



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

Submitted to the
131st Maine
Legislature

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We are pleased to submit to the Governor and the 131st Legislature, Second Regular Session, the **Annual Report on the Status of the Maine Workers' Compensation System** as required by Title 39-A § 358-A(1).

The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system – the Workers' Compensation Board, the Bureau of Insurance, and the Department of Labor, Bureau of Labor Standards.

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EXECUTIVE SUMMARY

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed by §358-A (1) of the Workers' Compensation Act to submit an annual report about the status of the workers' compensation system to the Governor, the Joint Standing Committee on Labor and Housing and the Joint Standing Committee on Insurance and Financial Services by February 15th of each year.

WORKERS' COMPENSATION BOARD

The Maine Workers' Compensation Board was created in 1992 based upon a report to the Legislature written by a blue-ribbon commission. The commission had been asked to study and make recommendations regarding Maine's workers' compensation system. The commission made a number of recommendations that led to the repeal of the former Workers' Compensation Act, Title 39, and to the enactment of Title 39-A (the "Act"). A key component of the recommendations was the creation of a labor-management board to oversee the workers' compensation system:

The plan that is being offered places control of the system in the hands of a new labor-management board, which will have virtually total control over the operation of the system. The Board will have the ability and the responsibility to see to it that the system operates as intended, and that any problems that arise can be quickly and accurately identified and dealt with.

Report of Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System, August 31, 1992, p. 2.

Originally, the Board of Directors (the "Board") was composed of 8 members; 4 representing labor and 4 representing management. During the 1990s, the Board deadlocked on a number of important issues. In 1997, a mission statement was added to the Act to emphasize the importance of "facilitating labor-management cooperation." 39-A M.R.S.A §151-A.

Because gridlock continued to be a problem in the late 1990s and early 2000s, the legislature changed the structure of the Board in 2004 to its current configuration. Today, 3 labor members, 3 management members and an Executive Director appointed by the Governor sit as voting members of the Board. The Executive Director is chair of the Board and is also the agency's chief executive.

Over the last few years, the directors have focused on, and made great strides toward reaching, the goal of fostering labor-management cooperation. This progress is neatly encapsulated in the following testimony presented by a Board member during her reappointment hearing:

As a Board, we recently created a stakeholders' group regarding LD 1896 (legislation to increase COLA for a certain group of injured workers who are collecting workers' compensation). We met several times with the sponsor of the bill as well as people from both labor and management. We felt it was important to meet so we could voice concerns/support and also educate ourselves on how it will affect not only injured

workers but business owners throughout the state of Maine. Although the Board has not taken an official position on LD 1896, we felt it was an important step in fostering relationships between the labor and business worlds.

This testimony of a different director during her reappointment hearing highlights another area on which the Board will be focusing in 2024: the dual objectives of a workers' compensation system that provides substantial benefits to injured workers at an affordable cost to employers.

We have been able to delve into issues that have arisen, debating, and often arriving at solutions acceptable to management and labor. It also gives the opportunity for being curious, asking questions, looking deeper to assess the adequacy, cost, and efficiency of Maine's Workers' Compensation system, always with an eye to improve, make the system better. And, to be forward looking, not just reacting at the last hour. An example is the research we've begun that was initiated [LD 1896] to provide cost of living adjustments to certain Workers' Compensation claimants. Rather than simply taking what might be considered traditional labor-management stances, we are asking the questions and scouring the existing research for guidance: what constitutes adequate employee benefits; what constitutes a reasonable cost to employers?

The hard work and conscientious approach of the labor-management board has created a culture of collaboration and cooperation. This culture of labor-management cooperation will ensure that Maine has a stable workers' compensation system that delivers substantial benefits to injured workers at an affordable cost to employers.

BUREAU OF INSURANCE

Pursuant to 24-A M.R.S.A. § 2383-A, the Superintendent of Insurance must report annually to the Governor and the Joint Standing Committee on Health Coverage, Insurance and Financial Services on the status of competition in the workers' compensation market. This report examines different measures of market conditions. Most data used in this report is from company annual statements filed in 2023, reporting data as of 12/31/2022.

Workers' compensation insurance in Maine operates on 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 account 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 -11.9% change in the advisory loss costs effective April 1, 2023.

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 2022 was over 64%. MEMIC received approval for a 5.113% increase to its workers' compensation rates effective June 1, 2023.

The workers' compensation insurance market is very concentrated with much of the business being written by a small number of companies. Twenty-nine insurers wrote more than \$1 million each in annual premium in 2022. The top 10 insurance groups wrote over 88% of the workers' compensation insurance in the state in 2022. However, 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. Employers that maintain a safe work environment and control their losses should continue to see insurers competing for their business.

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 32% (as measured by standard premium) of the overall workers' compensation market in 2022.

BUREAU OF LABOR STANDARDS

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, emerging trends, and challenges with regards to that prevention effort.

In 2023 the Bureau saw a full resumption of services and activities from any limitations due to the pandemic. Class schedules and attendance are back up to pre-pandemic levels as are on-site trainings and consultations.

The results of the 2022 *Survey of Occupational Injuries and Illnesses* (SOII) relate that the Total OSHA Recordable Case incidence rate was 4.9 cases per 100 full-time equivalent workers. This is an increase from 2021 when it was 4.7. The rates measuring Days Away, Restricted or Job Transfer rose 15% from 2020 to 2021 and 6% again from 2021 to 2022 to 1.7 days away from work. This may mean that in addition to the increase in rate, the injuries that are reported are also increasing in severity and impact on the worker. The SOII Survey is the only measure of Injuries and illnesses that incorporates the hours worked and therefore accounts for exposure time in the workplace. This will need to be watched going forward.

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 and a 5% downturn for calendar 2023, possibly indicating the 2022 was the peak, there has been a steady increase in the application and processing of minor work permits. The concern is that there may be commensurate increases in injuries and illnesses in that group. The Bureau is especially protective of minors because an injury that early in life can mean decades of lost productivity for the workers and any associated social and economic costs. The legislature passed a resolve in 2023 that requests that the Bureau take a detailed look at minor work injuries. That report is in process.

Some interesting trends are emerging from the Workers' Compensation injury and illness *First Report* numbers post-pandemic.

- 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 make up 52.5%. This industry is likely growing due to the age of Maine's population, and Maine may be the leader as the oldest state in the nation.
- Supporting this are increases in the Healthcare Support occupations, where both the raw number of injuries and their proportion of all injuries have returned to levels seen at the onset of the pandemic.

- While the proportion of disabling claims filed for Transportation and Material Moving workers has been increasing post pandemic, the total number of claims being filed is starting to show signs of decreasing. The 2,655 claims filed in 2021 may end up being the peak.
- Injuries to production workers are now higher than they were pre-pandemic, while Office and Administrative workers do not seem likely to return to their pre-pandemic highs. The overall picture of the post-pandemic workplace is starting to crystalize, and many of the changes seen in 2020 seem to be sticking around rather than reverting to the stability of the 2010's.

These trends will be watched and researched further.

There are 2 challenges the Bureau is facing:

- First, the Bureau is dealing with a high rate of turnover of staff as some long-time employees retire and others promote. At one point in the recent past, the Department of Labor was told it was the oldest agency in Maine state government in the oldest state in the country! In the last three calendar years, the Bureau has (mostly) retired or promoted 16 out of 40 experienced staff with 10 out of 19 of them in the Workplace Safety and Health Division. Thus far, 2024 is starting out with 2 promotions out of the Workplace Safety and Health Division and 1 retirement. The way positions are handled in Maine state government, not only does the agency lose the long-term staff and their knowledge, but other long-term staff and supervisors' time is diverted to train new staff because overlap of staff is not permitted. Luckily the experienced staff are bringing a very good group of new staff up to speed quickly and with little disruption. That said, it is still a challenge particularly for recruitment, creating delays in hiring and likely longer waits on consultation services.
- Second, much of Maine's Workers Compensation injury and illness non-enforcement prevention effort 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. At the peak in 1989, there were 30,315 lost time Workers' Compensation cases in Maine. In 2022, that number is 50.7% lower, at 15,372. Historically, with the reduction in cases has also been a reduction in costs, and, therefore, the assessment. While this is good news, in the latest year, the cap amount has declined to what is very close to the normal yearly operating budget for the Bureau's SETF activities. This coupled with increasing personnel and operating costs may mean the Bureau will have to curtail resources and/or services to accommodate further reductions absent additional cooperative agreement revenues from US DOL or allocations from the state's General Fund. The primary challenge at this point would be funding investments in efficiency, research and development or funding grants and contracts to others for such.

The Bureau looks forward to a new year with optimism towards meeting these challenges and continuing progress and innovation in the prevention work it is tasked.

SECTION A

WORKERS' COMPENSATION BOARD

Section A: Workers’ Compensation Board

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1. INTRODUCTION

The mission of the Workers' Compensation Board "is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation." 39-A M.R.S.A. §151-A.

To achieve this mission, the Board is specifically tasked with resolving disputes, ensuring compliance with the requirements of the Act and the Board's rules, regulating medical costs, and providing representation to injured workers who are unable to obtain the services of private attorneys. The Board must accomplish its objectives without exceeding its allocated revenue. The Board is not a General Fund agency. It is financed through an assessment on employers directly, or if 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 and is currently working on a new comprehensive review.

2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION

I. ENABLING LEGISLATION

On January 1, 1993, Title 39, the Workers' Compensation Act of 1991, and all prior Workers' Compensation Acts, were repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992.

II. REVISIONS TO ENABLING LEGISLATION

The following are legislative changes enacted since 1993.

- **§102(4)**. Clarified that, for injuries on and after January 1, 2020, fringe benefits that do not continue during incapacity must be included in the average weekly wage to the extent that the inclusion does not result in a weekly benefit amount greater than 2/3 of 125% of the state average weekly wage at the time of injury. Previously, the benefit cap was 2/3 of the state average weekly wage at the time of injury.
- **§102(11)(B-1)**. Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§102(13-A)**. Tightened definition of independent contractor and made it the same as the definition used by Department of Labor.
- **§104-A**. Allows injured workers to bring civil actions against co-employees, supervisors, officers and directors for sexual harassment, sexual assault, intentional torts related to sexual harassment or sexual assault. Employing entities remain immune from civil suits.
- **§105**. Creates self-declaration process for employers to establish independent contractor status. Hiring entities can independently determine if predetermination has been granted by reviewing list of independent contractors on Board's website.
- **§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.
- **§209-A (4)**. Provides that existing reimbursement rates for medical services remain in effect if an annual update of the medical fee schedule is not completed.
- **§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; does 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 (2) (A) (2)**. Sets forth the formula for calculating offset for old-age insurance benefits and payments under employee benefit plans for injuries on and after January 1, 2013.

- **§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 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, 2020, 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 by a state worker who provides care, supervision or custody for incarcerated persons is work related.
- **§328-D.** Creates a rebuttable presumption that law enforcement officer's cardiovascular or pulmonary condition is work-related if it occurs within 6 months of work or training.
- **§§355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.
- **§360 (1).** Allows insurers to recover penalties from employers that are imposed for late-filed forms if employer's late notice to insurer caused the late filing.
- **§401 (4-A).** Sets forth process for wood harvesters and landowners to file forms with the Board to establish independent contractor status.

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/her employer and prove negligence to obtain a remedy. Workers' compensation was conceived as an alternative to the tort system for those injured at work and because of their work. Instead of litigating negligence, under this "new" system, injured workers would receive statutorily mandated benefits for lost wages and medical treatment. Employers correspondingly lost legal defenses such as assumption of risk or contributory negligence. Injured workers gave up remedies beyond lost wages and medical

treatment such as pain and suffering and punitive damages. This “grand bargain,” as it has come to be known in the national literature, remains a fundamental feature of today’s workers’ compensation system. Perhaps as a sign of the times, in Maine financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance. Workers’ compensation disputes still arise in this no fault system. For example, disputes address whether an employee’s incapacity is related to work; the amount of weekly benefits due the injured worker; and what, if any, earning capacity has been lost. Maine, like most other states, established an agency to process these disputes and perform other administrative responsibilities. Disputes under this system became simpler. Injured workers rarely had lawyers. Expensive, long term, and medically complicated claims, such as cumulative trauma and chemical exposures, were decades away.

Adjudicators as Fact Finders

In 1929, the Maine Federation of Labor and an early employer group, “Associated Industries”, opposed a Commissioner’s re-nomination. Testimony from both groups referred to decision reversals by the Maine Supreme Court. This early feature of Maine’s system, review of decisions by the Supreme Court, still exists, although today these appeals are discretionary. The Supreme Court decides legal issues; it does not conduct de novo hearings. In Maine, our state agency adjudicator, today an Administrative Law Judge (ALJ), is the final fact finder.

In the 1980s, Commissioners became full time and an informal conference process was introduced in an attempt to resolve disputes early in the claim cycle, before need for a formal hearing. Additionally, the agency expanded its physical presence, opening regional offices in Augusta, Bangor, Caribou, Lewiston, and Portland all supported by the central administrative office in Augusta. In 1987, three full-time Commissioners were added, bringing the total from 8 to 11, in addition to a Chair. In recent years, the Board has reduced the number of staff hearing claims to eight, from a high of 11.

Until 1993, Commissioners, (those who now are ALJs), were gubernatorial appointments, subject to confirmation by the Legislature’s judiciary committee. The need for independence of its quasi-judicial function was one of the reasons why the agency was established as an independent, free-standing institution, rather than as a part of a larger administrative department within the executive branch. The small scale of state government in 1916 no doubt also played a role in this structural decision.

Transition to the Modern Era

During the 1970s, Maine, along with several other states, made changes to their workers’ compensation laws in an effort to ensure that the laws were functioning equitably. These changes included: Making coverage compulsory for most employers; increasing the maximum weekly benefit; removing durational limitations for total and partial benefits; and, making it easier for injured workers to secure legal services.

Statutory changes and evolving medical knowledge also brought a new type of claim into the system. The law no longer required an injury happen “by accident.” Doctors began to connect repetitive overuse conditions to a claimant’s work and thus brought these conditions within the workers’ compensation coverage. Gradual, overuse injuries frequently recover more slowly. This requires benefit payments for longer periods than many accidental injuries. These claims were also more likely to involve litigation.

Over the course of time, rising costs transformed workers' compensation into a contentious political issue in the 1980s and early 1990s.

