



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

Submitted to the 127<sup>th</sup>  
Maine Legislature  
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Pamela D. Megathlin  
Director  
Bureau of Labor Standards  
Department of Labor

Paul H. Sighinolfi, Esq.  
Executive Director  
Workers' Compensation Board

Eric A. Cioppa  
Superintendent  
Bureau of Insurance  
Department of Professional and  
Financial Regulation





STATE OF MAINE  
 WORKERS' COMPENSATION BOARD  
 27 STATE HOUSE STATION  
 AUGUSTA, MAINE 04333-0027

PAUL R. LePAGE  
 GOVERNOR

PAUL H. SIGHINOLFI, ESQ.  
 EXECUTIVE DIRECTOR/CHAIR

February 15, 2015

The Honorable Paul R. LePage  
 Governor of the State of Maine  
 1 State House Station  
 Augusta ME 04333-0001

Senator Amy F. Volk, Chair  
 Representative Erin D. Herbig, Chair  
 Joint Standing Committee on Labor,  
 Commerce, Research and Economic  
 Development  
 100 State House Station  
 Augusta ME 04333-0100

The Honorable Michael D. Thibodeau  
 President of the Senate  
 3 State House Station  
 Augusta ME 04333-0003

Senator Rodney L. Whittemore, Chair  
 Representative Henry E.M. Beck, Chair  
 Joint Standing Committee on  
 Insurance and Financial Services  
 100 State House Station  
 Augusta ME 04333-0100

The Honorable Mark W. Eves  
 Speaker of the House  
 2 State House Station  
 Augusta ME 04333-0002

We are pleased to submit to the Governor and the 127<sup>th</sup> Legislature, First Regular Session, the **Annual Report on the Status of the Maine Workers' Compensation System** as required by Title 39-A § 358-A(1).

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

Pamela D. Megathlin  
 Director  
 Bureau of Labor Standards  
 Department of Labor

Paul H. Sighinolfi, Esq.  
 Executive Director  
 Workers' Compensation Board

Superintendent  
 Bureau of Insurance  
 Department of Professional and  
 Financial Regulation

TEL: 207-287-3751  
 or toll-free in Maine  
 1-888-801-9087

TTY: Maine Relay 711

FAX: 207-287-7198



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## EXECUTIVE SUMMARY

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed in the Workers' Compensation Act, Title 39-A, at §358-A(1) to submit an annual report on the status of the workers' compensation system to the Governor, the Joint Standing Committee on Labor, Commerce, Research and Economic Development, and the Joint Standing Committee on Insurance and Financial Services by February 15 of each year.

### WORKERS' COMPENSATION BOARD

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The Maine Workers' Compensation Board has an approach to managing the Workers' Compensation Act that focuses on providing good service and maintaining the stability of the system. Overall, dispute resolution continues to perform up to expectations; compliance with the Workers' Compensation Act is generally high; claim frequency is down again this year; compensation rates have been reduced more than 50 percent since 1993; MEMIC, the largest workers' compensation insurer in the State, has once again declared a \$12 million dividend to Maine policy holders; and the Board has reduced the assessment to employers by approximately \$1.3 million over the past two years. All of these contribute to our continuing effort to make the Maine workers' compensation system viable, which in turn creates a stable and productive market.

Although we have said this before, we believe it is worth repeating, the Workers' Compensation Board, in recent years, has transitioned from an agency whose focus was mainly dispute resolution to one which provides effective regulation, improved compliance, and functions as a consistent advocate for injured workers. We are working to control medical costs through a comprehensive medical fee schedule and continue to vigorously address the problem of employee misclassification.

We believe it is critical the system maintains this positive momentum generated by the Board in recent years. Our political landscape is ever changing. In spite of that, it is important for the Board to have a clear vision, one that reassures the Governor and Legislature we are fulfilling our mission "to serve the employees and employers of the State fairly and expeditiously."

There were a few major staff leadership position changes this year due to retirement. In addition, the Executive Director experienced unanticipated angst over a Hearing Officer assignment decision made several years earlier. The decision was initially aired before the Board, then in the press, and finally before the Legislature. The lesson learned is that decisions that are perceived by the objective observer as neutral might be perceived differently by those directly involved. The matter led to Board discussions concerning role responsibilities and the adoption of a policy statement addressing them.

This annual report should provide the Governor and the Legislature with a foundation from which to analyze the Board's workings and assess the effect these efforts have made.

To put the Board's present functioning in context: the seeds of administrative changes at the Board were initially sown ten years ago. At that time, the Governor worked with both labor and management to ensure the passage of legislation designed to eliminate Board gridlock and normalize operations. The legislation changed the Board structure from eight to seven members. Today, three members represent labor and three represent management. The seventh is the Executive Director, who serves as Chair of the Board and at the pleasure of the Governor. Since 2004, the Board has worked to resolve all of the issues that caused gridlock and now focuses on setting policy. Some of the difficult issues the Board has, and is addressing, are: hearing officer appointments; budgetary and assessment matters; electronic filing mandates; rule revisions; form revisions; legislation; compliance issues; independent medical examiner recruitment and retention; worker

advocate resources and reclassifications; dispute resolution; increases in compliance benchmarks; independent contractor predeterminations and assessment; medical fee schedule updates; data gathering; and employee misclassification.

The importance of the 2004 legislation cannot be overly emphasized. Maine has gradually improved its national workers' compensation standing on costs. An effective, efficient and well managed Board helps to facilitate this positive trend. Policy decisions are less regularly made by the Chair which means, in large part, the parties in interest are reaching consensus more often on decisions that impact the system.

It was not too long ago that Maine was one of the costliest workers' compensation states in the nation. Reports comparing Maine workers' compensation costs to other states demonstrate Maine has improved significantly in lowering costs. Maine is approaching the national average for indemnity and medical benefits; Maine's status has improved when compared to the other jurisdictions requiring workers' compensation.

We have moved from one of the most expensive states in the nation to one that is in the average range for both premiums and benefits and have positioned ourselves to continue this trend. Maine is working towards a balance between reasonable costs and reasonable benefits, all within the Governor's policy of keeping Maine fair-minded and competitive.<sup>1</sup>

The Workers' Compensation Board made significant progress on controlling medical costs when it adopted a medical facility fee schedule in 2011, and in updating the schedule each year thereafter. The Legislature in 1992 mandated the adoption of a fee schedule to help contain health care costs within the system. It was not until 2011 one was adopted and implemented.

The objectives of the fee schedule include: providing access to quality care for all injured workers, insuring providers are fairly paid, reducing and containing health care costs, and creating certainty and simplicity in this complex area.

This year, the Board reached consensus on a number of issues and has moved forward on matters that have hindered its efficiency and effectiveness in the past.

We can still do more to improve Maine's workers' compensation system. We continue to work on employee misclassification, injured employees are being encouraged to explore vocational rehabilitation when appropriate (vocational rehabilitation requests continue to increase), we are encouraging cooperative job placement efforts with the Bureau of Employment Services, and we are working to insure reporting compliance within the system.

In recent years, the Maine Workers' Compensation Board has transitioned from an agency whose energies were mainly focused on dispute resolution to one which provides effective regulation, improved compliance, strong advocacy for injured workers, and open and equal treatment of the business community.

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<sup>1</sup> Some of the national reports comparing Maine to other jurisdictions repeatedly fail to consider the very high percentage of Maine employers who are self-insured. Greater than 40% of our market is self-insured. This is significantly higher than most other states. When national comparisons are made, they usually do not consider the self-insured community, thus these comparisons fail to give an accurate picture of the health of our workers' compensation market.

## BUREAU OF INSURANCE

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This portion of the report examines different measures of market conditions. Workers' compensation insurance in Maine operates in a prior approval rating system. The National Council on Compensation Insurance (NCCI), the state's designated statistical agent, files annual advisory loss costs on behalf of insurers for approval with the Superintendent. Advisory loss costs represent the portion of the rates that accounts for losses and loss adjustment expenses. Each insurer files factors called loss cost multipliers for the Superintendent's approval. These multipliers account for company experience, overhead expenses, taxes, contingencies, investment income and profit. Each insurer reaches its rates by multiplying the advisory loss costs by the loss cost multipliers. Other rating rules, such as experience rating, schedule rating, and premium discounts, also affect the ultimate premium amount paid by an individual employer.

On February 5, 2014, NCCI filed with the Superintendent for an overall 7.7% decrease in the advisory loss costs effective April 1, 2014. According to NCCI, the loss-time claim frequency has been exhibiting a declining trend since 2000 and the average indemnity cost—a measure of severity—has also been declining with a slight increase in policy year 2011. Medical costs continue to increase and now consume 55% of Maine's total benefit costs. Indemnity costs accounts for the other 45% of total benefit costs. The Superintendent approved NCCI's filing effective April 1, 2014.

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 rose from 59% in 2011 to 63% in 2013, a 4% increase. The workers' compensation insurance market is very concentrated with much of the business being written by a small number of companies. Twenty-three insurers wrote more than \$1 million each in annual premium in 2013, two fewer companies than in 2012. The top 10 insurance groups wrote over 92% of the workers' compensation insurance in the state in 2013, about 1% more than in 2012. Employers that maintain a safe work environment and control their losses should continue to see insurers competing for their business.

Some insurers have lowered their rates in hopes of attracting business. Additionally, the number of insurance companies with workers' compensation authority has increased for several years. Insurers other than MEMIC do not have to offer coverage to employers and can be more selective in choosing which employers to underwrite. In order to become 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 42% (as measured by standard premium) of the overall workers' compensation market in 2013, a 3% decline from 2012.

## BUREAU OF LABOR STANDARDS

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In the Workers' Compensation system, the Maine Department of Labor's Bureau of Labor Standards (BLS) facilitates the prevention of occupational injuries and illnesses by a variety of means.

Maine statute, Title 3 MRSA §42, authorizes BLS to collect and analyze statistical data on work-related injuries and illnesses and their effects. BLS partners with the Maine Workers' Compensation Board (WCB) and federal agencies to coordinate injury and illness data collection with them and BLS helps organize that data in ways that augment its quality, availability, and applicability.

Under Title 26 MRSA §42-A, BLS establishes and oversees safety education and training programs to help employers comply with Occupational Safety and Health Administration requirements and maintain best practices for injury and illness prevention. BLS also oversees the employer-employee relationship in the state through enforcement of Maine labor standards laws and through enforcement of occupational safety, and health standards in the public sector.

The Bureau's non-enforcement services are currently available at no charge because resources are provided through a dedicated, special-revenue state fund collected from insurers and self-insured employers and employer groups, the Safety Education and Training Fund, or SETF. Insurers and self-insured employers pay an assessment based on a cap and an allocation formula defined in law. Individual fees are determined by how much the employer/insurer pays out in workers' compensation benefits (less medical payments).

Not only does the SETF support the Bureau's non-enforcement services; it is also the source of matching funds for roughly \$700,000 in grants from US DOL for core injury/illness data and prevention programs. Without matching state funding via SETF, those grants would not be possible.

There is growing concern about the level of SETF funding for future activities. Achievements in prevention have helped reduce both the numbers and rates of injuries and illnesses over time. Likewise, programs and activities aimed at secondary and tertiary prevention have reduced injury/illness-case durations and costs. Together, these reductions have driven down the Workers' Compensation benefits paid out by insurers and self-insured employers and as a result, the SETF fund has steadily declined. Consequently, the Bureau may at some point have to consider options or changes to the current funding mechanism to maintain prevention program activities.

In each year's report, BLS singles out and highlights an important trend or feature. In 2013, this report noted two statistics that are not commonly understood: the difference between DAFW (Days Away from Work) and DJTR (Days of Job Transfer or Restriction). After an employee is injured on the job, one of three conditions will follow. 1) The employee may return immediately to his regular work; 2) The employee may miss days of work while recovering from the injury (DAFW); 3) The employee may return to work but be temporarily transferred to a different job, as suggested by the physician, or restricted to certain work activities (DJTR). Given that overall claims have been coming down over a 20-year period, the goal is to have the nature of those claims change in the best direction. That is, given a fixed number of cases, it is better for DAFW to be reduced and DJTR to be increased. The bureau has been pleased to see that given a certain rate of injury, Maine is among the very lowest states in the nation with regard to DAFW and one of the highest in DJTR. If these statistics are a good surrogate for the seriousness of injury, *then it is fair to note that injuries are not only coming down in number but the seriousness of those injuries is also coming down.*

This year, the bureau will highlight Maine's improving understanding based in the injury and illness data of the increasing number of injuries to the older members in the workforce. There are clearly more injuries and illnesses to older workers in Maine than in previous times. However, according to the "Maine Workforce

Outlook 2012 to 2022” by the Maine Department of Labor’s Center for Workforce Research and Information, the outlook to 2022 projects little change in labor force participation rates for age groups under 55 but a significant rise among those ages 55 and over. With a higher percentage of older workers in the work force, there is, and likely will be, a correspondingly higher number of injuries and illness involving older workers. However, employment and injury data suggest that the disabling injury rate in this older worker population (number of injuries per worker) has not increased in recent years. While more research may be warranted, there is yet no indication that older workers are more prone to injuries and illnesses than younger workers generally or that their injuries are more costly.



**SECTION A**

**WORKERS' COMPENSATION BOARD**



# Section A: Workers' Compensation Board

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# 1. INTRODUCTION

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To best understand the Maine Workers' Compensation Board, some background is helpful. The original agency, known as the Industrial Accident Board, began operations almost 100 years ago on January 1, 1916. There was a name change in 1978 when it became the Workers' Compensation Commission. On January 1, 1993, there was another name change when it became the Maine Workers' Compensation Board.

The functions of the Board fit into seven areas: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE); (3) Worker Advocacy; (4) Medical/Rehabilitation Services; (5) Technology; (6) Central and Regional Office support; and (7) the Appellate Division.

With the implementation of Standard Operating Procedures (SOPs), our claims management process has experienced a reduction and, in some cases, an elimination of backlogs. Dispute resolution has become more efficient. A Law Court decision in 2004 on our Independent Medical Examiner (IME) program reversed some of the progress. The Law Court holding in *Lydon v. Sprinkler Systems* resulted in a reduction in the number of health care providers who could be independent medical examiners. This caused delays to the formal hearing process. The effects of this decision are still being experienced. Cases without need for an IME are processed more quickly than those involving a Board-appointed independent examination. In addition, the Board's ability to attract doctors in certain sub-specialties willing to serve as independent medical examiners has been difficult, and in order to ameliorate the problem the Board raised the fee schedules for the IME doctors. The Legislature helped by enacting LD 1056 in 2011, *An Act To Increase the Availability of Independent Medical Examiners*, which has aided some. The number of IME physicians was 30 pre- *Lydon*; 11 post- *Lydon*; and 27 currently. A concerted effort has been made in recent years to expand the pool of IME doctors. We have contacted specialty societies and sought to have information posted on sub-specialty websites. Through these efforts, we have modestly increased the number of IME physicians.

The MAE Program has improved payment and filing compliance. MAE's goals are to (1) provide timely and reliable data to the Board and other policy-makers; (2) monitor and audit payments and filings; and (3) identify insurers, self-insurers and third-party administrators who are not complying with minimum standards. Compliance is at or near 90% in all categories, a major improvement since the inception of MAE.

The Worker Advocate Program gives injured workers access to trained representatives. This improves the likelihood of receiving statutory benefits. Nearly 64% of injured workers are represented by advocates at mediation and about 26% are represented by advocates at the formal hearing level.

The Board is not a General Fund agency, that is, it receives no General Fund money. Our financing is through an assessment on Maine's employers and their carriers. The Legislature established this assessment as the Board's revenue source. The assessment is capped by statute.

The Board is working to improve efficiency and lower costs through administrative efforts ranging from mandating electronic data interchange (EDI), enforcing performance standards in the dispute resolution process, and enforcing compliance through the MAE program and the Abuse Investigation Unit.

Prior to the inception of the Maine Workers' Compensation Act of 1992, Maine was one of the costliest states in the nation for workers' compensation coverage. Recent national evaluations demonstrate an improvement in comparison to other states. Maine has gone from one of the costliest states in the nation to one that is approaching average premium costs while providing meaningful benefits. In recent years, we reported these reductions fit within the Governor's goal of making the system fair and competitive for the employees and employers of Maine. That is still true this year. We strive to control costs for employers, and at the same time work to provide benefits in an efficient manner to injured workers.

## 2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION

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### I. ENABLING LEGISLATION

On January 1, 1993, Title 39, which was 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. Title 39-A M.R.S.A. § 101, et seq. (Maine Workers' Compensation Act of 1992).

### II. REVISIONS TO ENABLING LEGISLATION

The following are revisions made to the Act since 1993.

- **§ 102(11)(B-1).** Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 102(13-A).** Tightened definition of independent contractor and made it the same as the definition used by Department of Labor.
- **§ 113.** Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A.** Added the Board's mission statement.
- **§§ 151, Sub-§1.** Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors. Changed the composition of the Board from eight to seven members.
- **§ 153(9).** Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A.** Established the worker advocate program.
- **§ 201(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.
- **§§ 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.
- **§ 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-A).** Defines "permanent impairment" for the purpose of determining entitlement to partial incapacity benefits.
- **§ 217(8).** Creates a presumption that work is unavailable if an employee is participating in employment rehabilitation.
- **§ 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.

- **§§ 321-A & 321-B.** Reestablished the Appellate Division within the Board.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.
- See Section 13 of this report for bills enacted by the 126<sup>th</sup> Legislature, Second Segular Session.

### **III. STATE AGENCY HISTORY**

As noted earlier in this report, 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 common law into the statutory system we know today occurred in 1915. Under our common law tort system, an injured worker had to sue his employer and prove fault to obtain compensation. Workers' compensation was conceived as an alternative to the tort system for injured workers. Instead of litigating fault, under this "new" system, injured workers would receive statutorily determined compensation for lost wages and medical treatment. Employers gave up 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 is sometimes called, remains a fundamental feature of workers' compensation. Perhaps because of the time period, financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance. Workers' compensation disputes still occur in a no fault system. For example, disputes arise as to whether an incapacity is related to work; how much in weekly benefits is due the injured worker; and what, if any, earning capacity has been lost. Maine, like other states, established an agency to process these disputes and perform other administrative duties. Disputes were simpler. Injured workers rarely had lawyers. Expensive, long term, and medically complicated claims, such as carpal tunnel syndrome or back strain, were decades away.

#### **Adjudicators as Fact Finders**

In 1929, the Maine Federation of Labor and an early employer group listed as "Associated Industries" opposed Commissioner William Hall's re-nomination. Testimony from both groups referred to reversals of his decisions by the Maine Supreme Court. This early feature of Maine's system, review of decisions by the Supreme Court, still exists, although today appeals are discretionary. The Supreme Court decides issues of legal interpretation; it does not conduct a hearing de novo. In Maine, the state agency adjudicator is the final fact finder.

Until 1993, Commissioners were gubernatorial appointments, subject to confirmation by the legislative committee on judiciary. The need for independence of its quasi-judicial function was one of the reasons why it was established as an independent agency, 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.

## **Transition to the Modern Era**

Before 1974, workers' compensation coverage was voluntary. In 1974 it became mandatory. This and other significant changes to the statute were passed without an increased appropriation for the Industrial Accident Board. In 1964, insurance carriers reported about \$3 million in direct losses paid. By 1974, that number grew to about \$14 million in paid direct losses. By 1979, direct losses paid by carriers totaled a little over \$55 million. By 1984, this number grew to almost \$128 million. These figures do not reflect benefits paid through self-insurance. The exponential growth of the system resulted from legislative changes during the 1970s and set the stage for a series of workers' compensation crises that occurred throughout the 1980s, into the early 1990s and some of the vestiges are still felt today.

In the early 1970s, time limits were removed for both total and partial wage loss benefits. Inflation adjustments or cost of living adjustments (COLAs) were added. The maximum weekly benefit was set at 200% of the state average weekly wage. Also, legislation was enacted making it easier for injured workers to secure the services of an attorney. The availability of legal representation greatly improved an injured worker's likelihood of receiving benefits, especially in a complex case. Statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required an injury happen "by accident." Doctors began to connect injuries such as carpal tunnel syndrome or repetitive overuse conditions to work and thus brought these conditions within the coverage of workers' compensation.

This type of injury frequently required benefit payments for longer periods than many accidental injuries. These claims were more likely to involve litigation. Over the course of time, rising costs quickly transformed workers' compensation into a contentious political issue in the late 1980s and early 1990s.

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 a formal hearing.

Additionally, regional offices were established in Augusta, Bangor, Caribou, Lewiston, and Portland 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. Today, the Board has nine Hearing Officers.

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, then Governor John McKernan tied his veto of the state budget to changes in the Workers' Compensation Act. The consequence of this action was the shutdown of state government for three weeks.

In 1992, a Blue Ribbon Commission was created to examine and recommend changes. The Commission's report made a series of proposals which were ultimately enacted. Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial disability. These changes represented reductions in benefits for injured workers, particularly those with long term incapacity. Additionally, the provision of the statute concerning access to legal representation was changed making it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company (MEMIC) was established. It replaced the assigned risk pool and offered a permanent source of coverage. Despite differing views on the nature of the problems within the system, virtually all observers agree MEMIC has played a critical role in stabilizing the workers' compensation environment in Maine.

Based on a recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created directly involving labor and management members 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 Maine Chamber of Commerce. The eight Directors hired an Executive Director who ran the agency. In 2004, legislation was enacted reducing the Board to three Labor and three Management members. The Executive Director was made a gubernatorial appointment, confirmed by the Senate and serving at the pleasure of the Governor.

The Board appoints Hearing Officers who hear and decide formal claims. A two-step process replaced informal conferences: troubleshooting, and mediation.

In 1997, legislation was passed providing more structure to the claims monitoring operations of the Board and created the Monitoring, Audit, and Enforcement (MAE) program. Also in 1997, a worker advocate program, created by the Board, was expanded by the Legislature. This program provides injured workers with legal counsel who provide guidance and prosecute any claims.

In recent years, both the regulatory and dispute resolution operations of the Board have experienced significant accomplishments. The dispute resolution function has evolved into an efficient informal process. Between troubleshooting and mediation, approximately 75% of initial disputes are resolved within 80 days from the date a denial is filed. An efficient formal hearing process has reduced timelines to an acceptable 10 months for processing average claims.

The Board of Directors was gridlocked when appointing Hearing Officers in 2003 and 2004 resulting in slower claims processing at the formal level. This problem was further exacerbated when the Law Court decided *Lydon v. Sprinkler Systems*. This decision significantly reduced the number of independent medical examiners (IME). The pool went from 30 to 11. We now have 27 active examiners and are constantly recruiting. The appointment of Hearing Officers gridlock was broken as Hearing Officers are now appointed to seven year terms. The IME problem has improved through the addition of better compensation for independent medical examiners and making it easier to qualify as an IME doctor.

In an apples-to-apples comparison, matching the complexity of the dispute and the type of litigation, the Board's average time frame for formal hearings is reasonable compared to other states, and is quite good if compared to the civil court systems for comparable personal injury cases.

The agency was criticized for not doing more with its data gathering and regulatory operations during the late 1980s and early 1990s. The Board installed a relational database in 1996, and a modern programming language; the result was an improvement in data collection. Today, filings of First Reports and first payment documents are systematically tracked. 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 coverage. No 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.

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 proposed and enacted to make the Board's Executive Director a tie-breaking member of the Board and its Chair. The Executive Director became a gubernatorial appointment, subject to confirmation by a legislative committee and Senate. As noted earlier, the Chair serves at the pleasure of the Governor. With the new 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.

Chapter 208, *A Resolve to Appoint Members To and Establish Terms for the Workers' Compensation Board*, was enacted during the second session (2008) of the 123<sup>rd</sup> Legislature. The purpose of the Resolve was to change the membership on the Board while maintaining continuity. Governors have appointed new members to the Board since the adoption of this resolve.

## 3. DISPUTE RESOLUTION

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### I. INTRODUCTION

The Workers' Compensation Board has five regional offices throughout the state that manage and process disputes. The regional offices are responsible for troubleshooting, mediation and formal hearings. Regional offices are located in Augusta, Bangor, Caribou, Lewiston and Portland.

