



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

Submitted to the  
131st Maine  
Legislature

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STATE OF MAINE  
**WORKERS' COMPENSATION BOARD**  
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February 14, 2023

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We are pleased to submit to the Governor and the 131<sup>st</sup> Legislature, First 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

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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.

Governor Mills has been clear that she expects stakeholders to work in good faith to achieve consensus on issues in the workers' compensation system. Governor Mills' expectation is in line with the original goal for the board of directors:

As the Law Court has noted: "[t]he Act reflects not so much a legislative intent to comprehensively address every workers' compensation issue in a detailed and specific way, but to commit some issues to a process in which the participants in the system, labor and management, can work out flexible and realistic solutions."

*Baker v. S.D. Warren*, 2010 ME 87, ¶ 10.

The current Board of Directors is accomplishing this goal. They work hard, they collaborate and, as envisioned by the Board's mission statement, they are "fostering labor-management cooperation."

An example of this cooperation is the employment of administrative law judges. For perspective, a little background is necessary. The original Board of Directors was composed of 8 members, 4 representing labor and 4 representing management. During the late 1990s, the board deadlocked on some important issues, including employment of administrative law judges (then called hearing officers). As a result, in 2004, the legislature changed the board to its current 7-member configuration.

Decisions made by the Board after the 2004 change were by simple majority, 4 out of 7 members. Pursuant to a recent amendment, employment decisions regarding administrative law judges now must be made with the support of 5 of 7 members. Because the structure of the Board changed, in part because of an inability to make employment decisions regarding administrative law judges, there was concern that gridlock could once again become a problem.

The Board is pleased to report that has not been the case. Since the law changed, two administrative law judges have been hired and consensus, not gridlock, has been the hallmark of the hiring process. Both administrative law judges were hired with the support of 7 of 7 board members.

As we head into calendar year 2023, the board of directors will continue to work to foster a collaborative environment where flexible and realistic solutions can be developed and implemented. Maine law requires insurers to file complete reports within specified timeframes that tell the Board whether, when, and under what procedures, lost wages and medical bills are paid, denied, or terminated. The Board of Directors established benchmarks to measure the timeliness of these important filings. The 2021 Annual Compliance Report shows that overall industry compliance with filing deadlines fell below the benchmarks. Further, forms sometimes lack essential information, which thwarts the very purpose that the reports are intended to serve. The Workers' Compensation Board will explore new options to improve insurer compliance with form-filing deadlines and the completeness of the information provided. The Board will also keep working to improve its Independent Medical Examiner system. The Board has already implemented a program to ensure the work of the independent medical examiners is done in a timely manner. In the coming year, the Board will look for ways to improve the appointment and review processes. The Board's Abuse Investigation Unit is once again fully staffed and will be able to play a more active role in ensuring compliance with the Workers' Compensation Act.



## BUREAU OF INSURANCE

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This report examines different measures of market conditions. Most data used in this report is from company annual statements filed in 2022, reporting data as of 12/31/2021.

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 -10.3% change in the advisory loss costs effective April 1, 2022.

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 for 2021 was nearly 66%. 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-seven insurers wrote more than \$1 million each in annual premium in 2021. The top 10 insurance groups wrote over 90% of the workers' compensation insurance in the state in 2021. 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, and the number of companies actively writing this coverage has increased.

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 nearly 36% (as measured by standard premium) of the overall workers' compensation market in 2021.



# BUREAU OF LABOR STANDARDS

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The Bureau's role in Maine's Workers' Compensation system is in doing what it can to facilitate the prevention of work-related injuries and illnesses and their social and economic costs. This report summarizes recent activity, outcome measures, and emerging issues in the workplace with regards to that prevention effort.

2022 was a transition year for BLS accommodating the relaxation of pandemic guidelines for doing business and returning to meeting in-person and in groups indoors. In the fall BLS relaxed the Safety Training Institute classroom limit guidelines and moved back to the pre-pandemic limit of 48 students in the classroom. Onsite appointments resumed, as did in-person on-site training and inspections, and meetings and conferences. In some cases, BLS continued with virtual meeting hybrids as an option, which is proving to be a benefit to people, and staff limited in their travel due to budgets and time constraints.

The results of the 2021 Survey of Occupational Injuries and Illnesses (SOII) were released in November and the Total OSHA Recordable Case incidence rate was 4.7 cases per 100 full-time equivalent workers. While this is an increase from 2020 when it was 4.5, it is a decrease from 2019 when it was 4.9. The pandemic temporarily lowered the rate due to overall lowered exposure, but the overall downward pre-pandemic trend is continuing post-pandemic, illustrating that the collective prevention efforts of the SafetyWorks! program, the insurance companies and the businesses of Maine are continuing in a good direction. This needs to be balanced with a caution, however. It appears that while the rate of cases is lower, the severity may be increasing. The rates measuring Days Away, Restricted or Job Transfer rose 15% from 2020 to 2021. This may mean that the injuries that are reported are increasing in severity and impact on the worker. This will need to be watched going forward.

Much of Maine's Workers Compensation injury and illness non-enforcement prevention efforts is funded by the Safety Education and Training Fund (SETF) and is assessed on insurers based on their portion of compensation payout and capped by their reported total cost of injuries and illnesses in the previous year. Historically, with the reduction in cases has also been a reduction in costs, and, therefore, the assessment. In the latest year, the cap has declined to what is very close to the normal yearly operating budget for the SETF activities. This is somewhat alarming in that it may mean the Bureau will have to curtail services to accommodate further reductions absent additional cooperative agreement revenues from US DOL or from the state's General Fund.

As employers continue to struggle finding workers, they have increasingly turned to using minors in the workplace to bridge the gap. With the exception of the 2020 primary pandemic year, there has been a steady increase in the application and processing of minor work permits with the concern being whether there is a commensurate increase in injuries and illnesses in that group. This will be researched going forward. With minors, the chance of long-term disability is a concern because they are so early in their work-life cycle.

Some interesting trends are emerging from the injury and illness numbers post-pandemic that will also require research to determine the cause and any changes in prevention efforts to mitigate. See section 3 for more data and details on these trends.

- Prior to the pandemic, approximately 42.5% of disabling claims were filed by women, and 57.5% were filed by men. Since 2019, disabling claims filed within the Healthcare and Social Assistance industry have skyrocketed relative to every other industry, which have seen a reduction in filings. Because this is one of the largest industries in Maine and has a female majority workforce, the gap in filing by gender has shrunk from 15% to only 5%. Female claimants make up 47.5% of post-pandemic claims, while males are only 52.5%. The significant increases in disabling claims filed for healthcare occupations, both at the practitioner/technical level and at the support level, have not receded back to pre-pandemic levels, further emphasizing the strain put on healthcare workers over the last year.
- The number of disabling injuries and illnesses in the Healthcare and Social Assistance industry are noteworthy for multiple reasons. The industry's increased number of claims filed directly after the pandemic started in 2020 has not gone down in proportion to other industries, even after employment in other industries returned to pre-pandemic levels. On the contrary, the total number of claims within the industry increased in lockstep with the rest of Maine. This industry has sustained its significantly sized margin over the second most common filing industry, rather than returning to having an insignificant lead over Retail Trade.
- Public Administration and Transportation and Warehousing were the only two industries to show an increased proportion of disabling claims filed compared to the year before the pandemic. And while all other industries are showing a decreased proportion of disabling claims filed, Manufacturing and Construction are doing so while simultaneously showing an increased number of disabling claims filed compared to before the pandemic.
- Many offices are under capacity as workers have continued to work remotely rather than return to business headquarters. This has led to injuries and illnesses for Office and Administrative Support workers to continue being significantly lower post-pandemic compared to 2019 and earlier, both in terms of raw count and as a proportion of all Maine claims. See table C-16 for the numbers.

We look forward to researching these and other trends and what changes to prevention and training strategies they suggest.

**SECTION A**

**WORKERS' COMPENSATION BOARD**



# Section A: Workers' Compensation Board

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# 1. INTRODUCTION

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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 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 Monitoring and Audit Divisions. Specifically, monitoring and auditing staff take a more in-depth look at an entity's compliance and payment accuracy.

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 might 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

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### 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** Creates rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§328-B** Creates a rebuttable presumption that specified cancers that are contracted by firefighters and certain employees of forest protection unit of the Department of Agriculture are work-related.
- **§328-C** Creates a rebuttable presumption that heart disease and hypertension that is contracted a state worker who provides care, supervision or custody for incarcerated persons is 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. 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. 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 eight, from a high of 11.

Until 1993, Commissioners, (now 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.

### **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.

In addition, statutory changes and evolving medical knowledge also brought a new type of claim into the system. The law no longer required that an injury happen "by accident." 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 during this period of time.

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.

### 3. DISPUTE RESOLUTION

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#### 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. Since the onset of the COVID-19 pandemic, in March 2020, 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 most 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 2013 through 2022.

<b>Troubleshooting</b>				
Filings Assigned, Disposed, and Pending				
<b>Year</b>	<b>Assigned</b>	<b>Disposed</b>	<b>Pending 12/31</b>	<b>Av Days at TS</b>
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
2022	12,582	12,720	488	19



#### 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 2013 through 2022.

<b>Mediations</b>				
Cases Assigned, Disposed, and Pending				
<b>Year</b>	<b>Assigned</b>	<b>Disposed</b>	<b>Pending 12/31</b>	<b>Av Days at MDN</b>
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
2022	1,674	1,689	402	70

## 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 2013 through 2022.

### Formal Hearing Cases Assigned, Disposed, and Pending

Year	Assigned	Disposed	†Lump Sum Settlements	Pending 12/31	Av Months to Decree at TS
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
2022	1,203	1,189	635	510	7.8

† 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

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### 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. 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. The 2021 Annual Compliance Report was approved by the Board on September 13, 2022.

The following sections, taken from the 2021 Annual Compliance Report report, show a continuing failure to meet the Board’s benchmarks. The Board continues to look for ways to increase compliance with its benchmarks. For example, the Board initiated a process to assess penalties if a Memorandum of Payment is filed late. Compliance with this benchmark increased after the Board began this process.

#### **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 2021 Annual Compliance Report**

	Benchmark	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
<b>Lost Time First Report Filings</b> Received within 7 Days	85%	78%	80%	79%	79%
<b>Initial Indemnity Payments</b> Made within 14 Days	87%	84%	84%	84%	86%
<b>Initial Memorandum of Payment Filings</b> Received within 17 Days	85%	67%	64%	67%	69%
<b>Initial Indemnity Notice of Controversy Filings</b> Received within 14 Days	90%	87%	94%	92%	93%
<b>Wage Information (WBC-2)</b> Received with 30 days of an employer's notice of knowledge of a claim for compensation	75%	66%	69%	65%	63%
<b>Wage Information (WCB-2B)</b> Received with 30 days of an employer's notice of knowledge of a claim for compensation	75%	64%	67%	64%	63%

**Annual Compliance from the 2021 Annual Compliance Report**

	1997[1]	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>Lost Time First Report Filings</b> Received within 7 Days	37%	85%	85%	84%	83%	83%	83%	83%	82%	82%	78%
<b>Initial Indemnity Payments</b> Made within 14 Days	59%	90%	91%	90%	87%	89%	90%	88%	86%	87%	84%
<b>Initial Memorandum of Payment Filings</b> Received within 17 Days	57%	89%	90%	89%	86%	88%	89%	87%	84%	81%	67%
<b>Initial Indemnity Notice of Controversy Filings</b> Received within 14 Days		95%	95%	94%	94%	93%	93%	94%	94%	94%	92%
<b>Wage Statements Due</b> and Received within 30 Days									*71%	70%	65%
<b>Fringe Benefit Forms Due</b> and Received within 30 Days									*71%	69%	64%

### **III. 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. A more efficient audit process will, hopefully, play a role in raising the compliance with benchmarks and other requirements of the Act.

#### **A. Compliance Audits**

The following audits were completed in 2022:

- Synernet
- Corvel Corporation
- Cottingham and Butler Claim Services
- Maine School Management Association
- Maine Municipal Association
- Liberty Mutual

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

- Hannaford Retail Services
- ESIS

Audits are in process for the following entities:

- Cross Insurance
- Cannon Cochran Claims Services
- Gallagher-Basset
- Eastern Alliance
- Travelers
- Zurich Insurance
- American International Group
- Wal-Mart Claims Services

#### **B. Complaints for Audit**

The audit program has a Complaint for Audit process. Through this process, a complainant requests that 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 2022, the Board received seven 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.

## **IV. 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.

## **V. TRAINING**

As resources permit, the Board provides education and training to participants in the workers' compensation system.

Training sessions can provide a general overview of the Board and its divisions, and/or 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. Open training modules are available on the Board's website and have been especially helpful since the onset of the COVID-19 pandemic. The newsletter issued by the MAE program is 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.

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. Prior to the pandemic, trainings were held twice per year. 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.

## 5. OFFICE OF MEDICAL/REHABILITATION SERVICES

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### 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 2022, the Board received seven applications for employment rehabilitation services. In four of the seven applications, the evaluator determined that the employee was not suitable for employment rehabilitation services at the present time and in one case the evaluator did not have enough medical information to make a determination. Of the remaining two applications, one employee is participating in a plan voluntarily paid for by the insurer and one application is pending an evaluation of suitability.

#### 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 240 requests for independent medical exams in 2022.

	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	0%	9%	11%	20%	32%	7%	9%	7%	5%	0%
Q2	5%	11%	16%	18%	23%	14%	2%	0%	4%	7%
Q3	4%	10%	6%	18%	24%	16%	4%	2%	0%	14%
Q4	3%	9%	14%	16%	25%	16%	6%	3%	2%	7%

	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	41	3		1		45	91%	7%	0%	2%	0%
Q2	42	8	2	4		56	75%	14%	4%	7%	0%
Q3	34	5	3	5	2	49	69%	10%	6%	10%	4%
Q4	31	4	8	3	1	47	66%	9%	17%	6%	2%

	2022 Q1 Awaiting Report - Days From Exam										
	0-14 Days	15-30 Days	31-60 Days	61+ Days	Exam In Future	Total	0-14 Days	15-21 Days	22-28 Days	29-60 Days	Exam In Future
Q1	9				35	44	20%	0%	0%	0%	80%
Q2	3	1	1	1	56	62	5%	2%	2%	2%	90%
Q3	2	1			34	37	5%	3%	0%	0%	92%
Q4	2		1		44	47	4%	0%	2%	0%	94%



## **6. WORKER ADVOCATE PROGRAM**

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### **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 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. Representation, however, 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. 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.

