

COMPLIANCE AUDIT REPORT

STATE OF MAINE
WORKERS' COMPENSATION BOARD



ESIS, Inc.
Engagement Date: January 24, 2022
Issue Date: October 26, 2022

Office of Monitoring, Audit & Enforcement

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SUMMARY

ESIS is a third-party administrator (TPA) that handles Maine workers' compensation claims for several insurers and self-insured employers.

The Audit Division of the Maine Workers' Compensation Board (Board) examined twenty-nine (29) claim files where indemnity benefits were paid for the period under examination (2021) as well as thirty-five (35) medical payments for the period under examination (2021). The claim sample was drawn from a listing of all ESIS's 2021 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all ESIS's 2021 medical payments for those claims in the sample. In addition, due to questionable claims handling techniques identified early in the audit process, the examination was expanded to include three (3) claims outside the examination period (2021) as well as a sample of twenty-five (25) medical payments related to those claims. The three (3) claims are as follows:

- Cote, Jean DOI 10/25/20
- Holt, Scott DOI 5/4/17
- Tysinger, Christopher DOI 12/20/19

All thirty-two (32) claims were examined to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of benefit payments
- Accuracy of benefit payments

This audit was also expanded to include a review of issues raised in one "Complaint for Audit" (CFA) form. One other CFA had been filed with the Audit Division (prior to audit), but all issues raised by that document had been addressed and resolved by ESIS prior to our audit engagement. Therefore, that one (1) CFA was not included in this audit.

ESIS handles its Maine workers' compensation claims solely in Simsbury, Connecticut.

The audit work was conducted as a desk audit.

The compliance tables found on pages 22 through 26 of this report are representative of Board findings as of January 24, 2022. Since that time, the Audit Division has received additional information, missing form filings, form corrections, indemnity payments and adjustments. Based on this information, the Detailed Claims Information provided as an appendix of this report is representative of Board findings and updated form filings as of the issuance of this report.

Following is a discussion of the aforementioned compliance tables and of the steps taken since January 24, 2022 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Form filing**

- Title 39-A M.R.S.A. and the Board Rules and Regulations provide the requirements for reports to the Board:

<i>WCB-1, First Report of Occupational Injury or Disease</i>	<i>39-A M.R.S.A. Section 303, Rules & Regs, Ch 8 Section 13, Rules & Regs, Ch 3 Section 4</i>
<i>WCB-2, Wage Statement</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-2B, Fringe Benefits Worksheet</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-3, Memorandum of Payment (MOP)</i>	<i>Rules & Regs, Ch 1 Section 1.1, Rules & Regs, Ch 1 Section 1.3, 39-A M.R.S.A. Section 205(7), Rules & Regs, Ch 8 Section 12</i>
<i>WCB-4, Discontinuance or Modification of Compensation</i>	<i>Rules & Regs, Ch 8 Section 11, Rules & Regs, Ch 8 Section 12</i>
<i>WCB-4A, Consent Between Employer and Employee</i>	<i>Rules & Regs, Ch 8 Section 18</i>
<i>WCB-8, (21 Day) Certificate of Discontinuance or Reduction of Compensation</i>	<i>39-A M.R.S.A. Section 205(9)</i>
<i>WCB-9, Notice of Controversy (NOC)</i>	<i>Rules & Regs, Ch 1 Section 1.1, Rules & Regs, Ch 3 Section 4</i>
<i>WCB-11, Statement of Compensation Paid</i>	<i>Rules & Regs, Ch 8 Section 1, Rules & Regs, Ch 8 Section 12</i>

- Failure to file any Board form within established time frames is a violation of Title 39-A M.R.S.A. Section 360(1) (A) or (B).
- First Report of Occupational Injury or Disease (WCB-1):
 - Two (2) First Report of Occupational Injury or Disease forms were filed in accordance with the above requirements.
 - ESIS’s compliance rate for First Report of Occupational Injury or Disease filings is 6%, which is below the Board’s performance benchmark of 85%.
 - Thirty (30) First Report of Occupational Injury or Disease forms were filed late.
- Wage Statement (WCB-2) and Fringe Benefits Worksheet (WCB-2B):
 - Thirteen (13) Wage Statements and ten (10) Fringe Benefits Worksheets were filed in accordance with the above requirements.
 - Fifteen (15) Wage Statements and thirteen (13) Fringe Benefits Worksheets were filed late.
 - Four (4) Wage Statements and nine (9) Fringe Benefits Worksheets were required, but not filed.
 - Since January 24, 2022, ESIS submitted those four (4) Wage Statements and those nine (9) Fringe Benefits Worksheets.

