

# MAINE STATE LEGISLATURE

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

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

February  
2021

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

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February 12, 2021

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Joint Standing Committee on Labor and  
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Senator Heather Sanborn, Chair  
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Joint Standing Committee on Health  
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We are pleased to submit to the Governor and the 130<sup>th</sup> Legislature, First 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 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 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.

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.

The dominant issue for the Board in 2020 was, of course, the COVID-19 pandemic. Following guidance issued by Governor Mills in March, the Board began planning and then implementing a remote work environment. Thanks to the exemplary work of the Board's employees, the agency was able to swiftly shift to remote operations. Since April, the Board has maintained limited staff in each of its offices while ensuring the agency's work continued with minimal disruption.

In order to monitor the impact of the pandemic on the workers' compensation system, the Board established a method to track COVID-19 data. This effort was aided by the adoption of a national standard for reporting COVID-19 claims to state workers' compensation agencies. By the middle of January 2021, the Board had received 2,724 Lost Time First Reports of Injury (FROIs) related to COVID-19. Approximately 70% were filed by employers in the healthcare and residential facility fields. With respect to occupation, nurses and CNAs had the highest number of claims.

The number of cases entering the Board's dispute resolution process has also been impacted by the pandemic. In 2020, lost time First Report of Injury filings with the Board decreased by 7% compared to 2019. If COVID-19 cases are removed, the decrease in lost time First Report of Injury filings is down 24%. Claims for compensation (cases where an injured worker misses more than 7 days of work due to an injury) increased by 1% compared to 2019. With COVID-19 cases removed, claims for compensation decreased by 22% compared to 2019. Cases assigned to Troubleshooters decreased to 14,160 in 2020 from 15,494 in 2019; cases assigned to Mediators decreased to 1,829 in 2020 from 2,384 in 2019; and cases assigned to Administrative Law Judges decreased to 1,438 in 2020 from 1,581 in 2019.

The Board is funded through an assessment on insured and self-insured employers. The assessment paid by insured employers is a percentage of the employer's workers' compensation premium. Each year, the Workers' Compensation Board of Directors establishes the assessment percentage applied to

the employer's premium. The rate is calculated, in part, based on the estimated total premium market for the coming year.

The assessment rate for FY 2020-2021 was determined by the Board in May. As a result, the Board was able to take into account the impact of the pandemic in setting the applicable rate:

- The Board reduced the estimated premium market for the coming year by 11%. Prior to the pandemic, the estimated market was predicted to be \$244,000,000. Instead, the Board used an estimated market of \$216,000,000. This reduction should reduce the possibility that the Board's revenues will be lower than anticipated this fiscal year.
- In an attempt help ease the pressures on Maine's businesses, the Board voted to reduce the 2020 assessment to a level that is 4.65% lower than the 2019 assessment.

The pandemic temporarily hampered the Board's ability to reinvigorate the Monitoring, Auditing and Enforcement units. Nevertheless, due to the efforts of Board employees, overall industry compliance with benchmarks, which had been trending downward, began to improve in the latter part of 2020. Also as a result of the pandemic, the Board was not able to fund projects to expand electronic filing capacity and migrate to a new database. Still, progress was made over the course of 2020 to improve the quality of the Board's data in some areas. This enabled the Board to create better and more timely reports from data it gathers.

In 2020, the Board completed the statutorily required comprehensive triennial review of its medical fee schedule. After evaluating data from the Maine Health Data Organization (MHDO), the National Council on Compensation Insurance (NCCI) from other states, the Board maintained its conversion factors and baserates at the current level. An increase was not needed to meet the goal set by 39-A MRSA §209-A of ensuring "broad access for employees to all individual health care practitioners and health care facilities in the state." Finally, the Board adopted written financial policies and procedures that govern payment of travel, lodging, meals, subscriptions and contributions and that specify the conditions under which those costs will be disbursed.

## 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.

As described further in the next section, the Superintendent approved NCCI's "law only filing," to account for changes in benefits due to LD 756, for an overall 3.9% increase in the advisory loss costs effective January 1, 2020. The Superintendent also approved NCCI's filing for an overall average 0% change in the advisory loss costs effective April 1, 2020.

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 stayed unchanged in 2019 at 67%. The workers' compensation insurance market is very concentrated with much of the business being written by a small number of companies. Twenty-five insurers wrote more than \$1 million each in annual premium in 2019. The top 10 insurance groups wrote over 77% of the workers' compensation insurance in the state in 2019. 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 mostly 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 (2.1%) in 2019.

Insurers other than MEMIC do not have to offer coverage to employers and can be more selective in choosing which employers to underwrite. 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 2019.





# BUREAU OF LABOR STANDARDS

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The Bureau's role in the Workers' Compensation system is facilitating prevention of workplace injuries and illnesses.

Much of 2020 was preoccupied with dealing with the COVID-19 pandemic crisis and for the Bureau of Labor Standards that took the form of a lot of questions about safety and health in the workplace during a pandemic. U.S. OSHA and CDC had much of the information online and BLS was able to refer callers to their sites for the best and most recent information, even as it developed. The advice for mitigating COVID-19 exposure and prevention followed that for dealing with pandemics in general. While the population is more susceptible to COVID-19 and it is more serious, the prevention involves the same things an individual does for a cold or flu. The one difference is that in a pandemic situation it requires that everyone participate in prevention activity particularly when physically close to others. One prevention method that was adopted by workplaces, including ours where possible, was the physical distancing by encouraging work from home.

Most changes for the Bureau revolved around how we adapted. All SafetyWorks! Training Institute (STI) classes were suspended from mid-March through July and when resumed attendance was reduced to accommodate physical distancing. Other hearings, classes, and meetings were held virtually over the same time and continue now where emergency rules are still in effect. On-site consultations and meetings were held virtually if not postponed indefinitely. The numbers for 2020 will reflect these accommodations and changes and the Bureau will likely continue curtailments into the 2021 calendar year until emergency protocols are lifted. In the meantime, staff are working on updating training programs and creating short videos to supplement on-site consultations and training.

The Workplace Safety and Health Division (WSHD) was able to upgrade the SafetyWorks! Training Institute's AV equipment in 2020 because of OSHA one-time funds becoming available. In addition to replacing the AV equipment, it also included adding microphones to the ceiling. This allows remote users to now hear audience questions during Zoom and other remote meetings. Due to COVID-19 restrictions we are exploring more remote or combination class options. We have also started recording short safety and health presentations that can be viewed at the participants convenience online and remote.

So far, the WSHD has recorded the following safety and health webinars at the SafetyWorks! Training Institute:

- Introduction to OSHA
- Hazard Communications
- Bloodborne Pathogens
- Emergency Action Plans

Each webinar is approximately 15 to 30 minutes in length. Once the webinars are finalized, they will be placed on the SafetyWorks! website.

In response to the COVID-19 pandemic and its effect on the workplace, the Bureau looked at its impact on the overall count and nature of first reports.

The time period between March 1<sup>st</sup> through August 31<sup>st</sup> of 2020 saw a 17% decrease in the number of lost time claims filed compared to the 5-year average for the same timeframe. The gap in claim filing is almost entirely exclusive to a decrease in male claimants, as the number of claims filed by women has remained constant. This statewide decrease is accompanied by sharp increase specific to the Healthcare and Social Assistance Industry, already Maine's highest filing industry, which reported nearly 40% more claims throughout the first six months of the pandemic. The Healthcare and Social Assistance Industry is where 80% of workplace COVID-19 transmissions took place, as well as 75% of cases where an employee was removed from the worksite after developing symptoms or being exposed to COVID-19 without specific mention of contracting the virus or presenting a positive test result.

Through August 31<sup>st</sup>, there have been 226 instances of COVID-19 being specifically mentioned in the injury narrative as contracted in the workplace. As of September 1<sup>st</sup>, the official count for COVID-19 cases in Maine was 4,548, equating to 5% of all COVID-19 transmissions happening in the workplace. However, our reporting is based on what is recorded in the First Report of Injury (FROI) form. We recorded 804 claims where a worker was removed from the workplace due to either exposure to COVID-19, or development of COVID-19 symptoms, without mention of contracting the illness or registering a positive test result. Many of these claims were filed early in the pandemic before our knowledge of the virus had evolved, and before the federal government passed legislation offering other modes of relief to employees outside of the Workers Compensation system. These claims did not include enough information to determine whether the claimant contracted COVID-19. Without additional information such as test results, we do not know how pervasive COVID-19 transmission is in the workplace.

More research will be required to further detail what happened in the workplace regarding injuries and illnesses and the Workers' Compensation system will be a rich source of data.

In 2020, the Bureau hired an Outreach and Education Coordinator whose position performs work to enhance the Bureau's effectiveness by implementing strategic outreach initiatives related to workers' rights, employer education, and workplace health & safety. A focus for this position has been to develop contacts and strengthen relationships with community-based organizations that provide services to marginalized, often underserved populations. Through the development of these relationships with organizations like the Maine Immigrants' Rights Coalition and the Southern Maine Workers' Center, the Bureau has been able to provide additional outreach and education on workplace safety and health topics, as well as other labor laws, including Maine's Earned Paid Leave law. This new law provides workers with previously no paid time off with the opportunity to earn paid leave from work in the event of illness, injury, sudden necessity, or planned time off.

In addition, the Outreach and Education Division's Director/Maine Monitor Advocate provides workplace safety and health support by monitoring farmworker housing for compliance with OSHA 1910.142 Temporary Labor Housing Standards, as well as conducting pre-occupancy labor housing

inspections for related H2A foreign labor certification applications. This position also provides useful health and safety information on the State Monitor Advocate's web page such as the Guide to a Healthy Back in both English and Spanish.



## TABLE OF CONTENTS

	<u>Page</u>
<b>Executive Summary .....</b>	<b>1</b>
 <b>Reports from the Workers' Compensation Board, the Bureau of Insurance, and the Bureau of Labor Standards</b>	
<b>A. Workers' Compensation Board .....</b>	<b>A1</b>
<b>B. Bureau of Insurance .....</b>	<b>B1</b>
<b>C. Bureau of Labor Standards .....</b>	<b>C1</b>



## **SECTION A**

### **WORKERS' COMPENSATION BOARD**





# Section A: Workers' Compensation Board

## Table of Contents

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<b>1. INTRODUCTION .....</b>	<b>A1</b>
<b>2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION .....</b>	<b>A3</b>
I.    ENABLING LEGISLATION .....	A3
II.   REVISIONS TO ENABLING LEGISLATION .....	A3
III.  STATE AGENCY HISTORY .....	A5
<b>3. DISPUTE RESOLUTION .....</b>	<b>A8</b>
I.    INTRODUCTION .....	A8
II.   FOUR TIERS OF DISPUTE RESOLUTION .....	A8
III.  TROUBLESHOOTING STATISTICAL SUMMARY .....	A9
IV.   MEDIATION STATISTICAL SUMMARY .....	A10
V.    FORMAL HEARING STATISTICAL SUMMARY .....	A11
<b>4. OFFICE OF MONITORING, AUDIT &amp; ENFORCEMENT .....</b>	<b>A12</b>
I.    HISTORY .....	A12
II.   TRAINING .....	A12
III.  MONITORING .....	A13
IV.   AUDIT .....	A15
V.    ENFORCEMENT .....	A16
<b>5. OFFICE OF MEDICAL/REHABILITATION SERVICES .....</b>	<b>A17</b>
I.    MEDICAL FEE SCHEDULE .....	A17
II.   MEDICAL UTILIZATION REVIEW .....	A18
III.  EMPLOYMENT REHABILITATION .....	A19
IV.   INDEPENDENT MEDICAL EXAMINERS .....	A20
<b>6. WORKER ADVOCATE PROGRAM .....</b>	<b>A21</b>
I.    INTRODUCTION .....	A21
II.   HISTORY .....	A21
III.  THE CURRENT WORKER ADVOCATE PROGRAM .....	A22
IV.   CASELOAD STATISTICS .....	A23
V.    SUMMARY .....	A25
<b>7. INFORMATION MANAGEMENT .....</b>	<b>A26</b>
I.    2020 UPDATE .....	A26
II.   UPCOMING PROJECTS AND CHALLENGES .....	A27

<b>8. BUDGET AND ASSESSMENT.....</b>	<b>A28</b>
<b>9. CLAIMS MANAGEMENT UNIT.....</b>	<b>A30</b>
<b>10. INSURANCE COVERAGE UNIT .....</b>	<b>A32</b>
<b>10A. PREDETERMINATION UNIT.....</b>	<b>A33</b>
<b>11. COORDINATION WITH OTHER AGENCIES .....</b>	<b>A34</b>
I. DEPARTMENT OF LABOR.....	A34
II. BUREAU OF INSURANCE.....	A34
III. OTHER AGENCIES .....	A35
<b>12. ABUSE INVESTIGATION UNIT.....</b>	<b>A36</b>
<b>13. GENERAL COUNSEL REPORT .....</b>	<b>A37</b>
I. LEGISLATION .....	A37
II. RULES .....	A37
<b>14. APPELLATE DIVISION.....</b>	<b>A39</b>
<b>15. COVID-19 DATA .....</b>	<b>A41</b>
I. FIRST REPORTS OF INJURY RELATED TO COVID-19 .....	A41
II. DISPOSITION OF COVID-19 RELATED CLAIMS.....	A52
III. COMPARISON OF 2019 AND 2020 DATA .....	A56

# 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 through their insurers or, if self-insured, directly on the employer 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-à-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.

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, and a comprehensive review of the medical fee schedule is performed every three years. The Board completed the comprehensive review 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.

### 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 a factual mistake, act of God or unavoidable circumstances, then insurers are excused from paying a 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.** Eliminates the permanent impairment threshold for dates of injury on and after January 1, 2013 and establishes 520 weeks as the maximum duration for partial incapacity benefits with certain exceptions.
- **§ 213(1).** 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).** Clarifies that the 18% whole person impairment test for receipt of long term partial incapacity benefits effective January 1, 2013 will not apply to injury dates on and after January 1, 2020. Partial incapacity benefits for injuries on and after January 1, 2020, will be payable for 12 years without regard to the amount of a claimant’s impairment.
- **§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 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 PTO 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, 2010, 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 three week state government shutdown.

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. Troubleshooters conduct their work via telephone. As a result, the COVID-19 pandemic did not require any operational changes in the manner in which Troubleshooters conduct their work.

#### Mediation

Claims unresolved at troubleshooting are scheduled with a mediator in one of our regional offices. Normally, mediations are conducted in person at a regional office or by other electronic means. Due to the COVID-19 pandemic, since March 2020, all mediations have been conducted telephonically.

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. Due to the COVID-19 pandemic, the Board has been conducting all formal hearing proceedings via remote technology.

### III. TROUBLESHOOTING STATISTICAL SUMMARY

The following table shows the number of filings assigned and disposed at troubleshooting, the number of filings pending at the end of each year, and the average amount of time a file remained in troubleshooting for the period 2011 through 2020.

<b>Troubleshooting</b> Filings Assigned, Disposed, and Pending				
<b>Year</b>	<b>Assigned</b>	<b>Disposed</b>	<b>Pending 12/31</b>	<b>Av Days at TS</b>
*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
2020	14,160	14,176	469	25

\*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 number of cases pending at the end of each year, and the average amount of time a case remained in mediation for the period 2011 through 2020.

<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>
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
2020	1,829	1,952	383	72

## 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 2011 through 2020.

<b>Formal Hearing</b> Cases Assigned, Disposed, and Pending					
Year	Assigned	Disposed	† Lump Sum Settlements	Pending 12/31	Av Months to Decree
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
2020	1,438	1,461	884	639	8.5

\* 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**

In recent years, the Board has endeavored to provide education and training to the workers’ compensation industry. To do so, the Board has dedicated human and other resources in order to train/educate insurers, self-insured employers, claim adjusters, administrators, employers and, health care providers.

The Board normally offers a two day “open training” three times a year. Due to the pandemic, these sessions were not held in 2020. When they are held, training 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. Open training modules are available on the Board’s website and have been used more extensively in the absence of in-person training, as have telephone and email contact with the Audit department with specific claims handling questions. 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, report on Board activities that impact claims management, and give general guidance regarding rule and statute changes.

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. 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. One on-site training session was held in 2020 before the pandemic forced cancellation of any additional sessions. Again, web based resources and telephone/email contact have provided increased assistance in the place of in-person sessions.

The Board also offers a two-day session on the Medical Fee Schedule; one day for claims administrators/payers and one day for medical providers. In 2020, the Medical Fee Schedule sessions, held prior to the pandemic, had 55 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. Normally held twice each year, the pandemic forced sessions to be cancelled in 2020. As is the case with other training areas, resources are available on the Board’s website.

The Board typically provides training at an annual continuing education program known as Comp Summit. The Board also staffs an information booth at Comp Summit where it provides information on training and other Board resources to attendees. Comp Summit was not held in 2020 due to the pandemic.

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 Audit Department receives an average of 12-15 such calls or emails a week through which it provides guidance on proper claims-handling.

### **III. MONITORING**

The Board's Monitoring department publishes quarterly and annual reports that detail compliance with benchmarks established by the Board. Due to a data collection lag, the annual compliance reports are usually not approved by the Board until the second or third quarter of the following calendar year. This year, the 2019 Annual Compliance Report was approved by the Board on October 13, 2020.

The following sections, taken from the 2019 report, 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 2021.

#### **Lost Time First Report Filings**

- Compliance with the lost time first report filing obligation exists when the lost time first report is filed (accepted Electronic Data Interchange (EDI) transaction, with or without errors) within 7 days of the employer receiving notice or knowledge of an employee injury that has caused the employee to lose a day's work.
- When a medical only first report was received and later converted to a lost time first report, if the received date minus the date of the employer's notice or knowledge of incapacity was less than zero, the filing was considered compliant.

#### **Initial Indemnity Payments**

- Compliance with the Initial Indemnity Payment obligation exists when the 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 6 days.

#### **Initial Memorandum of Payment Filings**

- Compliance with the Initial Memorandum of Payment filing obligation exists when the MOP is received within 17 days of the employer's notice or knowledge of incapacity.

#### **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 exists 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.

#### **Wage Information**

- Compliance with this benchmark (WCB-2 and WCB-2b forms) exists when the wage information is filed within 30 days of the employer receiving notice or knowledge of incapacity. Note: This benchmark began in July of 2019.