### II. THREE TIERS OF DISPUTE RESOLUTION

Title 39-A, the Maine Workers' Compensation Act, establishes a three-tiered dispute resolution process: troubleshooting, mediation, and formal hearing.

#### Troubleshooting

Troubleshooting represents the initial stage of the Dispute Resolution process. At troubleshooting, a Claims Resolution Specialist informally attempts to resolve controversies by contacting the employer and the employee. Many times, additional information, often medical reports, must be obtained in order to facilitate a resolution. The Claims Resolution Specialist functions as a neutral in the system providing assistance and information. If the parties are not able to resolve the dispute at this stage, the claim is referred to the next step, mediation.

#### Mediation

At mediation, a case is scheduled with one of the Board's regional mediators. The parties attend or teleconference the mediation at a regional office. The favored and typical mediation is in person. The mediator requests that the party seeking benefits provide an explanation and rationale for the benefits being sought. The mediator then requests the other parties explain their concerns and identify what benefits they are willing to pay and/or why they are not prepared to pay benefits. The mediator seeks resolution proposals from the parties and the mediator may propose resolutions in an attempt to find an acceptable compromise. If the case is resolved at this stage, 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, it could be referred to formal hearing. If a voluntary resolution is not reached at mediation, participation at mediation often benefits the parties by assisting them in identifying concerns that need further exploration and narrowing the issues that need to be addressed at formal hearing.

#### Formal Hearing

A formal hearing is scheduled after a petition is filed. At the hearing stage, the parties are required to exchange information, including medical reports, and answer Board discovery questions pertaining to the claim. After required discovery has been completed, the parties file a "Joint Scheduling Memorandum." This filing lists the witnesses who will testify and estimates the hearing time needed. Medical witness depositions are oftentimes scheduled to elicit or dispute expert testimony. At the hearing, witnesses for both sides 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 hearing officer thereafter issues a final written decision.

The number of cases entering each phase for the period 2004 through 2014 are shown in the table below:

| Cases Entering Dispute Resolution |                  |           |                |
|-----------------------------------|------------------|-----------|----------------|
| Year                              | Trouble Shooting | Mediation | Formal Hearing |
| 2004                              | 9,356            | 3,303     | 2,458          |
| 2005                              | 8,784            | 3,003     | 2,088          |
| 2006                              | 8,962            | 2,652     | 1,915          |
| 2007                              | 8,749            | 2,499     | 1,765          |
| 2008                              | 8,384            | 2,428     | 1,680          |
| 2009                              | 7,960            | 2,220     | 1,602          |
| 2010                              | 8,546            | 2,928     | 1,561          |
| 2011                              | *13,660          | 2,362     | 1,440          |
| 2012                              | 14,526           | 2,766     | 1,398          |
| 2013                              | 13,351           | 2,522     | 1,321          |
| 2014                              | 14,035           | 2,755     | 1,333          |

\*Beginning in 2011, the Board changed the way cases are counted. In the past, our count was based on the number of parties. In 2011, we started counting the "disputed issues." This change was made to more accurately report on the work of the Board, not just the number of participants within our system.

As this chart shows, less than one-third of disputes entering troubleshooting proceed to mediation. Of those going to mediation, approximately half will continue to the formal hearing stage.

### III. TROUBLESHOOTING STATISTICAL SUMMARY

The following table shows the number of filings and dispositions at troubleshooting, the average timeframes, and number of filings pending at the end of each year for the period 2004 through 2014.

| Troubleshooting<br>Filings Assigned, Disposed, and Pending |          |          |                  |                  |
|------------------------------------------------------------|----------|----------|------------------|------------------|
| Year                                                       | Assigned | Disposed | Pending<br>12/31 | Av Days<br>at TS |
| 2004                                                       | 9,356    | 9,588    | 606              | 27               |
| 2005                                                       | 8,784    | 8,724    | 666              | 27               |
| 2006                                                       | 8,962    | 8,927    | 701              | 27               |
| 2007                                                       | 8,749    | 8,719    | 731              | 27               |
| 2008                                                       | 8,439    | 8,439    | 676              | 30               |
| 2009                                                       | 7,960    | 7,913    | 723              | 29               |
| 2010                                                       | 8,546    | 8,303    | 919              | 27               |
| *2011                                                      | 13,660   | 13,438   | 697              | 28               |
| 2012                                                       | 14,526   | 14,514   | 685              | 24               |
| 2013                                                       | 13,351   | 13,358   | 678              | 26               |
| 2014                                                       | 14,035   | 14,067   | 646              | 32               |

\*Beginning in 2011, the Board changed the way cases are counted. In the past, our count was based on the number of parties. In 2011, we started counting the "disputed issues." This change was made to more accurately report on the work of the Board, not just the number of participants within our system.

#### IV. MEDIATION STATISTICAL SUMMARY

The following table shows the number of filings and dispositions at mediation, the average timeframes, and number of cases pending at the end of each year for the period 2004 through 2014.

| Mediations                            |          |          |                  |                   |
|---------------------------------------|----------|----------|------------------|-------------------|
| Cases Assigned, Disposed, and Pending |          |          |                  |                   |
| Year                                  | Assigned | Disposed | Pending<br>12/31 | Av Days<br>at MDN |
| 2004                                  | 3,303    | 3,395    | 666              | 62                |
| 2005                                  | 3,003    | 3,084    | 585              | 59                |
| 2006                                  | 2,652    | 2,741    | 496              | 61                |
| 2007                                  | 2,499    | 2,532    | 463              | 58                |
| 2008                                  | 2,428    | 2,488    | 443              | 55                |
| 2009                                  | 2,220    | 2,239    | 424              | 57                |
| 2010                                  | 2,928    | 2,868    | 452              | 59                |
| 2011                                  | 2,231    | 2,362    | 583              | 66                |
| 2012                                  | 2,766    | 2,738    | 555              | 50                |
| 2013                                  | 2,522    | 2,556    | 521              | 61                |
| 2014                                  | 2,755    | 2,789    | 487              | 57                |

## V. FORMAL HEARING STATISTICAL SUMMARY

The following table shows the number of filings, dispositions, and lump sum settlements at formal hearing, the average timeframes, and number of cases pending at the end of each year for the period 2004 through 2014.

| Formal Hearing<br>Cases Assigned, Disposed, and Pending |          |          |                          |                  |                        |
|---------------------------------------------------------|----------|----------|--------------------------|------------------|------------------------|
| Year                                                    | Assigned | Disposed | †Lump Sum<br>Settlements | Pending<br>12/31 | Av Months<br>to Decree |
| 2004                                                    | 2,458    | 2,414    |                          | 1,706            | 10.9                   |
| 2005                                                    | 2,088    | 2,266    |                          | 1,528            | 11.7                   |
| 2006                                                    | 1,915    | 2,173    |                          | 1,270            | 11.7                   |
| 2007                                                    | 1,765    | 1,907    |                          | 1,128            | 10.7                   |
| 2008                                                    | 1,680    | 1,728    |                          | 1,080            | 8.4                    |
| 2009                                                    | 1,602    | 1,546    |                          | 1,136            | 9.1                    |
| 2010                                                    | 1,561    | 1,486    |                          | 1,211            | 8.5                    |
| 2011                                                    | 1,440    | 1,445    |                          | 1,206            | *10.8                  |
| 2012                                                    | 1,398    | 1,427    | 667                      | 1,144            | *12.1                  |
| 2013                                                    | 1,321    | 1,311    | 702                      | 1,154            | *9.7                   |
| 2014                                                    | 1,333    | 1,376    | 734                      | 1,111            | *10                    |

\* This figure represents all cases within the system. In prior years, certain cases were excluded. Claims processing has been slowed by a shortage of IME physicians in certain specialties, awaiting Medicare approval, and staff retirements.

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

## VI. OTHER

The number of cases entering the dispute resolution process declined steadily until 2010, when an increase was experienced. Because we are now attempting to provide a more accurate picture of this process, it is difficult to compare figures pre-2011 to those post-2011. Our new numbers demonstrate claims are down or flat, a trend that is consistent with the national workers' compensation picture.

## **4. OFFICE OF MONITORING, AUDIT & ENFORCEMENT**

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### **I. HISTORY**

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

### **II. TRAINING**

The Board believes a key compliance component is education. In early 2012, the Board confirmed this commitment by dedicating additional human and other resources to its training program for insurers, self-insured employers, claim adjusters, and administrators who manage Maine workers’ compensation claims.

The Board offers a two day “open training” four times a year in January, April, June, and October. These sessions provide a general overview of the Board and its divisions, as well as specific training in claims-handling techniques such as form filing, average weekly wage (AWW) calculation, and calculation of benefits due for a wide variety of the many scenarios the claim handler is likely to encounter. These sessions are very popular, both for those new to Maine claims, and as a review and update for the seasoned claim handler. Eighty-two adjusters, employers, providers, and others involved in workers’ compensation attended the last four quarterly sessions. In addition, open training modules are available on the Board’s website.

Our staff also offers on-site training sessions which provide the entity being trained the opportunity to receive customized staff training. The six hour session focuses on the core of the open training sessions – form filing, AWW calculation, and benefit calculation. These presentations also provide the opportunity to review the entity’s recent compliance and audit results, and address specific problems and issues it may be experiencing. One hundred thirteen individuals received on-site training in the past twelve months.

The Board provides training at the annual Comp Summit convention, including participation in the “Comp 101” session held each year for those new to our system. The Board has a booth at Comp Summit to provide information on training and other Board resources to attendees. The Board likewise participates in the annual Maine HR Convention, again participating in training programs and staffing an information booth. In October 2014, Board staff participated in two “HR Day” programs sponsored by the Maine Department of Labor.

Finally, the Board has increased access by telephone and email to claim handlers who have questions with difficult or unusual claim situations. The Board receives on an average a dozen such calls/emails a week in which we provide guidance on proper claims-handling techniques.

### III. MONITORING

This section of the report, because of the way the Board collects and reports data, traditionally provides information from the prior calendar year. The Board continues that approach this year. On July 8, 2014, the Maine Workers' Compensation Board of Directors approved the 2013 Annual Compliance Report (January 1, 2013 through December 31, 2013):

#### A. Lost Time First Report Filings

- Compliance with the lost time first report filing obligation occurs when a 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 injury that causes the employee to lose a day's work.
- When a medical-only first report is received and later converted to a lost time first report, if the date received minus the date of the employer's notice or knowledge of incapacity is less than zero, the filing is considered compliant.
- The Board's benchmark for lost time first report (FROI) filings within 7 days is 85%.
- Benchmark Met. Eighty-five percent (85%) of lost time FROI filings were within 7 days.

#### B. Initial Indemnity Payments

- Compliance with the Initial Indemnity Payment obligation occurs when an indemnity 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.
- The Board's benchmark for initial indemnity payments within 14 days is 87%.
- Benchmark Exceeded. Ninety-one percent (91%) of initial indemnity payments were within 14 days.

#### C. Initial Memorandum of Payment Filings

- Compliance with the Initial Memorandum of Payment filing obligation occurs when the MOP is received within 17 days of the employer's notice or knowledge of incapacity.
- The Board's benchmark for initial Memorandum of Payment (MOP) filings within 17 days is 85%.
- Benchmark Exceeded. Ninety percent (90%) of initial MOP filings were within 17 days.

#### D. 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 occurs 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.
- The Board's benchmark for initial indemnity Notice of Controversy (NOC) filings within 14 days is 90%.
- Benchmark Exceeded. Ninety-five percent (95%) of initial indemnity NOC filings were within 14 days.

#### E. Wage Information

- Seventy-four percent (74%) of Wage Statement(s) and seventy-seven percent (77%) of the Fringe Benefit Worksheet(s) were filed within 30 days.
- The Board has yet to adopt benchmarks in this area.

## IV. AUDIT

The Board conducts compliance audits of insurers, self-insurers and third-party administrators to ensure all obligations under the Workers' Compensation Act are met. The functions of the audit program include, but are not limited to: ensuring that all Board reporting requirements are met, auditing the timeliness of benefit payments, auditing the accuracy of indemnity payments, evaluating claims-handling techniques, and determining whether claims are unreasonably contested.

### A. Compliance Audits

The following audits have been completed thus far in 2014:

| Auditee (alpha order) | Total Penalties |
|-----------------------|-----------------|
| Berkshire Hathaway    | \$4,950.00      |
| CMI                   | \$3,050.00      |
| FutureComp            | \$9,950.00      |
| Guarantee             | \$20,000.00     |
| Macy's                | \$3,200.00      |
| MHCA                  | \$1,500.00      |
| MMTA                  | \$3,000.00      |
| National Interstate   | \$4,150.00      |
| NGM                   | \$2,350.00      |
| Old Republic          | \$0.00          |
| Sentry                | \$5,675.00      |
| Sparta                | \$4,500.00      |
| State of Maine        | \$20,850.00     |
| Synernet              | \$4,500.00      |
| York                  | \$19,300.00     |

### B. Complaints for Audit

The audit program also has a Complaint for Audit form and procedure where the complainant requests the Board conduct an investigation to determine if the insurer, self-administered employer or third-party administrator has 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 or committing fraud or intentional misrepresentation. The complainant also asks that the Board assess all applicable penalties. In 2014, the Board received five (5) complaints for audit. This number is down significantly from previous years and is seen as a sign of a healthy workers' compensation system.

### C. Employee Misclassification

The misclassification of an employee as something other than an employee, such as an independent contractor, presents a serious problem for affected employees, employers, and the entire economy. Misclassified employees are often denied access to the critical benefits and protections to which they are entitled under the Act. Employee misclassification also generates substantial losses to the Treasury, Social Security and Medicare funds, as well as to state unemployment insurance.

In 2009, our Legislature established an allocation of funds to enhance the enforcement of laws prohibiting the misclassification of workers. To date, the MAE program has completed 68 employee misclassification audits. The audits covered 347 employees, \$2,352,325.92 in payroll, \$2,897,888.33 in "subcontractor" wages shown on 1099's, and \$13,708.00 in "casual labor" wages not shown on 1099s and resulted in \$3,599,001.68 in potentially misclassified wages, which may result in \$475,468.68 in unpaid workers' compensation premiums.

At the end of 2014, several employee misclassification investigations of the construction industry were pending final resolution; however, several audits in the non-construction industry have resulted in Board action. Penalties assessed on employees not properly covered by workers' compensation insurance are credited to the Employment Rehabilitation Fund, a fund that provides access to employment rehabilitation services such as retraining and job placement. Besides penalties, these employers are required to maintain workers' compensation insurance to cover their employees going forward.

## **V. ENFORCEMENT**

The Board's Abuse Investigation Unit handles enforcement of the Workers' Compensation Act. The report of the Abuse Investigation Unit appears at Section 12 of the Board's Annual Report.

## 5. OFFICE OF MEDICAL/REHABILITATION SERVICES

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### I. MEDICAL FEE SCHEDULE

#### A. Background

Our Act instructs, the goal of a 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). The Board was initially tasked with establishing a medical fee schedule in 1993 and again by December 31, 2011. See, 39-A M.R.S.A. § 209 and § 209-A(4). The Board satisfied this requirement when the current iteration of its medical fee rule became effective on December 11, 2011. The Board has, since the adoption of a fee schedule Rule, kept the Rule current and consistent with its statutory obligation through annual updates.

#### 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 simply incorporates the codes and weights underlying the federal CMS inpatient facility, outpatient facility and professional services payment systems.

The Board’s rule contains the final piece 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 updates undertaken by the Board. Annual updates are completed during the last quarter of each calendar year. The Board is currently in the midst of its statutorily required three year comprehensive review of the medical fee schedule. In this review, the Board must consider the following factors in setting or revising the medical fee schedule:

- A. The private 3rd-party payor average payment rates obtained from the Maine Health Data Organization;
- B. Any material administrative burden imposed on providers by the nature of the workers' compensation system; and
- C. Maintaining broad access for employees to all individual health care practitioners and health care facilities in the State.

A draft of Board Rule Chapter 5 is in development and will be in final form after this report is completed.

## **II. MEDICAL UTILIZATION REVIEW**

The Board currently has 26 organizations certified to provide workers' compensation utilization management services pursuant to Title 39-A M.R.S.A. §210 and Board Rules Chapter 7, however, the Board does not currently have any approved treatment guidelines.

The issue of opioid use and misuse by injured workers is a major concern in the workers' compensation community as well as to society in general. The Board of Directors recently voted to convene a workgroup to evaluate the needs of the workers' compensation community and make recommendations.

## **III. EMPLOYMENT REHABILITATION**

The Board has 21 providers approved to provide employment rehabilitation services pursuant to Title 39-A M.R.S.A. §217 and Board Rules Chapter 6. Through October 2014, the Board received 60 applications for employment rehabilitation services. Of those, 44 were from injured workers, 13 from employers/insurers, and three from hearing officers.

The number of applications in 2014 represents a significant increase over previous years and continues to increase due to the ongoing efforts of the Executive Director to market the program. The program includes the service, treatment or training necessary and appropriate to return an employee to suitable employment. Recent success stories include an injured OTR tractor trailer driver. Due to work restrictions and limitations of no prolonged sitting and driving, the injured employee could not return to his previous employment. This employee reported the vocational counseling and guidance provided through the program was key to his return to full time employment as a Commercial Fleet Manager. The employee as well as employee counsel expressed appreciation for the value of the program. This is just one of the many cases of an injured employee's successful return to work!

## **IV. INDEPENDENT MEDICAL EXAMINERS**

The Section 312 Independent Medical Examiner System is critical to the Board's mission. Despite recent law changes and the recruitment efforts of the Board's Executive Director, the Board still lacks a sufficient number of health care providers willing and able to serve as independent medical examiners. At present, the Board has 27 independent medical examiners pursuant to Title 39-A M.R.S.A. §312 and Board Rules Chapter 4.

The Executive Director continues his efforts to recruit physicians to serve as independent medical examiners. In addition, with the assistance of the International Association of Industrial Accident Boards and Commissions (IAIABC), he is in the process of evaluating the Board's annual review process designed to measure the quality of the performance and the timeliness of the submission of the medical findings by the independent medical examiners.

There were 488 requests for independent medical exams in 2014. Of the 488 requests, 301 were from injured workers, 151 from employers/insurers, 5 from hearing officers, and 31 by agreement of the parties.

## 6. WORKER ADVOCATE PROGRAM

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### I. INTRODUCTION

The Worker Advocate Program provides legal representation without cost to injured workers pursuing claims before the Workers' Compensation Board. In order for an injured worker to qualify to receive assistance, 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 not have informally resolved the dispute; and finally, the worker must not have retained private legal counsel.

Traditional legal representation is the core of the program; the Advocate staff have broad responsibilities to injured workers, which include: attending hearings and mediations; 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 in other sections of this report, in 1992 the Maine Legislature 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." However, under Title 39-A (beginning in January of 1993), the employer/insurer no longer has liability for legal fees regardless of whether the worker prevails, and, in addition, fees paid by injured workers to their attorneys are limited to a maximum of 30% of accrued benefits with settlement fees capped at no greater than 10% of the settlement amount.

These changes made it difficult in many instances for injured workers to obtain legal counsel—unless they had a serious injury with substantial accrued benefits or a high average weekly wage. Estimates indicate that upwards of 40% of injured workers did not have legal representation after these statutory changes were enacted. This presented dramatic challenges for the administration of the workers' compensation system. By 1995, recognition of this problem prompted the Workers' Compensation Board of Directors to establish a pilot "Worker Advocate" program.

The pilot program was staffed by one non-attorney Advocate and was limited to the representation of injured workers at the dispute resolution mediation stage. Based on the pilot's success, the Board expanded the program to five non-attorney Advocates, one for each regional office; however, representation remained limited to mediations. Ultimately, in recognition of both the difficulties facing unrepresented workers and the success of the pilot program, the Legislature in 1997 amended Title 39-A and created the Worker Advocate Program.

The 1997 legislation created 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 much greater skill and more work than previously required of Advocates. Some of these new tasks include: participation in depositions,

attendance at hearings, drafting required joint scheduling memorandums, drafting motions, drafting complicated post-hearing position letters, working with complex medical reports, conducting settlement negotiations, and analysis and utilization of the statute, our Rules, and case law.

### **III. THE CURRENT WORKER ADVOCATE PROGRAM**

At present, the Board has 12 Advocates working in five regional offices. Advocates are generally required to represent all qualified employees who apply to the program. This contrasts with private attorneys who pick and choose who they represent. The statute provides exceptions to this requirement where the program may decline to provide assistance. However, the reality is 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 not successful, 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 third section of this report, if troubleshooting is unsuccessful, cases are forwarded to mediation. To represent an injured worker at mediation, the Advocate Program must first obtain medical records and other evidence concerning the injury and the worker’s employment. Advocates meet with the injured worker, where they 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 must 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 more formal processing.

At mediation, the parties appear before a Mediator, discuss the claim specifics, present the issues, and attempt to negotiate a resolution. The Mediator facilitates, but has no authority to require the parties to reach a resolution or to set the terms of an agreement. If the parties resolve the claim, the agreement is reduced to writing in a binding record. A significant number of cases are resolved before, at, and after mediation; of every 100 disputes reported to the Board, approximately 75 are resolved at mediation and thus avoid formal hearings.

Cases that are not resolved at mediation typically involve factual and/or legally complex disputes. These claims typically concern situations where facts are unclear or there are differing interpretations of the Act and case law. If a voluntary resolution of the dispute fails at mediation, the case typically proceeds to a formal hearing.

The hearing process is initiated by an Advocate filing 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 the hearing, Advocates, like any other lawyer, must elicit direct and cross examination testimony from the witnesses, introduce exhibits, make objections and

motions, and, at the conclusion of the evidence, file position papers that summarize the facts and credibly argue the law in the way most favorable to the injured worker. Along the way, the Advocates also often attend depositions of medical providers, private investigators, and labor market experts. Eventually, a decision is issued or the parties agree on either a voluntary resolution of the issues or a lump sum settlement. In recent years, the average timeframe for the entire process is about 12 months, although it can be significantly shorter or longer depending on the complexity of medical evidence and the need for independent medical evaluations.

#### IV. CASELOAD STATISTICS

Injured workers in Maine have made substantial utilization of the Advocate Program. Advocates represented injured workers at approximately 64% of all mediations in 2014. Given the relatively large number of mediations handled by Advocates, it bears noting that from 1998 through 2008, the program consistently cleared a majority of the cases assigned in a given year for mediation. The following table reflects the number of Advocate cases mediated from 2005 through 2014.

|      | Assigned | Disposed | Pending<br>12/31 | % of All<br>Pending |
|------|----------|----------|------------------|---------------------|
| 2005 | 1,915    | 1,841    | 311              | 53%                 |
| 2006 | 1,522    | 1,533    | 280              | 56%                 |
| 2007 | 1,397    | 1,434    | 243              | 52%                 |
| 2008 | 1,405    | 1,437    | 211              | 48%                 |
| 2009 | 1,205    | 1,195    | 221              | 52%                 |
| 2010 | 1,006    | 1,156    | 271              | 60%                 |
| 2011 | 975      | 896      | 246              | 42%                 |
| 2012 | 1,703    | 982      | 294              | 53%                 |
| 2013 | 1,465    | 1,540    | 270              | 55%                 |
| 2014 | 1,688    | 1,486    | 307              | 64%                 |

In 2014, the number of cases handled by Advocates at mediation represents an increase as compared to the number of cases taken to mediation in 2013. The Advocate Division handled 64% of all mediations in our system in 2014.

Since becoming fully staffed, the Advocate Program has represented injured workers in approximately 30% of all Board formal hearings. In some years, Advocates clear more formal cases than were pending at the start of the year. Given the much greater scope of responsibility inherent in formal hearing cases, Advocates have performed well in their expanded role. The following table represents the number of cases handled by Advocates at formal hearing from 2005 through 2014.