The political environment of the 1980s and early 1990s was extraordinary for Maine's workers' compensation system. Contentious legislative sessions directly related to workers' compensation occurred in 1982, 1985, 1987, 1991, and 1992. In 1991, the governor tied a veto of the state budget to changes in the Workers' Compensation Act. The consequence of this action was a three week state government shutdown.

In 1992, the Legislature created a Blue Ribbon Commission to examine our system and recommend changes. The Commission's report made a series of proposals which were ultimately enacted. Inflation adjustments 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 helped stabilize Maine's workers' compensation system.

Based on a recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created to directly involve labor and management representatives in the administration of the agency.

The Board of Directors was initially comprised of four Labor and four Management members, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and the Maine Chamber of Commerce. The eight Directors hired an Executive Director who was responsible for the day to day operations of the agency. During the late 1990s, the Board of Directors deadlocked on important issues such as the appointment of Hearing Officers, adjustments to the partial benefit structure under §213, and the agency budget. By 2002, this became a matter of legislative concern. Finally, in 2004, legislation was enacted making the Executive Director a tie-breaking member of the Board as well as its Chair. The Executive Director is a gubernatorial appointment, subject to confirmation by a legislative committee and the Senate. With this arrangement, gridlock due to tie votes is no longer an issue. The Executive Director casts deciding votes when necessary. However, the objective is still to foster cooperation and consensus between the Labor and Management caucuses. This now occurs regularly.

The agency was criticized in the late 1980s and early 90s for not doing more with its data gathering. The Board installed a relational database in 1996, with modern programming language; the result was an improvement in data collection. Today, filings of First Reports and first payment documents are systematically tracked and benchmarked. Significant administrative penalties have been pursued in some cases. Better computer applications and the Abuse Unit have improved the task of identifying employers, typically small employers, with no insurance. Now coverage hearings are regularly scheduled. The Board mandated the electronic filing of First Reports beginning on July 1, 2005. The Board has also mandated the electronic filing of claim denials; this became effective in June 2006. We are presently considering other areas where electronic filing would be appropriate as part of our EDI effort.

3. DISPUTE RESOLUTION

I. INTRODUCTION

The Workers' Compensation Board has five regional offices throughout the state. These offices manage and process disputed claims. The regional offices are where troubleshooting, mediation and formal hearings take place. Our regional offices are located in Augusta, Bangor, Caribou, Lewiston and Portland.

II. FOUR TIERS OF DISPUTE RESOLUTION

Title 39-A, the Maine Workers' Compensation Act, establishes a four-tiered dispute resolution process: troubleshooting, mediation, formal hearing, and the Appellate Division. The Appellate Division is discussed in section 14 of this report.

Troubleshooting

Troubleshooting is the initial stage of the Dispute Resolution process. During troubleshooting, a Claims Resolution Specialist, frequently called a Troubleshooter, calls employees and employers and attempts to resolve the parties' disagreement. Many times, additional information, such as medical reports, must be obtained to facilitate a resolution. Our Claims Resolution Specialists are neutral; they provide assistance and information to all parties. If the parties are not able to resolve their dispute, the claim is referred to the next step, mediation. Troubleshooters conduct their work via telephone.

Mediation

Claims unresolved at troubleshooting are scheduled with a mediator in one of our regional offices. Mediations are typically conducted telephonically; however, in-person mediations are available upon request of the parties.

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.

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 2014 through 2023.

Troubleshooting				
Filings Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at TS
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
2023	11,709	11,504	693	19

IV. MEDIATION STATISTICAL SUMMARY

The following table shows the number of filings assigned and disposed at mediation, the number of cases pending at the end of each year, and the average amount of time a case remained in mediation for the period 2014 through 2023.

Mediations				
Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at MDN
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
2023	1,538	1,525	324	68

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 2014 through 2023.

Formal Hearing					
Cases Assigned, Disposed, and Pending					
Year	Assigned	Disposed	†Lump Sum Settlements	Pending 12/31	Av Months to Decree at TS
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
2023	1,071	1,057	573	525	7.2

† These figures were not recorded in prior years, but they are a significant part of the formal hearing process, so they will be included going forward.

4. OFFICE OF MONITORING, AUDIT & ENFORCEMENT

I. HISTORY

The Maine Legislature, in 1997, established the Office of Monitoring, Audit and Enforcement (MAE). The multiple goals of this office are: (1) monitoring and auditing payments and filings; (2) providing timely and reliable data to policymakers; and (3) identifying those insurers, self-administered employers, and third-party administrators (collectively “insurers”) who are not in compliance with minimum standards established under our Act.

II. 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 2022 Annual Compliance Report was approved by the Board on July 11, 2023.

The following sections, taken from the 2022 Annual Compliance 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, as well as if a Wage Statement is filed late. Compliance with both benchmarks has improved since the Board began these processes.

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 2022 Annual Compliance Report

	Benchmark	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Lost Time First Report Filings Received within 7 Days	85%	77%	78%	74%	78%
Initial Indemnity Payments Made within 14 Days	87%	86%	84%	83%	85%
Initial Memorandum of Payment Filings Received within 17 Days	85%	78%	78%	78%	83%
Initial Indemnity Notice of Controversy Filings Received within 14 Days	90%	93%	92%	93%	92%
Wage Information (WBC-2) Received with 30 days of an employer's notice of knowledge of a claim for compensation	75%	65%	67%	60%	74%
Wage Information (WCB-2B) Received with 30 days of an employer's notice of knowledge of a claim for compensation	75%	63%	66%	60%	72%

Annual Compliance from the 2022 Annual Compliance Report

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Lost Time First Report Filings Received within 7 Days	85%	85%	84%	83%	83%	83%	83%	82%	82%	78%	76%
Initial Indemnity Payments Made within 14 Days	90%	91%	90%	87%	89%	90%	88%	86%	87%	84%	84%
Initial Memorandum of Payment Filings Received within 17 Days	89%	90%	89%	86%	88%	89%	87%	84%	81%	67%	79%
Initial Indemnity Notice of Controversy Filings Received within 14 Days	95%	95%	94%	94%	93%	93%	94%	94%	94%	92%	93%
Wage Statements Due and Received within 30 Days								71%	70%	65%	66%
Fringe Benefit Forms Due and Received within 30 Days								71%	69%	64%	65%

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 2023:

- Gallagher-Basset
- Eastern Alliance
- Cross Insurance

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

- Travelers

Audits are in process for the following entities:

- Zurich Insurance
- American International Group
- Wal-Mart Claims Services
- Cannon Cochran Claims Services
- Acadia
- Sedgwick
- MHCAWCF

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 2023, the Board received one audit complaint.

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 (CompCon).

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

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 2023, the Board received eight applications for employment rehabilitation services. In four of the eight applications, the evaluator determined that the employee was not suitable for employment rehabilitation services at the present time and in one case the application was withdrawn. Of the three remaining applications, one employee is participating in a plan paid for by the employment rehabilitation fund and two applications have pending objections to the evaluation for 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 227 requests for independent medical exams in 2023.

Time From Request to Exam				
	0-60 Days	61-90 Days	91-120 Days	> 120 Days
Q1	10%	17%	33%	40%
Q2	7%	19%	36%	38%
Q3	9%	22%	31%	38%
Q4	9%	24%	28%	39%

Time From Exam to Report Filed					
	0-14 Days	15-21 Days	22-28 Days	29-60 Days	61+ Days
Q1	79%	8%	4%	6%	2%
Q2	78%	5%	4%	5%	7%
Q3	75%	9%	4%	5%	7%
Q4	76%	10%	4%	4%	6%

6. WORKER ADVOCATE PROGRAM

I. INTRODUCTION

The Worker Advocate Program provides legal representation without cost to injured workers pursuing claims before the Workers' Compensation Board. In order for an injured worker to qualify for Advocate representation, the injury must have occurred on or after January 1, 1993; the worker must have participated in the Board's troubleshooter program; the worker must have failed to informally resolve the dispute; and finally, the worker must not have retained private legal counsel.

Traditional legal representation is the core of the program; the Advocate staff, worker advocates, paralegals, and legal secretaries, have broad responsibilities to injured workers. These 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 employee 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. 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, this 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 Advocate positions among the 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.

IV. CASELOAD STATISTICS

Injured workers in Maine have made substantial utilization of the Advocate Program. Advocates represented injured workers at approximately 70% of the cases pending at mediation in 2023. The following table shows the number of Advocate cases mediated from 2014 through 2023.

Year	Filings Assigned	Filings Disposed	Cases Pending at Board 12/31	% of All Cases Pending at Board
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%
2023	1,471	871	289	70%

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 35% of all Board formal hearings in 2023. 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 2014 through 2023.

	Filings Assigned	Cases Assigned	Cases Disposed	Cases Pending at Board 12/31	% of All Cases Pending at Board
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%
2023	467	212	219	182	35%

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

Over the course of the last year, vacancies have placed additional stress on employees in the program. This has also created delays which we are working hard to address.

7. INFORMATION MANAGEMENT

The Board's information management needs are overseen by the Board's Deputy Director of Information Management, who coordinates with the State of Maine Office of Information Technology (MaineIT), and two Management Analyst positions. There are 12 software programs managed in whole or in connection with MaineIT by this department, along with coordinating the work of two MaineIT workers who are dedicated to fulfilling the Board's programming needs on the main database, Progress. Programming was completed on 86 requests in 2023.

I. 2023 UPDATE

A. Management Analyst I

A Management Analyst I position was added to the Information Management team in April. As the demands on the team grow, it has become apparent that some resources within the agency needed to shift to ensure the needs of the Board and each department are being met.

B. Independent Contractor Statements

As of October 25, 2023, an individual who wants to create a rebuttable presumption of independent contractor status must file a statement - Independent Contractor Statement (Form WCB-267). To make the process as simple as possible, the Board created a new online form for electronic submissions. A list of completed statements is posted to the Board's website and updated regularly.

C. Upgrade of Remote Desktop Servers

The Board moved its Progress and CorVu applications to new remote desktop servers (RDS). The new servers provide increased security and improved access to updated applications, such as Microsoft Office.

D. EDI Coverage Improvements

A considerable amount of time was spent designing and programming a new posting matrix for EDI coverage transactions. The new matrix carefully selects the appropriate employers from the database to attach to the policy based on the employer's FEIN.

E. Database Cleanup

Efforts to clean up the Progress database continued throughout 2023.

F. Contract Programmer

The Board's contract programmer was brought to full time beginning in 2023. They are now fully responsible for database administration of our Progress application, along with fulfilling ongoing programming needs.

G. Coverage Department

Several management reports were developed for the coverage department. The reports are run weekly and reviewed by managers to ensure accuracy and to identify areas for improvement.

H. Letters to Employers with No Recorded Coverage

The module that identifies employers lacking workers' compensation coverage was modified further to require vetting by the coverage staff before letters are mailed.

I. Portland Office Move

A significant amount of time was spent finding a new location for our Portland office, designing a comprehensive layout, and coordinating renovations and details of the move. The office relocated to the new space at 56 Northport Drive, Portland on December 4, 2023.

J. Retirement of MaineIT Programmer

A long-time MaineIT programmer for the Board retired at the end of the year.

II. UPCOMING PROJECTS AND CHALLENGES

A. Recording of Board Proceedings

The Board will discontinue the use of For the Record (FTR) recording software and move to Microsoft Teams. Microsoft Teams provides more flexibility for the recordings whether proceedings are held remotely, in-person, or in a hybrid manner.

B. EDI Rules

Revisions to the EDI Rules will be proposed in the coming year. A taskforce will be created to review the proposed rules prior to them being presented to the Board of Directors.

C. 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

Since 1993, 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. The assessment cap has required adjustments that have happened periodically since 1993. 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 purpose of this legislation was to ensure the Board could submit the budget upon which its members reached consensus while providing a continued opportunity to develop a longer term solution to issues that arise regarding the assessment cap.

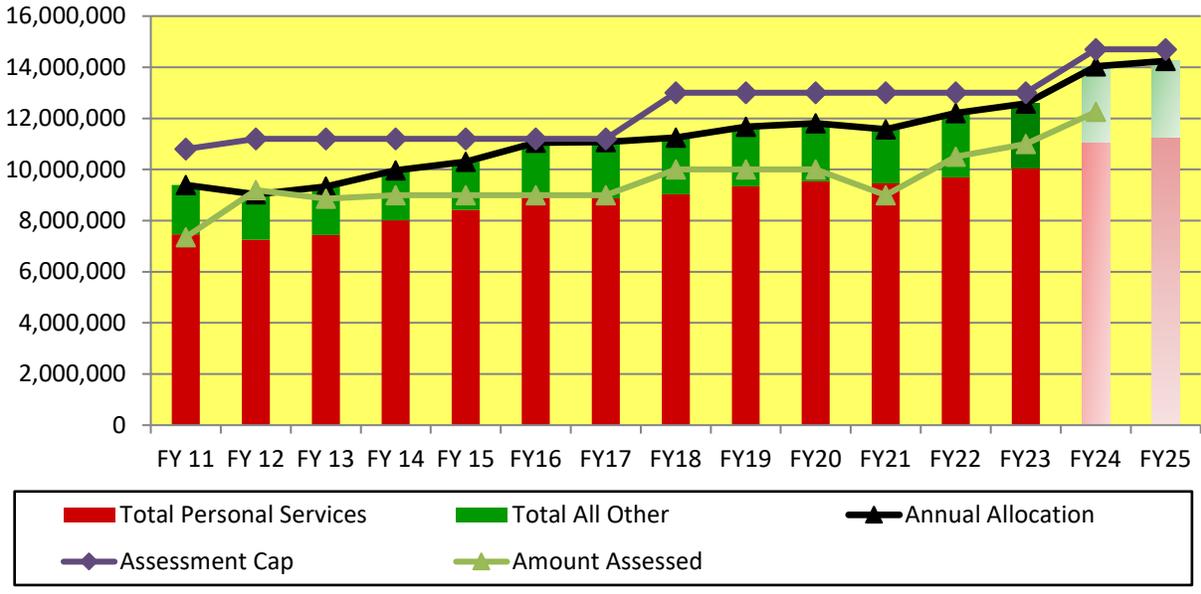
In addition to revenue raised from the annual assessment, other minor amounts of revenue are collected from the sale of publications and some fines and penalties; less than 1% of total revenue in FY 2022. The Board collects other fines and penalties not available for Board expenses; the Legislature has directed those amounts be paid into one of two dedicated accounts, the Rehabilitation Fund or the General Fund. The Board-approved budgets for the current 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 2023 and projected expenditures for fiscal years 2024 and 2025. The chart also shows the amounts assessed through FY 2024 (July 1, 2023 – June 30, 2024) and the assessment cap projected through fiscal year 2025.