### Quarterly Compliance from the 2019 Annual Compliance Report

	Benchmark	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
<b>Lost Time First Report Filings</b> Received within 7 Days	85%	83%	83%	82%	81%
<b>Initial Indemnity Payments</b> Made within 14 Days	87%	87%	86%	86%	86%
<b>Initial Memorandum of Payment Filings</b> Received within 17 Days	85%	85%	85%	82%	84%
<b>Initial Indemnity Notice of Controversy Filings</b> Received within 14 Days	90%	93%	93%	94%	95%
<b>Wage Information (WBC-2)</b> Received with 30 days of an employer's notice of knowledge of a claim for compensation	75%	N/A	N/A	71%	70%
<b>Wage Information (WCB-2B)</b> Received with 30 days of an employer's notice of knowledge of a claim for compensation	75%	N/A	N/A	71%	71%

### Annual Compliance from the 2019 Annual Compliance Report

	1997[1]	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>Lost Time First Report Filings</b> Received within 7 Days	37%	86%	87%	85%	85%	84%	83%	83%	83%	83%	82%
<b>Initial Indemnity Payments</b> Made within 14 Days	59%	89%	89%	90%	91%	90%	87%	89%	90%	88%	86%
<b>Initial Memorandum of Payment Filings</b> Received within 17 Days	57%	86%	89%	89%	90%	89%	86%	88%	89%	87%	84%
<b>Initial Indemnity Notice of Controversy Filings</b> Received within 14 Days		94%	95%	95%	95%	94%	94%	93%	93%	94%	94%

## **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 the compliance with benchmarks and other requirements of the Act.

### **A. Compliance Audits**

The following audit was completed in 2020:

- National Interstate Insurance Company

The Draft Audit Report was completed and the Final Audit Report is pending for the following entity:

- FutureComp

The initial Exit Conference has been accepted and Draft Audit Reports are pending for the following entities:

- Chubb National Insurance Group
- Constitution State Services
- CorVel Corporation
- Cottingham & Butler Claims Services, Inc.
- Macy's Retail Holdings
- Protective Insurance Company

Initial Exit Conference has been completed for the following entities:

- Acuity Mutual
- Brotherhood Mutual

Audits are in process for the following entities:

- Hannaford Retail Services
- Maine Employers Mutual Insurance Company
- State of Maine Office of Workers' Compensation
- Synernet

### **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 2020, the Board received five 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. Employers that comply with the Act's coverage requirement are placed at a competitive disadvantage when bidding against employers that misclassify workers as independent contractors. Employee misclassification also generates substantial losses to our state Treasury, Social Security and Medicare, as well as to state unemployment insurance.

In 2020, the MAE program completed one large employee misclassification audit and had three others pending and almost complete, but are waiting for additional information from employers. Completing these type of audits has proven to be difficult because of travel restrictions and delays due to the COVID pandemic.

## **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).

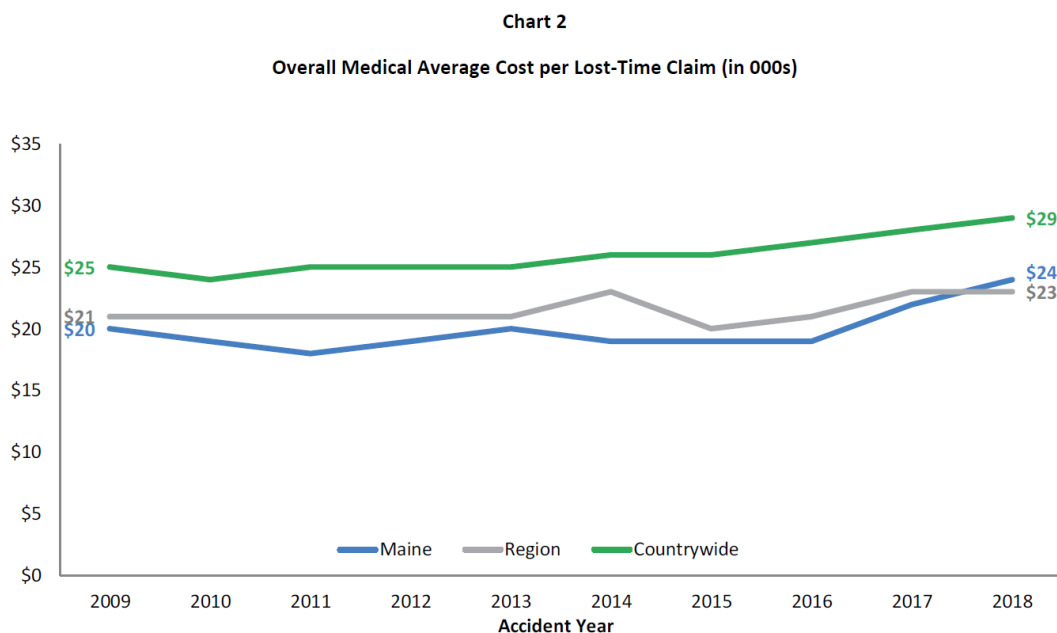
#### B. Methodology

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 Council on Compensation Insurance (NCCI), Maine's overall medical average cost per lost-time claim is lower than the region and countrywide averages.



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

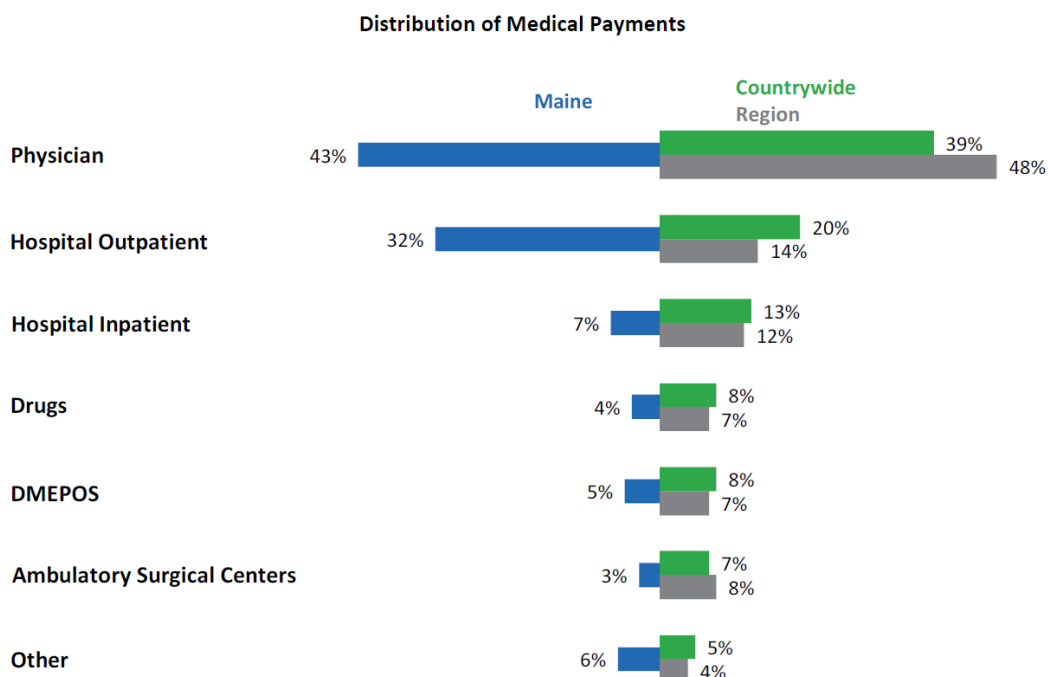
The Board offers two “open training” sessions on Board Rule Chapter 5, aka the Medical Fee Schedule: one for claim administrators/medical bill reviewers and one for health care providers/provider billing and office staff. These sessions provide a general overview of the fee schedule, as well as specific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

Fifty-five adjusters, employers, providers, and others involved in workers’ compensation attended the 2020 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.

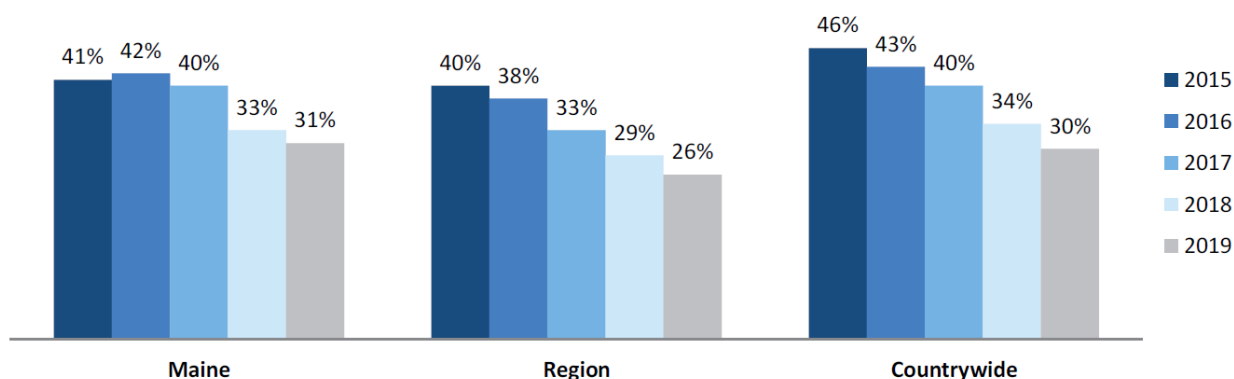
## II. MEDICAL UTILIZATION REVIEW

The Board does not currently have approved treatment guidelines. In its October 2020 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 share of drug claims with at least one opioid prescription has decreased 10% from 2015 to 2019.

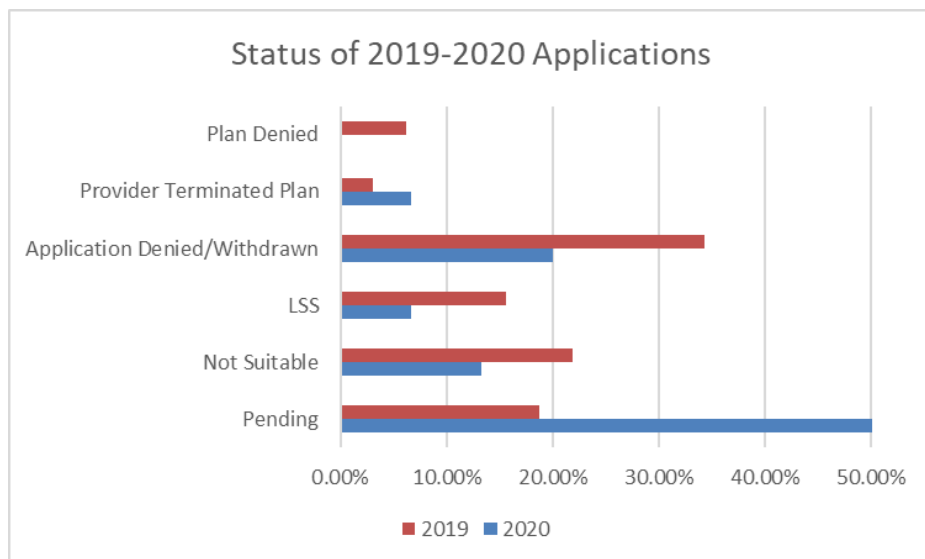
**Share of Drug Claims With at Least One Opioid Prescription by Service Year**



### 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.

In 2020, the Board received 15 applications from injured workers for employment rehabilitation services, which represents a 53% decrease from 2019. The chart below shows the status of the 2019 and 2020 applications as of December 31, 2020.



#### **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 received 358 requests for independent medical exams in 2020 and the Board's independent medical examiners conducted 273 exams.

In 2020, the Board added two orthopedic surgeons to its list of approved independent medical examiners; a much needed specialty.

## **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.

In 2020 the COVID-19 pandemic required the Board to end in-person interviews with clients and the Board moved to “virtual” proceedings, with the parties participating by telephone and other electronic means.

#### **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 pending at mediation in 2020. The following table reflects the number of Advocate cases mediated from 2010 through 2020. In 2016, the Advocate Division upgraded its case management and statistics software.

### Advocate Cases at Mediation

Year	Filings Assigned	Filings Disposed	Cases Pending at Board 12/31	% of All Cases Pending at Board
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	260	47%
2019	2,271	1,661	307	63%
2020	1,866	1,564	242	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 pending before a mediator for an injured worker.

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 2010 through 2020.

### Advocate Cases at Formal Hearing

	Filings Assigned	Cases Assigned	Cases Disposed	Cases Pending at Board 12/31	% of All Cases Pending at Board
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	246	30%
2019	813	284	331	230	34%
2020	776	343	288	272	43%

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

The Advocates represented the injured worker in approximately 43% of the cases pending at formal hearings at the end of 2020.

## 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. The Advocate Division experienced staff shortages in 2020, with hiring limited due to the pandemic. Credit should be given to the Advocates and staff who worked well under very difficult circumstances to continue our mission of serving Maine’s injured workers.

## 7. INFORMATION MANAGEMENT

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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. 2020 UPDATE

#### A. Recording Software

Early in the year, new computers were installed in the Board's hearing rooms with the latest version of For the Record (FTR) recording software and Windows 10.

#### B. COVID-19 Change in Workflow

In March, most Board employees began working from home as much as possible. Those with desktop computers were upgraded to laptops and everyone was set up with remote access to the State's system.

#### C. Video Conferencing

The Board discontinued in-person hearings due to the pandemic beginning in March. CourtCall, Microsoft Teams, and Zoom are the platforms offered for video conferencing.

#### D. Public Use Computers

With hearings being conducted primarily by video, it became apparent that some hearing witnesses did not have the proper technology to participate. As a result, public use computers were secured for each office. In order to ensure the safety of staff, the computers may only be used in certain circumstances, and use requires the approval of an administrative law judge.

#### E. Employer Database

OIT programmers completed an extensive project to improve the functionality of the Board's employer database. Since November of 2018, the Board had been maintaining two employer databases. The new database, which was launched on September 21, 2020, combines the two databases into one which can now be maintained and updated regularly by Board staff.

#### F. Bangor Regional Office Upgrades

The Bangor Regional Office underwent a network upgrade and had their phone systems changed to Voice over Internet Protocol (VoIP). All other offices were upgraded in 2019.

#### G. Reports

Significant progress was made in 2020 with respect to the Board's ability to create reports from the data gathered by the Board. As a result, caseloads, timelines, filings, and accuracy of data entry can be better monitored. As a result of these efforts, the Board has been able to monitor and track COVID-19 cases on a weekly basis.

## **H. Data Quality**

The agency spent a significant amount of time on database cleanup projects. One major focus has been to ensure that only licensed insurers, self-insurers, and third-party administrators are in the database. As a corollary, the Board is also verifying that claims and policies are attached to the proper entities. This work will continue well into 2021.

## **II. UPCOMING PROJECTS AND CHALLENGES**

### **A. Employer Database**

In continuing with its data quality project, the agency will be focusing on extensive cleanup of its employer database. This project will have four components:

1. Clean up existing data. Remove duplicate addresses, remove employers set up in error, remove closed employers with no coverage policies, waivers, or claims, review active/closed statuses etc.
2. Monitor incoming data. Establish a program that will monitor the data posted to the employer database to ensure quality control.
3. Post employer information updates and additions directly from proof of coverage EDI transactions.
4. Self-insurers. Since self-insurers are not required to file proof of coverage via EDI, we obtain self-insured employer information by reaching out each year. The Board will be reviewing this process to see how more thorough and accurate data can be obtained from each self-insured employer.

### **B. Server Upgrade**

As part of OIT's modernization effort, Progress will be moving onto new servers in early 2021.

### **C. Progress Update**

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

### **D. EDI Claims 3.1 & Database Migration**

Because of the pandemic, the Board is not able to fund these projects at this time. The projects remain a priority as they will enable more information to be filed electronically with the Board as well as providing a better long-term database solution for the Board. The Board will move forward on these projects as soon as practicable.

## 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.

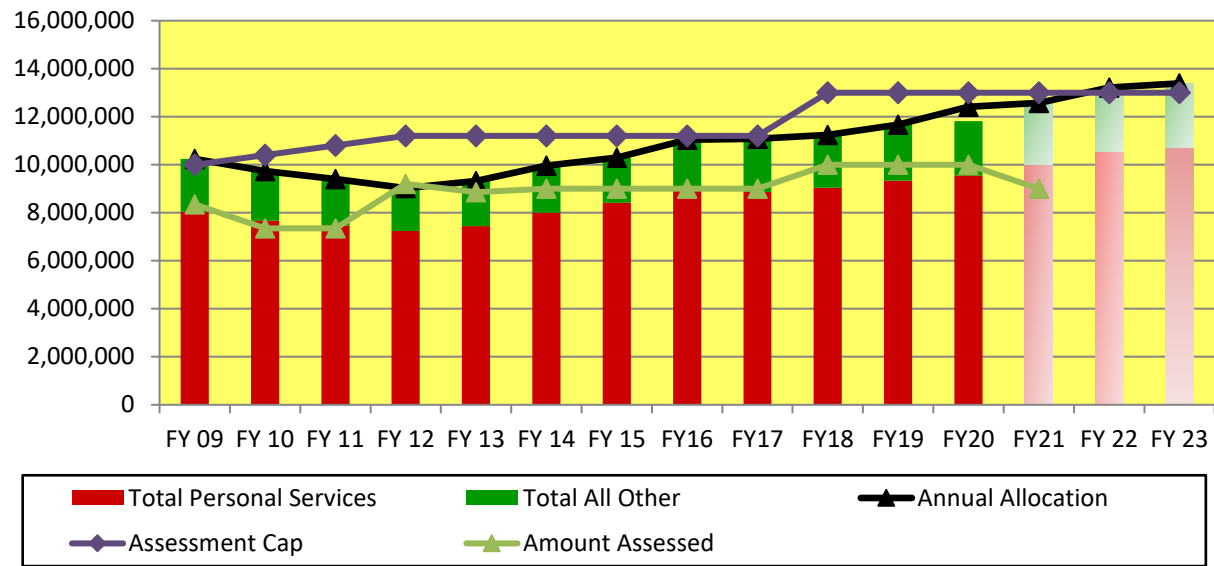
The Board's budget is limited to the revenue raised from the annual assessment. Other minor amounts of revenue are collected from the sale of publications and some fines and penalties; less than 1% of total revenue in FY 2020. The Board collects other fines and penalties not available for Board expenses; 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 fiscal year 2021, the second year of the current biennium, is \$12,566,245. The approved budgets for the upcoming biennium are \$13,218,131 for fiscal year 2022 and \$ 13,389,962 for fiscal year 2023.

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 2020 and projected expenditures for fiscal years 2021, 2022 and 2023. The chart also shows the assessment cap and the amounts assessed through FY 2021 (July 1, 2020 – June 30, 2021).

**Actual and Projected Expenditures  
Workers' Compensation Administrative Fund - 0183  
January 2021**

(figures for FY 21, FY 22 & FY 23 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 ensure 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, 2020 to December 31, 2020.

