

State of South Carolina



Workers' Compensation Commission

TO: Roland Franklin, Jr. Esq.
FROM: Gary M Cannon *Gary M. Cannon*
DATE: December 8, 2023
RE: Supplemental Information for HLOC

This is in response to the request for additional information for the House Legislative Oversight Committee.

1. What is the number of employers for which \$2 Million of fines were waived or rescinded in FY23.

With the assistance of the SCWCC IT department, it was determined the \$2.28 million employer non-compliance assessed fines penalties were **waived** for 263 employers in FY23. The number of employers that made up the \$469,000 in **rescinded** employer fines and penalties in FY23 was 51. The number of employers that made up the \$80,170 in **uncollectable** fines and penalties in FY23 was 2.

Waived fines are defined as partial fines and penalties amounts waived because of employer compliance settlement negotiations.

Rescinded fines are defined as fines and penalties that were rescinded due to a Commission error or a fine assessment error.

Uncollectable fines are defined as fines and penalties deemed uncollectable due to employers being out of business or businesses that the Commission was unable to contact based on information obtained during the compliance investigation.

2. What are the number of cases filed with the Commission by a Form 12A and the number created by filing a Form 50 or Form 52? The highlighted areas reflect the requested data.

	FY2018-19	FY2019-20	FY2020-21	FY2021-22	FY2022-23	
8. Number of Accident Cases Filed with the Commission	65,827	66,825	58,327	57,986	57,591	= New cases + reopened cases
A. New Cases	62,751	64,093	55,553	55,483	55,285	= cases created and MM
i. WCC Cases Created	24,155	24,993	25,545	24,009	24,145	= Form 12A and form 50 or 52
1. WCC Cases Created by Employer Report - Form 12-A	21,031	21,992	22,570	20,642	20,592	= 12A forms
2. WCC Cases Created by Claimant Report - Form 50 or 52	3,124	3,001	2,975	3,367	3,553	= 50 and 52 Forms
Percent of Form 50 -52 of WCC Cases Created	13%	12%	12%	14%	15%	
ii. Minor Medical Reported (12M)	38,596	39,100	30,008	31,474	31,140	reported annually by employer. No lost time and medical < \$2,500
B. Reopened cases	3,076	2,732	2,774	2,503	2,452	

3. With regard to the question about the method of payment of compensation to claimants, on November 13, 2023 the Commission submitted our proposed language and Notice of a public hearing to the State Register, pursuant to § 1-23-110(3) to amend Reg. 67-1602. The proposed language was published in the State Register on November 27, 2023. The public hearing is scheduled for January 22, 2024. After the public hearing the Commission will decide whether and what proposed changes to submit to the General Assembly. The following is the proposed language of the changes:

S.C. Code of Regulations R. 67-1602

67-1602. Payment of Compensation.

A. Unless otherwise ordered by the Commission, the employer's representative shall pay all compensation directly to (1) the claimant or (2) the guardian, if the claimant is a minor or incapacitated person, or (3) another person approved by a court or the Commission to accept payment on behalf of the claimant.

B. To pay an award or settlement ~~The~~ the employer's representative shall make a check payable to the claimant and the claimant's attorney, as allowed pursuant to an approved Form 61, Attorney Fee Petition, or by order of the Commission.

C. Periodic payments of temporary disability and reimbursements for expenses under Reg. 67-1601 shall be made by electronic payment systems, subject to the following conditions:

(1) The employer, employer's representative, or other payer must provide the claimant written or electronic notice of the method of electronic payment available and how to access it on or before the date compensation becomes due;

(2) If the claimant does not respond within seven (7) days of the date such notice is given the employer, employer's representative, or other payer may provisionally issue payment in the form of a check. The check must be accompanied by written instructions for the claimant

to commence payment electronically. If the claimant subsequently requests electronic payment, the employer, employer's representative, or other payer must commence payment electronically; and

(3) A claimant may at any time elect in writing or electronically to receive such payments by check and the employer, employer's representative, or other payer shall honor such request.