### Advocate Cases at Formal Hearing

|      | Assigned | Disposed | Pending<br>12/31 | % of All<br>Pending |
|------|----------|----------|------------------|---------------------|
| 2005 | 679      | 714      | 452              | 30%                 |
| 2006 | 628      | 715      | 361              | 29%                 |
| 2007 | 632      | 673      | 320              | 28%                 |
| 2008 | 599      | 610      | 309              | 29%                 |
| 2009 | 564      | 511      | 362              | 32%                 |
| 2010 | 463      | 515      | 306              | 26%                 |
| 2011 | 438      | 374      | 242              | 20%                 |
| 2012 | 444      | 289      | 338              | 29%                 |
| 2013 | 476      | 281      | 377              | 31%                 |
| 2014 | 461      | 293      | 305              | 26%                 |

The Advocates handled about the same number of formal hearings in 2014 as were assigned in 2013. It should be noted that the Advocates continue to be responsible for 26% of the formal hearings held across the state in 2014.

In 2014, the Board adopted a new Rule on Advocate representation. A discussion of the Rule appears in section 13 of this report.

## V. SUMMARY

The Advocate Program was created to meet a significant need in the administration of the workers' compensation system. The statutory expansion of program duties in 1997 created unmet needs in the program. In order to meet the obligations in the statute, the Workers' Compensation Board has diverted resources from other work to the Advocate Program. Currently the program has 12 Advocates with a support staff of 16 (two of whom are part-time) and a supervising Senior Staff Attorney. Services are provided in five regional offices: Augusta, Bangor, Caribou, Lewiston, and Portland.

In its first 10 years, the Program has proven its value by providing much-needed assistance to Maine's injured workers, albeit with limited resources. As a result of the limited resources, the Advocate Program has experienced periods of high caseloads which has led to staff turnover. In one 12-month period, (2006–2007) 42% of existing Advocate Program positions were vacant. Nothing has greater potential to impact the quality of the services rendered to injured workers than insufficient staff. In response to ongoing concerns, the 123<sup>rd</sup> Legislature provided additional support for the Advocate Program. Qualifications for Advocates and paralegals were increased and, in conjunction, pay ranges were upgraded. The changes, which went into effect in September 2007, were intended to attract and retain staff and to bolster stability of this program—which is an integral part of the workers' compensation system in Maine. We believe these goals are being met.

## 7. TECHNOLOGY

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The Board, over the past year, has implemented a number of significant changes within our information management systems and their delivery. By statute, many of the information delivery platforms and applications are centralized into the state Office of Information Technology (OIT). We work with OIT to improve the service quality and support received.

The following represents a list of functional areas within the Board that have seen new development, upgrades, or enhancements to the systems they use on a regular basis:

- Section 312 screens were implemented for the Office of Medical and Rehabilitation Services and the regional office formal hearing process.
- The Abuse Investigation Unit has new reports developed for management reports.
- Began process to remove all old links and pages not currently active on the workers' compensation website. Once this process has been completed we will begin an effort to redesign the look and feel of the website.
- Upgraded the network cabling in the Bangor Regional and Augusta Central offices from the old CAT-3 wiring with CAT-5 wiring. This leaves the Portland office as the only one left with less than desirable network wiring. This issue will be covered by a lease in the future.
- Completed the first phase with the Consensus Rule-Making Group in the review of the IAIABC Claims Release 3 Electronic Data Interchange (EDI) payments implementation. This phase of the project is focused on replacing payment forms currently sent via hard copy to the Board. This project will satisfy the need to send payment information in hard copy and require trading partners to submit information via EDI. We have also begun programming for the EDI transactions with completion estimated in the Spring of 2015. We are also investigating having a web portal for trading partners to see, enter, and update claim information. This segment will follow the Progress upgrade for payments.
- The Abacus application, which is a law firm client tracking system used by the Advocate Division, was upgraded in early December to the latest release with hopes of resolving compatibility issues which arose with the computer upgrades with Windows 7. With one month of operation, it seems issues have resolved with the upgrade. However, critical issues remain with the performance of the product. We have looked at the network, servers, and desktops, and believe the fundamental problem lies with the wide-area network delivery. We are working with OIT on other application delivery options.

### Future Challenges:

- Computer upgrades were completed July 2013 to Microsoft Windows 7 32-bit operating system. This upgrade did nothing to enhance performance of our computers due to the 3 GB memory limitation. We need the operating system to be upgraded to the 64-bit version so additional memory can be installed for better system performance. In order for this to occur, we need to upgrade the ISYS application so it is compliant with the 64-bit operating system.

- OIT informed the WCB in late fall the platform for our Progress application, which is the primary system used by all within the WCB, is deteriorating. The Department of Labor and WCB share this hardware and an upgrade is sorely needed. There are significant operational risks without this needed upgrade. In order to upgrade the hardware, all applications need to be brought up to the latest release of Progress. The total cost to the WCB is estimated at \$120k, which was not a budget item. We are working with OIT on available options.
- OIT also informed the WCB the Progress database is not in the long-term plan and it is not a going-forward strategy for the State. There are options that may be available to the WCB that will be investigated over the next few years.
- Abacus delivery in a wide area networked environment is barely acceptable and other options for hosting the application need to be investigated.
- Application upgrade is needed for ISYS, Progress (in the works), Abacus, and Dragon.

## 8. BUDGET AND ASSESSMENT

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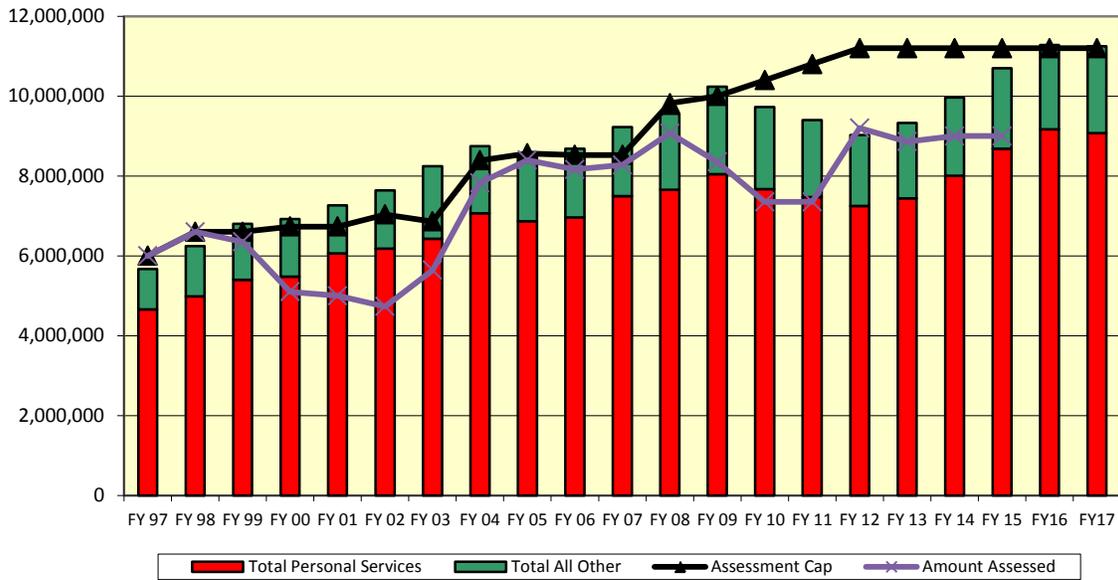
In 1992, the Legislature established a statutory assessment of insurers and self-insurers to fund the operations of the Board. Previously the agency received an appropriation from the General Fund. Assessments are paid by Maine's employers, both self-insured and those with insurance. In creating this funding mechanism, the Legislature intended the users pay for the workers' compensation system. The Legislature also capped the assessment limiting the amount of revenue produced. The dollar amount of the cap has been increased since its inception; the current Administrative Fund assessment cap of \$11,200,000 is a sum that has been in place since 2012.

The Board cannot budget more than it can raise in revenue from the annual assessment, and other minor revenues collected from the sale of publications, and some fines and penalties. The majority of the fines and penalties collected are, however, not available as revenue for Board expenses; by statute they are paid into the Rehabilitation Fund or the General Fund. The Board-approved budget for fiscal year 2015 ending on June 30, 2015 is \$10,739,109. Budgets for the upcoming biennium (fiscal years 2016 and 2017) are under development. The initial projected budgets are \$11,284,188 for FY 2016 and \$11,249,672 for FY 2017.

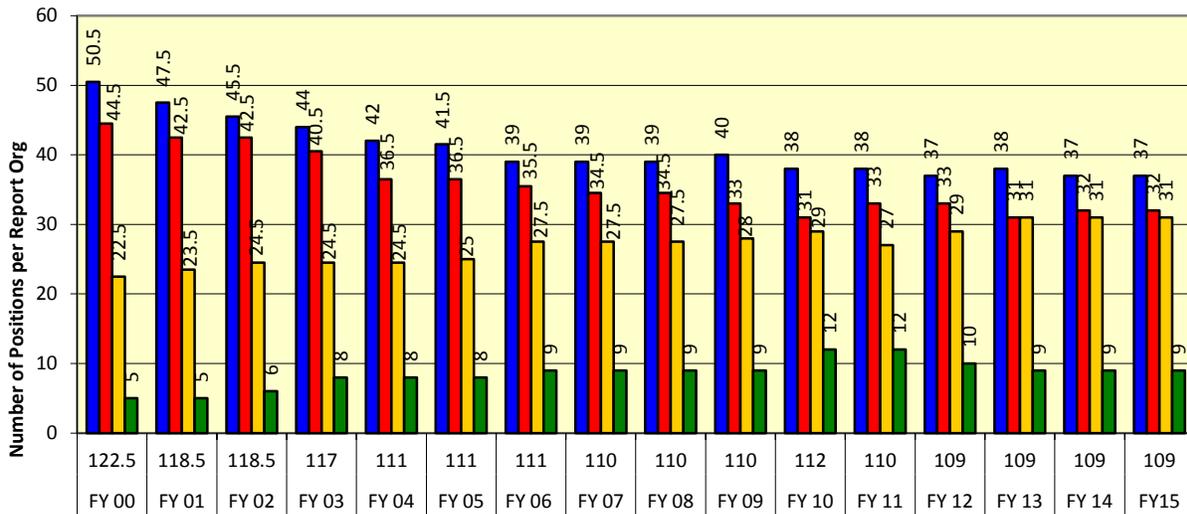
The Board may, by a majority vote of its members, use funds from the reserve account to assist in funding Personal Services, All Other expenditures, and other reasonable costs incurred to administer the Act. The Bureau of the Budget and Governor approve all requests to use reserve funds via the financial order process. This provides greater discretion to the Board in the use of its reserve account. The bar chart entitled "WCB – 20 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY14 and projected expenditures for FY15-FY17. The chart also shows the assessment cap and the amounts actually assessed through FY15.

Since 2000, the Board has reduced staff by over 13 positions (13.5 full-time equivalent staffing hours) from 122.5 to the FY15 level of 109. Despite the decrease during this period, the Board has accommodated staffing for two new divisions created by the Legislature in 1997; the Monitoring, Audit & Enforcement (MAE) program, and the Advocate Division. In FY15 personnel for the MAE and Advocate programs combined represents 37% of the Board's total number of employees. The bar chart entitled "WCB – Personnel Changes Since FY00" illustrates the Board's efficient use of personnel.

**WCB - 20 Year Schedule of Actual and Projected Expenditures  
Workers' Compensation Administrative Fund - 0183  
FY'97- FY'17 (January 2015)**

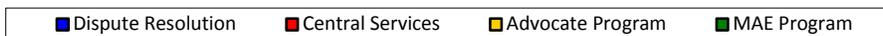


**WCB – Personnel Changes Since FY00  
January 2015**



**Total Number of Employees per Fiscal Year**

The MAE and Worker Advocate programs represent 37% of the agency's total number of employees.



## 9. CLAIMS MANAGEMENT UNIT

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The Claims Management Unit (CMU) operates using a “case management” system. Individual claim managers process a file from start to finish. The insurance carriers, claims administrators, and self-insured employers benefit from having a single contact in this unit.

The Unit coordinates with the Monitoring section of the MAE Program to identify carriers who frequently file late forms or may be consistently late in making required payments to injured workers. Case managers in the Claims Management Unit review the carrier’s filings to ensure payments to injured workers are accurate and that the proper forms are completed and filed with the Board. The Unit participates in compliance and payment training workshops quarterly with the MAE Program and as requested.

Electronic Data Interchange (EDI) has created efficiencies in this department. It allows managers to increase their claims management efforts through the electronic filing of the First Reports of Injury and Notices of Controversy.

Upgrades of computer programs and screens have streamlined the workload making daily performance more efficient, automated functions, and helped reduce the time it takes to process claims and associated paperwork. All of these changes have provided time to address higher level and more serious problems which benefit the entire workers’ compensation community. It also helps carriers identify potential problems early in the life of a claim.

Claims staff searches the database for a claim that matches the information on each form that is received, checking by Social Security number, employee name and date of injury. This information is entered into the database after the Employer’s First Report of Occupational Injury or Disease is filed with the Board. Claims Management Unit staff verifies the accuracy of payment information on each claim filed with the Workers’ Compensation Board for dates of injury after 1966. Cost of Living Adjustments (COLA) are calculated on claims beginning with dates of injury on January 1, 1972 through December 31, 1992. Claims staff check to see that a COLA is calculated correctly. The filing of forms with incorrect information causes Claims staff to spend time researching files and performing mathematical calculations, which is necessary to ensure correct payments are made to injured workers.

This department is responsible for annually producing the “State Average Weekly Wage Notice.” This notice contains information necessary to make COLAs on claims, to calculate permanent impairment payments, and determine whether to include fringe benefits when calculating compensation rates. The SAWW is determined by the Department of Labor each year. Claim staff uses this information to perform the mathematical calculations to determine the COLA multiplier and maximum benefit in effect for the upcoming year.

A brief description of the way various forms are processed is explained below:

**Petitions** - The file for the claim is located or created, the form is entered in the database, and the file is sent to the appropriate Claims Resolution Specialist in a regional office. A telephone call or e-mail message is directed to the person who filed the form if a claim cannot be found in our database. A request is made to provide an Employer’s First Report of Occupational Injury or Disease so a claim file can be started.

**Notices of Controversy** - The initial form is filed electronically. Corrections to the form are submitted to the Board on paper forms and the changes are entered by Claims staff.

**Answers to Petitions** - The file for the claim is located, the Answer is entered into the database and sent to the file.

**Wage Statements** - The average weekly wage is calculated by Claims staff in accordance with the Statute, Board Rules and Law Court decisions. The average weekly wage is entered into the database and the form is filed.

**Schedule of Dependent(s) and Filing Status Statements** - The information on this form is entered into the database and the form is filed.

**Memorandum of Payment, Discontinuance or Modification of Compensation, Consent between Employer and Employee** - The form is checked for accuracy, comparing dates, the rate, and the wage to information previously filed. The form is entered into the database and then sent to the file room. A telephone call or e-mail message is directed to the person who filed the form if there is a problem. Explanations or amended forms are requested when necessary.

**21-Day Certificate or Reduction of Compensation** - The form is checked for accuracy, comparing dates, the payment rate, and the wage. The form is entered in the database if everything is correct. In cases where it is determined by Claims staff that there has been an improper suspension or reduction, Claims staff contact the person who prepared the form and seek a correction. The file and form are sent to a Claims Resolution Specialist in a regional office if the form is not corrected promptly.

**Lump Sum Settlement** - The information on this form is entered into the database and the form is sent to the file room.

**Statement of Compensation Paid** - The information on this form is compared to information previously reported, the form is entered into the database, and the form is filed. A large number of these forms are found to have errors which results in staff having 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**

Forms were filed between November 1, 2013 and October 31, 2014

| <b>Forms:</b>                                             | <b>Forms Processed By:</b> |            |              | <b>TOTAL</b> |
|-----------------------------------------------------------|----------------------------|------------|--------------|--------------|
|                                                           | <b>EDI</b>                 | <b>CMU</b> | <b>OTHER</b> |              |
| Employer's First Report of Occupational Injury or Disease | 29,006                     | 37         | 57           | 29,100       |
| Notice of Controversy                                     | 9,472                      | 0          | 48           | 9,520        |
| Petitions                                                 |                            | 2,993      | 2,464        | 5,457        |
| Answers to Petitions                                      |                            | 3,035      | 2,565        | 5,600        |
| Wage Statement                                            |                            | 10,042     | 0            | 10,042       |
| Schedule of Dependent(s) and Filing Status Statements     |                            | 44         | 0            | 441          |
| Fringe Benefits Worksheet                                 |                            | 8,792      | 0            | 8,792        |
| Memorandum of Payment                                     |                            | 5,698      | 95           | 5,793        |
| All Other Payment Forms, including:                       |                            | 17,096     | 157          | 17,216       |
| Discontinuance or Modification of Compensation            |                            |            |              |              |
| Consent Between Employer and Employee                     |                            |            |              |              |
| 21-Day Certificate of Discontinuance or Reduction of Comp |                            |            |              |              |
| Lump Sum Settlement                                       |                            |            |              |              |
| Statement of Compensation Paid                            |                            | 17,096     |              | 17,096       |

Forms currently filed electronically are the Employer's First Report of Occupational Injury or Disease and the Notice of Controversy. All others are filed in paper form and are manually entered into our system. Corrections to a Notice of Controversy cannot be made electronically.

## 10. INSURANCE COVERAGE UNIT

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The Insurance Coverage Unit researches the history of employer insurance coverage in order to verify the accuracy of these records. This is important for many of the claims at formal hearing, especially when there is a controversy on the liability for the payment of a claim. Workers' compensation coverage in Maine is mandatory and this unit routinely provides assistance to the public on insurance coverage requirements.

Computer programming has helped to streamline data entry and enhance the ability to identify trends and problems with carriers. The program can link coverage and conduct employer updates more easily than in the past. This has resulted in a reduction of First Reports that cannot be matched to an insurer.

The Board's database has been merged with the Department of Labor's resulting in greater collaboration with DOL and the Bureau of Insurance. The Unit processes proof of workers' compensation insurance coverage received electronically. A staff member is assigned for processing applications to waivers of workers' compensation coverage.

A staff goal is to process 100% of the proof of coverage filings received electronically within 24 hours of receipt and 90% of waiver applications within 48 hours of receipt. The Board received and processed 44,456 proof-of-coverage filings and processed 1,219 waiver applications between November 2013 and November 2014.

The Insurance Coverage Unit assists with problem claims including the identification of insurance coverage, the identification of employers, and identifying employers address changes. This is done to properly process and assign claim files to the appropriate regional offices. The Coverage staff works closely with the Abuse Investigation Unit on problems associated with coverage enforcement. The Unit cooperates with the MAE program to identify carriers and self-insureds who consistently fail to file required information in a timely manner. They also assist the Bureau of Labor Standards to maintain an accurate, up-to-date employer database utilized by both agencies.

## 10A. PREDETERMINATION UNIT

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The Predetermination Unit processes all applications for employment status predetermination. These are voluntary forms used by workers, employers and insurance companies to determine whether an individual worker, and in some cases a group, associated with an employer are employees or independent contractors. If a worker is an employee, the employer must provide workers' compensation insurance coverage for that person. If an independent contractor, insurance coverage is not required unless the independent contractor has employees or elects to be personally covered. Filing the forms is voluntary under the Maine Workers' Compensation Act.

The Board, in 2012, utilized five different predetermination applications. Effective January 1, 2013, the number of predetermination forms was reduced to three. Two are exclusive to wood harvesters. The first is titled Application for Certificate of Independent Status (Form WCB-262). This form is used by the wood harvester so he/she can apply for a certificate of independent status. The second form for wood harvesters is titled Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption (Form WCB-260). This is a two-party application is completed by the land owner and the wood harvester. If both forms are approved, the wood harvester is precluded from filing a workers' compensation claim if injured at work.

The Legislature adopted a new uniform "independent contractor" definition in 2012. The new definition became effective on January 1, 2013. Correspondingly, the Board adopted a new form titled Application for Predetermination of Independent Contractor Status to Establish A Rebuttable Presumption (WCB-266). The form was approved by the Board and it replaced WCB-264, WCB-265 and WCB-261 starting in December 2012.

There were 5,294 approved predeterminations, both conclusive and rebuttable, in 2014. All were processed within 30 days of filing as required by the statute. Most were processed within several days of filing with the Board.

# 11. COORDINATION WITH OTHER AGENCIES

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The Workers' Compensation Board is an independent agency charged with performing a discrete function within state government. In recent years, the Board has made efforts to coordinate and collaborate with other agencies. The Department of Labor (DOL) and Bureau of Insurance (BOI) are major collaborators; the Bureau of Human Resources (BHR), the Office of Information Technology (OIT), the Department of Health and Human Services (DHHS), and the Attorney General's Office are agencies the Board works with regularly.

## I. DEPARTMENT OF LABOR

For years, the Board and the Department of Labor (DOL) maintained separate employer databases. The separate databases contained information unique to the needs of each agency, but there was also a significant overlap. Maintaining the two systems proved to be inefficient and resulted in unnecessary work. Information that was updated on one system, for example, would not always be updated on the other system causing confusion between the agencies. The Board and DOL worked together to merge their information into a single database. Now, the Board can more accurately determine whether employers are complying with the requirement to secure workers' compensation coverage for their employees.

The Board, DOL and other interested parties worked together to draft a single, uniform "independent contractor" definition that can be used for both workers' compensation and DOL purposes. The new definition has been in effect since January 2013 and is working well. In an effort to improve the overall effectiveness of the new definition, the Board is reviewing the process for requesting a predetermination of an individual's employment status. Concerns have been raised it may be too easy to receive an independent contractor predetermination, thus, potentially, undermining the goal of ensuring all employees are covered by required workers' compensation insurance. We are evaluating this concern.

The Board also works with DOL's vocational rehabilitation staff. In order to return injured workers to suitable employment as quickly as possible, the Board refers injured workers to qualified employment rehabilitation specialists, who evaluate the workers and develop rehabilitation plans. Some of these referrals go to DOL staff. DOL's staff does well ensuring developed plans for injured workers are tailored to the individual worker's abilities and needs. The Board and DOL continue to monitor how effective the plans are at returning injured workers to suitable employment.

The Bureau of Labor Standards (BLS), a division within DOL, uses claim information gathered by the Board to produce statistical reports on workplace safety in Maine. These reports are used by the Board, policy makers, and others to understand how well the system is working and where there is room for improvement. 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 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 to calculate the annual assessment.

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 must then take appropriate action to ensure questionable claims handling comes to an end.

### **III. OTHER AGENCIES**

As the Board continues to shrink, it has entered into agreements with other agencies to provide services that used to be provided in-house. Several of these agencies are within the Department of Administrative and Financial Services (DAFS).

For instance, the Board's human resources needs are managed in conjunction with the Bureau of Human Resources. The Board and BHR have worked well together to address a number of personnel related issues.

A coordinated effort is also underway with the Office of Information Technology (OIT), another DAFS Bureau, to upgrade the Board's computer hardware and software. Upgrades include desktops, network servers, a database server, network hubs, and a routed network. Major programming changes are underway. We anticipate these will continue into the foreseeable future.

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.

Finally, the Board works with the Attorney General's office on matters ranging from employee misclassification to representation on collection matters when penalties are assessed and not readily paid.

## 12. ABUSE INVESTIGATION UNIT

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The Abuse Investigation Unit (AIU) is responsible for enforcing the administrative penalty provisions of the Workers' Compensation Act. The AIU investigates allegations of fraud, illegal or improper conduct, and violations associated with mandatory filings, payments and insurance coverage. The Unit has six (6) professional staff and the Board's Assistant General Counsel. AIU personnel perform investigations, file complaints and petitions, represent the Board at administrative penalty hearings, and decide penalty cases.

AIU staff is also responsible for managing billing and payments for penalties, and for initiating collection via Maine Revenue Services and the Attorney General's office through civil and criminal actions. As part of this work, AIU is responsible for complying with requirements set 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 insurance coverage requirements of the Act. The AIU staff investigates whether businesses have workers' compensation insurance; files complaints against businesses that are out of compliance; represents the Unit in administrative hearings for penalties; and, when able, negotiates consent agreements that resolve violations. In 2014, AIU focused on employers who misclassify workers as independent contractors by requesting over 65 "wage" audits of employers and subcontractors, and prosecuting several complex cases. AIU was also responsible for defending appeals of "coverage" penalty decisions to the Board's Appellate Division. The Assistant General Counsel and AIU Advocates have one case that has been appealed to the Maine Law Court. The case has been briefed and is scheduled for oral argument in early 2015.

