



# **Oversight of Workers' Compensation**

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**Minnesota's workers' compensation system works well for many injured workers; but for some, the system fails to achieve timely medical recovery and return to work.**

## **Major Findings:**

- The number of workers' compensation claims filed in Minnesota has been going down.
- The number of insurer errors identified by Department of Labor and Industry (DLI) auditors has been increasing, including about \$3 million a year in underpaid benefits.
- Following a DLI enforcement initiative, insurers denied claims less frequently after 2005. But benefits were eventually paid in a large portion of those that were denied, raising concerns that some insurers still improperly avoided liability.
- Shortcomings in investigative and staff resources have undercut DLI's ability to enforce laws mandating workers' compensation coverage.
- DLI does an inadequate job tracking reimbursements from uninsured employers after the state has paid benefits on their behalf.
- Most injured workers surveyed had positive experiences with workers' compensation. But the share of claims in which workers and insurers dispute benefits has been rising.
- The state has made little progress reducing the need for workers' compensation hearings.
- Minnesota's dispute resolution process is overly complex, and many workers who used it found it frustrating.
- Minnesota's union construction industry has an alternate dispute resolution process that is simpler and has lower benefit costs.
- In some cases, when workers accept voluntary agreements to end their claims, the terms of the agreements may not be in their best interests.

## **Key Recommendations:**

- The Legislature should establish an ombudsperson for workers' compensation.
- DLI should do more to monitor whether insurers' denials of liability are appropriate.
- DLI should improve its process for obtaining reimbursements from employers for which the state has paid benefits.
- DLI should continue efforts to streamline the dispute resolution process.
- DLI should track outcomes for workers who have settled claims and adjust, as needed, how such agreements are approved.
- DLI and the Legislature should improve the workers' compensation information system.

## **Insurers have been making more errors when processing claims.**

### **Report Summary**

Workers' compensation is an insurance program that provides benefits to workers who suffer a work-related injury or illness. A compensable injury can be any condition that is caused, aggravated, or accelerated by employment activities. Injured workers are automatically eligible to receive reimbursement for medical and rehabilitation expenses, as well as indemnity payments for lost wages.

Private sector employers, insurers, and claim administration companies bear much of the responsibility for administering workers' compensation. The Minnesota Department of Labor and Industry (DLI) oversees the workers' compensation system.

#### **The number of workers' compensation claims filed in Minnesota has declined.**

From 1998 to 2000, Minnesota workers filed about 168,000 workers' compensation claims per year. The number of claims filed decreased each year through 2007, when workers filed about 120,000 claims. In 2007, insurers spent about \$950 million on all benefits.

#### **Insurers have denied claims less frequently since 2005.**

In late 2005, DLI staff began reviewing all instances in which insurers denied liability when a claim was first filed. They assessed whether each insurer reported a legal basis for denial and provided specific facts to support its judgment. The increased enforcement appears to have had a positive impact. After reaching a high of about 17 percent in 2004, the rate at which insurers denied primary liability declined to 12 percent in 2007.

#### **Benefits were eventually paid in a large portion of denied claims, raising concerns that insurers improperly avoided liability.**

Eventual payment of benefits on claims that were initially denied could be due to

a variety of reasons, including that the insurer chose to improperly deny the claim or failed to conduct a good-faith investigation when the claim was first made. For injuries in 2006, about 25 percent of claims denied within 14 days of the injury (the time period allowed to determine liability) had been paid as of July 2008. This percentage is large enough to merit further investigation.

If questions over a denied claim are not promptly resolved, the affected worker can register a dispute with the insurer and request assistance through the state's dispute resolution process.

#### **DLI auditors have identified an increasing number of insurer errors, including about \$3 million a year in underpaid benefits.**

The number of errors DLI found during audits has increased in recent years. Errors were most often related to the accuracy of permanent partial disability payments or the number of weeks of benefits that were to be paid. DLI audits identified more than \$3 million in underpaid benefits in each of the past five fiscal years. This is less than 1 percent of roughly \$470 million in annual indemnity benefits.

About three-fourths of all penalties DLI assessed in 2007 were against insurers that did not provide requested information within 30 days or failed to file a required form. From 2003 to 2007, the number of penalties assessed ranged from a low of 340 in 2004 to a high of 655 in 2006.

#### **Shortcomings in investigative and staff resources have undercut DLI's ability to enforce laws mandating workers' compensation coverage.**

DLI identifies employers that fail to carry workers' compensation insurance from three primary sources: claims by one of their employees, tips, and lists of cancelled policies. None of the sources systematically alert DLI to employers that never had workers' compensation insurance in the first place. DLI has

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**Employers that fail to obtain workers' compensation insurance need to be held more accountable.**

made limited use of automated data analysis techniques to identify noncompliant employers. For example, DLI does not use the state's database of employers registered in the unemployment system to find those that should also hold a workers' compensation policy but do not. Lack of a commonly used employer identifier is a key barrier.

The number of DLI investigators enforcing mandatory coverage laws declined from 6.5 investigators in 2000 to 3.5 in 2008. This created a large backlog of cases. DLI often did not investigate employers with lapsed policies until two years after policy cancellation.

