



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

Submitted to the
130th Maine
Legislature

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2022

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We are pleased to submit to the Governor and the 130th Legislature, Second 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 and the Joint Standing Committee on Insurance and Financial Services by February 15th of each year.

WORKERS' COMPENSATION BOARD

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 Board of Directors meets 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 2021 remained the COVID-19 pandemic. The Board's operations are still being conducted from a predominantly remote work environment. As was the case in 2020, the exemplary work of the Board's employees has allowed the agency to work remotely while ensuring the agency's work continued with minimal disruption.

In April of 2020, the Board began tracking, on a weekly basis, the number of First Reports of Injury (FROIs) filed with respect to COVID-19 claims. As cases declined during the late spring/early summer of 2021 the Board shifted to monthly reports. During late summer and early fall, FROIs related to COVID-19 claims began to rise again. As a result, in October, the Board resumed weekly tracking of COVID-19 claims. FROIs are tracked based on the date of injury, not the date the FROI is received. The Board received 2,531 FROIs for dates of injury in 2020 (from March, when the first cases were reported, through December). In calendar year 2021, the Board received 2,549 FROIs.

In 2020, due to the pandemic, there was a significant decrease (24%) in the number of FROIs filed for non-COVID related injuries as compared to 2019. In 2021, non-COVID related FROIs were only down 4% from 2019 filings. COVID-related FROIs (both infections and reactions to the vaccines) still account for approximately 23% of all FROIs filed with the Board. Taken together, the total number of FROIs filed in 2021 was 20% greater than it was in 2019.

All six members of the Workers' Compensation Board of Directors were either reappointed or appointed to four-year terms in 2021. For the first time in several years, no members are continuing to serve after their terms expired. The new and reappointed members continue to work well together. Notably, the Board hired two new administrative law judges (ALJs) in 2021. These appointments, due to changes enacted in 2019, required the affirmative votes of 5 of 7 Board members. (Previously, a simple majority was all that was needed.) In both cases, the new ALJs were hired with unanimous votes.

At the end of 2020, reports produced by the Monitoring, Auditing and Enforcement (MAE) unit showed that overall industry compliance with benchmarks set by the Board, which had been trending downward, was improving. Unfortunately, this did not carry forward into 2021. Industry compliance with most benchmarks was below par throughout 2021. In order to improve compliance in 2022 and beyond, the Board's Abuse Investigation Unit (AIU) will use Quarterly Compliance reports produced by the MAE program to initiate targeted enforcement actions where compliance has fallen below acceptable standards.

Finally, in 2021, the Board implemented a program to monitor the Independent Medical Examiner Program. As a result, the Board was able to identify examining physicians whose reports were not being filed in a timely manner. Notice that improvement was needed to avoid action by the Board was communicated to the doctors. The Board's monitoring system has proven beneficial; doctors are redoubling their efforts and reports are being submitted more promptly.

BUREAU OF INSURANCE

Pursuant to 24-A M.R.S.A. § 2383-A the Superintendent of Insurance must report annually to the Governor and the Joint Standing Committee on Health Coverage, Insurance and Financial Services on the status of competition in the workers' compensation market. This 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.

The Superintendent approved NCCI's most recent filing for an overall average 0.3% change in the advisory loss costs effective April 1, 2021.

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 2020 at 67%. MEMIC received approval for a 6.082% increase to its workers' compensation rates effective July 1, 2021. The workers' compensation insurance market is very concentrated with much of the business being written by a small number of companies. Twenty-two 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 2020. 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.

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 2020.

BUREAU OF LABOR STANDARDS

The Bureau's role in the Workers' Compensation system is facilitating the prevention of workplace injuries and illnesses. As with 2020, much of 2021 was preoccupied dealing with the fallout from the COVID-19 pandemic as precautions taken to ensure the health and safety of workers changed perceptions from temporary measures to longer-lasting cultural shifts.

The Workplace Safety and Health Division (WSHD) took advantage of classroom activities being suspended and upgraded the audio/visual equipment in the SafetyWorks! Training Institute (STI). Ninety percent of this upgrade was paid for with one-time funding from federal OSHA. Part of the upgrade included webcams in the rear of the classroom, as well as microphones throughout the ceiling. This allows the STI to be used for blended classes with students participating in the classroom, as well as virtually. WSHD also recorded eight safety and health webinars using the new equipment, and posted these to our website, as well as MDOL's YouTube channel for ad-hoc learning. As pandemic conditions improved, classroom size was eventually increased from 18 to 24 students. This is still well below the maximum class size of 48 that we advertised pre-pandemic, so these classroom upgrades to make the STI more accessible to virtual attendees have been essential to providing quality training.

Our Customer Service Unit was inundated with phone calls in 2020, receiving more than 40,000 inquiries about departmental services, of which only 5,000 were related to services which the Bureau performed. A majority of these calls were related to unemployment services, with callers desperately trying to contact the Bureau of Unemployment Compensation (BUC) through any means possible. After steps were taken by the Department to direct callers more efficiently to BUC, this was no longer a problem.

Under longstanding State law and a 2015 cooperative agreement with the Federal government, Maine is required to adopt and enforce all of OSHA's occupational safety and health standards for public employers. The Maine Board of Occupational Safety and Health (BOSH) is typically required to adopt and enforce OSHA's standards for public employers within 30 days of the standard's release and, at a minimum, extend the same requirements to Maine's public employers. OSHA's standards are considered minimum requirements. A State Plan state like Maine may implement more rigorous standards but cannot implement less rigorous standards than those set out by OSHA.

Under the original text for 26 MRSA §565, rules adopted by the BOSH would not become effective sooner than 90 days after the date of adoption and promulgation, effectively denying BOSH the ability to institute emergency rules. LD248 was proposed to remove this restriction from the law and allow Maine BOSH to institute emergency rules. This legislation passed on June 8th, and the OSHA Healthcare Emergency Temporary Standard (ETS) went into effect on June 21st, allowing BOSH to adopt rules from the ETS within OSHA's required 30-day window. Immediately following the adoption of the emergency State rules, Maine BOSH began the rulemaking process for permanent rules. This rulemaking process will include the opportunity for public comment.

While we were able to process approximately 50 minor work permits each day, a combination of factors led to that being inadequate to match pace with the incoming applications. Two changes contributed to

the increase. First, the application process for Minor Work Permits moved to an online portal, which gave our customers the ability to submit applications electronically rather than going through an inefficient and time-consuming process of submitting hard copies through the postal service. Secondly, the effects of the pandemic saw employers searching for workers in unconventional places, which included the minor workforce. Up until last year, 2019 had the greatest number of minor work permits issued at 4,827. In 2021, there were 6,821 minor work permits issued, with over 1,800 in June alone. A majority of these permits were in the Accommodation and Food Services industry, though there were also large increases in the Retail Trade sector. 2021 also had a record number of 307 minor work permit denials, a much greater number than in years prior. It is unknown if the increase in denials is temporary due to the pandemic, or permanent due to the requirements imposed by the online portal to clearly identify the job duties that each minor will be performing.

Due to how COLAs are structured into Maine State Retirement plans, August is typically a month that sees the most staff retire from public service. This year, staff retirement, combined with the effects of the "Great Resignation," caused an increase in the vacancy rate within the Bureau. We were severely understaffed throughout September and October, with 20% of our positions vacant. A handful of new hires and promotions reduced this rate in November, but the Bureau still has open positions in multiple divisions. The remaining open positions are proving harder to fill due to a combination of a tight labor market, and strained assistance from support services to recruit and process applications. Hopefully, the new year will see the remaining positions filled.

2021 has proven to be another challenging year. The numbers so far illustrate that despite the presence of the pandemic, efforts toward the prevention of workplace injuries and illnesses remain in place and effective.

TABLE OF CONTENTS

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

SECTION A

WORKERS' COMPENSATION BOARD

Section A: Workers' Compensation Board

Table of Contents

1. INTRODUCTION	A1
2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION	A3
I. ENABLING LEGISLATION	A3
II. REVISIONS TO ENABLING LEGISLATION	A3
III. STATE AGENCY HISTORY	A5
3. DISPUTE RESOLUTION	A8
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
4. OFFICE OF MONITORING, AUDIT & ENFORCEMENT	A12
I. HISTORY	A12
II. TRAINING	A12
III. MONITORING	A13
IV. AUDIT	A15
V. ENFORCEMENT	A16
5. OFFICE OF MEDICAL/REHABILITATION SERVICES	A17
I. MEDICAL FEE SCHEDULE	A17
II. MEDICAL UTILIZATION REVIEW	A17
III. EMPLOYMENT REHABILITATION	A17
IV. INDEPENDENT MEDICAL EXAMINERS	A19
6. WORKER ADVOCATE PROGRAM	A20
I. INTRODUCTION	A20
II. HISTORY	A20
III. THE CURRENT WORKER ADVOCATE PROGRAM	A21
IV. CASELOAD STATISTICS	A23
V. SUMMARY	A24
7. INFORMATION MANAGEMENT	A25
I. 2021 UPDATE	A25
II. UPCOMING PROJECTS AND CHALLENGES	A27

8. BUDGET AND ASSESSMENT	A28
9. CLAIMS MANAGEMENT UNIT	A30
10. INSURANCE COVERAGE UNIT	A33
10A. PREDETERMINATION UNIT.....	A34
11. COORDINATION WITH OTHER AGENCIES	A35
I. DEPARTMENT OF LABOR	A35
II. BUREAU OF INSURANCE	A35
III. OTHER AGENCIES	A36
III. COVID-19.....	A36
12. ABUSE INVESTIGATION UNIT.....	A37
13. GENERAL COUNSEL REPORT	A38
I. LEGISLATION	A38
II. RULES	A37
III. ADJUDICATORY HEARINGS	A37
IV. APPELLATE DIVISION	A38
IV. MAINE SUPREME JUDICIAL COURT APPEALS	A38
IV. AGENCY STUDIES.....	A39
14. APPELLATE DIVISION.....	A40

1. INTRODUCTION

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 directly, or if self-insured, through their insurers 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-a-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 private attorneys. 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 most recent comprehensive review in 2020.

2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION

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 (3-A) (B)** was amended to provide a PTSD presumption of work relatedness to first responders, corrections officers and 9-1-1 emergency dispatchers.
- **§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.
- **§328 (B)** creates a presumption that certain cancers that are contracted by firefighters work-related.
- **§§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

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 average number of filings pending at the end of each year, and the amount of time a case remained in troubleshooting for the period 2012 through 2021.

Troubleshooting				
Filings Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at TS
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
2021	13,567	13,443	723	21

IV. MEDIATION STATISTICAL SUMMARY

The following table shows the number of filings assigned and disposed at mediation, the average number of cases pending at the end of each year, and the amount of time a case remained in mediation for the period 2012 through 2021.

Mediations				
Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at MDN
2012	2,183	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
2021	1,738	1,571	451	65

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 2012 through 2021.

Formal Hearing					
Cases Assigned, Disposed, and Pending					
Year	Assigned	Disposed	†Lump Sum Settlements	Pending 12/31	Av Months to Decree at TS
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
2021	1,292	1,298	751	562	7.6

* 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

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 2021. 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. On-site training sessions have not been held during the pandemic. Again, web based resources and telephone/email contact have provided increased assistance in the place of in-person sessions.

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.

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 2020 Annual Compliance Report was approved by the Board on October 12, 2021.

The following sections, taken from the 2020 report, show that compliance with the Board's benchmarks is trending in a negative direction. The Board continues to look for ways to increase compliance with its benchmarks.

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.

Quarterly Compliance from the 2020 Annual Compliance Report

	Benchmark	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Lost Time First Report Filings Received within 7 Days	85%	83%	85%	83%	80%
Initial Indemnity Payments Made within 14 Days	87%	85%	90%	88%	88%
Initial Memorandum of Payment Filings Received within 17 Days	85%	84%	84%	85%	74%
Initial Indemnity Notice of Controversy Filings Received within 14 Days	90%	95%	95%	94%	93%
Wage Information (WBC-2) Received with 30 days of an employer's notice of knowledge of a claim for compensation	75%	73%	72%	73%	67%
Wage Information (WCB-2B) Received with 30 days of an employer's notice of knowledge of a claim for compensation	75%	72%	72%	71%	64%

Annual Compliance from the 2020 Annual Compliance Report

	1997[1]	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Lost Time First Report Filings Received within 7 Days	37%	87%	85%	85%	84%	83%	83%	83%	83%	82%	82%
Initial Indemnity Payments Made within 14 Days	59%	89%	90%	91%	90%	87%	89%	90%	88%	86%	87%
Initial Memorandum of Payment Filings Received within 17 Days	57%	89%	89%	90%	89%	86%	88%	89%	87%	84%	81%
Initial Indemnity Notice of Controversy Filings Received within 14 Days		95%	95%	95%	94%	94%	93%	93%	94%	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 audits were completed in 2021:

- Acuity Mutual
- Brotherhood Mutual
- Chubb National Insurance Group
- Constitution State Services
- Macy's Retail Holdings
- Maine Employers Mutual Insurance Company
- Protective Insurance Company
- State of Maine Office of Workers' Compensation

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

- CorVel Corporation
- Cottingham and Butler Claims Services
- Synernet

Audits are in process for the following entities:

- Hannaford Retail Services
- Liberty Mutual
- Maine School Management Association
- Maine Municipal Association
- ESIS

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 2021, the Board received six 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 2021, the MAE program, along with the Abuse Unit, assisted the Attorney General's Office and OSHA with their efforts to prevent/correct employee misclassification. Additionally, a plan was established with Maine's Department of Labor to share additional information and combine audit resources to help further prevent employee misclassification amongst Maine employers. Ongoing regular meetings focused on misclassification will now be occurring between the Board and the Department of Labor to continue our efforts to stop employee misclassification.

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.

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.

