

COMPLIANCE AUDIT REPORT

STATE OF MAINE WORKERS' COMPENSATION BOARD



Walmart Claims Services, Inc.
Engagement Date: March 28, 2023
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Office of Monitoring, Audit & Enforcement

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CONTENTS

SUMMARY	1
♦ Timeliness of benefit payments	2
♦ Accuracy of indemnity payments.....	4
♦ Accuracy of medical payments.....	5
♦ Other significant issues	6
♦ PENALTIES	7
♦ Penalties payable to providers and/or injured employees	7
<u>Title 39-A M.R.S.A. Section 205(3)</u>	7
♦ Penalties payable to injured employees and the Workers' Compensation Board	
Administrative Fund	10
<u>Title 39-A M.R.S.A. Section 324(2)(A)</u>	10
♦ Penalties payable to the State General Fund	11
<u>Title 39-A M.R.S.A. Section 359(2)</u>	11
<u>Title 39-A M.R.S.A. Section 360(2)</u>	11
COMPLIANCE TABLES	12
Timeliness of Benefit Payments.....	12
A. Initial Payment of Indemnity Benefits.....	12
B. Subsequent Payment of Indemnity Benefits	12
C. Medical Payments.....	12
D. Payment of Approved Agreements, Orders, Decisions	12
♦ Accuracy of Indemnity Payments	13
E. Average Weekly Wage	13
F. Weekly Compensation Rate	13
G. Partial Benefits	13
H. Amount Paid	13
♦ Accuracy of Medical Payments	14
I. Amount Paid	14

SUMMARY

Walmart Claims Services, Inc. (Walmart) is a self-insured, self-administered Maine employer.

The Audit Division of the Maine Workers' Compensation Board (Board) examined thirty-one (31) claim files where indemnity benefits were paid for the period under examination (2020-2021) as well as fifty-nine (59) medical payments for the period under examination (2020-2021) 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 Walmart's 2020-2021 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Walmart's 2020-2021 medical payments for those claims in the sample.

Walmart handles its Maine workers' compensation claims primarily in Bentonville, Arkansas.

The audit work was conducted as a desk audit.

The compliance tables found on pages 12 through 14 of this report are representative of Board findings as of March 28, 2023. 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 as of the issuance of this report.

Following is a discussion of the aforementioned compliance tables and of the steps taken since March 28, 2023 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-four (24) initial indemnity payments were made timely and one (1) claim received “salary continuation” from their respective employer.
 - Walmart’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 78%, which is below the Board’s performance benchmark of 87%.
 - Seven (7) initial indemnity payments were made late.
 - Two (2) late initial indemnity payments were made later than 30 days after they became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
 - Three hundred sixty-nine (369) subsequent indemnity payments were made timely.
 - Thirty (30) subsequent indemnity payments were made late.
- Board Rules and Regulations Chapter 5 states in part, “The employer/insurer shall pay the health care provider’s charge or the maximum allowable payment under this fee schedule, whichever is less, within 30 days of receipt of a bill unless the bill or previous bills from the same provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider’s bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider.”
 - Fifty-eight (58) medical payments were made timely.
 - One (1) medical payment was 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).
 - Four (4) Lump Sum Settlements were paid timely.
 - Two (2) Lump Sum Settlements were paid late in violation of Section 324(1) and subject to penalty under Section 324(2).

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

◆ **Accuracy of indemnity payments**

- Title 39-A M.R.S.A. Section 102(4) and Board Rules and Regulations Chapter 1, Section 5 provide the requirements for calculating average weekly wages (AWWs). Title 39-A M.R.S.A. Section 102(1) and Board Rules and Regulations Chapter 8, Section 9 provides the requirements for determining weekly compensation rates (WCRs). Title 39-A M.R.S.A. Sections 212, 213, and 215 provide the requirements for compensation for total incapacity, partial incapacity, and death benefits.
- The accuracy of indemnity payments was reviewed for thirty-one (31) claims.
- Average Weekly Wage:
 - Thirty (30) AWWs were correct.
 - One (1) AWW was incorrect.
- Weekly Compensation Rate:
 - Thirty (30) WCRs were correct.
 - One (1) WCR was incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for four (4) claims.
 - The method used to calculate partial benefits was incorrect for six (6) claims.
- Amount Paid:
 - Nine (9) claims were compensated correctly.
 - Nineteen (19) claims were underpaid (\$15,109.96 aggregately).
 - Since March 28, 2023, Walmart has paid \$264.55 of the amounts due.
 - Three (3) claims were overpaid (\$585.15 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$14,260.26 to injured workers.

