

South Carolina
House of Representatives
Legislative Oversight Committee

LAW ENFORCEMENT, CRIMINAL AND CIVIL
JUSTICE SUBCOMMITTEE

Chairman Chris Wooten

The Honorable William H. Bailey
The Honorable Kambrell H. Garvin
The Honorable Leon Douglas "Doug" Gilliam
The Honorable Jeffrey E. "Jeff" Johnson

A G E N D A

Tuesday, November 21, 2023

10:30 a.m.

Room 521 - Blatt Building

- I. Approval of Minutes of July 19, 2023 Meeting
- II. Discussion of the study of the Workers' Compensation Commission
- III. Adjournment



South Carolina House of Representatives Legislative Oversight Committee

Chair Jeffrey E. "Jeff" Johnson

First Vice-Chair Chris Wooten

William H. Bailey
Gary S. Brewer
April Cromer
Kambrell H. Garvin
Leon Douglas "Doug" Gilliam
Thomas Duval "Val" Guest, Jr.

William M. "Bill" Hixon
Joseph H. "Joe" Jefferson, Jr.
Wendell Keith Jones
Roger K. Kirby
Josiah Magnuson
John R. McCravy, III

Timothy A. "Tim" McGinnis
Adam M. Morgan
Travis A. Moore
Russell L. Ott
Marvin R. Pendarvis
Marvin "Mark" Smith

Lewis Carter
Director

Cathy A. Greer
Administration Coordinator

Roland Franklin
Legal Counsel

Riley E. McCullough
Research Analyst

Post Office Box 11867
Columbia, South Carolina 29211
Telephone: (803) 212-6810 • Fax: (803) 212-6811
Room 228 Blatt Building

MEETING MINUTES

Wednesday, July 19, 2023
10:30 a.m. Blatt Room 516

Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.7, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly's website (<http://www.scstatehouse.gov>) and clicking on Committee Postings and Reports, then under House Standing Committees click on Legislative Oversight. Then click on Video Archives for a listing of archived videos for the Committee.

Attendance

- I. Chair Chris Wooten called the Law Enforcement and Criminal and Civil Justice Subcommittee meeting to order on Wednesday, July 19, 2023, in Room 516 of the Blatt Building. In addition to Chair Wooten, Representative Leon Douglas Gilliam, Representative Kambrell H. Garvin, and Representative Jeffrey E. Johnson were present for all or a portion of the meeting.

Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings.

Approval of Minutes

- I. Representative Wooten makes a motion to approve the meeting minutes from the June 6, 2023 meeting. A roll call vote is held and the motion passes.

Rep. Wooten's motion to approve meeting minutes.	Yea	Nay	Not Voting
Rep. Wooten	✓		
Rep. Johnson	✓		
Rep. Bailey			✓
Rep. Garvin	✓		
Rep. Gilliam	✓		

Discussion of the South Carolina Workers' Compensation Commission

- I. Chair Wooten calls the meeting to order and asks the Members to introduce themselves. Chair Wooten notes that Commissioner T. Scott Beck was sworn in at the Thursday, March 9, 2023 public input meeting and remains under oath. Chair Wooten asks if there are any agency representatives present who intend to present testimony who have not been sworn in. After noting that all agency representatives have been sworn in, Chair Wooten asks Commissioner Beck to begin his presentation.
- II. Commissioner Beck begins the presentation with a follow-up clarifying testimony presented at the June 6, 2023 meeting. Chairman Beck then provided additional testimony on the following topics:
- a. Laws governing the payment of benefits for temporary compensation;
 - b. Laws governing the payment of benefits for permanent disability;
 - c. Informal conferences;
 - d. Attorney practices;
 - e. The appellate process and mediation;
 - f. The budget;
 - g. Agency partnerships and collaborations;
 - h. Stakeholder outreach;
 - i. Commissioner and staff development;
 - j. Challenges facing the Commission; and
 - k. Agency opportunities.

Adjournment

- I. There being no further business, the meeting is adjourned.

Agency Overview: Workers' Compensation Commission

Agency Mission

“The mission of the South Carolina Workers' Compensation Commission is to provide an equitable and timely system of benefits to injured workers and employers in the most responsive, accurate, and reliable manner possible.”

History and Resources (FY 20-21)

History

“The Grand Bargain”

- Workers gave up the right to sue employers in civil court for workplace injuries
- Employees guaranteed treatment and compensation
- Created no fault system with exclusive remedy for injuries
- Minimized cost to employers of lengthy trials

1935 – Created as the SC Industrial Commission then changed to the Workers' Compensation Commission

Organizational Units

- Commissioners
- Office of Executive Director
- Information Technology
- Claims
- Judicial
- IMS

Employees



53

authorized FTEs

Funding



\$8,400,000

Annual Operating Budget

Successes and Challenges

Identified by the agency

Successes

- Current WCC IT Staff have multiple years and extensive levels of related experience to form a cohesive team.
- Institutional Knowledge
- Employment with State Government, benefits and sense of pride for serving the public good.
- Cooperative relationships with state agencies and local governments for attaining venues for hearings.