Cases not resolved at mediation typically involve complex factual and/or legal 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.

#### IV. CASELOAD STATISTICS

Injured workers in Maine have made substantial utilization of the Advocate Program. Advocates represented injured workers at approximately 69% of the cases pending at mediation in 2022. The following table shows the number of Advocate cases mediated from 2013 through 2022.

Year	Filings Assigned	Filings Disposed	Cases Pending at Board 12/31	% of All Cases Pending at Board
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%
2022	1,409	987	276	69%

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.

The Advocate Program has represented injured workers in approximately 39% of all Board formal hearings in 2022. Given the much greater scope of responsibility inherent in formal hearing cases, Advocates have performed well in their expanded role. The following table shows the number of cases handled by Advocates at formal hearing from 2013 through 2022.

	Filings Assigned	Cases Assigned	Cases Disposed	Cases Pending at Board 12/31	% of All Cases Pending at Board
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%
2022	655	258	259	198	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.

## 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 has experienced significant staff shortages in the past couple of years. Credit is due to the Advocate Division staff who worked well under very difficult circumstances to continue our mission of serving Maine’s injured workers.

## 7. INFORMATION MANAGEMENT

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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. 2022 UPDATE

#### A. Progress Version 12 Upgrade

The upgrade to Progress Version 12 and new application servers was completed in January 2022.

#### B. Purge of Electronic Claims

The Board established a mechanism to remove electronic claims from its system when they become eligible for deletion as required by the State's records retention schedule. The initial purge yielded the removal of approximately 400,000 claims.

#### C. Purge of Electronic Employer Records

More than 78,000 unused employer records were removed from the WCB employer database. Many of the records were set up in error or duplicative. As we continue to clean up the database, another 30,000 records are anticipated to be removed in 2023.

#### D. Database Cleanup

Efforts to clean up the Progress database continued throughout 2022.

#### E. Progress Programmer

To assist with the backlog of programming requests, a third Progress programmer was hired on a contract in mid-2022. The programmer began by working part time and will increase to full time in 2023.

#### F. Coverage Department

The Information Management team met weekly with Coverage staff to identify ways to improve the flow of the coverage system and the employer database. Time was also spent discussing standard operating procedures and developing and reviewing management reports.

#### G. Letters to Employers with No Recorded Coverage

The module that identifies employers lacking workers' compensation coverage was modified to accommodate system changes and ensure a higher rate of accuracy.

## **H. Computer Refresh Project**

MaineIT is nearing completion on a project to replace the State's oldest laptops for employees. Several Board employees were included in the project and have received new computers.

## **I. Reports**

Ample time was spent throughout the year creating new management reports for staff and improving upon those already in place. The reports help to ensure accuracy in Board data and a reasonably fair distribution of cases amongst staff.

## **II. UPCOMING PROJECTS AND CHALLENGES**

### **A. Upgrade of Remote Desktop Servers**

The Board will move to new remote desktop servers (RDS) in early 2023. The new servers will provide updated applications and better security.

### **B. EDI Claims 3.1**

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

## 8. BUDGET AND ASSESSMENT

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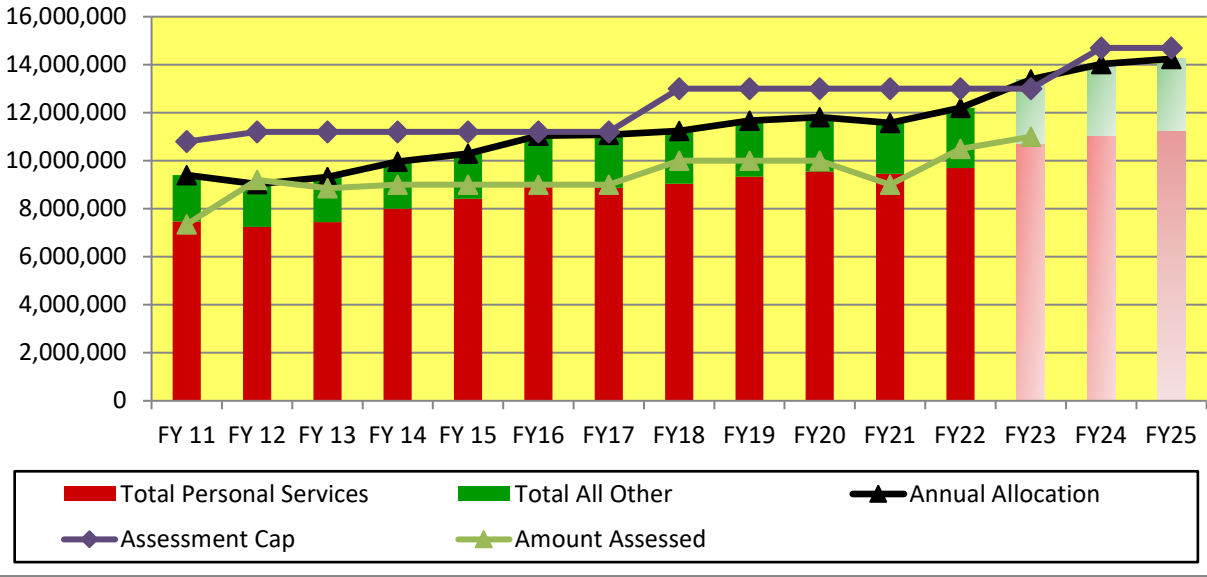
Since 1992, Board operations have been funded by a statutory assessment. The Board receives no General Fund support. Assessments are paid by Maine's employers, both insured and self-insured. By establishing a funding assessment, the Legislature intended the entities using the workers' compensation system 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. The assessment cap has been adjusted periodically since 1993 to address the Board's increased funding needs. In August 2022 the Board voted to introduce legislation as part of the Board's biennial budget increasing the current cap of \$13,000,000, approved in 2016, to \$14,700,000 annually starting in Fiscal Year 2024 (beginning July 1, 2023).

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 2022. 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 budget for FY2023, the second year of the current biennium, is \$13,389,962. The Board-approved budgets for the upcoming biennium are \$14,034,014 for fiscal year 2024 and \$14,245,805 for fiscal year 2025.

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 2022 and projected expenditures for fiscal years 2023, 2024 and 2025. The chart also shows the amounts assessed through FY 2023 (July 1, 2022 – June 30, 2023) and the assessment cap, including the new proposed assessment cap of \$14.7 million, projected through fiscal year 2025.

**Actual and Projected Expenditures  
Workers' Compensation Administrative Fund - 0183  
January 2023**  
(figures for FY23, FY24 & FY25 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 works with carriers to help facilitate timely and accurate filings.

Claims managers must consider all factors that can affect indemnity payments including the date of injury, 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 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, 2022 to December 31, 2022.

Information/Form	EDI	CMU	TOTAL
<b>Employer's First Report of Occupational Injury or Disease</b>	<b>30,028</b>	<b>59</b>	<b>30,087</b>
<b>Notice of Controversy</b>	<b>9,589</b>	<b>9</b>	<b>9,598</b>
<b>Petitions (including CBCs)</b>		<b>1,425</b>	<b>2,962</b>
<b>Answers to Petitions</b>		<b>416</b>	<b>416</b>
<b>Wage Statement</b>		<b>12,316</b>	<b>12,316</b>
<b>Schedule of Dependent(s) and Filing Status Statements</b>		<b>6</b>	<b>6</b>
<b>Fringe Benefits Worksheet</b>		<b>7,051</b>	<b>8,826</b>
<b>Memorandum of Payment</b>		<b>4,211</b>	<b>4,211</b>
All other payment forms, including:		<b>18,596</b>	<b>18,596</b>
• Discontinuance or Modification of Compensation			
• Consent Between Employer and Employee			
• 21-Day Certificate of Discontinuance or Reduction of Compensation			
• Lump Sum Settlement			
<b>Statement of Compensation Paid</b>		<b>9,943</b>	<b>9,943</b>

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

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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 move to electronic filing was done to allow 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. This will improve the Board's ability to identify problems and trends with coverage filings. The Board is also working to ensure that coverage and claims information is consistent.

For the twelve (12) month period January 2022 through December 2022, the Board received and processed 56,900 proof-of-coverage filings. The Coverage Unit processed 522 waiver applications. Part of matching coverage to specific employers involves resolving instances of "no recorded coverage." In 2022, 1,111 "no record of coverage" letters were sent to employers requesting information to verify if they were subject to the coverage requirement, and if so, whether they had workers' compensation insurance. Information received in response to these letters allowed Coverage staff to determine 90 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 Abuse Investigation 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

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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 2022, the Predetermination Unit received 5,349 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. 376 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, 253 applications were successfully processed but the remaining 123 applications were not completed because the applicant did not reply or provide the requested information. After all processing, 5,224 predeterminations were approved and 2 were denied.

# 11. COORDINATION WITH OTHER AGENCIES

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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.

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.

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.

## 12. ABUSE INVESTIGATION UNIT

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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 AIU 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. The AIU was very short staffed this year. The majority of the AIU staff changed in 2022, but, was fully staffed as of the end of December. 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.

The AIU has been meeting with the Department of Labor quarterly to combine efforts and share information to ensure employers are classifying their employees properly.

## **13. GENERAL COUNSEL REPORT**

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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**

During its Second Regular Session, The 130th Legislature: Amended §201(3-A)(B) of the Workers' Compensation Act to extend the sunset date for the repeal of the first responder PTSD presumption from October 1, 2022 to October 1, 2025; amended §328-B to extend the firefighter cancer presumption to forest rangers and forest fire prevention specialists who are employed by the Department of Agriculture; and added §328-C to the Act. Under this provision, if a state worker suffers heart disease or hypertension and provides care, supervision or custody to an incarcerated person, then, under certain circumstances, a rebuttable presumption is created that either of those medical conditions is work-related.

### **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 2022 as required by 39-A MRSA §209-A.

### **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. During the pandemic, parties appeared remotely. In some circumstances this worked well for parties. Parties now have the option of attending hearings in person since the pandemic has ended.

### **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. Oral arguments are presented by lawyers for their clients. In 2022, the Appellate Division issued 38 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 2022, eight appeals of Appellate Division decisions were filed. The Law Court declined to grant review in those cases. The Law Court did not issue decisions in workers' compensation cases in 2022.



## 14. APPELLATE DIVISION

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The Board's Appellate Division has completed its tenth 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). The Appellate Division provides the parties with 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 eighty-four notices of intent to appeal have been filed since August 2012; 22 were filed in 2022. The Division has held oral arguments in 211 cases. Oral arguments continued to be limited in 2022 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 and issued written decisions in 355 cases (38 issued in 2022). One hundred twenty-two appeals (5 in 2022) 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.

Six Petitions for Appellate Review of Appellate Division decisions were filed with the Law Court in 2022. The Law Court did not grant review in any cases in 2022, and issued no decisions in appeals from the Appellate Division.

Appellate Division decisions of note include *Palmore v. Town of Lisbon*, Me. W.C.B. No. 21-32 (App. Div. 2021). In that case, a panel of the division upheld an award in favor of a firefighter who suffered brain cancer, in which the firefighter presumption in 39-A M.R.S.A. § 328-B was applied. The case was remanded, however, for further findings regarding the firefighter's earning capacity.

Additionally, in *Estate of Boyle v. Lappin Brothers*, Me. W.C.B. No. 22-14, an appellate panel affirmed the ALJ's decision that the employer had a lien on proceeds from a third-party settlement received by the Estate, even though those proceeds did not come from the manufacturer of the asbestos product used by the deceased while working for Lappin Brothers during his last injurious exposure to asbestos. See 39-A M.R.S.A. §§ 107, 614(4).

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

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# 1. INTRODUCTION & BACKGROUND

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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 5, 2022, NCCI filed with the Superintendent for an overall 10.3% decrease in the advisory loss costs effective April 1, 2022. 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 has been generally declining with an increase in more recent years. The Superintendent approved NCCI's filing effective April 1, 2022.

The average change in the advisory loss costs is not evenly distributed across all five principal rating classifications, as seen below.

<b>Industry Group</b>	<b>Percentage Change</b>
Manufacturing	-10.7%
Contracting	-10.8%
Office & Clerical	-9.4%
Goods & Services	-11.3%
Miscellaneous	-8.0%

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.