**DLI does an inadequate job tracking reimbursements from uninsured employers for benefits paid on their behalf.**

If an injured worker's employer is uninsured, DLI pays benefits from the Special Compensation Fund. (Its revenues come from an assessment on insurers and self-insured employers.) State law then requires DLI to recover the benefits paid plus a penalty from the uninsured employer.

DLI's reimbursement database contains billing records for fewer than half the cases in which it paid benefits between 1998 and 2007. DLI staff assert that the department did not always create a billing record when an employer paid its reimbursement in a lump sum. They could not estimate how often this happened. Among claims with existing billing records, the settlement amount rarely equaled the 165 percent provided for in law. So far, DLI has recovered roughly \$2 million from these employers. This constitutes 19 percent of the total settlement amounts the employers agreed to or were ordered to pay.

**The proportion of claims in which workers and insurers have disputes over benefits has been rising.**

The percentage of filed indemnity claims with disputes climbed from 15 to 19 percent between 1997 and 2007. Disputes can involve not only denials of liability, but conflicts over any aspect of benefits due once the claim has been accepted. The number of reported disputes between workers and insurers over allowable medical treatment doubled from 1997 to 2007.

**Most injured workers had positive opinions about workers' compensation, but a sizeable number had negative experiences.**

Most claimants we surveyed had positive opinions about their workers' compensation experience. About two-thirds of claimants thought they were treated fairly by their employers' insurance company, and 74 percent agreed that they had no trouble getting the medical treatment they needed.

Nevertheless, a sizeable number of respondents had negative experiences, particularly those who had disputes over their claims. Among those with disputes who expressed an opinion, 89 percent agreed that the dispute resolution system was too complex, and 88 percent agreed that the process took too long. Only 31 percent agreed that their dispute was resolved fairly, and 38 percent stated that they felt well informed about their rights.

**Minnesota's alternative dispute resolution process is overly complex.**

There are many possible steps and paths through the dispute resolution process, which is managed by the Office of Administrative Hearings (OAH) and DLI. The path varies depending on the nature of the disputed issue, the form used to file the dispute, the willingness of parties to negotiate, and the procedures used by DLI and OAH. A single claim can have multiple disputes that may be at different points in the process.

**The proportion of claims with disputes between injured workers and insurers has increased, and the state's dispute resolution program needs to be more effective.**

**The Union Construction Workers' Compensation Program was designed to be simpler and less adversarial than the state system.**

State law allows employers and unions to establish alternative processes for workers' compensation. Construction industry employers and unions have established the Union Construction Workers' Compensation Program (UCWCP). The UCWCP uses a dispute resolution process that is far simpler than the state's, with a single path and fewer steps. The UCWCP also has slightly lower denial rates and lower costs, and there is no evidence of greater worker dissatisfaction.

**DLI and OAH have not made substantial progress getting disputes resolved before a formal hearing.**

DLI's policy is to get disputes settled as early as possible, avoiding the need for administrative conferences or hearings. However, the number of administrative conferences held by DLI increased by more than 85 percent between 2000 and 2008. The state has made little progress reducing the number of costly hearings at OAH.

In 2007, the department began to more actively encourage parties in disputes to look for mutual agreement, offering

mediation services to assist. DLI staff mediated 204 disputes in 2006, 278 in 2007, and 463 in 2008, but this did not offset the increase in administrative conferences and hearings.

**Concerns about the impact of settlement agreements on injured workers merit further study.**

Settlement agreements are voluntary written agreements to close a claim or end a dispute. They often include a lump-sum payment for benefits. Some stakeholders are concerned that injured workers can be shortchanged by agreeing to these settlements.

One major concern is that injured employees are not back to work at the time of settlement. In our survey of workers who had agreed to settlements, about 30 percent reported that they were unemployed as of fall 2008 due to their work-related injury or illness. Also, some workers close their vocational rehabilitation plans as part of a settlement, even though the plans have not been followed through to completion. Among workers who closed their plans uncompleted as part of a settlement in 2006, only 29 percent were employed. In contrast, 98 percent of those who worked their plans through to completion in 2006 were employed when the plans closed.

## Summary of Agency Response

*In a letter dated February 13, 2009, Minnesota Commissioner of Labor and Industry Steve Sviggum said that OLA's recommendations "are on point with the direction and needs of our workers' compensation system in Minnesota." Accordingly, he said his agency has recommended that the Workers' Compensation Advisory Council put forward legislative proposals this session to (1) streamline the alternative dispute resolution process by expanding the Union Construction Workers' Compensation Program model and realigning duties between the Office of Administrative Hearings and his agency; and (2) allocate funding for improvements to the department's information technology systems. He also said, "the department is interested in pursuing the use of an ombudsperson in a manner that will not compromise our neutrality."*

The full evaluation report, *Oversight of Workers' Compensation*, is available at 651-296-4708 or:  
[www.auditor.leg.state.mn.us/ped/2009/workcomp.htm](http://www.auditor.leg.state.mn.us/ped/2009/workcomp.htm)