**Actual and Projected Expenditures
Workers' Compensation Administrative Fund - 0183
January 2024**

(figures for 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, 2023 to December 31, 2023.

Information/Form	EDI	CMU	TOTAL
Employer's First Report of Occupational Injury or Disease (All types)	27,433	61	27,494
Notice of Controversy	9,069	19	9,088
Petitions		1,359	1,359
Answers to Petitions		424	424
Wage Statement		9,669	9,669
Schedule of Dependent(s) and Filing Status Statements		3	3
Fringe Benefits Worksheet		7,197	7,197
Memorandum of Payment		3,415	3,415
All other payment forms, including:		16,705	16,705
• Discontinuance or Modification of Compensation			
• Consent Between Employer and Employee			
• 21-Day Certificate of Discontinuance or Reduction of Compensation			
• Lump Sum Settlement			
Statement of Compensation Paid		11,210	11,210

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.

CBC petitions have been removed from this summary. Please note that they are now accounted for under **Section 3 Dispute Resolution, V. Formal Hearing Statistical Summary**. Lump sum settlements entered by the Claims Management Unit noted above under **All other payment forms**.

10. INSURANCE COVERAGE UNIT

The Insurance Coverage Unit is responsible for filings and records regarding workers' compensation insurance coverage. Board rules require employers doing business in Maine to file proof of a workers' compensation insurance policy (known as "coverage") with the Board. When an injured worker makes a claim for benefits, the claim must be linked to that employer's coverage policy.

The Coverage staff provides information to insurers, employers, insurance adjusters and the public regarding insurance coverage requirements. Staff matches insurance coverage to employers, creates and updates employer records, and researches the history of an employer's insurance coverage when there is a question regarding which insurer is responsible for paying workers' compensation benefits. Employers identified as needing but not having workers' compensation coverage are notified by letter and asked to contact the Coverage Unit. Coverage staff resolve the matter, when possible, or provide the employer additional information to correct records or complete filing. The Unit is also responsible for processing applications to waive the requirement to have workers' compensation coverage, maintain waiver records, and rescind waivers upon request of the applicant or when applicants do not meet the statutory requirements.

In 2009, the Board implemented electronic filing for proof of workers' compensation insurance. The 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 2023 through December 2023, the Board received and processed 59,830 proof-of-coverage filings. The Coverage Unit processed 558 waiver applications. Part of matching coverage to specific employers involves resolving instances of "no recorded coverage." In 2023, 2,010 "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 295 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

The Workers' Compensation Act permits individuals (and in some cases groups of workers) to submit information to the Board for a determination that they are independent contractors. Determinations can be preliminary (rebuttable in a subsequent proceeding) or binding as discussed below. Filing of predetermination information is voluntary under the Maine Workers' Compensation Act. As of October 2023, there are three (3) different types of predeterminations. The Predetermination Unit is responsible for handling information and forms submitted for predetermination of employment status. The applications are filed by the worker alone; this makes it easier for the applicant to use the form with multiple hiring entities.

New legislation, LD 1803, was adopted in 2023 that changed the predetermination process. Prior to the change, the board made decisions based on information proved by the applicant in an eight-page, paper form. The WCB-266 application was discontinued as of 10/25/2023. The new process allows workers to submit an online Independent Statement (WCB-267) and receive immediate confirmation of submission. The information is then published to the Workers Compensation web site weekly for reference by any employer or insurer. Independent contractors may still submit a paper form, in which case board personnel will then enter the information on their behalf using the online form.

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 wood harvesters to 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 2023, the Predetermination Unit received 4,390 WCB-266 applications prior to the discontinuation of that form on October 24, 2023. All complete applications were processed within 30 days of filing as required by the statute, and most were processed within several days of receipt. 253 applications were returned because they were incomplete, incorrect, or submitted on an outdated form. The applicants were contacted by phone or letter, asked for additional information or sent an updated form. Of that group, 56 applications were successfully processed but the remaining 197 applications were not completed due to lack of response. After all processing, 4,087 rebuttable presumptions were approved and 0 were denied. The unit processed 106 conclusive presumptions. Since the new Independent Contractor Statements, WCB-267, went into use on October 25, 2023 the Board has received 1,065 submissions.

11. COORDINATION WITH OTHER AGENCIES

The Workers' Compensation Board is an independent agency charged with performing discrete functions within state government. Additionally, the Board coordinates and collaborates with other agencies.

I. DEPARTMENT OF LABOR

The Board and the Department of Labor (DOL) used to share an employer database. The shared database was used by the Board to identify employers operating without required workers' compensation coverage. The Board and DOL no longer share that database, but the Abuse Investigation Unit has access to pertinent information at DOL needed to investigate employers without workers' compensation insurance and misclassification cases. We are currently working together on a plan to ensure the Board has access to the data it needs to perform its oversight function through the Coverage Department.

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 is filed contesting the work-relatedness of an 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

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 also tracks fatality cases and brings cases on behalf of the Board when there are no dependents. 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 has struggled to remain fully staffed in the past few years. AIU personnel conduct investigations, file complaints and petitions, represent the Board at administrative penalty hearings, and decide penalty cases for late filed forms.

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, the 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 investigate whether businesses have proper workers' compensation insurance; files complaints against businesses that are out of compliance; represent 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 to combine efforts and share information to ensure employers are classifying their employees properly.

13. GENERAL COUNSEL REPORT

The Workers' Compensation Board is responsible for overseeing and implementing the Workers' Compensation Act. The Board, in performing these functions, can propose legislation and rules when it deems change is necessary. The Board has the authority to act in adjudicatory and appellate roles.

I. LEGISLATION

During its First Regular Session, the 131st Legislature amended the Workers' Compensation Act.

LD 53 was enacted to add §104-A, which allows employees to file civil actions against employees, supervisors, officers and directors for sexual harassment, sexual assault, intentional torts related to sexual harassment or sexual assault. Employing entities remain immune from civil suits. LD 1123 added §328-D to the Act. This amendment creates a rebuttable presumption that law enforcement officers' cardiovascular/pulmonary injuries are work-related if they occur within 6 months of their work or training.

LD 1803, which was submitted by the Workers' Compensation Board, was passed. Section 105 was amended to create a self-declaration process for employees to establish independent contractor status. Hiring entities can independently identify independent contractors by reviewing a list of independent contractors on Board's website. Section 209-A (4) was amended so that existing reimbursement rates for medical services will remain in effect if an annual update of the medical fee schedule is not completed. The mandate in §210 (1) for the Board to adopt utilization review protocols for treatment of specific injuries was eliminated; adoption of such protocols is now permissive. A new formula for calculating offsets for benefits paid under employee benefit plans was incorporated into §221 (2)(A)(2). Sections 303 and 360(1) were amended to allow an insurer to recover from an insured employer the cost of a penalty imposed by the Board for any form filed late if an employer's late notice to the insurer caused the form to be filed late. Section 401 was amended to include a process for wood harvesters and landowners to file forms with the Board to establish independent contractor status.

II. RULES

The Workers' Compensation Act confers rulemaking authority to the Board. The Board of Directors amended chapters 4, 5 and 17 in 2023. The changes included a provision in chapter 4 that reinforced the axiom that §312 independent medical examiners be impartial. Amendments to chapter 5 included changes to the board's medical authorization forms that allow parties to sign the forms without being represented by lawyers, and that allow forms approved by health care providers to be used along with the board's medical authorization forms. Further, chapter 5 was amended to clarify that medical bills must be paid, denied, or returned to healthcare providers for proper coding within 30 days (with notice of the billing deficiency). Chapter 17 was amended to update mileage reimbursement rates for employee travel. The annual update to the medical fee schedule was completed pursuant to 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. Some conferences and some hearings continue to be conducted remotely.

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 2023, the Appellate Division issued 20 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 2023, 8 Petitions for Appellate Review were filed and the Law Court granted two of those petitions. The Law Court did not issue any decisions in workers' compensation cases in 2023.

14. APPELLATE DIVISION

The Board's Appellate Division has completed its eleventh 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.

Five hundred and six notices of intent to appeal have been filed since August 2012; 22 were filed in 2023. The Division has held oral arguments in 224 cases, thirteen in 2023. All arguments in 2023 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 375 cases (twenty issued in 2023). One hundred twenty-nine appeals (seven in 2023) 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.

Eight Petitions for Appellate Review of Appellate Division decisions were filed with the Law Court in 2023. The Law Court granted review in two cases in 2023 but issued no decisions in appeals from the Appellate Division.

The first case in which the Law Court granted review is *Crosen v. Blouin Motors, Inc.*, Me. W.C.B. No. 23-08 (App. Div. 2023). The issue is whether the ALJ erred when deciding that the employer was limited to taking a portion of the offset for Mr. Crosen's social security old-age benefits authorized by 39-A M.R.S.A. § 221 (3)(A)(1), equal to the previously established 60% apportionment finding in the case. The Appellate Division affirmed the ALJ's decision that 39-A M.R.S.A. § 354 prohibits the full offset sought by Blouin, because that provision prohibits the use of an apportionment finding to reduce an employee's incapacity benefits.

The second case is *Michaud v. Caribou Ford Mercury, Inc.*, Me. W.C.B. No. 23-12 (App. Div. 2023). At issue is whether the interest on the employee's specific loss benefit payment accrues from the date of maximum medical improvement or the date of injury, when the employee had sustained greater than 80% loss of vision on the date of injury and his condition never improved. *See* 39-A M.R.S.A. § 212(3)(M). The Appellate Division affirmed the ALJ's determination that interest accrues as of the date the employee reached maximum medical improvement, as specific loss is determined when the employee's condition reaches a reasonable medical endpoint. The employee also contended the mediation agreement compels a finding that the specific loss occurred as of the date of injury, but the Appellate Division determined that issue had not been preserved for appellate review.

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

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 11, 2023, NCCI filed with the Superintendent for an overall 11.9% decrease in the advisory loss costs effective April 1, 2023. According to NCCI, the lost-time claim frequency has generally declined over the last 8 years and the average indemnity cost—a measure of severity—continue to indicate a decreasing trend. The average medical cost experienced a significant decrease in Policy Year 2020. The Superintendent approved NCCI's filing effective April 1, 2023.

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

Industry Group	Percentage Change
Manufacturing	-10.9%
Contracting	-13.4%
Office & Clerical	-12.1%
Goods & Services	-12.5%
Miscellaneous	-9.8%

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:

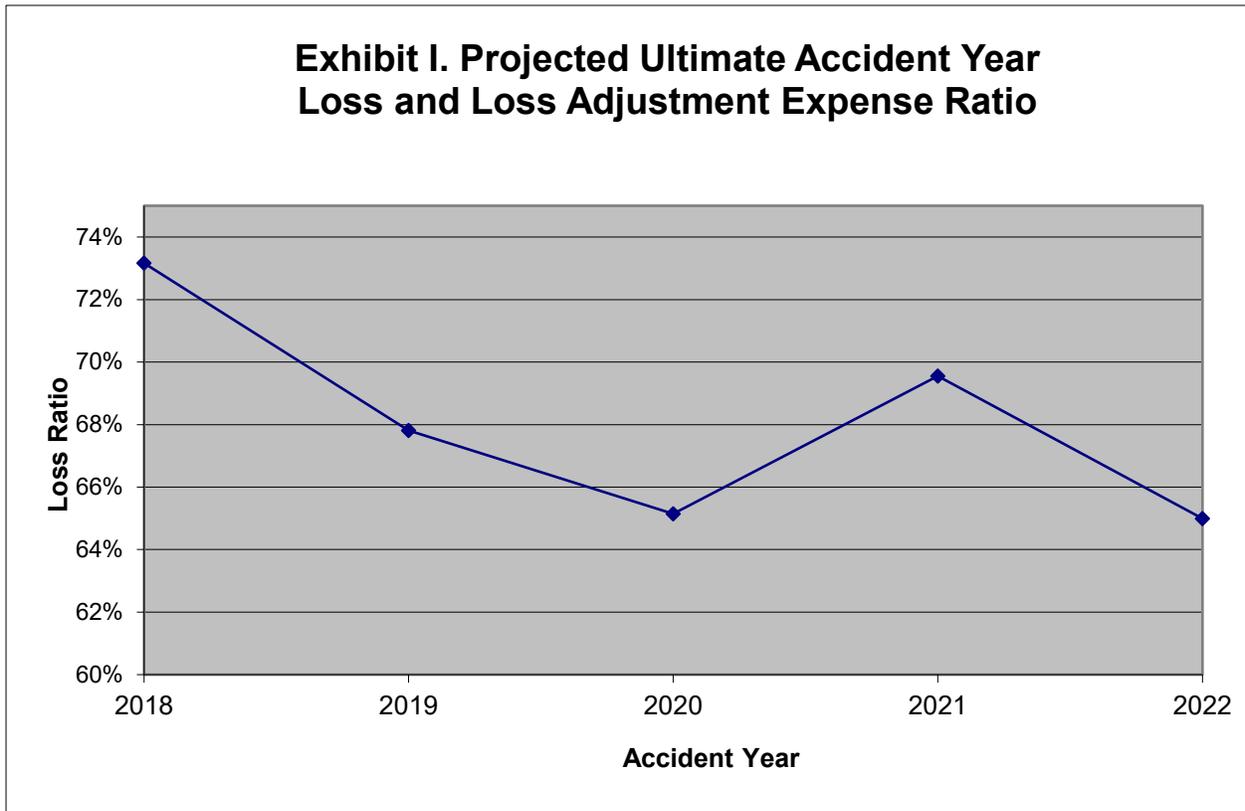
- ❑ **Accident year** experience as of a specific evaluation date matches 1) all paid losses and loss reserves as of the specific evaluation date for injuries occurring during a given 12-month period (regardless of when the losses are reported) with 2) all premiums earned during the same period (regardless 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 account 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 65.0% to 73.2% for the past five years. The 2022 ratio was 65.0%, indicating that \$65.00 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.