- Memorandum of Payment (WCB-3 or WCB-4A) and Notice of Controversy (WCB-9):
 - Eleven (11) Memorandum of Payment forms and two (2) Notice of Controversy (“lost time”) forms were filed in accordance with the above requirements.
 - ESIS’s compliance rate for Memorandum of Payment filings is 33%, which is below the Board’s performance benchmark of 85%.
 - ESIS’s compliance rate for Notice of Controversy filings is 40%, which is below the Board’s performance benchmark of 90%.
 - Nineteen (19) Memorandum of Payment forms and three (3) Notice of Controversy (“lost time”) forms were filed late.
 - Three (3) Memorandum of Payment forms were required, but not filed.
 - Since January 24, 2022, ESIS submitted those three (3) Memorandum of Payment forms.
- Discontinuance or Modification of Compensation (WCB-4 or WCB-4A):
 - Six (6) Discontinuance or Modification of Compensation forms were filed in accordance with the above requirements.
 - Ten (10) Discontinuance or Modification of Compensation forms were filed late.
 - Sixteen (16) Discontinuance or Modification of Compensation forms were required, but not filed.
 - Since January 24, 2022, ESIS submitted those sixteen (16) Discontinuance or Modification of Compensation forms.
- (21 Day) Certificate of Discontinuance or Reduction of Compensation (WCB-8 or WCB-4A):
 - Three (3) (21 Day) Certificate of Discontinuance or Reduction of Compensation forms were filed in accordance with the above requirements.
 - One (1) (21 Day) Certificate of Discontinuance or Reduction of Compensation form was required, but not filed.
 - Since January 24, 2022, ESIS submitted one (1) Consent Between Employer and Employee form in lieu of a (21 Day) Certificate of Discontinuance or Reduction of Compensation.

- Statement of Compensation Paid (WCB-11):
 - Thirteen (13) Statement of Compensation Paid forms were filed in accordance with the above requirements.
 - Nineteen (19) Statement of Compensation Paid forms were required, but not filed.
 - Since January 24, 2022, ESIS submitted four (4) of those Statement of Compensation Paid forms.

◆ **Timeliness of benefit payments**

- Title 39-A M.R.S.A. Section 205(2) provides the time requirements for indemnity payments.
- When there is not an ongoing dispute, failure to pay weekly compensation benefits or accrued weekly benefits within 30 days after becoming due and payable is a violation of Title 39-A M.R.S.A. Section 205(2) and subject to penalty under Section 205(3).
- Initial Indemnity Payments:
 - Nine (9) initial indemnity payments were made timely and four (4) claims received “salary continuation” from their respective employers.
 - ESIS’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 38%, which is below the Board’s performance benchmark of 87%.
 - Twenty-one (21) initial indemnity payments were made late.
 - Seven (7) late initial indemnity payments were made later than 30 days after they became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
 - Five hundred twenty-seven (527) subsequent indemnity payments were made timely.
 - Eighty-three (83) subsequent indemnity payments were made late.
 - Six (6) late subsequent indemnity payments were made later than 30 days after they became due and payable in violation of Section 205(2). Of those six (6) late payments, five (5) are subject to penalty under Section 205(3) and one (1) the penalty was dismissed per a Consent Decree.
- Board Rules and Regulations Chapter 5 states in part, “The employer/insurer shall pay the health care provider's charge or the maximum allowable payment under this fee schedule, whichever is less, within 30 days of receipt of a bill unless the bill or previous bills from the same provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider’s bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider.”
 - Fifty (50) medical payments were made timely.
 - Ten (10) medical payments were made late.

- Title 39-A M.R.S.A. Section 324(1) provides the requirements for compensation payments per an approved agreement, order or decision. Board Rules and Regulations Chapter 8, Section 18.2 provides the requirements for compensation payments per a Consent Between Employer and Employee (WCB-4A).
- Two (2) provisional orders, one (1) mediation agreement and one (1) Consent Decree were paid timely.
- One (1) mediation agreement was paid late in violation of Section 324(1) and subject to penalty under Section 324(2).