Information/Form	EDI	CMU	TOTAL
<b>Employer's First Report of Occupational Injury or Disease</b>	<b>27,139</b>	<b>100</b>	<b>27,239</b>
<b>Notice of Controversy</b>	<b>10,283</b>	<b>592</b>	<b>10,875</b>
<b>Petitions</b>		<b>3,563</b>	<b>3,563</b>
<b>Answers to Petitions</b>		<b>572</b>	<b>572</b>
<b>Wage Statement</b>		<b>9,308</b>	<b>9,308</b>
<b>Schedule of Dependent(s) and Filing Status Statements</b>		<b>4</b>	<b>4</b>
<b>Fringe Benefits Worksheet</b>		<b>8,923</b>	<b>8,923</b>
<b>Memorandum of Payment</b>		<b>5,696</b>	<b>5,696</b>
<b>All other payment forms, including:</b>		<b>14,398</b>	<b>14,398</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>12,982</b>	<b>12,982</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 2020 through December 2020, the Board received and processed 51,926 proof-of-coverage filings. The Coverage Unit processed 797 waiver applications. Part of matching coverage to specific employers involves resolving instances of "no recorded coverage." In 2020, 1,225 "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 494 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 2020, the Predetermination Unit received 5,476 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. 5,012 applications were approved, both conclusive and rebuttable, and 1 was denied. 506 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, 464 applications were successfully processed but the remaining 42 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. Additionally, the Board coordinates and collaborates with other agencies.

## 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 that database. We are currently working together on a plan to ensure the Board has access to the data it needs to perform its oversight function.

The Board, DOL and other interested parties worked together to create a uniform "independent contractor" definition that is used for both workers' compensation and DOL purposes. The definition has been in effect since January 2013. 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. The Board and DOL continue to monitor the effectiveness of the plans.

The Bureau of Labor Standards (BLS), a division within DOL, uses claim information gathered by the Board to produce statistical reports on workplace safety. These reports are used by the Board, policy makers, and others to understand and improve workplace safety. 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 then takes appropriate action to ensure questionable claims handling is addressed.

### **III. OTHER AGENCIES**

The Board has entered into agreements with other agencies to provide services that used to be provided in-house. For instance, the Board's human resources needs are managed in conjunction with the Bureau of Human Resources.

The Board also works with the Office of Information Technology (OIT), another DAFS Bureau, with respect to computer hardware and software.

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 also works with the Maine Health Data Organization to gather information regarding payments for medical services made by private third-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 five (5) professional staff members and is supervised by the Board's Deputy General Counsel. Currently, multiple AIU staff members are also assisting other areas of the Board because of the pandemic and staff shortages. 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.

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.

Because of the COVID-19 pandemic, hearings against potential uninsured employers were temporarily put on hold.

## **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 to act in adjudicatory and appellate roles.

### **I. LEGISLATION**

Following the enactment of significant amendments to the Workers' Compensation Act during the first regular session of the 129<sup>th</sup> Legislature, the second regular session ended with no changes to Title 39-A.

### **II. RULES**

The Workers' Compensation Act confers rulemaking authority upon the Board. Since adopting revisions to its rules in 2018, the rules have not been amended.

The Board completed its annual update and its three year comprehensive review of the medical fee schedule in 2020 as required by 39-A MRSA § 209-A. Base rates and conversion factors for professional and outpatient fees were not increased.

### **III. ADJUDICATORY HEARINGS**

39-A MRSA §§ 315 and 318 authorize administrative law judges to conduct hearings as part of the Board's statutory dispute resolution process. Litigants participated in person before the pandemic, but hearings are now being conducted remotely by CourtCall, Zoom or Microsoft Teams.

### **IV. APPELLATE DIVISION**

39-A MRSA §§ 321-A established the Appellate Division. It acts as an appeals court for decisions issued by administrative law judges at the hearing level. Panels of three administrative law judges decide cases, usually after oral arguments are presented by lawyers for litigants. During the COVID-19 shutdown, live arguments were suspended. The Appellate Division experienced a brief interruption in its processes but regained its footing midway through the year. Counsel now present arguments by remote media and appellate decisions are being issued. In 2020, the Appellate Division issued 28 decisions.

### **V. MAINE SUPREME JUDICIAL COURT APPEALS**

39-A MRSA § 322 authorizes parties to appeal Appellate Division decisions to the Law Court. These appeals are discretionary. In 2020, three such appeals were taken and two appellate decisions were issued by the Law Court.

### **VI. AGENCY STUDIES**

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. The first such study pertained to the



Worker Advocate Program. The board evaluated the level of advocate pay, the availability of resources available in the litigation process and the demands put upon the advocate program. The study concluded that worker advocates may not be receiving compensation that is commensurate with their work and that additional litigation tools would allow them to better represent litigants.

A study of additional protections for injured workers whose employers did not properly secure workers' compensation coverage was also conducted. The working group examined contractor-under liability and weighed the benefits of establishing a fund to pay claims for uninsured injured workers. While the stakeholders agreed that a myriad of problems result when employers fail to provide insurance for their employees, the group was not able to reach a consensus on recommendations to solve the problem.

The third study was conducted to evaluate issues related to the availability of vocational rehabilitation programs for injured workers and work search obligations for employers and employees. Due to a decrease in applications for vocational rehabilitation, the group decided it was premature to recommend changes to the Board's rehabilitation procedures. Also, the working group could not come to a consensus on the question of whether a rule should be created that shifts to the employer the responsibility to provide a listing of available jobs to injured workers. Opponents supported the existing rule, which calls for administrative law judges to consider a range of relevant factors when determining whether an employee conducted a good faith work search.

## 14. APPELLATE DIVISION

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The Board's Appellate Division has completed its eighth full year of operation after being reinstituted 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 forty notices of intent to appeal have been filed since August 2012; 32 were filed in 2020. The Division has held oral arguments in 190 cases. Oral argument was limited in 2020 due to the COVID-19 public health emergency. All arguments were held remotely, via teleconference, or decisions were based on the written submissions of the parties alone. Since 2012, the Division has held argument before ten *en banc* panels (one in 2020) and issued written decisions in 282 cases (28 issued in 2020). One hundred six appeals (seven in 2020) 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.

Ten Petitions for Appellate Review of Appellate Division decisions were filed with the Law Court in 2020. The Law Court granted review in three cases and issued two decisions. In *Lorraine Somers v. S.D. Warren*, 2020 ME 137, the Court affirmed the Appellate Division's determination that the employer was not authorized to discontinue partial incapacity benefit payments pursuant to a board decree without having first complied with Me. W.C.B. Rule, ch. 2, § 5(1), which required an employer to notify the employee of the right to request an extension for financial hardship before discontinuance. The rule has since been amended to place the notice requirement on the board.

In *Darla Potter v. Cooke Aquaculture*, 2020 ME 144, the Court affirmed the Appellate Division's determination that the employee, who was injured while working on the employer's offshore salmon farm, was not a "seaman" pursuant the Jones Act, 46 U.S.C.S. § 30104, and was therefore subject to board jurisdiction and not the exclusive jurisdiction of federal maritime law.

One additional case is pending before the Law Court: *Charest v. Hydraulic Hose and Assemblies*, Me. W.C.B. No. 20-10 (App. Div. 2020). The issue for decision is whether the employer's ongoing obligation to pay benefits and the Social Security payments received by the employee served to toll the limitations period.

Appellate Division decisions of interest include *Larrabee v. City of South Portland, et al.*, Me. W.C.B. No. 20-23, in which the Division examined what proof was necessary to negate the "Firefighter Presumption," 39-A M.R.S.A. § 328. The case involved a firefighter who had two heart attacks towards the end of his 35-year career. The panel determined that it was incumbent on the municipal employers to present evidence that firefighting did not cause the employee's gradual cardiovascular injury, and not simply to present evidence that alternative risk factors likely caused the injury.

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

## 15. COVID-19 DATA

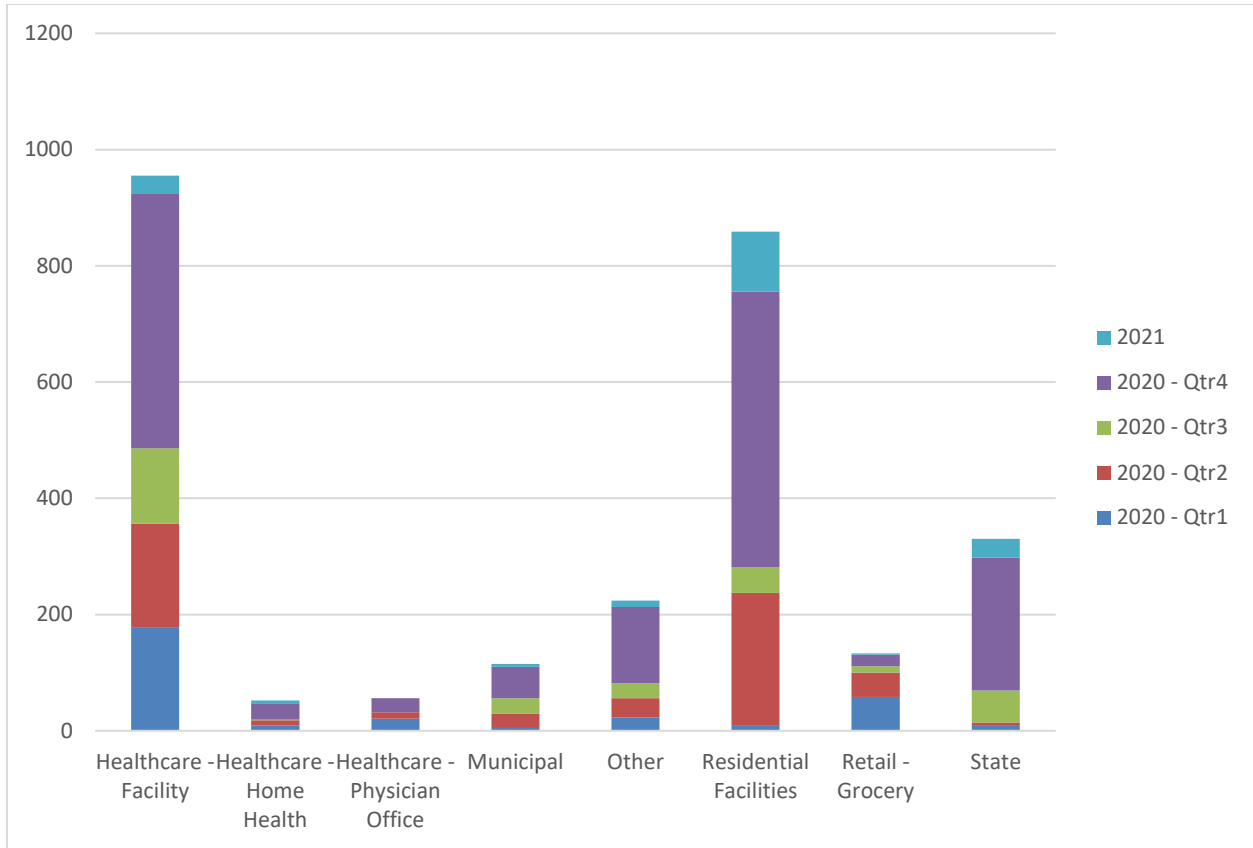
### I. FIRST REPORTS OF INJURY RELATED TO COVID-19

When a claimed injury causes an employee to lose a day or more of work, a First Report of Injury must be filed with the Board. These are referred to as lost-time First Reports of Injury. The following charts detail the number of lost time First Reports of Injury related to COVID-19 received by the Board through January 16, 2021.

- A. Lost Time First Report of Injury filings by employer category (as defined by the Board) along with the percentage of such reports by category:

Employer Category	Lost Time First Reports Received	Percent of Lost Time First Reports
Healthcare - Facility	955	35%
Residential Facilities	859	32%
State	330	12%
Retail - Grocery	133	5%
Municipal	115	4%
Healthcare - Physician Office	56	2%
Healthcare - Home Health	52	2%
Community & Social Service	36	1%
Employee Staffing	33	1%
Transportation Services - Ambulance	26	1%
Trades	22	1%
Transportation Services - Other	19	1%
Retail - Other	17	1%
Bars and/or Restaurants	16	1%
Aquaculture	11	0%
Fuel Dealer	9	0%
Boatyard and Marina	7	0%
Fitness and Recreation	7	0%
Cleaning & Janitorial Service	4	0%
Education - Colleges & Universities	3	0%
Paper Mill	3	0%
Wholesale	2	0%
Moving and Storage	2	0%
Professional Services	1	0%
Turnpike Authority	1	0%
Pest Control Services	1	0%
Telecommunication Services	1	0%
Security Services	1	0%
Manufacturing	1	0%
Banking & Insurance	1	0%
<b>Grand Total</b>	<b>2724</b>	

B. Lost time First Report of Injury filings by employer category -- top categories and “other” – grouped by the calendar quarter in which the injury happened.



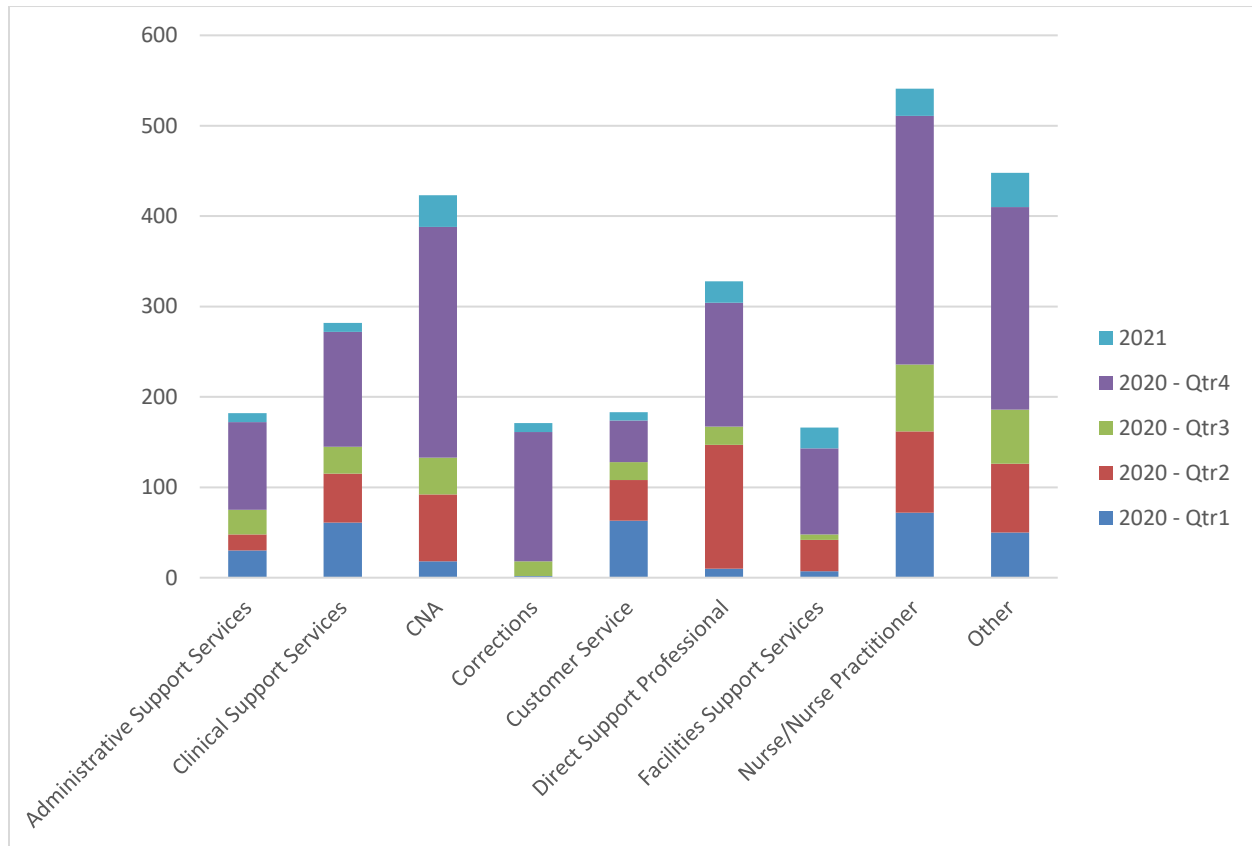
The following chart provides a more detailed breakdown of lost time First Report of Injury filings:

Employer Category	2020												2021
	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Total
Healthcare - Facility	5	172	79	60	40	69	18	43	52	183	204	30	955
Residential Facilities		10	82	105	40	12	23	9	9	202	264	103	859
State		10	2	1	1	11	8	36	75	103	51	32	330
Retail - Grocery		58	31	9	2	6	3	2	2	6	12	2	133
Municipal		5	5	13	6		25	2	12	24	18	5	115
Healthcare - Physician Office		21	11						1	8	15		56
Healthcare - Home Health		9	1	7	1			1	3	19	5	6	52
Community & Social Service			3	2	5	1	2			13	9	1	36
Employee Staffing			1	1	4	3	2	1		4	16	1	33
Transportation - Ambulance		15	1	3			1	4	2				26
Trades		1	1	1	1				6	3	5	4	22
Transportation - Other		2	1			1			1	3	9	2	19
Retail - Other		3	1	1	1	1			2	1	6	1	17
Bars and/or Restaurants				1	1	1	1	4	1	6	1		16
Aquaculture										11			11
Fuel Dealer										1	8		9
Boatyard and Marina										7			7
Fitness and Recreation										2	4	1	7
Cleaning & Janitorial Service					3							1	4
Colleges & Universities								1		1	1		3
Paper Mill								2		1			3
Wholesale										2			2
Moving and Storage		1									1		2
Professional Services									1				1
Turnpike Authority										1			1
Pest Control Services							1						1
Telecommunication Services		1											1
Security Services			1										1
Manufacturing										1			1
Banking & Insurance											1		1
<b>Grand Total</b>	<b>5</b>	<b>308</b>	<b>220</b>	<b>204</b>	<b>105</b>	<b>105</b>	<b>84</b>	<b>105</b>	<b>167</b>	<b>602</b>	<b>630</b>	<b>189</b>	<b>2724</b>

C. Lost time First Report of Injury filings by job category (as defined by the Board) along with the percentage of such reports by category by category:

<b>Job Category</b>	<b>Lost Time First Reports Received</b>	<b>Percent of Lost Time First Reports</b>
Nurse/Nurse Practitioner	541	20%
CNA	423	16%
Direct Support Professional	328	12%
Clinical Support Services	282	10%
Customer Service	183	7%
Administrative Support Services	182	7%
Corrections	171	6%
Facilities Support Services	166	6%
Laborer	77	3%
Rehab Services	64	2%
Physician/Physician Assistant	61	2%
Skilled Labor	49	2%
Law Enforcement	38	1%
Firefighter	32	1%
EMT/Paramedic	28	1%
Courts	23	1%
Driver - Other	21	1%
Driver - Ambulance	11	0%
Aquaculture	11	0%
Unknown	9	0%
Educational Support Services	5	0%
Teacher	4	0%
Engineer	3	0%
Child Care	3	0%
Transportation Support Services	2	0%
Technician	2	0%
Security Guard	1	0%
Dental Hygienist	1	0%
Personal Care Services	1	0%
Tax Examiner	1	0%
Professor	1	0%
<b>Grand Total</b>	<b>2724</b>	

D. Lost time First Report of Injury filings by job category -- top categories and “other” – grouped by the calendar quarter in which the injury happened.