II. MEDICAL UTILIZATION REVIEW

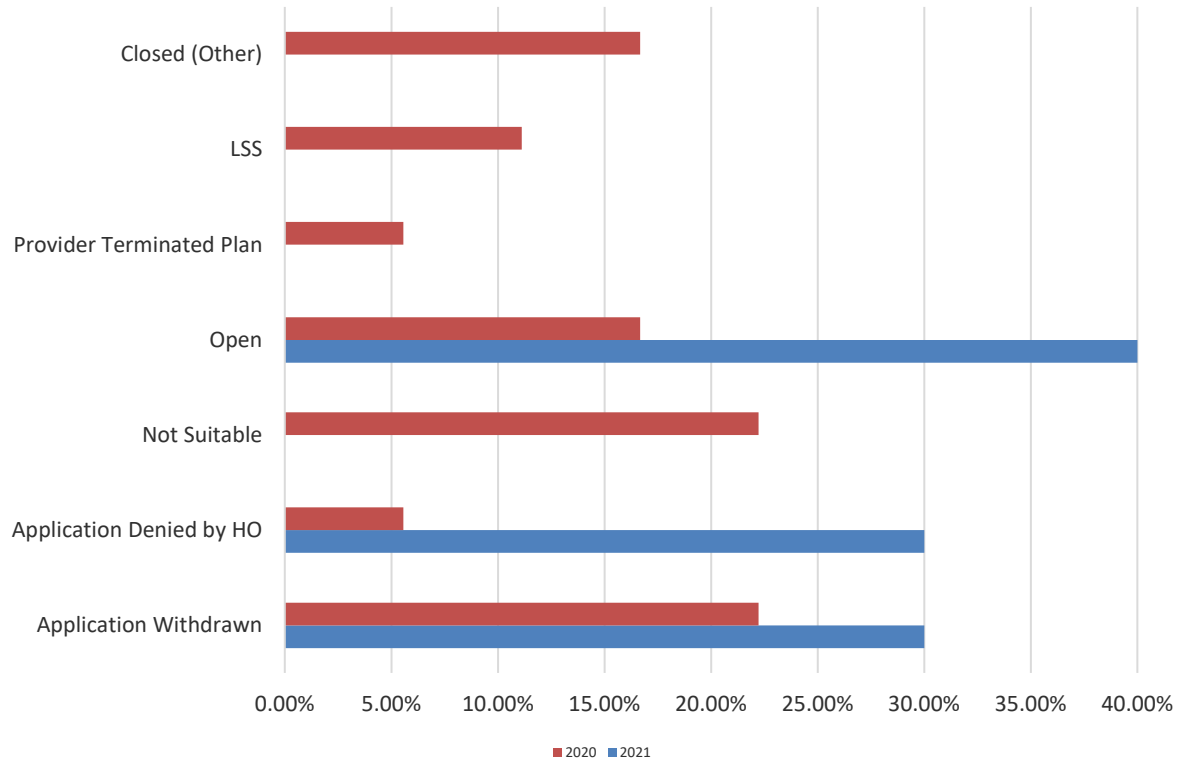
The Board does not currently have approved treatment guidelines.

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 2021, the Board received 10 applications for employment rehabilitation services. The chart below shows the status of the 2021 and 2020 applications as of December 31, 2021.

Status of 2020-2021 Applications



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 301 requests for independent medical exams in 2021.

	Time From Request to Exam									
	0-45	46-60	61-75	76-90	91-120	121-150	151-180	181-210	210-240	>240
Q1	1%	7%	8%	11%	26%	14%	9%	11%	4%	9%
Q2	3%	7%	19%	11%	21%	22%	3%	3%	3%	10%
Q3	4%	11%	19%	19%	27%	9%	3%	3%	1%	4%
Q4	0%	11%	15%	18%	18%	9%	11%	5%	3%	9%

	Time From Exam to Report Filed										
	0-14 Days	15-21 Days	22-28 Days	29-60 Days	61+ Days	Total	0-14 Days	15-21 Days	22-28 Days	29-60 Days	61+ Days
Q1	52	11	2	5	20	90	58%	12%	2%	6%	22%
Q2	47	8	3	6	8	72	65%	11%	4%	8%	11%
Q3	44	7	3	4	12	70	63%	10%	4%	6%	17%
Q4	42	2	6	9	6	65	65%	3%	9%	14%	9%

	IMEs Awaiting Reports										
	0-14 Days	15-30 Days	31-60 Days	61+ Days	Scheduled In Future	Total	0-14 Days	15-30 Days	31-60 Days	61+ Days	Scheduled In Future
Q1	3	4	5	5	67	84	4%	5%	6%	6%	80%
Q2	7	5	2	11	36	61	11%	8%	3%	18%	59%
Q3	10	4	3	3	22	42	24%	10%	7%	7%	52%
Q4	2				36	38	5%	0%	0%	0%	95%

6. WORKER ADVOCATE PROGRAM

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 64% of the cases pending at mediation in 2021. The following table reflects the number of Advocate cases mediated from 2012 through 2021. In 2016, the Advocate Division upgraded its case management and statistics software.

Year	Filings Assigned	Filings Disposed	Cases Pending at Board 12/31	% of All Cases Pending at Board
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%
2021	1,628	1,289	290	64%

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 33% 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 2012 through 2021.

Advocate Cases at Formal Hearing

	Filings Assigned	Cases Assigned	Cases Disposed	Cases Pending at Board 12/31	% of All Cases Pending at Board
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%
2021	558	260	300	219	39%

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 39% of the cases pending at formal hearings at the end of 2021.

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 17 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 2021, 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

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. 2021 UPDATE

A. Formal Hearing Decision Sharing

Sharing of Maine Workers' Compensation Board formal hearing decisions with LexisNexis and Westlaw was reestablished in early 2021. Decisions are also now shared with Casemaker Legal.

B. Missing Coverage

The process for sending letters to employers with no recorded coverage was overhauled early in the year. The new process eliminates some steps that relied on data from outside sources and gives staff the ability to preview a list of qualifying employers before the letters are sent.

C. NCCI

Board staff met with the National Council on Compensation Insurance (NCCI) to seek suggestions on how to improve Maine's proof of coverage EDI filing acceptance rates. Many issues were identified, and some adjustments were made to Maine's system to ensure a smoother flow of filings and a reduction in rejections. This work will continue during 2022.

D. EDI Mailbox

In early July, the Board established a new general mailbox for EDI inquiries:
EDI.WCB@maine.gov.

E. Delete Employer Function

The launch of the new employer database in 2020 paved the way for the programming of a function that allows for the deletion of duplicate and erroneous employer profiles. The function took months to program to ensure employers being deleted are not connected to any case in the system.

F. Pick Employer Matrix

In September, a new pick-employer matrix was put into production for claims. Several changes were made to the matrix to ensure that the system is matching each claim to the correct employer in our database.

G. Bangor Regional Office Move

The Deputy Director of Information Management spent time coordinating security and technology needs for the move of the Board's Bangor office, which occurred on September 1, 2021.

H. Data Quality

The agency continued to spend a significant amount of time on database cleanup projects. Staff spent considerable resources verifying that policies and claims are attached to the correct employers, a project which resulted in the creation of the pick employer matrix mentioned above.

I. EDI Specialist Hired

In July, the Management Analyst II in the Information Management department retired. A new MAII was hired in December. This new staff person will serve as the Board's EDI specialist, along with fulfilling many more duties for the agency.

J. Proof of Coverage

A major project is underway to allow new employers to be created in our database upon the filing of electronic proof of coverage. For the past several years, staff has had to manually create new insureds, employers, and employer locations. The new functionality will allow staff to review the data received on the proof of coverage transactions and post new insureds and employers to the database automatically. They will also be able to post changes more easily to existing employers.

K. Server Upgrade

The server upgrade is a project that began over two years ago. The Board's OIT programmers dedicated a significant amount of time working with the server team at OIT to work out kinks and roadblocks that cropped up along the way.

L. Progress Update

Once on the new servers, the programmers were able to upgrade Progress to version 12, as required by the license agreement. The Board will switch to the new servers and Progress v12 in January of 2022.

II. UPCOMING PROJECTS AND CHALLENGES

A. Backlog of Programming Requests

For many years, the Board has been experiencing a backlog of programming requests. At any given time, the list has over 100 tickets pending which range in complexity. There are currently 124 tickets pending with approximately 15 that need to be added. Careful analysis of the database continues to generate many new tickets and will continue to do so going forward. In addition, while some tickets are simple, others are complex and require weeks or months of the programmers' time to execute.

B. EDI Claims 3.1

The implementation of EDI Claims 3.1 remains a priority and will be addressed when programming resources are available.

C. Database Migration

The Office of Information Technology has determined the Progress application the Board uses is a viable product and has agreed to support it for the foreseeable future. A memorandum of understanding is expected to be signed in early 2022. The Board may still explore alternative options in the future.

8. BUDGET AND ASSESSMENT

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.

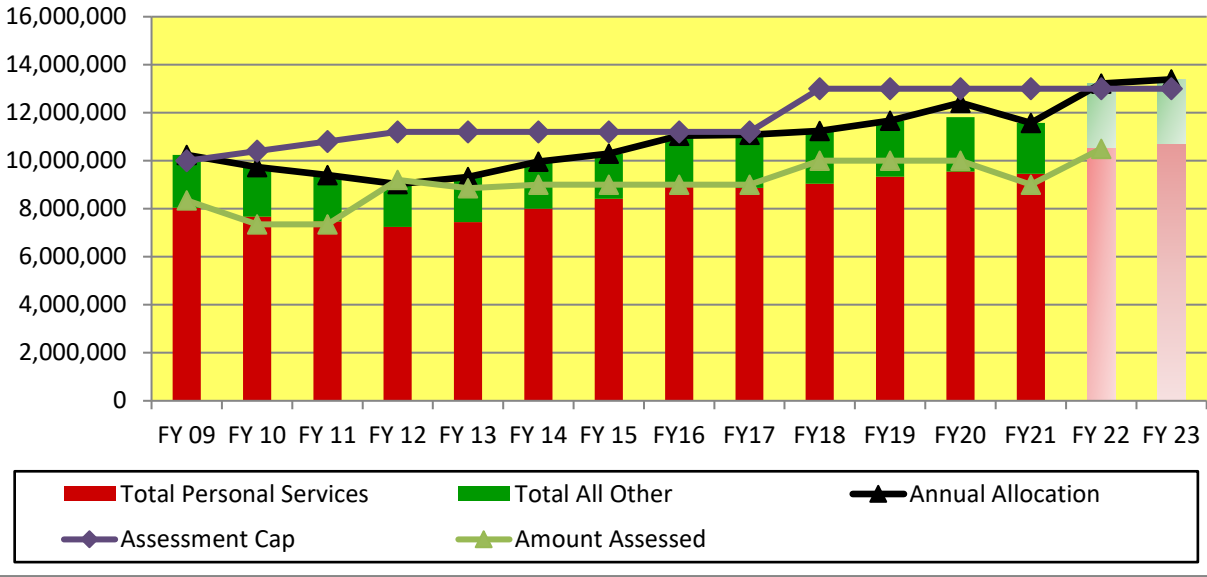
The Board's budget is limited to the revenue raised from the annual assessment. Other minor amounts of revenue are collected from the sale of publications and some fines and penalties; less than 1% of total revenue in FY 2021. The Board collects other fines and penalties not available for Board expenses; the Legislature has directed those amounts be paid into one of two dedicated accounts, the Rehabilitation Fund or the General Fund. The Board approved budgets for the current 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 2021 and projected expenditures for fiscal years 2022 and 2023. The chart also shows the amounts assessed through FY 2022 (July 1, 2021 – June 30, 2022) and the assessment cap, \$13 million, projected through fiscal year 2023.

**Actual and Projected Expenditures
Workers' Compensation Administrative Fund - 0183
January 2022**

(figures for FY 22 & FY 23 are budget projections)



9. CLAIMS MANAGEMENT UNIT

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 insures 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, 2021 to December 31, 2021.

Information/Form	EDI	CMU	TOTAL
Employer's First Report of Occupational Injury or Disease (all types)	30,645	30	30,675
Notice of Controversy	10,611	15	10,626
Petitions (including CBCs)		1,550	3,331
Answers to Petitions		474	474
Wage Statement		12,495	12,495
Schedule of Dependent(s) and Filing Status Statements		2	2
Fringe Benefits Worksheet		8,966	8,966
Memorandum of Payment		6,200	6,200
All other payment forms, including:		15,667	15,667
<ul style="list-style-type: none"> • Discontinuance or Modification of Compensation • Consent Between Employer and Employee • 21-Day Certificate of Discontinuance or Reduction of Compensation • Lump Sum Settlement 			
Statement of Compensation Paid		9,117	9,117

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

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 2021 through December 2021, the Board received and processed 55,151 proof-of-coverage filings. The Coverage Unit processed 587 waiver applications. Part of matching coverage to specific employers involves resolving instances of "no recorded coverage." In 2021, "no record of coverage" letters were not sent to employers requesting information due to programming changes and upgrades. In previous years, information received from responses to these letters allowed Coverage staff to determine if 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

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 2021, the Predetermination Unit received 5,517 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. 4,666 applications were initially approved, both conclusive and rebuttable, and none of the applications were denied. 446 applications were returned because they were incomplete, incorrect, 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, 405 applications were successfully processed but the remaining 41 applications were not completed because the applicant did not reply or provide the requested information. After all processing, 5112 predeterminations were approved and 41 denied or not completed.

11. COORDINATION WITH OTHER AGENCIES

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, but the Abuse Investigation Unit has access to pertinent information at DOL needed to investigate employers without workers' compensation insurance and misclassification cases. We are currently working together on a plan to ensure the Board has access to the data it needs to perform its oversight function through the Coverage Department. The Board and DOL meet, at least quarterly, with DOL to coordinate employee misclassification efforts in order to not duplicate work and to ensure employers are complying with all of the laws that pertain to the Board and DOL.

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.

In order to return injured workers to suitable employment as quickly as possible, the Board refers injured workers to qualified vocational rehabilitation specialists. In addition to Board approved providers, referrals are also made to employment rehabilitation providers at DOL. These providers evaluate the injured workers and develop rehabilitation plans. The Board and DOL continue to monitor the effectiveness of these 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.