Source: NCCI

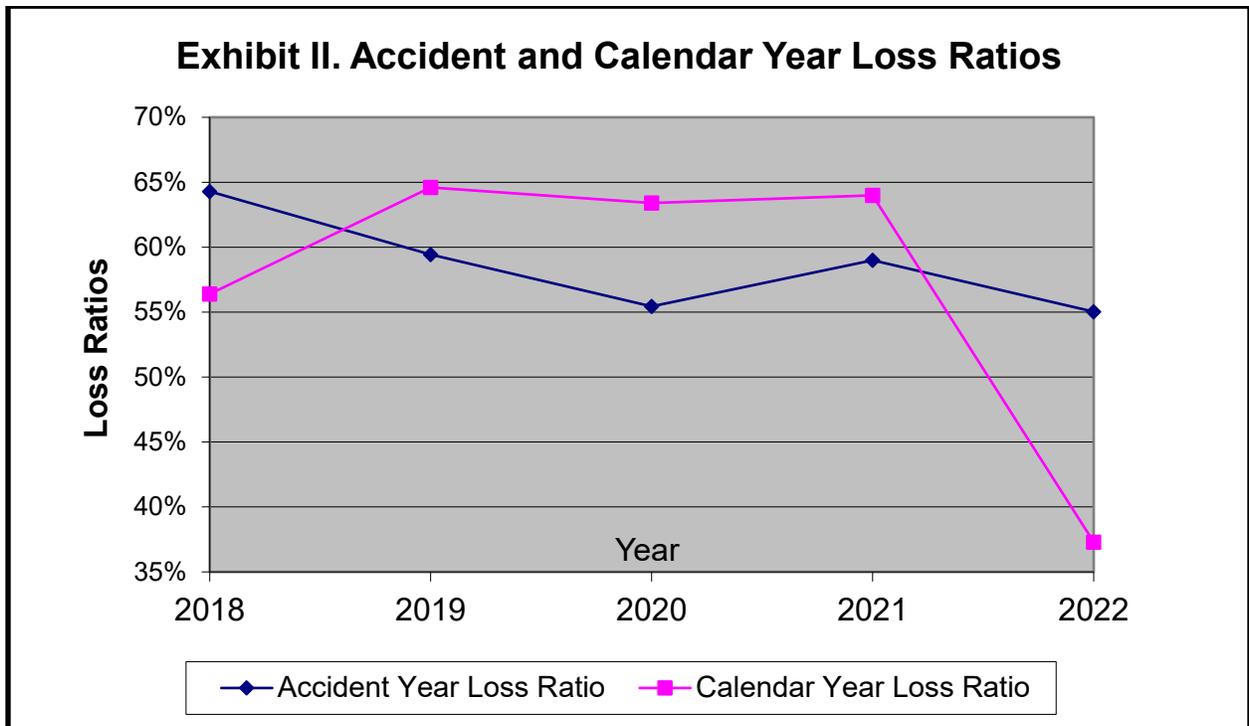
II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

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 a low of 37% in 2022 and 65% in 2019. Accident year loss ratios ranged from a low of 55% in 2020 and 2022 to a high of 64% in 2018. Calendar year loss ratios show a downward trend in the last few years, and accident year loss ratios show a recent drop due to rate changes taken by carriers.



Source: NCCI

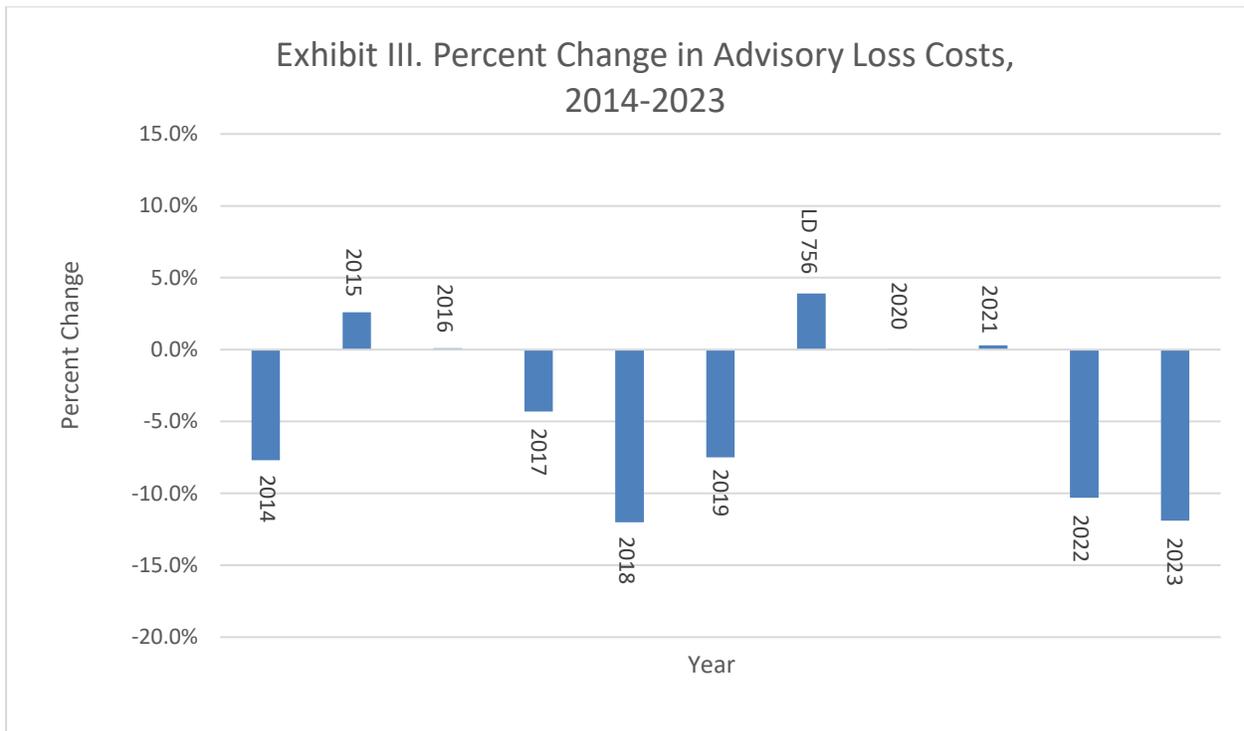
Note: The Accident Year data points in Exhibit II above do not match those in Exhibit I on the previous page, because Unallocated Loss Adjustment Expense is not included in Exhibit II.

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.

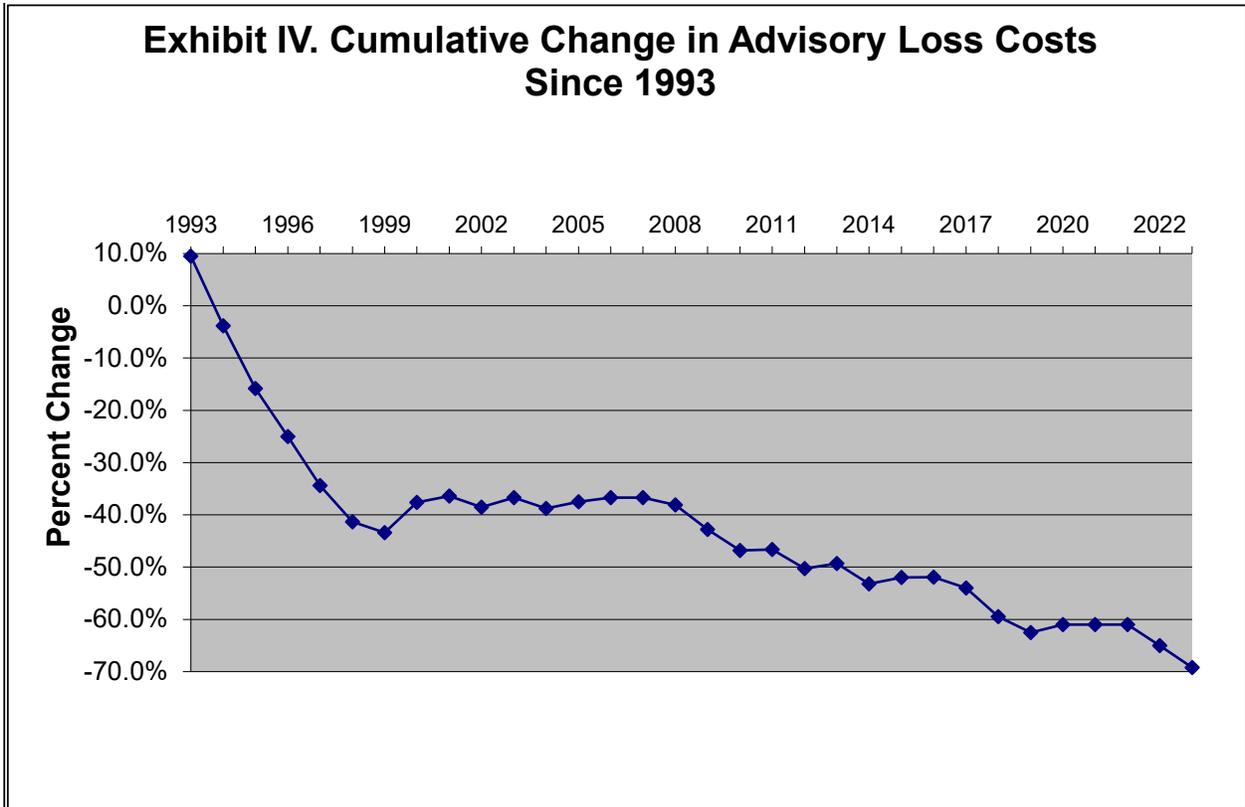
Effective April 1, 2023, the Superintendent approved a -11.9% average change in the workers' compensation advisory loss costs. Advisory loss costs are now more than 17% lower than they were ten years ago, and nearly 69% lower than when the major reform of the workers' compensation system took effect 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 17% over the past ten years, and by nearly 69% since 1993.



Source: NCCI

4. MARKET STRUCTURE AND COMPETITION

I. MARKET CONCENTRATION

Market concentration is one measure of competition. Greater concentration means that there are fewer insurers in the market or that relatively few insurers are issuing a disproportionate amount of coverage. The result is less competition. Conversely, less concentration indicates greater competition.

As of October 1, 2023, 396 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 2022 MEMIC accounted for over 64% 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 2022 by premium level.

Amount of Written Premium	Number of Companies at That Level
>\$10,000	191
>\$100,000	128
>\$1,000,000	29

Source: Annual Statements filed with the Bureau of Insurance. Total written premium for 2022 was over \$280 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 2021 Competition Database Report, which was prepared in 2023, the HHI for workers' compensation insurance in Maine was 4,448. This measure is the third highest (i.e., most concentrated) for all commercial lines in Maine, behind financial guaranty and medical professional liability.

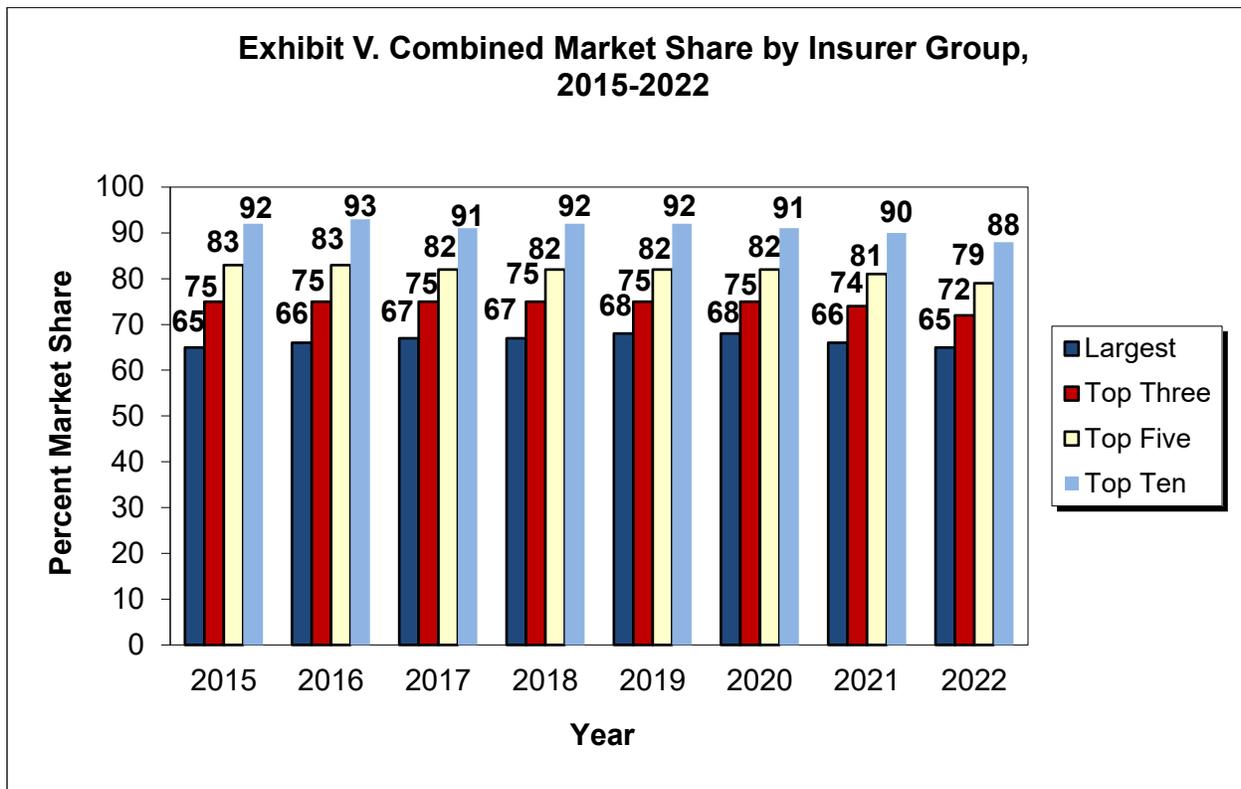
There is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guidelines for corporate mergers use 1,800 and above to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate 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 \$181 million in premium (64.8%) in 2022. The top three groups, including MEMIC, wrote over \$201 million in business (72%). The top five groups wrote over \$221 million (79%), and the top 10 groups had over \$247 million in written premium (88.4%). The reported amounts of written premium for the top 10 groups rose by over \$16 million from 2021 to 2022, while their overall market share decreased by nearly two 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 seven out of the past 10 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 nearly 20% over the past ten years. There currently are no significant barriers to entry.

Year	Number of Carriers	Net Change (Percent)
2023	396	4.5
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

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 2022, and those groups’ market share from 2015-2022. These groups wrote over 88% of the workers’ compensation business in 2022. 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 held nearly 65 percent market share in 2022.