AIU coordinates its work with the Board's Coverage Division and the Monitoring, Audit and Enforcement Program. AIU also works with the Attorney General's office to enforce subpoenas, and to identify and refer cases for criminal prosecutions against employees and employers that have committed egregious or repeated violations of the Workers' Compensation Act.

## 13. GENERAL COUNSEL REPORT

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The Workers' Compensation Board (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, in limited situations, to act in adjudicatory and appellate roles.

### I. LITIGATION

It is unusual, but not unheard of, for the Board, in its role overseeing the Act and the workers' compensation system, to be involved in litigation. Such is the case in the matter of *Holyoke v. The Workers' Compensation Board*. This case is also mentioned in the Abuse Investigation Unit section of this report. *Holyoke* centers around the issue of ensuring employers comply with the requirement to purchase workers' compensation for all workers.

Holyoke was penalized after a hearing during which the Abuse Unit staff proved Holyoke had misclassified several employees as independent contractors. In an attempt to avoid being penalized, Holyoke argued purchasing a workers' compensation policy on *an* employee satisfies its statutory obligation to purchase such a policy for *all* employees. This argument was rejected by the Hearing Officer assigned the case and was also unanimously rejected by the Board's Appellate Division.

The Appellate Division, in a 2-1 decision, also held Holyoke, despite having misclassified several of its employees as independent contractors, was effectively immune from being penalized.

As noted by the dissenting member of the panel, adopting either Holyoke's theory or the majority's theory would be ruinous to Maine's workers' compensation system. Employers could either ignore the coverage requirement entirely, or, purchase a policy on its least expensive employee and hope no one is injured. If either theory holds sway, Maine's workers' compensation system might effectively be unsustainable.

In response to the Appellate Division, the Board unanimously voted to appeal the *Holyoke* case to the Law Court. Briefing was completed in 2014, and oral argument will be scheduled in early 2015. A decision is expected later in 2015.

### II. RULES

During 2014, the Board repealed and replaced its rules. Largely, these changes are intended to update the rules so they are consistent with recent statutory changes. There are a few substantive changes worth mentioning. First, § 221(4) requires the Board to adopt rules pertaining to notification to injured workers of possible eligibility for Social Security retirement benefits. Briefly, insurers are required to notify retirement age injured workers who are receiving compensation for lost wages of their possible eligibility for Social Security retirement benefits. Once, notified, the injured worker must apply for these benefits. The rule adopted by the Board establishes a procedure governing notification that standardizes the process and provides necessary information to the affected worker. The Act made this rule change mandatory.

The Board provides advocates to injured workers who do not have private counsel. By statute, advocates may decline or cease representation for specific enumerated reasons, such as a lack of supporting evidence. Advocates could not, however, cease representation if an injured worker was uncooperative; e.g., refusing to respond to requests for meetings, information, etc. To alleviate this problem, the Board adopted a rule allowing advocates to cease representation in those cases. The rule is based on the Maine Bar Rules. While the Board does not anticipate frequent invocation of the rule, in the situations it does apply, it will help advocates better manage their caseloads and spend time more productively with employees who need assistance, and less time chasing uncooperative clients.

2014 also marks the third year since implementation of the Board's medical fee schedule. By statute, the Board is required to, and did, begin a comprehensive review of the fee schedule. The Board has been gathering data from interested parties as well as the Maine Health Data Organization to help with this process. Work on this rule will continue into 2015.

### **III. LEGISLATIVE ACTIVITY**

During the Second Regular Session of the 126<sup>th</sup> Legislature, L.D. 1833 was considered. Ultimately, the bill was passed in the form of a resolve requiring a study of the problems that occur when employees suffer injuries while working for employers that have not secured required workers' compensation coverage. The bill was vetoed by the Governor. The Board, having already begun work on this topic, agreed it would continue to work on this issue with the same parties envisioned by the resolve. Work by this task force is expected to conclude by the beginning of the 2015 legislative session, and it is anticipated draft legislation will be submitted to the First Regular Session of the 127<sup>th</sup> Legislature.

### **IV. EXTREME FINANCIAL HARDSHIP CASES**

Benefits for weekly compensation are subject (with some exceptions) to a durational limitation pursuant to 39-A M.R.S.A. § 213(1). Once the durational limitation is reached, an employee is no longer entitled to partial incapacity benefits. Because this might work a hardship on an injured worker, the Board "may in the exercise of its discretion extend the duration of benefit entitlement ... in cases involving extreme financial hardship due to inability to return to gainful employment." 39-A M.R.S.A. § 213(1).

When it decides these types of cases, the Board acts like a Hearing Officer. It must hear and accept evidence and argument on the standard contained in § 213(1) and then decide if an extension of benefits is warranted. The Board heard one extreme financial hardship case in 2014 and rendered a decision extending benefits for a period of 24 months.

Decisions are available at: [http://www.maine.gov/wcb/Board\\_Decisions/section\\_213/section213.html](http://www.maine.gov/wcb/Board_Decisions/section_213/section213.html)

## **V. BOARD REVIEW PURSUANT TO 39-A M.R.S.A. § 320**

When the Workers' Compensation Act was amended in 1992, the Appellate Division, which was part of the Workers' Compensation Commission, was eliminated. As a result, the Board was given authority to hear and decide appeals from Hearing Officer decisions in limited situations. First, only a Hearing Officer can refer a case for possible review; second, the case must involve an issue of significance to the operation of the workers' compensation system; and third, the Board must vote to accept the case for review.

Over the years, the Board received a small number of requests for review. With the reinstatement of the Appellate Division, it is likely requests for review will be few and far between. However, the Board still is empowered to review decisions in appropriate cases. The Board heard no § 320 cases in 2014.

Decisions of the Board pursuant to 39-A M.R.S.A. § 320 are available at:  
[http://www.maine.gov/wcb/Board\\_Decisions/board\\_decisions.htm](http://www.maine.gov/wcb/Board_Decisions/board_decisions.htm)

## 14. APPELLATE DIVISION

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The Board's Appellate Division has completed its second 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 Hearing Officers. With the renewed operation of the Appellate Division, the parties now have an automatic right of appeal from a decision issued by a Hearing Officer.

Prior to August 30, 2012, a party aggrieved by a decision could ask the Hearing Officer to refer the case 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.

Appeals to the Appellate Division are generally decided by panels comprised of three Hearing Officers. The Executive Director can ask the Appellate Division to hear an appeal *en banc* if the appeal contains an important issue. An *en banc* panel consists of all Hearing Officers except, of course, the one who issued the decision being appealed.

One hundred twenty eight notices of intent to appeal have been filed since August 2012, fifty-six were filed in 2014. So far, the Appellate Division has held oral argument in forty-one cases, including before two *en banc* panels, and has issued written decisions in fifty-five cases, with thirty-six issued in 2014. Twenty-two cases 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.

One case, *Daigle v. High View Manor, Inc.*, Me. W.C.B. No. 14-31, (App. Div. 2014), was heard by an *en banc* panel of the Appellate Division before an audience of over 130 attorneys and industry professionals at the 2014 annual Comp Summit in Rockport, Maine. After the hearing, by a unanimous decision, the Appellate Division affirmed a Hearing Officer's decision the employee's fall on a staircase resulted in a compensable work-related injury despite the fact the employee suffered from a pre-existing knee condition.

The Law Court has accepted three cases from the Division for appellate review, including *Workers' Compensation Bd. Abuse Investigation Unit v. Holyoke*, Me. W.C.B. No. 14-11 (App. Div. 2014), and *Johnson v. Home Depot USA, Inc.*, Me. W.C.B. No. 14-2 (App. Div. 2014). As noted earlier in this report, the *Holyoke* case involves the Board's authority to fine a construction industry employer for misclassifying employees as independent contractors after having provided the employer with a pre-determination that the employees were independent contractors. *Johnson* involved whether, under the Act, a hearing office may suspend workers' compensation payments when the employee is missing and cannot be located. A decision in *Holyoke* is expected in 2015. *Johnson* was affirmed by the Court.

Other cases of note include *Flanagin v. State Dep't of Inland Fisheries*, Me. W.C.B. No. 14-22 (App. Div. 2014), in which the Appellate Division panel reiterated that the limitations period for a claim is tolled if payments made by the employer or insurer for a subsequent injury were made with "contemporaneous notice" that the payments were for treatment that was in part necessitated by an earlier injury; and *Levasseur v. Albert Farms, Inc.*, Me. W.C.B. No. 14-7 (App. Div. 2014), affirming an award of benefits to a long haul truck driver who was injured in a parking lot when walking his dog on a break during a work-

related trip. The panel reasoned that the “traveling employee” exception to the “going and coming rule” generally allows for compensation when an employee is traveling as part of the employee’s work duties, and suffers an injury because of conditions or activities directly related or incidental to such travel, including taking rest breaks, eating, and using lodging.

Appellate Division decisions are available at:

<http://www.maine.gov/wcb/departments/Appellate/Appellate%20Decisions%20index.htm>



**SECTION B**

**BUREAU OF INSURANCE**



# Section B: Bureau of Insurance

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# 1. INTRODUCTION & BACKGROUND

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This report examines different measures of competition in the Maine workers' compensation insurance market. The measures are: 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; 4) ease of entry into and out of the workers' compensation insurance market; and 5) comparison of variations in rates.

The tables in this report for accident year and calendar year loss ratios contain five years of information. 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 up to 10 years of information.

On February 5, 2014, NCCI filed with the Superintendent for an overall 7.7% decrease in the advisory loss costs effective April 1, 2014. According to NCCI, the loss-time claim frequency has been exhibiting a declining trend since 2000 and the average indemnity cost—a measure of severity—has also been declining with a slight increase in policy year 2011. Medical costs continue to increase and now consume 55% of Maine's total benefit costs. Indemnity costs account for the other 45% of benefit costs. The Superintendent approved NCCI's filing effective April 1, 2014.

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

| <b>Industry Group</b> | <b>Percentage Change</b> |
|-----------------------|--------------------------|
| Miscellaneous         | -5.1%                    |
| Manufacturing         | -7.9%                    |
| Office & Clerical     | -8.6%                    |
| Contracting           | -9.2%                    |
| Goods & Services      | -7.9%                    |

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 as long as 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 of time (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 actually reported. The losses are matched to the fully developed earned premium for those same policies. The ultimate policy year incurred loss result cannot be finalized until all losses are settled. Policy year data is used to determine advisory loss costs. Advisory loss costs are the portion of rates that accounts for losses and loss adjustment expenses.

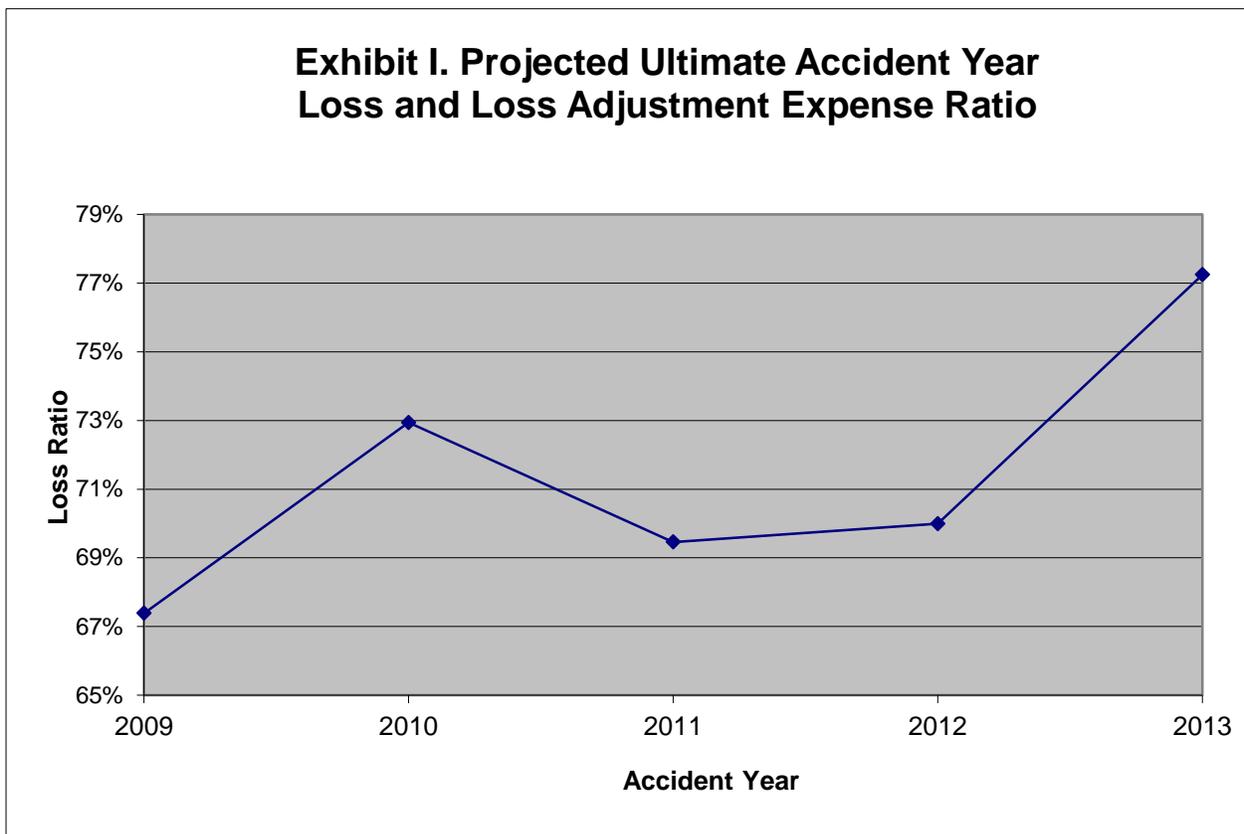
## 2. RECENT EXPERIENCE

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### I. PROJECTED ULTIMATE ACCIDENT YEAR LOSS AND LOSS ADJUSTMENT EXPENSE RATIOS

The accident year loss and loss adjustment expense ratio shows 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, or decrease in reserve (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 or increase in reserve.

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 67% to 77% for the past five years. The 2013 ratio was 77.2%, indicating that \$77.20 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.



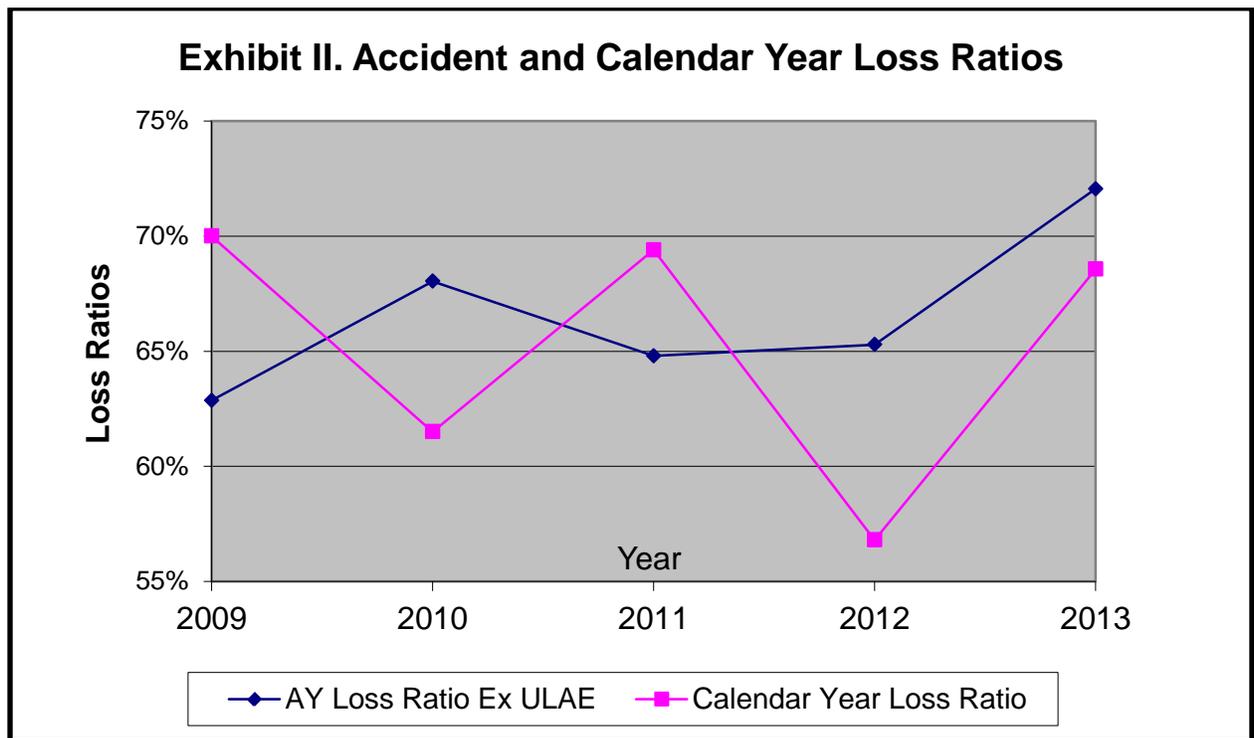
Source: NCCI

## II. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS

Calendar year loss ratios compare losses incurred with premium earned in the same year). Calendar year loss ratios reflect loss payments, adjustments to case reserves, and changes to IBNR (“incurred but not reported”) reserves, on all claims during a specific year, including those adjustments from prior injury years. Calendar year data is relatively easy to compile but can be distorted by large changes in case or IBNR reserves.

However, 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. Calendar and accident year ratios also do not include amounts paid by insurers for sales, general expenses and taxes, nor do they reflect investment income. 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.

Exhibit II shows calendar year and accident year loss ratios for the most recent five years. The calendar year loss ratios ranged between 70% in 2009 and 57% in 2012. Accident year loss ratios ranged from a low of 63% in 2009 to a high of 72% in 2013. Calendar year loss ratios show a slight downward trend, and accident year loss ratios show an upward trend.



Note: ULAE means Unallocated Loss Adjustment Expense

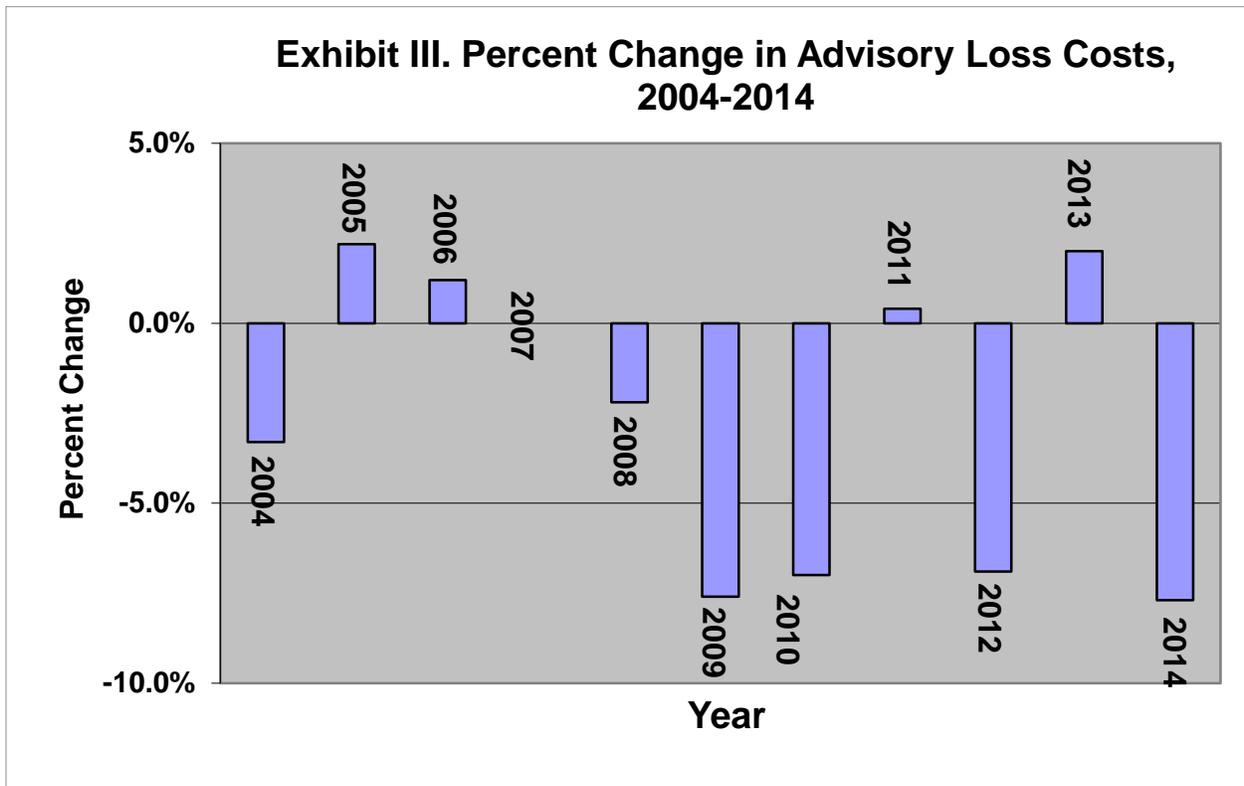
Source: NCCI

### 3. LOSSES IN WORKERS' COMPENSATION

#### I. CHANGES IN ADVISORY LOSS COSTS

NCCI files advisory loss costs on behalf of workers' compensation carriers. Advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what insurers pay for commissions, general expenses, taxes and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what to load into premium to cover those items.

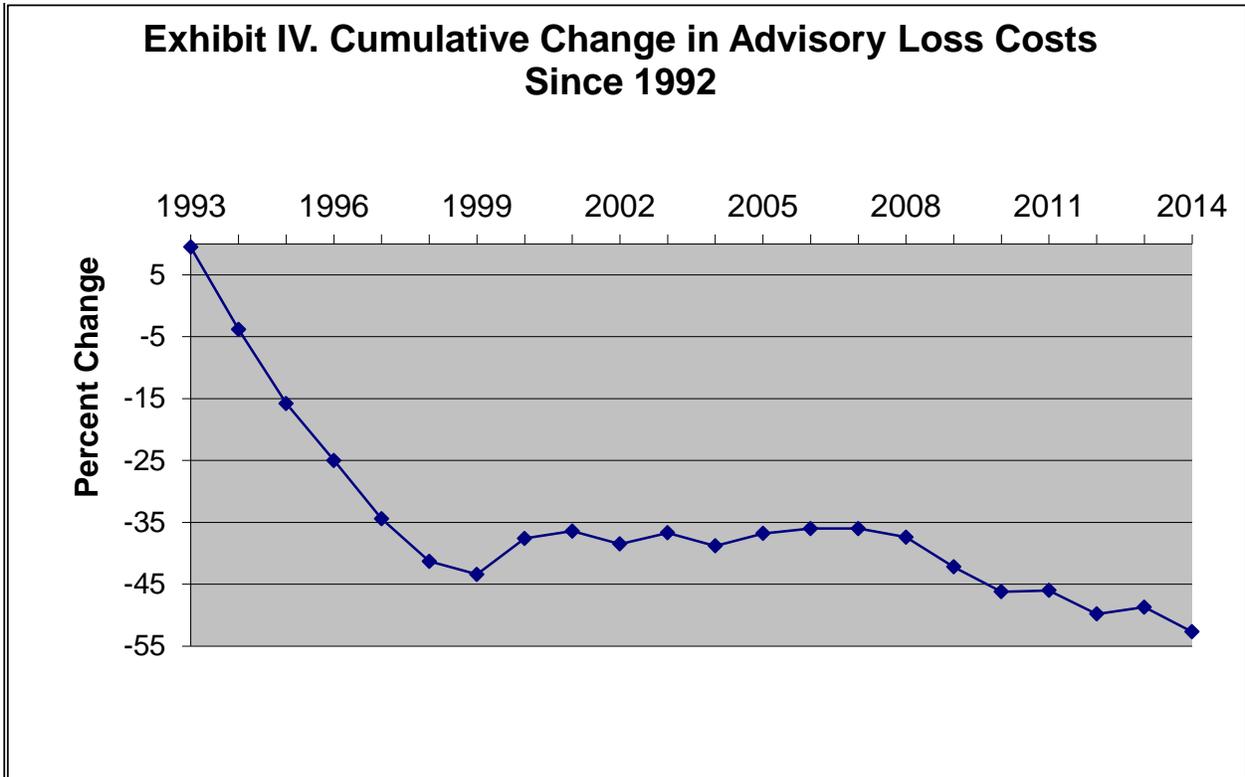
Effective April 1, 2014, the Superintendent approved a 7.7% decrease in the workers' compensation advisory loss costs. Advisory loss costs are now about 14% lower than they were five years ago and nearly 53% lower than when the major reform of the workers' compensation system took effect in 1993. Changes in the advisory loss costs tend to lag behind actual changes in statewide loss experience because of the time needed to accumulate and evaluate loss data.