Additionally, the Board assists BOI in its investigation of potential violations of Bureau Rule 530. Rule 530 requires health and disability insurers to make provisional claims payments when a Notice of Controversy has been filed in a workers' compensation claim contesting the work-relatedness of the underlying illness or injury. Pursuant to a Memorandum of Understanding, the Board helps confirm whether workers' compensation claims exist for Maine consumers on the BOI's lists, whether workers' compensation carriers made any payments toward those claims, and whether NOCs were filed.

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. OIT and the Board are currently working together on a major project; specifically, moving the Board to a new database.

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.

The Board has worked to combat employee misclassification with the Occupational Safety and Health Administration (OSHA) of the United States Department of Labor. The Board has provided assistance to OSHA with guidance about Maine workers' compensation laws and Board employees testified at an OSHA hearing involving a Maine employer. Per an MOU, the Board's Abuse Investigation Unit shares resources with OSHA when the agencies are investigating the same employer.

Finally, the Board works with the Attorney General's office on various matters including retaining outside counsel, contracting, employee misclassification, criminal prosecution of uninsured employers, and collection of penalties that are assessed and not paid consistent with board decrees.

IV. COVID-19

Over the course of 2021, the Board continued to provide additional assistance to the Department of Health and Human Services (DHHS) and the Department of Labor (DOL) for pandemic related work. Specifically, the Board lent staff to DHHS to assist with contract tracing efforts and to DOL to process unemployment claims.

12. ABUSE INVESTIGATION UNIT

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 typically has four advocates/ attorney advocates, one auditor that assists the unit, and two support staff. The AIU is supervised by the Board's Deputy General Counsel. Currently, the AIU needs to fill two attorney advocate positions. Additionally, because of the pandemic, one attorney advocate has been assisting the Department of Labor part time and the auditor is assisting Maine's Center of Disease Control as a COVID-19 contact tracer. 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 and emphasis was focused on getting employers into current compliance with their workers' compensation insurance obligations. Additionally, the AIU started to meet and coordinate with the Department of Labor more regularly to combine their efforts and share information to ensure employers are classifying their employees properly.

13. GENERAL COUNSEL REPORT

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

The 130th Legislature passed two amendments to the Workers' Compensation Act. One amendment added gynecologic cancer to the list of firefighter cancers in §328-B that are presumed to be work related. The second amendment extended the rebuttable first-responder PTSD presumption to corrections officers and 9-1-1 emergency dispatchers.

II. RULES

The Workers' Compensation Act confers rulemaking authority to the Board. Since adopting revisions to its rules in 2018, the rules have not been amended. The Board's annual update to the medical fee schedule was completed in 2021 as required by 39-A MRSA §209-A and was effective January 1, 2022.

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. The Board is evaluating COVID-19 risk factors and anticipates returning to in-person hearings when health and safety concerns no longer warrant remote hearings.

IV. APPELLATE DIVISION

39-A MRSA §321-A established the Appellate Division, which acts as an appeals court for hearing level decisions issued by administrative law judges. 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 during 2020 but adapted to the pandemic and conducts oral arguments by remote means. In 2021, the Appellate Division issued 35 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 2021, eleven appeals of Appellate Division decisions were filed and the Law Court granted review in two of those cases. The Law Court issued three decisions in workers' compensation cases.

VI. AGENCY STUDIES

Pursuant to the mandate in 39-A MRSA §201(3-A) (B), the Board prepared a study of the PTSD presumption for first responders. It was sent to the Joint Standing Committee on Labor and Housing in advance of the January 1, 2022 submission deadline. The report provided the committee with an analysis the impact of the PTSD presumption, which was enacted in 2017.

14. APPELLATE DIVISION

The Board's Appellate Division has completed its ninth full year of operation after being reinstated 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 sixty-two notices of intent to appeal have been filed since August 2012; 22 were filed in 2021. The Division has held oral arguments in 203 cases. Oral arguments continued to be limited in 2021 due to the COVID-19 public health situation. 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 eleven *en banc* panels (one in 2021) and issued written decisions in 317 cases (35 issued in 2021). One hundred eighteen appeals (12 in 2021) 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.

Eleven Petitions for Appellate Review of Appellate Division decisions were filed with the Law Court in 2021. The Law Court granted review in two cases and issued three decisions: *Charest v. Hydraulic Hose & Assemblies*, 2021 ME 17, 247 A.3d 709 (holding that the employer's ongoing obligation to pay benefits, offset by Social Security payments, served to toll the limitations period pursuant to 39-A M.R.S.A. §306(2)); *Desgrosselliers v. Auburn Sheet Metal*, 2021 ME 63 (affirming that in an occupational disease case, the employee had no obligation under 39-A M.R.S.A. §301 to provide notice of his illness to the employer's insurer when the employer had long been out of business) and *Furrow v. Bath Iron Works*, Mem-21-128 (affirming that the employee's claims were barred by the statute of limitations and that the employee, having a preexisting condition, failed to meet his burden to prove that his employment contributed to his disability in a significant manner under 39-A M.R.S.A. §201(4)).

Appellate Division decisions of note include *Martin v. George C. Hall & Sons, Inc.*, Me. W.C.B. No. 21-27 (App. Div. en banc 2021), and in *Carver v. Walmart*, Me. W.C.B. No. 21-30 (App. Div. 2021), in which the Appellate Division addressed whether an increase in the State minimum wage alone can constitute the changed economic circumstances required to alter an existing benefit payment scheme. The en banc panel in *Martin* held that the change in economic circumstances must be evaluated in reference to the factors that formed the basis of the prior determination regarding post-injury earning capacity. Because the prior award was not based on the minimum wage, the panel affirmed that the change in minimum wage alone was insufficient to revisit and decrease the prior award. In *Carver*, a case in which the prior award was based on the minimum wage, the panel held that a minimum wage increase is one factor to be considered, but standing alone, is insufficient to reopen a prior decree. The case was remanded for reconsideration in light of a nonexclusive list of factors.

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

SECTION B

BUREAU OF INSURANCE

SECTION B: BUREAU OF INSURANCE

TABLE OF CONTENTS

1. INTRODUCTION & BACKGROUND	B2
I. ACCIDENT YEAR, CALENDAR YEAR AND POLICY YEAR	B3
2. RECENT EXPERIENCE	B4
I. PROJECTED ULTIMATE ACCIDENT YEAR LOSS AND LOSS ADJUSTMENT EXPENSE RATIOS	B4
II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS	B5
3. LOSSES IN WORKERS' COMPENSATION	B6
I. CHANGES IN ADVISORY LOSS COSTS	B6
II. CUMULATIVE CHANGES IN ADVISORY LOSS COSTS.....	B7
4. MARKET STRUCTURE AND COMPETITION	B8
I. MARKET CONCENTRATION	B8
II. HERFINDAHL-HIRSCHMAN INDEX.....	B9
III. COMBINED MARKET SHARE.....	B10
IV. NUMBER OF CARRIERS IN MAINE'S WORKERS' COMPENSATION INSURANCE MARKET	B11
V. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE GROUPS	B12
VI. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE CARRIERS	B13
VII. MEMIC RATE CHANGE.....	B13
5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES	B14
I. RATE DIFFERENTIALS	B14
II. ADDITIONAL FACTORS AFFECTING PREMIUMS.....	B14
6. ALTERNATIVE RISK MARKETS	B16
I. PERCENT OF OVERALL MARKET HELD BY SELF-INSURED EMPLOYERS	B16
II. NUMBER OF SELF-INSURED EMPLOYERS AND GROUPS	B17
7. A LOOK NATIONALLY	B18
II. OREGON WORKERS' COMPENSATION PREMIUM RATE RANKING	B18
III. AVERAGE LOSS COSTS BY STATE BASED ON MAINE'S PAYROLL DISTRIBUTION	B18

1. INTRODUCTION & BACKGROUND

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 January 6, 2021, NCCI filed with the Superintendent for an overall 0.3% change in the advisory loss costs effective April 1, 2021. According to NCCI, the lost-time claim frequency has declined steadily since 2013 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 years. The Superintendent approved NCCI's filing effective April 1, 2021.

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	-1.7%
Contracting	-2.6%
Manufacturing	1.4%
Goods & Services	1.3%
Miscellaneous	1.4%

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:

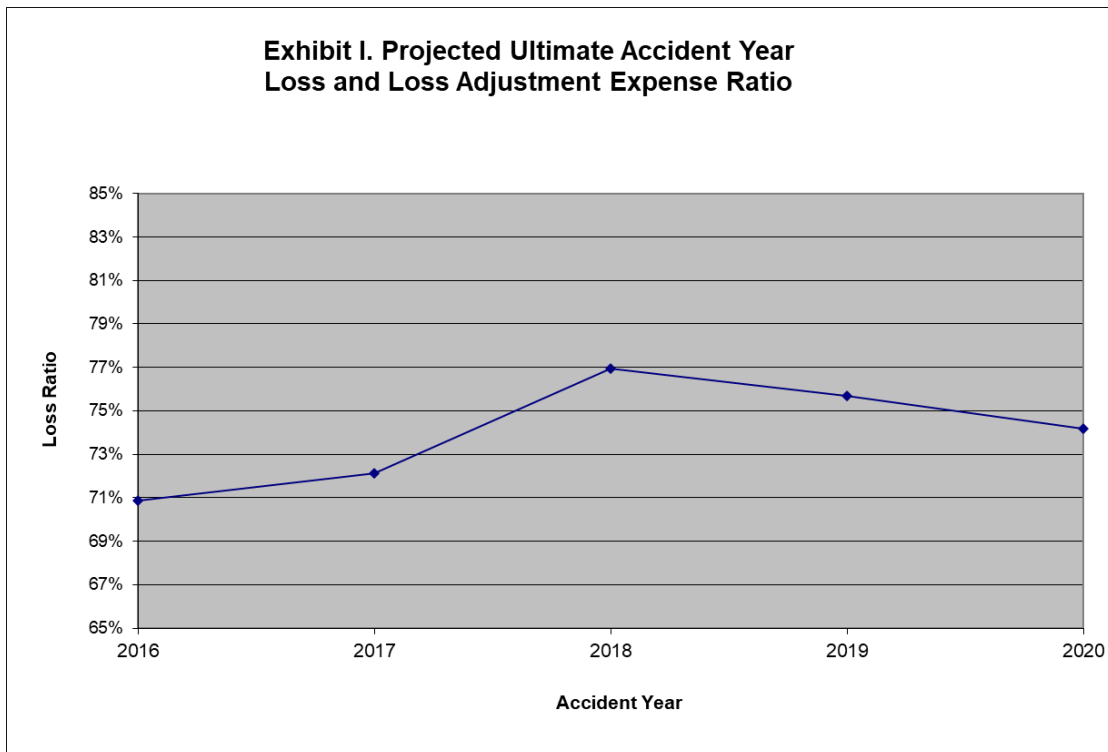
- ❑ **Accident year** experience as of a specific evaluation date matches 1) all paid losses and loss reserves as of the specific evaluation date for injuries occurring during a given 12-month period (regardless of when the losses are reported) with 2) all premiums earned during the same period (regardless 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 70.9% to 76.9% for the past five years. The 2020 ratio was 74.2%, indicating that \$74.20 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.



Source: NCCI

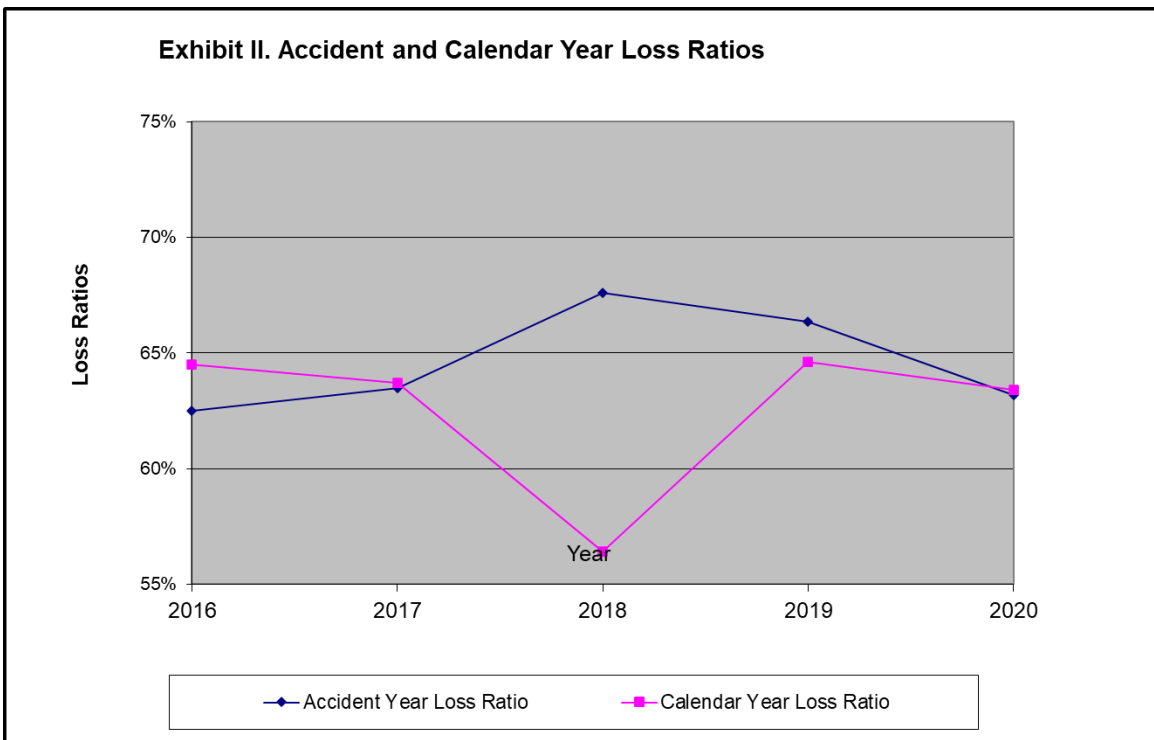
II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

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 62% in 2016 to a high of 68% in 2018. Calendar year loss ratios show a downward trend in the last year, and accident year loss ratios show a slight downward 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.