◆ **Accuracy of indemnity payments**

- Title 39-A M.R.S.A. Section 102(4) and Board Rules and Regulations Chapter 1, Section 5 provide the requirements for calculating average weekly wages (AWWs). Title 39-A M.R.S.A. Section 102(1) and Board Rules and Regulations Chapter 8, Section 9 provides the requirements for determining weekly compensation rates (WCRs). Title 39-A M.R.S.A. Sections 212, 213, and 215 provide the requirements for compensation for total incapacity, partial incapacity, and death benefits.
- The accuracy of indemnity payments was reviewed for thirty-two (32) claims.
- Average Weekly Wage:
 - Twenty (20) AWWs were correct.
 - Twelve (12) AWWs were incorrect.
- Weekly Compensation Rate:
 - Nineteen (19) WCRs were correct.
 - Thirteen (13) WCRs were incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for three (3) claims.
 - The method used to calculate partial benefits was incorrect for four (4) claims.
- Amount Paid:
 - Three (3) claims were compensated correctly.
 - Twelve (12) claims were underpaid (\$15,385.95 aggregately).
 - Since January 24, 2022, ESIS paid the amounts due.
 - Seventeen (17) claims were overpaid (\$10,943.54 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$4,442.41 to injured workers.

◆ **Accuracy of medical payments**

- Title 39-A M.R.S.A. Section 209-A and Board Rules and Regulations Chapter 5 provide the fee setting requirements for medical and ancillary services and products rendered by individual health care practitioners and health care facilities.
- The accuracy of sixty (60) medical payments was reviewed among thirty-two (32) claims.
- Amount Paid:
 - Forty-two (42) medical payments sampled were correct.
 - Eighteen (18) medical payments sampled were incorrect.

◆ **Other significant issues**

- Box 22 (First Day Of Compensability After Waiting Period Is Met) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of the first compensable day that follows the completion of the 7-day waiting period. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 22 of the MOPs that were filed for eight (8) claims.
- Boxes 23a (Date of Incapacity) and 23b (Date Employer Notified) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of incapacity and date that the employer was notified of the incapacity. Note: the Date of Incapacity reported in Box 23a and the Date Employer Notified in Box 23b must equal the Date of Incapacity (DN56) and Date Employer Notified (DN281) reported in box 43 of the WCB-1, Employer's First Report of Occupational Injury or Disease (First Report). See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Boxes 23a and/or 23b of the MOPs and/or Boxes 43a and/or 43b of the FROIs that were filed for seven (7) claims.
- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date that the initial indemnity payment (for the incapacity addressed by the MOP) is sent to the employee. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 24 of the MOPs that were filed for two (2) claims.
- Box 19b (previous revision) or 21b (latest revision) (to (Return Date)) of the WCB-4, Discontinuance or Modification of Compensation must accurately reflect the date the incapacity ended. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 19b or 21b of the WCB-4, Discontinuance or Modification of Compensation forms filed for three (3) claims.
- Medical Treatment reported on the WCB-11, Statement of Compensation Paid form must not include expenses such as bill review and case management services. See the Board's Forms and Petitions Manual.
 - The auditor noted that several payments for medical bill review services and case management services are reported as Medical Treatment on the WCB-11.
- Incorrect "Weekly Compensation" and/or "Medical Treatment" amounts were reported on the "Final" WCB-11 Statement of Compensation Paid filed for three (3) claims.

◆ **Complaint for audit**

- 1) A “Complaint For Audit” (CFA) was filed 10/8/21 regarding Thomas Foley’s 9/1/82 injury and ESIS’s failure “to make payments to Employee since May 18, 2021”. In response to this CFA, the Office of Audit requested an indemnity payment history for calendar year 2021, though payments for the period 1/4/21 through 3/6/22 were provided by ESIS. Following is an outline of our finding and associated penalty pertaining to this issue:
 - The allegation stated in the CFA was confirmed. Except for a payment issued on 3/23/21 which covered a two-week period, ESIS had consistently made weekly total benefit payments to Mr. Foley of \$774.76 beginning 1/7/21 through 5/18/21, which included weeks ending 1/10/21 through 5/23/21. Nevertheless, although compensation was due seven (7) days later, on 5/25/21, no payment was made until 10/13/21 when ESIS paid total benefits for the period 5/24/21 through 10/17/21 of \$16,269.96 (147 days x (\$774.76/7)). This late payment is subject to penalty under Section 205(3).
 - Further review of payments made to Mr. Foley through 3/6/22 revealed an additional finding and penalty as follows:
 - Due to a COLA adjustment, Mr. Foley’s weekly compensation rate increased from \$774.76 to \$857.22 on July 1, 2021. However, total benefits paid beginning that date were made at an incorrect rate of \$854.86, resulting in an underpayment of \$62.64 through week ending 3/6/22. In response to this finding, ESIS subsequently paid this amount on 7/6/22.
 - Unfortunately, total benefit payments made to Mr. Foley after 10/13/21 continued to be issued late, resulting in one (1) payment through week ending 3/6/22 being made 40 days after the previous payment, which is subject to a penalty under Section 205(3).