The following chart provides a more detailed breakdown of lost time First Report of Injury filings:

	2020											2021	
Job Category	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Total
Nurse/Nurse Practitioner	2	70	38	27	25	42	8	24	29	121	125	30	541
CNA		18	34	27	13	20	13	8	10	96	149	35	423
Direct Support Professional		10	43	62	32	12	8		5	59	73	24	328
Clinical Support Services	3	58	19	23	12	8	10	12	13	55	59	10	282
Customer Service		63	32	11	2	9	6	5	5	19	22	9	183
Administrative Support Services		30	7	9	2	2	4	21	14	41	42	10	182
Corrections		2					15	1	49	65	29	10	171
Facilities Support Services		7	14	15	6	1	2	3	2	43	50	23	166
Laborer			1	1			1	7	18	14	29	6	77
Rehab Services		10	18	9	2	2	1			10	8	4	64
Physician/Physician Assistant		16	4	5	1	7	1	2	2	10	13		61
Skilled Labor		2	1		2			12		13	9	10	49
Law Enforcement		2	2	3	1	1	4		10	8	5	2	38
Firefighter		3	2	6	2		7		5	7			32
EMT/Paramedic		10	2	1	4		1	3	1	5	1		28
Courts								5		10	1	7	23
Driver - Other		1	2	1		1				3	9	4	21
Driver - Ambulance		5		3			1	1	1				11
Aquaculture										11			11
Unknown											4	5	9
Educational Support Services									1	4			5
Teacher							1	1	1	1			4
Engineer					1					1	1		3
Child Care										3			3
Transportation Support Services										1	1		2
Technician				1			1						2
Security Guard			1										1
Dental Hygienist									1				1
Personal Care Services										1			1
Tax Examiner		1											1
Professor										1			1
Grand Total	5	308	220	204	105	105	84	105	167	602	630	189	2724

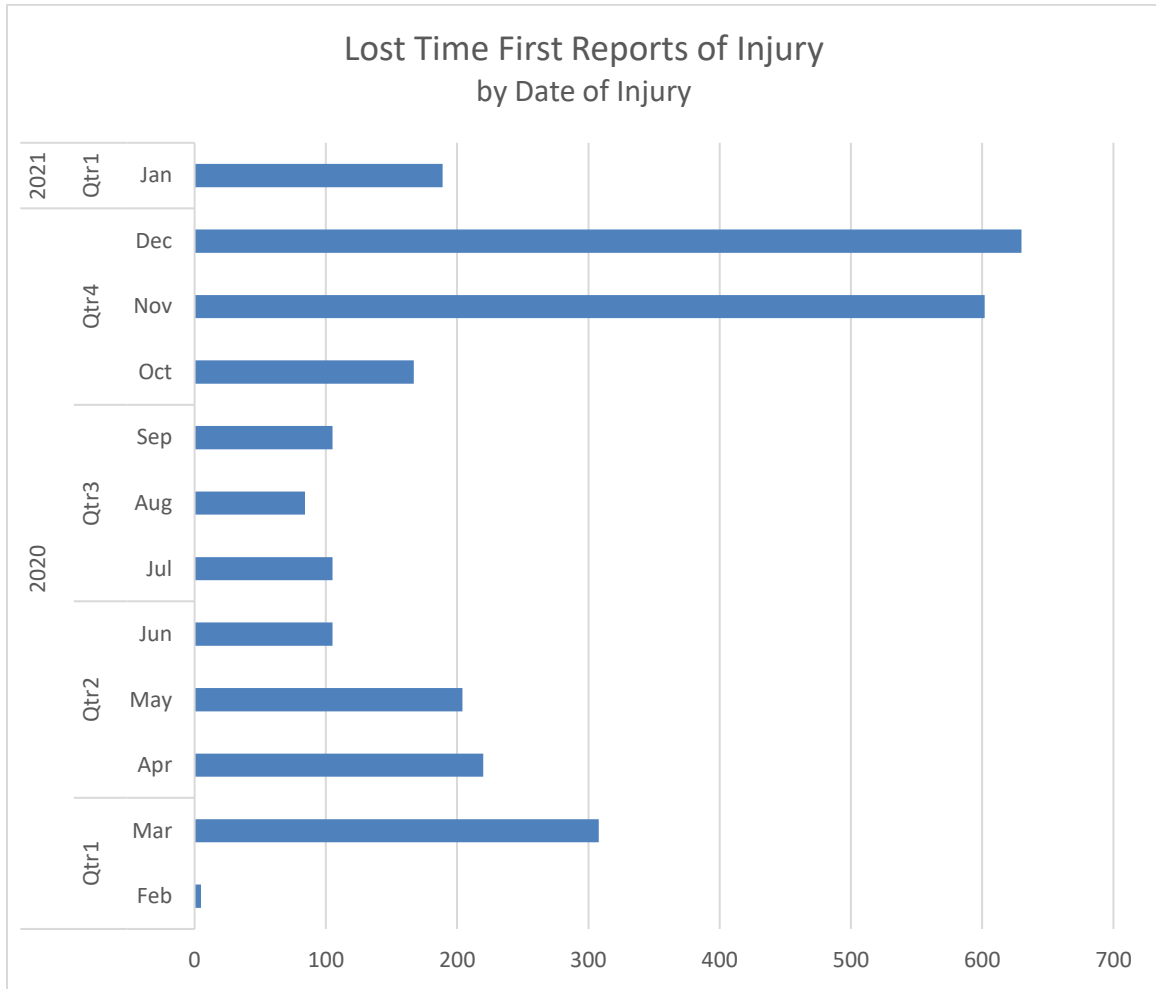
E. The following chart combines the information regarding total First Reports of Injury by employer and job category:

Employer/Job Category	Lost Time FROIs	Percent of all Lost Time FROIs	Percent of FROIs within Employer Category
<b>Healthcare - Facility</b>	<b>955</b>	<b>35%</b>	
Administrative Support Services	87		9%
Clinical Support Services	259		27%
CNA	118		12%
Direct Support Professional	3		0%
EMT/Paramedic	7		1%
Facilities Support Services	34		4%
Nurse/Nurse Practitioner	360		38%
Personal Care Services	1		0%
Physician/Physician Assistant	56		6%
Rehab Services	30		3%
<b>Residential Facilities</b>	<b>859</b>	<b>32%</b>	
Administrative Support Services	40		5%
Clinical Support Services	1		0%
CNA	287		33%
Customer Service	3		0%
Direct Support Professional	270		31%
Driver - Other	1		0%
Facilities Support Services	118		14%
Laborer	1		0%
Nurse/Nurse Practitioner	112		13%
Physician/Physician Assistant	1		0%
Rehab Services	16		2%
Unknown	9		1%
<b>State</b>	<b>330</b>	<b>12%</b>	
Administrative Support Services	45		14%
Clinical Support Services	1		0%
Corrections	153		46%
Courts	23		7%
Customer Service	7		2%
Direct Support Professional	20		6%
Educational Support Services	2		1%
Engineer	1		0%
Facilities Support Services	1		0%
Laborer	33		10%
Law Enforcement	19		6%
Nurse/Nurse Practitioner	6		2%
Rehab Services	1		0%
Skilled Labor	16		5%
Tax Examiner	1		0%
Technician	1		0%

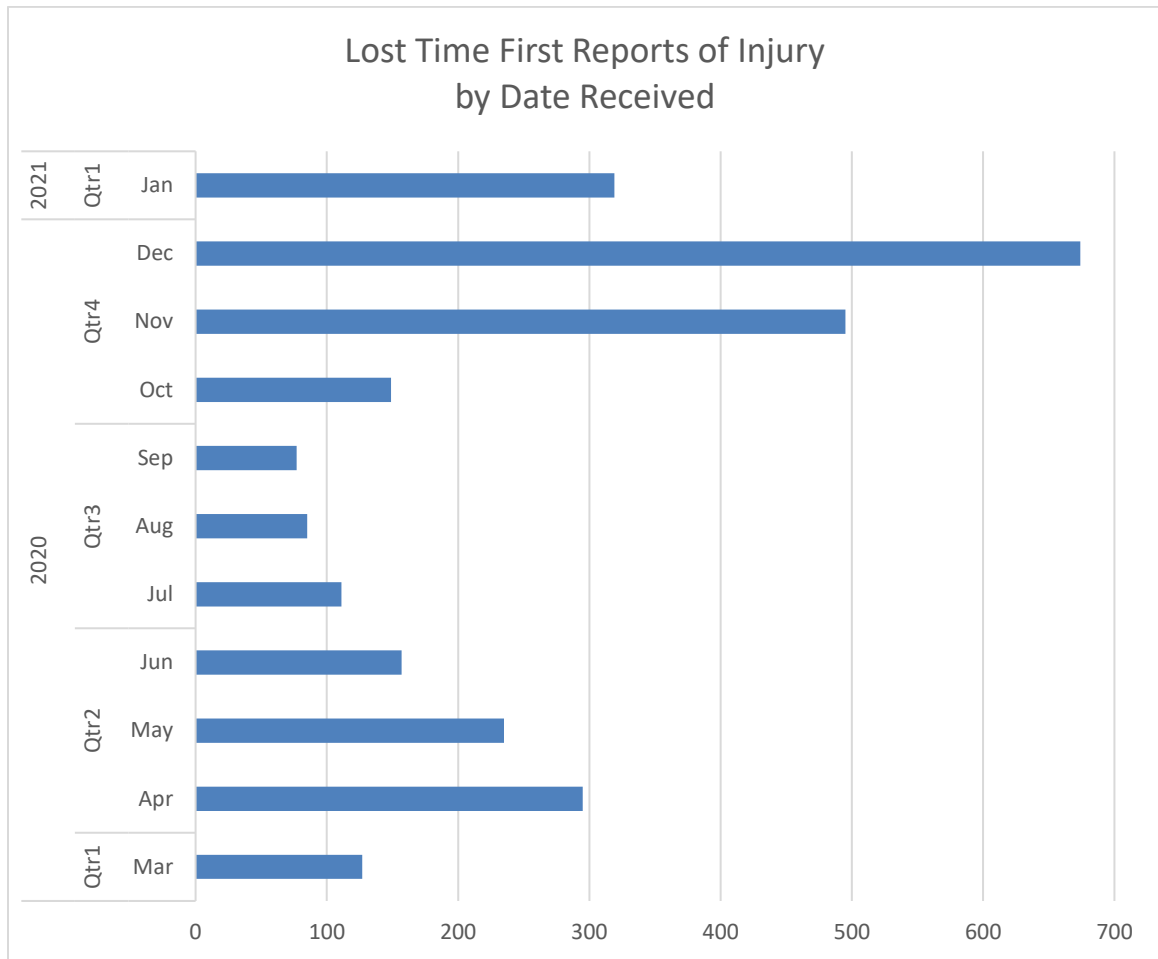
<b>Retail - Grocery</b>	<b>133</b>	<b>5%</b>	
Customer Service	132		99%
Laborer	1		1%
<b>Municipal</b>	<b>115</b>	<b>4%</b>	
Administrative Support Services	1		1%
CNA	1		1%
Corrections	18		16%
Driver - Other	6		5%
Educational Support Services	3		3%
EMT/Paramedic	7		6%
Engineer	1		1%
Firefighter	32		28%
Laborer	12		10%
Law Enforcement	19		17%
Nurse/Nurse Practitioner	1		1%
Skilled Labor	10		9%
Teacher	4		3%
<b>Healthcare - Physician Office</b>	<b>56</b>	<b>2%</b>	
Administrative Support Services	4		7%
Clinical Support Services	19		34%
CNA	4		7%
Dental Hygienist	1		2%
Facilities Support Services	4		7%
Nurse/Nurse Practitioner	16		29%
Physician/Physician Assistant	4		7%
Rehab Services	4		7%
<b>Healthcare - Home Health</b>	<b>52</b>	<b>2%</b>	
Administrative Support Services	2		4%
Clinical Support Services	1		2%
CNA	10		19%
Direct Support Professional	6		12%
Nurse/Nurse Practitioner	20		38%
Rehab Services	13		25%
<b>Community &amp; Social Service</b>	<b>36</b>	<b>1%</b>	
Child Care	3		8%
CNA	1		3%
Direct Support Professional	29		81%
Nurse/Nurse Practitioner	3		8%
<b>Employee Staffing</b>	<b>33</b>	<b>1%</b>	
Administrative Support Services	1		3%
Clinical Support Services	1		3%
CNA	2		6%
Facilities Support Services	3		9%
Laborer	3		9%
Nurse/Nurse Practitioner	23		70%

<b>Transportation Services - Ambulance</b>	<b>26</b>	<b>1%</b>	
Customer Service	1		4%
Driver - Ambulance	11		42%
EMT/Paramedic	14		54%
<b>Trades</b>	<b>22</b>	<b>1%</b>	
Laborer	13		59%
Skilled Labor	9		41%
<b>Transportation Services - Other</b>	<b>19</b>		
<b>Retail - Other</b>	<b>17</b>		
<b>Bars and/or Restaurants</b>	<b>16</b>		
<b>Aquaculture</b>	<b>11</b>		
<b>Fuel Dealer</b>	<b>9</b>		
<b>Boatyard and Marina</b>	<b>7</b>		
<b>Fitness and Recreation</b>	<b>7</b>		
<b>Cleaning &amp; Janitorial Service</b>	<b>4</b>		
<b>Education - Colleges &amp; Universities</b>	<b>3</b>		
<b>Paper Mill</b>	<b>3</b>		
<b>Wholesale</b>	<b>2</b>		
<b>Moving and Storage</b>	<b>2</b>		
<b>Professional Services</b>	<b>1</b>		
<b>Turnpike Authority</b>	<b>1</b>		
<b>Pest Control Services</b>	<b>1</b>		
<b>Telecommunication Services</b>	<b>1</b>		
<b>Security Services</b>	<b>1</b>		
<b>Manufacturing</b>	<b>1</b>		
<b>Banking &amp; Insurance</b>	<b>1</b>		
<b>Grand Total</b>	<b>2724</b>		

F. Distribution of FROIs by date of injury grouped by quarter and month.



G. Distribution of FROIs by the date the Board received it; grouped by quarter and month.



## H. Distribution of Injury by Age Group

Age Group	Lost Time First Reports	Percent of All Lost Time First Reports
<20	67	2%
20-29	638	23%
30-39	666	24%
40-49	490	18%
50-59	540	20%
60-69	286	10%
70-79	34	1%
80+	3	0%
<b>Grand Total</b>	<b>2724</b>	

This chart shows the same information sorted by the month in which the injury occurred.

Age Category	2020												Total
	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	
<20		3	3	4	2		4	1	1	19	25	5	67
20-29	2	75	60	43	30	35	22	12	36	133	147	43	638
30-39	1	70	49	43	37	32	18	26	45	154	148	43	666
40-49	1	54	41	56	11	16	17	20	33	115	101	25	490
50-59	1	59	44	39	18	14	12	29	37	118	126	43	540
60-69		41	21	17	6	8	9	17	14	54	72	27	286
70-79		6	1	2	1		2		1	9	10	2	34
80+			1								1	1	3
<b>Grand Total</b>	<b>5</b>	<b>308</b>	<b>220</b>	<b>204</b>	<b>105</b>	<b>105</b>	<b>84</b>	<b>105</b>	<b>167</b>	<b>602</b>	<b>630</b>	<b>189</b>	<b>2724</b>

## II. DISPOSITION OF COVID-19 RELATED CLAIMS

When a lost time First Report of Injury (FROI) is filed, the insurer/self-insurer responsible for handling the claim will either:

- Report that the injured worker returned to work within 7 days – the statutory waiting period – meaning the injured worker is not eligible for lost time benefits; or
- File a Notice of Controversy (NOC) indicating it will not pay lost time benefits; or
- File a Memorandum of Payment (MOP) indicating the injured worker is being paid by the insurer or is receiving salary continuation payments from the employer for whom the injured employee worked.

Some claims that are initially denied (i.e. a NOC is filed) will ultimately be paid. The charts that follow show the breakdown of how COVID-19 claims have been handled so far. Claims that were initially denied but later resulted in payments to injured employees are included in one of the paid categories.

For purposes of the “Lost Time First Report Analysis” charts, claims that are “open” (meaning no information beyond the lost time FROI has been received by the Board) are excluded.

The charts captioned “Claims for Compensation Analysis” are a subset of cases in which injured workers have not returned to work within the 7-day waiting period. Those claimants have either been paid or their claims have been denied. It is worth noting that the percentage of claims paid directly by the employer (31%) is significantly higher than it is for non-COVID-19 claims. Typically, only 1% of claims are paid directly by employers.

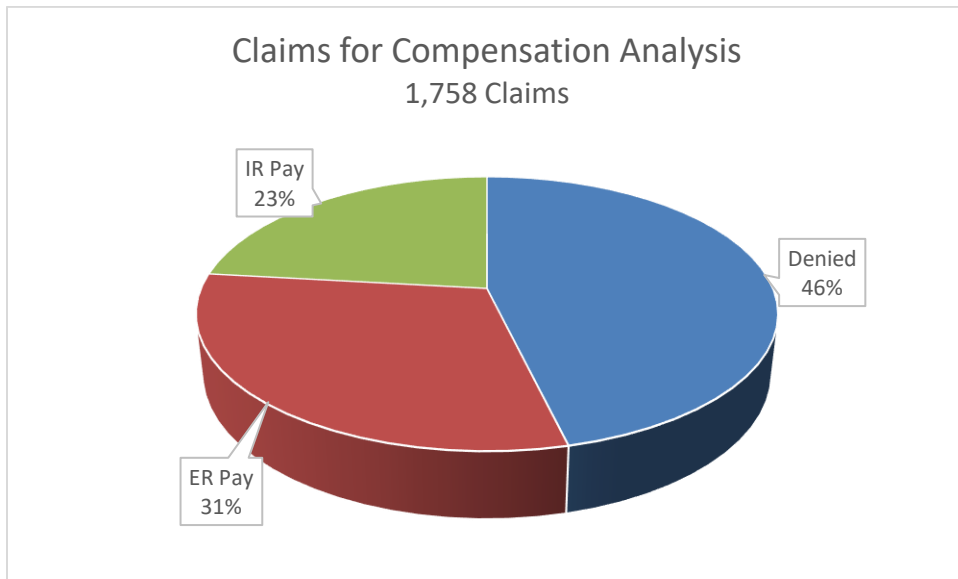
These charts are based on lost time FROIs identified by insurers as COVID-19 claims. They were received by the Board through January 16, 2021.