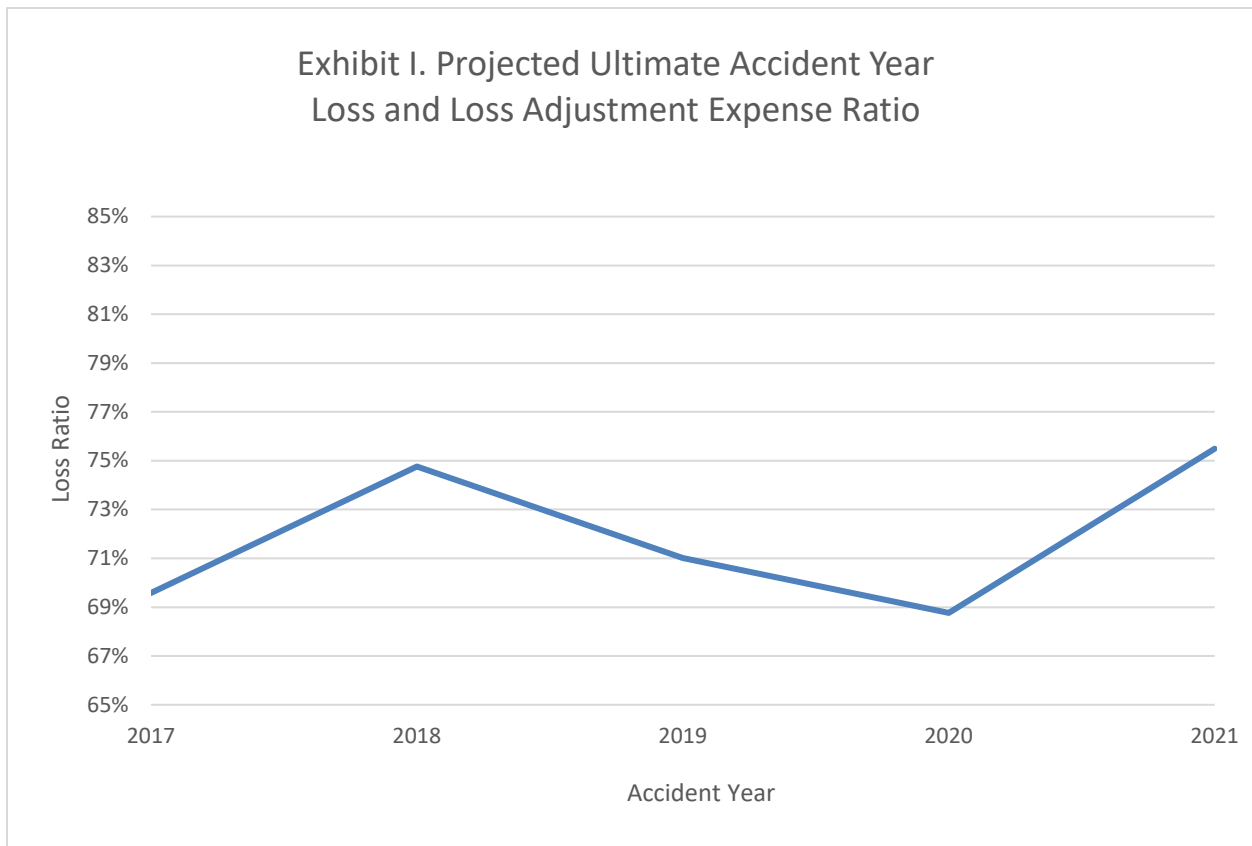


## 2. RECENT EXPERIENCE

### 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 68.8% to 75.5% for the past five years. The 2021 ratio was 75.5%, indicating that \$75.50 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.



Source: NCCI

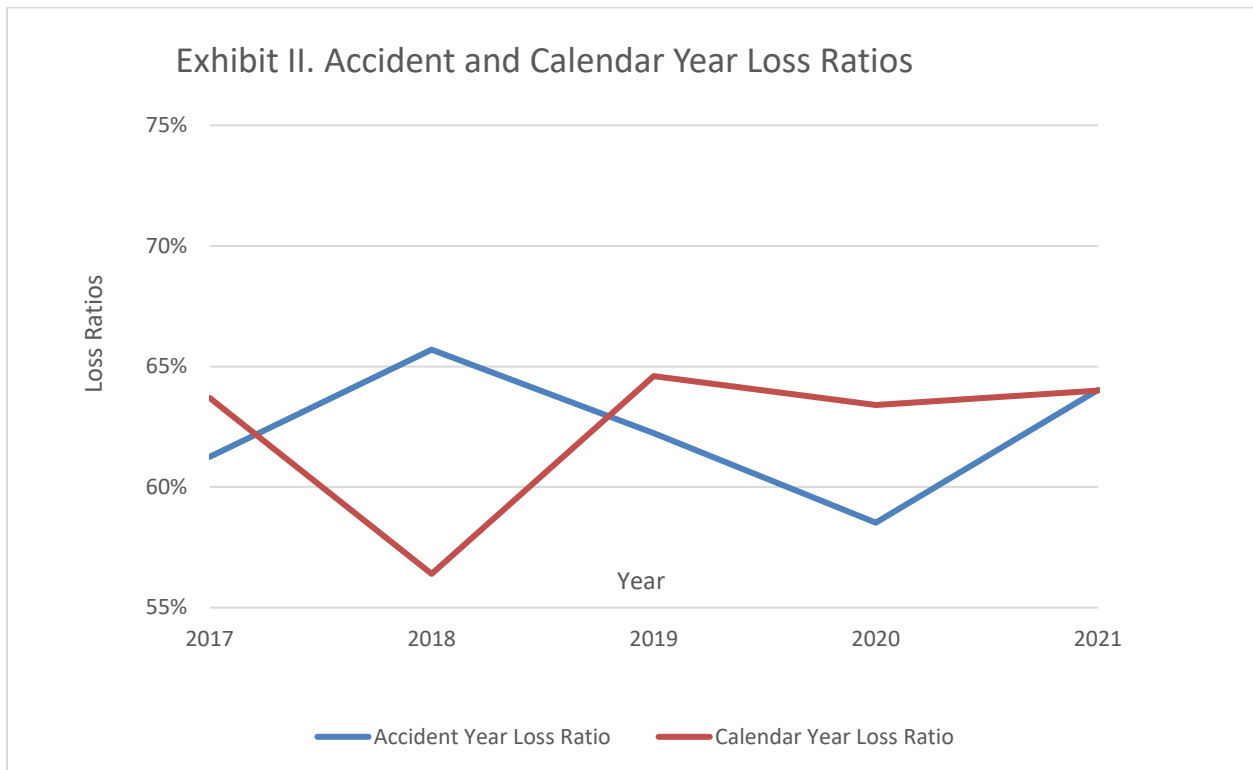
## II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

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 2019. Accident year loss ratios ranged from a low of 61% in 2017 to a high of 66% in 2018. Calendar year loss ratios show an upward trend in the last few years, and accident year loss ratios show a recent upward trend.



Source: NCCI

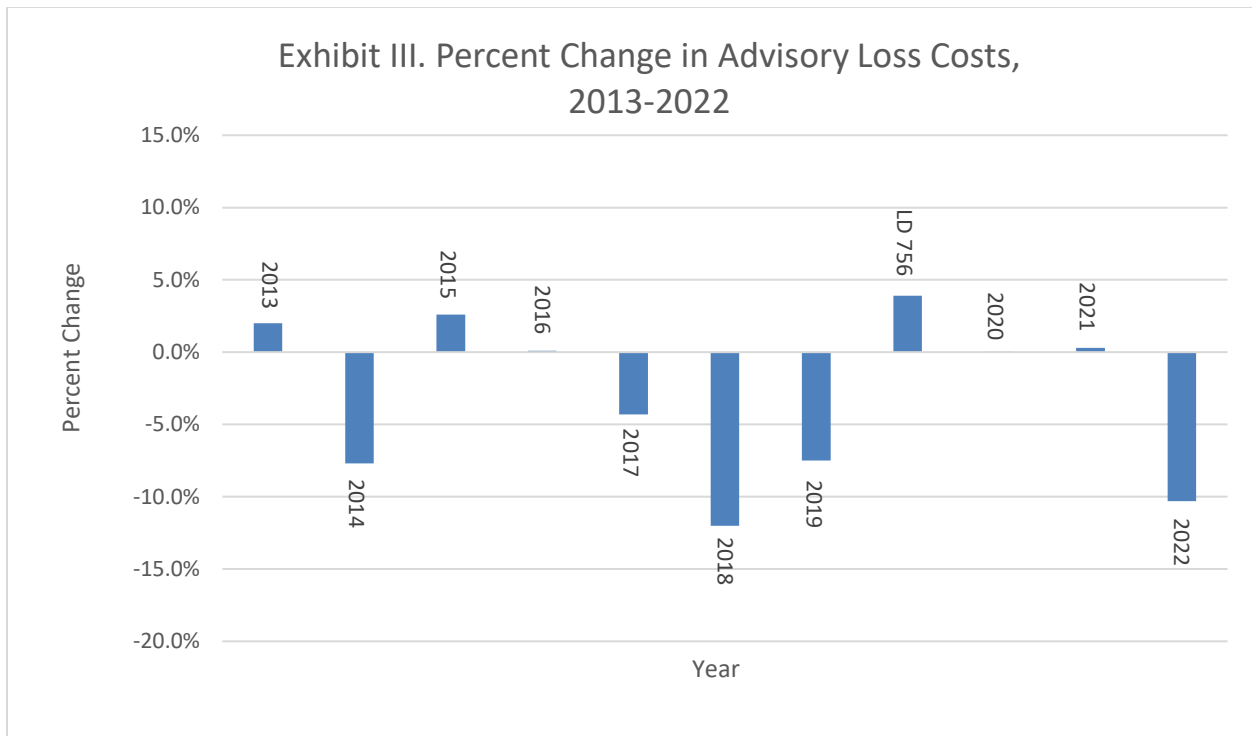
Note: The Accident Year data points in Exhibit II above do not match those in Exhibit I on the previous page, because Unallocated Loss Adjustment Expense is not included in Exhibit II.

### 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.

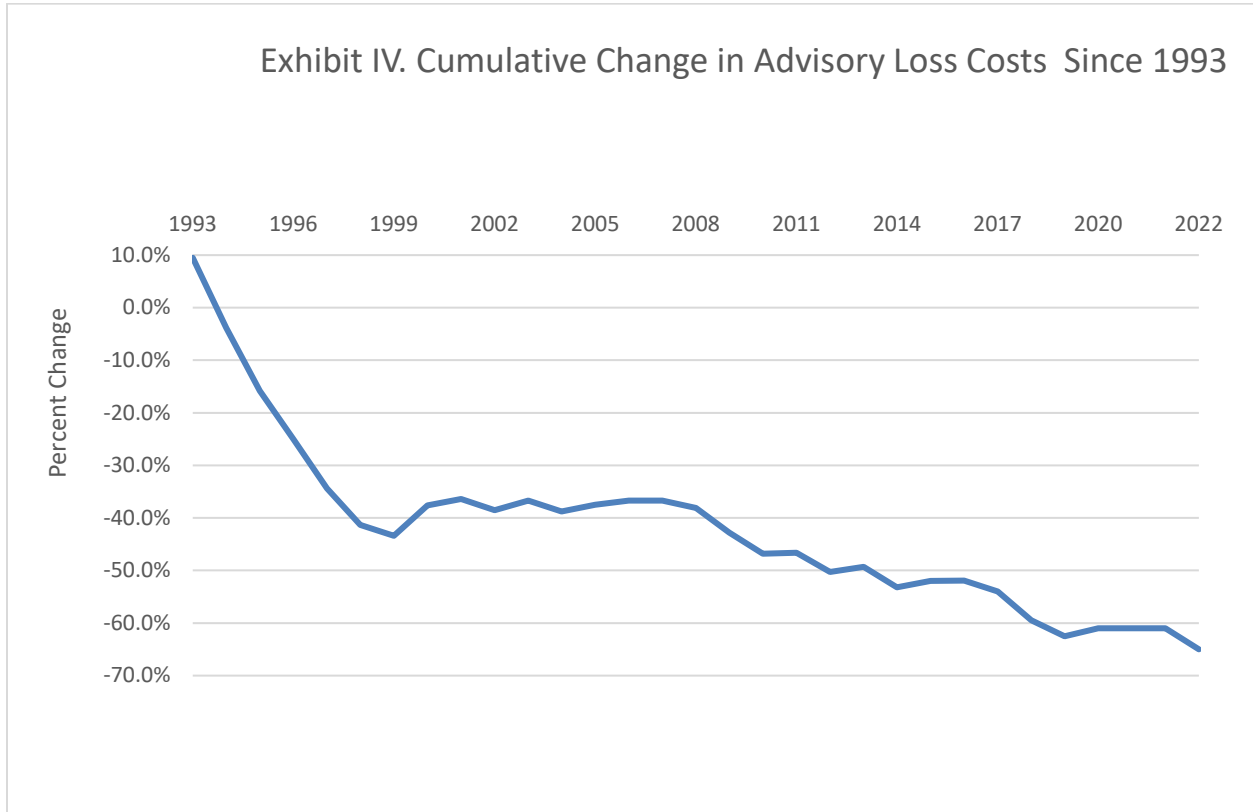
Effective April 1, 2022, the Superintendent approved a -10.3% average change in the workers' compensation advisory loss costs. Advisory loss costs are now more than 15% lower than they were ten years ago, and nearly 65% lower than when the major reform of the workers' compensation system took effect 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 on 1/1/2020, "An Act To Improve the Maine Workers' Compensation Act of 1992."

## 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 15% over the past ten years, and by nearly 65% since 1993.



Source: NCCI

## 4. MARKET STRUCTURE AND COMPETITION

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### 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, 2022, 379 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 2021 MEMIC accounted for nearly 66% 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 2021 by premium level.

<b>Amount of Written Premium</b>	<b>Number of Companies at That Level</b>
>\$10,000	182
>\$100,000	121
>\$1,000,000	27

Source: Annual Statements filed with the Bureau of Insurance. Total written premium for 2021 was nearly \$256 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 below 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 2020 Competition Database Report, which was prepared in 2021, the HHI for workers' compensation insurance in Maine was 4,624. This measure is the third highest (i.e., most concentrated) for all commercial lines in Maine, behind financial guaranty and medical professional liability.