Source: NCCI

## II. CUMULATIVE CHANGES IN ADVISORY LOSS COSTS

Exhibit IV shows the cumulative changes in loss costs since 1993. Average loss costs have declined 14% over the past five years.



Source: NCCI

## 4. MARKET STRUCTURE AND COMPETITION

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### I. MARKET CONCENTRATION

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

As of October 1, 2014, the Superintendent had authorized 328 companies to write workers' compensation coverage. This number is not the best indicator of market concentration because some insurers have no written premium. In 2013 MEMIC, the insurer of last resort, accounted for more than 62% of the written premium in the market. Although MEMIC has succeeded in retaining business, voluntary market insurers are able to be more selective about which risks they accept. The following table shows the number of carriers by premium level that wrote workers' compensation insurance in 2013. Two fewer companies in 2013 had more than \$1 million in written premium than in 2012.

| Amount of Written Premium | Number of Companies At That Level |
|---------------------------|-----------------------------------|
| >\$10,000                 | 144                               |
| >\$100,000                | 95                                |
| >\$1,000,000              | 23                                |

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2013 was more than \$203 million.

Market concentration alone does not give a complete picture of market competition. That is 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 NAIC's (National Association of Insurance Commissioners) annual Competition Database Report compiles various data elements that measure the competitiveness of state insurance markets. The HHI is one data element.

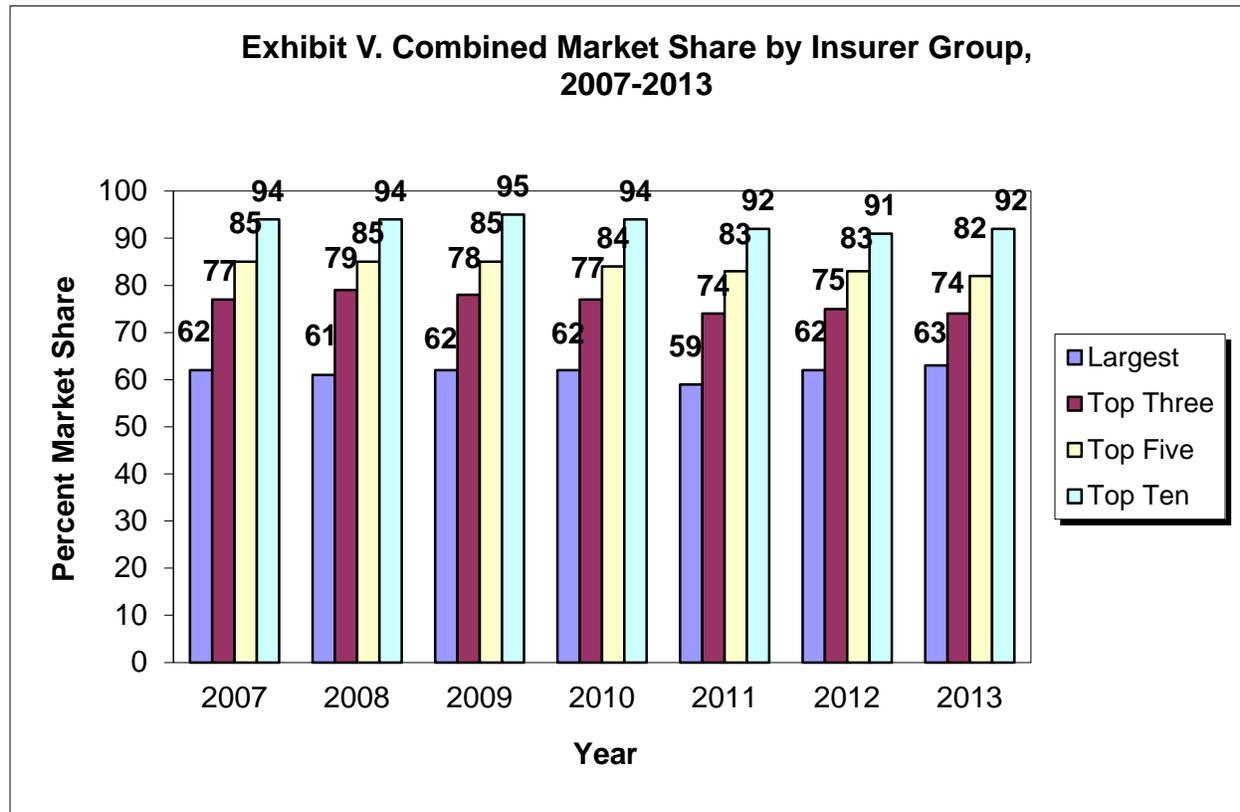
The 2012 Competition Database Report, which was prepared in 2013, showed that the HHI for workers' compensation insurance in Maine was 3,943 in 2012. This is the third highest for all commercial lines in Maine, behind Financial Guaranty and Medical Professional Liability. There is no precise point at 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 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 might not be a helpful gauge of this market 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 a one or more carriers under common ownership. Exhibit V illustrates the percent market share of the largest commercial insurance group, in terms of written premium, as well as the percent market share for the top three, top five and top 10 insurer groups. MEMIC has the largest market share at over 62 percent. The market share of the top 10 insurer groups was nearly 92% in 2013; all other groups accounted for just over 8% of the workers' compensation premium in Maine, excluding self-insured premium.

MEMIC wrote more than \$127 million in premium in 2013. The top three groups, including MEMIC, wrote over \$149 million in business. The top five groups wrote over \$166 million, and the top 10 groups had over \$186 in written premium. The reported amounts of written premium for the top 10 groups rose by \$6 million from 2012 to 2013.



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 throughout much of the 15-year period shown in the table below. The number of carriers who may file rates and are eligible to write workers' compensation coverage has increased by over 56 percent since 2000. There currently are no significant barriers to entry.

| <b>Year</b> | <b>Number of Carriers</b> | <b>Net Change (Percent)</b> |
|-------------|---------------------------|-----------------------------|
| 2014        | 328                       | -0.6                        |
| 2013        | 330                       | 0.3                         |
| 2012        | 329                       | 5.1                         |
| 2011        | 313                       | 6.8                         |
| 2010        | 293                       | 0.3                         |
| 2009        | 292                       | 3.6                         |
| 2008        | 282                       | 3.3                         |
| 2007        | 273                       | 2.3                         |
| 2006        | 267                       | 3.9                         |
| 2005        | 257                       | 1.1                         |
| 2004        | 254                       | 1.2                         |
| 2003        | 251                       | 4.2                         |
| 2002        | 241                       | 5.7                         |
| 2001        | 228                       | 8.6                         |
| 2000        | 210                       | 6.1                         |

Source: Bureau of Insurance Records

**Notes:** Totals are based on the number of carriers licensed to transact workers' compensation insurance as of October 1 of each year.

## V. PERCENT MARKET SHARE OF THE TOP TEN INSURANCE GROUPS

Table III shows market share for the ten largest insurance groups from 2007-2013. These groups wrote nearly 92 percent of business. 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 Berkshire Hathaway Group became one of the top 10 writers in 2012 when it acquired the Guard Insurance Group, which had been the 9<sup>th</sup> largest group writing workers' compensation in 2011. Great Falls Insurance Company, a Maine domestic insurance company, continues to be one of the top 10 writers of workers' compensation business.

| <b>Insurance Group</b>       | <b>2013<br/>Share</b> | <b>2012<br/>Share</b> | <b>2011<br/>Share</b> | <b>2010<br/>Share</b> | <b>2009<br/>Share</b> | <b>2008<br/>Share</b> | <b>2007<br/>Share</b> |
|------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Maine Employers' Mutual      | 62.6                  | 62.3                  | 59.4                  | 61.5                  | 62.2                  | 61.3                  | 61.6                  |
| Liberty Mutual Group         | 6.1                   | 8.0                   | 9.7                   | 10.0                  | 10.4                  | 11.0                  | 8.8                   |
| Travelers Group              | 4.9                   | 4.7                   | 4.4                   | 3.9                   | 3.5                   | 2.7                   | 2.2                   |
| WR Berkeley Group            | 4.5                   | 4.6                   | 5.1                   | 5.2                   | 5.7                   | 6.1                   | 6.3                   |
| Hartford Fire & Casualty     | 3.5                   | 3.5                   | 3.1                   | 3.2                   | 3.4                   | 3.7                   | 3.6                   |
| Great Falls Ins Co           | 2.8                   | 1.8                   | 0.7                   | -                     | -                     | -                     | -                     |
| American International Group | 2.8                   | 1.7                   | 4.2                   | 3.6                   | 2.3                   | 2.8                   | 5.2                   |
| Berkshire Hathaway Group     | 1.5                   | 1.8                   | 0.5                   | 0.2                   | 0.1                   | 0.1                   | 0.1                   |
| Zurich Insurance Group       | 1.5                   | 1.6                   | 2.0                   | 2.1                   | 2.0                   | 1.2                   | 1.3                   |
| The Hanover Ins Group        | 1.4                   | 1.4                   | 1.6                   | 1.5                   | 1.6                   | 1.8                   | 1.7                   |

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 2007 through 2013. Throughout this period MEMIC has had more than 59% of the market. No other carrier attained a 5% market share during this period. The top 10 companies combined held nearly 76% of the market. Great Falls Insurance Company, which was licensed by the Maine Bureau of Insurance at the end of 2010 and commenced writing workers' compensation in 2011, is now the second largest company writing workers' compensation in Maine.

| <b>Insurance Carrier</b>             | <b>2013<br/>Share</b> | <b>2012<br/>Share</b> | <b>2011<br/>Share</b> | <b>2010<br/>Share</b> | <b>2009<br/>Share</b> | <b>2008<br/>Share</b> | <b>2007<br/>Share</b> |
|--------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Maine Employers' Mutual              | 62.5                  | 62.1                  | 59.3                  | 61.5                  | 62.2                  | 61.3                  | 61.6                  |
| Great Falls Ins Co                   | 2.8                   | 1.8                   | 0.7                   | -                     | -                     | -                     | -                     |
| Firemen's Ins Co of Wash DC          | 2.1                   | 1.9                   | 2.3                   | 2.1                   | 1.9                   | 1.3                   | 1.3                   |
| Acadia Insurance Company             | 1.6                   | 2.1                   | 2.2                   | 2.6                   | 3.4                   | 4.2                   | 4.5                   |
| New Hampshire Ins Co                 | 1.3                   | 1.0                   | 1.2                   | 1.2                   | 1.2                   | 1.0                   | 0.5                   |
| Charter Oak Fire Ins Co              | 1.3                   | 1.3                   | 1.1                   | 1.2                   | 1.0                   | 0.9                   | 0.8                   |
| Insurance Company of the State of PA | 1.2                   | 0.8                   | 0.6                   | 1.0                   | 0.8                   | 0.6                   | 0.4                   |
| Liberty Mutual Fire Ins Co           | 1.1                   | 0.9                   | 1.0                   | 0.8                   | 0.9                   | 0.8                   | 1.0                   |
| Twin City Fire Ins Co                | 1.1                   | 1.1                   | 0.8                   | 0.8                   | 1.0                   | 1.2                   | 1.4                   |
| Netherlands                          | 1.0                   | 1.7                   | 2.3                   | 2.7                   | 2.6                   | 2.1                   | 1.4                   |

Source: Annual Statements Filed with the Bureau by Insurance Carriers

## 5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

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### I. RATE DIFFERENTIALS

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

The Bureau of Insurance surveyed all of 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. Carriers in these groups accounted for about 92% of the market and nearly \$187 million in written premium in Maine for calendar year 2013. The table below shows the percentage of policies written at rates compared to the MEMIC Standard Rating tier.

| <b>Rate Comparison</b>    | <b>2014 Percent</b> | <b>2013 Percent</b> |
|---------------------------|---------------------|---------------------|
| Below MEMIC Standard Rate | 19.5%               | 20.3%               |
| At MEMIC Standard Rate    | 66.1%               | 64.7%               |
| Above MEMIC Standard Rate | 14.4%               | 15.0%               |

Note: Based upon the results of a survey conducted by the Bureau of Insurance

Possible reasons that policyholders accept rates higher than MEMIC's Standard Rating tier are: 1) an insurer other than MEMIC that might not otherwise provide workers' compensation coverage provides it as part of a package with other lines of insurance at an overall competitive price to the insured; 2) an insurer other than MEMIC charges a higher rate but offers enough credits to lower the overall premium; or 3) the insured's poor loss history resulted in its being placed in MEMIC's High Risk Rating tier.

### 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. Our records indicate that over 71% of insurers either have different loss cost multipliers on file or are part of a group that does.
- ❑ **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%. More than 81% of insurers with filed rates in Maine have received approval to use scheduled rating.

- ❑ **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 the percentage reductions in premium applicable to their small deductible plan. The Bureau must review and approve this filing.
- ❑ **Managed Care Credits** are offered to employers who use managed care plans for workers' compensation injuries. Eighteen percent of insurers offer managed care credits.
- ❑ **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 calendar year 2013, MEMIC declared dividends of \$16 million. In October 2014, MEMIC announced it would pay a dividend totaling \$18 million to 17,000 qualified policyholders in November 2014. Including this payment, MEMIC will have returned nearly than \$180 million to policyholders in the form of capital returns and dividends since 1998.
- ❑ **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 the statutory deductibles offer. 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.
- ❑ **Merit Rating Plan.** If an employer is not eligible for the experience rating plan than 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.

Insurers in Maine's top ten groups reported that nearly \$10 in credits (for policies in force as of August 31, 2013) was provided for every \$1 in debits. These credits were more than \$16.5 million, an increase of \$11 million over the prior year. The debits for these policies were nearly \$1.7 million, \$160,000 less than in 2012.

## 6. ALTERNATIVE RISK MARKETS

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### I. PERCENT OF OVERALL MARKET HELD BY SELF-INSURED EMPLOYERS

Self-insurance plays an important role in Maine's workers' compensation market. Self-insured employers pay for losses with their own resources rather than by purchasing insurance. They may, however, choose or be required by the Bureau of Insurance to purchase insurance for losses that exceed a certain limit. One advantage of being self-insured is better cash flow. Employers who self-insure anticipate that they would be better off not paying premiums. They are likely to have active programs in safety training and injury prevention. In 2013, nearly 42% of Maine's total workers' compensation insurance market, as measured by standard premium, consisted of self-insured employers and groups. The self-insured workers' compensation market has exceeded 40 percent in each of the twelve years listed in the table below.

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

| <b>Table VI:<br/>Estimated Total of All Standard Premiums for Self-Insured Employers and<br/>Percent of the Workers' Compensation Market Held by Self-Insurers, 2002-2013</b> |                                                         |                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------------------|
| <b>Year</b>                                                                                                                                                                   | <b>Estimated Total<br/>of All Standard<br/>Premiums</b> | <b>Percent of<br/>Workers' Comp. Market<br/>(in annual standard premium)</b> |
| 2013                                                                                                                                                                          | \$147,032,582                                           | 41.9                                                                         |
| 2012                                                                                                                                                                          | \$159,230,371                                           | 44.6                                                                         |
| 2011                                                                                                                                                                          | \$166,712,916                                           | 44.7                                                                         |
| 2010                                                                                                                                                                          | \$171,478,611                                           | 47.5                                                                         |
| 2009                                                                                                                                                                          | \$160,359,285                                           | 44.5                                                                         |
| 2008                                                                                                                                                                          | \$179,280,965                                           | 44.6                                                                         |
| 2007                                                                                                                                                                          | \$174,830,526                                           | 42.1                                                                         |
| 2006                                                                                                                                                                          | \$167,535,911                                           | 40.9                                                                         |
| 2005                                                                                                                                                                          | \$167,278,509                                           | 40.3                                                                         |
| 2004                                                                                                                                                                          | \$171,662,347                                           | 41.7                                                                         |
| 2003                                                                                                                                                                          | \$182,379,567                                           | 43.1                                                                         |
| 2002                                                                                                                                                                          | \$167,803,123                                           | 43.0                                                                         |

Source: Annual Statements Filed with the Bureau of Insurance

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, 2014 there were 19 self-insured groups representing 1,336 employees. The number of self-insured groups has remained the same for the past eight years. The number of employees in self-insured groups increased from 58 to 62 in the past year and is at its highest number since 2008.

| <b>Year</b> | <b># of<br/>Self-Insured<br/>Groups</b> | <b># of<br/>Employers<br/>In Groups</b> | <b># of Individually<br/>Self-Insured<br/>Employers</b> |
|-------------|-----------------------------------------|-----------------------------------------|---------------------------------------------------------|
| 2014        | 19                                      | 1,336                                   | 62                                                      |
| 2013        | 19                                      | 1,363                                   | 58                                                      |
| 2012        | 19                                      | 1,370                                   | 59                                                      |
| 2011        | 19                                      | 1378                                    | 59                                                      |
| 2010        | 19                                      | 1382                                    | 58                                                      |
| 2009        | 19                                      | 1459                                    | 58                                                      |
| 2008        | 19                                      | 1,461                                   | 70                                                      |
| 2007        | 19                                      | 1,478                                   | 70                                                      |
| 2006        | 20                                      | 1,437                                   | 71                                                      |
| 2005        | 20                                      | 1,416                                   | 80                                                      |
| 2004        | 20                                      | 1,417                                   | 86                                                      |
| 2003        | 19                                      | 1,351                                   | 91                                                      |
| 2002        | 19                                      | 1,235                                   | 98                                                      |
| 2001        | 19                                      | 1,281                                   | 92                                                      |
| 2000        | 19                                      | 1,247                                   | 98                                                      |

Source: Bureau of Insurance Records

Notes: For the purposes of self-insurance, affiliated employers are considered separate employers. The number of individually self-insured employers and self-insured group information beginning in 2001 is as of October 1 of the year listed. Figures for 2000 are as of January 1.

## 7. A LOOK NATIONALLY

### I. OREGON WORKERS' COMPENSATION PREMIUM RATE RANKING

The State of Oregon ranks the states and the District of Columbia bi-annually by premium. The Oregon premium rate rankings focus on 50 classifications based on their relative importance as measured by their share of losses in Oregon. In 2014, Maine had the 13<sup>th</sup> highest workers' compensation premium rates for all industries. In 2012, Maine was 10<sup>th</sup> highest overall, and it was 8<sup>th</sup> in 2010.

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

NCCI reports average loss costs for 38 states and the District of Columbia. In 2013, Maine had the 15th highest average loss cost and, in 2012, the 9th highest.

| State          | Average Loss Cost | Rank      |
|----------------|-------------------|-----------|
| Connecticut    | 2.15              | 1         |
| Montana        | 1.81              | 2         |
| Vermont        | 1.75              | 3         |
| Illinois       | 1.71              | 4         |
| Alaska         | 1.71              | 4         |
| New Hampshire  | 1.67              | 6         |
| Oklahoma       | 1.58              | 7         |
| Rhode Island   | 1.53              | 8         |
| Iowa           | 1.51              | 9         |
| New Mexico     | 1.44              | 10        |
| Georgia        | 1.43              | 11        |
| Maryland       | 1.42              | 12        |
| North Carolina | 1.40              | 13        |
| Alabama        | 1.39              | 14        |
| <b>Maine</b>   | <b>1.38</b>       | <b>15</b> |
| Louisiana      | 1.38              | 15        |
| Idaho          | 1.31              | 17        |
| South Carolina | 1.28              | 18        |
| Colorado       | 1.28              | 18        |
| Nebraska       | 1.26              | 20        |
| Missouri       | 1.25              | 21        |
| Florida        | 1.24              | 22        |

| State         | Average Loss Cost | Rank |
|---------------|-------------------|------|
| Tennessee     | 1.20              | 23   |
| Mississippi   | 1.19              | 24   |
| South Dakota  | 1.16              | 25   |
| Kansas        | 1.16              | 25   |
| Arizona       | 1.16              | 25   |
| Kentucky      | 1.12              | 28   |
| Oregon        | 1.10              | 29   |
| Hawaii        | 1.07              | 30   |
| Nevada        | 0.97              | 31   |
| Virginia      | 0.90              | 32   |
| Utah          | 0.86              | 33   |
| D.C.          | 0.84              | 34   |
| West Virginia | 0.82              | 35   |
| Indiana       | 0.82              | 35   |
| Arkansas      | 0.65              | 37   |
| Texas         | 0.63              | 38   |
| Countrywide   | 1.22              |      |

Note: Average loss cost does not include expense and profit loading and is an average using all payrolls. The actual average for an employer will depend on the type of business and payroll mix.

**SECTION C**

**BUREAU OF LABOR STANDARDS**



# Section C: Bureau of Labor Standards

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# 1. INTRODUCTION

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## I. 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 prevention of injuries and illnesses. Additionally, the Bureau is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor standards laws and the related rules, including child labor laws and occupational safety and health standards in the public sector.

For program planning, evaluation and management, the Bureau considers how each program activity may affect any of the four stages of injury and illness prevention and response:

- The **primordial** stage, which relates to the incipience or creation of hazards and activities/events that can lead to them or keep them from emerging.
- The **primary** stage, which refers to administrative, enforcement and engineering activities to prevent exposure to injury and illness hazards that are already present.
- The **secondary** stage, which refers to the response to injuries and illnesses as they happen.
- The **tertiary** stage, which refers to the therapies and treatment strategies beyond the initial treatment response necessary to return patients to full function from their injuries or illnesses.

### Administration

The Bureau conducts and supports prevention **research** in all four stages but primarily concentrates its **intervention** efforts in **primordial** and **primary** prevention, eliminating risks and exposures to danger before an injury or illness can be initiated.

- The Bureau supports **primordial** prevention through **education and outreach**, helping employers “vaccinate” their workplaces against injuries and illnesses. These efforts are designed to foster preemptive undertakings such as employee wellness programs and best safety practices, and include training of workers and management and publicly offered classes and displays. Participation in these outreach activities is voluntary and available for any employer that requests them or allows its employees to take part in them.
- The Bureau supports **primary** safety prevention through **consultation** relating to OSHA safety standards in private, state, and local government workplaces, which serves to minimize or remove exposure to dangerous workplace risks and work practices. These consultations are voluntary as well: there are neither direct charges for the consultations nor fines for violations of the standards as a result of these voluntary services. There is, however, a commitment on the employer’s part to abate any problems uncovered in the consultation services.

- The Bureau also supports *primary* safety prevention through its **enforcement** of OSHA safety standards. This includes formal inspections and investigations conducted directly by the Bureau for public sector employers (state and local employers). The U.S. Occupational Safety and Health Administration (OSHA) administers this same enforcement for the private sector.