PENALTIES

◆ Penalties payable to providers and/or injured employees

Title 39-A M.R.S.A. Section 205(3)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within thirty (30) days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over thirty (30) days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Ian Anderson vs. Superior Plus LP Date of Injury: 3/4/21 Date ER Notified of Incapacity: 3/12/21 Claim #1E01E010118195 Board #21028569	No NOC was filed, and the initial indemnity payment was made 4/29/21, which was 34 days after compensation became due and payable (3/26/21).	\$200.00
Jodie Bernard vs. Maxim Healthcare Services Date of Injury: 6/3/21 Date ER Notified of Incapacity: 6/6/21 Claim #1E01E010308275 Board #21021186	No NOC was filed, and the initial indemnity payment was made 9/17/21, which was 70 days after compensation became due and payable (7/9/21).	\$1,500.00
Neil Laverriere vs. Superior Plus LP Date of Injury: 2/25/21 Date ER Notified of Incapacity: 7/26/21 Claim #C498C4403531 Board #21017948	No NOC was filed, and the initial indemnity payment was made 10/29/21, which was 81 days after compensation became due and payable (8/9/21).	\$1,500.00
Paul Lebel vs. Superior Plus LP Date of Injury: 7/10/21 Date ER Notified of Incapacity: 7/11/21 Claim #1E01E010411884 Board #21022813	No NOC was filed, and the initial indemnity payment was made 11/26/21, which was 124 days after compensation became due and payable (7/25/21).	\$1,500.00
Liivia Malmgren vs. Trueblue, Inc. Date of Injury: 1/14/21 Date ER Notified of Incapacity: 1/14/21 Claim #7B894984385282B Board #21004226	No NOC was filed until 43 days after compensation became due and payable (1/28/21). The “mandatory payment” was made 3/11/21, which was 42 days after compensation became due and payable (1/28/21).	\$600.00*

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Elvina Roberts vs. Maxim Healthcare Services Date of Injury: 9/6/21 Date ER Notified of Incapacity: 9/18/21 Claim #C166C538823X Board #21021636	No NOC was filed, and the initial indemnity payment was made 12/15/21, which was 82 days after compensation became due and payable (9/24/21).	\$1,500.00
Darius White vs. Mastec, Inc. Date of Injury: 5/18/21 Date ER Notified of Incapacity: 5/23/21 Claim #1E01E010170918 Board #21020108	No NOC was filed, and the initial indemnity payment was made 8/19/21, which was 69 days after compensation became due and payable (6/11/21).	\$1,500.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$8,300.00

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Tiffany Allen vs. Maxim Healthcare Services Date of Injury: 3/4/21 Date ER Notified of Incapacity: 3/5/21 Claim #1E01E010120604 Board #21010568	The subsequent indemnity payment was made 5/13/21, which was 36 days after compensation became due and payable (4/7/21).	\$300.00
Gabriel Brown vs. Charter Combined Date of Injury: 2/27/21 Date ER Notified of Incapacity: 2/27/21 Claim #8F721663494161B Board #21014710	A subsequent indemnity payment was made 5/20/21, which was 38 days after compensation became due and payable (4/12/21).	\$400.00
Jean Cote vs. LA Management, LLC Date of Injury: 10/25/20 Date ER Notified of Incapacity: 11/6/20 Claim #C166C2842378 Board #20021529	A subsequent indemnity payment was made 4/30/21, which was 42 days after compensation became due and payable (3/19/21).	\$600.00
Thomas Foley (CFA) vs. The Rust Engineering Co. Date of Injury: 9/1/82 Date ER Notified of Incapacity: N/A Claim #C356C1150787 Board #82033550	A subsequent indemnity payment was made 10/13/21, which was 141 days after compensation became due and payable (5/25/21). A subsequent indemnity payment was made 2/9/22, which was 33 days after compensation became due and payable (1/7/22).	\$1,500.00
Scott Holt vs. Suburban Propane LP Date of Injury: 5/4/17 Date ER Notified of Incapacity: 5/5/17 Claim #C877C4727613 Board #17010004	A subsequent indemnity payment was made 10/23/17, which was 74 days after compensation became due and payable (8/10/17).	\$1,500.00