Insurance Group	2015 Share	2016 Share	2017 Share	2018 Share	2019 Share	2020 Share	2021 Share	2022 Share
Maine Employers’ Mutual	64.6	65.9	67.4	67.4	67.7	67.5	66.1	64.8
Hartford Fire & Casualty	3.2	3.1	3.1	3.3	3.1	2.9	3.5	3.6
ProAssurance Corp Group	-	-	-	3.6	3.9	3.6	3.6	3.5
WR Berkeley Group	4.1	4.4	3.9	3.5	3.6	3.4	3.5	3.5
Travelers Group	4.3	4.3	3.9	3.7	3.8	3.8	3.9	3.5
Zurich Insurance Group	1.8	2.2	2.1	1.8	2.0	2.1	2.6	2.8
Liberty Mutual Group	5.7	3.7	2.6	3.3	3.5	3.3	2.9	2.6
Chubb Ltd Group	-	2.0	2.0	2.2	2.0	1.9	1.7	1.4
Amtrust Financial Serv Grp	1.0	0.8	0.8	0.6	0.6	0.6	0.8	1.4
Old Republic Group	0.8	0.7	0.8	0.7	0.7	0.9	1.4	1.2

Source: Annual Statements Filed with the Bureau by Insurance Carriers

VI. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE CARRIERS

Table IV shows the percent of market share for the ten largest carriers for each calendar year from 2015 through 2022. Throughout this entire period Maine Employers' Mutual Insurance Company (MEMIC) had more than 64% market share. The top 10 companies combined held nearly 75% of the market in 2022.

Insurance Carrier	2015 Share	2016 Share	2017 Share	2018 Share	2019 Share	2020 Share	2021 Share	2022 Share
Maine Employers' Mutual	64.4	65.7	67.0	67.0	67.3	67.1	65.9	64.4
Zurich American Ins Co	1.5	1.7	1.6	1.4	1.4	1.4	1.7	1.7
Eastern Alliance Ins Co	-	-	0.6	2.6	2.1	1.8	1.9	1.7
Allied Eastern Ind Co	-	-	-	0.3	1.2	1.3	1.1	1.2
Firemen's Ins Co of Wash DC	1.7	1.7	1.6	1.0	1.0	1.2	1.2	1.1
LM Ins Corp.	0.2	0.2	0.2	0.3	0.5	0.6	0.9	1.1
Standard Fire Ins Co	0.7	0.7	0.8	0.6	0.5	0.5	0.6	1.1
Continental Western Ins Co	-	1.0	1.1	1.1	1.0	0.8	0.9	0.8
Hartford Underwriters Ins Co	0.7	0.6	0.6	0.6	0.6	0.4	0.7	0.8
Prop & Cas Ins Co Hartford	0.1	0.1	0.3	0.6	0.5	0.5	0.5	0.7

Source: Annual Statements Filed with the Bureau by Insurance Carriers

VII. MEMIC RATE CHANGE

In 2023, MEMIC received approval for a 5.113% average rate increase. This increase marked the second 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 increased the expense constant from \$220 to \$295 to account for increases in the fixed cost of administering a policy.

Tier	Current LCM	New LCM	Number of Policies	Approximate Avg. \$ Impact
Safety	1.14	1.19	265	\$2,256
Preferred	1.29	1.46	680	\$6,253
Small Business	1.39	1.41	11,257	\$21
Standard	1.56	1.60	5,396	\$661

5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

I. RATE DIFFERENTIALS

There is a wide range of potential rates for workers' compensation policyholders in Maine, but most employers aren't approved for the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such factors as prior-claims history, safety programs and classifications. An indication that the current workers' compensation market may not be fully price-competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers.

The Bureau of Insurance surveyed all the companies in the ten largest insurance groups, requesting the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. The table below shows the percentage of policies written at rates compared to the MEMIC Standard Rating tier (including MEMIC policies).

Rate Comparison	2022 Percent	2023 Percent
Below MEMIC Standard Rate	61.7%	61.4%
At MEMIC Standard Rate	17.4%	13.3%
Above MEMIC Standard Rate	20.9%	25.3%

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 2023, MEMIC announced it would pay dividends totaling \$18 million to approximately 14,000 qualified policyholders in November 2023. The 2023 payments brought the total of capital returns and dividends paid by MEMIC since 1993 to \$351 million. In 2022, 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

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 2022, 32% of Maine’s total workers’ compensation insurance market, as measured by estimated standard premium, consisted of self-insured employers and groups. The self-insurance percent of market share trend has decreased steadily since 2013. The decrease from 2021 to 2022 of nearly 4% is primarily due to the termination of five self-insurance programs, two in 2021 and three in 2022.

The estimated standard premium for individual self-insured employers is determined by multiplying the advisory loss cost by a factor of 1.2 as specified in statute, multiplying that figure by the payroll amount, dividing the result by 100, and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

Year	Estimated Total of All Standard Premiums	Percent of Workers' Compensation Market (in annual standard premium)
2022	\$131,782,561	32.0
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

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, 2023, there were 18 self-insured groups representing 1,173 employees. The number of individual self-insured employers decreased by one from 2022.

Table VIII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 2014-2023			
Year	# of Self-Insured Groups	# of Employers In Groups	# of Individually Self-Insured Employers
2023	18	1,173	50
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

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 9th highest workers' compensation premium rates in all industries. Maine's rank was 16th highest in 2020, 19th highest in 2018, 14th highest in 2016, and 13th highest in 2014.

II. AVERAGE LOSS COSTS BY STATE BASED ON MAINE'S PAYROLL DISTRIBUTION

NCCI reports average loss costs for 37 states and the District of Columbia, using the most recent loss cost filings for the states which have designated NCCI as the licensed rating and statistical organization. Maine had the 5th highest average loss cost in the most recent report, as well as in last year's report.

State	Average Loss Cost	Rank
Hawaii	1.35	1
Connecticut	1.02	2
Vermont	1.02	2
Illinois	0.97	3
Missouri	0.88	4
Maine	0.87	5
Iowa	0.86	6
Montana	0.86	6
Georgia	0.85	7
Idaho	0.84	8
Louisiana	0.83	9
Rhode Island	0.80	10
Florida	0.78	11
South Carolina	0.78	11
Oklahoma	0.77	12
New Mexico	0.75	13
New Hampshire	0.74	14
Alabama	0.72	15
Nebraska	0.72	15

State	Average Loss Cost	Rank
Alaska	0.71	16
Maryland	0.71	16
Colorado	0.64	17
Oregon	0.63	18
Kansas	0.63	18
South Dakota	0.62	19
North Carolina	0.60	20
Mississippi	0.58	21
Kentucky	0.55	22
Nevada	0.53	23
Arizona	0.52	24
D.C.	0.51	25
Virginia	0.51	25
Indiana	0.48	26
Tennessee	0.47	27
Utah	0.42	28
West Virginia	0.38	29
Arkansas	0.37	30
Texas	0.31	31
Countrywide	0.65	

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

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, 2023 Developments, outlines the 2023 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 study¹, the prevention of any injury and/or illness is the prevention of a costly case and the loss of productivity for an injured worker.

¹ Located under "Archived Items" here: http://www.maine.gov/labor/labor_stats/research.html

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

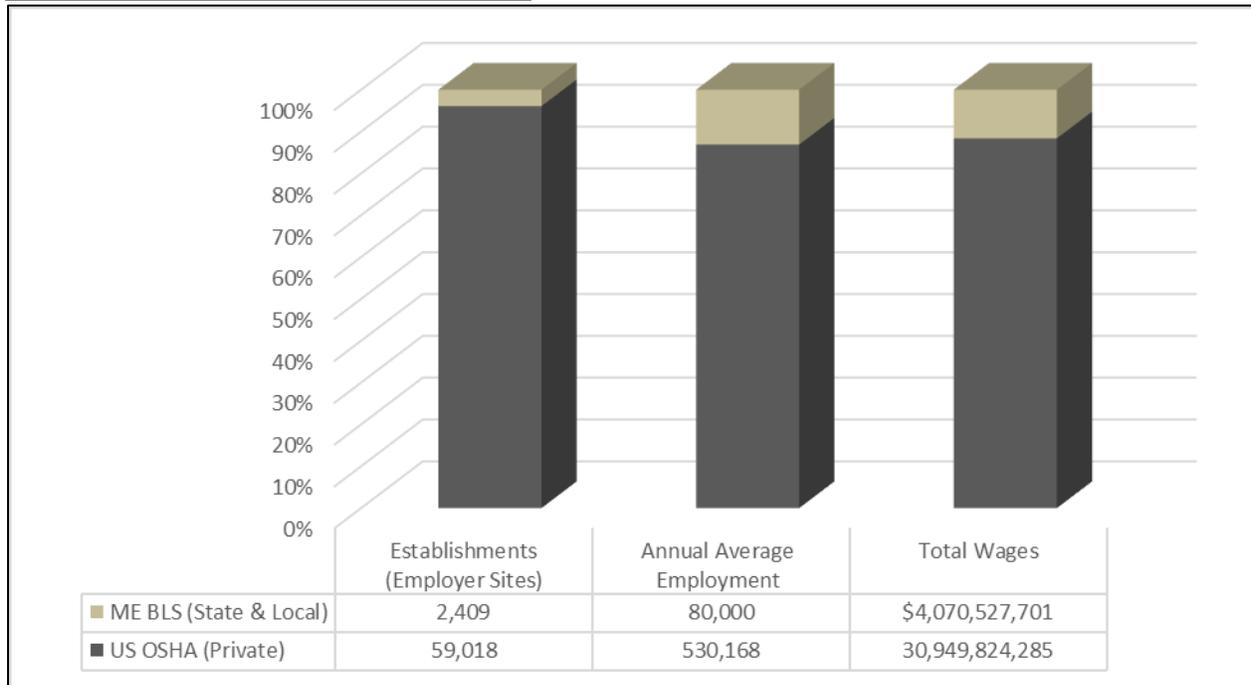
Maine Workers' Compensation System			
Function		State, County, and Local Government Workplaces	Non-Government Workplaces
Prevention	Research	Maine SafetyWorks!	
	Outreach and Education	Maine SafetyWorks!	
	Employer Consultation	Maine SafetyWorks!	
	Safety Standards Enforcement	Maine BLS*	U.S. OSHA
	Child Labor Enforcement	Maine BLS	
Administration		Maine Workers' Compensation Board	
Insurance Market		Maine Bureau of Insurance	
Outside of Maine Workers' Compensation System			
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 2022 and 2023 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, 2023.

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.

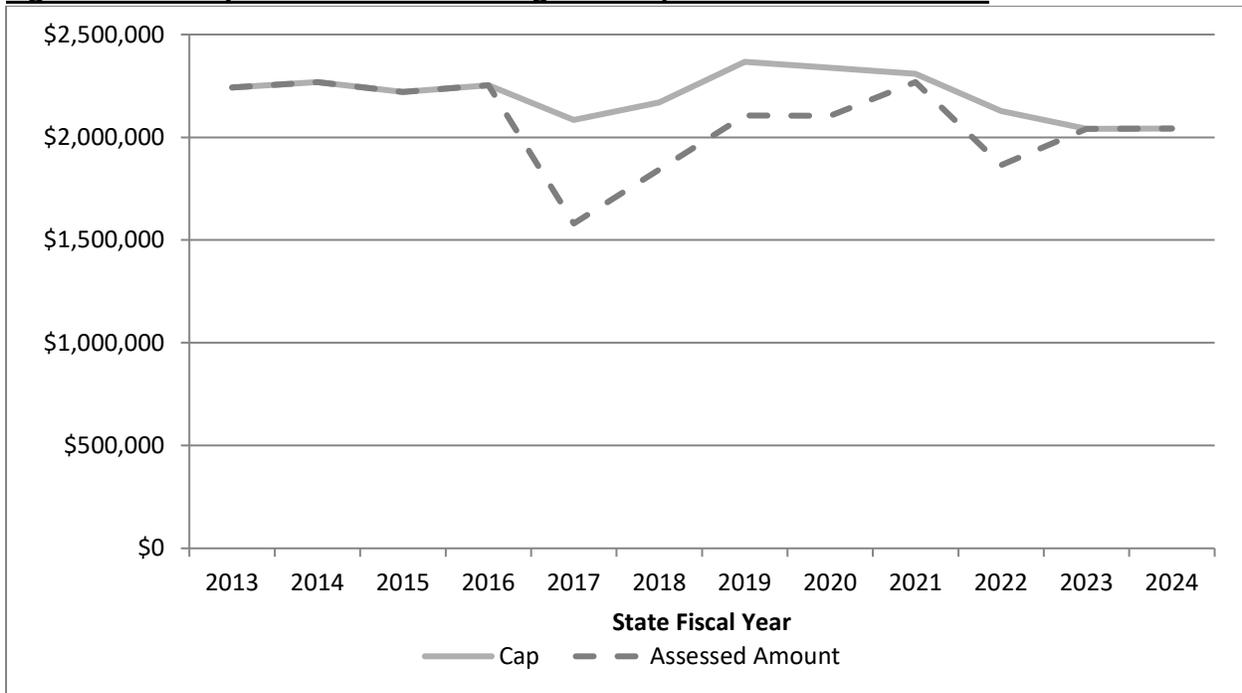
Since 2015, the Bureau’s public sector (state and local government) enforcement and consultation activities have been match-funded (50/50) through a U.S. OSHA “23g” cooperative agreement, with matching funds from the SETF for the consultation portion of the work. (The state general fund provides the 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 \$1.8 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 two latest years, 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 40 in the Bureau in 2023. 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"> • 114 classes with 2,079 workers trained in 2023 • Hosted 9 OSHA Region 1 Training & Education courses in 2023 with 66 workers trained.
Employer OSH Data Profiles	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 19 employer profile/data requests answered in CY 2023
On-site Consultations	State SETF/U.S. OSHA and MSHA* Cooperative Agreement	<ul style="list-style-type: none"> • 451 employer onsite consultations were conducted, which identified 2,585 serious hazards protecting 59,962 employees from those hazards in 2023
Youth Employment Permit Enforcement	State General Fund	<ul style="list-style-type: none"> • 7031 work permit applications received in CY 2023 • 6474 work permits approved in CY 2023 • 1216 work permits initially denied in CY 2023
Wage & Hour Enforcement, Random & Focused Inspections	State General Fund	<ul style="list-style-type: none"> • 306 employer inspections • 37 inspections found violations • 2298 violations found during these inspections
Wage & Hour Enforcement, Complaint Investigations	State General Fund	<ul style="list-style-type: none"> • 291 complaint investigations in CY 2023 • 97 complaints found violations in CY 2023 • 672 Child labor violations with 13 employers
Public Sector Safety Enforcement	State General Fund/U.S.OSHA, 50/50	<ul style="list-style-type: none"> • 135 employers • 569 violations cited • \$211,600 in initial penalties issued in 2023; reduced to \$142.93 pending and/or after penalty discussion as of 12/31/2023 • No Whistleblower investigations
OSHA Recordkeeping Employer Outreach	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 8 sessions in CY 2023 • 122 attendees in CY 2023 • 10 sessions planned in CY 2024