The dark gray areas in Table C-1 illustrate the purview of the Maine Bureau of Labor Standards. The **non-enforcement** (research, outreach, education, and consultation) services that the Bureau offers are branded under the Bureau’s SafetyWorks! logo to distinguish them from the enforcement activities (formal inspections and investigations)

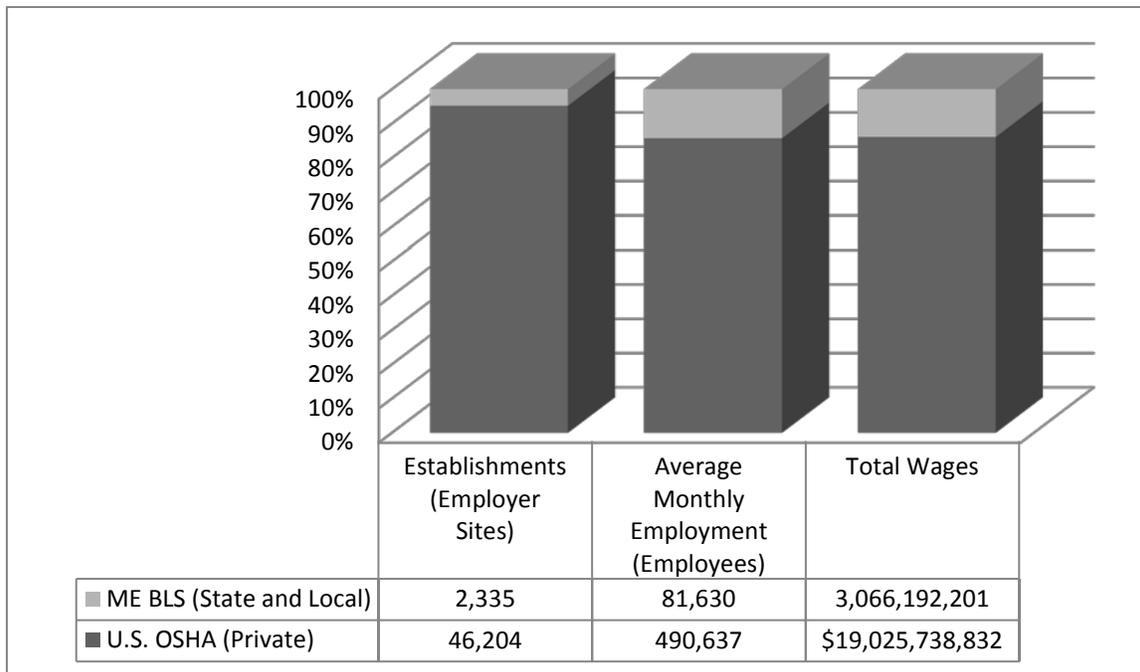
**Table C-1: Workplace Injury and Illness Prevention and Response**

| <b>Maine Workers’ Compensation System</b>                 |                              |                                   |                          |
|-----------------------------------------------------------|------------------------------|-----------------------------------|--------------------------|
| Function                                                  |                              | State and Local Government        | Private Sector Employers |
| Prevention                                                | Research                     | Maine SafetyWorks!                |                          |
|                                                           | Outreach and Education       | Maine SafetyWorks!                |                          |
|                                                           | Employer Consultation        | Maine SafetyWorks!                |                          |
|                                                           | Safety Standards Enforcement | Maine BLS                         | US OSHA                  |
|                                                           | Child Labor Enforcement      | Maine BLS                         |                          |
| Administration                                            |                              | Maine Workers’ Compensation Board |                          |
| Insurance Market                                          |                              | Maine Bureau of Insurance         |                          |
| <b>Outside of Maine Workers’ Compensation System</b>      |                              |                                   |                          |
| Exempt (self-employed, agriculture, forestry, or fishing) |                              |                                   |                          |
| U.S. Government and Special Federal Jurisdictions         |                              |                                   |                          |

Table C-1 includes certain areas or types of activities that are outside the Workers’ Compensation system because there can be some overlap, although that overlap is unlikely. For instance, self-employed individuals may elect to buy WC insurance coverage for themselves, and workers under the federal Longshore and Harbor Workers' Compensation Act can elect to claim through the Maine WC system. However, neither group typically does that. Likewise, the table and this report do not cover federal government employees because the Maine workers’ compensation system has no jurisdiction over them.

While both the state and federal governments share the employer safety enforcement load in Maine, the bulk of this enforcement work is carried out by federal OSHA. The numbers and proportions of establishments, workers and wages are shown in Figure C-1 below.

**Figure C-1: Establishments, Employment, and Wages by Enforcement Jurisdiction (Excludes U.S. Government)**



Source: <http://www.maine.gov/labor/cwri/qcew1.html> , annual average, year-ending 2nd quarter 2014.

Data relating to private-sector enforcement in this report are provided by U.S. OSHA. All other statistics come from the Maine Workers’ Compensation database for reportable injuries and illnesses and from the Maine Bureau of Labor Standards “Gen II” database for all outreach, education, and consultation activities and public-sector (state and local government) employers and child-labor enforcement activities, as well as from publically available data provided by the federal Bureau of Labor Statistics. More detailed explanations of, and statistics for, the enforcement activities that the Bureau provides are explained later in this report.

**Safety Education and Training Fund and Other Funding**

The Bureau’s non-enforcement services are currently available at no additional charge because resources are provided through a dedicated state special revenue fund collected from insurers and self-insured employers and employer groups. Individual fees are based on how much the employer/insurer pays out in workers’ compensation benefits (less medical payments). The fund is called the Safety Education and Training Fund, or SETF, and the revenue for the fund is assessed on insurers and self-insured employers based on a cap and an allocation formula defined in law.

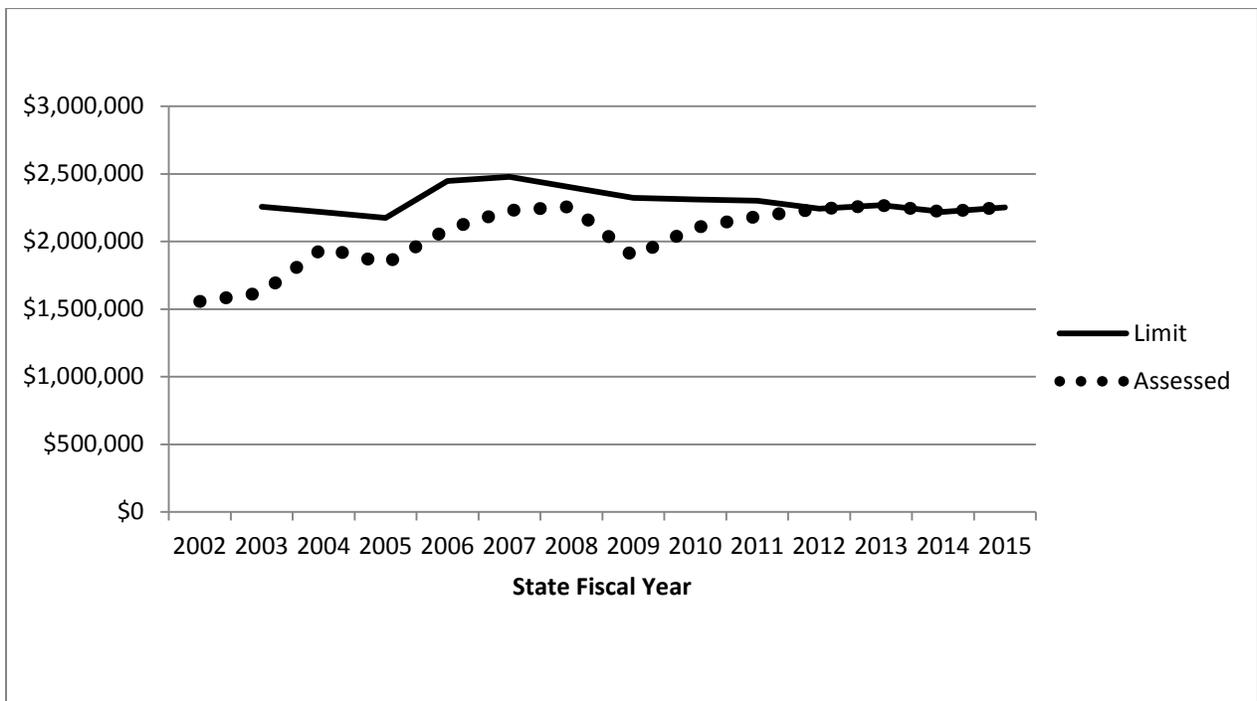
The SETF assessment is augmented by significant funding for certain employer consultations through an OSHA “21d” cooperative agreement with the U.S. Department of Labor (US DOL) . There are neither direct charges for the consultations nor fines for violations of the standards as a result of these

voluntary services. There is a commitment on the employer’s part to abate any problems uncovered in the consultation services.

The SETF funding is also important as the source of matching funds for roughly \$700,000 in grants from US DOL. Without matching state funding via SETF, those grants would not be possible.

There is growing concern about the level of SETF funding for future activities. Due in part to 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), have also driven down the Workers’ Compensation benefits paid out by the insurers and self-insured employers. As a result, the SETF fund that pays for the non-enforcement services has steadily declined. In fact, for the last few years, the Bureau has had to assess right at the SETF cap in order to sustain its services. Figure C-2 below illustrates the cap coming down to meet at the point of program budget needs.

**Figure C-2: SETF Limit 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 fluctuated in previous years because of holdovers—savings from one year carried over to the next. However, in moving from state fiscal year 2011 to 2012, and in the years subsequent, there have been no holdovers and the Bureau has had to assess the full amount for the services it provides.

Moreover, the Bureau’s current case management system, in place since 1999, is now in “containment”, meaning that support for its components will no longer be provided at some point in the future. This

system records and tracks work for field staff and supervisors and produces formatted reports for employers, listing standards violations and solutions. It allows staff and management to concentrate on content rather than on process and deadlines.

Rather than face the possibility that the system would become unsupported through programmer or software attrition, the Bureau has decided to replace it on a planned time schedule. However, the Bureau will need to invest a significant sum to do so.

Once the new system is completed and paid for, the Bureau may be able to reduce the SETF assessment amount below the cap again. The Bureau also believes there will be additional efficiencies from the newer features, improved design and enhanced capacity of the updated system that should eventually enhance reporting and the efficiency of the work, reducing lead times and increasing value added.

While none of the following are necessary at this time, should costs continue to increase and SETF revenues continue to decline, the Bureau would have consider other options to stay within its budget, including:

- Reducing the capacity of one or more of the services provided.
- Eliminating some services.
- Seeking out and implementing alternative funding, including nominal charges, for its services.
- Requesting an increase of the cap.

**A. What services were provided?**

Table C-2 provides a summary of the services most recently provided by the Bureau. Note that time frames for the reports vary because they are based on various yearly periods and availability of the data at the time of publication. While much of the activity appears to be funded through the state General Fund, that revenue source accounts for only eight full-time equivalent positions out of 41 in the Bureau. The SETF and federal matching funds account for the majority of position and activity funding.

**Table C-2: Summary of Prevention Services and Activities**

| Service                                           | Jurisdiction / Funding Source                    | Activity Measures                                                                       |
|---------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------|
| Worker and Employer OSH Training                  | State SETF                                       | 8,442 workers trained (FFY)                                                             |
| Employer OSH Data Profiles                        | State SETF / US Bureau of Labor Statistics Grant | 31 employer profile/data requests answered December 2013 through November 2014          |
| On-site Consultations                             | State SETF / US OSHA and MSHA* Grants            | 752 employer onsite consultations and reports (FFY)                                     |
| Youth Employment Permit Enforcement               | State General Fund                               | 2,762 permits issued<br>40 denied (SFY)                                                 |
| Wage & Hour Enforcement, Random Inspections       | State General Fund                               | 2,169 self-directed inspections<br>340 violations<br>5 child labor violations (SFY)     |
| Wage & Hour Enforcement, Complaint Investigations | State General Fund                               | 553 employer investigations<br>243 violations (SFY)                                     |
| Public Sector Safety Enforcement                  | State General Fund                               | 119 employers<br>826 physical sites<br>2,438 violations<br>\$232,200 in penalties (FFY) |
| Private Sector OSHA Enforcement                   | US OSHA                                          | 435 employer inspections<br>766 violations<br>\$1,861,805 in penalties (FFY)            |
| OSHA Recordkeeping Employer Outreach              | State SETF / US Bureau of Labor Statistics Grant | 12 sessions in CY 2014<br>291 attendees in CY 2014<br>8 sessions planned in CY 2015     |

\* MSHA—U.S. Mine Safety and Health Administration

FFY Federal Fiscal Year (October 1, 2013 through September 30, 2014)

SFY State Fiscal Year (July 1, 2013 through June 30, 2014)

CY Calendar Year

**B. What are the outcomes of the services provided?**

There is a striking contrast between where things were 20 years ago compared to the latest data as evidenced in the individual reports to follow. In many cases, the changes from the year before are not striking. However, this report reveals marked longer-term changes.

**Table C-3: Summary of Data Activities and Significant Measures**

| Data Programs                                        | Funding                                        | Result Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------------------|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Workers' Compensation Case Data                      | State SETF/US Bureau of Labor Statistics Grant | <ul style="list-style-type: none"> <li>• 13,269 disabling cases coded in calendar year 2013               <ul style="list-style-type: none"> <li>○ Decrease of 117 (0.9%) from 2012</li> <li>○ Decrease of 17,046 (54%) from the high of 30,315 in 1989</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Survey of Occupational Injuries and Illnesses (SOII) | State SETF/US Bureau of Labor Statistics Grant | <ul style="list-style-type: none"> <li>• 5.3 Total OSHA recordable incidence rate in 2013               <ul style="list-style-type: none"> <li>○ 5.5 from 2012</li> <li>○ Decrease of 28% from 2003</li> <li>○ Decrease of 49% from 1993</li> </ul> </li> <li>• 2.9 Days Away, Restricted or Job Transfer incidence rate in 2013               <ul style="list-style-type: none"> <li>○ 2.9 in 2012</li> <li>○ Decrease of 28% from 2003</li> <li>○ Decrease of 44 % from 1993</li> </ul> </li> <li>• 1.5 Days Away From Work incidence rate in 2013               <ul style="list-style-type: none"> <li>○ 1.4 in 2012</li> <li>○ Decrease of 25% from 2003</li> <li>○ Decrease of 58% from 1993</li> </ul> </li> </ul>                                                                     |
| Census of Fatal Occupational Injuries (CFOI)         | State SETF/US Bureau of Labor Statistics Grant | <ul style="list-style-type: none"> <li>• 19 fatalities in 2012               <ul style="list-style-type: none"> <li>○ Down from 26 in 2011</li> <li>○ Highest in 1999 with 32</li> <li>○ Lowest in 2005 with 15</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| OSHA Data Initiative (ODI)                           | US Occupational Safety & Health Administration | This program was suspended in 2013 due to funding cuts following the federal sequestration.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Employer Substance Abuse Testing                     | SETF                                           | <ul style="list-style-type: none"> <li>• 4.5% total positive tests for 2013               <ul style="list-style-type: none"> <li>○ 3.4% in 2011 (record low)</li> <li>○ High of 4.9% in 2002 and 2007</li> </ul> </li> <li>• 4.6% applicants positive for 2013               <ul style="list-style-type: none"> <li>○ 3.4 % in 2011 (record low)</li> <li>○ High of 5.0% in 2007</li> </ul> </li> <li>• 6.8% probable cause positive for 2013               <ul style="list-style-type: none"> <li>○ 25.0% in 2011</li> <li>○ Low of 1.1% in 2006</li> <li>○ High of 80% in 2007 (only 5 tests)</li> </ul> </li> <li>• 3.2% random positive for 2012               <ul style="list-style-type: none"> <li>○ 1.9% in 2011 (record low)</li> <li>○ High of 4.4% in 2009</li> </ul> </li> </ul> |

The prevention of injuries and illnesses helps workers avoid entering the WC system and is the most efficient and humane way to contain costs. Three studies on the 100 most-costly Maine WC cases found that almost any case can evolve into a high-cost case due to complications and the intricacies of the WC system. As explained later in this report, the reduction in high-cost cases and the number of cases is the rationale behind the Department's comprehensive prevention program.

## II. ORGANIZATION OF THIS REPORT

The report is meant to providing an accurate picture of the prevention of the Bureau's efforts to prevent occupational injuries and illnesses, including enforcement activities.

**Part 1**, above, is a summary of the Bureau's role, activities and outcomes.

**Part 2, Prevention Services Available**, will describe 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**, will present research programs of the Bureau and some resulting data and conclusions.

**Part 4, Challenges**, will discuss how current information gathering and sharing can be improved and provide an update on the initiative in this area.

**Part 5, Developments**, will outline 2014 developments and some prospects for the immediate future.

## 2. PREVENTION SERVICES AVAILABLE

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### I. SAFETYWORKS!

Services provided by SafetyWorks! include on-site and off-site occupational safety and health training, consultations and outreach (non-enforcement), indoor air quality assessments and prevention functions of the Bureau of Labor Standards (BLS). Under its umbrella, a variety of free education, consultations, and outreach services are made available to Maine employers, employees, and educators. These services are voluntary and provided only at the request of the employer at no cost. These activities include use of the Maine Workers' Compensation Board (WCB) data supplementing the US Bureau of Labor Statistics and OSHA data to respond to requests for information from the OSH community and the general public on the safety and health status of Maine workers.

SafetyWorks! instructors may design their safety training programs based on industry profiles generated from data from the WCB *First Report of Occupational Injury or Disease* among 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. This information allows outreach and education activities to be tailored to those employers and their needs.

#### A. Employer and Employee Training and Education

**General OSH Training** - SafetyWorks! staff develop and offer industry-specific and problem-specific training. WCB data can suggest the need for, and direct the selection of the components of such training. In addition, the Bureau provides OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different curricula, all upgraded during the summer of 2013, of all types 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. Scheduled public training is offered at the SafetyWorks! Training Institute, and at local CareerCenters. Employer training is delivered at the worksite at the employer's request. In fiscal year 2012, 438 safety classes were completed with 8,534 attendees. In 2012, the SafetyWorks! Training Institute was relocated from Fairfield to the Central Maine Commerce Center in North Augusta. This state-of-the-art training center has realistic, safety mock-ups for experiential, adult learning.

**Youth Employment Education** - A special emphasis for the Bureau is the education of young workers. As you will see in the data section, a high proportion of the injuries and illnesses reported occur to young workers and to workers with little experience. The Bureau regularly works with the vocational technical high schools to provide teen students with 10-hour standards training and with the Penobscot Job Corps to train their students prior to entering the workforce. The Wage & Hour Division expanded its education and outreach to provide additional compliance assistance to the employers of Maine minors.

#### B. 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 Unit

(R&S) of the Bureau can provide a Maine employer with a profile of that employer's injury and illness experience over a number of 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. Between November 1, 2012, and October 31, 2013, 31 employer profile/data requests were answered.

**On-Site Consultation** - 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.

A typical employer consultation can 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 advisory, confidential, and cooperative in nature. In fiscal 2014, 747 employer on-site consultations were requested and completed.

For more on the services offered by the SafetyWorks! program, go to: [www.safetyworksmaine.com](http://www.safetyworksmaine.com).

## **II. ENFORCEMENT**

Despite all the voluntary resources available, there is a need to determine compliance on a non-voluntary basis if, for no other reason, as a check on the Bureau's voluntary process. In order to accomplish that, there are several enforcement programs in place. The Bureau keeps those separate from the SafetyWorks! programs to distinguish them from those which are voluntary. The enforcement activity is triggered through targeted random inspections, complaints and/or known issues which are typically discovered through analysis of one or more data sources (as outlined in Section 3 of this report).

### **A. Youth Work Permits**

To protect young workers, the Wage and Hour Division of the Bureau reviews and approves or denies work permit applications for workers under the age of 16. The approval process involves school verification of the young worker's age and that the young worker has passing grades. Then the work duties and environment are cleared as appropriate or non-hazardous for the age of the worker. From July 1, 2013, to June 30, 2014, 2,762 work permits were approved and only 40 permits were denied.

### **B. Wage and Hour Enforcement**

In addition to the issuance of work permits, the Wage and Hour Division inspects employers for compliance with Maine wage and hour and youth employment laws, which have an

occupational safety and health component. The Division can use age data from the WCB *First Report of Occupational Injury or Disease* to select industries and employers for inspection. Employers are also identified for inspections based on combinations of certain administrative criteria and past compliance. From July 1, 2013, to June 30, 2014 the Division conducted 2,169 self-directed inspections finding 340 separate violations. There were also 533 complaint assignments finding 243 violations. There were 5 youth employment violations involving hazardous occupations. The other child labor violations involved the number of hours worked or the time of day the work was performed beyond state labor law limits.

### **C. Public-Sector Site Safety Inspections**

The Workplace Safety and Health (WS&H) Division of the Bureau enforces safety regulations based on US OSHA standards *in the public sector only* and is therefore responsible for the health and safety of employees of state and local governments and quasi-state/municipal agencies. The Board of Occupational Safety and Health, whose members are appointed by the Governor, oversees public sector safety and health enforcement. WS&H prioritizes state and local agencies for inspection based on reports of deaths or serious injuries requiring overnight hospital stays, complaints from employees or employee representatives, the agencies' injury and illness data from the WCB, and the results of the Survey of Occupational Injuries and Illnesses (SOII). WS&H compliance officers conduct randomly selected, unannounced inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; however, this shutdown is not mandatory. By way of comparison with OSHA activity in the private sector (below), there were 119 public sector employers and 826 site inspections completed in federal fiscal year 2014 (October 2013 through September 2014); the inspections resulted in 2,438 violations cited and \$232,200 assessed in penalties before reductions for size of the employer and good faith abatement efforts.

### **D. Private-Sector Site Safety Inspections (US/OSHA)**

In Maine, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) enforces federal workplace health and safety standards in the private sector in parallel with the Bureau's enforcement in the public sector. OSHA prioritizes employers for inspection based on the employers' injury and illness data from the OSHA Data Initiative (ODI), LEPs or NEPs – both typically developed using the ODI, and complaints from employees or employee representatives. OSHA compliance officers likewise conduct randomly selected, unannounced and complaint-based inspections of the work environment and can cite employers for non-compliance with safety and health standards, which usually carry fines. As in the public sector, 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 required to shut down the operation. OSHA conducted 435 inspections in Maine for federal fiscal year 2014 (October 2013 through September 2014) resulting in 766 citations and \$1,861,805 in penalties.

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, through continuous injury surveillance programs and through conducting focused studies.

### 3. RESEARCH AND DATA AVAILABLE

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#### I. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS

The Research and Statistics Unit in the Technical Services 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)
- U.S. OSHA Data Initiative (ODI)
- Occupational Fatality Reporting Program

Combined, the results of these surveys 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. The database includes:

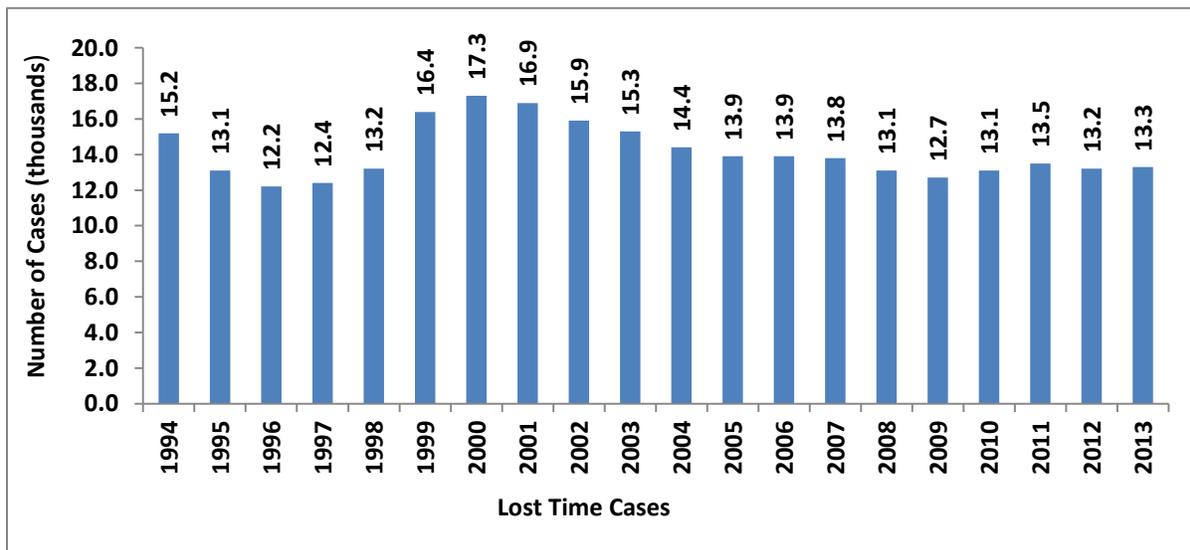
- 1) Characteristics of the employer
- 2) Characteristics of the employee
- 3) Characteristics of the workplace
- 4) Characteristics and results of the incident
- 5) Characteristics and results of the workers' compensation claim

Because the data are tied to the WCB administrative data, the consistency and completeness of administrative data is critical. The Bureau analyzes the WCB data and provides injury profiles to employers and safety professionals to use in prevention and training activities. The following is a summary of the data from this program.