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
James Hood vs. Superior Plus LP Date of Injury: 4/15/21 Date ER Notified of Incapacity: 4/19/21 Claim #C166C3781206 Board #21009756	A subsequent indemnity payment was made 7/28/21, which was 44 days after compensation became due and payable (6/14/21).	\$700.00**
Frank Mason vs. Charter Combined Date of Injury: 7/17/21 Date ER Notified of Incapacity: 7/17/21 Claim #1E01E01044307X Board #21015870	A subsequent indemnity payment was made 9/23/21, which was 34 days after compensation became due and payable (8/20/21).	\$200.00
Total Penalties to Injured Employees for Delays of Subsequent Indemnity Payments		\$5,200.00

* Paid.

** Dismissed.

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Tiffany Allen vs. Maxim Healthcare Services Date of Injury: 3/4/21 Date ER Notified of Incapacity: 3/5/21 Claim #1E01E010120604 Board #21010568	A provisional WCR was used to pay benefits for the period 3/5/21 through 4/1/21. Payment of accrued benefits was made 9/12/22, which was 515 days after compensation became due and payable (4/15/21). The claimant’s benefits were improperly discontinued effective 5/6/21. Payment of accrued benefits was made 8/24/22, which was 461 days after compensation became due and payable (5/20/21).	\$1,500.00
Stephen Chapman vs. Superior Plus LP Date of Injury: 1/28/21 Date ER Notified of Incapacity: 3/23/21 Claim #C498C4389957 Board #21009296	The claimant’s benefits were improperly discontinued on 5/4/21. Payment of accrued benefits was made 7/22/22, which was 430 days after compensation became due and payable (5/18/21).	\$1,500.00
Angelo Cimaglia vs. Ferrellgas, Inc. Date of Injury: 9/17/21 Date ER Notified of Incapacity: 9/18/21 Claim #1E01E010767338 Board #21022202	A provisional payment was used to pay benefits for the period 10/17/21 through 10/23/21. Payment of accrued benefits was made 7/18/22, which was 254 days after compensation became due and payable (11/6/21).	\$1,500.00
Jean Cote vs. LA Management, LLC Date of Injury: 10/25/20 Date ER Notified of Incapacity: 11/6/20 Claim #C166C2842378 Board #20021529	The claimant’s benefits were improperly discontinued on 12/24/21. Payment of accrued benefits was made 7/21/22, which was 195 days after compensation became due and payable (1/7/22).	\$1,500.00

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Elaine Ecker vs. Panolam Industries International, Inc. Date of Injury: 5/4/21 Date ER Notified of Incapacity: 6/17/21 Claim #1E01E010344850 Board #21014712	The claimant was totally incapacitated from 7/13//21 through 7/16/21. Payment for that incapacity was made 7/18/22, which was 353 days after compensation became due and payable (7/30/21).	\$1,500.00
Jeffrey Goldberg vs. Charter Combined Date of Injury: 3/24/21 Date ER Notified of Incapacity: 11/19/21 Claim #1E01E010122826 Board #21025785	Benefits were not increased to the Maximum Benefit Level effective 7/1/21 until 7/18/22, which was 227 days after compensation became due and payable (12/3/21).	\$1,500.00
Scott Holt vs. Suburban Propane LP Date of Injury: 5/4/17 Date ER Notified of Incapacity: 5/5/17 Claim #C877C4727613 Board #17010004	A provisional payment was used to pay the period 5/5/17 through 5/21/17. Payment of accrued benefits was made 9/6/17, which was 94 days after compensation became due and payable (6/4/17). A provisional payment was used to pay the period 5/22/17 through 6/23/17. Payment of accrued benefits was made 10/11/17, which was 96 days after compensation became due and payable (7/7/17).	\$1,500.00
Neil Laverriere vs. Superior Plus LP Date of Injury: 2/25/21 Date ER Notified of Incapacity: 7/26/21 Claim #C498C4403531 Board #21017948	A provisional WCR was used to pay this claim. Payment of accrued benefits was made 7/18/22, which was 469 days after compensation became due and payable (4/5/21).	\$1,500.00
Paul Lebel vs. Superior Plus LP Date of Injury: 7/10/21 Date ER Notified of Incapacity: 7/11/21 Claim #1E01E010411884 Board #21022813	A provisional WCR was used to pay this claim. Payment of accrued benefits was made 7/22/22, which was 352 days after compensation became due and payable (8/4/21).	\$1,500.00
Darius White vs. Mastec, Inc. Date of Injury: 5/18/21 Date ER Notified of Incapacity: 5/23/21 Claim #1E01E010170918 Board #21020108	The claimant was totally incapacitated from 12/19/21 through 12/25/21. Payment for that incapacity was made 7/21/22, which was 194 days after compensation became due and payable (1/8/22).	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$15,000.00