A. Disposition, on an industry wide basis, of lost time FROIs received by the Board:





B. Disposition, on an industry-wide basis, of claims for compensation:



The following chart details how claims for compensation are treated by claim administrators over time. This chart shows it takes approximately two months before all claims for compensation are received by the Board and for the disposition (i.e., paid or denied) of claims to stabilize.



### III. COMPARISON OF 2019 AND 2020 DATA

The following charts compare 2019 and 2020 data for lost time First Reports of Injury and the disposition of claims for compensation. Since there were no COVID-19 related claims in 2019, these charts present the data both with and without COVID-19 claims.

2020 - All			% Change v 2019
Lost Time First Reports of Injury			
1 - RTW	5341	40%	-23%
2 - Denied	2756	21%	28%
3 - ER Pay	567	4%	336%
4 - IR Pay	3641	27%	-21%
5 - Open	1004	8%	68%
Grand Total	13309		-7%
Claims for Compensation			
2 - Denied	2756	40%	28%
3 - ER Pay	567	8%	336%
4 - IR Pay	3641	52%	-21%
Grand Total	6964		1%

2020 - No COVID			% Change v 2019
Lost Time First Reports of Injury			
1 - RTW	4785	44%	-31%
2 - Denied	2020	19%	-6%
3 - ER Pay	106	1%	-18%
4 - IR Pay	3249	30%	-29%
5 - Open	751	7%	26%
Grand Total	10911		-24%
Claims for Compensation			
2 - Denied	2020	38%	-6%
3 - ER Pay	106	2%	-18%
4 - IR Pay	3249	60%	-29%
Grand Total	5375		-22%

## **SECTION B**

### **BUREAU OF INSURANCE**



# Section B: Bureau of Insurance

## Table of Contents

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<b>1.</b>	<b>INTRODUCTION &amp; BACKGROUND .....</b>	<b>B1</b>
	I. ACCIDENT YEAR, CALENDAR YEAR AND POLICY YEAR .....	B2
<b>2.</b>	<b>RECENT EXPERIENCE.....</b>	<b>B3</b>
	I. PROJECTED ULTIMATE ACCIDENT YEAR LOSS AND LOSS ADJUSTMENT EXPENSE RATIOS .....	B3
	II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS .....	B4
<b>3.</b>	<b>LOSSES IN WORKERS' COMPENSATION .....</b>	<b>B5</b>
	I. CHANGES IN ADVISORY LOSS COSTS .....	B5
	II. CUMULATIVE CHANGES IN ADVISORY LOSS COSTS.....	B6
<b>4.</b>	<b>MARKET STRUCTURE AND COMPETITION .....</b>	<b>B7</b>
	I. MARKET CONCENTRATION .....	B7
	II. COMBINED MARKET SHARE.....	B8
	III. NUMBER OF CARRIERS IN MAINE'S WORKERS' COMPENSATION INSURANCE MARKET.....	B9
	IV. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE GROUPS .....	B10
	V. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE CARRIERS .....	B10
<b>5.</b>	<b>DIFFERENCES IN RATES AND FACTORS AFFECTING RATES . .....</b>	<b>B11</b>
	I. RATE DIFFERENTIALS .....	B11
	II. ADDITIONAL FACTORS AFFECTING PREMIUMS .....	B11
<b>6.</b>	<b>ALTERNATIVE RISK MARKETS .....</b>	<b>B13</b>
	I. PERCENT OF OVERALL MARKET HELD BY SELF-INSURED EMPLOYERS .....	B13
	II. NUMBER OF SELF-INSURED EMPLOYERS AND GROUPS .....	B14
<b>7.</b>	<b>A LOOK NATIONALLY .....</b>	<b>B15</b>
	I. AVERAGE LOSS COSTS BY STATE BASED ON MAINE'S PAYROLL DISTRIBUTION .....	B15



# 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.

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 August 7, 2019, NCCI submitted a "law only" filing with the Superintendent for an overall 3.9% average increase in the advisory loss costs effective January 1, 2020, which was submitted after legislative changes to the benefit structure enacted with L.D. 756, "An Act To Improve the Maine Workers' Compensation Act."

On January 15, 2020, NCCI filed with the Superintendent for an overall 0% change in the advisory loss costs effective April 1, 2020. 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 and indemnity cost has been generally declining with an increase in the latest year. The Superintendent approved NCCI's filing effective April 1, 2020.

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

Industry Group	Percentage Change
Office & Clerical	-2.8%
Contracting	-2.3%
Manufacturing	2.1%
Goods & Services	1.7%
Miscellaneous	-1.3%

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

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:

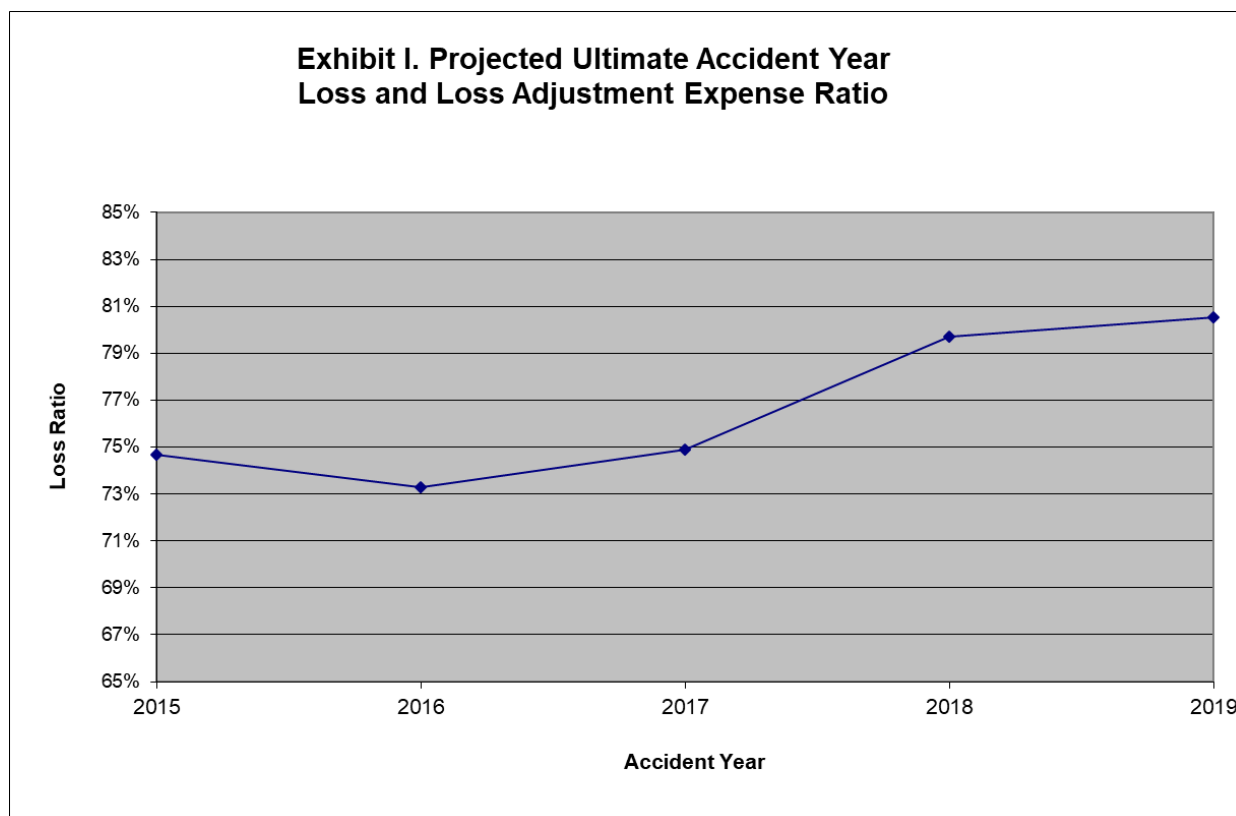
- ❑ **Accident year** experience as of a specific evaluation date matches 1) all paid losses and loss reserves as of the specific evaluation date for injuries occurring during a given 12-month period (regardless of when the losses are reported) with 2) all premiums earned during the same period (regardless 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 73.3% to 80.5% for the past five years. The 2019 ratio was 80.5%, indicating that \$80.50 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.



Source: NCCI

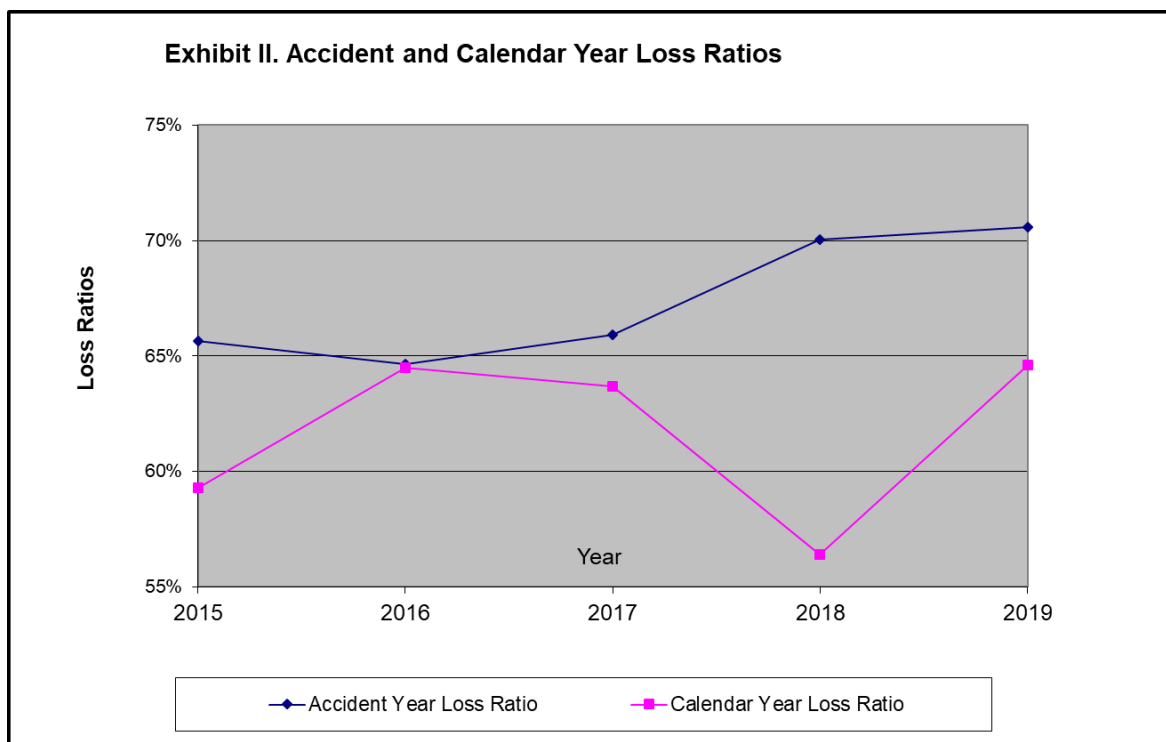
## II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

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, from below to above 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 2018 and 65% in 2016 and 2019. Accident year loss ratios ranged from a low of 65% in 2016 to a high of 71% in 2019. Calendar year loss ratios show an upward trend in the last year, and accident year loss ratios show a slight 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.

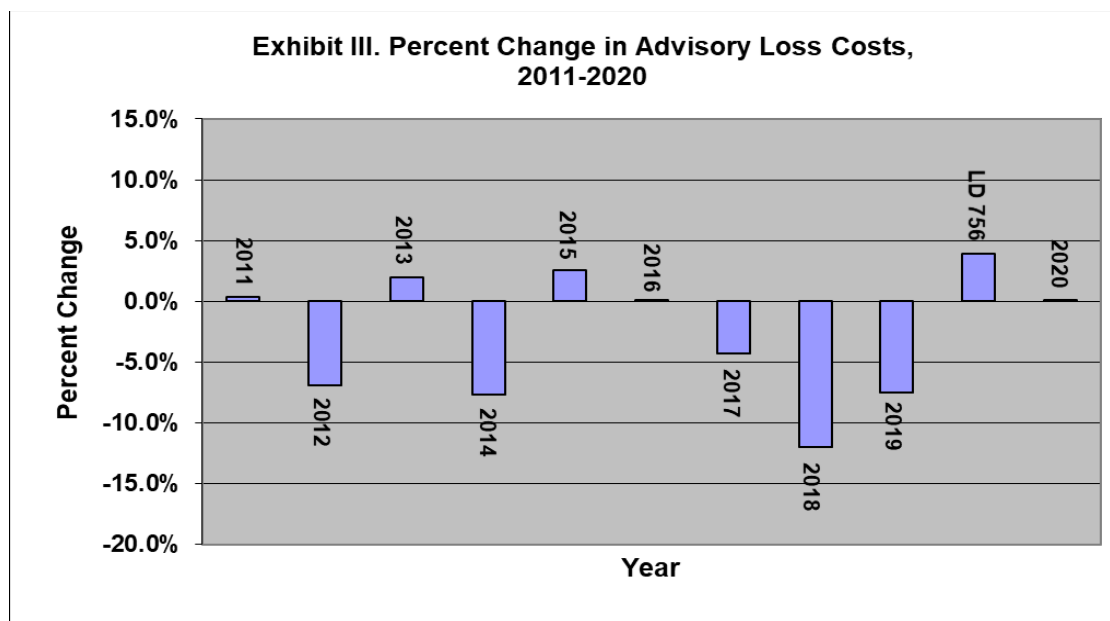
Source: NCCI

### 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.

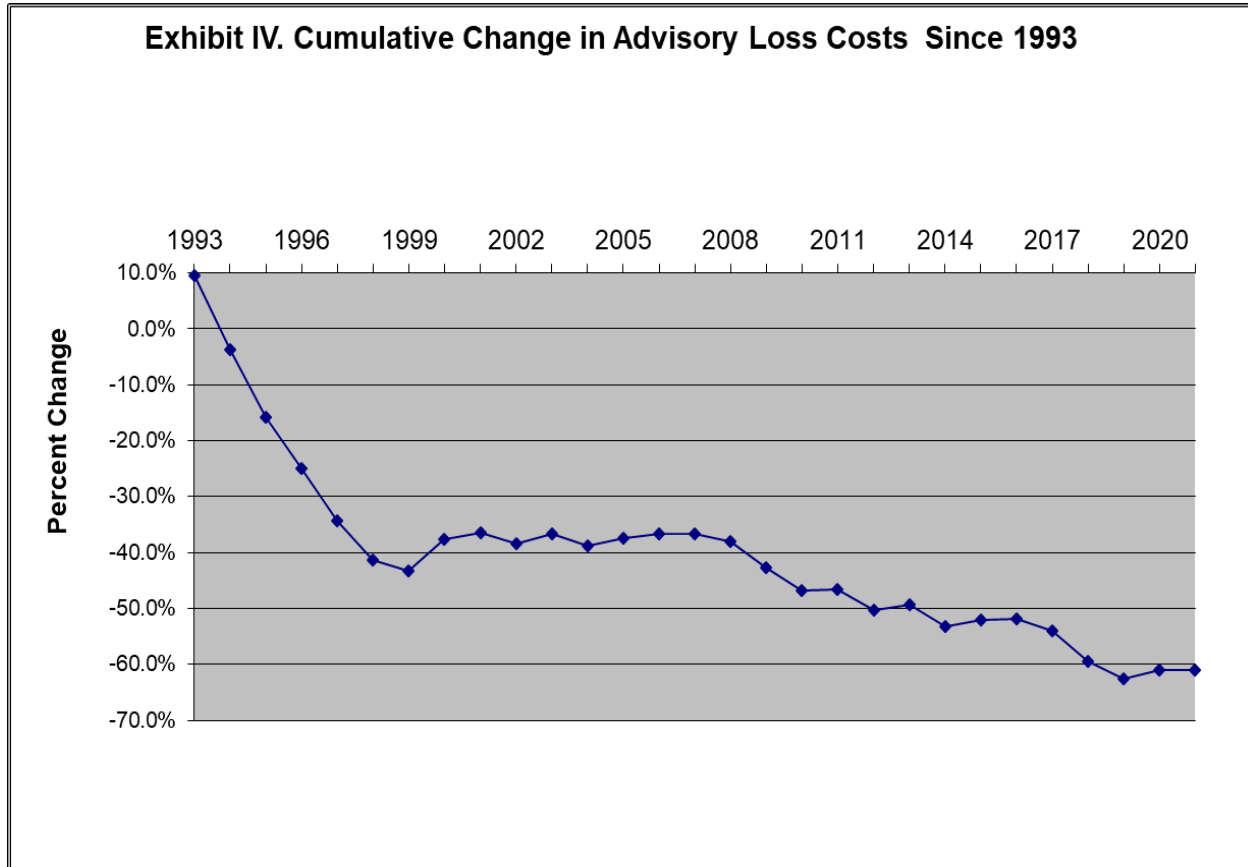
Effective April 1, 2020, the Superintendent approved a 0.0% average change in the workers' compensation advisory loss costs. Advisory loss costs are now more than 14% lower than they were ten years ago, and nearly 61% lower than when the major reform of the workers' compensation system took effect in 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 Exhibit III includes the impact of 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 14% 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, 2020, 363 companies are authorized to write workers' compensation coverage. This number is not the best indicator of market concentration because some insurers have no written premium. In 2019 MEMIC accounted for over 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 2019 by premium level.