In response to notice of these problem areas, Walmart will take 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 twenty-one (21) claims.
- Amount Paid:
 - Fifty-eight (58) medical payments sampled were correct.
 - One (1) medical payment sampled was 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 eleven (11) 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 that were filed for seventeen (17) claims.
- Box 20a (Current Incapacity) and 20b (Date Employer Notified) of the WCB-9, Notice of Controversy (NOC) must accurately reflect the first qualifying day of disability in the current period of disability being denied and the date employer notified of such, respectively. If the date of the Current Incapacity is the same as the Initial Incapacity, this should be left blank. See the Board's Forms and Petitions Manual.
 - Incorrect dates and/or misleading information were reported in Box 20a and/or 20b of the NOCs that were filed for thirteen (13) claims.
- 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 ten (10) employees 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), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
James Howard vs. Walmart Associates, Inc. Date of Injury: 10/28/2020 Date ER Notified of Incapacity: 10/29/20 Claim # 9380102 Board # 20020145	No NOC was filed, and the initial indemnity payment was made 1/29/21, which was 57 days after compensation became due and payable (12/03/20).	\$1,500.00
Starr Osgood vs. Walmart Associates, Inc. Date of Injury: 10/2/2022 Date ER Notified of Incapacity: 10/4/22 Claim # C2742642 Board # 2202251	No NOC was filed until 114 days after compensation became due and payable (10/18/22). The “mandatory payment” was made 7/03/25, which was 989 days after compensation became due and payable (10/18/22).	\$1,500.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$3,000.00

** This claim has been settled by Lump Sum and the Audit Division is not pursuing penalties (on behalf of the corresponding employee) arising from the violation cited.

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Norma Cyr vs. Walmart Associates, Inc. Date of Injury: 9/16/2020 Date ER Notified of Incapacity: 9/17/20 Claim # C0695666 Board # 20017383	The claimant was totally incapacitated from 9/17/20 through 11/6/20 (receiving SalCon) payment for that incapacity has not yet been made.	\$1,500.00**
Maureen Cavanagh vs. Walmart Associates, Inc. Date of Injury: 8/10/2021 Date ER Notified of Incapacity: 8/12/21 Claim # 9704432 Board # 21017209	Payment for the 7-day waiting period was made 7/25/25, which was 1,414 days after compensation became due and payable (9/10/21).	\$1,500.00
Colleen Duprey vs. Walmart Associates, Inc. Date of Injury: 9/4/2020 Date ER Notified of Incapacity: 9/7/20 Claim # C0688015 Board # 20016612	The claimant was partially incapacitated from 11/7/20 – 11/19/20. Payment for that incapacity was made 3/7/25, which was 1,573 days after compensation became due and payable (11/15/20).	\$1,500.00
Matthew Frye vs. Walmart Associates, Inc. Date of Injury: 2/10/21 Date ER Notified of Incapacity: 2/12/21 Claim # 9515231 Board # 21004400	The claimant’s benefits were improperly discontinued effective 3/8/21. Payment of accrued benefits was made 7/28/25, which was 1,589 days after compensation became due and payable. (3/22/21)	\$1,500.00
Marilyn Hulseberg vs. Walmart Associates, Inc. Date of Injury: 5/5/2020 Date ER Notified of Incapacity: Claim # 9176253 Board # 20016780	The claimant was partially incapacitated from 5/5/20 through 11/28/21. Payment of accrued benefits has not yet been made.	\$1,500.00**
James Howard vs. Walmart Associates, Inc. Date of Injury: 10/28/2020 Date ER Notified of Incapacity: 10/29/20 Claim # 9380102 Board # 20020145	Payment for the 7-day waiting period was made 7/28/25, which was 1,697 days after compensation became due and payable (12/04/20).	\$1,500.00
Cristian Morcillo-Carrasco vs. Walmart Associates, Inc. Date of Injury: 6/8/2020 Date ER Notified of Incapacity: 6/10/20 Claim # 9212752 Board # 20013516	Payment for part of the 7-day waiting period was made 7/28/25, which was 1,816 days after compensation became due and payable (8/07/20).	\$1,500.00
Eric Olson vs. Walmart Associates, Inc. Date of Injury: 9/15/21 Date ER Notified of Incapacity: 9/21/21 Claim # 9747030 Board # 21021234	Payment for part of the 7-day waiting period was made 3/7/25, which was 1,246 days after compensation became due and payable (10/08/21).	\$1,500.00