◆ **Penalties payable to injured employees and the Workers' Compensation Board Administrative Fund**

Title 39-A M.R.S.A. Section 324(2)(A)

“Except as otherwise provided by Section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the Board may assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance.”

Violations subject to penalty under Section 324(2) were found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Gregory Bennett vs. Superior Plus LP Date of Injury: 1/14/21 Date ER Notified of Incapacity: 1/15/21 Claim #C166C3222824 Board #21002593	Incapacity benefits were paid 7/9/21, which was 14 days after the date of the corresponding mediation agreement signed (6/25/21). One or more medical bills were paid 7/12/21, which was 17 days after the date of the corresponding mediation agreement signed (6/25/21).	\$1,400.00
Total		\$1,400.00

◆ Penalties payable to the State General Fund

Title 39-A M.R.S.A. Section 359(2)

“In addition to any other penalty assessment permitted under this Act, the Board may assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The Board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the Board is exempt from the provisions of the Maine Administrative Procedure Act. The amount of any penalty assessed pursuant to this subsection must be directly related to the severity of the pattern of questionable claims-handling techniques or repeated unreasonably contested claims. All penalties collected pursuant to this subsection shall inure to the benefit of the General Fund. An insurance carrier’s payment of any penalty assessed under this section may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.”

- The Board may refer ESIS to the Abuse Investigation Unit to pursue penalties under Section 359(2) for the following reasons (including, but not limited to):
 - Failure to file or timely file forms with the Board
 - Failure to pay or timely pay benefits
 - Failure to pay benefits accurately

- **Penalty exposure: \$25,000.00**

Title 39-A M.R.S.A. Section 360(1)(A)

“The Board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act.”

Violations subject to penalty under Section 360(1)(A) were found on the following claims:

Employee	Date of Injury	Forms Not Filed	Penalty Exposure
	3/4/21	WCB-11, Statement of Compensation Paid	\$100.00
	2/27/21	WCB-11, Statement of Compensation Paid	\$100.00
	1/28/21	WCB-11, Statement of Compensation Paid	\$100.00
	10/25/20	WCB-11, Statement of Compensation Paid	\$100.00
	4/27/21	WCB-11, Statement of Compensation Paid	\$100.00
	5/4/17	WCB-11, Statement of Compensation Paid (3)	\$300.00
	4/7/21	WCB-11, Statement of Compensation Paid	\$100.00
	2/25/21	WCB-11, Statement of Compensation Paid	\$100.00
	7/10/21	WCB-11, Statement of Compensation Paid	\$100.00
	1/14/21	WCB-11, Statement of Compensation Paid	\$100.00
	3/8/21	WCB-11, Statement of Compensation Paid	\$100.00
	12/20/19	WCB-11, Statement of Compensation Paid	\$100.00
	5/18/21	WCB-11, Statement of Compensation Paid	\$100.00
TOTAL			\$1,500.00

Title 39-A M.R.S.A. Section 360(1)(B)

“The Board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

Violations subject to penalty under Section 360(1)(B) were found on the following claims:

Employee	Date of Injury	Forms Filed Late	Penalty Exposure
	3/4/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00*
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
	3/4/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation (2)	\$200.00
	8/10/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
	1/14/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-3, Memorandum of Payment (2)	\$200.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
		WCB-11, Statement of Compensation Paid	\$100.00
	6/3/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
		WCB-11, Statement of Compensation Paid	\$100.00
	1/13/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	2/27/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	1/28/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation (2)	\$200.00