<b>Table I: Number of Companies by Level of Written Premium—2019</b>	
<b>Amount of Written Premium</b>	<b>Number of Companies at That Level</b>
>\$10,000	175
>\$100,000	107
>\$1,000,000	25

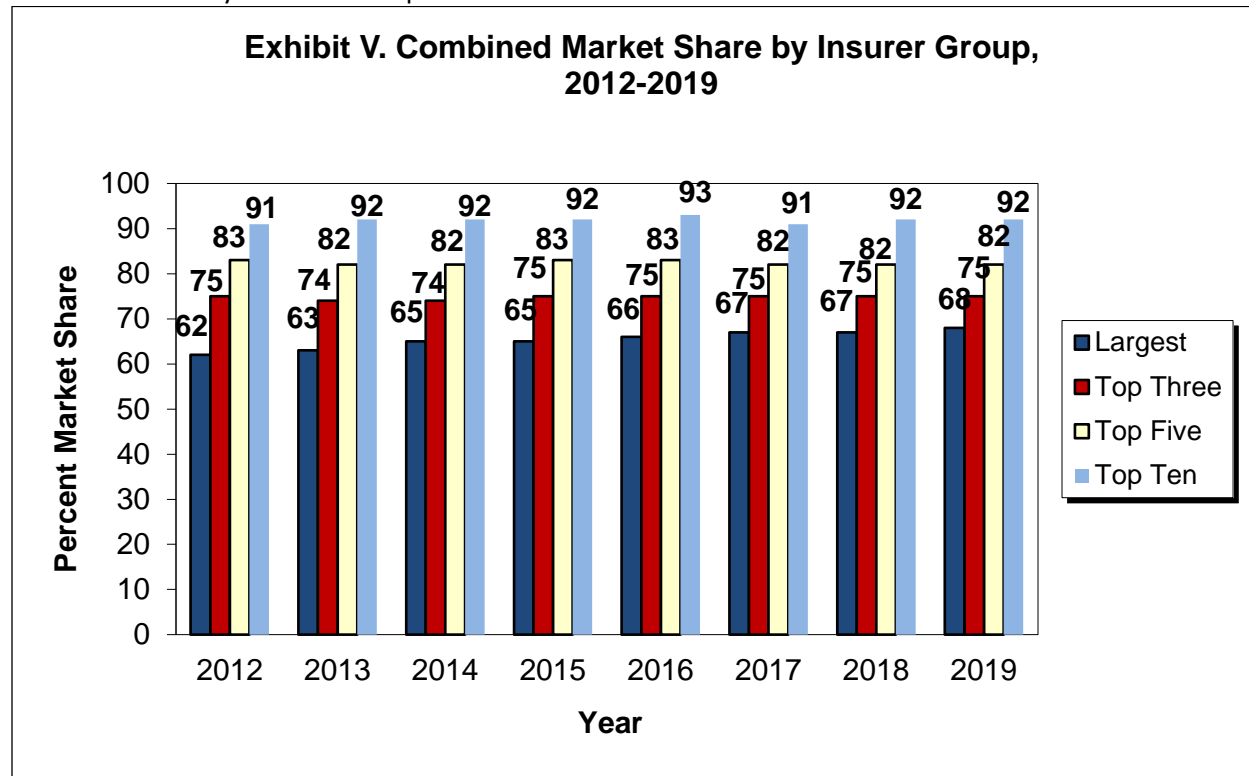
Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2019 was over \$231 million.

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. 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 \$156 million in premium (67.7%) in 2019. The top three groups, including MEMIC, wrote over \$174 million in business (75.4%). The top five groups wrote over \$190 million (82.4%), and the top 10 groups had over \$213 million in written premium (92.0%). The reported amounts of written premium for the top 10 groups rose by over \$2.5 million from 2018 to 2019, while their overall market share increased by less than one percent.



Source: Annual Statements Filed with the Bureau of Insurance

### III. 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 20 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 73% since 2000. There currently are no significant barriers to entry.

<b>Table II: Number of Workers' Compensation Carriers, 2000-2020</b>		
<b>Year</b>	<b>Number of Carriers</b>	<b>Net Change (Percent)</b>
2020	363	-2.2
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.



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

Table III shows market share for the ten largest insurance groups in 2019, and those groups' market share from 2012-2019. These groups wrote 92% of the workers' compensation business in 2019. 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 2019.

<b>Table III: Percent Market Share for Top Insurance Groups, By Amount of Written Premium, 2012-2019</b>								
<b>Insurance Group</b>	<b>2019 Share</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>
Maine Employers' Mutual	67.7	67.4	67.4	65.9	64.6	64.8	62.6	62.3
ProAssurance Corp Group	3.9	3.6	-	-	-	-	-	-
Travelers Group	3.8	3.7	3.9	4.3	4.3	4.4	4.9	4.7
WR Berkeley Group	3.6	3.5	3.9	4.4	4.1	4.5	4.5	4.6
Liberty Mutual Group	3.5	3.3	2.6	3.7	5.7	4.5	6.1	8.0
Hartford Fire & Casualty	3.1	3.3	3.1	3.1	3.2	3.4	3.5	3.5
Chubb Ltd Group	2.0	2.2	2.0	2.0	-	-	-	-
Zurich Insurance Group	2.0	1.8	2.1	2.2	1.8	1.5	1.5	1.6
The Hanover Ins Group	1.3	1.1	1.1	1.1	1.0	1.2	1.4	1.4
American International Group	1.2	1.5	1.8	1.2	1.7	3.1	2.8	1.7

Source: Annual Statements Filed with the Bureau by Insurance Carriers

#### V. 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 2012 through 2019. Throughout this entire period Maine Employers' Mutual Insurance Company (MEMIC) had more than 62% market share. The top 10 companies combined held over 77% of the market in 2019.

<b>Table IV: Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 2012-2019</b>								
<b>Insurance Carrier</b>	<b>2019 Share</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>
Maine Employers' Mutual	67.3	67.0	67.0	65.7	64.4	64.7	62.5	62.1
Eastern Alliance Ins Co	2.1	2.6	0.6	-	-	-	-	-
Zurich American Ins Co	1.4	1.4	1.6	1.7	1.5	0.9	0.8	0.9
Allied Eastern Ind Co	1.2	0.3	-	-	-	-	-	-
Charter Oak Fire Ins Co	1.0	1.1	1.1	1.2	0.9	1.1	1.3	1.3
Firemen's Ins Co of Wash DC	1.0	1.0	1.6	1.7	1.7	2.0	2.1	1.9
Continental Western Ins Co	1.0	1.1	1.1	1.0	-	-	-	-
Union Ins Co	0.9	0.6	0.7	0.7	0.6	0.5	0.3	0.2
Travelers Commercial Cas Co	0.7	0.6	0.5	0.7	0.7	0.7	0.6	0.5
New Hampshire Ins Co	0.6	0.8	0.8	0.7	0.7	1.0	1.3	1.0

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>Table V: Percent of Reported Policyholders At, Above or Below MEMIC's Standard Rating Tier Rates</b>		
<b>Rate Comparison</b>	<b>2020 Percent</b>	<b>2019 Percent</b>
Below MEMIC Standard Rate	21.5%	18.0%
At MEMIC Standard Rate	58.0%	60.8%
Above MEMIC Standard Rate	20.5%	21.1%

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 2019, MEMIC announced it would pay dividends totaling \$22 million to approximately 18,000 qualified policyholders in November 2019. The 2019 payments brought the total of capital returns and dividends paid by MEMIC since 1998 to \$285 million. In 2020, MEMIC announced an early return of dividends, in light of the economic distress caused by the COVID-19 pandemic; in June it announced it would return \$17 million to qualified employers by July 2020, bringing the total returned to policyholders since 1998 to \$302 million.
- ❑ **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

### 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 is 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 2019 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>Table VI: Estimated Total of All Standard Premiums for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 2002-2019</b>		
<b>Year</b>	<b>Estimated Total of All Standard Premiums</b>	<b>Percent of Workers' Comp. Market (in annual standard premium)</b>
2019	\$129,295,963	35.8
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, 2020, there were 18 self-insured groups representing 1,222 employers. The number of individual self-insured employers has remained at 57 for the past four years.

<b>Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 2000-2020</b>			
<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2020	18	1,222	57
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. 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. As shown below, Maine was tied with Idaho for the 6th highest average loss cost in the most recent report, issued in 2020. In the report issued in 2019, Maine had the 13th highest average loss cost.

State	Average Loss Cost	Rank
Connecticut	1.25	1
Georgia	1.24	2
Vermont	1.23	3
Illinois	1.15	4
Hawaii	1.13	5
<b>Maine</b>	<b>1.10</b>	6
Idaho	1.10	6
Louisiana	1.09	8
Iowa	1.06	10
Alaska	1.06	10
South Carolina	1.05	12
Montana	1.05	12
Missouri	1.03	13
Oklahoma	1.02	14
Florida	1.00	15
Rhode Island	0.99	16
Maryland	0.90	17
New Mexico	0.88	21
New Hampshire	0.88	21
Nebraska	0.88	21

State	Average Loss Cost	Rank
Alabama	0.88	21
Virginia	0.83	22
Colorado	0.81	23
Kentucky	0.74	25
Mississippi	0.74	25
Oregon	0.73	28
Arizona	0.73	28
South Dakota	0.73	28
Nevada	0.72	29
D.C.	0.71	30
Kansas	0.70	31
North Carolina	0.69	32
Tennessee	0.60	33
Indiana	0.56	34
Utah	0.55	35
West Virginia	0.49	36
Arkansas	0.43	37
Texas.	0.38	38
Countrywide	0.83	

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

## Table of Contents

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<b>1. INTRODUCTION .....</b>	<b>C1</b>
I. ORGANIZATION OF THIS REPORT .....	C1
II. ROLE OF THE BUREAU OF LABOR STANDARDS IN PROTECTING MAINE WORKERS .....	C1
III. INJURY PREVENTION AND COST CONTAINMENT .....	C7
<b>2. PREVENTION SERVICES .....</b>	<b>C8</b>
I. SAFETYWORKS! .....	C8
II. ENFORCEMENT .....	C9
<b>3. RESEARCH AND DATA .....</b>	<b>C11</b>
I. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS .....	C11
II. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT .....	C24
<b>4. CHALLENGES AND OPPORTUNITIES .....</b>	<b>C27</b>
I. SAFETY EDUCATION & TRAINING FUNDING .....	C27
II. ELECTRONIC DATA INTERCHANGE AND MISSING DATA .....	C27
III. RETURN TO WORK DATA .....	C29
IV. COST DATA .....	C30
<b>5. DEVELOPMENTS.....</b>	<b>C31</b>
I. RESOURCES AND FUNDING .....	C31
II. PROGRAM INITIATIVES.....	C31



# 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, 2020 Developments**, outlines the 2020 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**

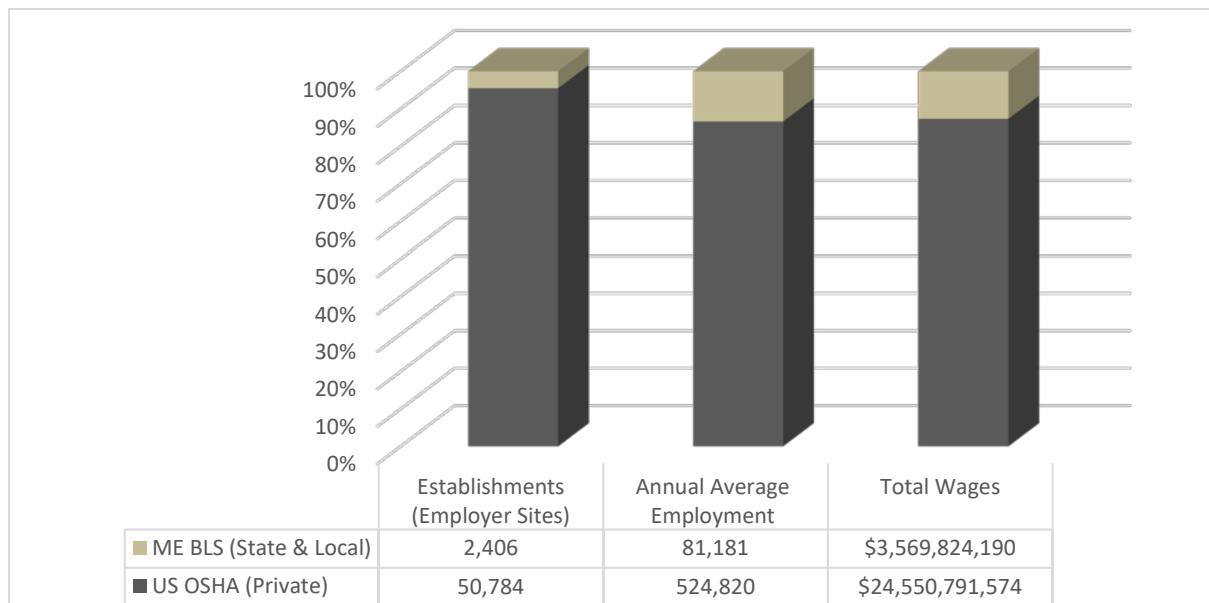
Maine Workers' Compensation System			
Function		State and Local Government	Private Sector Employers
Prevention	Research	Maine SafetyWorks!	
	Outreach and Education	Maine SafetyWorks!	
	Employer Consultation	Maine SafetyWorks!	
	Safety Standards Enforcement	Maine BLS*	U.S. OSHA
	Child Labor Enforcement	Maine BLS	
Administration		Maine Workers' Compensation Board	
Insurance Market		Maine Bureau of Insurance	
Outside of Maine Workers' Compensation System			
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, 2020.

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 of the outreach and education efforts in the workplace.

### 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.

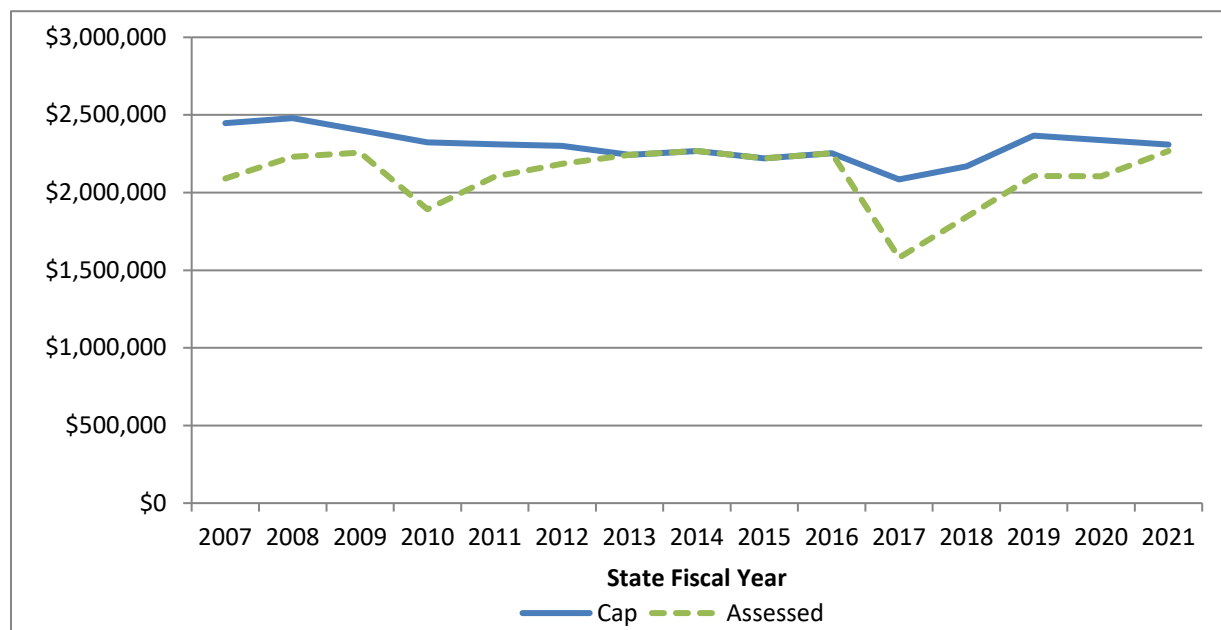
Since 2015 the Bureau's public sector (state and local government) enforcement and consultation activities have been match-funded (50/50) through a U.S. OSHA "23g" cooperative agreement, with matching funds from the SETF for the consultation portion of the work. (The state general fund provides the match 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) 2017-2020, 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 41 in the Bureau. The SETF and federal matching funds account for the most funding of positions and activities. Likewise, most activity in the Bureau is non-enforcement.

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

<b>Service</b>	<b>Jurisdiction / Funding Source</b>	<b>Activity Measures</b>
SafetyWorks! Training Institute	State SETF / U.S. OSHA and MSHA* Cooperative Agreement	<ul style="list-style-type: none"> <li>81 classes with 919 workers trained in (FFY) 2020.</li> </ul> <p>STI was shutdown mid-March for three months due to COVID-19. Once it was reopened social distance safeguards limited maximum class size from 48 to 18 participants. A total of 36 classes were cancelled during this period.</p>
Employer OSH Data Profiles	State SETF / U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>35 employer profile/data requests answered in CY 2020</li> </ul>
On-site Consultations	State SETF / U.S. OSHA and MSHA* Cooperative Agreement	<ul style="list-style-type: none"> <li>255 employer onsite consultations and reports which identified 1,486 serious hazards (FFY) 2020.</li> </ul> <p>These numbers are down considerably from last year due to COVID-19 restrictions.</p>
Youth Employment Permit Enforcement	State General Fund	<ul style="list-style-type: none"> <li>3427 work permit applications received</li> <li>3421 work permits approved</li> <li>30 work permits initially denied in SFY 2019</li> </ul>
Wage & Hour Enforcement, Random & Focused Inspections	State General Fund	<ul style="list-style-type: none"> <li>297 employer inspections</li> <li>26 inspections found violations</li> <li>61 total child labor violations involving 8 employers in SFY 2019</li> </ul>
Wage & Hour Enforcement, Complaint Investigations	State General Fund	<ul style="list-style-type: none"> <li>277 complaint investigations</li> <li>120 complaints found violations in SFY 2019</li> <li>6 child labor violations involving 3 employers</li> </ul>



Service	Jurisdiction / Funding Source	Activity Measures
Public Sector Safety Enforcement	State General Fund / U.S.OSHA, 50/50	<ul style="list-style-type: none"> <li>• 25 employers</li> <li>• 219 total violations, 94 serious violations</li> <li>• \$22,140 in initial penalties issued FFY 2020</li> </ul> <p>These numbers are down considerably from last year due to COVID-19 restrictions</p>
OSHA Recordkeeping Employer Outreach	State SETF / U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 5 sessions in CY 2020</li> <li>• 52 attendees in CY 2020</li> <li>• 11 sessions planned in CY 2021</li> </ul>

\*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>• 13,845 disabling cases coded in calendar year 2019 <ul style="list-style-type: none"> <li>○ Increase of 43 total cases from 2018</li> <li>○ Decrease of 16,470 (54.33%) 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>• 4.9 Total OSHA recordable case incidence rate in CY 2019 <ul style="list-style-type: none"> <li>○ Increase of 2% from CY 2018</li> <li>○ Decrease of 13% from CY 2009</li> <li>○ Decrease of 44% from CY 1999</li> </ul> </li> <li>• 2.7 Days Away, Restricted or Job Transfer case incidence rate in CY 2019 <ul style="list-style-type: none"> <li>○ Consistent with CY 2018</li> <li>○ Decrease of 13% from 2009</li> <li>○ Decrease of 43% from 1999</li> </ul> </li> <li>• 1.3 Days Away From Work case incidence rate in CY 2019 <ul style="list-style-type: none"> <li>○ Consistent with CY 2018</li> <li>○ Decrease of 13% from CY 2009</li> <li>○ Decrease of 38% from 1998</li> </ul> </li> </ul>

Data Programs	Funding	Result Measures
Census of Fatal Occupational Injuries (CFOI)	State SETF/US Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>20 fatalities in 2019 <ul style="list-style-type: none"> <li>Increased fatality count from 2018 (17)</li> <li>Highest fatality count since 2011 (26)</li> <li>Lowest fatality counts in 2005 and 2015 (15)</li> </ul> </li> </ul>
Employer Substance Abuse Testing	SETF	<ul style="list-style-type: none"> <li>7.0% total positive tests for CY 2019 <ul style="list-style-type: none"> <li>Low of 3.3% in CY 2014</li> <li>High of 7.0% in CY 2019</li> </ul> </li> <li>7.2% applicants positive for CY 2019 <ul style="list-style-type: none"> <li>Low 3.1 % in CY 2014</li> <li>High of 7.2% in CY 2019</li> </ul> </li> <li>45.8% probable cause positive for CY 2019 <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 2019 <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 2020, 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 Division (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 2020, 35 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 2020, 255 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, 2019 to June 30, 2020, W&H approved 3,421 work permits and denied 30 permits for these young workers.