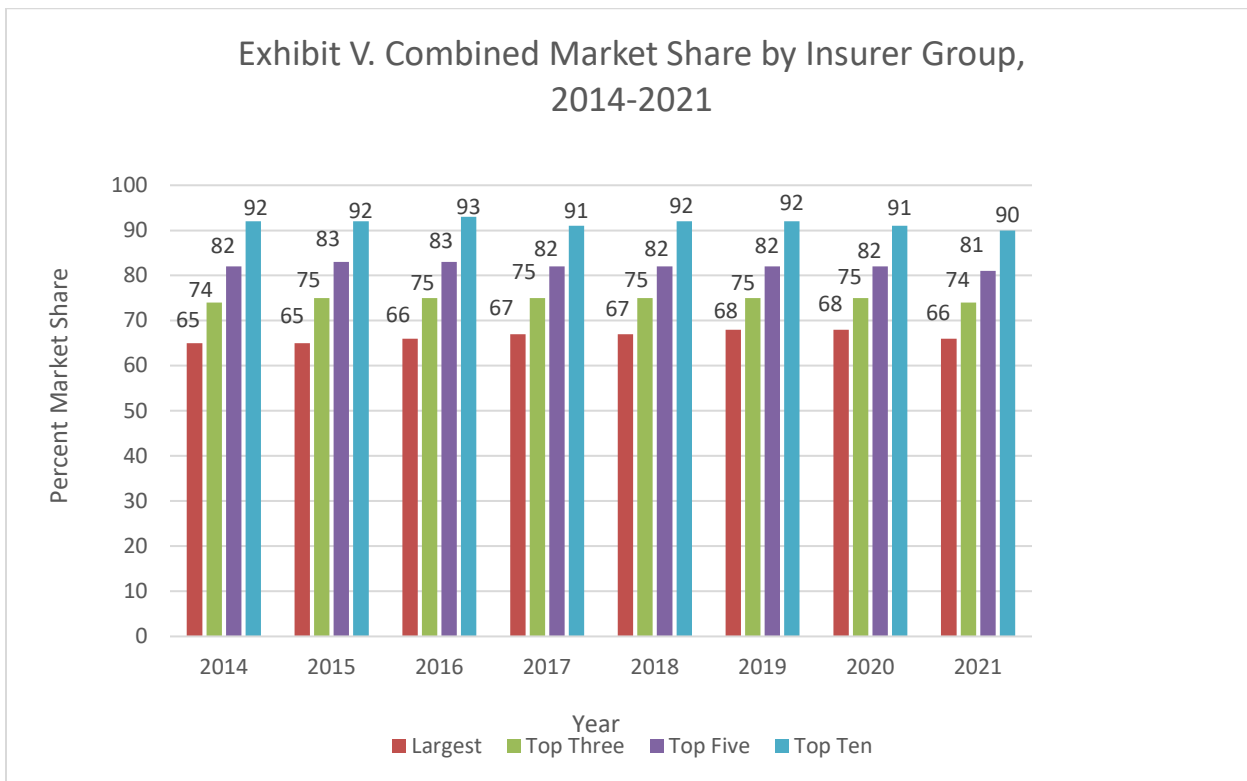
There is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guidelines for corporate mergers use 1,800 and above to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate 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 \$169 million in premium (66.1%) in 2021. The top three groups, including MEMIC, wrote over \$188 million in business (73.6%). The top five groups wrote over \$206 million (80.6%), and the top 10 groups had over \$231 million in written premium (90.3%). The reported amounts of written premium for the top 10 groups rose by over \$18 million from 2020 to 2021, while their overall market share decreased by less than one half of 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 19 out of the past 22 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 80% since 2000. There currently are no significant barriers to entry.

Year	Number of Carriers	Net Change (Percent)
2022	379	2.2
2021	371	2.2
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

Source: Bureau of Insurance Records Note: 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 2021, and those groups' market share from 2014-2021. These groups wrote over 90% of the workers' compensation business in 2021. 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 66% market share in 2021.

Insurance Group	2014 Share	2015 Share	2016 Share	2017 Share	2018 Share	2019 Share	2020 Share	2021 Share
Maine Employers' Mutual	64.8	64.6	65.9	67.4	67.4	67.7	67.5	66.1
Travelers Group	4.4	4.3	4.3	3.9	3.7	3.8	3.8	3.9
ProAssurance Corp Group	-	-	-	-	3.6	3.9	3.6	3.6
WR Berkeley Group	4.5	4.1	4.4	3.9	3.5	3.6	3.4	3.5
Hartford Fire & Casualty	3.4	3.2	3.1	3.1	3.3	3.1	2.9	3.5
Liberty Mutual Group	4.5	5.7	3.7	2.6	3.3	3.5	3.3	2.9
Zurich Insurance Group	1.5	1.8	2.2	2.1	1.8	2.0	2.1	2.6
Chubb Ltd Group	-	-	2.0	2.0	2.2	2.0	1.9	1.7
Old Republic Group	0.7	0.8	0.7	0.8	0.7	0.7	0.9	1.4
The Hanover Ins Group	1.2	1.0	1.1	1.1	1.1	1.3	1.2	1.1

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 2014 through 2021. Throughout this entire period Maine Employers' Mutual Insurance Company (MEMIC) had more than 64% market share. The top 10 companies combined held nearly 76% of the market in 2021.

Insurance Carrier	2014 Share	2015 Share	2016 Share	2017 Share	2018 Share	2019 Share	2020 Share	2021 Share
Maine Employers' Mutual	64.7	64.4	65.7	67.0	67.0	67.3	67.1	65.9
Eastern Alliance Ins Co	-	-	-	0.6	2.6	2.1	1.8	1.9
Zurich American Ins Co	0.9	1.5	1.7	1.6	1.4	1.4	1.4	1.7
Firemen's Ins Co of Wash DC	2.0	1.7	1.7	1.6	1.0	1.0	1.2	1.2
Allied Eastern Ind Co	-	-	-	-	0.3	1.2	1.3	1.1
Charter Oak Fire Ins Co	1.1	0.9	1.2	1.1	1.1	1.0	1.1	1.1
LM Ins Corp.	0.2	0.2	0.2	0.2	0.3	0.5	0.6	0.9
Continental Western Ins Co	-	-	1.0	1.1	1.1	1.0	0.8	0.9
Hartford Underwriters Ins Co	0.8	0.7	0.6	0.6	0.6	0.6	0.4	0.7
Eastern Advantage Assurance	-	-	-	0.2	0.7	0.6	0.5	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. 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

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### 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).

<b>Rate Comparison</b>	<b>2021 Percent</b>	<b>2022 Percent</b>
Below MEMIC Standard Rate	77.3%	61.7%
At MEMIC Standard Rate	3.7%	17.4%
Above MEMIC Standard Rate	18.9%	20.9%

Source: Based on 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 or 2) an insurer other than MEMIC charges a higher rate but offers enough credits to lower the overall premium.

### 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 2022, MEMIC announced it would pay dividends totaling \$17 million to approximately 14,000 qualified policyholders in November 2022. The 2022 payments brought the total of capital returns and dividends paid by MEMIC since 1993 to \$333 million. In 2021, MEMIC returned \$17 million to qualified policyholders.
- ❑ **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

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### 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 2021 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.

<b>Table VII: Estimated Total of All Standard Premiums for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 2002-2021</b>		
<b>Year</b>	<b>Estimated Total of All Standard Premiums</b>	<b>Percent of Workers' Compensation Market (in annual standard premium)</b>
2021	\$143,088,712	35.9
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

Source: Annual Statements Filed with the Bureau of Insurance

Notes: 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, 2022, there were 18 self-insured groups representing 1,172 employees. The number of individual self-insured employers decreased by four from 2021.

<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2022	18	1,172	51
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

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.

## 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 2022, Maine had the 9<sup>th</sup> highest workers' compensation premium rates in all industries. Maine's rank was 16<sup>th</sup> highest in 2020, 19<sup>th</sup> highest in 2018, 14<sup>th</sup> highest in 2016, and 13<sup>th</sup> 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 5th highest average loss cost in the most recent report, as well as in last year's report.

State	Average Loss Cost	Rank
Hawaii	1.32	1
Vermont	1.09	2
Connecticut	1.06	3
Illinois	1.04	4
Maine	0.99	5
Georgia	0.98	6
Idaho	0.96	7
Missouri	0.95	8
Iowa	0.95	8
Louisiana	0.94	10
South Carolina	0.87	11
Rhode Island	0.86	12
Montana	0.86	12
Florida	0.85	14
New Mexico	0.84	15
Oklahoma	0.83	16
Alabama	0.81	17
New Hampshire	0.80	18
Nebraska	0.77	19

State	Average Loss Cost	Rank
Alaska	0.76	20
Maryland	0.72	21
Colorado	0.68	22
South Dakota	0.68	22
Oregon	0.65	24
Kansas	0.65	24
North Carolina	0.63	26
Mississippi	0.62	27
Kentucky	0.61	28
D.C.	0.61	28
Arizona	0.58	30
Nevada	0.57	31
Virginia	0.55	32
Indiana	0.54	33
Tennessee	0.52	34
Utah	0.46	35
West Virginia	0.41	36
Arkansas	0.37	37
Texas	0.34	38
Countrywide	0.71	

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

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# 1. INTRODUCTION

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## I. ORGANIZATION OF THIS REPORT

The report summarizes the Department of Labor, Bureau of Labor Standards' ("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, 2022 Developments**, outlines the 2022 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 for state, county, 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, which can result in fines and penalties. The logic is that the prevention of fines and penalties through education and outreach prevents exposure, which in turn prevents the injuries and illnesses. As we saw with our top 100 most costly claims study<sup>1</sup>, the prevention of any injury and/or illness is the prevention of a costly case and the loss of productivity for an injured worker.

<sup>1</sup> Located under "Archived Items" here: [http://www.maine.gov/labor/labor\\_stats/research.html](http://www.maine.gov/labor/labor_stats/research.html)

**Table C-2: Workplace Injury and Illness Prevention and Response**

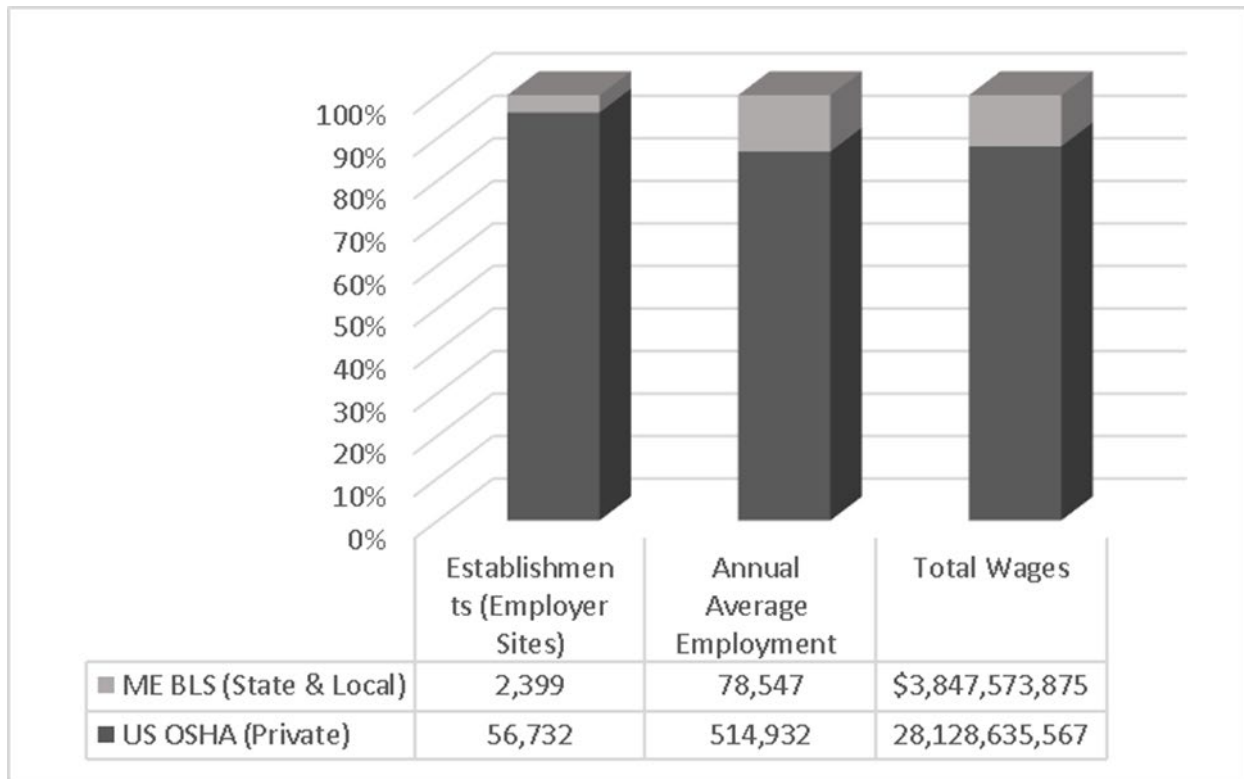
<b>Maine Workers' Compensation System</b>			
Function		State, County, and Local Government Workplaces	Non-Government Workplaces
Prevention	Research	Maine SafetyWorks!	
	Outreach and Education	Maine SafetyWorks!	
	Employer Consultation	Maine SafetyWorks!	
	Safety Standards Enforcement	Maine BLS*	U.S. OSHA
	Child Labor Enforcement	Maine BLS	
Administration		Maine Workers' Compensation Board	
Insurance Market		Maine Bureau of Insurance	
<b>Outside of Maine Workers' Compensation System</b>			
Exempt (self-employed, some agriculture, forestry, and fishing)			
U.S. Government and Special Federal Jurisdictions including the U.S. Postal Service			

\*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 (WC) 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 and workplaces. The numbers and proportions of establishments, workers, and wages averaged over the 4 quarters spanning 2021 and 2022 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, 2022.

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 and the Maine Department of Labor's Center for Workplace Research and Information (DOL CWRI). 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 assessments are based on

the proportion the employer/insurer paid out in workers' compensation expenses 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/ SETF 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.

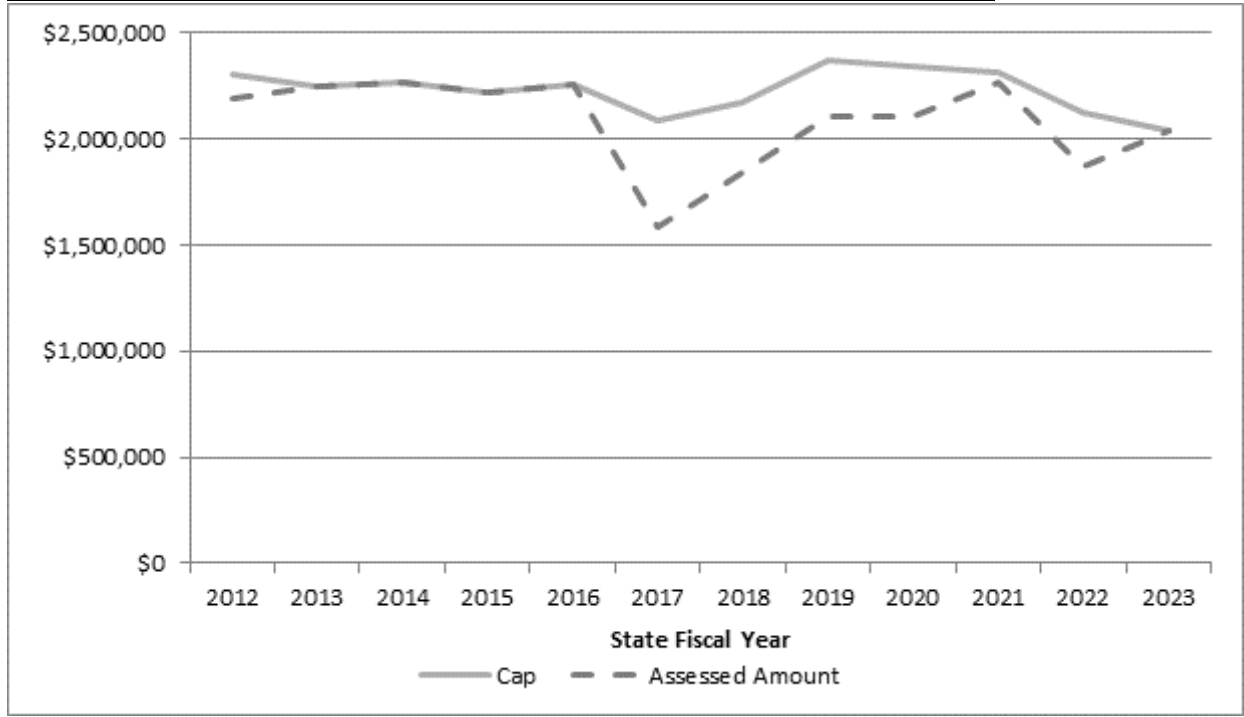
Since 2015, the Bureau's public sector (state and local government) enforcement and consultation activities have been match-funded (50/50) through a U.S. OSHA "23g" cooperative agreement, with matching funds from the SETF for the consultation portion of the work. (The state general fund provides the 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. In the latest year, the cap has declined to what is very close to the normal yearly operating budget for the SETF activities. This is somewhat alarming in that it may mean the Bureau will have to curtail services to accommodate further reductions absent additional cooperative agreement revenues from US DOL or from the state’s General Fund.