Employee	Date of Injury	Forms Filed Late	Penalty Exposure
	9/17/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
	10/25/20	WCB-4, Discontinuance or Modification of Compensation	\$100.00
		WCB-11, Statement of Compensation Paid	\$100.00
	5/4/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-9, Notice of Controversy	\$100.00
	11/9/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
	3/24/21	WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
	8/12/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
	4/27/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-9, Notice of Controversy	\$100.00
	5/4/17	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-4, Discontinuance or Modification of Compensation (4)	\$400.00
	4/15/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-11, Statement of Compensation Paid	\$100.00
	4/7/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-3, Memorandum of Payment	\$100.00
	2/25/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00

Employee	Date of Injury	Forms Filed Late	Penalty Exposure
	7/10/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	1/14/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-9, Notice of Controversy	\$100.00
	7/17/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
	3/8/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	11/15/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-4, Discontinuance or Modification of Compensation (2)	\$200.00
	5/4/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	9/6/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	1/7/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	12/20/19	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00

Employee	Date of Injury	Forms Filed Late	Penalty Exposure
	4/7/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	11/21/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation (3)	\$300.00
	5/18/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
	12/10/21	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
TOTAL			\$12,600.00

* Paid AIU.

COMPLIANCE TABLES

◆ Form Filing

A. First Report of Occupational Injury or Disease (WCB-1)

		2021*	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	6%
Late		30	94%
Total		32	100%

B. Wage Statement (WCB-2)

		2021*	
		Number	Percent
Received at the Board:			
Filed	Compliant	13	41%
Late		15	47%
Not Filed		4	12%
Total		32	100%

C. Fringe Benefits Worksheet (WCB-2B)

		2021*	
		Number	Percent
Received at the Board:			
Filed	Compliant	10	31%
Late		13	41%
Not Filed		9	28%
Total		32	100%

D. Memorandum of Payment (WCB-3 or WCB-4A)

		2021*	
		Number	Percent
Received at the Board:			
Filed	Compliant	11	33%
Late		19	58%
Not Filed		3	9%
Total		33	100%

E. Discontinuance or Modification of Compensation (WCB-4 or WCB-4A)

		2021*	
		Number	Percent
Received at the Board:			
Filed	Compliant	6	19%
Late		10	31%
Not Filed		16	50%
Total		<u>32</u>	<u>100%</u>

F. Certificate of Discontinuance or Reduction of Compensation (WCB-8 or WCB-4A)

		2021*	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	75%
Not Filed		1	25%
Total		<u>4</u>	<u>100%</u>

G. Notice of Controversy (WCB-9)

		2021*	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	40%
Late		3	60%
Total		<u>5</u>	<u>100%</u>

H. Statement of Compensation Paid (WCB-11)

		2021*	
		Number	Percent
Received at the Board:			
Filed	Compliant	13	41%
Not Filed		19	59%
Total		<u>32</u>	<u>100%</u>

◆ **Timeliness of Benefit Payments**

I. Initial Payment of Indemnity Benefits

			2021*	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	13	38%
15-44	Days		14	41%
45+	Days		7	21%
Total			34	100%

J. Subsequent Payment of Indemnity Benefits

			2021*	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	527	86%
8-37	Days		77	13%
38+	Days		6	1%
Total			610	100%

K. Medical Payments

			2021*	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	50	83%
31+	Days		10	17%
Total			60	100%

L. Payment of Approved Agreements, Orders, Decisions

			2021*	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	4	80%
10 +	Days		1	20%
Total			5	100%

◆ Accuracy of Indemnity Payments

M. Average Weekly Wage

		2021*	
		Number	Percent
Calculated:			
Correct	Compliant	20	63%
Incorrect		12	37%
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Total		32	100%
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N. Weekly Compensation Rate

		2021*	
		Number	Percent
Calculated:			
Correct	Compliant	19	59%
Incorrect		13	41%
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Total		32	100%
		<hr/>	

O. Partial Benefits

		2021*	
		Number	Percent
Calculated:			
Correct	Compliant	3	43%
Incorrect		4	57%
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Total		7	100%
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P. Amount Paid

		2021*	
		Number	Percent
Calculated:			
Correct	Compliant	3	9%
Underpaid		12	38%
Overpaid		17	53%
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Total		32	100%
		<hr/>	

◆ **Accuracy of Medical Payments**

Q. Amount Paid

		2021*	
		Number	Percent
Calculated:			
Correct	Compliant	42	70%
Incorrect		18	30%
<hr/>		<hr/>	
Total		60	100%

***Includes three (3) claims with prior dates of injury**