ones where the initial injury or illness was not well defined at the start (i.e., the treatment begins before the diagnosis is clear). At this time, the Bureau lacks resources to move further on analysis of this important data.

\*See: Maine's 100 Most Costly Claims under "Archived Items" in this web location:

[http://www.maine.gov/labor/labor\\_stats/research.html](http://www.maine.gov/labor/labor_stats/research.html)

## 5. DEVELOPMENTS

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### I. RESOURCES AND FUNDING

The group that analyzes the data and researches emerging and ongoing issues with workplace safety and health lost a position in the last round of state budget cuts. All the vacancies were filled for 2018, but the existing resources are such that there is a backlog of about 3 months of Workers' Compensation First Reports. The Bureau is seeking to augment personnel to restore the ability to code as reports come in and have the coding be more current than is possible now.

Cooperative agreements with the U.S. Occupational Safety and Health Administration (U.S. OSHA), Mine Safety and Health Administration, (MSHA) and the U.S. Bureau of Labor Statistics (U.S. BLS) are in good standing despite federal budget issues.

### II. PROGRAM INITIATIVES

From time to time, the Bureau initiates or enters into partnerships initiating various programs promoting occupational safety and health.

#### A. Safety Education Research Initiative (SERI)

In order to provisionally fill the research coordination function vacated by MORA, and to foster a more proactive and cooperative working arrangement between the Research and Statistics Unit (R&S) and the Division of Workplace Safety and Health (WSH), the Bureau created an in-house group called SERI to help coordinate and target the Bureau's injury and illness research and publications. The main purpose of SERI is to identify, initiate, and prioritize research projects for R&S to undertake (using the SafetyWorks! brand) in concert with the needs and emerging priorities in the Division of Workplace Safety and Health. The group meets to identify and discuss emerging problems data and research needs and to review ongoing projects. As a result, the Bureau's research publications and other such outputs benefit from greater collaboration from within the Bureau.

#### B. Data Outreach Initiative

Also, a data dashboard has been maintained on the MDOL website in cooperation with the Center for Workforce Research and Information. The dashboard uses an interactive data visualization tool called "Tableau", which is now available on the Bureau's website, [http://www.maine.gov/labor/labor\\_stats/workinjuries.html](http://www.maine.gov/labor/labor_stats/workinjuries.html).

### C. SHARP and SHAPE Award Programs

Some employers have been so successful with adopting best practices that they have earned recognition from the Maine Department of Labor through the SHAPE and SHARP awards program. As part of the award, the employer is presented a plaque in a ceremony and a flag to display at the workplace.

#### **SHARP**

SafetyWorks!, in partnership with U.S. OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees on-site and 500 nationally who meets the program requirements for employee safety and health, including an exemplary safety and health program, is exempted from program inspection for two years. Employers successfully meeting SHARP requirements are publicly honored. As of January 2020, there are 46 private-sector employers, who have received SHARP status, including:

Borderview (Van Buren)	Hunting Dearborn, Inc. (Fryeburg)
CCB Inc. (Westbrook)	Kittery Point Yacht Yard (Kittery Point)
Cianbro Corporation – Rickers Wharf (Portland)	Limington Lumber Company (Baldwin)
Cianbro Equipment (Pittsfield)	Lonza Rockland (Rockland)
Cianbro Fabrication Shop (Pittsfield)	Lovell Lumber (Lovell)
Cianbro Paint Shop (Pittsfield)	Maine Machine Products Company (South Paris)
Classic Boat Shop (Bernard)	Maine Oxy & Acetylene & Supply Co. (Presque Isle)
CM Almy, Inc. (Pittsfield)	Maine Oxy Acetylene & Supply Company (dba Dirigo Technologies) (Auburn)
Community Living Assoc. (Green Center, Houlton)	Maine Oxy Acetylene & Supply Company (Hermon)
Community Living Assoc. (Roger Randall, Houlton)	Maine Woods Company (Portage)
Davis Brothers (Chester)	Marden's Inc. (Calais)
DeepWater Buoyancy (Biddeford)	Marden's Inc. (Ellsworth)
Deering Lumber, Inc. (Kennebunk)	Marden's Inc. (Sanford)
Everett J. Prescott (Bangor)	Marden's Warehouse, (Waterville)
Everett J. Prescott, Inc. (Gardiner)	MidState Machine (Winslow)
Everett J. Prescott, Inc. (Portland)	Modula Inc. (Lewiston)
FASTCO Corp. (Lincoln)	Morris Yachts (Trenton)
French & Webb Inc. (Belfast)	Record Hill Wind (Roxbury)
Gorham Sand & Gravel (Gorham)	Reed & Reed – Metal Fab (Woolwich)
Hancock Lumber (Casco Mill)	S W Boatworks (Lamoine)
Hancock Lumber Company (Bridgton)	SFX America (Portland)
Hancock Lumber Company (Pittsfield Sawmill)	Somic America (Brewer)
Howard Tool Company (Bangor)	Strouts Point Wharf (Freeport)