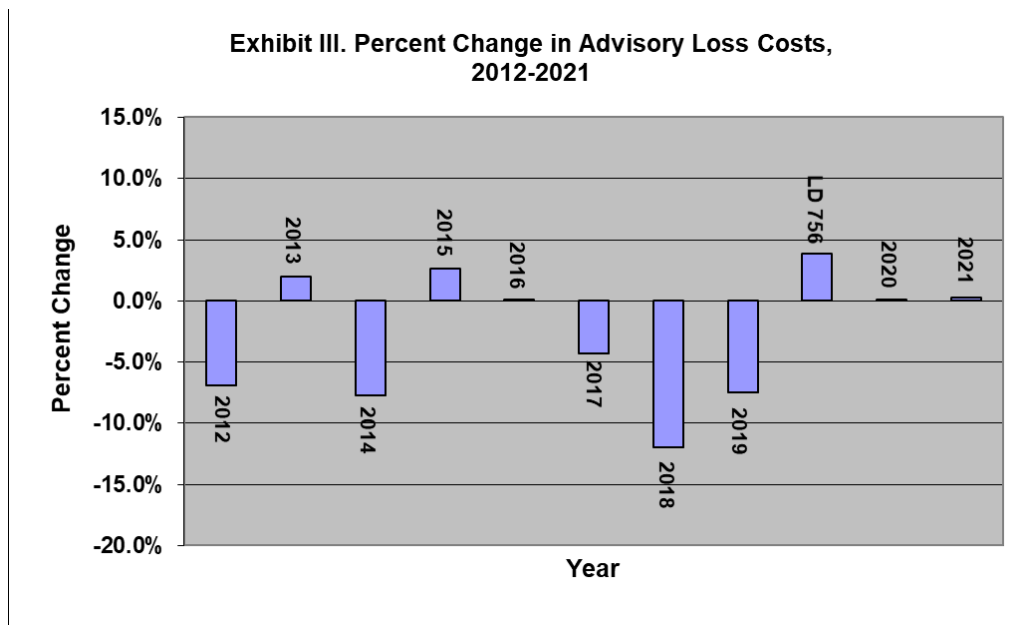
Source: NCCI

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.

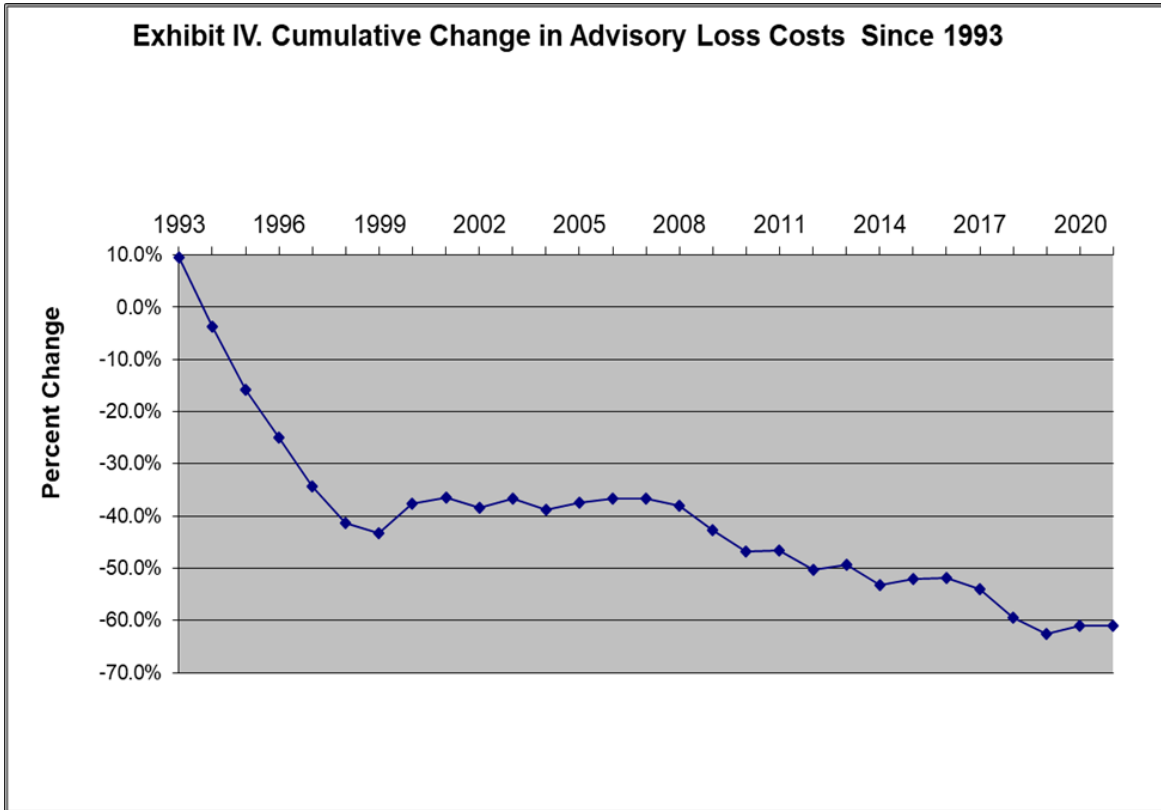
Effective April 1, 2021, the Superintendent approved a 0.3% average change in the workers' compensation advisory loss costs. Advisory loss costs are now more than 10% lower than they were ten years ago, and nearly 61% lower than when the major reform of the workers' compensation system took effect in 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 10% over the past ten years.



Source: NCCI

4. MARKET STRUCTURE AND COMPETITION

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, 2021, 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 2020 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 2020 by premium level.

Amount of Written Premium	Number of Companies at That Level
>\$10,000	174
>\$100,000	107
>\$1,000,000	22

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2020 was over \$234 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 on page 16 for more complete information.

II. HERFINDAHL-HIRSCHMAN INDEX

The Herfindahl-Hirschman Index (HHI) measures market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The annual Competition Database Report produced by the National Association of Insurance Commissioners compiles various data elements that measure the competitiveness of state insurance markets. The HHI is one data element.

According to the 2019 Competition Database Report, which was prepared in 2021, the HHI for workers' compensation insurance in Maine was 4,664. This measure is the third highest (i.e., most concentrated) for all commercial lines in Maine, behind financial guaranty and medical professional liability.

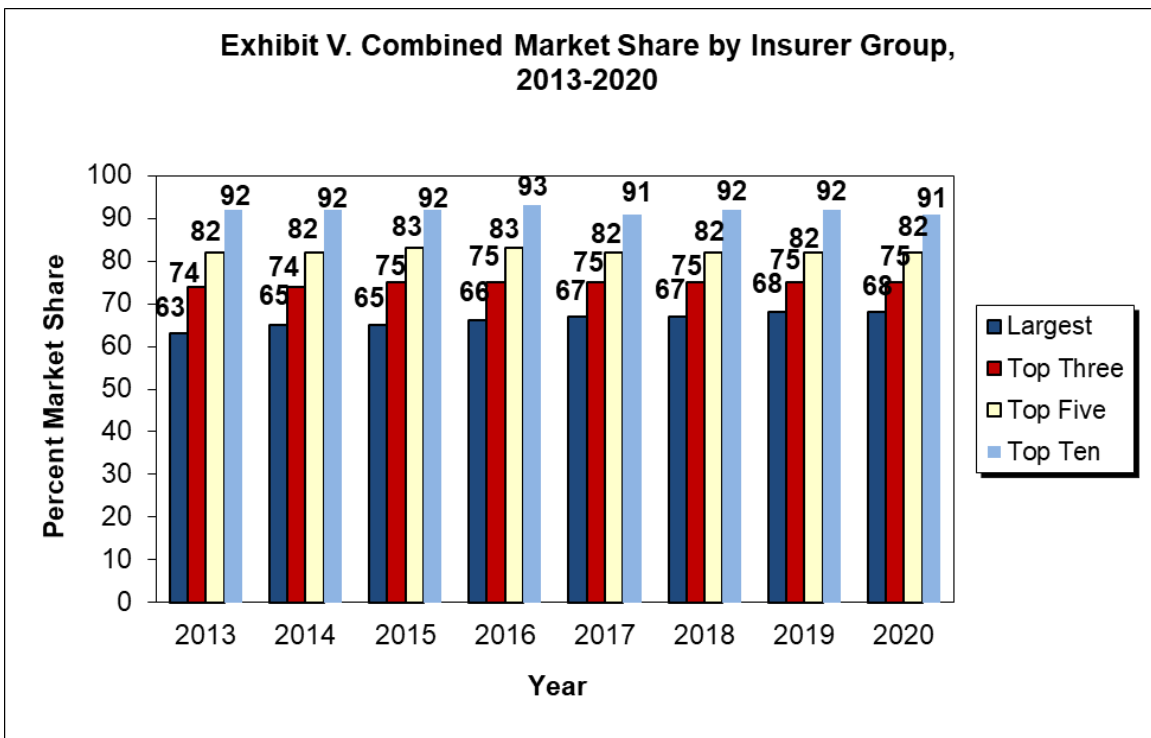
There is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guidelines for corporate mergers use 1,800 and above to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate moderately concentrated markets. A market with an HHI below 1,000 is considered not concentrated.

Applying the HHI to Maine's workers' compensation market does not give a complete picture of Maine's market concentration for two reasons. First, the Maine Legislature created MEMIC to replace a highly concentrated residual market in which other insurers were reluctant to write actively in this state. Second, the market has a high percentage of employers who self-insure, either individually or in groups.

III. 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 \$158 million in premium (67.5%) in 2020. The top three groups, including MEMIC, wrote over \$175 million in business (74.8%). The top five groups wrote over \$191 million (81.5%), and the top 10 groups had over \$213 million in written premium (90.7%). The reported amounts of written premium for the top 10 groups rose by over \$2.5 million from 2019 to 2020, while their overall market share increased by less than one percent.



Source: Annual Statements Filed with the Bureau of Insurance

IV. NUMBER OF CARRIERS IN MAINE'S WORKERS' COMPENSATION INSURANCE MARKET

The number of carriers in the workers' compensation market has increased in 18 out of the past 21 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 76% since 2000. There currently are no significant barriers to entry.

Year	Number of Carriers	Net Change (Percent)
2021	371	3.8
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.

V. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE GROUPS

Table III shows market share for the ten largest insurance groups in 2020, and those groups' market share from 2013-2020. These groups wrote 91% of the workers' compensation business in 2020. 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 2020.

Insurance Group	2013 Share	2014 Share	2015 Share	2016 Share	2017 Share	2018 Share	2019 Share	2020 Share
Maine Employers' Mutual	62.6	64.8	64.6	65.9	67.4	67.4	67.7	67.5
Travelers Group	4.9	4.4	4.3	4.3	3.9	3.7	3.8	3.8
ProAssurance Corp Group	-	-	-	-	-	3.6	3.9	3.6
WR Berkeley Group	4.5	4.5	4.1	4.4	3.9	3.5	3.6	3.4
Liberty Mutual Group	6.1	4.5	5.7	3.7	2.6	3.3	3.5	3.3
Hartford Fire & Casualty	3.5	3.4	3.2	3.1	3.1	3.3	3.1	2.9
Zurich Insurance Group	1.5	1.5	1.8	2.2	2.1	1.8	2.0	2.1
Chubb Ltd Group	-	-	-	2.0	2.0	2.2	2.0	1.9
American International Group	2.8	3.1	1.7	1.2	1.8	1.5	1.2	1.2
The Hanover Ins Group	1.4	1.2	1.0	1.1	1.1	1.1	1.3	1.2

Source: Annual Statements Filed with the Bureau by Insurance Carriers

VI. 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 2013 through 2020. Throughout this entire period Maine Employers' Mutual Insurance Company (MEMIC) had more than 62% market share. The top 10 companies combined held over 76% of the market in 2020.

Insurance Carrier	2013 Share	2014 Share	2015 Share	2016 Share	2017 Share	2018 Share	2019 Share	2020 Share
Maine Employers' Mutual	62.5	64.7	64.4	65.7	67.0	67.0	67.3	67.1
Eastern Alliance Ins Co	-	-	-	-	0.6	2.6	2.1	1.8
Zurich American Ins Co	0.8	0.9	1.5	1.7	1.6	1.4	1.4	1.4
Allied Eastern Ind Co	-	-	-	-	-	0.3	1.2	1.3
Firemen's Ins Co of Wash DC	2.1	2.0	1.7	1.7	1.6	1.0	1.0	1.2
Charter Oak Fire Ins Co	1.3	1.1	0.9	1.2	1.1	1.1	1.0	1.1
Continental Western Ins Co	-	-	-	1.0	1.1	1.1	1.0	0.8
Union Ins Co	0.3	0.5	0.6	0.7	0.7	0.6	0.9	0.7
LM Ins Corp.	-	0.2	0.2	0.2	0.2	0.3	0.5	0.6
Arch Ins Co.	0.4	0.8	0.7	0.7	0.9	0.7	0.6	0.6

Source: Annual Statements Filed with the Bureau by Insurance Carriers

VII. MEMIC RATE CHANGE

In 2021, MEMIC received approval for a 6.082% average rate increase. This increase marked the first increase in the company's loss cost modifiers (LCMs) since 2004. This increase is also significant because it brings the company's rates into a range within which the Bureau must consider whether they are excessive. Table V below shows the estimated impact on the Maine market.

In addition to the rate increase, MEMIC created a new small business tier and increased their expense constant. The small business tier creates an opportunity for small businesses to qualify for lower rates. The increase in the expense constant from \$180 to \$220 is to account for increases in the fixed cost of administering a policy.