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

The Wage and Hour Division (WHD) also inspects employers for compliance with Maine wage and hour and youth employment laws, which have an occupational safety and health component. The WHD can use age data from the Workers' Compensation Board *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, 2019, to June 30, 2020 the WHD conducted 297 random and focused inspections and found violations with 26 separate employers. WHD also responded to 277 complaints and found violations with 120 separate employers. The WHD found 67 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 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:

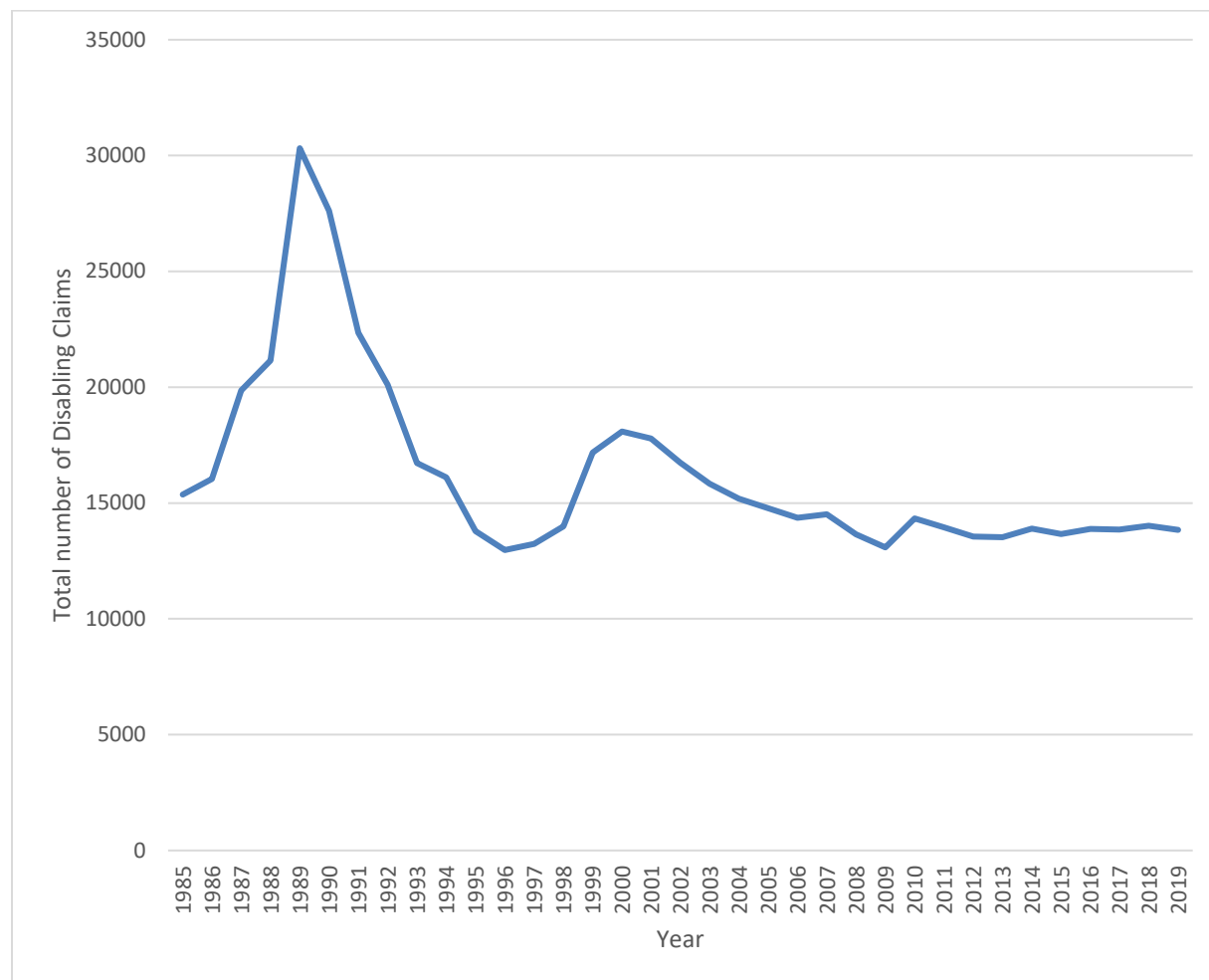
- 1) Characteristics of the employer
- 2) Characteristics of the employee
- 3) Characteristics of the workplace
- 4) Characteristics and results of the incident
- 5) Characteristics and results of the workers' compensation claim including costs

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-five Year Pattern of Disabling Cases, Maine (1985–2019)*

In 2019 there were 13,845 disabling cases reported to the Maine Workers' Compensation Board. A disabling claim is a claim in which a worker was removed from the workplace due to injury or illness and did not return to work on the same day. Figure C-12 shows the 35-year trend of total recorded disabling cases since 1985.

**Figure C-12: Thirty-Five-Year Pattern of Disabling WCB Cases, 1985–2019**



**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 13,525 in 2013 and a high of 14,018 in 2011, yielding a range of only 493 cases within the last 9 years.

## ***ii. Geographic Distribution of Disabling Cases, Maine (2017–2019)***

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 2017 through 2019 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 2017 through 2019, 10 out of 16 counties had consistently lower injury rates than the state average (Aroostook, Franklin, Hancock, Lincoln, Oxford, Penobscot, Somerset, Waldo, Washington, and York), four counties were consistently higher than the state average (Androscoggin, Cumberland, Kennebec, and Sagadahoc) and two counties fluctuated around the state average (Knox and Piscataquis).

**Table C-13: Geographical Distribution of Disabling Cases, Maine (2017–2019)**

County	2017			2018			2019		
	Cases	Workforce	Rate Per 1,000	Cases	Workforce	Rate Per 1,000	Cases	Workforce	Rate Per 1,000
Androscoggin	1132	55,498	20.4	1185	55,239	21.5	1156	55,225	20.9
Aroostook	613	31,496	19.5	607	30,867	19.7	599	30,205	19.8
Cumberland	3477	164,393	21.2	3471	164,612	21.1	3599	164,832	21.8
Franklin	201	14,430	13.9	185	14,383	12.9	233	14,241	16.4
Hancock	519	29,297	17.7	468	29,374	15.9	485	29,089	16.7
Kennebec	1363	62,653	21.8	1395	62,180	22.4	1287	61,923	20.8
Knox	432	20,706	20.9	444	20,575	21.6	384	20,194	19.0
Lincoln	252	17,034	14.8	255	16,933	15.1	251	16,789	15.0
Oxford	382	26,808	14.2	383	26,617	14.4	392	26,333	14.9
Penobscot	1433	76,886	18.6	1395	76,597	18.2	1432	76,836	18.6
Piscataquis	122	7,494	16.3	159	7,440	21.4	127	7,274	17.5
Sagadahoc	546	19,379	28.2	562	19,480	28.9	605	19,421	31.2
Somerset	365	23,053	15.8	404	22,732	17.8	416	22,429	18.5
Waldo	271	21,145	12.8	272	21,123	12.9	225	20,613	10.9
Washington	262	14,039	18.7	238	13,850	17.2	244	13,688	17.8
York	1452	113,240	12.8	1505	113,678	13.2	1489	113,644	13.1
Unknown*	1033	-	-	1089	-	-	918	-	-
<b>Maine</b>	<b>13,869</b>	<b>697,548</b>	<b>19.9</b>	<b>14,018</b>	<b>695,679</b>	<b>20.1</b>	<b>13,845</b>	<b>692,739</b>	<b>20.0</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/laus.html>

### **iii. Disabling Cases by Occupational Groups, Maine (2017–2019)**

Fourteen occupational groups accounted for more than 90 percent of all reported disabling injuries in 2019. Table C-14 lists those top fourteen occupational groups, with their corresponding share of injury totals.



**Table C-14: Disabling Cases by Occupational Groups, Maine (2017–2019)**

Occupational Groups	2016		2017		2018	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving Occupations	2114	15.3%	2496	17.8%	2143	15.5%
Construction and Extraction Occupations	1204	8.7%	1272	9.1%	1305	9.4%
Office and Administrative Support Occupations	1256	9.1%	1154	8.2%	1193	8.6%
Production Occupations	1205	8.7%	1179	8.4%	1169	8.4%
Food Preparation and Serving Related Occupations	964	7.0%	1169	8.3%	1113	8.0%
Installation, Maintenance, and Repair Occupations	988	7.1%	942	6.7%	1005	7.3%
Building and Grounds Cleaning and Maintenance Occupations	830	6.0%	913	6.5%	912	6.6%
Healthcare Support Occupations	784	5.7%	935	6.7%	810	5.9%
Healthcare Practitioners and Technical Occupations	783	5.6%	768	5.5%	783	5.7%
Personal Care and Service Occupations	564	4.1%	560	4.0%	549	4.0%
Protective Service Occupations	508	3.7%	470	3.4%	537	3.9%
Educational Instruction and Library Occupations	506	3.7%	446	3.2%	503	3.6%
Sales and Related Occupations	550	4.0%	311	2.2%	541	3.9%
Community and Social Service Occupations	369	2.7%	389	2.8%	341	2.5%
All Other Occupational Groups	1234	8.9%	1014	7.2%	941	6.8%
<b>Total</b>	<b>13,859</b>	<b>100%</b>	<b>14,018</b>	<b>100%</b>	<b>13,845</b>	<b>100%</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 6,753 disabling injuries over the last 3 years, accounting for 16.2% of all work-related disabling injuries. This is almost as much as the bottom 12 occupation categories combined (2,153), which includes occupations such as firefighters, retail salespeople, and social service specialists. While these jobs are numerous throughout Maine, the prevalence of injuries throughout these occupations merits further study

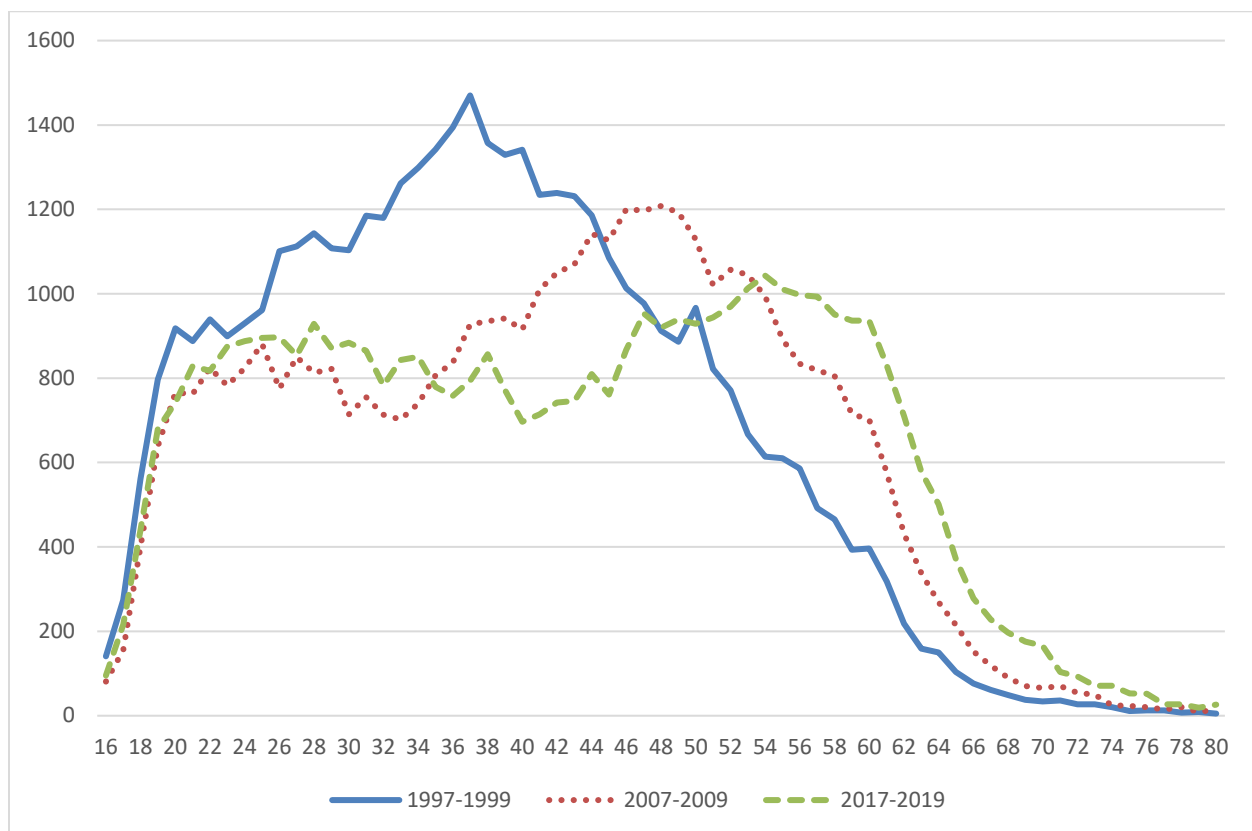
#### ***iv. Age of Injured Worker, Maine, 10-year Comparisons***

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 1997-1999 group, the peak number injuries were suffered by 37-year old workers, which totaled 1,470 over the 3-year span. 10 years later, the peak number of injuries shifted 11 years to 48-year old workers, which totaled 1,208 over the 3-year span. In the most recently collected 3-year span of data, the peak number of injuries has shifted 6 years forward to 54-year-old workers, who totaled 1,043 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 (1997-1999, 2007-2009, 2017-2019)**

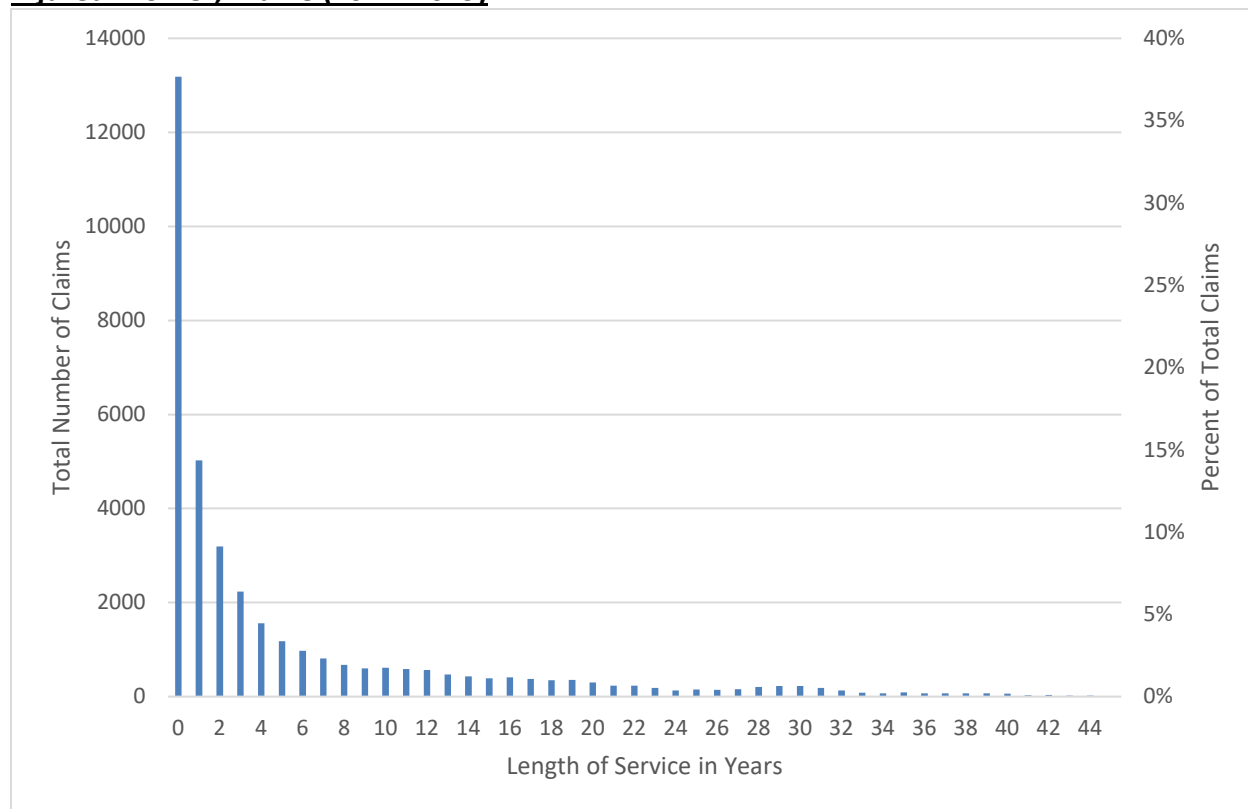


**Source:** Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*

**v. Length of Service of Injured Worker, Maine, 2017-2019**

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 the most warranted.

