

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**Eastern Alliance Insurance Group
Engagement Date: July 20, 2022
Issue Date: May 25, 2023**

Office of Monitoring, Audit & Enforcement

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SUMMARY

Eastern Alliance Insurance Group (Eastern) provides a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined twenty-eight (28) claim files where indemnity benefits were paid for the period under examination (2021) as well as fifty-nine (59) medical payments for the period under examination (2021) to determine compliance with statutory and regulatory requirements in the following areas:

- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of Eastern's 2021 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Eastern's 2021 medical payments for those claims in the sample.

Eastern handles its Maine workers' compensation claims primarily in Auburn, Maine. Eastern also utilizes the services of Lori Wharff, Becky Leupold and Tracey Gould as its claims agents within the State.

The audit work was conducted as a desk audit.

The compliance tables found on pages 10 through 12 of this report are representative of Board findings as of (July 20, 2022). Since that time, the Audit Division has received additional information, 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 as of the audit cutoff date of July 20, 2022.

Following is a discussion of the aforementioned compliance tables and of the steps taken since July 20, 2022, to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Timeliness of benefit payments**

- Title 39-A M.R.S.A. Section 205(2) provides the time requirements for indemnity payments.
- When there is not an ongoing dispute, failure to pay weekly compensation benefits or accrued weekly benefits within 30 days after becoming due and payable is a violation of Title 39-A M.R.S.A. Section 205(2) and subject to penalty under Section 205(3).
- Initial Indemnity Payments:
 - Twenty (20) initial indemnity payments were made timely and one (1) claim received “salary continuation” from its respective employers.
 - Eastern’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 75%, which is below the Board’s performance benchmark of 87%.
 - Seven (7) initial indemnity payments were made late.
 - One (1) late initial indemnity payment was made later than 30 days after it became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
 - Three hundred forty-two (342) subsequent indemnity payments were made timely.
 - Twenty-three (23) subsequent indemnity payments were made late.
 - One (1) late subsequent indemnity payment was made later than 30 days after it became due and payable in violation of Section 205(2) and subject to penalty under Section 205(3).
- Board Rules and Regulations Chapter 5 states in part, “The employer/insurer shall pay the health care provider's charge or the maximum allowable payment under this fee schedule, whichever is less, within 30 days of receipt of a bill unless the bill or previous bills from the same provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider’s bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider.”
 - Fifty-six (56) medical bills were paid timely.
 - Three (3) medical bills were paid late.
- Title 39-A M.R.S.A. Section 324(1) provides the requirements for compensation payments per an approved agreement, order or decision. Board Rules and Regulations Chapter 8, Section 18.2 provides the requirements for compensation payments per a Consent Between Employer and Employee (WCB-4A).
 - One Consent Decree (1) and one (1) mediation agreement were paid timely.

◆ **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 twenty-eight (28) claims.
- Average Weekly Wage:
 - Twenty-eight (28) AWWs were correct.
- Weekly Compensation Rate:
 - Twenty-six (26) WCRs were correct.
 - Two (2) WCRs were incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for nine (9) claims.
- Amount Paid:
 - Fifteen (15) claims were compensated correctly.
 - Four (4) claims were underpaid (\$943.55 aggregately).
 - Since July 20, 2022, Eastern has paid all of the amounts due.
 - Eight (8) claims were overpaid (\$2,520.51 aggregately).
 - Collectively, the aforementioned errors resulted in a net overpayment of \$1,576.96 to injured workers.

In response to notice of these problem areas, Eastern has taken steps to improve future compliance by providing additional staff training regarding those actions necessary to ensure accurate payments.

◆ **Accuracy of medical payments**

- Title 39-A M.R.S.A. Section 209-A and Board Rules and Regulations Chapter 5 provide the fee setting requirements for medical and ancillary services and products rendered by individual health care practitioners and health care facilities.
- The accuracy of fifty-nine (59) medical payments was reviewed among nineteen (19) claims.
- Amount Paid:
 - Fifty-nine (59) medical payments sampled were correct.