Tier	Current LCM	New LCM	Number of Policies	Approximate Avg. \$ Impact
Safety	1.09	1.14	300	\$1,496
Preferred	1.21	1.29	786	\$2,074
Small Business	1.45	1.39	11,307	(\$55)
Standard	1.45	1.56	5,381	\$1,592

5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

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).

Rate Comparison	2020 Percent	2021 Percent
Below MEMIC Standard Rate	21.5%	28.10%
At MEMIC Standard Rate	58.0%	47.9%
Above MEMIC Standard Rate	20.5%	24.0%

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 with the statutory deductibles. 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 2020 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.

Year	Estimated Total of All Standard Premiums	Percent of Workers' Compensation Market (in annual standard premium)
2020	\$132,635,613	36.1
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.

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, 2021, there were 18 self-insured groups representing 1,117 employers. The number of individual self-insured employers decreased by two from 2020.

Table VIII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 2000-2020			
6Year	# of Self-Insured Groups	# of Employers In Groups	# of Individually Self-Insured Employers
2021	18	1,117	55
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. OREGON WORKERS' COMPENSATION PREMIUM RATE RANKING

The State of Oregon ranks the states and the District of Columbia bi-annually by premium. The Oregon premium rate rankings focus on 50 classifications based on their relative importance as measured by their share of losses in Oregon. In 2020, Maine had the 16th highest workers' compensation premium rates in all industries. Maine's rank was 19th highest in 2018, 14th highest in 2016, and 13th highest in 2014.

II. 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. Maine had the 6th highest average loss cost in the most recent report, as well as in last year's report.

State	Average Loss Cost	Rank
Connecticut	1.22	1
Hawaii	1.21	2
Vermont	1.14	3
Georgia	1.11	4
Illinois	1.11	4
Maine	1.10	6
Idaho	1.05	7
Louisiana	1.05	7
Missouri	1.03	9
Iowa	1.02	10
South Carolina	0.97	11
Rhode Island	0.91	12
Alabama	0.91	12
Oklahoma	0.90	14
Florida	0.90	14
Alaska	0.89	16
New Mexico	0.87	17
Montana	0.86	18
New Hampshire	0.86	18
Maryland	0.82	20

State	Average Loss Cost	Rank
Nebraska	0.82	20
Colorado	0.74	22
South Dakota	0.72	23
Oregon	0.69	24
Kansas	0.69	24
Kentucky	0.68	26
Mississippi	0.68	26
Nevada	0.67	28
Virginia	0.66	29
Arizona	0.66	29
North Carolina	0.66	29
D.C.	0.64	32
Tennessee	0.55	33
Indiana	0.55	33
Utah	0.52	35
West Virginia	0.44	36
Arkansas	0.42	37
Texas	0.36	38
Countrywide	0.77	

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

- 1. INTRODUCTION C1
 - 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 C8
- 2. PREVENTION SERVICES C9
 - I. SAFETYWORKS! C9
 - II. ENFORCEMENT C11
- 3. RESEARCH AND DATA C13
 - I. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS..... C13
 - II. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT C27
- 4. CHALLENGES AND OPPORTUNITIES C30
 - I. SAFETY EDUCATION & TRAINING FUNDING C30
 - II. ELECTRONIC DATA INTERCHANGE AND MISSING DATA C30
 - III. RETURN TO WORK DATA..... C32
 - IV. COST DATA..... C33
- 5. DEVELOPMENTS..... C34
 - I. RESOURCES AND FUNDING..... C34
 - II. PROGRAM INITIATIVES..... C34

1. INTRODUCTION

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, 2021 Developments, outlines the 2021 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

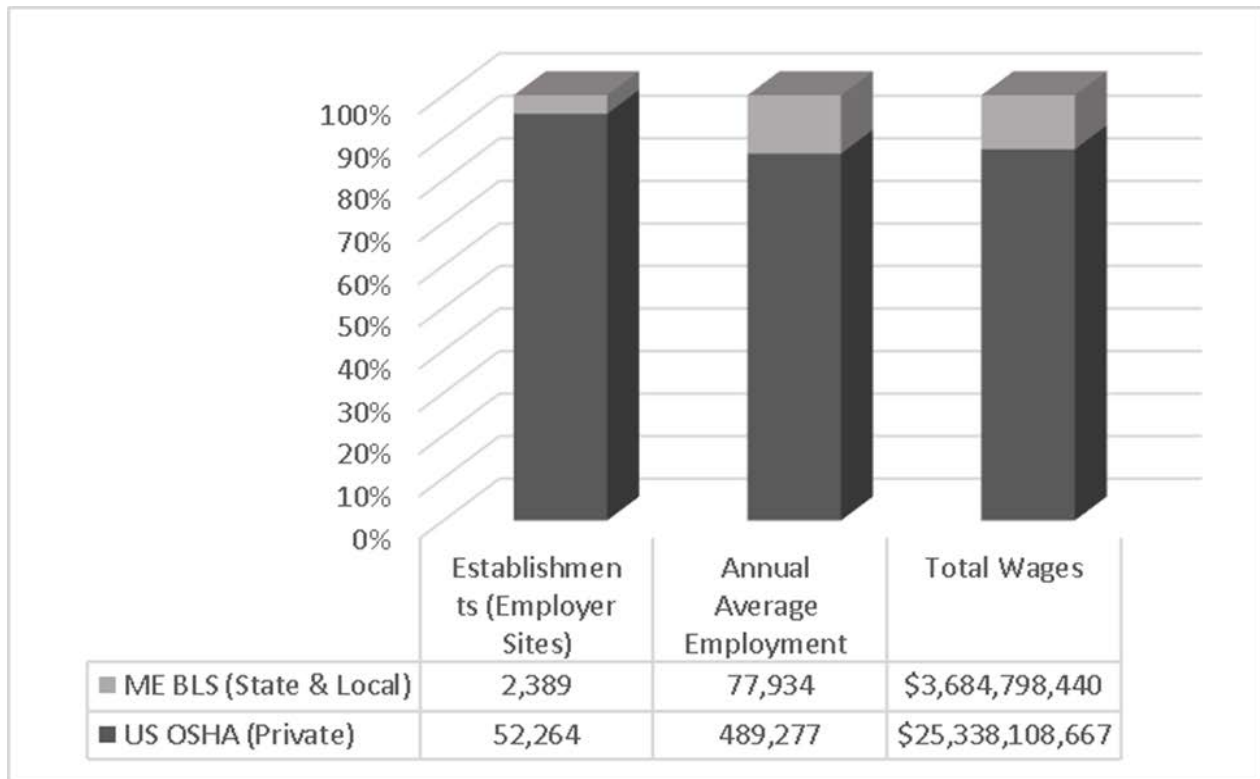
Maine Workers' Compensation System			
Function		State and Local Government	Private Sector Employers
Prevention	Research	Maine SafetyWorks!	
	Outreach and Education	Maine SafetyWorks!	
	Employer Consultation	Maine SafetyWorks!	
	Safety Standards Enforcement	Maine BLS*	U.S. OSHA
	Child Labor Enforcement	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, 2021.

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 during the consultation services.

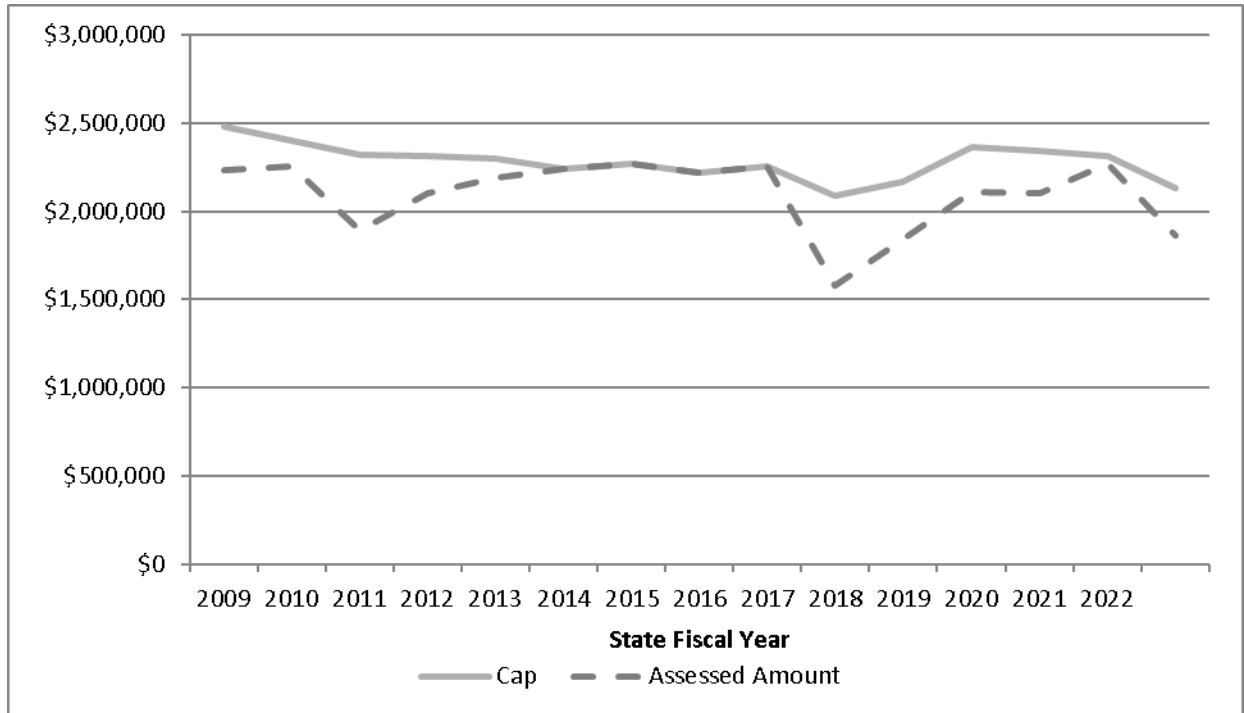
Since 2015 the Bureau’s public sector (state and local government) enforcement and consultation activities have been match-funded (50/50) through a U.S. OSHA “23g” cooperative agreement, with matching funds from the SETF for the consultation portion of the work. (The state general fund provides the match 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 over \$1.6 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 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-5 below illustrates the gaps and when the cap and assessment total merge.

Figure C-5: 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 2014-2017, the Bureau had to charge at the cap to pay for a major software upgrade. For state fiscal years (SFY) 2017-2022, 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-6 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 in 2020. 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-6: Summary of Prevention Services and Activities

Service	Jurisdiction / Funding Source	Activity Measures
SafetyWorks! Training Institute	State SETF / U.S. OSHA and MSHA* Cooperative Agreement	<ul style="list-style-type: none"> • 100 classes and 10 OSHA Region 1 courses with 1,006 workers trained in (FFY) 2021. Due to COVID-19 and social distancing requirements, STI reduced its class size from 48 participants to 18. This amount has since increased to 24.
Employer OSH Data Profiles	State SETF / U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 52 employer profile/data requests answered in CY 2021
On-site Consultations	State SETF / U.S. OSHA and MSHA* Cooperative Agreement	<ul style="list-style-type: none"> • 304 employer onsite consultations and reports which identified 1,660 serious hazards (FFY) 2021. These numbers are considerably down from pre-COVID years due to COVID-19 restrictions.
Youth Employment Permit Enforcement	State General Fund	<ul style="list-style-type: none"> • 6084 work permit applications received • 5461 work permits approved • 233 work permits initially denied in SFY 2020
Wage & Hour Enforcement, Random & Focused Inspections	State General Fund	<ul style="list-style-type: none"> • 48 employer inspections • 10 inspections found violations • 141 total child labor violations involving 2 employers in SFY 2020
Wage & Hour Enforcement, Complaint Investigations	State General Fund	<ul style="list-style-type: none"> • 224 complaint investigations • 59 complaints found violations in SFY 2020 • 128 child labor violations involving 8 employers
Public Sector Safety Enforcement	State General Fund / U.S.OSHA, 50/50	<ul style="list-style-type: none"> • 18 employers • 44 total violations, 28 serious violations • \$13,100 in initial penalties issued FFY 2021 <p>These numbers are down considerably from pre-COVID years 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"> • 11 sessions in CY 2021 • 131 attendees in CY 2021 • 11 sessions planned in CY 2022

*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-7.

Table C-7: Summary of Data Activities and Significant Measures

Data Programs	Funding	Result Measures
Workers' Compensation Case Data (1977-2020)	State SETF / U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 13,874 disabling cases coded for calendar year 2020 <ul style="list-style-type: none"> ○ Decrease of 80 claims from 2019 (13,954) ○ Decrease of 16,441 from the high of 30,315 in 1989 (54.23% decrease)
Survey of Occupational Injuries and Illnesses (SOII) (1975-2020)	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 4.3 Total OSHA recordable case incidence rate in CY 2020 <ul style="list-style-type: none"> ○ Decrease of 12% from CY 2019 ○ Decrease of 13% from CY 2010 ○ Decrease of 44% from CY 2000 • 2.6 Days Away, Restricted or Job Transfer case incidence rate in CY 2020 <ul style="list-style-type: none"> ○ Decrease of 4% from 2019 ○ Decrease of 15% from 2010 ○ Decrease of 100% from 2000 • 1.5 Days Away From Work case incidence rate in CY 2020 <ul style="list-style-type: none"> ○ Increase of 7% from CY 2019 ○ Consistent with 2010 ○ Decrease of 44% from 2000
Census of Fatal Occupational Injuries (CFOI) (1992 – 2020)	State SETF/US Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 20 fatalities in 2020 <ul style="list-style-type: none"> ○ Equal fatality count to 2019 (20) ○ Highest fatality count in 2011 (26) ○ Lowest fatality counts in 2005 and 2015 (15)
Employer Substance Abuse Testing (1989-2020)	SETF	<ul style="list-style-type: none"> • 7.4% total positive tests for CY 2020 <ul style="list-style-type: none"> ○ Low of 3.3% in CY 2014 ○ High of 7.4% in CY 2020 • 7.3% applicants positive for CY 2020 <ul style="list-style-type: none"> ○ Low 3.1 % in CY 2014 ○ High of 7.3% in CY 2020 • 66.7% probable cause positive for CY 2020 <ul style="list-style-type: none"> ○ Low of 6.8% in CY 2013 ○ High of 80% in CY 2007 (only 5 tests conducted) • 5.5% random positive for CY 2020 <ul style="list-style-type: none"> ○ Low of 1.9% in CY 2011 ○ High of 5.5% in CY 2020

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

2. PREVENTION SERVICES

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 2021, 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 2021, 52 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 2021, 304 employer on-site consultations were requested and completed.