Landon Richendollar vs. Walmart Associates, Inc. Date of Injury: 8/4/2021 Date ER Notified of Incapacity: 8/6/21 Claim # 9699024 Board # 21016789	The claimant's benefits were improperly discontinued effective 9/2/21. Payment of accrued benefits was made 7/28/25, which was 1,411 days after compensation became due and payable (9/16/21).	\$1,500.00
Emily Rowe vs. Walmart Associates, Inc. Date of Injury: 4/11/2021 Date ER Notified of Incapacity: 4/14/21 Claim # 9577465 Board # 21008236	Payment for part of the 7-day waiting period was made 7/28/25, which was 1,543 days after compensation became due and payable (5/07/21).	\$1,500.00
Darlene Sawyer vs. Walmart Associates, Inc. Date of Injury: 2/27/2021 Date ER Notified of Incapacity: 3/2/21 Claim # 9530449 Board # 21004723	The claimant's benefits were improperly discontinued effective 4/12/21. Payment of accrued benefits has not yet been made.	\$1,500.00**
Janette Wright vs. Walmart Associates, Inc. Date of Injury: 6/29/2020 Date ER Notified of Incapacity: 6/30/20 Claim # 9237519 Board # 20011943	Payment for the 7-day waiting period was made 7/28/25, which was 1,837 days after compensation became due and payable (7/17/20).	\$1,500.00
Total Penalties to Injured Employees for Delays of "Other" Indemnity Payments		\$18,000.00

** This claim has been settled by Lump Sum and the Audit Division is not pursuing penalties (on behalf of the corresponding employee) arising from the violation cited.

**♦ 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 claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Norma Cyr vs. Walmart Associates, Inc. Date of Injury: 9/16/2020 Date ER Notified of Incapacity: 9/17/20 Claim # 9333912 Board # 20017383	Benefits were paid 11/21/22, which was 26 days after the date the corresponding Lump Sum Settlement was signed (10/26/22).	\$3,200.00
Jonathan Hunnewell vs. Walmart Associates, Inc. Date of Injury: 6/27/2020 Date ER Notified of Incapacity: 6/28/2020 Claim # C0637872 Board # 20011942	Benefits were paid 12/28/20, which was 14 days after the date of the corresponding Lump Sum Settlement was signed (12/14/20).	\$800.00
Total		\$4,000.00

◆ 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 must be deposited to 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 Walmart to the Abuse Investigation Unit to pursue penalties under Section 359(2) for the following reasons (including, but not limited to):
 - Failure to pay or timely pay benefits
 - Failure to pay benefits accurately
 - Unreasonable NOCs
- **Penalty exposure: \$25,000.00**

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.”

- The Board may refer Walmart to the Abuse Investigation Unit to pursue penalties under Act §360(2) for the following reasons (including, but not limited to):
 - Failure to pay or timely pay benefits
 - Failure to pay benefits accurately
 - Unreasonable NOCs
 - Failure to address compliance issues outlined in previous audit(s)
- **Penalty exposure: \$10,000.00**

COMPLIANCE TABLES

Timeliness of Benefit Payments

A. Initial Payment of Indemnity Benefits

			2020-2021	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	25	78%
15-44	Days		5	16%
45+	Days		2	6%
Total			32	100%

B. Subsequent Payment of Indemnity Benefits

			2020-2021	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	369	92%
8-37	Days		30	8%
Total			399	100%

C. Medical Payments

			2020-2021	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	58	98%
31+	Days		1	2%
Total			59	100%

D. Payment of Approved Agreements, Orders, Decisions

			2020-2021	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	4	67%
10 +	Days		2	33%
Total			6	100%

◆ **Accuracy of Indemnity Payments**

E. Average Weekly Wage

		2020-2021	
		Number	Percent
Calculated:			
Correct	Compliant	30	97%
Incorrect		1	3%
Total		31	100%

F. Weekly Compensation Rate

		2020-2021	
		Number	Percent
Calculated:			
Correct	Compliant	30	97%
Incorrect		1	3%
Total		31	100%

G. Partial Benefits

		2020-2021	
		Number	Percent
Calculated:			
Correct	Compliant	4	40%
Incorrect		6	60%
Total		10	100%

H. Amount Paid

		2020-2021	
		Number	Percent
Calculated:			
Correct	Compliant	9	29%
Underpaid		19	61%
Overpaid		3	10%
Total		31	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2020-2021	
		Number	Percent
Calculated:			
Correct	Compliant	58	98%
Incorrect		1	2%
Total		59	100%