



2018 OCT 12 PM 3:54
OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

OCT 12 2018

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania, N.W., Suite 504
Washington, D.C. 20004

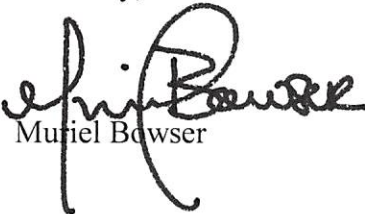
Dear Chairman Mendelson:

Pursuant to section 3(b) of the District of Columbia Workers' Compensation Act of 1979 (D.C. Law 3-77, effective July 1, 1980) and section 2(b) of the Workers' Compensation Amendment Act of 1998 (D.C. Law 12-229, effective April 16, 1999), I am transmitting the semi-annual compliance report on the private sector Workers' Compensation Program. The report offers statistical information pertaining to the Program.

Should you have any questions or comments, you may contact Dr. Unique Morris-Hughes, Interim Director, Department of Employment Services, at 202-671-1900.

I look forward to continuing our work together to protect the District's workers.

Sincerely,


Muriel Bowser

Attachment

**DEPARTMENT OF EMPLOYMENT SERVICES
LABOR STANDARDS BUREAU
OFFICE OF WORKERS' COMPENSATION**

SEMI-ANNUAL COMPLIANCE REPORT

**JANUARY– JUNE
2018**

**Dr. Unique Morris-Hughes
Interim Director
Dept. of Employment Services**

The Department of Employment Services, Labor Standards Bureau, Office of Workers' Compensation (OWC) administers the District of Columbia Workers' Compensation Program pursuant to the Workers' Compensation Act of 1979, as amended ("the Act"), D.C. Official Code §§ 32-1501 *et seq.* OWC collects, collates, and maintains statistical information concerning injuries sustained as the result of employment duties, requirements and/or activities within or connected to the District of Columbia (the District). OWC also provides employers/insurers and employees a forum for the impartial resolution/mediation of disputes which arise among these parties. Further, OWC, in its management of the program, maintains the administrative infrastructure to support the maintenance of specialized private sector employment wage and injury information.

The mission of OWC is to oversee the security and safety of the District's private sector employment environment within which employees, employers, insurance carriers, and self-insured entities interact and relate pursuant to the mandates of the Act. A major component of the mission is to monitor and enforce compliance with the coverage and reporting requirements of the statute.

REFERENCES:

❖ **D.C. Official Code § 32-1515(g):**

Within 16 days after final payment of compensation has been made, the employer shall send to the Mayor a notice . . . stating that such final payment has been made. . . . If the employer fails to so notify the Mayor within such time the Mayor shall assess against such employer a civil penalty in the amount of \$100.

❖ **D.C. Official Code § 32-1516(a):**

No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund . . . for the purpose of providing compensation or medical services . . . shall be valid, and any employer who makes a deduction for such purpose . . . shall be punished by a fine of not more than \$1,000.

❖ **D. C. Official Code § 32-1519(b):**

In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Mayor may . . . make payment from [the Special Fund] upon any award made under this chapter . . . Such an employer shall be liable for payment . . . of the amounts paid therefrom . . . and for the purposes of enforcing this liability, the Mayor . . . shall be subrogated to all the rights of the person receiving such payment or benefits . . . against the employer and may . . . seek to recover the amount of the default...

❖ D.C Official Code § 32-1532(e):

Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed \$1,000 for each such failure or refusal.

❖ D.C. Official Code § 32-1539(a)- (b):

(a) Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be assessed a civil fine of not less than \$1,000 and not more than \$10,000

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after 1 of his employees has been injured . . . with intent to avoid the payment of compensation under this chapter . . . shall be guilty of a misdemeanor and . . . shall be punished by a fine of not less than \$1,000 and not more than \$10,000

❖ D.C. Official Code §32-1542.04(b):

The Director shall file a semi-annual compliance report with the Council by March 31st and by September 30th, which shall contain detailed and comprehensive information about the compliance enforcement activities during the preceding 6 months.

❖ 7 DCMR §§ 203.2; 214.16:

Failure to provide a Report of Injury shall subject an employer to a civil penalty up to one thousand dollars (\$1,000) for each failure. The Office shall assess a penalty of not less than \$1,000 and not more than \$10,000 for failure to maintain the insurance required by the Act.