*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 (1977-2022)	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 14,943 disabling cases coded for CY 2022 <ul style="list-style-type: none"> ○ Decrease of 1,446 claims from CY 2021 (16,389) ○ Decrease of 15,372 from the high of 30,315 in CY 1989 (50.7% decrease)
Survey of Occupational Injuries and Illnesses (SOII) (1975-2022)	State SETF/U.S. Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 4.9 Total OSHA recordable case incidence rate in CY 2022 <ul style="list-style-type: none"> ○ Increase of 4% from CY 2021 ○ Decrease of 11% from CY 2012 ○ Decrease of 36% from CY 2003 • 3.1 Days Away, Restricted or Job Transfer case incidence rate in CY 2022 <ul style="list-style-type: none"> ○ Increase of 3% from CY 2021 ○ Increase of 7% from CY 2012 ○ Decrease of 29% from CY 2003 • 1.7 Days Away From Work case incidence rate in CY 2022 <ul style="list-style-type: none"> ○ Increase of 6% from CY 2021 ○ Increase of 21% from CY 2012 ○ Decrease of 15% from CY 2003 <p>Rates per 100 full-time equivalent workers</p>
Census of Fatal Occupational Injuries (CFOI) (1992 – 2022)	State SETF/US Bureau of Labor Statistics Cooperative Agreement	<ul style="list-style-type: none"> • 23 fatalities in 2022 <ul style="list-style-type: none"> ○ Higher fatality count than CY 2021 (19) ○ Highest fatality count in CY 1999 (32) ○ Lowest fatality counts in CY 2005 and CY 2015 (15)
Employer Substance Abuse Testing (1989-2023)	SETF	<ul style="list-style-type: none"> • 7.0% total positive tests for CY 2022 <ul style="list-style-type: none"> ○ Low of 3.3% in CY 2014 ○ High of 10.9% in CY 2021 • 7.1% applicants positive for CY 2022 <ul style="list-style-type: none"> ○ Low 3.1 % in CY 2014 ○ High of 10.9% in CY 2021 • 66.7% probable cause positive for CY 2022 <ul style="list-style-type: none"> ○ Low of 6.8% in CY 2013 ○ High of 80% in CY 2007 (only 5 tests conducted) • 1.2% random positive for CY 2022 <ul style="list-style-type: none"> ○ Low of 1.2% in CY 2022 ○ High of 7.6% in CY 2021

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

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. Four new courses were added to the trainings being offered in 2023, including Safety & the Supervisor, Cold Illness Prevention, and in response to the increase of suicides in the workplace, Mental Health First Aid and SafeTalk were also added.

In 2023, the BLS scheduled training was primarily provided at the SafetyWorks! Training Institute, virtually, 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 2023, 19 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 2023, 451 employer on-site consultations were requested and completed. In addition, 4,868 employees were trained on-site.

Alliances - The Alliance Program enables the agency to develop voluntary, collaborative working relationships with OSHA and with organizations that are committed to workplace safety and health. SafetyWorks! currently has three Alliances with OSHA. Those Alliances are with the 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. The Maine Brewers Guild Alliance was renewed for another 5 years.

Maine established its first public sector Alliance for fire service training with the State of Maine Fire Marshal's Office, Maine Fire Service Institute, and Maine Forest Service.

For more on the services offered by the SafetyWorks! program, go to:
www.safetyworksmaine.gov.

II. ENFORCEMENT

While programs and resources for voluntary prevention activities are effective, there is still a need for some non-voluntary compliance activities and for compliance assurance measures to verify that voluntary processes are actually carried out. To do so, the Bureau implements several enforcement programs fully outside of SafetyWorks! 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, 2023, to December 31, 2023, WHD approved 6474 work permits and initially denied 1216 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, 2023, to December 31, 2023, WHD conducted 306 random and focused inspections and found violations with 37 separate employers. WHD also responded to 291 complaints and found violations with 97 separate employers. The WHD found 672 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. Maine 23g was designated as a "Certified State Plan for Public Sector", having completed all Federal requirements on March 21, 2023.

The Board of Occupational Safety and Health, whose members are appointed by the Governor, oversees public sector safety and health enforcement. WS&H prioritizes state and local agencies

for inspection based on reports of deaths or serious injuries requiring overnight hospital stays, complaints from employees or employee representatives, the agencies' injury and illness data from the WCB, and the results of the *Survey of Occupational Injuries and Illnesses (SOII)*. WS&H compliance officers conduct randomly selected, unannounced inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; however, this shutdown is not mandatory.

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to occupational safety and health (OSH). This knowledge is gained by OSH research, focused studies, and through continuous injury surveillance programs.

3. RESEARCH AND DATA

I. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS

The Research and Statistics Division of the Bureau of Labor Standards is responsible for the administration and maintenance of the following data sources:

- Maine Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*
- U.S. Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses* (SOII)
- U.S. Bureau of Labor Statistics *Census of Fatality Occupational Injury Program* (CFOI)
- Occupational Fatality Reporting Program
- Employer Substance Use Testing Program

Combined, the results of these surveys and censuses provide a useful profile of occupational injuries and illnesses in Maine. The following are program overviews and data summaries generated by these programs.

A. Maine Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*

Since 1973, the Maine Bureau of Labor Standards has coded, tabulated, analyzed and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the U.S. Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding and is now called the Census of Case Characteristics. The Bureau data are directly linked to the WCB administrative data for each case and provide a wealth of information on individual cases and case aggregations. The database includes:

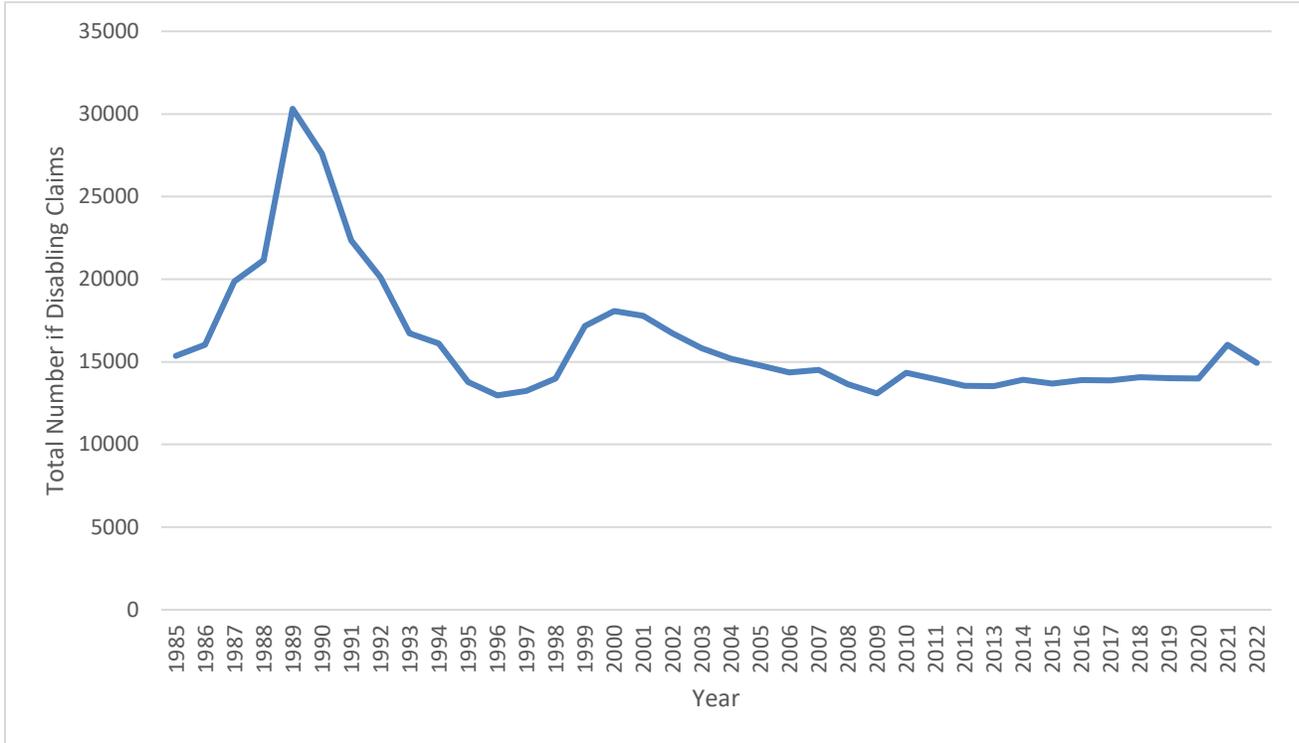
- 1) Characteristics of the employer
- 2) Characteristics of the employee
- 3) Characteristics of the workplace
- 4) Characteristics and results of the incident
- 5) Characteristics and results of the workers' compensation claim including costs

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

i. Thirty-five Year Pattern of Disabling Cases, Maine (1985–2022)

In 2022 there were 14,943 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-14 shows the 37-year trend of total recorded disabling cases since 1985.

Figure C-14: Annual Pattern of Disabling WCB Cases, 1985–2022



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 13,532 in 2013 and a high of 14,334 in 2010, yielding a range of only 812 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. Calendar year 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 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. Calendar year 2022 saw claim levels trend downwards compared to the prior year, but they are still historically elevated, having not had this many disabling claims since 2004.

ii. Distribution of Disabling Claims by Gender and County, Maine (2020-2022)

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-15 provides the number of disabling cases statewide and by county and gender for calendar years 2020 through 2022.

Table C-15: Distribution of Disabling Cases by Gender and County, Maine (2020-2022)

County	2020			2021			2022			Three Year County Total
	Female	Male	Total	Female	Male	Total	Female	Male	Total	
Androscoggin	664	685	1349	580	690	1270	504	640	1144	3763
Aroostook	339	330	669	378	324	702	357	365	722	2093
Cumberland	2089	1860	3949	2200	2173	4373	2310	2143	4453	12775
Franklin	164	118	282	135	136	271	137	137	274	827
Hancock	187	240	427	272	316	588	232	259	491	1506
Kennebec	645	620	1265	889	772	1661	654	662	1316	4242
Knox	131	255	386	156	311	467	190	214	404	1257
Lincoln	87	120	207	84	145	229	90	150	240	676
Oxford	182	232	414	166	242	408	168	247	415	1237
Penobscot	759	751	1510	1211	976	2187	1034	890	1924	5621
Piscataquis	56	86	142	118	98	216	82	80	162	520
Sagadahoc	98	368	466	158	497	655	153	523	676	1797
Somerset	201	215	416	238	229	467	207	196	403	1286
Waldo	103	121	224	129	154	283	124	150	274	781
Washington	92	118	210	177	171	348	132	143	275	833
York	671	772	1443	663	853	1516	682	801	1483	4442
#N/A*	155	483	638	100	285	385	97	188	285	1308
Year Total	6623	7374	13997	7654	8372	16026	7153	7790	14943	44966

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 Industry Groups, Maine (2020-2022)

Nine industry groups accounted for almost 85% of all disabling injuries in 2022. Table C-16 lists those top nine industry groups, with their corresponding share of injury totals.

Table C-16: Disabling Cases by Industry Groups, Maine (2020-2022)

Industry Groups	2020		2021		2022		Three Year Industry Total
	Number	Percent	Number	Percent	Number	Percent	
Health Care and Social Assistance	4475	32.0%	5119	31.9%	4684	31.3%	14278
Retail Trade	1900	13.6%	2071	12.9%	1862	12.5%	5833
Manufacturing	1361	9.7%	1684	10.5%	1724	11.5%	4769
Construction	1111	7.9%	1161	7.2%	1048	7.0%	3320
Public Administration	1083	7.7%	1314	8.2%	1007	6.7%	3404
Accommodation and Food Services	608	4.3%	895	5.6%	869	5.8%	2372
Transportation and Warehousing	520	3.7%	744	4.6%	732	4.9%	1996
Educational Services	543	3.9%	666	4.2%	694	4.6%	1903
All Other Industries	2396	17.1%	2371	14.8%	2322	15.5%	7089
Year Total	13997	100.0%	16026	100.0%	14943	100.0%	44966

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.

Manufacturing, Accommodation/Food Service, and Transportation/Warehousing have been steadily increasing since the Pandemic as employment returns to pre-pandemic levels. Educational Services has also been increasing, though that increase is not as directly attributed to increased employment.

Injuries within Retail Trade, Construction, and Public Administration are changing without a significant trend present. The Bureau will monitor these industries for developing trends.

iv. Disabling Cases by Occupational Groups, Maine (2020-2022)

Ten occupational groups accounted for more than 80% of all reported disabling injuries in 2022. Table C-17 lists those top ten occupational groups, with their corresponding share of injury and illness totals.

Table C-17: Disabling Cases by Occupational Groups, Maine (2020-2022)

Occupation Groups	2020		2021		2022		Three Year Total
	Number	Percent	Number	Percent	Number	Percent	
Transportation and Material Moving	2274	16.2%	2655	16.6%	2582	17.3%	7511
Healthcare Support	1810	12.9%	1737	10.8%	1852	12.4%	5399
Healthcare Practitioners and Technical Occupations	1610	11.5%	1736	10.8%	1665	11.1%	5011
Construction and Extraction	1229	8.8%	1279	8.0%	1183	7.9%	3691
Production Occupations	1012	7.2%	1220	7.6%	1231	8.2%	3463
Food Preparation and Serving Related	841	6.0%	1066	6.7%	987	6.6%	2894
Installation, Maintenance, and Repair	912	6.5%	954	6.0%	835	5.6%	2701
Building and Grounds Cleaning and Maintenance	780	5.6%	806	5.0%	851	5.7%	2437
Protective Service	677	4.8%	805	5.0%	539	3.6%	2021
Office and Administrative Support	628	4.5%	781	4.9%	595	4.0%	2004
All Other Occupations	2224	15.9%	2987	18.6%	2623	17.6%	7834
Total	13997	100.0%	16026	100.0%	14943	100.0%	44966

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 been increasing post pandemic, the total number of claims being filed is starting to show signs of decreasing. The 2,655 claims filed in 2021 may end up being the peak.