◆ **Other significant issues**

- Box 22 (First Day Of Compensability After Waiting Period Is Met) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of the first compensable day that follows the completion of the 7-day waiting period. See the Board's Forms and Petitions Manual.
 - An incorrect date was reported in Box 22 of the MOP that was filed for one (1) claim.
- Boxes 23a (Date of Incapacity) and 23b (Date Employer Notified) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of incapacity and date that the employer was notified of the incapacity. Note: the Date of Incapacity reported in Box 23a and the Date Employer Notified in Box 23b must equal the Date of Incapacity (DN56) and Date Employer Notified (DN281) reported in box 43 of the WCB-1, Employer's First Report of Occupational Injury or Disease (First Report). See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Boxes 23a and/or 23b of the MOPs that were filed for two (2) claims.
- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date that the initial indemnity payment (for the incapacity addressed by the MOP) is sent to the employee. See the Board's Forms and Petitions Manual.
 - An incorrect date was reported in Box 24 of the MOP that was filed for one (1) claim.
- Section 213 provides the requirements for partial incapacity benefits. Partial benefits must be calculated at a rate of 2/3 of the difference between the employee's pre-injury (after-tax) AWW and their post-injury (after-tax) weekly (based on payroll, i.e. Saturday through Friday) actual wages (not based on M-1). See Board Rules and Regulations Chapter 8, Section 8.
- It appears that post-injury wages were not reviewed to assess a potential obligation to pay partial benefits when one (1) employee returned to work on "modified duty".

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), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Gerald Wright vs. Levant Landscaping Construction Date of Injury: 9/1/21 Date ER Notified of Incapacity: 9/3/21 Claim # EAI21W10889 Board # 21019422	No NOC was filed, and the initial indemnity payment was made 12/23/21, which was 92 days after compensation became due and payable (10/6/21).	\$1,500.00*
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$1,500.00

*Paid.

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Monique Reid vs. Anthony's Food Shop Inc. Date of Injury: 7/22/21 Date ER Notified of Incapacity: 7/23/21 Claim # EAI21W09013 Board # 21015846	The subsequent indemnity payment was made 9/29/21, which was 50 days after the previous indemnity payment (8/10/21).	\$300.00*
Total Penalties to Injured Employees for Delays of Subsequent Indemnity Payments		\$300.00

* Paid.

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Nicholas Parent vs. GR Parent Inc. Date of Injury: 4/16/21 Date ER Notified of Incapacity: 5/10/21 Claim # EAI21W05271 Board # 21009897	Benefits were not increased to the Maximum Benefit Level effective 7/1/21 until 2/21/23, which was 600 days after compensation became due and payable.	\$1,500.00*
Jordan Valliere vs. Protection Professionals, Inc. Date of Injury: 9/2/21 Date ER Notified of Incapacity: 9/7/21 Claim # EAI21W10887 Board # 21019421	The claimant’s benefits were improperly discontinued on 10/3/21. Payment of accrued benefits was made 2/23/22, which was 500 days after compensation became due and payable.	\$1,500.00*
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$3,000.00

* Paid.

♦ **Penalties payable to the State General Fund**

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

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

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 359(2) and/or 360(2), Eastern must take corrective measures to address the following inadequacies:

- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

Title 39-A M.R.S.A. Section 360(2)

“The Board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The Board may also require that person to repay any compensation received through a violation of this Act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 360(2) and/or 359(2), Eastern must take corrective measures to address the following inadequacies:

- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

COMPLIANCE TABLES

Timeliness of Benefit Payments

A. Initial Payment of Indemnity Benefits

			2021	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	21	75%
15-44	Days		6	21%
45+	Days		1	4%
Total			28	100%

B. Subsequent Payment of Indemnity Benefits

			2021	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	342	93%
8-37	Days		22	6%
38+	Days		1	1%
Total			365	100%

C. Medical Payments

			2021	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	56	95%
31+	Days		3	5%
Total			59	100%

D. Payment of Approved Agreements, Orders, Decisions

			2021	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	2	100%
Total			2	100%

◆ **Accuracy of Indemnity Payments**

E. Average Weekly Wage

		2021	
		Number	Percent
Calculated:			
Correct	Compliant	28	100%
Total		28	100%

F. Weekly Compensation Rate

		2021	
		Number	Percent
Calculated:			
Correct	Compliant	26	93%
Incorrect		2	7%
Total		28	100%

G. Partial Benefits

		2021	
		Number	Percent
Calculated:			
Correct	Compliant	8	100%
Total		8	100%

H. Amount Paid

		2021	
		Number	Percent
Calculated:			
Correct	Compliant	15	54%
Underpaid		4	14%
Overpaid		9	32%
Total		28	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2021	
		Number	Percent
Calculated:			
Correct	Compliant	59	100%
Total		59	100%