~~The employer, employer's representative, or other payer shall make each payment in the form of a check using an electronic payment system, unless the parties mutually agree to an alternate payment method as provided for in this section. An employer, employer's representative, or other payer may use an electronic payment system, including, but not limited to, an electronic funds transfer, a direct deposit, debit card, or similar payment system, as an alternative method of payment if:~~

~~(1) the claimant can immediately obtain the full amount of the periodic payment;~~

~~(2) the method of payment is easily and readily accessible to the claimant; and~~

~~(3) the use of an electronic payment system is optional and at the election of the parties as documented in the records of the payer; and~~

~~(4) once the parties have agreed to use an alternate payment system in accordance with this section, either party may opt to change the method of payment to another method consistent with this section by providing 30 days' written notice to the other party.~~

D. An employer, employer's representative, or other payer may petition the commission for an order allowing the payer to make periodic payments of temporary disability and reimbursements of expenses under Reg. 67-1601 using a check. The Commission shall only grant such petitions for a time period not to exceed two years from the effective date of this regulation, and only upon a showing of hardship by the payer. Such petitions shall be decided by written order of the commission, with right to review and appeal as in other cases. Any employer, employer's representative, or payer granted the privilege of making payment by check pursuant to this subsection shall provide the claimant with written notice that payment will be made by check on or before the date compensation becomes due. The employer, employer's representative, or payer shall notify the claimant as soon as electronic payment is available.

E. An employer, employer's representative, or other payer using an electronic payment system, including, but not limited to, an electronic funds transfer, a direct deposit, debit card, or similar payment system, must meet the following conditions:

(1) the claimant can immediately obtain the full amount of the periodic payment;

(2) the method of payment is easily and readily accessible to the claimant; and

(3) the claimant retains the right to opt for payment by check consistent with paragraph (C) by giving 30 days written or electronic notice to the payer.

~~D.F.~~ When payment is made to a debit card account:

(1) the payer shall not charge the claimant any fee related to the issuance of the debit card;

(2) the claimant must be provided a reasonable method to obtain payment in full without incurring any usage fee; and

(3) any other fees associated with the use of the debit card shall be disclosed to the claimant in writing by the payer.

~~E. Other than when making payment by check, an employer, employer's representative, or other payer shall not make a payment as described in subsection C. without the full consent of the claimant, obtained without intimidation, coercion, or fear of discharge or reprisal. Default payment shall be by check.~~

G. When making payment using a check in accordance with paragraphs (C)(2) or (D), above, payment is deemed complete on the date the employer, employer's representative, or other payer delivers the check into the possession of the U.S. Postal Service or common carrier with postage or other charges paid. The employer, employer's representative, or other payer shall keep record of

the date each check is delivered into the possession of the U.S. Postal Service or common carrier and shall provide such records to the claimant or the commission immediately upon request. If there are any tracking numbers or similar information associated with the shipment of the check by U.S. Mail or common carrier, such information shall be provided to claimant or the commission immediately upon request.

~~F. H.~~ Payment made other than as directed in this section shall not acquit, protect, or discharge the employer, employer's representative, or other payer for the payment due.

~~G. I.~~ The claimant may request a hearing to assess a penalty and/or interest as authorized by statute for late payment or suspension or termination of benefits by filing with the Commission's Judicial Department a WCC Form 50 Employee's Request for Hearing. ~~motion to increase compensation payments according to R.67-215.~~

4. In response to the inquiry about the status of issues of working with the Attorney General's office raised during the testimony, we met with the Attorney General and his staff. The Attorney General's Office took the position that they will continue to consider each request for approval to hire outside counsel on a case-by-case basis.

5. In response to the comments about the Form 19 offered by the HLOC, the Commission is in the process of amending the language on the Form 19 to address the issues raised by the HLOC. The amended Form 19 will be reviewed by the Commissioners on December 18 and forwarded to the HLOC.