**A. What services were provided?**

Table C-6 below 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 14 full-time equivalent positions out of 41 in the Bureau in 2022. 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"> <li>• 111 classes and 6 OSHA Region 1 courses with 1,393 workers trained in 2022</li> </ul> Due to COVID-19 and social distancing requirements, STI reduced its class size from 48 participants to 24. Attendance was increased back to 48 in Fall 2022.
Employer OSH Data Profiles	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 49 employer profile/data requests answered in CY 2022</li> </ul>
On-site Consultations	State SETF/U.S. OSHA and MSHA* Cooperative Agreement	<ul style="list-style-type: none"> <li>• 392 employer onsite consultations and reports which identified 2,014 serious hazards in 2022</li> </ul>
Youth Employment Permit Enforcement	State General Fund	<ul style="list-style-type: none"> <li>• 7441 work permit applications received</li> <li>• 6906 work permits approved</li> <li>• 927 work permits initially denied in CY 2022</li> </ul>
Wage & Hour Enforcement, Random & Focused Inspections	State General Fund	<ul style="list-style-type: none"> <li>• 196 employer inspections</li> <li>• 4 inspections found violations</li> <li>• 127 violations found during these inspections</li> </ul>
Wage & Hour Enforcement, Complaint Investigations	State General Fund	<ul style="list-style-type: none"> <li>• 288 complaint investigations</li> <li>• 65 complaints found violations in CY 2022</li> <li>• 80 Child labor violations with 4 employers</li> </ul>
Public Sector Safety Enforcement	State General Fund/U.S.OSHA, 50/50	<ul style="list-style-type: none"> <li>• 41 employers</li> <li>• 210 violations cited</li> <li>• \$49,600 in initial penalties issued in 2022, reduced to \$12,385 after penalty discussion</li> </ul>
OSHA Recordkeeping Employer Outreach	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 11 sessions in CY 2022</li> <li>• 183 attendees in CY 2022</li> <li>• 9 sessions planned in CY 2023</li> </ul>

\*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 (1977-2021)	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 16,389 disabling cases coded for CY 2021               <ul style="list-style-type: none"> <li>○ Increase of 2,044 claims from CY 2020 (14,345)</li> <li>○ Decrease of 13,926 from the high of 30,315 in CY 1989 (45.9% decrease)</li> </ul> </li> </ul>
Survey of Occupational Injuries and Illnesses (SOII) (1975-2021)	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 4.7 Total OSHA recordable case incidence rate in CY 2021               <ul style="list-style-type: none"> <li>○ Increase of 9% from CY 2020</li> <li>○ Decrease of 16% from CY 2010</li> <li>○ Decrease of 46% from CY 2000</li> </ul> </li> <li>• 3.0 Days Away, Restricted or Job Transfer case incidence rate in CY 2021               <ul style="list-style-type: none"> <li>○ Increase of 15% from CY 2020</li> <li>○ Consistent with CY 2010</li> <li>○ Decrease of 42% from CY 2000</li> </ul> </li> <li>• 1.6 Days Away From Work case incidence rate in CY 2021               <ul style="list-style-type: none"> <li>○ Increase of 7% from CY 2020</li> <li>○ Increase of 7% from CY 2010</li> <li>○ Decrease of 41% from CY 2000</li> </ul> </li> </ul> <p>Rates per 100 full-time equivalent workers</p>
Census of Fatal Occupational Injuries (CFOI) (1992 – 2021)	State SETF/US Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> <li>• 19 fatalities in 2021               <ul style="list-style-type: none"> <li>○ Lower fatality count than CY 2020 (20)</li> <li>○ Highest fatality count in CY 1999 (32)</li> <li>○ Lowest fatality counts in CY 2005 and CY 2015 (15)</li> </ul> </li> </ul>
Employer Substance Abuse Testing (1989-2022)	SETF	<ul style="list-style-type: none"> <li>• 10.9% total positive tests for CY 2021               <ul style="list-style-type: none"> <li>○ Low of 3.3% in CY 2014</li> <li>○ High of 10.9% in CY 2021</li> </ul> </li> <li>• 10.9% applicants positive for CY 2021               <ul style="list-style-type: none"> <li>○ Low 3.1 % in CY 2014</li> <li>○ High of 10.9% in CY 2021</li> </ul> </li> <li>• 30.8% probable cause positive for CY 2021               <ul style="list-style-type: none"> <li>○ Low of 6.8% in CY 2013</li> <li>○ High of 80% in CY 2007 (only 5 tests conducted)</li> </ul> </li> <li>• 7.6% random positive for CY 2021               <ul style="list-style-type: none"> <li>○ Low of 1.9% in CY 2011</li> <li>○ High of 7.6% in CY 2021</li> </ul> </li> </ul>

### **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 evolved into the highest-cost cases while others were at low or no cost.

\*See footnote on page C1 for link to this publication

## 2. PREVENTION SERVICES

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### I. SAFETYWORKS!

SafetyWorks! provides public and customized occupational safety and health training, consultations, 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 2022, the 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 2022, 49 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 2022, 392 employer on-site consultations were requested and completed. In addition, 1,972 employees were trained on-site.

**Alliances** -The Alliance Program enables the agency to develop voluntary, collaborative working relationships with and OSHA with organizations that are committed to workplace safety and health. SafetyWorks! currently has four Alliances with OSHA. Those Alliances are with Maine Masonry School, Maine Brewers' Guild, Construction Safety Alliance of Maine, and a Region 1 Alliance between all six consultation offices in New England and the American Foundation for Suicide Prevention.

For more on the services offered by the SafetyWorks! program, go to:  
[www.safetyworksmaine.gov](http://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! in order 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 (WHD) 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 January 1, 2022, to December 31, 2022, WHD approved 6,906 work permits and initially denied 927 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 January 1, 2022, to December 31, 2022, WHD conducted 196 random and focused inspections and found violations with 4 separate employers. WHD also responded to 288 complaints and found violations with 65 separate employers. The WHD found 207 total child labor violations involving excessive hours worked, working at times of the day outside of the range allowed under state labor laws, working within 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

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### 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:

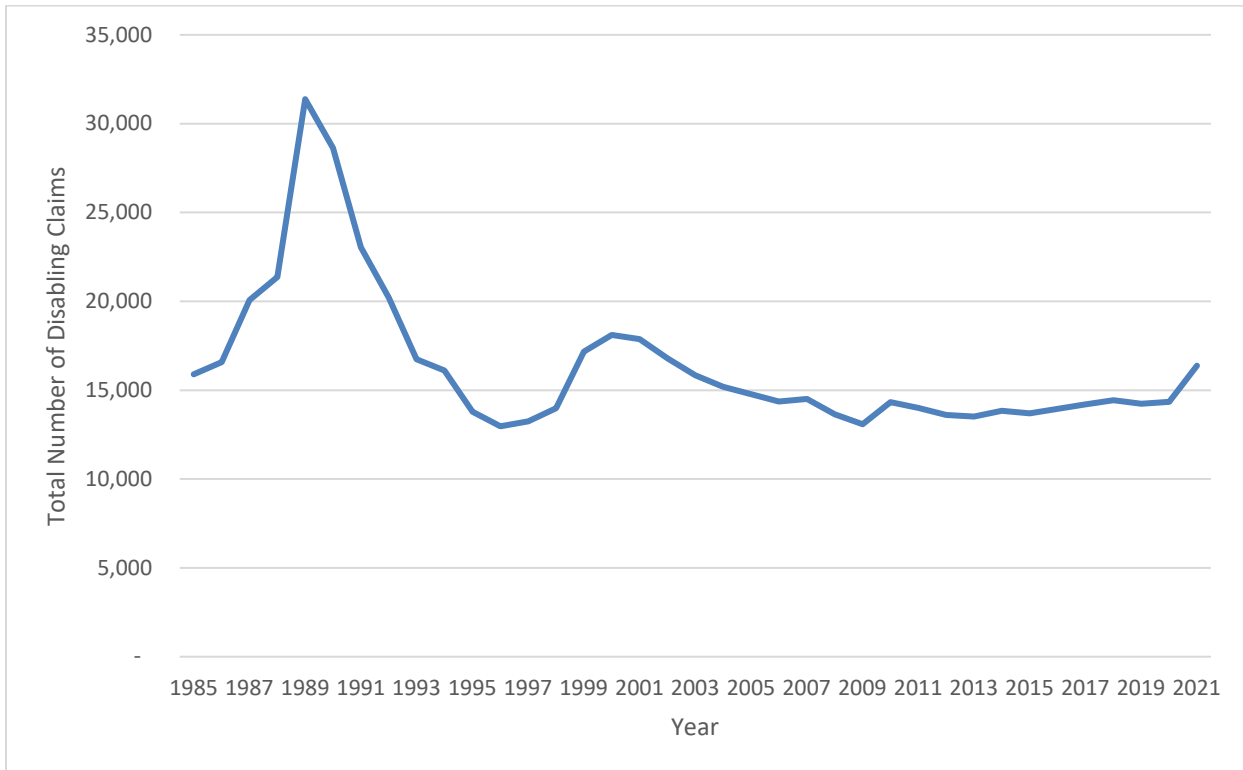
- 1) Characteristics of the employer
- 2) Characteristics of the employee
- 3) Characteristics of the workplace
- 4) Characteristics and results of the incident
- 5) Characteristics and results of the workers' compensation claim including costs

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 (1985–2021)**

In 2021 there were 16,389 disabling cases reported to the Maine Workers’ Compensation Board. A disabling claim is defined as a worker being removed from the workplace due to injury or illness and not returning to work on the same calendar day. Figure C-13 shows the 36-year trend of total recorded disabling cases since 1985.

**Figure C-13: Thirty-Five-Year Pattern of Disabling WCB Cases, 1985–2021**



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

The 2010s saw very little change in the total number of disabling claims, with a low of 13,515 in 2013 and a high of 14,330 in 2011, yielding a range of only 815 claims within the 10-year span. While COVID-19 had a dramatic effect on the composition of Workers’ Compensation claims in 2020, the large increase of disabling claims filed in the Healthcare and Social Service Industry was balanced by the decrease in all other industry sectors. 2021 saw a return to normal employment levels as vaccinations became widespread; however, the increased claims being filed in the Healthcare and Social Service Industry did not decrease. This has led to the highest filing of disabling claims in 20 years, and the highest year-over-year increase in disabling claims filed since 1998-1999.

**ii. Distribution of Disabling Claims by Gender and County, Maine (2019-2021)**

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-14 provides the number of disabling cases statewide and by county and gender for calendar years 2019 through 2021.

**Table C-14: Distribution of Disabling Cases by Gender and County, Maine (2019-2021)**

County	2019			2020			2021			Three Year County Total
	Female	Male	Total	Female	Male	Total	Female	Male	Total	
Androscoggin	496	669	1,165	664	685	1,349	579	685	1,264	3,778
Aroostook	285	325	610	338	330	668	378	318	696	1,974
Cumberland	1,675	1,964	3,639	2,081	1,855	3,936	2,184	2,159	4,343	11,918
Franklin	89	147	236	163	119	282	135	135	270	788
Hancock	201	289	490	185	240	425	269	316	585	1,500
Kennebec	594	706	1,300	644	620	1,264	886	769	1,655	4,219
Knox	148	239	387	130	255	385	154	310	464	1,236
Lincoln	97	156	253	87	120	207	84	145	229	689
Oxford	181	217	398	182	231	413	163	242	405	1,216
Penobscot	682	766	1,448	759	749	1,508	1,203	974	2,177	5,133
Piscataquis	51	78	129	56	86	142	118	98	216	487
Sagadahoc	112	503	615	98	367	465	154	488	642	1,722
Somerset	192	229	421	202	214	416	236	230	466	1,303
Waldo	101	129	230	103	121	224	129	153	282	736
Washington	100	146	246	92	118	210	175	171	346	802
York	668	839	1,507	669	771	1,440	659	849	1,508	4,455
#N/A*	246	675	921	155	482	637	100	284	384	1,942
<b>Year Total</b>	<b>5,918</b>	<b>8,077</b>	<b>13,995</b>	<b>6,608</b>	<b>7,363</b>	<b>13,971</b>	<b>7,606</b>	<b>8,326</b>	<b>15,932</b>	<b>43,898</b>

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

\* "#N/A" represents WCB First Reports with missing location information.

Prior to the pandemic, approximately 42.5% of disabling claims were filed by women, and 57.5% were filed by men. Since 2019, disabling claims filed within the Healthcare and Social Assistance industry have skyrocketed relative to every other industry, who have seen a reduction in filings. Because this is one of the largest industries in Maine and has a female majority workforce, the gap in filing by gender has shrunk from 15% to only 5%. Female claimants make up 47.5% of post-pandemic claims, while males are only 52.5%.