The cited regulations detail the penalties for failure to timely report employee injuries to OWC, as well as failure to come into or remain in compliance with the statutory mandates requiring workers' compensation insurance coverage for all private sector employees performing services in the District of Columbia.

The Act mandates OWC to investigate and determine employer compliance with statutory notification and insurance coverage requirements. OWC compiles and disseminates bi-annual reports of these efforts and the instant submission is made pursuant to the reporting requirement as cited above. The reporting period is January 1, 2018 through June 30, 2018.

ACTIVITY LEVELS:

The following charts reflect Proof of Coverage (POC) determinations, reporting breakdowns, and the carrier audit inquiries and/or investigations performed by OWC for the stated period and the penalties which have been imposed as a result of said inquiries. These inquiries are pertinent to, and provide the structural bases for, investigating the compliance issues raised under the provisions of the Code cited previously.

POC INQUIRIES: JANUARY 1, 2018 THRU JUNE 30, 2018

| POC INQUIRIES | COMPLIANT EMPLOYERS | INSURANCE NOT REQUIRED | PENDING INQUIRIES | NON-COMPLIANT EMPLOYERS |
|----------------------|----------------------------|-------------------------------|--------------------------|--------------------------------|
| 1,251* | 1,141 | 23 | 40** | 47 |

()*: The POC inquiries are predicated upon (1) no insurance information indicated on administrative forms submitted to OWC; (2) request from stakeholders and other agencies; and (3) the Unit's access and review of the information maintained by the National Council on Compensation Insurance (NCCI) cancellation/reinstatement database.

*(**)*: Pending inquiries are those initiated during the reporting period and awaiting the submission and review of the documentation requested by OWC and deemed necessary to reach a final determination of statutory compliance or non-compliance with the statute.

TIMELY REPORTING INQUIRIES: JANUARY 1, 2018 THRU JUNE 30, 2018

| REPORTING INQUIRIES | COMPLETED INVESTIGATIONS | COMPLIANT EMPLOYERS | PENDING | NON-COMPLIANT EMPLOYERS |
|----------------------------|---------------------------------|----------------------------|----------------|--------------------------------|
| 142 | 90 | 40 | 52* | 50 |

()*: Pending inquiries are awaiting the submission and review of the documentation requested by OWC pertinent to reaching a final determination of employer compliance or non-compliance with the statute.

FINES ASSESSED/COLLECTIONS

| PERIOD | EMPLOYERS | ASSESSED | COLLECTED* | CREDIT |
|---------------------------|------------------|-----------------|-------------------|---------------|
| January 1 – June 30, 2018 | 5 | \$700.00 | \$700.00 | 0 |

()*: This column represents amounts collected from employers determined to be non-compliant during the current and prior reporting periods.

There are also instances in which the payment of a fine may not have been satisfied during the reporting period due to (1) the installment/consent agreement and/or (2) the filing of an appeal by the employer. Of the five employers who were assessed during the current reporting period, all five paid their fine amounts in full; and, two appeals were filed.

Note: In imposing fines and penalties, OWC is mindful of the financial burden payment may place on a small employer. Therefore, OWC, on a case by case basis, makes every effort to consider requests from employers seeking to make payment arrangements for

assessed fines and penalties by way of acceptable installment plans. These plans may require payments to be made outside of the reporting period. The variances shown above are the result of such time lapse.

| |
|---|
| QUARTERLY CARRIER REPORT AUDIT/VERIFICATIONS |
| 645* |

() This figure represents the auditing of insurance carriers' quarterly submissions for accuracy and consistency.*

ADJUSTED CUMULATIVE FINES AND COLLECTIONS: 2004 – JUNE 30, 2018

| | ADJUSTED CUMULATIVE TOTAL 2004 – DECEMBER 31, 2017 | CUMULATIVE TOTAL 2004 – 2018 | ADJUSTED CUMULATIVE TOTAL 2004-2018 | JANUARY 1, 2018 – JUNE 30, 2018 TOTAL |
|-------------------------------------|--|------------------------------------|--|--|
| ASSESSED FINE AMOUNT | \$510,240.00 | \$535,990.00 | \$515,740.00 | \$700.00 |
| FINES COLLECTED | \$505,720.00 | \$506,445.00 | – | \$700.00* |