**Figure C-16: Count/Percentage of Disabling WCB Cases by Years of Service Completed by Injured Worker, Maine (2017–2019)**



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

Between 2017 and 2019, the number of lost time cases by length of service can be broken up into three groups; 35.45% had been working for their employer less than one year, 32.29% had put in at least one year but less than five years of service, and 32.26% of employees had completed at least five years of service. Over half of all disabling cases (57.55%) 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 2019, the Maine Bureau of Labor Standards surveyed 2,597 private establishments and 520 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 2019 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:

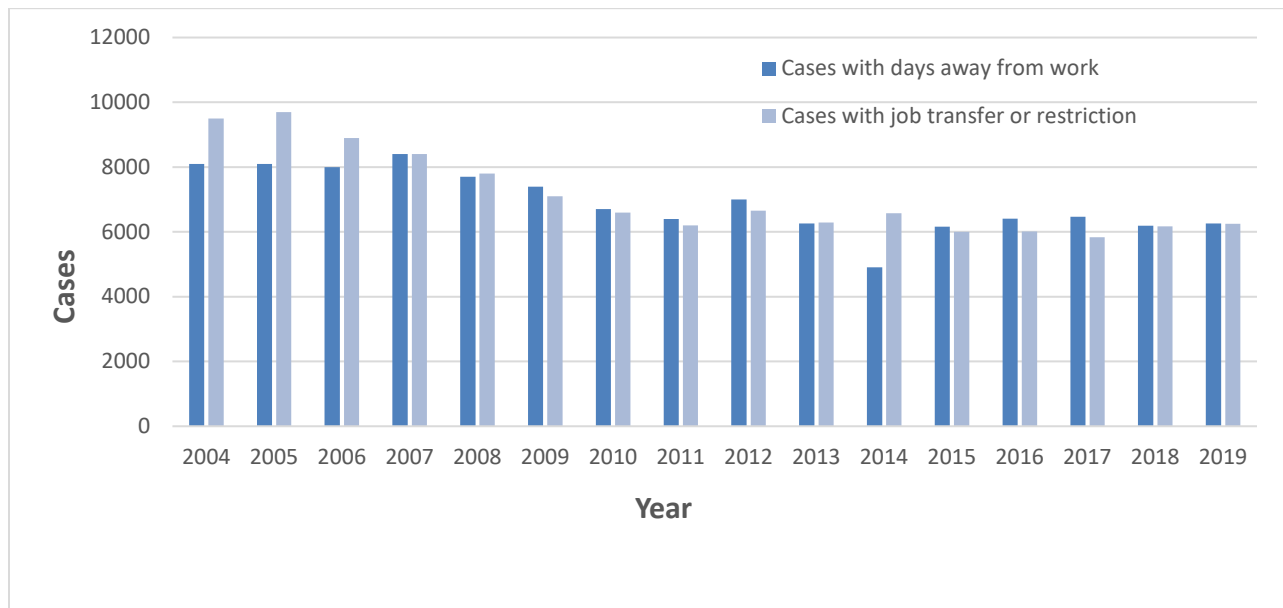
- The two systems record cases based on different definitions of “work-related” and other factors.
- WCB data (coupled with employer data available to the Bureau) can be used to generate employment-based rates but those rates are not the same as the rates published through SOII. The SOII rates are based 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 (2004–2019)**

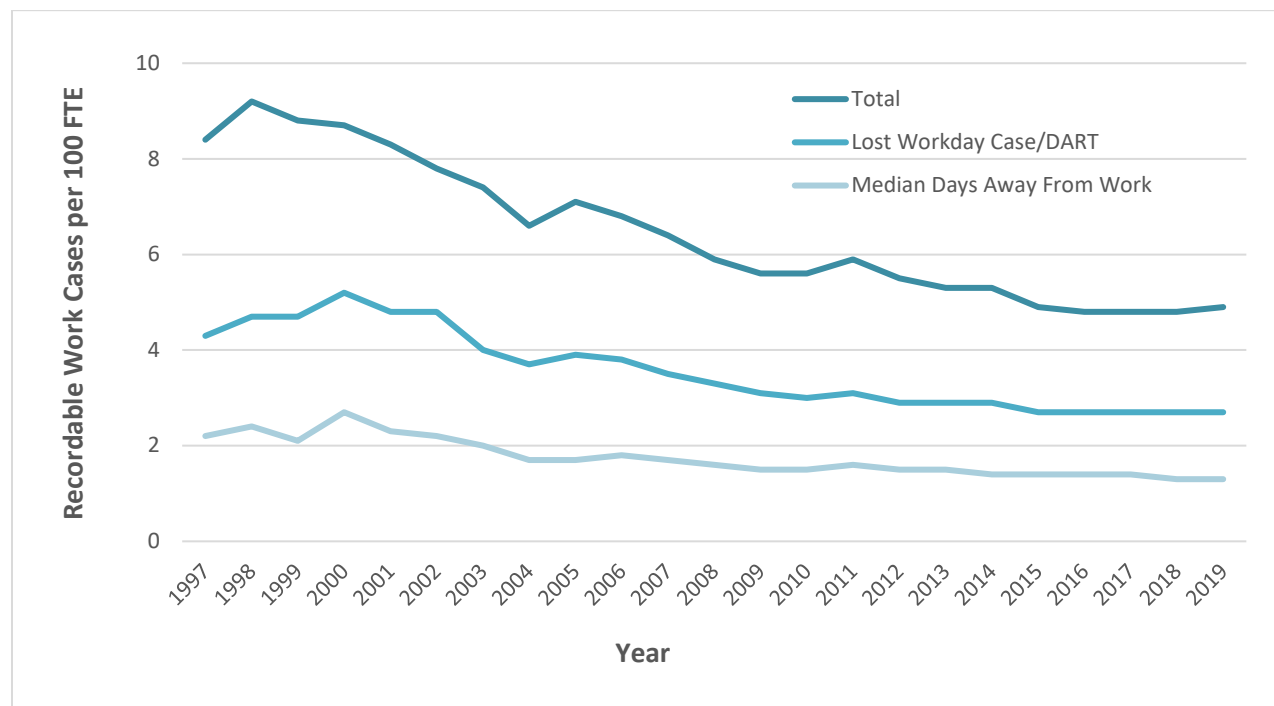


For 2019, there were an estimated total of 12,507 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total it was estimated that 6,256 cases resulted in at least one day away from work and 6,252 cases resulted 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 (1997–2019)**



**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 13% since 2009 and by 44% since 1999. The Lost Workday Case / DART rate has decreased by 13% from 2009 and by 43% from 1999. The Days Away from Work Rate has declined by 13% from 2009 and by 38% since 1999. 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 1999–2019 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 2019 SOII (private sector), Bakeries and Tortilla Manufacturing 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, 2019**

Industry Group	Cases per 100 FTEs
Bakeries and tortilla manufacturing	14.0
Continuing care retirement communities	11.4
Warehousing and storage	10.8
Residential building construction	9.3
Sawmills and wood preservation	8.6
Transportation equipment manufacturing	8.5
Services for the elderly and persons with disabilities	8.3
Assisted living facilities for the elderly	8.2
Plumbing, heating, and air conditioning contractors	7.6
Supermarkets and other grocery (except convenience) stores	7.6
Fuel Dealers	7.6
<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 2019 data, over 25,100 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 Federal BLS 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

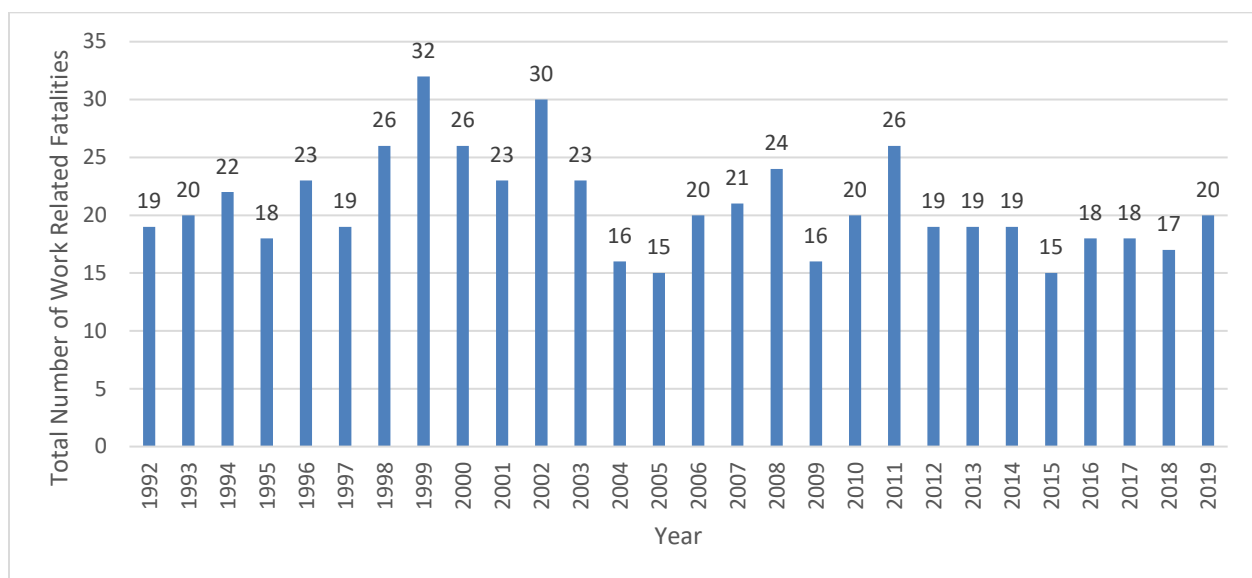
Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable. Private and public sector (state, local, and county government) are included.

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 and/or local police and sheriff's departments, 5) the U.S. Coast Guard; 6) OSHA reports, and 7) newspaper clippings and other public media.

***i. Fatal Occupational Injuries, Maine (1992–2019)***

Figure C-20 shows the numbers of work-related fatalities recorded in Maine from 1992–2019.

**Figure C-20: Work-Related Fatalities, Maine (1992–2019)**



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 2019, the annual survey indicated that a total of 26,173 tests were administered by employers with approved policies and 1,843 (7.0%) of these tests were positives. Of the 25,048 job applicants tested, 1,794 (7.2%) 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/substanceusetesting/](https://www.maine.gov/labor/labor_laws/substanceusetesting/). Survey data for 2020 will be available by April 1, 2021.

**Table C-23: Results of Overall and Applicant Substance Use Testing (2010–2019)**

Year	Approved Policies	Total Tests			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2019	540	26,173	1,843	7.0	25,048	1,794	7.2

**Table C-24: Results of Probable and Random Substance Use Testing (2010-2019)**

Year	Approved Policies	Probable Cause Testing			Random Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2019	540	24	11	45.8	1,101	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 Division provides formal training, consultation, and outreach to Maine employers. In 2019, the BLS Research and Statistics Division training staff conducted classes in various locations in the state via SafetyWorks! Due to the COVID-19 pandemic, only 4 sessions were offered in 2020; three in Augusta and one in Bangor.

### 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 Division 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. This year we assessed at the full amount where some new initiatives were planned and implemented.

### 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 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, 2016–2020**

Claim Status	Year of Injury or Illness Report					Total
	2016	2017	2018	2019	2020	
Lost Time (LT) Claims	5,304	5,114	4,872	4,692	3,921	23,903
Open LT Claims	331	387	514	687	1,347	1,919
% Open	6.2%	7.6%	10.6%	14.6%	34.4%	8.0%
Closed LT Claims	4,973	4,727	4,358	4,005	2,574	18,063
Resumed Work	3,202	3,220	3,026	3,046	2,193	12,494
% Resumed Work	60.4%	63.0%	62.1%	64.9%	55.9%	52.3%
Source: Workers' Compensation Board <i>Employers First Report of Occupational Injury and Disease</i> and subsequent payment reports as of 1/19/2021						
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

As a result of COVID-19 and its effects on the workplaces in 2020, numbers are drastically different for the calendar year. All SafetyWorks! Training Institute (STI) classes were suspended from mid-March through July and when resumed were reduced attendance to accommodate social distancing. Other hearings, classes and meetings were held virtually over the same time and continue as emergency rules are in effect. On-site consultations and meetings were held virtually if not postponed indefinitely. The numbers will reflect these accommodations and changes and the Bureau will likely continue curtailments into 2021 until emergency protocols are lifted. In the meantime, staff are working on updating training and creating short videos to supplement on-site consultations and training.

The Workplace Safety and Health Division (WSHD) was able to upgrade the SafetyWorks! Training Institute's AV equipment in 2020 because of OSHA one-time funds becoming available. In addition to replacing the AV equipment, it also included adding microphones to the ceiling. This allows remote users to now hear audience questions during Zoom and other remote meetings. Due to COVID-19 restrictions we are exploring more remote or combination class options. We have also started recording short safety and health presentations that can be viewed at the participants convenience.

WSHD recorded the following safety and health webinars at the SafetyWorks! Training Institute.:

- Introduction to OSHA
- Hazard Communications
- Bloodborne Pathogens
- Emergency Action Plans

Each webinar is approximately 15 to 30 minutes in length, once the webinars are finalized they are placed on the SafetyWorks! website.

### II. PROGRAM INITIATIVES

From time to time, the Bureau enters into initiatives promoting occupational safety and health. These may be internal or with partners from other agencies or groups.

#### A. Preliminary COVID-19 Analysis

In response to the COVID-19 pandemic and its effect on the workplace, the Bureau looked at its impact on overall count and nature of first reports.

The time period between March 1st through August 31st of 2020 saw a 17% decrease in the number of lost time claims filed compared to the 5-year average for the same timeframe. The gap in claim filing is almost entirely exclusive to a decrease in male claimants, as the number of claims filed by women has remained constant. This statewide decrease is accompanied by sharp increase specific to the Healthcare and Social Assistance Industry, already Maine's highest filing industry, which reported nearly 40% more claims throughout the first six months of the pandemic. The Healthcare and Social Assistance Industry is where 80% of workplace COVID-19 transmissions took place, as well as 75% of cases where an employee was removed from the worksite after developing symptoms or being exposed to COVID-19 without specific mention of contracting the virus or presenting a positive test result.

Through August 31st, there have been 226 instances of COVID-19 being specifically mentioned in the injury narrative as contracted in the workplace. As of September 1st, the official count for COVID-19 cases in Maine was 4,548, equating to 5% of all COVID-19 transmissions happening in the workplace. However, our reporting is based on what is recorded in the First Report of Injury (FROI) form. We recorded 804 claims where a worker was removed from the workplace due to either exposure to COVID-19, or development of COVID-19 symptoms, without mention of contracting the illness or registering a positive test result. Many of these claims were filed early in the pandemic before our knowledge of the virus had evolved, and before the federal government passed legislation offering other modes of relief to employees outside of the Workers Compensation system. These claims did not include enough information to determine whether the claimant contracted COVID-19. Without additional information such as test results, we do not know how pervasive COVID-19 transmission is in the workplace.

## **B. 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 Division (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.

## **C. 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).

## D. 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 (SHARP only) 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 2021, there are 40 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)
Davis Brothers (Chester)	Maine Oxy Acetylene & Supply Company (Hermon)
DeepWater Buoyancy (Biddeford)	Maine Woods Company (Portage)
Deering Lumber, Inc. (Kennebunk)	Marden's Inc. (Calais)
Everett J. Prescott (Bangor)	Marden's Inc. (Ellsworth)
Everett J. Prescott, Inc. (Gardiner)	Marden's Warehouse, (Waterville)
Everett J. Prescott, Inc. (Portland)	MidState Machine (Winslow)
FASTCO Corp. (Lincoln)	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 2021, there are 86 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.	Northport First Responders
Ashland, Town of	Hartland VFD	Northport Volunteer Fire Dept.
Auburn Water & Sewage District	Hope Fire Dept.	Norway Water District
Belgrade Transfer Station	Houlton Water Company	Oakland Fire & Rescue Dept.
Berwick Water Dept.	Jay, Town of	Old Town, City of
Boothbay Fire Dept.	Jefferson Fire & Rescue	Orono Fire Dept.
Bradley Fire Dept.	Kennebec Water District	Paris Fire Dept.
Bristol / So. Bristol Transfer Station	Kennebunk, Kennebunkport & Wells Water	Presque Isle, City of
Bristol, Town of	Kennebunk, Town of	Rockport, Town of
Brooks Fire Dept.	Kingfield Fire Dept.	Rome Fire Dept.
Brownfield Volunteer Fire Dept.	Kittery Water District	Sabattus Sanitary & Water
Brunswick Sewer District	Knox County	Sagadahoc County
Bucksport, Town of	Levant Fire Dept.	Saint Agatha Fire Dept.
Camden Fire Dept.	Lewiston Fire Dept.	Scarborough, Town of
Caribou, City of	Liberty Fire Dept.	Skowhegan, Town of
Carrabassett Valley Fire Dept.	Limestone Water and Sewer	Somerville Fire Dept.
Cary Medical Center	Lincoln Water District	South Thomaston Fire Dept.
L'Acadie Care Facility	Maine Turnpike Authority	United Technologies
Damariscotta Fire Dept.	Maine Veterans' Home - Caribou	University of Maine - Blueberry Farms
Dover and Foxcroft Water District	Manchester Fire Dept.	Waldoboro Fire Dept.
Durham Fire Dept.	Mapleton, Town of	Westbrook Public Services
Edgecomb Fire Dept.	MDOT - Region 2 and Fleet Services	Wilton, Town of
Fairfield, Town of	MDOT - Region 3	Windsor Volunteer Fire Dept.
Farmingdale Fire Dept.	MDOT - Region 4	Winslow, Town of
Farmington Police and Parks & Recreation	MDOT - Region 5	Winthrop Fire Dept.
Fort Fairfield, Town of	Mid-Maine Technical Center	York Water District
Fort Kent Fire & Rescue		
Greater Augusta Utilities District		

## **E. Outreach and Education**

In 2020, the Bureau hired an Outreach and Education Coordinator whose position performs work to enhance the Bureau's effectiveness by implementing strategic outreach initiatives related to workers' rights, employer education, and workplace health & safety. A focus for this position has been to develop contacts and strengthen relationships with community-based organizations that provide services to marginalized, often underserved populations. Through the development of these relationships with organizations like the Maine Immigrants' Rights Coalition and the Southern Maine Workers' Center, the Bureau has been able to provide additional outreach and education on workplace safety and health topics, as well as other labor laws, including Maine's Earned Paid Leave law. This new law provides workers with previously no paid time off with the opportunity to earn paid leave from work in the event of illness, injury, sudden necessity, or planned time off.

In addition, the Outreach and Education Division's Director/Maine Monitor Advocate provides workplace safety and health support by monitoring farmworker housing for compliance with OSHA 1910.142 Temporary Labor Housing Standards, as well as conducting pre-occupancy labor housing inspections for related H2A foreign labor certification applications. This position also provides useful health and safety information on the State Monitor Advocate's web page such as the Guide to a Healthy Back in both English and Spanish.