**iii. Disabling Cases by Occupational Groups, Maine (2019-2021)**

Nine industry groups accounted for almost 85% of all disabling injuries in 2021. Table C-15 lists those top nine industry groups, with their corresponding share of injury totals.

**Table C-15: Disabling Cases by Occupational Groups, Maine (2019-2021)**

Industry Groups	2019		2020		2021		Three Year Industry Total
	Number	Percent	Number	Percent	Number	Percent	
Health Care and Social Assistance	2,770	19.8%	4,466	32.0%	5,098	32.0%	12,334
Retail Trade	2,278	16.3%	1,899	13.6%	2,065	13.0%	6,242
Manufacturing	1,545	11.0%	1,356	9.7%	1,660	10.4%	4,561
Public Administration	1,024	7.3%	1,083	7.8%	1,308	8.2%	3,415
Construction	1,112	7.9%	1,109	7.9%	1,155	7.2%	3,376
Accommodation and Food Services	912	6.5%	607	4.3%	890	5.6%	2,409
Transportation and Warehousing	524	3.7%	516	3.7%	739	4.6%	1,779
Educational Services	866	6.2%	542	3.9%	660	4.1%	2,068
All Other Industry	2,964	21.2%	2,394	17.1%	2,357	14.8%	7,715
<b>Year Total</b>	<b>13,995</b>	<b>100.0%</b>	<b>13,972</b>	<b>100.0%</b>	<b>15,932</b>	<b>100.0%</b>	<b>43,899</b>

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

Note: Percentages are rounded and may not add up to 100.0%

The number of disabling injuries and illnesses in the Healthcare and Social Assistance industry are noteworthy for multiple reasons. The industry's increased number of claims filed directly after the pandemic started in 2020 has not gone down in proportion to other industries, even after employment in other industries returned to pre-pandemic. On the contrary, the total number of claims within the industry increased in lockstep with the rest of Maine. This industry has sustained its significantly sized margin over the second most common filing industry, rather than returning to having an insignificant lead over Retail Trade.

Public Administration and Transportation and Warehousing were the only two industries to show an increased proportion of disabling claims filed compared to the year before the pandemic. And while all other industries are showing a decreased proportion of disabling claims filed, Manufacturing and Construction are doing so while simultaneously showing an increased number of disabling claims filed compared to before the pandemic.

**iv. Disabling Cases by Occupational Groups, Maine (2019-2021)**

Ten occupational groups accounted for more than 80% of all reported disabling injuries in 2021. Table C-16 lists those top ten occupational groups, with their corresponding share of injury and illness totals.

**Table C-16: Disabling Cases by Occupational Groups, Maine (2019-2021)**

Occupation Groups	2019		2020		2021		Three Year Occupation Total
	Number	Percent	Number	Percent	Number	Percent	
Transportation and Material Moving	2,169	15.5%	2,268	16.2%	2,644	16.6%	7,081
Healthcare Support	819	5.9%	1,809	12.9%	1,730	10.9%	4,358
Healthcare Practitioners and Technical	795	5.7%	1,606	11.5%	1,728	10.8%	4,129
Construction and Extraction	1,317	9.4%	1,228	8.8%	1,268	8.0%	3,813
Production	1,180	8.4%	1,009	7.2%	1,204	7.6%	3,393
Food Preparation and Serving Related	1,123	8.0%	840	6.0%	1,060	6.7%	3,023
Installation, Maintenance, and Repair	1,017	7.3%	912	6.5%	950	6.0%	2,879
Protective Service	541	3.9%	677	4.8%	803	5.0%	2,021
Building/Grounds Cleaning/Maintenance	921	6.6%	779	5.6%	801	5.0%	2,501
Office and Administrative Support	1,204	8.6%	626	4.5%	775	4.9%	2,605
All Other Occupations	2,909	20.8%	2,218	15.9%	2,969	18.6%	8,096
<b>Year Total</b>	<b>13,995</b>	<b>100.0%</b>	<b>13,972</b>	<b>100.0%</b>	<b>15,932</b>	<b>100.0%</b>	<b>43,899</b>

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

*Note: Percentages are rounded and may not add up to 100.0%*

While the proportion of disabling claims filed for Transportation and Material Moving workers has not significantly increased pre-pandemic to post-pandemic, the total count of claims has risen sharply. These workers have suffered the greatest increase in claim filing over the past year as the economy has been recovering from the initial shock of COVID-19.

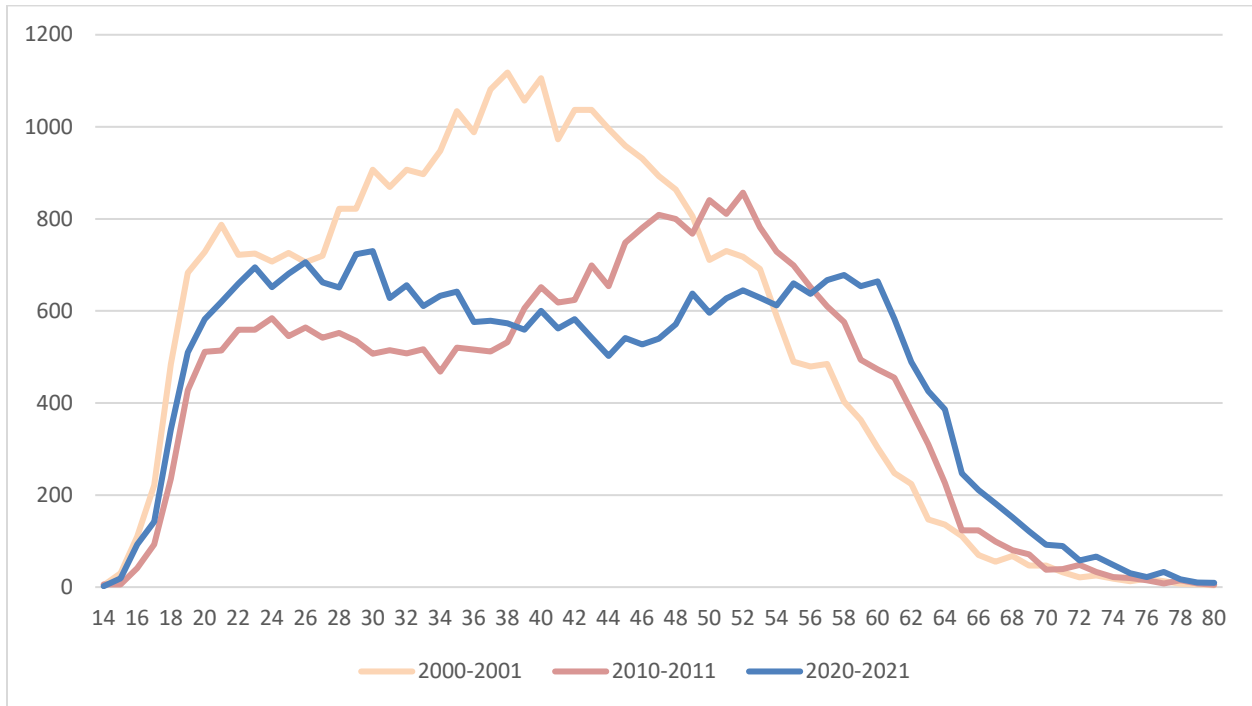
The significant increases in disabling claims filed for healthcare occupations, both at the practitioner/technical level and at the support level, have not receded back to pre-pandemic levels, further emphasizing the strain put on healthcare workers over the last year.

Many offices are under capacity as workers have continued to work-from-home rather than return to business headquarters. This has led to injuries and illnesses for Office and Administrative Support workers to continue being significantly lower post-pandemic compared to 2019 and earlier, both in terms of raw count and as a proportion of all Maine claims.

**v. 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-17 displays the total number of disabling injuries suffered by 3 groups of 3-year cohorts.

**Figure C-17: Number of Disabling WC Claims by Worker Age, Maine (2000-2001, 2010-2011, 2020-2021)**



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

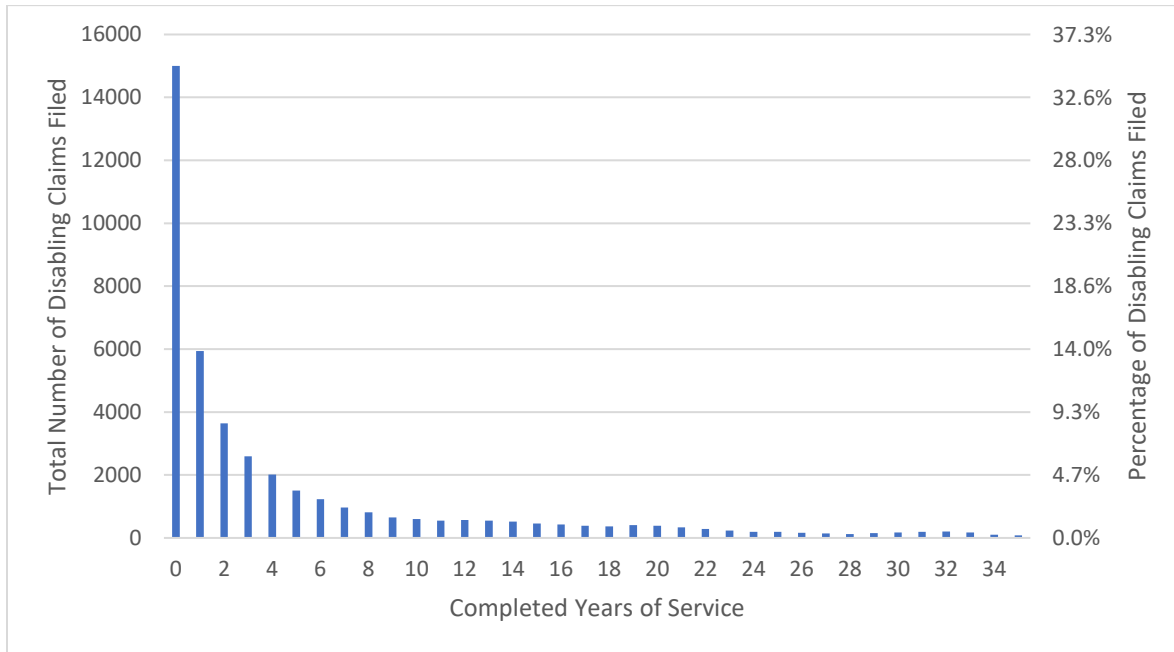
For the 2000-2001 group, the peak number claims filed were by 38-year-old workers, which totaled 1,118 over the 2-year span. Ten years later, the peak number of injuries shifted 14-years to 52-year-old workers, which totaled 857 over the 3-year span. This peak continues to age and decrease with time, as the 2020-2021 cohort sees this local maximum with 58-year-olds seeing 664 claims; however, it is not an absolute maximum. For the first time since including this chart in the report, the age filing the most claims has shifted from the tail end of the Baby Boomers generation to the latter half of the Millennial generation, with 30-year-old workers filing 730 claims.

When looking at overall injury and illness data, the Bureau has not found a significant link between the age of an injured worker and the frequency of injury. This implies that that age is not a predicting variable for a worker suffering a disabling injury or illness in the workplace. The remaining conclusion to be drawn is that the data above represents the overall age of the Maine workforce. The Millennial generation having a larger spike in claim filing over the last two years compared to the Baby Boomer generation is the first sign of the younger generation overtaking the older in terms of workforce composition.

**vi. Length of Service of Injured Worker, Maine, 2019-2021**

Figure C-18 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-18: Count/Percentage of Disabling WCB Cases by Years of Service Completed by Injured Worker, Maine (2019-2021)**



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

Between 2019 and 2021, the number of lost time cases by length of service can be broken up into three groups: 35% 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. Forty-nine percent 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 and 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 considering part-time and overtime exposure hours. Figures C-21 and C-22 display results from the 2021 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”.
- 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.

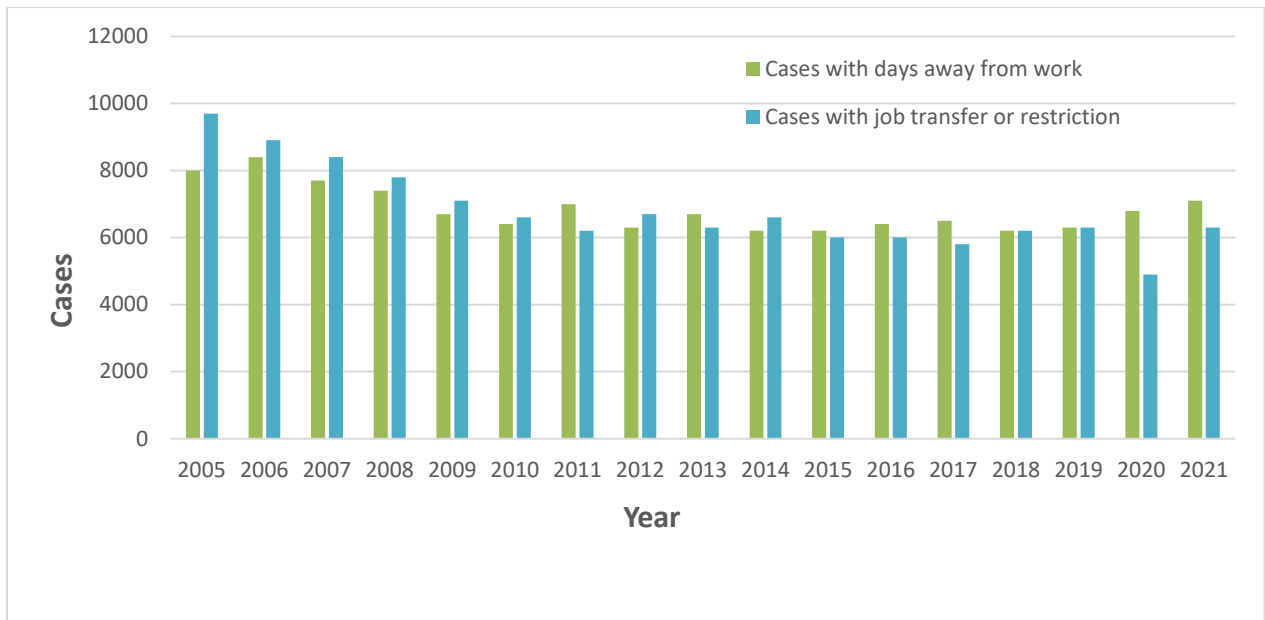
The SOII rates are based on hours worked converted into full-time equivalents (FTEs), whereas the WCB rates can only be based on employee numbers.