For more on the services offered by the SafetyWorks! program, go to: 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, 2020 to June 30, 2021, W&H approved 5,461 work permits and denied 233 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, 2020, to June 30, 2021 the WHD conducted 48 random and focused inspections and found violations with 10 separate employers. WHD also responded to 224 complaints and found violations with 59 separate employers. The WHD found 269 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

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

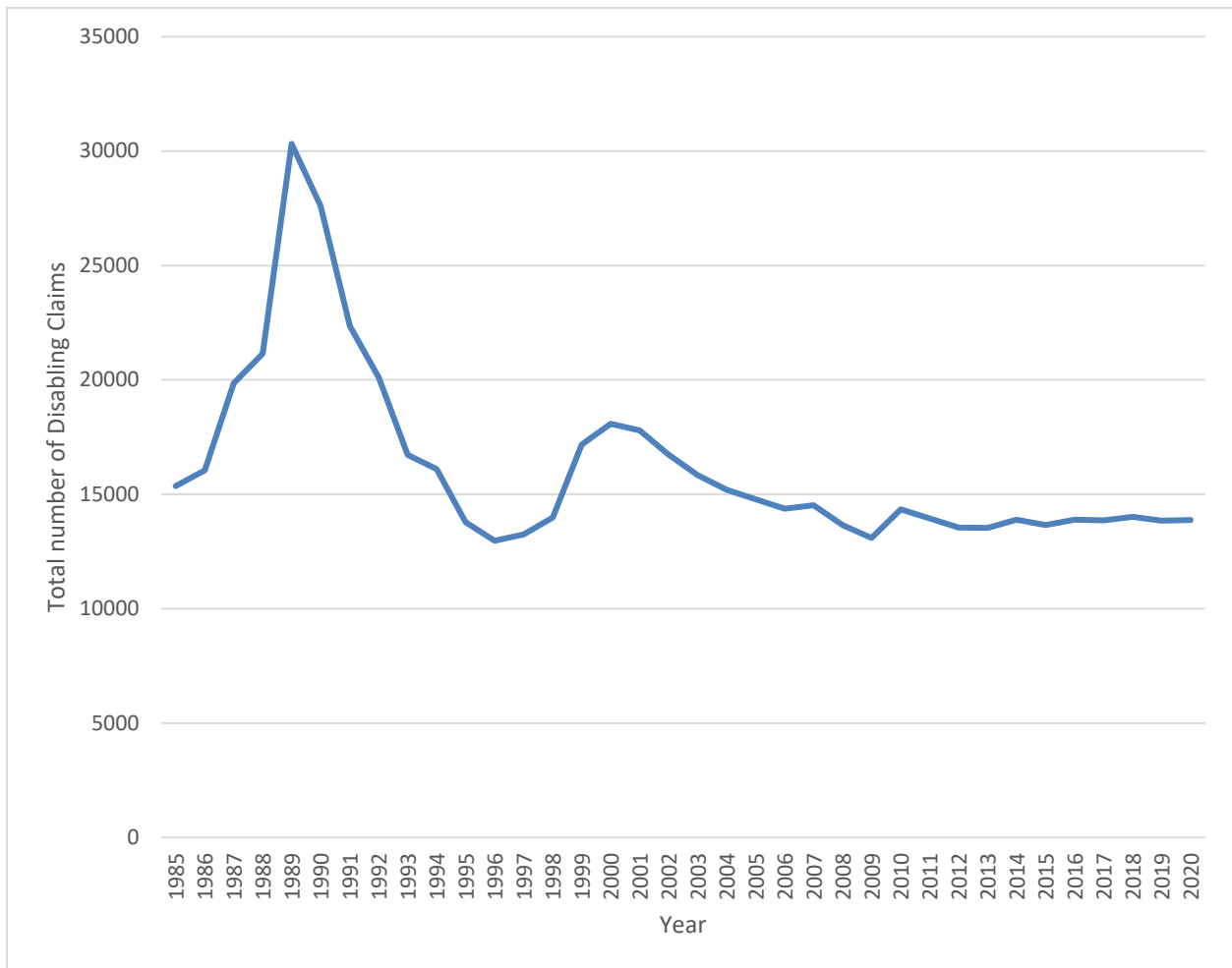
The Bureau analyzes the WCB data and provides injury profiles to employers and safety professionals to use in prevention and training activities. The consistency and completeness of WCB administrative data is critical to the accuracy and effectiveness of these prevention programs. The following is a summary of the data from the WCB claims and corresponding First Reports.

i. Thirty-five Year Pattern of Disabling Cases, Maine (1985–2020)

In 2020 there were 13,874 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-14 shows the 35-year trend of total recorded disabling cases since 1985.

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 10 years.

Figure C-14: Thirty-Five-Year Pattern of Disabling WCB Cases, 1985–2020



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

ii. *Distribution of Disabling Claims by Gender and County, Maine (2018-2020)*

Geographic and gender distributions of data can be useful in health and safety related planning and setting respective enforcement and consultation priorities by region. Table C-16 provides the number of disabling cases statewide and by county and gender for calendar years 2018 through 2020.

For the past several years, most counties would see 23 claims filed from males, for every 17 claims filed for females. 2020 saw the statewide ratio come closer together with 21 claims filed for male workers for every 19 by female workers. Of note, Aroostook, Cumberland, Franklin, Kennebec, and Penobscot all had a greater proportion of claims filed by female workers than male workers. Androscoggin is the only county with a major hospital and most claims filed by males, though their proportion is essentially even.

Table C-16: Distribution of Disabling Cases by Gender and County, Maine (2020–2018)

County	2020			2019			2018		
	Male	Female	County Total	Male	Female	County Total	Male	Female	County Total
Androscoggin	683 (50.9%)	657 (49.0%)	1340	667 (57.3%)	496 (42.6%)	1163	646 (54.4%)	541 (45.5%)	1187
Aroostook	326 (49.4%)	333 (50.5%)	659	323 (53.3%)	282 (46.6%)	605	366 (60%)	244 (40%)	610
Cumberland	1843 (47.1%)	2069 (52.8%)	3912	1955 (53.8%)	1674 (46.1%)	3629	1870 (53.7%)	1606 (46.2%)	3476
Franklin	119 (42.0%)	164 (57.9%)	283	146 (62.1%)	89 (37.8%)	235	114 (61.2%)	72 (38.7%)	186
Hancock	238 (56.3%)	184 (43.6%)	422	287 (58.9%)	200 (41.0%)	487	296 (63.2%)	172 (36.7%)	468
Kennebec	620 (49.2%)	639 (50.7%)	1259	705 (54.3%)	592 (45.6%)	1297	732 (52.3%)	667 (47.6%)	1399
Knox	254 (66.1%)	130 (33.8%)	384	238 (61.6%)	148 (38.3%)	386	264 (59.0%)	183 (40.9%)	447
Lincoln	120 (58.5%)	85 (41.4%)	205	156 (62.1%)	95 (37.8%)	251	150 (58.8%)	105 (41.1%)	255
Oxford	226 (55.5%)	181 (44.4%)	407	215 (54.2%)	181 (45.7%)	396	225 (58.7%)	158 (41.2%)	383
Penobscot	740 (49.5%)	754 (50.4%)	1494	764 (52.8%)	681 (47.1%)	1445	725 (51.8%)	673 (48.1%)	1398
Piscataquis	85 (60.2%)	56 (39.7%)	141	78 (61.4%)	49 (38.5%)	127	85 (53.4%)	74 (46.5%)	159
Sagadahoc	359 (78.9%)	96 (21.0%)	455	501 (81.7%)	112 (18.2%)	613	433 (76.6%)	132 (23.3%)	565
Somerset	214 (51.8%)	199 (48.1%)	413	228 (54.2%)	192 (45.7%)	420	228 (56.4%)	176 (43.5%)	404
Waldo	120 (53.8%)	103 (46.1%)	223	129 (56.3%)	100 (43.6%)	229	151 (55.5%)	121 (44.4%)	272
Washington	117 (56.5%)	90 (43.4%)	207	145 (59.1%)	100 (40.8%)	245	139 (58.1%)	100 (41.8%)	239
York	765 (53.3%)	667 (46.5%)	1433	838 (55.7%)	664 (44.2%)	1502	882 (58.5%)	624 (41.4%)	1506
Unknown*	483 (75.8%)	154 (24.1%)	637	675 (73.2%)	246 (26.7%)	921	785 (72.0%)	304 (27.9%)	1089
Statewide	7312 (52.7%)	6561 (47.2%)	13874	8050 (57.7%)	5901 (42.2%)	13951	8091 (57.6%)	5952 (42.3%)	13874

* "Unknown" represents WCB First Reports with missing location information.

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

iii. Disabling Cases by Occupational Groups, Maine (2018-2020)

Twelve occupational groups accounted for more than 90 percent of all reported disabling injuries in 2020. Table C-17 lists those top twelve occupational groups, with their corresponding share of injury totals.

Table C-17: Disabling Cases by Occupational Groups, Maine (2020-2018)

Occupational Groups	2020		2019		2018	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving Occupations	2,260	16.3%	2,162	15.5%	2498	17.8%
Healthcare Support Occupations	1,804	13.0%	818	5.9%	936	6.7%
Healthcare Practitioners and Technical Occupations	1,598	11.5%	793	5.7%	769	5.5%
Construction and Extraction Occupations	1,220	8.8%	1,312	9.4%	1,275	9.1%
Production Occupations	995	7.2%	1,174	8.4%	1,182	8.4%
Installation, Maintenance, and Repair Occupations	905	6.5%	1,012	7.3%	944	6.7%
Food Preparation and Serving Related Occupations	834	6.0%	1,120	8.0%	1,171	8.3%
Building, Grounds Cleaning, and Maintenance	771	5.6%	921	6.6%	915	6.5%
Protective Service Occupations	671	4.8%	541	3.9%	470	3.3%
Office and Administrative Support Occupations	618	4.5%	1,202	8.6%	1,154	8.2%
Sales and Related Occupations	524	3.8%	546	3.9%	311	2.2%
Management Occupations	369	2.7%	282	2.0%	242	1.7%
All Other Occupational Groups	1,305	9.4%	2,071	14.8%	2,177	15.5%
Total	13,874	100%	13,954	100%	13,874	100%

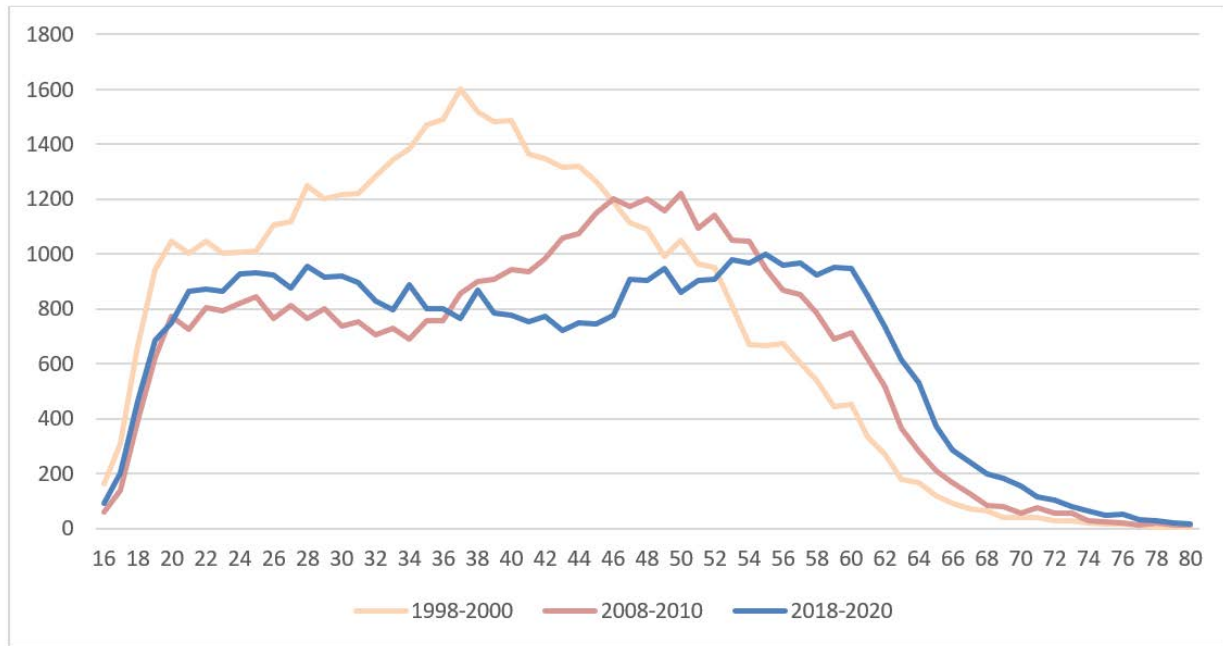
Source: Workers' Compensation Board *Employer's First Reports of Occupational Injury or Disease*

Massive layoffs during March of 2020 significantly shifted the employment landscape. Personal Care and Service Occupations, normally accounting for approximately 5% of disabling claims, only tallied 116 (0.8%) in 2020. Similar dips can be seen in Food Preparation occupations and Office/Administrative Support occupations, though not to the same extent. Meanwhile healthcare occupations, both at the practitioner/technical level and at the support level, all saw massive increases in disabling injuries, further emphasizing the strain put on healthcare workers over the last year.

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-18 displays the total number of disabling injuries suffered by 3 groups of 3-year cohorts.