() This figure represents the total fines collected during this period from non-compliant employers regardless of the period in which the assessment was imposed. As previously noted, in imposing fines and penalties, OWC is mindful of the financial burden repayment may place on a small employer. Therefore, OWC, on a case by case basis, makes every effort to consider requests from employers seeking to make payment arrangements for assessed fines and penalties by way of acceptable installment plans. These plans will often require payments to be made outside the reporting period. The variances shown above are the result of such time lapses from the end of the reporting period.*

MAJOR ACTIVITIES:

The principal compliance mandates of the Act require OWC to monitor the insurance coverage of employers; contact uninsured employers and/or investigate employment-related injuries; review the timeliness of employer filings; investigate uninsured employers regarding expenditures from the Special Fund; and verify carrier filings. These concerns focus compliance targets on six (6) primary areas: (1) investigation of employer insurance coverage; (2) timeliness of an employer's response to its injured employees; (3) recovery of benefit payments made to claimants by the Special Fund due to the post-injury insolvency of an employer; (4) auditing of insurance carrier's quarterly submissions for accuracy and consistency; (5) randomly conducting on-site visits of employers within the District of Columbia to ensure compliance and to educate the

public of the Act; and (6) referral of non-compliant employers to the Office of the Attorney General (OAG).

I. PROOF OF COVERAGE:

The investigation of an employer's workers' compensation insurance coverage is initiated primarily through (1) failure of the employer and/or injured worker to submit the required insurance information; (2) an internal or external tip; or (3) the review of insurance coverage expirations, cancellations, terminations, or failures to renew and/or reinstate coverage as required pursuant to D. C. Official Code §§ 32-1513(c) and 32-1538(b). This information is presently collected, collated, and transmitted to OWC by the NCCI. The monthly report consists of information identifying 1,100 – 1,400 employers. OWC reviews a sampling on a random basis and an initial determination of statutory compliance is made. A finding of a policy termination or non-renewal initiates the issuance of a "Proof of Coverage" letter which requires the employer to submit its current insurance information. Where proof of an existing insurance policy is provided, the compliance inquiry closes; where the employer does not respond to the POC information requests, the investigation may include one or all of the following: (1) a telephone and/or electronic search for additional contact information; (2) a field visit and on-site interview; and/or (3) review of the employer's business records and filings at the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), the District of Columbia Office of Tax and Revenue (OTR), and/or the Department of Employment Services, Office of Unemployment Compensation. This information is then analyzed with the information maintained by OWC and a determination of compliance/non-compliance with the statute is made. If a violation of the statute is established, OWC would then determine the assessment of a fine or penalty.

II. TIMELY REPORTING:

The second major compliance focus under the Act relates to an employer's administrative response to the occurrence of an employee's alleged work-related injury. The Act requires the employer to file notices and statements containing specific information to both the employee and OWC within specific time frames to start the statutory administrative processes and/or rights of the claimant. Failure to do so may result in the imposition of a fine. This type of compliance inquiry is predicated upon the close monitoring and review of claims filed with the OWC staff. During the current reporting period, OWC received 2,596 forms with missing information from the employers and/or employees, which prevented the claims from being processed. OWC was able to obtain missing information for the forms. There were 82 forms in which additional information has been requested. The forms included the Employee's Notice of Accidental Injury or Occupational Disease, the Employee's Claim Application, and/or the Employer's First Report of Injury or Occupational Disease, the Notice of Payment and the Notice of Final Payment.

III. SUBROGATION:

Under the statute, OWC may be subrogated to the rights of an injured employee where the Special Fund has paid benefits to the claimant in place of an uninsured, insolvent or absent employer. OWC is currently receiving payments from one (1) uninsured employer to satisfy its judgment.

IV. AUDITS:

The quarterly audit of the submission of losses by insurance carriers and self-insured employers, which is differentiated by claimant and type of benefit, provides OWC a secondary source of information through which to assess compliance with the reporting and payment requirements of the Act. Anomalies or discrepancies in reporting which are discovered through this audit process trigger inquiries that are pursued to resolution and/or possible fines. During this semi-annual reporting period, no discrepancy inquiry required formal resolution or the assessment of a pertinent fine.

V. REFERRAL TO THE OFFICE OF ATTORNEY GENERAL:

There were no non-compliant employers referred to the OAG.