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-20 below provides the SOII estimated number of recordable cases while Figure C-21 on the following page 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-20: Lost Workday and Restricted Work Activity Estimated Cases (2005–2021)**



For 2021, there were an estimated total of 13,400 OSHA recordable injuries and illnesses 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 7,100 cases resulted in at least one day away from work and 6,300 cases resulted in job transfer or restriction without any days away from work.

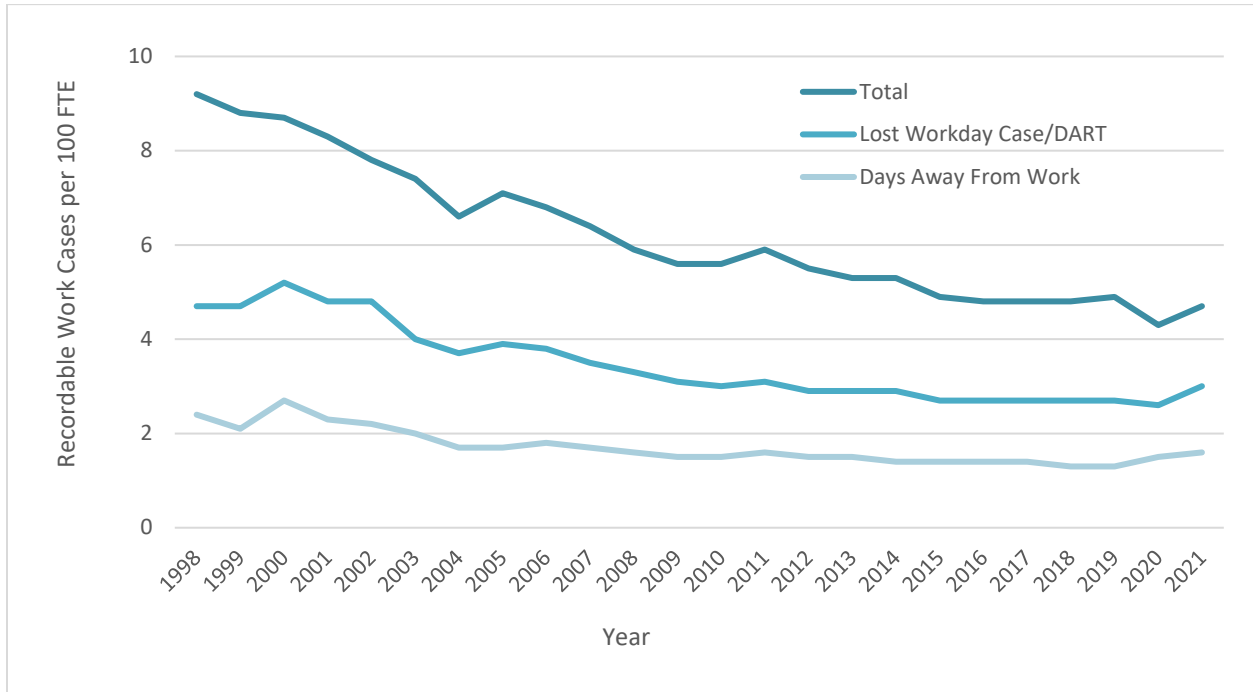
The 7,100 estimated cases with days away from work is not only an increase over the 6,800 estimations for 2020, but also the highest number of cases estimated in the 10-year observation period.

As statewide unemployment returned to pre-pandemic levels, the low number of cases of job restriction or transfer also rebounded. They did not see a significant change compared to the estimation for 2019. It is hypothesized that the normalization of remote work has led to a decrease in the number of cases of job transfer or restriction, explaining the widening gap between the number of these cases and cases of 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-21 shows a longitudinal 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.

**Figure C-21: Total Recordable, Lost Workday or DART\* and Days Away from Work Cases per 100 FTEs (1998–2021)**



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

2021 saw the first significant year-over-year increase in total case rate since 2011. This is due to the significant decrease in year-over-year case rates for 2019 to 2020. When looking at the two-year change between 2019 to 2021, there is not a significant difference in total recordable case rates.

While DART cases did not see a similar decrease year over year between 2019 to 2020, they did see a rise in overall rates similar to the total recordable case rate. This has led to the highest statewide DART rate since 2011. It remains to be seen whether the pandemic recovery has caused 2021 to be a spike year, or if we are establishing a new baseline.

The case rate for Days Away From Work showed increases in both 2020 and in 2021, leading to a significant increase in Days Away from Work (DAFW) between 2019 and 2021. Here, the long term trend of decreasing case rates is starting to erode, as a higher percentage of workplace injuries and illnesses are severe enough to remove the worker for more than a calendar day.

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](http://www.bls.gov/iif/state_archive.htm#ME)

### iii. Industry Sector Data

According to the 2021 SOII (private sector), Skilled Nursing Facilities recorded the highest total recordable incidence rate of 14.9 per 100 FTEs. Table C-22 lists the top-ten private-industry total recordable rates.

**Table C-22: Publishable\* Industries with the Top-Ten Total Recordable Rates, Maine, 2021**

Industry Group	Cases per 100 FTEs
Skilled Nursing Facilities	14.9
Warehousing and Storage	12.3
Residential, Mental Health, and Substance Abuse Facilities	10.4
Continuing Care, Retirement Communities, and Assisted Living	8.8
Electrical Contractors and Other Wiring Installation Contractors	8.7
Motor Vehicle and Parts Dealers	8.1
General Merchandise Stores	7.8
Amusement, Gambling, and Recreation Industries	7.3
Building Material and Supplies Dealers	6.9
General Medical and Surgical Hospitals	6.7
<b>All Private Industries</b>	<b>4.7</b>

Source: U.S. Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*

\*Recently Federal BLS made a change in their publishability criteria, with a renewed focus on protecting the potentially identifiable information of the establishments who supply us with data. Because both MDOL and BLS must agree to publish an industry's injury and illness rates for their data to be available, the number of manufacturing industries which we can provide injury and illness rates for has decreased.

For example, 2019 data for injury and illness rates in Maine's Boat Building industry were cleared to be published, which is the greatest level of specificity available for this industry.

The 2020 data for injury and illness rates in the Boat Building Industry were suppressed to protect the confidentiality of employers in related industries. More general injury and illness rates for Transportation Equipment Manufacturing subsector was the greatest level of detail allowed to be published. This group combines the data for industries involved in the manufacturing of motor vehicles, motor vehicle parts (including bodies and trailers), aerospace products and parts, railroad rolling stock, ships, and boats.

The 2021 data is unavailable beyond the most general Manufacturing level (7.4 cases per 100 FTEs). This combines the data from the Transportation Equipment Manufacturing subsector with data for 20 other manufacturing subsectors, which are as general and diverse as Paper Manufacturing, Textile Mills, and Machinery Manufacturing.

While the suppression of manufacturing data in the SOII is unfortunate, and MDOL has petitioned federal BLS to revise their publishability criteria, we also believe our responsibility to educate workers on which industries face the highest risk of injury and



illness is paramount. Without the ability to publish detailed SOII data, we will turn to more open data sources to complete this mission.

The largest employers in Maine, those with 250 or more employees, are required to submit their injury and illness data directly to OSHA through the Injury Tracking Application (ITA). OSHA then makes this information available at <https://www.osha.gov/Establishment-Specific-Injury-and-Illness-Data>. While this data does not replicate the industry-wide injury and illness rates produced through our federal partnership with BLS, its public availability makes it a valuable resource to supplement our existing data reporting of Workers' Compensation data. MDOL also has the expertise to work with the OSHA research file despite its inaccessibility for the average data user.

If there are injury or illness rates which you have normally been able to view through the SOII publication or this report but are unavailable for 2021, or if there are industries whose injury or illness rates you are interested in but have not been normally available through the SOII publication, please contact MDOL staff at [bls.mdol@maine.gov](mailto:bls.mdol@maine.gov). We can provide you with information from a separate data program which may be useful for your needs. Additionally, we can add your suggestion to the list of industries we focus on for the SOII publication.

### **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 2021 data, over 23,900 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.

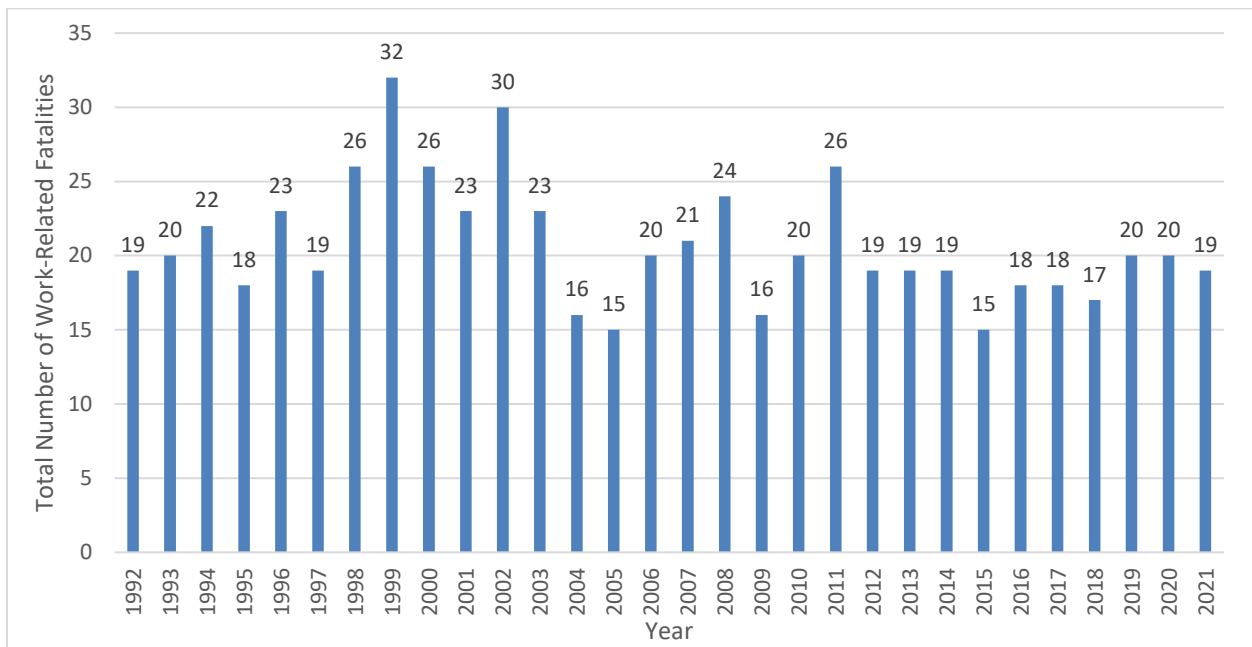
Private and public sector (state, local, and county government) are included in the CFOI.

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 (1992–2021)**

Figure C-24 shows the numbers of work-related fatalities recorded in Maine from 1992–2021.

**Figure C-24: Work-Related Fatalities, Maine (1992–2021)**



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:

[https://www.maine.gov/labor/labor\\_stats/publications/cfoi/index.html](https://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 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 2021, the annual survey indicated that a total of 22,228 tests were administered by employers with approved policies and 2,420 (10.9%) of these tests were positives. Of the 21,925 job applicants tested, 2,385 (10.9%) 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/](https://www.maine.gov/labor/labor_laws/substanceusetesting/). Survey data for 2022 will be available by April 1, 2023.

**Table C-26: Results of Overall and Applicant Substance Use Testing (2012–2021)**

Year	Approved Policies	Total Tests			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2021	526	22,228	2,420	10.9	21,925	2,385	10.9

**Table C-27: Results of Probable and Random Substance Use Testing (2012-2021)**

Year	Approved Policies	Probable Cause Testing			Random Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2021	526	52	16	30.8	251	19	7.6

## 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 2022, the BLS Research and Statistics Division training staff conducted 11 classes in various locations in the state via SafetyWorks: Six in Augusta, one in Portland, two in Bangor, one in Lewiston, 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](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](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 North American Industry Classification System (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; 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 WCB's 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 seeks 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% 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% of the overexertion injuries and that the back was the body part injured most often, accounting for 44.7% 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 levied for violations of those standards.

## 4. CHALLENGES AND OPPORTUNITIES

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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 does its best to remain aligned with federal requirements and activities.

As explained earlier, the SETF fund is currently capped by statute at 1% of the expenses 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, such as 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 100% although the cap is close to program yearly costs, which is of concern.

### 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 for responding to inquiries. Bureau data is, therefore, directly linked to the WCB administrative data, one-for-one, at the case level. This minimizes the chance 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 sometimes removes details important for coding the cases. This is something the Bureau is continuously analyzing and monitoring.

Because the Bureau's coders are typically the first humans to view some electronic data, and because 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 continuously monitor.



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.” In still 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 EDI process.
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.

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, 2018-2022**

Claim Status	Year of Injury or Illness Report					Total
	2018	2019	2020	2021	2022	
Lost Time (LT) Claims	5,060	4,995	5,318	5,211	4,275	24,859
Open LT Claims	359	374	513	727	1,160	3,133
% Open	7.1%	7.5%	9.6%	14.0%	27.1%	12.6%
Closed LT Claims	4,701	4,621	4,805	4,484	3,115	21,726
Resumed Work	3,045	3,176	3,786	3,688	2,638	16,333
% Resumed Work	60.2%	63.6%	71.2%	70.8%	61.7%	65.7%
<b>Source:</b> Workers' Compensation Board <i>Employers First Report of Occupational Injury and Disease</i> and subsequent payment reports as of 1/3/23						
From "Weekly Data Warehouse Check" Spreadsheet:						
Open, Closed from "Lost Time Status" tab						
Resumed Work from the "Last Payment Episode; Closed/Set Reason".						