Figure C-18: Number of Disabling WC Claims by Worker Age, Maine (1998-2000, 2008-2010, 2018-2020)



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

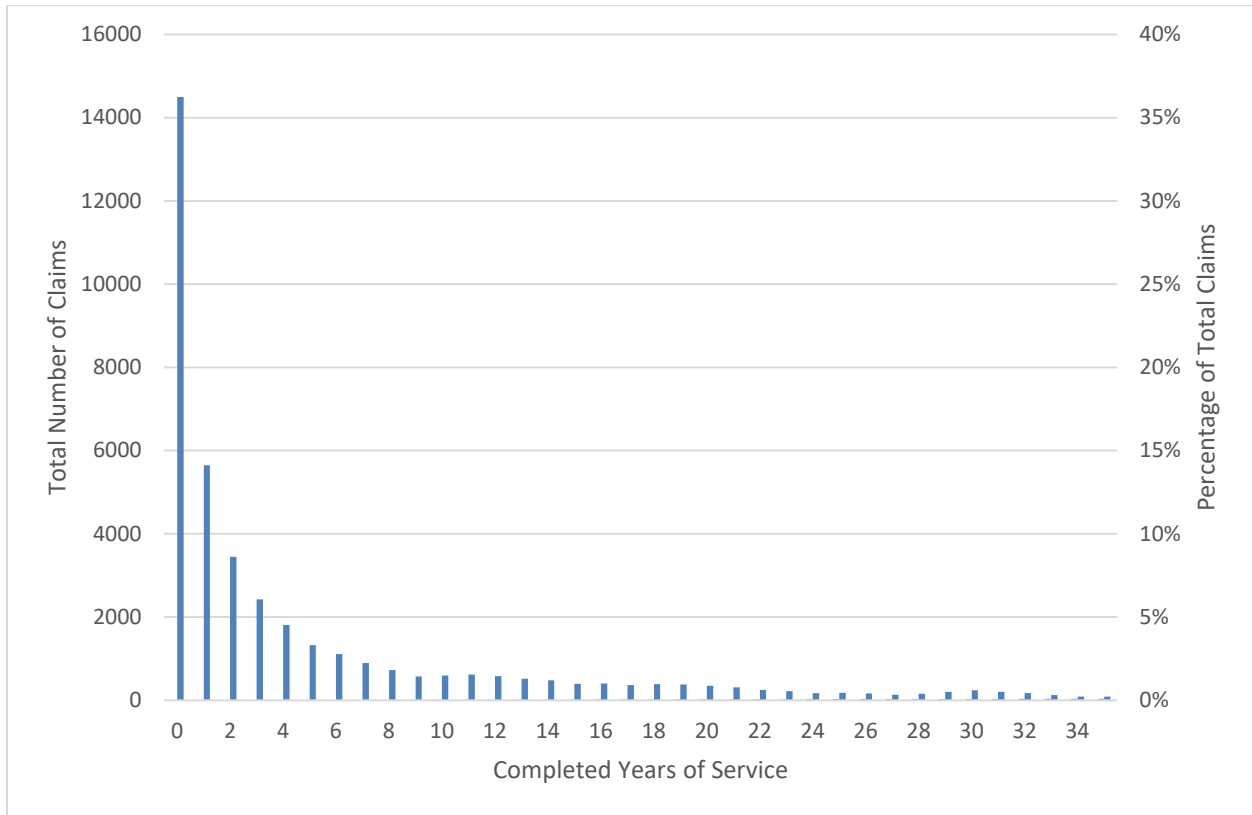
For the 1998-2000 group, the peak number injuries were suffered by 37-year old workers, which totaled 1,600 over the 3-year span. 10 years later, the peak number of injuries shifted 13 years to 50-year old workers, which totaled 1,223 over the 3-year span. In the most recently collected 3-year span of data, the peak number of injuries has shifted 6 years forward to 55-year-old workers, who totaled 999 disabling injuries. These datapoints point toward a reduction in injuries in the workplace but are also a strong indicator of Maine's aging workforce.

For the 1998-2000 cohort, we see injury counts gradually increasing between the ages of 20 and 37, a gradual decrease up to 52 years old, then a sharper decline in injury counts. The 2008-2010 cohort starts off relatively flat for injuries to 20 through 35-year old's, then increase up through the peak age of 50. There is a steady decline through age 60 before a large drop-off through the retirement years. However, the number of injuries suffered by 21-year old's in the 2018-2020 cohort (863) is not significantly less than the number if injuries at 55-year old peak of 999. For the first time, we see a relatively flat distribution of injuries throughout working ages. It will take several years of observation to find out if this equalization is an artifact of the pandemic, or the culmination of a larger trend in workplace health and may merit more active research.

v. Length of Service of Injured Worker, Maine, 2018-2020

Figure C-19 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-19: Count/Percentage of Disabling WCB Cases by Years of Service Completed by Injured Worker, Maine (2018-2020)



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

Between 2018 and 2020, the number of lost time cases by length of service can be broken up into three groups; 36% had been working for their employer less than one year, 33% had put in at least one year but less than five years of service, and 31% of employees had completed at least five years of service. Exactly half of all disabling cases were suffered by employees who had not yet completed two years of service with their employer. This further necessitates safety programs for new hires, as they are the ones most likely to be injured on the job.

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 2020, the Maine Bureau of Labor Standards surveyed 2,318 private establishments and 492 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-21 and C-22 display results from the 2020 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:

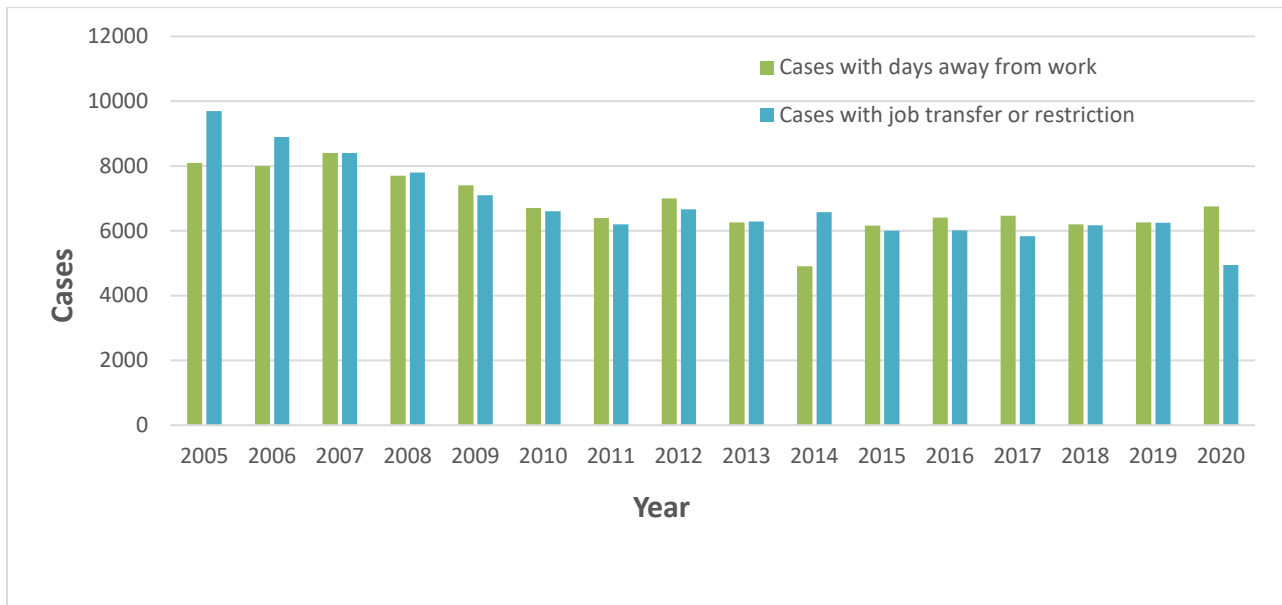
- The two systems record cases based on different definitions of “work-related” and other factors.
- WCB data (coupled with employer data available to the Bureau) can be used to generate employment-based rates but those rates are not the same as the rates published through SOII. The SOII rates are based 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-21 provides the SOII estimated number of recordable cases while Figure C-22 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-21: Lost Workday and Restricted Work Activity Estimated Cases (2005–2020)

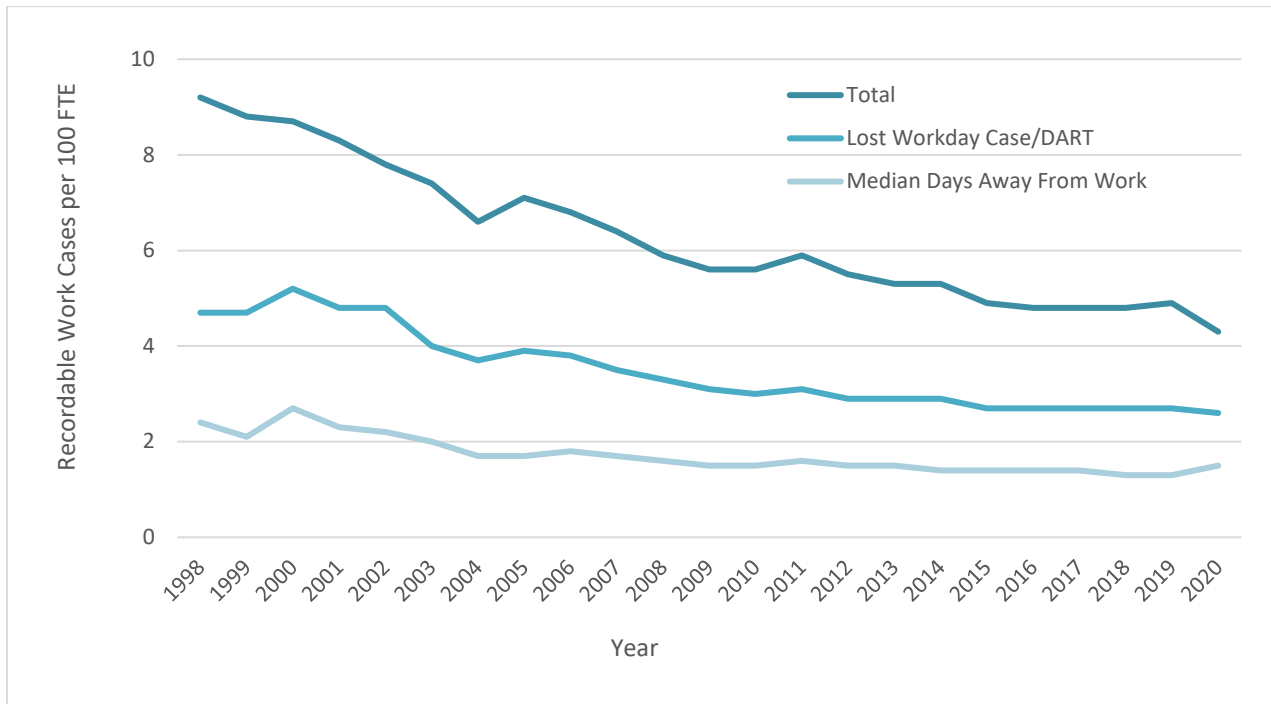


For 2020, there were an estimated total of 11,699 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total it was estimated that 6,752 cases resulted in at least one day away from work and 4,947 cases resulted in job transfer or restriction without any days away from work. During 2020 the workforce saw a lot of changes, including many employees receiving unemployment or working remotely, which may have been factors in the reduction of cases being reported that 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-22: Total Recordable, Lost Workday or DART and Days Away from Work Cases per 100 FTEs (1998–2020)



Note: DART = Days Away from Work, Restricted Work Activity, or Job Transfer

Figure C-22 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 23% since 2010 and by 51% since 2000. The Lost Workday Case / DART rate has decreased by 13% from 2010 and by 50% from 2000. The Days Away from Work Rate is the same as in 2010 and has declined by 44% since 2000. 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 1998–2020 are published on the U.S. Bureau of Labor Statistics website at this link: http://www.bls.gov/iif/state_archive.htm#ME

iii. Industry Sector Data

According to the 2020 SOII (private sector), Skilled Nursing Facilities recorded the highest total recordable incidence rate of 18.1 per 100 FTEs. Table C-23 describes the top-ten private-industry total recordable rates.

Table C-23: Publishable* Industries with the Top-Ten Total Recordable Rates, Maine, 2020

Industry Group	Cases per 100 FTEs
Skilled Nursing Facilities	18.1
Bakeries and Tortilla Manufacturing	16.1
Continuing Care Retirement Communities	13.4
Waste Management and Remediation Services	11.6
Logging	10.9
Warehousing and Storage	8.7
Transportation Equipment Manufacturing	8.2
Assisted living facilities for the elderly	7.4
Merchant Wholesalers, Durable Goods	7.0
Sawmills & Wood Preservations	6.8
All Private Industries	4.3

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 2020 data, over 21,600 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.