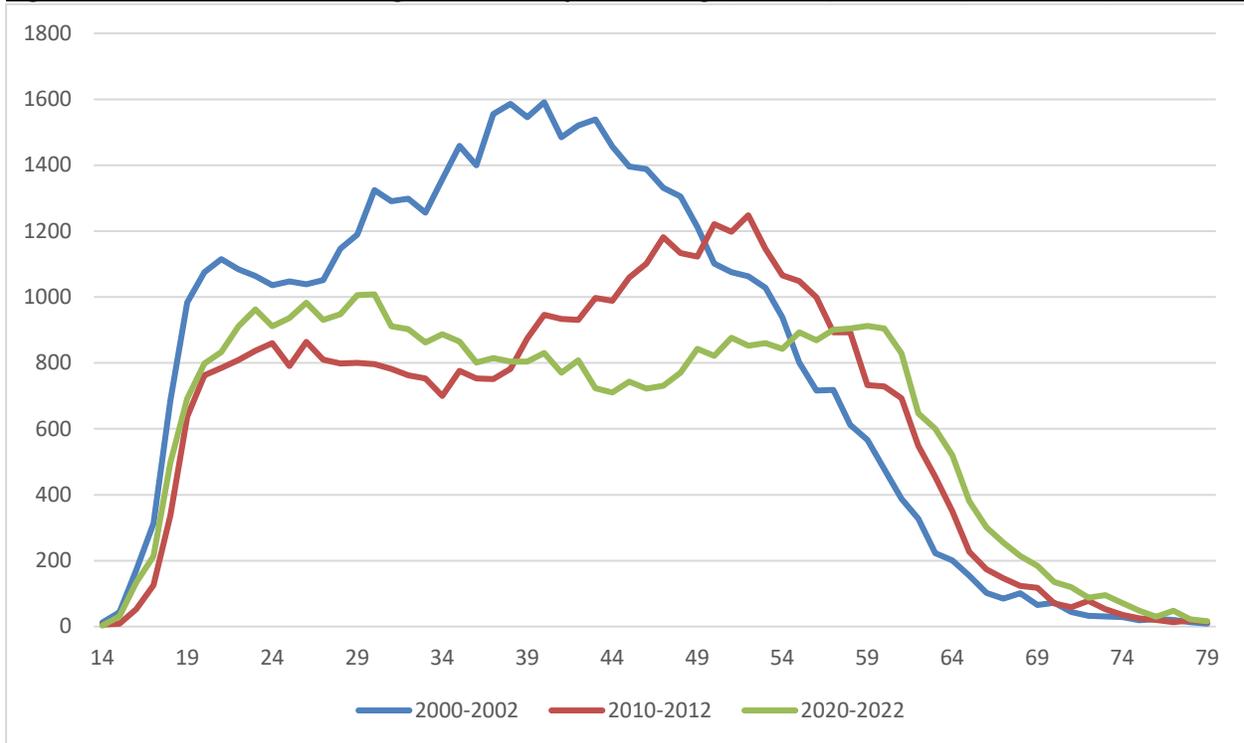
The same cannot be said for Healthcare Support occupations, where both the raw number of injuries and their proportion of all injuries have returned to levels seen at the onset of the pandemic. A return to pre-pandemic levels, which were half of what is displayed in the chart, seems farfetched given the staffing issues these occupations continue to endure.

Injuries to production workers are now higher than they were pre-pandemic, while Office and Administrative workers do not seem likely to return to their pre-pandemic highs. The overall picture of the post-pandemic workplace is starting to crystalize, and many of the changes seen in 2020 seem to be sticking around rather than reverting to the stability of the 2010's.

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

Figure C-18: Number of Disabling WC Claims by Worker Age, Maine (2000-2002, 2010-2012, 2020-2022)



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

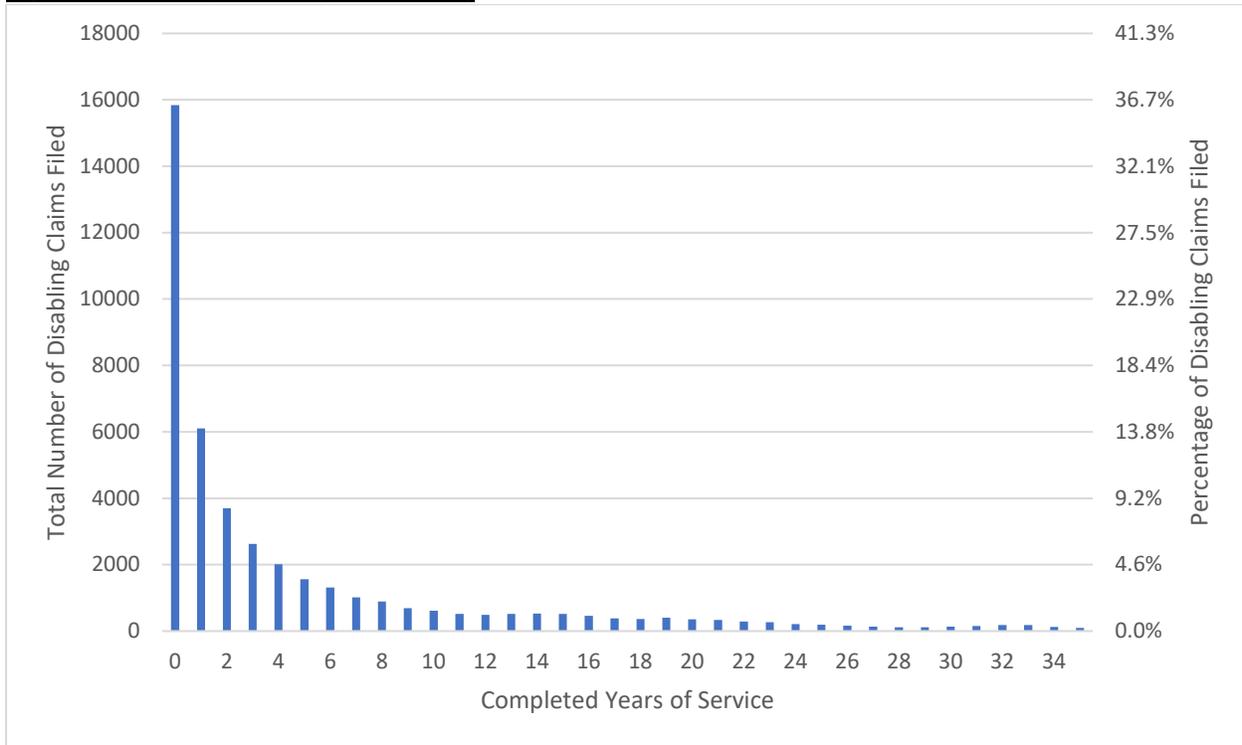
For the 2000-2002 group, the peak number of claims filed were by 38-year-old workers, which totaled 1,586 injuries over the 3-year span. Ten years later, the peak number of injuries shifted 14-years to 52-year-old workers, which totaled 1,248 over the 3-year span. This peak continues to age and decrease with time, as the 2020-2022 cohort sees this local maximum with 59-year-olds seeing 912 claims; however, it is not an absolute maximum. We are now seeing a shift in the workforce where 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 1,008 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 three years compared to the Baby Boomer generation is our first sign of the younger generation overtaking the older in terms of workforce composition.

vi. Length of Service of Injured Worker, Maine, 2020-2022

Figure C-19 below shows a trend where new hires incur significantly more injuries than employees who have been with their employers longer, suggesting that programs and efforts to assure the safety of new employees are the most warranted.

Figure C-19: Count/Percentage of Disabling WCB Cases by Years of Service Completed by Injured Worker, Maine (2020-2022)



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

Between 2020 and 2023, the number of lost time cases by length of service can be broken up into three groups: 36% had been working for their employer less than one year, 33% had put in at least one year but less than five years of service, and 31% of employees had completed at least five years of service. 50% 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 2022 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.

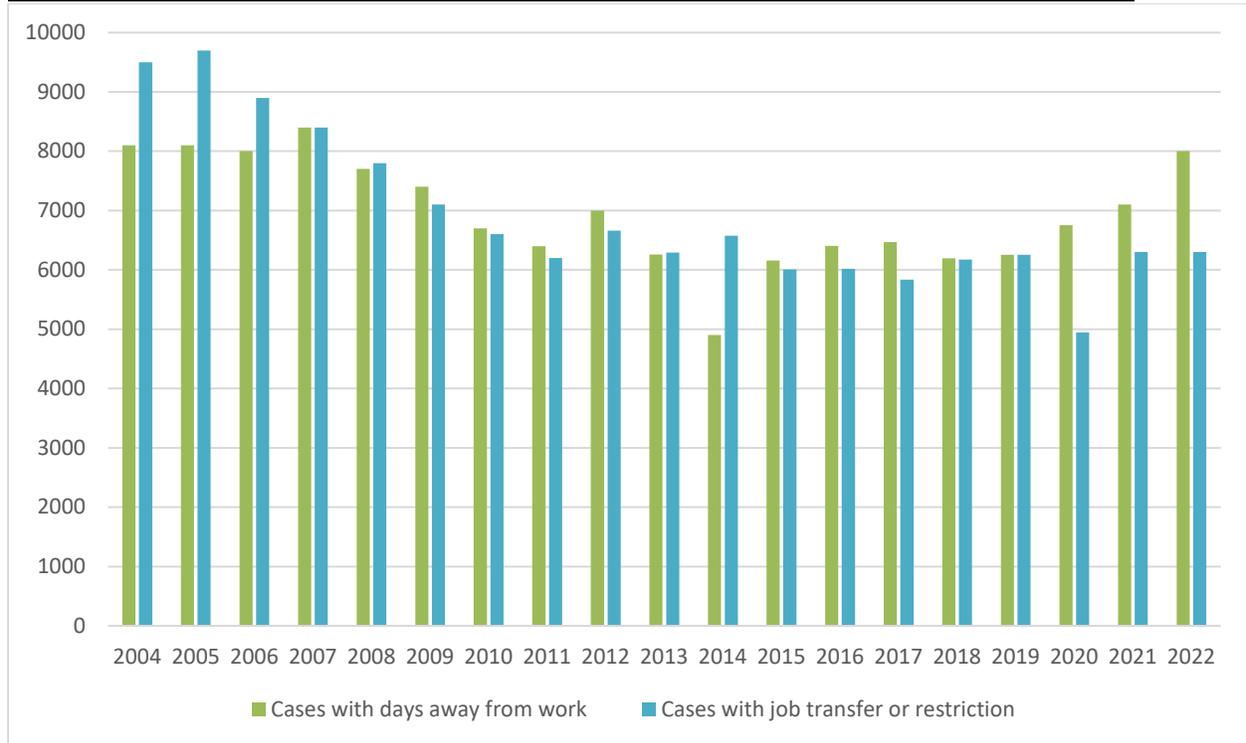
The SOII rates are based on hours worked converted into full-time equivalents (FTEs), whereas the WCB rates can only be based on employee numbers.

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-21 below provides the SOII estimated number of recordable cases while Figure C-22 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-21: Lost Workday and Restricted Work Activity Estimated Cases (2004–2022)



For 2022, there were an estimated total of 14,200 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 8,000 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.

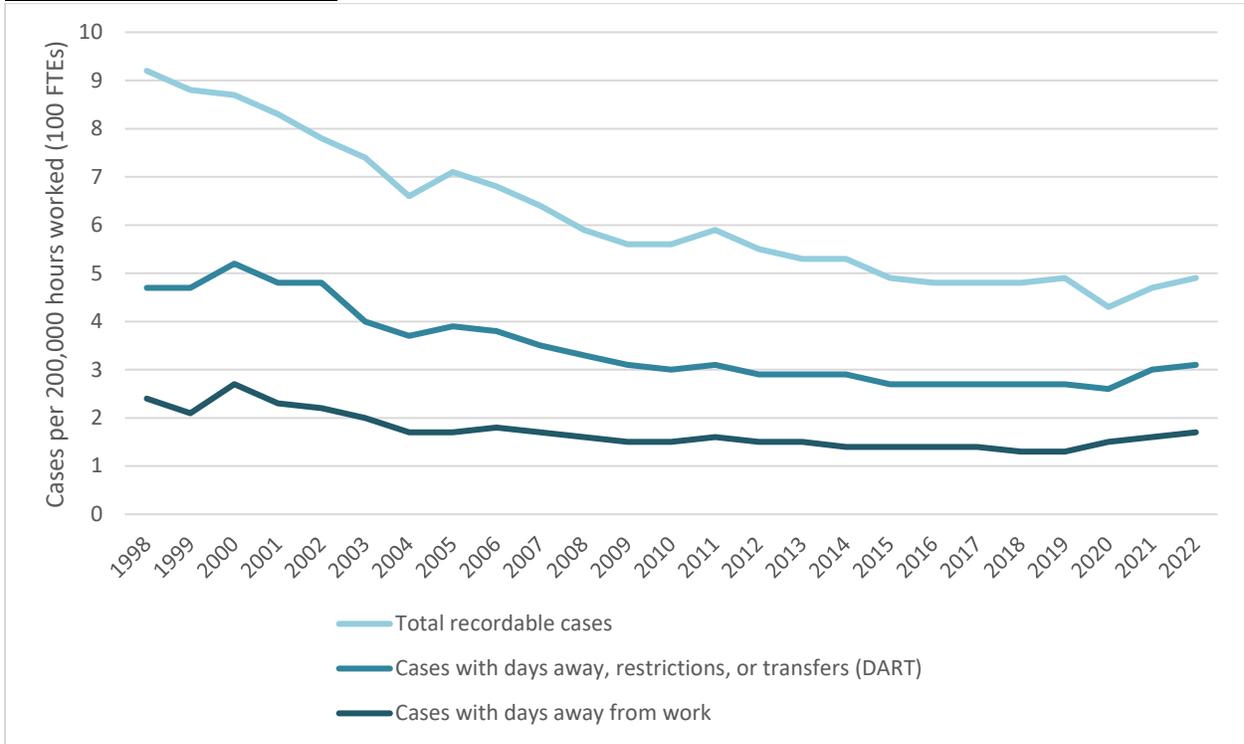
The 8,000 estimated cases with days away from work is not only an increase over the 7,100 estimations for 2021, but also the highest number of cases estimated in the 10-year observation period.

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-22 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-22: Total Recordable, Lost Workday or DART* and Days Away from Work Cases per 100 FTEs (1998-2022)



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

Calendar year 2022 saw a worrying trend of increasing injury rates, both cases resulting in lost time, as well as for cases which result in job transfer or restriction. While total recordable cases returned to pre-pandemic levels, DART cases and days away cases show continued upward trends.