#### **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 footnote on page C1 for link to this publication

## 5. DEVELOPMENTS

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### I. RESOURCES AND FUNDING

The effects of COVID-19 in the workplace during 2022 seemed less than in the previous 2 years. Even so, there have been a number of changes that impact the workplace and whose impact on work-related injuries and illnesses are uncertain. With more people working from home, the workplace is no longer separate and jurisdiction for the employer and regulators in the home as a workplace is a new uncertainty and concern. While an employer can control its own environment, it is still not clear about mitigating risks in a home or remote environment. It is anticipated there will be developments over the next few years which will define the employer's role.

SafetyWorks! classes continued to be held throughout the year, with expanded class size from 24 to 48 in October. On-site consultations and meetings were resumed with COVID protocols for exposure. The numbers of these services are higher than in 2020, but not quite above those in 2019 as a result. The labor market continues to be tight, and every worker's productivity is that much more important than in the past, as is prevention of injuries and illnesses that affect that productivity. Workers are being asked to work full schedules and overtime in some workplace sectors, mostly in goods manufacturing, logging, and utilities<sup>2</sup>. Studies suggest more time on the job increases exposure and fatigue, both of which contribute to injuries and illnesses<sup>3</sup>. Businesses walk a fine line between answering the need for production and not overworking staff when they cannot increase production by bringing on more workers.

The Workplace Safety and Health Division (WSHD) was able to purchase new tables and chairs and five Virtual Reality (VR) goggles for the SafetyWorks! Training Institute in 2022 because of OSHA one-time funds becoming available.

Virtual Reality Training Modules purchased to incorporate into our current SafetyWorks! Training programs include:

- Fall Protection
- Lockout / Tagout
- Confined Spaces

### 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.

<sup>2</sup> <https://www.bls.gov/news.release/empsit.t18.htm>

<sup>3</sup> <https://oem.bmj.com/content/62/9/588>

## **A. Violence in Healthcare**

LD 629 commissioned a task force to study improving safety and provide protection from violence for healthcare workers in hospitals and mental health care providers. The Bureau provided data for this taskforce, summarized below.

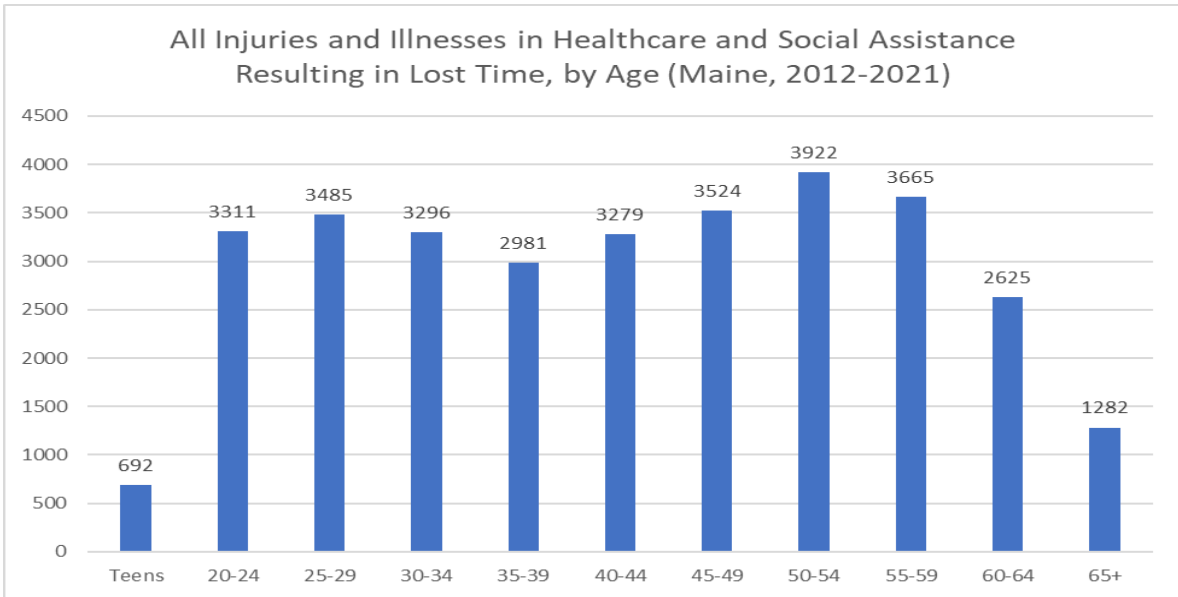
### **i. Statewide Injury Rates (all industry, private sector only)**

- For every 20,000,000 person-hours worked, or for every 10,000 full time equivalent workers (employees working 40 hours per week, 50 weeks per year), there are 3.0 instances of intentional injury perpetrated by a person other than the injured worker
- Approximately 70% of these cases were perpetrated by a health care patient
- Female workers (rate 5.3) are almost 5 times more likely to suffer these types of injury events than male workers (rate 1.1)
- Workers aged 20-24 (rate 7.2) and 25-34 (rate 5.5) are much more likely to suffer these types of injury events than all other age groups, with the next highest being workers aged 35-44 who had an injury rate of only 2.9.
- For the private sector Healthcare and Social Assistance industry only, the injury rate for these specific types of violent injuries are almost 5 times higher than the all-industry rate, at 14.3 cases per 10,000 FTEs

### **ii. Statewide Injury Counts (Workers' Compensation Data)**

Most of the demographic breakdowns show unsurprising data. Because of the large size of Maine's Healthcare and Social Assistance Industry, the data normalizes and shows trends which are consistent with the overall Maine workforce. However, the Age of Injured Worker variable deviates sharply when looking specifically at lost time claims filed due to Violence. Figure C-36 below shows the spread of all injury types within this industry, broken down by age range.

**Figure C-36: Injuries in Maine’s Healthcare and Social Assistance Industry by Age (2012-2021)**



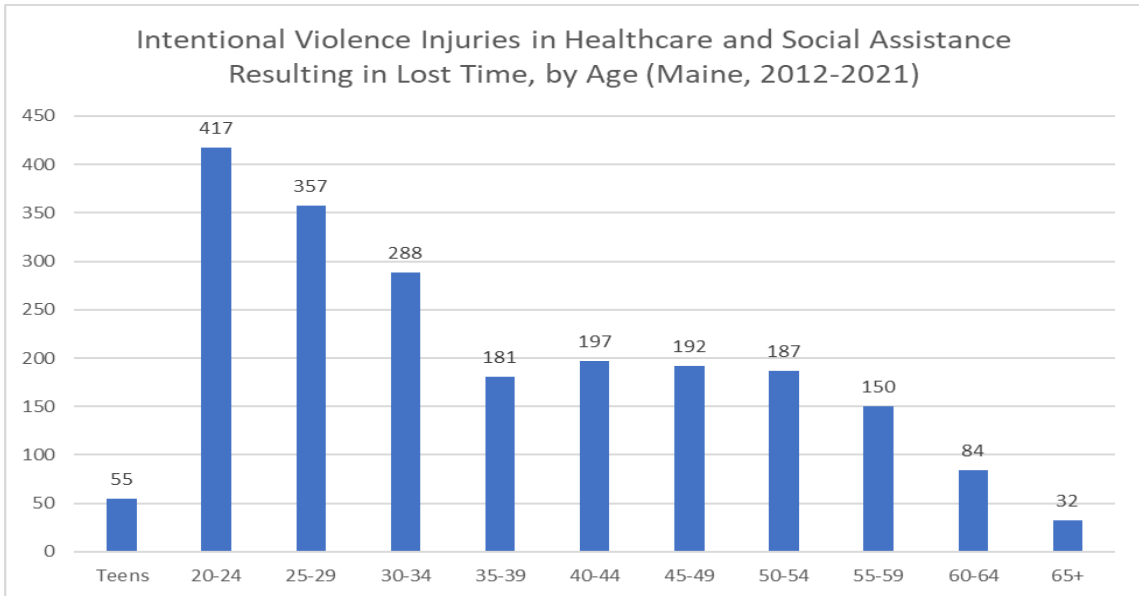
**Source:** Workers’ Compensation Board Employer’s First Reports of Occupational Injury or Disease

When looking at large swaths of injury data by age, the shape of C-36 is seen frequently. Low injuries to teens followed by a sharp increase with a local maximum in the mid to late 20s is expected. Injury counts then decrease through the 30s, before starting to rise again and peaking in the early to mid-50s. Finally, there is a sharp drop off in injury counts as workers become eligible for retirement.

What we’ve noticed in the past is that age bears no significance on injuries; younger workers are equally likely to suffer a lost time injury in the workplace as older workers. This has allowed us to use age as a proxy for estimating the age of the Maine workforce. The chart above accurately displays the age distribution of workers within the healthcare and social service industry over the last 10 years.

We would expect this same general shape for almost any chart with a sufficient number of data points. For intentional violence in healthcare and social service, we have over 2,000 injuries, which should be more than enough to generate this distribution. However, C-38 shows that is not the case.

**Figure C-37: Violence in Maine’s Healthcare and Social Assistance Industry by Age (2012-2021)**



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

Here we see an absolute maximum in the count of injury claims for workers in their early 20s, and an almost strictly decreasing number of injuries in older workers. Given the previous demographic slices showing trends which are more or less regular for large datasets, this age demographic is completely contrary to our expectations.

There could be numerous reasons for this distribution, and most likely due to a combination of factors more easily ascertained by those working in the industry. Further research is needed to understand this data, and cooperation with industry partners to develop safety programs which focus on protecting younger workers from violence in the workplace.

## **B. Safety Education Research Initiative (SERI)**

In order to provisionally fill the research coordination function vacated by the Maine Occupational Research Agenda (MORA) initiative, 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](http://www.maine.gov/labor/labor_stats/workinjuries.html).

Child labor: The increase in the number of Minor Work Permit applications and denials has heightened an awareness of the need to initiate an evaluation of injuries and illnesses among minors in the workplace. An initiative to evaluate Workers' Compensation data among minors is a priority. Should a young person be injured and result in long-term disability, the loss of productivity may be lengthy and the chance of this needs to be minimized. Additionally, the evaluation is a chance to find ways to start prevention awareness efforts earlier and more effectively. As minors, they are restricted and cannot be exposed to some occupations and industries. Once they turn 18, minor workers are allowed to enter more hazardous occupations and worksites and it is better they be equipped for that change before they are exposed.

## **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 Safety and Health Achievement Recognition Program (SHARP) and Safety and Health Award for Public Employers (SHAPE) awards programs. 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 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 1, 2023, there are 27 private-sector employers who have received SHARP status, including:

CCB Inc. (Westbrook)	Hunting Dearborn, Inc. (Fryeburg)
Cianbro Corporation – Rickers Wharf (Portland)	Lonza Rockland (Rockland)
Cianbro Equipment (Pittsfield)	Maine Oxy & Acetylene & Supply Company (Presque Isle)
Cianbro Fabrication & Paint Shop (Pittsfield)	Maine Oxy Acetylene & Supply Company (dba Dirigo Technologies)(Auburn)
CM Almy (Pittsfield)	Maine Oxy Acetylene & Supply Company (Hermon)
Davis Brothers (Chester)	Marden's Inc. (Calais)
DeepWater Buoyancy (Biddeford)	Marden's Inc. (Ellsworth)
Deering Lumber, Inc. (Kennebunk)	Record Hill Wind (Roxbury)
Everett J. Prescott (Bangor)	Reed & Reed – Metal Fab (Woolwich)
Everett J. Prescott, Inc. (Gardiner)	Robbins Lumber (formerly Limington Lumber Company) (Baldwin)
Everett J. Prescott, Inc. (Portland)	S W Boatworks (Lamoine)
Gorham Sand & Gravel (Buxton)	Safe Harbor - Kittery Point Yacht Yard (Kittery Point)
Hancock Lumber Company (Bridgton)	Strouts Point Wharf (Freeport)
Howard Tool Company (Hermon)	

## SHAPE

In 2005, SafetyWorks! initiated the 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 who strive to keep injuries/illnesses down. As of January 1, 2023, there are 85 public-sector employers who have received SHAPE status, including:

Addison Volunteer Fire Dept.	Hampden Water District	North Lakes Fire & Rescue
Alna Volunteer Fire Dept.	Harrington Fire Dept.	Northport First Responders
Appleton Fire Dept.	Hope Fire Dept.	Northport Volunteer Fire Dept.
Ashland, Town of	Houlton Water Company	Norway Water District
Auburn Water & Sewage District	Jay, Town of	Oakland Fire & Rescue Dept.
Belgrade Transfer Station	Jefferson Fire & Rescue	Old Town, City of
Boothbay Fire Dept.	Kennebec Water District	Orono Fire Dept.
Bradley Fire Dept.	Kennebunk, Kennebunkport & Wells Water	Paris Fire Dept.
Bristol / So. Bristol Transfer Station	Kennebunk, Town of	Presque Isle, City of
Bristol, Town of	Kingfield Fire Dept.	Rockland, City of
Brooks Fire Dept.	Kittery Water District	Rockport, Town of
Brownfield Volunteer Fire Dept.	Knox County	Rome Fire Dept.
Brunswick Sewer District	Levant Fire Dept.	Sabattus Sanitary & Water
Bucksport, Town of	Lewiston Fire Dept.	Sagadahoc County
Camden Fire Dept.	Liberty Fire Dept.	Saint Agatha Fire Dept.
Carrabassett Valley Fire Dept.	Limestone Water and Sewer	Sidney Fire Dept.
Cary Medical Center	Lincoln Water District	Sidney Rescue Dept.
L'Acadie Care Facility	Lincoln County	Skowhegan, Town of
Damariscotta Fire Dept.	Maine Turnpike Authority	Somerville Fire Dept.
Dover and Foxcroft Water District	Maine Veterans' Home - Caribou	South Thomaston Fire Dept.
Durham Fire Dept.	Manchester Fire Dept.	United Technologies Center
Edgecomb Fire Dept.	Mapleton, Town of	Waldoboro Fire Dept.
Fairfield, Town of	MDOT - Region 2 and Fleet Services	Wilton, Town of
Farmingdale Fire Dept.	MDOT - Region 3	Windsor Volunteer Fire Dept.
Farmington, Town	MDOT - Region 4	Winslow, Town of
Fort Fairfield, Town of	MDOT - Region 5	Winthrop Fire Dept.
Fort Kent Fire & Rescue	Mid-Maine Technical Center	York Water District
Greater Augusta Utilities District	Newcastle Fire Company	
Greenville Fire Dept.	Nobleboro Fire Dept.	