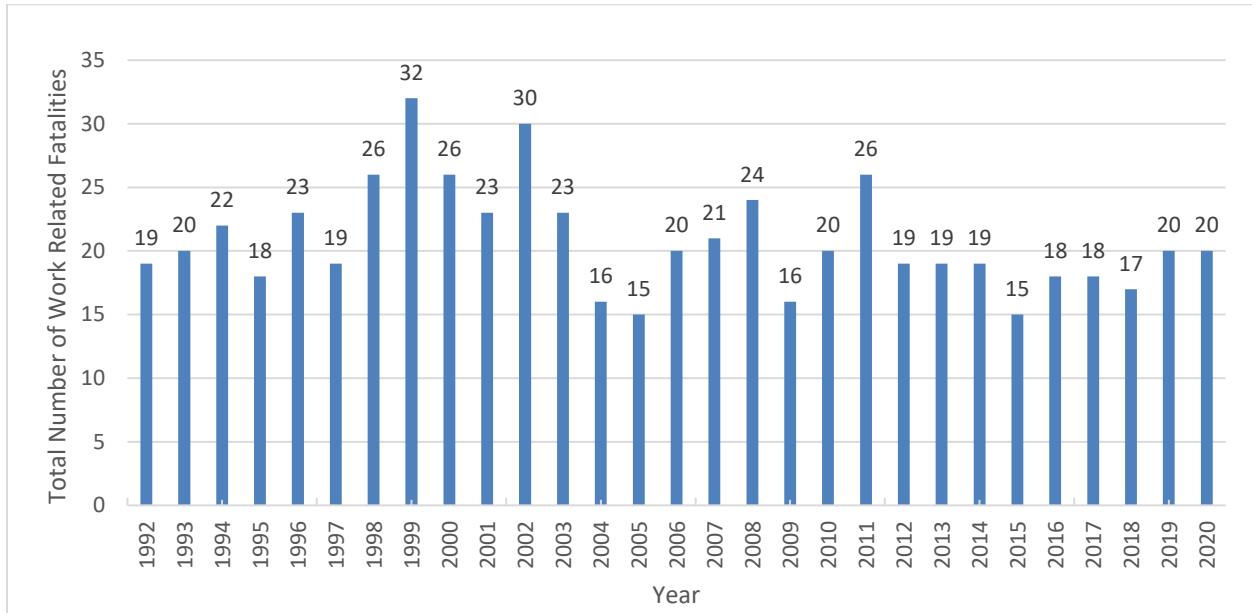
Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include the WCB *Employer's First Reports of Occupational Injury or Disease*, and fatality

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 (1992–2020)

Figure C-24 shows the numbers of work-related fatalities recorded in Maine from 1992–2020.

Figure C-24: Work-Related Fatalities, Maine (1992–2020)



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 .

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 and certified EAP prior to testing their employees under the current statute.)

In 2020, the annual survey indicated that a total of 19,565 tests were administered by employers with approved policies and 1,443 (7.4%) of these tests were positives. Of the 19,190 job applicants tested, 1,406 (7.3%) tested positive for illegal substances. Table C-26 shows the total tests and applicant test results for the last ten years while Table C-27 describes the corresponding results for probable cause and random testing.

For a full report, visit: https://www.maine.gov/labor/labor_laws/substanceusetesting/ . Survey data for 2021 will be available by April 1, 2022.

Table C-26: Results of Overall and Applicant Substance Use Testing (2011–2020)

Year	Approved Policies	Total Tests			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2020	536	19,565	1,443	7.4	19,190	1,406	7.3

Table C-27: Results of Probable and Random Substance Use Testing (2011-2020)

Year	Approved Policies	Probable Cause Testing			Random Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2020	536	27	18	66.7	347	19	5.5

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 2021, the BLS Research and Statistics Division training staff conducted eleven classes in various locations in the state via SafetyWorks: Six in Augusta, two in Portland, two in Bangor, and one in Presque Isle.

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, which can also be found here:

https://www.maine.gov/labor/labor_stats/research.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

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

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. The latest year we assessed at 90% where we had fewer expenses than planned in the previous year.

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 the case 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 (and successors) format. This standard requires data be thorough and timely which sometimes sacrifices details. Some employers and insurers have adopted systems that get the data through 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 should WCB adopt EDI for Subsequent Reports of Injury and Illness (SROI):

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 staff must watch for that.

III. RETURN-TO-WORK DATA

Returning to work to 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 the severity of 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.

Table C-32 below 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 accuracy. As it is, many exceptions and corrections are necessary to profile cases that may not actually reflect individual situations and is an area of future research.

Table C-32: Status of Lost Time Claims, Maine, 2017-2021

Claim Status	Year of Injury or Illness Report					Total
	2017	2018	2019	2020	2021*	
Lost Time (LT) Claims	5,163	4,986	4,864	5,108	3,391	23,512
Open LT Claims	332	439	501	808	1,234	3,314
% Open	6.4%	8.8%	10.3%	15.8%	36.4%	14.1%
Closed LT Claims	4,831	4,547	4,363	4,300	2,157	20,198
Resumed Work	3,213	3,040	3,142	3,549	1,887	14,831
% Resumed Work	62.2%	61.0%	64.6%	69.5%	55.6%	63.1%
* Partial year						
Source: Workers' Compensation Board <i>Employers First Report of Occupational Injury and Disease</i> and subsequent payment reports as of 12/16/2021						
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

5. DEVELOPMENTS

I. RESOURCES AND FUNDING

The effects of COVID-19 in the Workplace during 2021 were varied. For all workplaces it was a year of uncertainty as the new vaccines gave hope for resolution and a lack of acceptance and, by the midyear, the possible lack of efficacy against new variants affected certainty. The uncertainty has led to the withdrawal of workers from the workforce and resulting in labor shortages worldwide. This, in addition to the loss of productivity due to the disease itself. The resulting loss of productivity from these two sources affected the worldwide supply chain of the international economies and fed into additional productivity losses and uncertainty. SafetyWorks! classes continued to be held throughout the year, expanding class size from 18 to 24 early in 2021. On-site consultations and meetings were resumed with COVID-19 protocols for exposure. The numbers of these services are higher than in 2020 but not quite above those in 2019 as a result.

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
- Hearing Protection
- Heat Illness Prevention
- Personal Protective Equipment
- Video Display Terminal Training

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

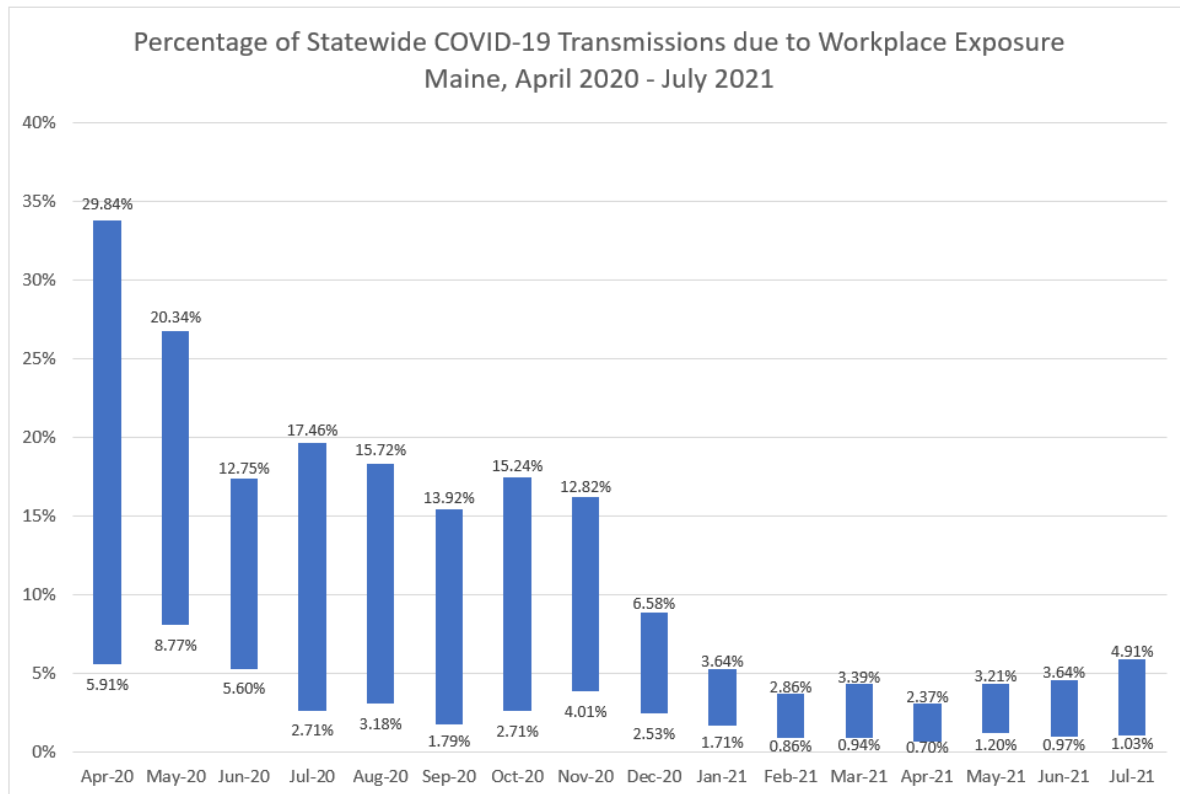
In response to the COVID-19 pandemic and its effect on the workplace, the Bureau looked how much potential transmission is taking place in the work environment.

According to the Maine CDC, there were there were 342 cases of COVID-19 reported in Maine in March of 2020. Also, that month, there were 318 First Report of Injury (FROI) claims filed with the Maine Workers' Compensation Board related to COVID-19. If all 318 of those employees contracted COVID-19, it would mean that 93% of statewide transmission in the first month of the pandemic was due to workplace exposure.

Unfortunately, information in the FROI is not extensive enough to accurately determine if a COVID-19 claim was filed for contracting the illness, or if the employee was removed from work as a precautionary/quarantine measure. Of those 318 COVID-19 FROIs filed in March of 2020, only 14 included specific information demoting that the employee was either known to have contracted COVID-19 or had a positive test result at the time of filing. These 14 claims account for 4% of statewide transmission that month.

Assuming there was a Workers' Compensation claim filed by every employee who believes their COVID-19 was contracted due to or in the course of their employment, then the true amount of COVID-19 transmission attributable to workplace exposure for March of 2020 lies somewhere in-between these two boundaries of 4% and 93%. Figure C-35 below charts this range of COVID-19 cases which could be attributed to workplace exposure for the following 16 months.

Figure C-35: Percentage of COVID-19 Transmissions due to Workplace Exposure, Maine (April 2020-July 2021)



March of 2020 is omitted, since the large range detailed above would skew the chart and make it unreadable. July 2021 is the last month for which we have complete information.

The exact number of COVID-19 confirmed positives due to workplace exposure cannot be known, since the FROI is not required to include an employee's COVID-19 test results. However, the graph above shows a likely lower and upper bound for how much of the disease spread could be attributed to workplace exposure. While the minimum guaranteed proportion of workplace transmission has not been significantly reduced between 2020 and 2021, the maximum proportion has shrunk considerably since vaccines began their rollout in December of 2020.

Of note, this graph stops just as the Delta Variant began gaining traction. There should not be any future projections made using this data, as the effects of that variant cannot be accounted for in data before August of 2021.

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 .

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 2022, there are 33 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)	Lonza Rockland (Rockland)
Cianbro Equipment (Pittsfield)	Maine Oxy & Acetylene & Supply Co. (Presque Isle)
Cianbro Fabrication Shop (Pittsfield)	Maine Oxy Acetylene & Supply Company (dba Dirigo Technologies) (Auburn)
Cianbro Paint Shop (Pittsfield)	Maine Oxy Acetylene & Supply Company (Hermon)
Classic Boat Shop (Bernard)	Marden's Inc. (Calais)
CM Almy, Inc. (Pittsfield)	Marden's Inc. (Ellsworth)
Davis Brothers (Chester)	MidState Machine (Winslow)
DeepWater Buoyancy (Biddeford)	Record Hill Wind (Roxbury)
Deering Lumber, Inc. (Kennebunk)	Reed & Reed – Metal Fab (Woolwich)
Everett J. Prescott (Bangor)	Robbins Lumber (frmly Limington Lumber Co.) (Baldwin)
Everett J. Prescott, Inc. (Gardiner)	S W Boatworks (Lamoine)
Everett J. Prescott, Inc. (Portland)	SFX America (Portland)
Gorham Sand & Gravel (Buxton)	Somic America (Brewer)
Hancock Lumber (Bridgton)	Strouts Point Wharf (Freeport)
Howard Tool Company (Bangor)	

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 2022, there are 84 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.
Boothbay Fire Dept.	Jay, Town of	Old Town, City of
Bradley Fire Dept.	Jefferson Fire & Rescue	Orono Fire Dept.
Bristol / So. Bristol Transfer Station	Kennebec Water District	Paris Fire Dept.
Bristol, Town of	Kennebunk, Kennebunkport & Wells Water	Presque Isle, City of
Brooks Fire Dept.	Kennebunk, Town of	Rockland Fire & EMS Department
Brownfield Volunteer Fire Dept.	Kingfield Fire Dept.	Rockport, Town of
Brunswick Sewer District	Kittery Water District	Rome Fire Dept.
Bucksport, Town of	Knox County	Sabattus Sanitary & Water
Camden Fire Dept.	Levant Fire Dept.	Sagadahoc County
Caribou, City of	Lewiston Fire Dept.	Saint Agatha Fire Dept.
Carrabassett Valley Fire Dept.	Liberty Fire Dept.	Skowhegan, Town of
Cary Medical Center	Limestone Water and Sewer	Somerville Fire Dept.
L'Acadie Care Facility	Lincoln Water District	South Thomaston Fire Dept.
Damariscotta Fire Dept.	Lincoln County	United Technologies
Dover and Foxcroft Water District	Maine Turnpike Authority	University of Maine - Blueberry Farms
Durham Fire Dept.	Maine Veterans' Home - Caribou	Waldoboro Fire Dept.
Edgecomb Fire Dept.	Manchester Fire Dept.	Wilton, Town of
Fairfield, Town of	Mapleton, Town of	Windsor Volunteer Fire Dept.
Farmingdale Fire Dept.	MDOT - Region 2 and Fleet Services	Winslow, Town of
Farmington, Town (excluding fire dept)	MDOT - Region 3	Winthrop Fire Dept.
Fort Fairfield, Town of	MDOT - Region 4	York Water District
Fort Kent Fire & Rescue	MDOT - Region 5	
Greater Augusta Utilities District	Mid-Maine Technical Center	

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 law, which went into effect in January of 2021, provides many workers who previously had no paid time off with the opportunity to earn paid leave in the event of illness, injury, sudden necessity, or planned vacation. The Outreach and Education Coordinator continues to promote access to information about paid and unpaid, job-protected leave as workers quarantine and navigate the COVID-19 pandemic.

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 H-2A 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, and regularly posts OSHA health and safety guidance for farms on current topics such as COVID-19.