Not displayed explicitly in this graphic are cases which only result in job transfer and restriction, or other recordable cases which did not result in a DART. Cases which resulted only in job transfer or restriction have been steady, a rate of 1.3 cases before 2020, and 1.4 cases after 2020. Non-DART cases were substantially reduced in the post-pandemic workplace. Prior to 2020, there were 2.2 cases per 100 FTEs. Now post-pandemic, they have shrunk to 1.7 cases. These are the only injury type to show a significant decrease after 2020.

More Maine SOII rate data from 2011–2022 are published on the U.S. Bureau of Labor Statistics website at this link: http://www.bls.gov/iif/state_archive.htm#ME

iii. Industry Sector Data

According to the 2022 SOII (private sector), Skilled Nursing Facilities recorded the highest total recordable incidence rate of 20.6 per 100 FTEs. Table C-23 lists the top-ten private-industry total recordable rates.

Table C-23: Publishable* Industries with the Top-Ten Total Recordable Rates, Maine, 2022

Industry Group	Cases per 100 FTEs
Skilled Nursing Facilities	20.6
Lawn & Garden Equipment and Supply Stores	17.6
Fuel Dealers	10.4
Wood Product Manufacturing	10.6
Continuing Care, Retirement Communities, and Assisted Living	10.1
Truck Transportation	9.9
General Medical and Surgical Hospitals	9.6
Transportation Equipment Manufacturing	9.6
Warehousing and Storage	9.6
Residential Building Construction	9.4
All Private Industries	5.0

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.

MDOL petitioned federal BLS to review their publishability criteria, as our responsibility to educate workers industries facing the highest risk of injury and illness is paramount. For 2022, we are again able to publish data for Transportation Equipment Manufacturing.

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 2022, 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. 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.

iv. OSHA Injury Tracking Application (ITA)

The largest employers in Maine, those with 100 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.

On July 21, 2023 new rules on the OSHA Injury Tracking Application were published in the Federal Register which went into effect January 1, 2024. Specifically work establishments with 100 or more employees and which fall into specific 4-Digit NAICS codes must electronically submit their OSHA 300, 300A, and 301 forms. Supposedly this data will be available on-line soon.

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 2022 data, over 27,200 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

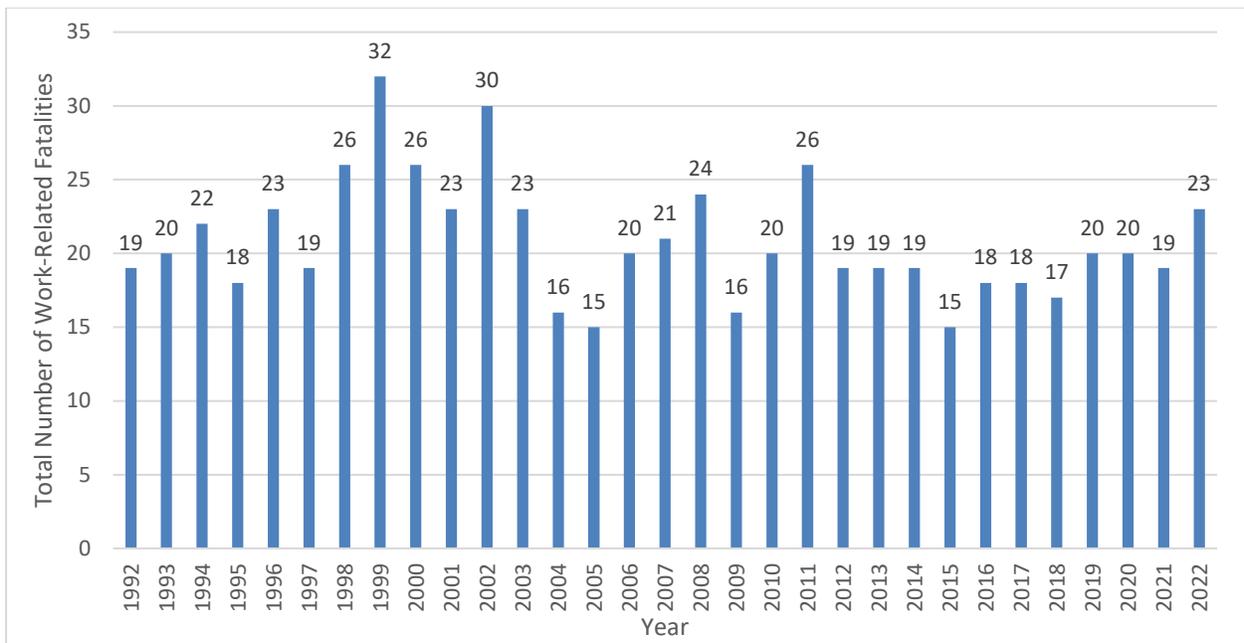
Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure, or the work relationship may be questionable. Private and public sector (state, local, and county government) are included in the CFOI.

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 (1992–2022)

Figure C-25 shows the numbers of work-related fatalities recorded in Maine from 1992–2022.

Figure C-25: Work-Related Fatalities, Maine (1992–2022)



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

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), Health Environmental Testing Laboratory (HETL), 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 2022, the annual survey indicated that a total of 22,054 tests were administered by employers with approved policies and 1,554 (7.0%) of these tests were positives. Of the 21,190 job applicants tested, 1,512 (7.1%) tested positive for illegal substances. Table C-27 shows the total tests and applicant test results for the last ten years, while Table C-28 describes the corresponding results for probable cause and random testing.

For a full report, visit: https://www.maine.gov/labor/labor_laws/substanceusetesting/. Survey data for 2023 will be available by April 1, 2024.

Table C-27: Results of Overall and Applicant Substance Use Testing (2013–2022)

Year	Approved Policies	Total Tests			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2022	520	22,054	1,554	7.0	21,190	1,512	7.1

Table C-28: Results of Probable and Random Substance Use Testing (2013-2022)

Year	Approved Policies	Probable Cause Testing			Random Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
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
2022	520	48	32	66.7	816	10	1.2

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 2023, the BLS Research and Statistics Division training staff conducted 8 classes in various locations in the state via SafetyWorks: Three in Augusta, three in Bangor, and two in Lewiston.

B. Special Projects

Using information from the Maine Workers' Compensation Board's *Employer's First Report of Occupational Injury or Disease*, the Research and Statistics Division conducted the following special research projects in 2012 – 2017, which can also be found here:

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

- Tableau: An Interactive Workers' Compensation Database
- *Hospital OSHA Recordkeeping Study*
- *Slipping and Falling on Ice*
- *Injuries Incurred by Maine's EMTs (and Others)*
- *Injuries and Illnesses Due to Workplace Chemicals and Related Hazards*

- *Roofing and Exterior Worker Falls in Maine, 2011 – 2013*

i. Tableau Interactive Web Database for Workers' Compensation Injury Data

In response to requests to publish characteristics of Workers' Compensation annual injury data, it was determined that the most effective method of graphic presentation would be via the interactive database software Tableau on the Department of Labor's website. This method of data presentation allows data seekers easy access to Workers' Compensation injury data that the Bureau updates annually. It is available at:

http://www.maine.gov/labor/labor_stats/workinjuries.html

ii. OSHA Recordkeeping Establishments at Maine Hospitals

Over the years, Bureau staff has come across a number of SOII survey reports by hospitals that included injuries from associated offices and clinics among their totals. Thus, the Bureau has been concerned that there may be over-reporting of injuries by hospitals leading to higher reported injury rates for that industry. In 2016, the Bureau hired a Margaret Chase Smith intern to examine the separate offices and practices associated or affiliated with major hospitals in Maine and determine which fall under the hospital's OSHA recordkeeping responsibilities and which are considered separate establishments. Of the 216 associated practices and offices examined, the Bureau found that 175 are actually separate establishments that were not under the OSHA recordkeeping responsibilities of their parent hospitals. The Bureau also determined that all but 2 of the 175 are ordinarily exempt from OSHA recordkeeping based on their 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

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. For the latest two years 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 (and possibly, the only) 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-33 below shows that for just over 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-33: Status of Lost Time Claims, Maine, 2019-2023

Claim Status	Year of Injury or Illness Report					Total
	2019	2020	2021	2022	2023	
Lost Time (LT) Claims	5,101	5,444	5,409	5,180	3,491	24,625
Open LT Claims	311	436	541	552	1,117	2,957
% Open	6.1%	8.0%	10.0%	10.7%	32.0%	12.0%
Closed LT Claims	4,790	5,008	4,868	4,628	2,374	21,668
Resumed Work	3,181	3,803	3,805	3,746	1,949	16,484
% Resumed Work	62.4%	69.9%	70.3%	72.3%	55.8%	66.9%

Source: Workers' Compensation Board, *Employers First Report of Occupational Injury and Disease* and subsequent payment reports as of 1/9/24.

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 and would welcome partnerships with researchers to do so.

*See footnote on page C1 for link to this publication

5. DEVELOPMENTS

I. RESOURCES AND FUNDING

The effects of COVID-19 in the workplace during 2023 seemed less than in the previous 3 years. Even so, there have been a number of changes that impact the workplace and whose impact on work-related injuries and illnesses are still unfolding. 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 redefine the employer's role.

SafetyWorks! classes continue to be well-attended. 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 utilities². Studies suggest more time on the job increases exposure and fatigue, both of which contribute to injuries and illnesses³. 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 using available one-time funds from OSHA.

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.

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

³ <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.

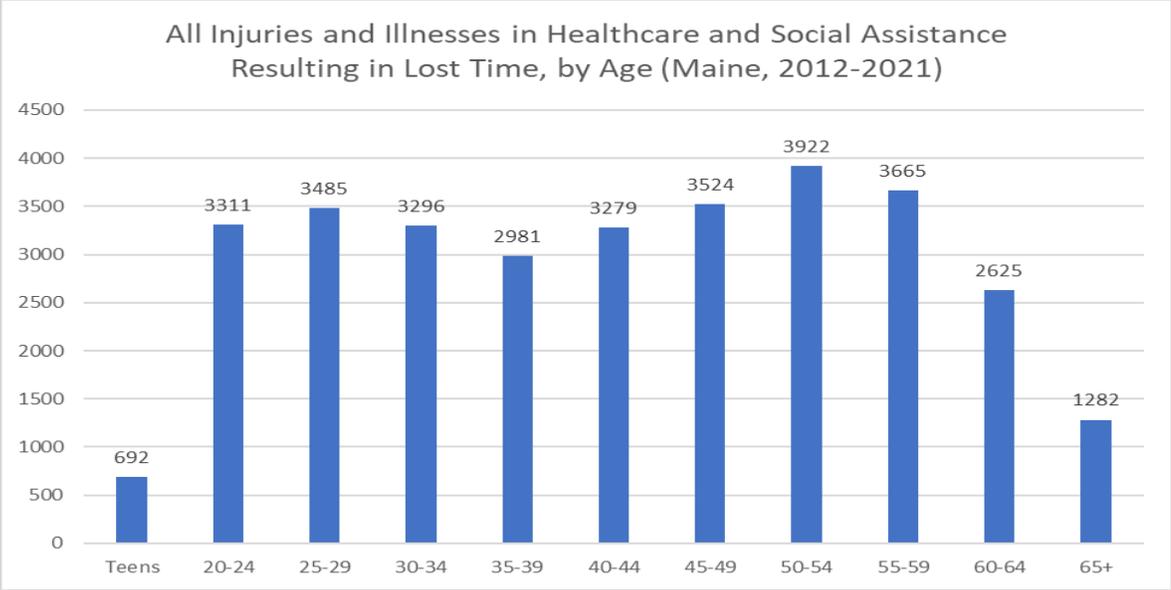
i. Statewide Injury Rates (all industry, private sector only)

- 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-37 below shows the spread of all injury types within this industry, broken down by age range.

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



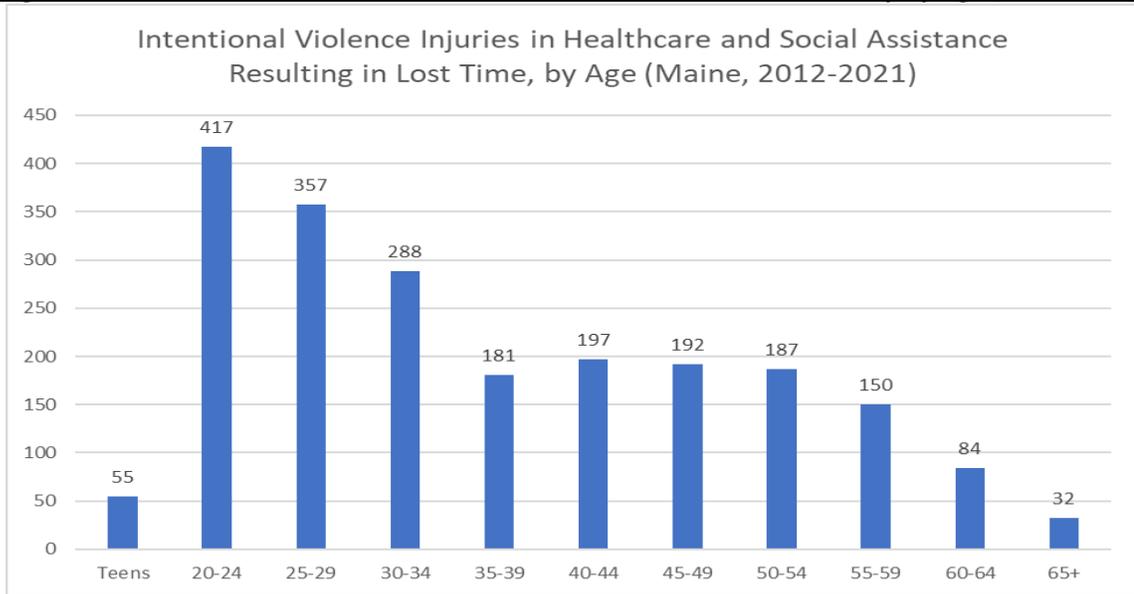
Source: Workers’ Compensation Board Employer’s First Reports of Occupational Injury or Disease

When looking at large swaths of injury data by age, the shape of C-37 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-38: 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.

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. In calendar

year 2023, there were 28 private-sector employers who 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)	Construction Pilot SHARP Reed & Reed – (Madawaska/Canada Bridge)

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. In calendar year 2023, there were 88 public-sector employers who received SHAPE status, including:

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