## SHAPE

In 2005, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a public-sector application of the federal private-sector SHARP program. SHAPE is a voluntary protection program for all “public sector” employers/employees that are going above and beyond the safety and health requirements to provide a safe and healthy workplace and strive to keep injuries/illnesses down. As of January 2020, there are 89 public-sector employers, who have received SHAPE status, including:

Addison Volunteer Fire Dept.	Greenville Fire Dept.	Newcastle Fire Company
Alna Volunteer Fire Dept.	Hampden Water District	North Lakes Fire & Rescue
Appleton Fire Dept.	Harrington Fire Dept.	Northern Penobscot Tech - R 3
Ashland, Town of	Hartland VFD	Northport First Responders
Auburn Water & Sewage District	Hope Fire Dept.	Northport Volunteer Fire Dept.
Belgrade Transfer Station	Houlton Water Company	Norway Water District
Berwick Fire Dept.	Jay, Town of	Oakland Fire Dept.
Berwick Water Dept.	Jefferson Fire & Rescue	Old Town, City of
Boothbay Fire Dept.	Kennebec Water District	Orono Fire Dept.
Bradley Fire Dept.	Kennebunk, Kennebunkport & Wells Water	Paris Fire Dept.
Bristol / So. Bristol Transfer Station	Kennebunk, Town of	Rockport, Town of
Bristol, Town of	Kingfield Fire Dept.	Rome Fire Dept.
Brooks Fire Dept.	Kittery Water District	Sabattus Sanitary & Water
Brownfield Volunteer Fire Dept.	Knox County	Sagadahoc County
Brunswick Sewer District	Levant Fire Dept.	Saint Agatha Fire Dept.
Bucksport, Town of	Lewiston Fire Dept.	Scarborough, Town of
Camden Fire Dept.	Liberty Fire Dept.	Skowhegan, Town of
Caribou, City of	Limestone Water and Sewer	Somerville Fire Dept.
Carrabassett Valley Fire Dept.	Lincoln Water District	South Thomaston Fire Dept.
Cary Medical Center	Maine Turnpike Authority	United Technologies
Damariscotta Fire Dept.	Maine Veterans' Home - Caribou	University of Maine - Aroostook Farms
Dover and Foxcroft Water District	Manchester Fire Dept.	University of Maine - Blueberry Farms
Durham Fire Dept.	Mapleton, Town of	Waldoboro Fire Dept.
Edgecomb Fire Dept.	Mayo Regional Hospital	Westbrook Public Services
Fairfield, Town of	MDOT - Region 2	Wilton, Town of
Farmingdale Fire Dept.	MDOT - Region 3	Windsor Volunteer Fire Dept.
Farmington Fire & Rescue, Police, Parks & Recreation	MDOT - Region 4	Winslow, Town of
Fort Fairfield, Town of	MDOT - Region 5	Winthrop Fire Dept.
Fort Kent Fire & Rescue	Mid-Coast School of Technology	York Water District
Greater Augusta Utilities District	Mid-Maine Technical Center	