#### *i. Twenty-Year Pattern of Disabling Cases, Maine (1994–2013)*

In 2013, there were 13,273 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure C-3 shows the 20-year trend of disabling cases. The figure shows in 2013 an increase of 86 cases over 2012. There has been a 16.5 percent reduction in disabling cases reported from 2003; about a 32 percent reduction since the 1992 reforms.

**Figure C-3: Twenty-Year Pattern of Disabling WCB Cases, 1994–2013**



**ii. Geographic Distribution of Disabling Cases, Maine (2010–2012)**

Geographic distribution data can be useful in health and safety related planning and setting respective enforcement and consultation priorities by region. Table C-4 provides the number of disabling cases statewide and by county for calendar years 2011 through 2013 and respective injury rates for each. These rates are based on numbers of employees in the respective regions and are not on employee-hours worked. As shown in Table C-4, 2013 injury rates in seven of the sixteen counties (Sagadahoc, Kennebec, Washington, Oxford, Penobscot, Waldo and Lincoln) were higher than the state-wide rate.

**Table C-4: Geographical Distribution of Disabling Cases, Maine (2011–2013)**

| County       | 2011          |                |                | 2012          |                |                | 2013          |                |                |
|--------------|---------------|----------------|----------------|---------------|----------------|----------------|---------------|----------------|----------------|
|              | Cases         | Employment     | Rate Per 1,000 | Cases         | Employment     | Rate Per 1,000 | Cases         | Employment     | Rate Per 1,000 |
| Sagadahoc    | 641           | 14,786         | 43.4           | 623           | 14,648         | 42.5           | 565           | 14,890         | 37.9           |
| Kennebec     | 1,475         | 55,558         | 26.5           | 1,477         | 55,540         | 26.6           | 1,540         | 56,534         | 36.7           |
| Washington   | 280           | 9,846          | 28.4           | 281           | 9,751          | 28.8           | 255           | 9,672          | 26.4           |
| Oxford       | 415           | 16,018         | 25.9           | 398           | 16,313         | 24.4           | 414           | 16,501         | 25.1           |
| Penobscot    | 1,520         | 67,025         | 22.7           | 1,491         | 67,649         | 22.0           | 1,648         | 68,046         | 24.2           |
| Waldo        | 239           | 10,504         | 22.8           | 241           | 10,571         | 22.8           | 257           | 10,899         | 23.6           |
| Lincoln      | 264           | 10,702         | 24.7           | 259           | 11,002         | 23.5           | 259           | 11,013         | 23.5           |
| <b>Maine</b> | <b>13,536</b> | <b>565,274</b> | <b>23.9</b>    | <b>13,187</b> | <b>568,809</b> | <b>23.2</b>    | <b>13,273</b> | <b>564,766</b> | <b>23.5</b>    |
| Aroostook    | 669           | 26,945         | 24.8           | 669           | 26,945         | 24.8           | 646           | 27,644         | 23.4           |
| Knox         | 414           | 16,370         | 25.3           | 366           | 16,629         | 22.0           | 388           | 16,861         | 23.3           |
| Androscoggin | 1,102         | 46,897         | 23.5           | 1,108         | 47,222         | 23.5           | 1,083         | 47,471         | 22.8           |
| Somerset     | 466           | 16,653         | 28.0           | 405           | 16,781         | 24.1           | 382           | 16,970         | 22.5           |
| Cumberland   | 3,597         | 167,044        | 21.5           | 3,586         | 168,792        | 21.2           | 3,783         | 169,947        | 22.3           |
| Hancock      | 496           | 21,710         | 22.8           | 463           | 21,488         | 21.5           | 456           | 20,668         | 22.1           |
| York         | 1,348         | 60,548         | 22.3           | 1,357         | 61,226         | 22.2           | 1,275         | 61,486         | 20.7           |
| Piscataquis  | 123           | 5,500          | 22.4           | 101           | 5,423          | 18.6           | 100           | 5,433          | 18.4           |
| Franklin     | 207           | 10,746         | 19.3           | 140           | 10,732         | 13.0           | 162           | 10,731         | 15.1           |
| Unknown*     | 29            |                |                | 265           |                |                | 60            |                |                |

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

**Sources:** The case data are from the Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*. The employment data are from the Center for Workforce Research and Information, Maine Department of Labor; and includes all non-federal private- and public- sector employment.

**iii. Disabling Cases by Occupational Groups, Maine (2011–2013)**

Ten occupational groups accounted for more than 70 percent of all reported disabling injuries in 2013. Table C-5 describes the top ten occupational groups with corresponding rates. Further research may be warranted to study the trends and patterns of injuries and illnesses within these ten occupational groups to identify the occupational risk factors.

**Table C-5: Disabling Cases by Occupational Groups, Maine (2011–2013)**

| Occupational Groups                           | 2011          |              | 2012          |              | 2013          |            |
|-----------------------------------------------|---------------|--------------|---------------|--------------|---------------|------------|
|                                               | Number        | Percent      | Number        | Percent      | Number        | Percent    |
| Transportation and Material Moving            | 1,649         | 12.2         | 1,664         | 12.6         | 2,099         | 15.8       |
| Production                                    | 1,137         | 8.4          | 1,329         | 10.1         | 1,238         | 9.3        |
| Installation, Maintenance, and Repair         | 1,111         | 8.2          | 1,053         | 8.0          | 1,156         | 8.7        |
| Construction and Extraction                   | 1,048         | 7.7          | 1,081         | 8.2          | 1,028         | 7.7        |
| Food Preparation and Serving                  | 934           | 6.9          | 916           | 6.9          | 974           | 7.3        |
| Office and Administrative Support             | 1,207         | 8.9          | 1,072         | 8.1          | 913           | 6.9        |
| Healthcare Support                            | 955           | 7.1          | 923           | 7.0          | 856           | 6.4        |
| Building and Grounds Cleaning and Maintenance | 843           | 6.2          | 716           | 5.4          | 786           | 5.9        |
| Healthcare Practitioners and Technicians*     | -             | -            | -             | -            | 709           | 5.3        |
| Sales and Related Occupations                 | 700           | 5.2          | 711           | 5.4          | 660           | 5.0        |
| Other Occupational Groups                     | 3,952         | 29.2         | 3,722         | 28.2         | 2,854         | 21.5       |
| <b>Total</b>                                  | <b>13,536</b> | <b>100.0</b> | <b>13,187</b> | <b>100.0</b> | <b>13,273</b> | <b>100</b> |

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

\*Not tabulated for 2011 and 2012

#### **iv. Length of Service of Injured Worker, Maine, 2011–2013**

Based on the WCB data, the Bureau has monitored two significant patterns relating to employee length of service and disabling injuries. First, new hires (under one year of service) have historically comprised roughly one quarter (and in some years more) of all disabling cases. New hires have a significantly higher injury rate than those who had been with their employers for a year or more. While injuries among new hires have actually trended down from a high of 36 percent in 2004, new hires still accounted for 28.6 percent of the disabling *First Reports* in 2013. This suggests that programs and efforts to assure the safety of new employees are still warranted.

Second, disabling cases for workers having 15 or more years of service with the same employer have increased, from 10.3 percent in 2001 to 15.2 percent in 2013 and disabling cases for workers with 20 or more years with the same employer increased from 5.9 percent in 2001 to 10.1 percent in 2013. However, having more injuries and illness among this group may or may not mean there are intrinsic factors that drive the injury rates for this group. There may be more injuries solely because there are more workers in this category as Maine's workforce ages due to the high proportion of older workers.

Nevertheless, these changes merit further attention to determine any long term projections and ramifications of this trend. For example, factors such as the economic downturn of 2008 - 2012 and its incentive for older workers to delay retirement and for employers to use the workforce in place (without recruiting new or additional employees) could be further evaluated to guide future policies and responses.

**Table C-6: Length of Service of Injured Worker, Maine, 2011–2013**

| Length of Service of the Injured Worker | Disabling Cases |              |               |              |              |              |
|-----------------------------------------|-----------------|--------------|---------------|--------------|--------------|--------------|
|                                         | 2011            |              | 2012          |              | 2013         |              |
|                                         | Number          | Percent      | Number        | Percent      | Number       | Percent      |
| Under 1 Year                            | 3,814           | 28.2         | 3,185         | 24.2         | 3276         | 24.7         |
| 1 Year                                  | 1,491           | 11.0         | 1,512         | 11.5         | 857          | 6.5          |
| 2 Years                                 | 1,027           | 7.6          | 929           | 7.0          | 1205         | 9.1          |
| 3-4 Years                               | 1,532           | 11.3         | 1,365         | 10.4         | 1330         | 10.0         |
| 5-9 Years                               | 2,410           | 17.8         | 2,328         | 17.7         | 2493         | 18.8         |
| 10-14 Years                             | 1,234           | 9.1          | 1,169         | 8.9          | 1208         | 9.1          |
| 15-19 Years                             | 549             | 4.1          | 549           | 4.2          | 674          | 5.1          |
| 20+ Years                               | 1,325           | 9.8          | 1,323         | 10.0         | 1341         | 10.1         |
| Unknown                                 | 154             | 1.1          | 827           | 6.2          | 889          | 6.7          |
| <b>Total</b>                            | <b>13,536</b>   | <b>100.0</b> | <b>13,187</b> | <b>100.0</b> | <b>13273</b> | <b>100.0</b> |

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

*Note:* For 2012 and 2013 null entries were placed in the "Unknown" instead of the "Under 1 Year" category.

**v. Age of Injured Worker, Maine, 2001, 2011–2013**

Related to the issue of injury rates and length of service, the Bureau has also been tracking how the aging workforce relates to disabling Workers' Compensation Claims. As can be seen in Table C-7, the proportion of injuries occurring to those workers age 50 and older has risen from 20.2 percent in 2001 to 36.2 percent in 2013. This is not surprising since, according to the Maine Jobs Council's 2010 report: *Maine's Aging Workforce: Opportunities and Challenges*, "By 2018, nearly one-quarter of the labor force will be age 55 and older." (The Maine Jobs Council is now known as the State Workforce Investment Board.) With a higher percentage of older workers in the work force, there is likely to be a correspondingly higher number of injuries and illness involving older workers. However, there is yet no clear evidence that older workers are intrinsically more prone to injuries and illnesses than other workers or that their injuries are more costly. Employment and injury data suggest that injury rates (number of injuries per worker) in this older population have not increased over recent years.

**Table C-7: Age of Injured Worker, Maine, 2001 and 2011-2013**

| Age of the Injured Worker | Disabling Cases |              |               |              |               |              |               |            |
|---------------------------|-----------------|--------------|---------------|--------------|---------------|--------------|---------------|------------|
|                           | 2001            |              | 2011          |              | 2012          |              | 2013          |            |
|                           | Number          | Percent      | Number        | Percent      | Number        | Percent      | Number        | Percent    |
| Under 19                  | 397             | 2.3          | 174           | 1.3          | 145           | 1.1          | 184           | 1.4        |
| 19-24                     | 2,182           | 12.9         | 1,517         | 11.2         | 1,522         | 11.5         | 1,437         | 10.8       |
| 25-29                     | 1,816           | 10.8         | 1,374         | 10.2         | 1,315         | 10.0         | 1,372         | 10.3       |
| 30-34                     | 2,157           | 12.8         | 1,209         | 8.9          | 1,257         | 9.5          | 1,228         | 9.3        |
| 35-39                     | 2,407           | 14.3         | 1,292         | 9.5          | 1,217         | 9.2          | 1,159         | 8.7        |
| 40-44                     | 2,464           | 14.6         | 1,496         | 11.1         | 1,505         | 11.4         | 1,449         | 10.9       |
| 45-49                     | 2,036           | 12.1         | 1,802         | 13.3         | 1,621         | 12.3         | 1,638         | 12.3       |
| 50-54                     | 1,548           | 9.2          | 1,892         | 14.0         | 1,783         | 13.5         | 1,806         | 13.6       |
| 55-59                     | 1,021           | 6.0          | 1,510         | 11.2         | 1,483         | 11.2         | 1,588         | 12.0       |
| 60+                       | 849             | 5.0          | 1,270         | 9.4          | 1,339         | 10.2         | 1,412         | 10.6       |
| Missing                   | 3               | N/A          | N/A           | N/A          | N/A           | N/A          | N/A           | N/A        |
| <b>Total</b>              | <b>16,879</b>   | <b>100.0</b> | <b>13,536</b> | <b>100.0</b> | <b>13,187</b> | <b>100.0</b> | <b>13,273</b> | <b>100</b> |

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

**B. U.S. Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII) SHA Recordable Cases**

Since 1972, the Maine Bureau of Labor Standards has partnered with the U.S. Bureau of Labor Statistics through a cooperative agreement to collect data through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published annually on the U.S. Bureau of Labor Statistics website at this link: <http://www.bls.gov/iif/oshstate.htm#ME>.

The data are generated from a random sample stratified by industry and establishment size. There are more than 3,000 work establishments in the sample in any given year. For the year 2013, the Maine Bureau of Labor Standards surveyed 2,951 private establishments and 524 public-sector agencies, 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, incidence rates are produced. The incident rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year. Unlike the rates generated from employment as the denominator, these rates take into account part-time and overtime exposure hours.

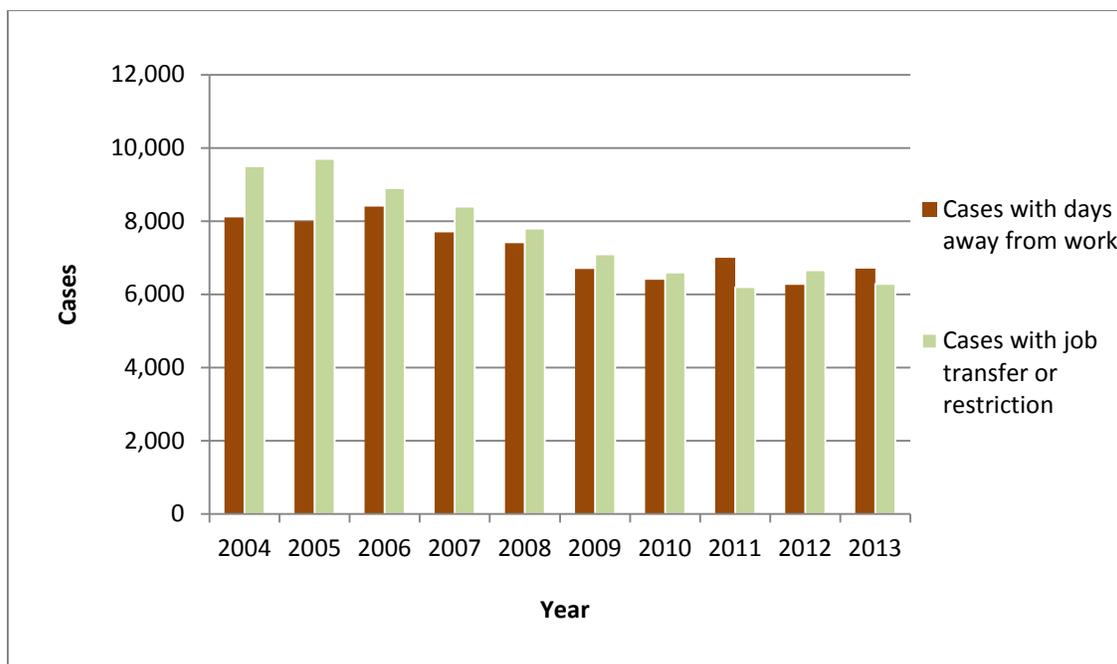
Figures C-4 and C-5 display results from the 2013 SOII. Data collected from this survey is not comparable with the WCB rate data for the following reasons:

- The two systems use different definitions of recordability of work-related cases.
- WCB rates are employment-based while the SOII rates are computed based on hours worked converted into full-time equivalents (FTEs).
- 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 Reportable Case Numbers and Rates**

There has been an ongoing debate in the OSH community about using the number versus rates; thus, the SOII estimates both. Figure C-4 provides the estimated number of recordable cases while Figure C-5 depicts the rates. The rates take into account 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-4: Lost Workday and Restricted Work Activity Cases (2004–2013)**

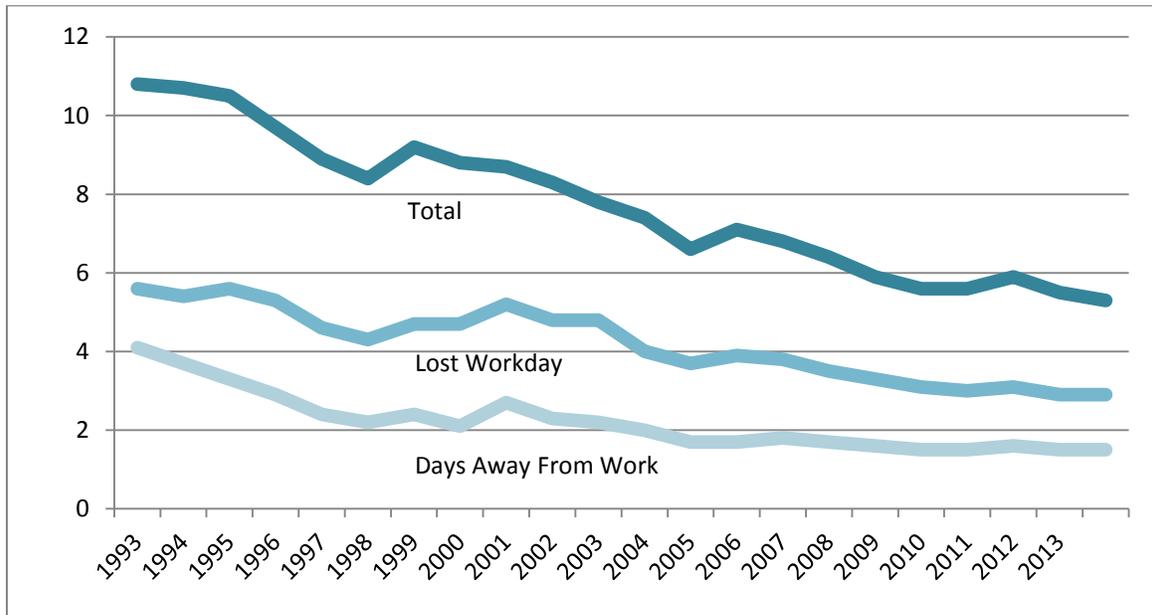


For 2013, there were an estimated total of 12,995 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total it was estimated that 6,704 cases resulted in at least one day away from work and 6,595 cases resulted in job transfer or restriction without any days away from work.

**ii. OSHA Reportable 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-5: Total Recordable, Lost Workday or DART and Days Away from Work Cases per 100 FTEs (1993–2013)**



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

Figure C-5 shows the general decline in the rate of injuries and illnesses reported. This table is per 100 full-time equivalents (FTEs) computed from employer-reported total hours worked.

The Total and Lost Workday rates have decreased by 28.3% from 2003 and by on half from 1993. The Days Away, Restricted, Transferred (DART) rate has decreased by over one quarter from 2003 and by nearly half from the 1993 Lost Workday rate. Note that there was a change in this time period between the years 2001 and 2002, when OSHA recordkeeping definitions were changed. In any case, this is a significant decrease, seen only as small decrements looking at them from year to year.

Again, more SOII rate data from 1996–2013 are published on the U.S. Bureau of Labor Statistics website at this link: <http://stats.bls.gov/iif/oshstate.htm#ME>.

**iii. Industry Sector Data**

According to the 2013 SOII (private sector), Transportation Equipment Manufacturing recorded the highest total recordable incidence rate of 14.3 per 100 FTEs. Table C-8 describes the top-ten private-industry total recordable rates.

**Table C-8: Industries with the Top-Ten Total Recordable Rates, Maine, 2013**

| <b>Industry Group</b>                                                        | <b>Cases per 100 FTEs</b> |
|------------------------------------------------------------------------------|---------------------------|
| Transportation Equipment Manufacturing                                       | 14.3                      |
| Nursing Care Facilities                                                      | 12.4                      |
| Residential Mental Retardation, Mental Health and Substance Abuse Facilities | 11.2                      |
| Fuel Dealers                                                                 | 10.6                      |
| Other Amusement and Recreation Industries                                    | 9.6                       |
| Sawmills                                                                     | 9.3                       |
| Home Health Care Services                                                    | 8.8                       |
| Warehousing and Storage                                                      | 8.7                       |
| Waste Management and Remediation Services                                    | 8.5                       |
| Other General Merchandise Stores                                             | 7.7                       |
| <b>All Private Industries</b>                                                | <b>5.3</b>                |

**Source:** US Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*

The link at <http://www.bls.gov/iif/oshstate.htm#ME> has rates for most of the major industries.

**U.S. Bureau of Labor Statistics, Census of Fatality Occupational Injury Program (CFOI)**

Since 1992, the Maine Bureau of Labor Standards has worked in partnership with the U.S. Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine.

The CFOI program is a federal/state cooperative program to collect data on all fatal occupational injuries. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The 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.

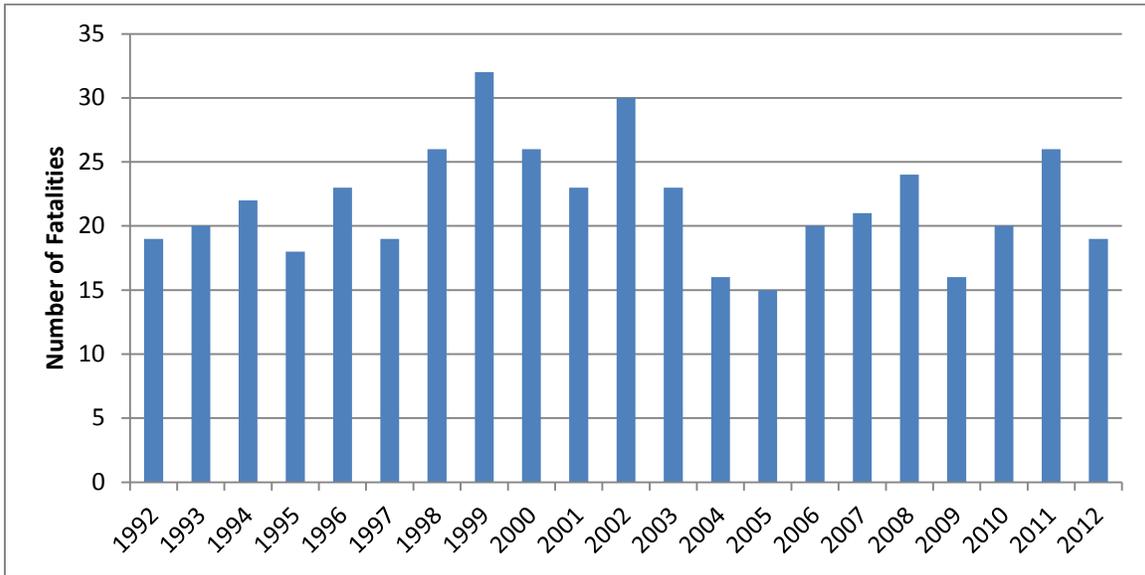
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include the WCB *Employer's First Reports of Occupational Injury or Disease*, and fatality reports from the following agencies and sources: 1) death certificates from Maine Center for Disease Control and Prevention, 2) the Chief Medical Examiner's Office, 3) the Department of Marine Resources, 4) investigative reports and motor vehicle accident reports from the Maine State Police, 5) investigative reports from the local police and sheriff's department, 6) the U.S. Coast Guard; 7) OSHA reports, and 8) newspaper clippings and other public media.

Only fatalities due to injuries are included in the CFOI. 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.

**i. Fatal Occupational Injuries, Maine (1992–2012)**

Figure C-6 shows the numbers of work-related fatalities recorded in Maine from 1992–2012.

**Figure C-6: Work-Related Fatalities, Maine (1992–2012)**



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 2012 data by several categories: by year, by occupation, by type of fatal event, by primary source (mostly vehicle accidents) and by age of the victim. The nature of these reports is tightly restricted by the US BLS, and the final form of the report must be approved by that agency. Thus, rather than publishing this information in two separate places, the reader is referred to the original document. Please see:

[http://www.maine.gov/labor/labor\\_stats/publications/foi/CF012.pdf](http://www.maine.gov/labor/labor_stats/publications/foi/CF012.pdf).

Finalized numbers for 2013 fatalities will not be available until spring of 2015.

**C. OSHA Data Initiative (ODI)**

From 1993 through 2012, the Bureau received a grant from US 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 US OSHA LEP. Due to the federal sequester in fiscal year 2013, the ODI initiative was not funded and has not been funded since.

#### **D. Occupational Fatality Reports**

Ten years ago, BLS piloted a fatality assessment, control and evaluation (FACE) program designed after the US 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.

Planned 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.

#### **E. Worker’s Memorial Day**

On April 28, 2014, representatives from the Bureau of Labor Standards joined others to honor the 22 Maine workers who died while on the job in 2013. Worker’s Memorial Day is observed every year on April 28, the day of OSHA’s establishment in 1971. The commemoration gathers community leaders, families of fallen workers, and employers to discuss the ongoing commitment of Maine employers to have no on-the-job fatalities by providing safe and healthy workplaces for all of Maine’s working men and women. Through the Bureau of Labor Standards SafetyWorks! program, training and education is offered to employers to ensure this obligation.

#### **F. Employer Substance-Abuse Testing**

Under the Maine Substance Abuse 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 abuse testing program. Employers can either use a model policy available from the Bureau or develop their own drug testing policy that complies with Maine drug testing laws (The Maine Substance Abuse Testing Law, Title 26 MRSA, Section 680 *et seq.*).

The Maine Substance Abuse 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 abuse testing policies.
  - Conducts the annual survey of substance abuse testing.
  - Analyzes testing data and publishes the annual report.
  - Provides models for Applicant and Employee Testing Policies.

- The Maine Department of Health and Human Services (DHHS), which licenses testing laboratories, and the Office of Substance Abuse Services within DHHS, which reviews and approves employee assistance programs (EAPs) for employers who do probable cause or random and arbitrary testing. (Any employer with more than 20 full-time employees must have a functioning EAP prior to testing their employees under the current statute.)

In 2013, the annual survey indicated that a total of 24,225 tests were administered by employers with approved policies and 1,100 (4.5%) of these tests were positives. Of the 23,284 job applicants tested, 1,068 (4.6%) tested positive for illegal substances. Table C-9 shows the total and applicant test results for the last ten years while Table C-10 describes the corresponding results for probable cause and random testing.

For a full report, visit: [www.maine.gov/labor/labor\\_stats/publications/substanceabuse](http://www.maine.gov/labor/labor_stats/publications/substanceabuse). Survey data for 2013 will be available by April 1, 2014.

**Table C-9: Results of Overall and Applicant Substance Abuse Testing (2004–2013)**

| Year | Approved Policies | Total Tests |           |     | Job Applicant Testing |           |     |
|------|-------------------|-------------|-----------|-----|-----------------------|-----------|-----|
|      |                   | Tests       | Positives | (%) | Tests                 | Positives | (%) |
| 2004 | 287               | 17,428      | 826       | 4.7 | 16,702                | 803       | 4.8 |
| 2005 | 310               | 17,742      | 749       | 4.2 | 16,876                | 706       | 4.2 |
| 2006 | 325               | 18,112      | 853       | 4.7 | 17,364                | 824       | 4.7 |
| 2007 | 350               | 22,641      | 1,110     | 4.9 | 21,700                | 1,076     | 5.0 |
| 2008 | 384               | 23,437      | 1,086     | 4.7 | 22,477                | 1,045     | 4.7 |
| 2009 | 412               | 17,399      | 666       | 3.8 | 16,719                | 631       | 3.8 |
| 2010 | 433               | 21,388      | 931       | 4.3 | 20,267                | 897       | 4.4 |
| 2011 | 436               | 16,100      | 545       | 3.4 | 15,580                | 532       | 3.4 |
| 2012 | 452               | 17,229      | 634       | 3.7 | 15,938                | 602       | 3.8 |
| 2013 | 487               | 24,225      | 1,100     | 4.5 | 23,284                | 1,068     | 4.6 |

**Table C-10: Results of Probable and Random Substance Abuse Testing (2004–2013)**

| Year | Approved Policies | Probable Cause Testing |           |      | Random Testing |           |     |
|------|-------------------|------------------------|-----------|------|----------------|-----------|-----|
|      |                   | Tests                  | Positives | (%)  | Tests          | Positives | (%) |
| 2004 | 287               | 6                      | 1         | 16.7 | 720            | 22        | 3.1 |
| 2005 | 310               | 18                     | 9         | 50.0 | 863            | 34        | 3.9 |
| 2006 | 325               | 18                     | 2         | 11.1 | 730            | 27        | 3.7 |
| 2007 | 350               | 5                      | 4         | 80.0 | 936            | 30        | 3.2 |
| 2008 | 384               | 13                     | 2         | 15.4 | 947            | 37        | 3.9 |
| 2009 | 412               | 16                     | 6         | 37.5 | 664            | 29        | 4.4 |
| 2010 | 433               | 39                     | 6         | 16.2 | 1,082          | 29        | 2.6 |
| 2011 | 436               | 12                     | 3         | 25.0 | 847            | 16        | 1.9 |
| 2012 | 452               | 20                     | 3         | 15.0 | 1,271          | 30        | 2.4 |
| 2013 | 487               | 44                     | 3         | 6.8  | 897            | 29        | 3.2 |

## II. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT

### A. OSHA Recordkeeping Employer Outreach Initiative

The Survey of Occupational Injuries and Illnesses and the OSHA Data Initiative survey depend on the accuracy of data tabulated from the OSHA Recordkeeping process. Additionally US OSHA enforces OSHA recordkeeping law and rules and fines employers for non-compliance. To ensure the accuracy of the data and to help employers comply with OSHA recordkeeping guidelines and avoid the fines, the Research and Statistics Unit provides formal training, consultation, and outreach functions to Maine employers, at no additional cost.

In 2014, the BLS Research and Statistics training staff conducted classes in various locations in the state from Portland to Presque Isle. In 2014, there were twelve sessions offered throughout the state. Some of this training was placed on the web in video format in 2013.

Also, of note, in October 2014, OSHA announced two major changes to the OSHA Recordkeeping Standard beginning January 1, 2015. One was a list of high-hazard industries subject to the OSHA recordkeeping rules based on the establishment's NAICS code (replacing the Standard Industrial Classification Code). The other change was new rules detailing what types of catastrophic events must be reported directly to Federal OSHA: fatalities, amputations, and in-patient hospitalizations. Information on these recordkeeping changes is available at <https://www.osha.gov/recordkeeping2014/index.html>.

Because of these changes, we offered four additional recordkeeping classes in November and December 2014. We also publicized these changes ahead of time via the Internet, email, newspaper articles, and outreach to affected organizations and associations.

In addition of note in Maine, US OSHA enforces OSHA recordkeeping rules (CFR1904) for private-sector establishments. Public-sector (state and local government employers) enforcement falls under the Bureau of Labor Standards, Workplace Safety and Health Division.

## **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 Unit conducted the following special research projects in 2012 - 2013: (<http://www.maine.gov/labor/bls/techserv.html>)

- Tableau: An Interactive Workers' Compensation Database
- 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* (pending publication)

### **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 will be updated on an annual basis and is now available at: <http://www.maine.gov/labor/bls/techserv.html>.

### **ii. *Slipping and Falling on Ice: A Serious Workplace Hazard***

Snow and ice cover Maine for most of the cold months, transforming our state into a true "winter wonderland" that is enjoyed by thousands. However, those same forms of frozen water pose serious hazards for work-related and other activities. Slipping and falling on ice may seem a common and inevitable nuisance in the winter, it may even seem comical at times; however, people sustain serious injuries from winter slips and falls. Each year, hundreds of Maine workers get hurt and lose valuable work time by slipping or falling on ice and snow. Indeed, the frequency of these incidents should raise more concern for everyone, employers and workers in particular.

Using information provided by the Maine Workers' Compensation Board (WCB) illness and injury claims database, this report examines the nature and extent of injuries occurring due to slipping and falling on snow and ice. It includes data about the physical effects the injured employees sustain; the financial burdens injuries place on employees, employers and insurance carriers; and factors that might affect the frequency of these accidents. This report aims to better define and examine the problem and its causes in the hope of guiding further work to foster effective measures that reduce these kinds of injuries to Maine workers.

**iii. *Injuries Incurred by Maine's EMTs, EMT/Firefighters and Paramedics***

This report presents 2012 data pertaining to injuries incurred by Maine's emergency medical technicians (EMTs), EMT/firefighters and paramedics where a significant number of similar injury events were recorded. Research and data analysis resulted in findings that 35 percent of injury events were due to overexertion while lifting, transporting or assisting injured or ill persons. Findings also show that sprain and strain injuries accounted for 93.6 percent of the overexertion injuries and that the back was the body part injured most often, accounting for 44.7 percent of the cases. These injuries occurred with and without the use of mobility or lift assistance equipment.

**iv. *Injuries and Illnesses Due to Workplace Chemicals and Related Hazards (pending publication)***

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.

**v. *Roofing and Exterior Worker Falls in Maine, 2011 – 2013 (pending publication)***

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. This report provides data on the causes of these incidents, the kinds of injuries incurred by the workers, and the associated Workers' Compensation costs. It also provides information regarding federal regulations and standards enforced by OSHA and the Maine Department of Labor, pertaining to fall protection safety in the construction industry and penalties levies for violations of those standards.

## 4. CHALLENGES

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The following items are challenges identified this year or ones that continue from previous years.

### I. SAFETY EDUCATION & TRAINING FUNDING

The Bureau's prevention efforts are funded through four federal cooperative grants and the state Safety and Education Training Fund (SETF). The SETF funds some programs and activities directly and is used to provide the matching funds required by the federal grants.

As explained in the Introduction, the SETF fund is currently capped at 1 percent of the payouts from Workers' Compensation claims. That total has declined in recent years due to fewer injuries occurring and declining compensation costs, while at the same time the Bureau's prevention expenses have climbed. In a sense this dilemma is happening because the program goals are being achieved, the Bureau is performing the ideal—which is putting itself out of business. However, this may also mean an eventual decrease in the education, consultation, and research activities that are now serving to maintain the decrease.

The reality is that SETF funding barely meets all the program costs today and the worry is that it may not be sufficient to sustain a steady-state level of prevention in the future. There will be increased pressure, therefore, to resolve this in one or more of following three ways:

- Locate alternative funding sources for the current activities funded through the SETF.
  - Seek additional grant funding where possible.
  - Seek additional General Fund monies if appropriate.
- Raise the cap on the fund.
- Cut services currently provided and funded by the SETF.
- Reduce the capacity of some services, likely resulting in longer wait times.

The most likely the short-term solution will be a combination of the three.

### 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 programs rather than keeping a separate repository of injury and illness data. In fact, the Bureau codes the information from Workers' Compensation First Reports and directly enters that coded data back into the Workers' Compensation system, from which it can then pull the stored data as needed for research or responding to inquiries.

As of January 1, 2005, all filings of the *Employer's First Report of Occupational Injury or Disease* were required to be submitted to the WCB through electronic data interchange (EDI), computer-to-computer, using one of two formats. One is the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3.0 format. Under the new EDI standard, certain fields are classified as "required," that is, necessary for a claim to be processed. Others are classified as "expected," that is, not required for a claim to be processed but necessary to complete a report. Although the WCB will request missing "expected" data from the reporting entity, the data may not be

available at the time the Bureau does its coding. The “expected” field will be changed to “required” as part of the upgrade in progress to the EDI system. This should fill in substantial holes in the data.

Because the Bureau’s coders are the first humans to view the electronic data, and they frequently access the data for research and inquiries, they are usually the first to notice data quality problems. Over the past year the Bureau’s staff has identified data problems of two distinct types:

1. **Ambiguity and coding uncertainty:** The Bureau’s coders follow strict rules about coding items where uncertainty exists. In some cases specific information is identified in the report that is not in the coding system and must be coded as “Not Elsewhere Classified” or “NEC.” In other cases not enough information is provided in the report to accurately determine a code and must be coded as “Unspecified” or “UNS.” Still in other cases the information suggests that multiple codes be selected. Based on the prevalence of “Unspecified” codes, the Bureau can identify topics, situations, specific employer groups, and even EDI system changes where the information submitted in the First Reports is not sufficient for accurate coding and classification.

The number of “Unspecified” codes has gone down over time, which suggests that the data quality overall has been improved by the EDI process. This is probably because the EDI system consistently requires responses and is tied to a tight employer-identity system. However, it is also clear that data quality with EDI still varies widely, and the reasons for that are not always clear. Some entries are complete and precise enough for accurate coding whereas at times some entries are missing or are 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. They 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 entry (First Report), to coding conventions and choices that the Bureau’s staff can make at the end of the process. Further research will be needed to determine the sources and causes of the variance so it may be addressed and minimized.

2. **Software glitches:** While overall the data are better, recent review subsets based on sources (employers/insurers) has turned up some systems that were not allowing data to move through them. In such cases, significant effort is required by system managers and others to correct the problems, and we will continue work to identify such sources and correct the data gaps as they are discovered.

### III. RETURN-TO-WORK DATA

Returning to work for 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, indicate something about the seriousness of the individual injuries and illnesses, and can be aggregated to prioritize and call attention to certain situations. 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 an injury or illness after it occurs).

In years past, the Bureau focused on a missing date on the *First Report of Occupational Injury or Disease* called return-to-work. Over the years, the Bureau noted between 18 and 20 percent of the cases seemed to lack a “return-to-work” date when an “incapacity date” was provided, which meant there was uncertainty about whether the cases were actually resolved. A few years ago, Bureau staff and the Monitoring and Enforcement Unit at the Workers’ Compensation Board identified how to locate that information in the system when it is not on the *First Report*. After this effort and research and redefinition-of-return to work to account for other events, the Bureau has determined that only 5 to 15 percent of the cases are actually unresolved or “open” and therefore legitimately lack a return-to-work date. All the other cases are resolved or “closed,” even though they may not necessarily have a recorded return-to-work date. The current data represent a “snapshot” and are constantly changing, even for past years.

From this research, we now know that, for almost 60 percent 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 tightness. As it is, many exceptions and corrections are necessary to categorize cases that may not actually reflect individual situations

**Table C-11: Status of Lost Time Claims, Maine, 2009–2013**

| Claim Status     | Year of Injury or Illness Report |       |       |       |       | Grand Total |
|------------------|----------------------------------|-------|-------|-------|-------|-------------|
|                  | 2009                             | 2010  | 2011  | 2012  | 2013  |             |
| Lost Time Claims | 5,357                            | 5,249 | 5,104 | 4,710 | 4,600 | 25,020      |
| Open Claims      | 297                              | 358   | 363   | 482   | 651   | 2,151       |
| % Open           | 5.5%                             | 6.8%  | 7.1%  | 10.2% | 14.2% | 8.6%        |
| Closed Claims    | 5,060                            | 4,891 | 4,741 | 4,228 | 3,949 | 22,869      |
| Resumed Work     | 2,975                            | 2,786 | 3,135 | 2,890 | 2,959 | 14,745      |
| %Resumed Work    | 55.5%                            | 53.1% | 61.4% | 61.4% | 64.3% | 58.9%       |

**Source:** Workers’ Compensation Board *Employer’s First Report of Occupational Injury and Disease* subsequent payment reports

#### 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 most costly 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).

## 5. 2014 DEVELOPMENTS

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### I. GRANTS

The Bureau uses WCB data to supplement US Bureau of Labor Statistics and OSHA data in developing OSH grant applications. OSH and other funds applied for by BLS in 2013 resulted in:

- Two OSH small grant increases being awarded.
- Grant funding for two 2013 summer interns being awarded and the internships filled.

### V. PROGRAM INITIATIVES

From time to time, the Bureau initiates or enters into partnerships initiating various programs promoting occupational safety and health.

#### A. Maine Occupational Research Agenda (MORA)

In 2000, after the first Maine OSH Research Symposium, the Bureau organized the Maine Occupational Research Agenda (MORA) and the associated steering group. The MORA is modeled after the NIOSH National Occupational Research Agenda (NORA) and membership includes education and health professionals, members of several government agencies, and insurers. The Technical Services Division, in collaboration with the MORA Steering Group members, developed and moved the research agenda forward. Through the spring of 2013, MORA provided input to the Bureau on a variety of OSH issues through the review of relevant projects. However, as group attendance had declined, particularly among its private sector representatives, the group decided to suspend activities until the Bureau is able to recruit more active participants who represent the private sector and other groups outside of state government and then take measures to revitalize the group. For more information visit:

[http://www.maine.gov/labor/workplace\\_safety/mora/](http://www.maine.gov/labor/workplace_safety/mora/)

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

In order to provisionally fill the research coordination function vacated by MORA, and to foster a more proactive and cooperative working arrangement between the Research and Statistics Unit (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 regularly 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

In 2004, the Research and Statistics Unit of the Bureau intensified its efforts to place its accumulated data and data-related services before the public. This outreach initiative took the

form of such items as a promotional tri-fold, explaining the unit's profile service and describing its major data sources. These were distributed in various ways, including as handouts at seven annual conferences, such as the Maine Safety and Health Conference, Maine Municipal Association, Maine Firefighters Association, Workers' Compensation Summit, and Human Resources Conference. Unit personnel attended some of these meetings in order to answer questions and take requests for profiles.

Also a data dashboard was built and placed on the MDOL website. This was done in cooperation with staff from the Center for Workforce Research and Information and over time developed to use an interactive data visualization tool called "Tableau", which is now available on the Bureau's website, [http://www.maine.gov/labor/labor\\_stats/workinjuries.html](http://www.maine.gov/labor/labor_stats/workinjuries.html).

## **D. SHARP and SHAPE Award Programs**

Some employers have been so successful with adopting best practices that they have earned recognition from the Maine Department of Labor through the SHAPE and SHARP awards and MESHE program. As part of the award, the employer is presented a plaque in a ceremony and a flag to display at the workplace.

### ***i. SHARP***

SafetyWorks!, in partnership with US OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees on-site 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. There are 67 employer locations qualified as of January 5, 2015 including:

|                                              |                                          |
|----------------------------------------------|------------------------------------------|
| Portage Wood Products LLC (Portage)          | Everett J. Prescott, Inc. (Bangor)       |
| Artisan Boatworks                            | Everett J. Prescott, Inc. (Gardiner)     |
| Bison Pumps                                  | Everett J. Prescott, Inc. (Portland)     |
| Cianbro Corporation – Rickers Wharf          | FASTCO Corp. (Lincoln)                   |
| Cianbro Equipment (Pittsfield)               | Franciscan Home (Eagle Lake)             |
| Cianbro Fabrication Shop                     | Fraser Timber (Ashland)                  |
| Cianbro Paint Shop (Pittsfield)              | French & Webb Inc. (Belfast)             |
| Classic Boat Shop (Bernard)                  | Hinckley Company (Trenton)               |
| CM Almy, Inc.                                | Hodgdon Shipbuilding (East Boothbay)     |
| Community Living Association (Green Center)  | Howard Tool Company                      |
| Community Living Association (Roger Randall) | Hunting Dearborn, Inc. (Fryeburg)        |
| Davis Brothers (Chester)                     | Johanson Boatworks (Rockland)            |
| Deering Lumber (Biddeford)                   | Jotul North America                      |
| Deering Lumber (Springvale)                  | Katahdin Health Care (Millinocket)       |
| Deering Lumber, Inc. (Kennebunk)             | Kittery Point Yacht Yard (Kittery Point) |

Limington Lumber Company (Baldwin)  
Lonza Rockland ((Rockland)  
Lovell Lumber (Lovell)  
Lucas Tree Experts (Maintenance Facility) (Portland)  
Maine Cat  
Maine Machine Products Company (South Paris)  
Maine Oxy (Brewer)  
Maine Woods Company (Portage)  
Marden's (Scarborough)  
Marden's Inc. (Calais)  
Marden's Inc. (Ellsworth)  
Marden's Inc. (Sanford)  
Marden's Warehouse, (Waterville)  
Marden's, Inc. (Lincoln)  
Mathews Brothers (Belfast)  
Mercy Home  
Mid-State Berkshire (Winslow)  
Moose River Lumber Co., Inc. (Jackman)  
Morris Yachts (Trenton)

Northern Aquatics (Eagle Lake)  
ONESTEEL Recycle (Bangor)  
ONESTEEL Recycling (Augusta)  
Peavey Manufacturing (Eddington)  
Pleasant River Lumber Company (Dover-Foxcroft)  
Pleasant River Lumber Company (West Enfield)  
Pleasant River Pine (Hancock)  
Reed & Reed – Metal Fab (Woolwich)  
Reed & Reed - Turner Bridge Site  
Robbins Lumber (Searsmont)  
Rumery's Boat Yard (Biddeford)  
S W Boatworks (Lamoine)  
Sargent Corporation (Stillwater)  
Somic America (Brewer)  
Steel-Pro Incorporated  
Strouts Point Wharf  
Valley Distributors (Oakland)  
Yachting Solutions (Rockland)

**ii. SHAPE**

In 2005, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a public-sector application of the federal private-sector SHARP program. SHAPE is a voluntary award program for all “public sector” employers/employees that are going above and beyond the safety and health requirements to provide a safe and healthy workplace and strive to keep injuries/illnesses down. As of January 5, 2015, there are 44 public-sector employers, who have received SHAPE status, including:

- |                                        |                                       |
|----------------------------------------|---------------------------------------|
| Auburn Water & Sewage District         | Kittery Water District                |
| Berwick Fire Department                | Mapleton Fire Department              |
| Brooks Fire Department                 | Mid-Maine Technical Center            |
| Brunswick, Town of                     | Newcastle Fire Company                |
| Camden Fire Department                 | North Lakes Fire & Rescue             |
| Caribou, City of                       | Northern Penobscot Tech - R 3         |
| Caribou Fire Department                | Northport Volunteer Fire Department   |
| Cary Medical Center                    | Oakland Fire Department               |
| Cushing Fire Department                | Orono Fire Department                 |
| Damariscotta Fire Department           | Paris Fire Department                 |
| Durham Fire Department                 | Presque Isle, City of                 |
| Fairfield, Town of                     | Region 3 - Maine DOT                  |
| Farmingdale Fire Department            | Region 5 - Maine DOT                  |
| Farmington Fire & Rescue               | Scarborough, Town of                  |
| Fort Fairfield Fire Department         | School of Applied Tech. R 2           |
| Hampden Water District                 | South Thomaston Fire Department       |
| Harrington Fire Department             | United Technologies                   |
| Houlton Water Company                  | University of Maine - Aroostook Farms |
| Jay Public Safety (Fire & Police)      | University of Maine - Blueberry Farms |
| Jay, Town of                           | Waldoboro Fire Department             |
| Kennebunk, Kennebunkport & Wells Water | Wilton Fire Department                |
| Kennebunk, Town of                     | York Water District                   |

**VI. LEGISLATION**

There are two agency bills in the legislature for 2015 that could affect the Bureau’s injury/illness prevention activities.

**1. An Act to Update Maine Law to Conform to New OSHA Regulations**

In September 2014, OSHA implemented changes to their injury/illness recordkeeping requirements. These changes become effective January 1, 2015, and must be implemented by states by July 1, 2015. Maine needs to comply with these changes because we are a State Plan State, which means that we are authorized to conduct safety consultations and inspections through SafetyWorks! in the public sector. These efforts help the bureau decrease general fund costs and reduce employer costs

through lower assessments on Workers' Compensation claims. Because Maine is a state plan state with regard to the public sector, the Bureau is eligible to receive federal reimbursement of up to \$400,000 per year for work we had already been doing

## **2. An Act To Conform Maine Law to Federal Law and Simplify the Work Permitting Process for Minors**

In most sections of Maine law regarding minors, state law is more restrictive than federal law. This can make it difficult for minors to get jobs that provide them with early exposure to important skills. The bill proposes to make it easier for minors to obtain employment, which can help them develop valuable work skills at a younger age. The bill amends sections of Maine law to conform to federal law, which opens up hours of work and places of work for minors.