Challenges

- Loss of key personnel would hinder continued development of processes and systems.
- Institutional Knowledge - Eligible for Retirement
- Salaries of current employees have not maintained a level to be competitive with other state agencies and the private sector.
- The potential safety and security of the Commissioners.



House Legislative Oversight Committee Sub-Committee Supplementary Briefing

Filing a Claim

Fines and Assessments

Non-compliance and Failure to Report

Filing a Claim





Filing a Claim

Filing a Claim and Electronic Filing:

Injured worker has two ways to file a claim:

- 1) File a WCC Form 50 Employee Notice of Claim (or WCC Form 52 in the event of a death claim).**
- 2) Writing the Commission in accordance with Reg. 67-206(C)**

Employer may also file a claim:

File WCC Form 12/A using EDI



Filing a Claim Defined

Filing Defined by Reg. 67-205:

A form or document delivered to the Commission electronically, by first class mail, or by hand delivery is filed the date of receipt in the Commission's offices as indicated by the earliest date stamped on the form or document by an official Commission stamp with the exception of forms and documents delivered pursuant to R.67-205C, R.67-205D, and R.67-205E.

A form or document delivered to the Commission by certified or registered mail is deemed filed the date of deposit in the United States Postal Service as indicated by the date of postmark.

A form or document transmitted to and received by the Commission electronically on or before 11:59:59 p.m. shall be considered filed with the Commission on that date, provided it is subsequently accepted after review by the appropriate department of the Commission.



Filing a Claim Defined (cont'd)

Filing Defined by Reg. 67-205 cont'd:

The following forms or documents are deemed filed on the date on the accompanying certificate of service properly addressed to the Commission: Forms 50, 51, 52, 53, 54, 55, 58, 30, and appellate briefs.



Filing a Claim, cont'd:

If there is a dispute as to the date of filing, the date on which a claim has been filed is a factual determination that can only be made by a Commissioner following a hearing.



Statutes of Limitation

The right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident, or if death resulted from the accident, within two years of the date of death.

For occupational disease claims the two-year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis.



Statutes of Limitation

For the death or injury of a member of the South Carolina National Guard, as provided for in Section 42-7-67, the time for filing a claim is two years after the accident or one year after the federal claim is finalized, whichever is later.

For a "repetitive trauma injury" as defined in Section 42-1-172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure. This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment.



Form 19

A. After payment of all compensation the employer's representative shall file with the Commission's Claims Department a Form 19, Status Report and Compensation Receipt, as provided in Section C below. If an individual claim file has been created by the Commission, a Form 19 is required to close the file, even if no compensation has been paid.

B. When the employer's representative denies the claim, a Form 19 must be filed with the Claims Department, and the employer's representative shall:

- (1) Attach to the form a copy of the letter provided to the claimant denying the claim; and
- (2) Complete, sign, and file a Form 19. The claimant's signature is not necessary.



Form 19

C. In all other cases, complete and file a Form 19 as provided below:

- (1) When more than one person receives payment of compensation, prepare a separate Form 19 for each person or Guardian and a final, additional Form 19 indicating the total amount of compensation paid and all medical expenses incurred in the claim.
- (2) Complete each line indicating payment of temporary total (TT), temporary partial (TP), and permanent partial (PP) compensation, disfigurement, and final release (an Agreement and Final Release), if applicable.
- (3) The claimant's signature is required on the Form 19 when permanent disability, disfigurement, or death benefits are paid or when the claim is settled by a Full and Final Release. The preparer shall sign and date the Form 19.



Fines and Assessments for Noncompliance and Coverage



Compliance Division

- Compliance Division's responsibility is to enforce the law and inform and educate the employers about the requirements for workers' compensation insurance in South Carolina.
- Assessments are calculated at the maximum amounts pursuant to Sections §42-5-40 and §42-3-105 of the SC Code of Laws.
- Primary focus is to have employers obtain coverage to protect employees. We negotiate to the minimum amount of assessment by law if the employer obtains coverage and pays the fine.
- Small businesses comprise most of the violations of non-compliance and they typically are assessed a large fine. When they cooperate by obtaining coverage and agree to pay the assessment, we establish a monthly payment plan to satisfy the penalties.
- Employers who are repeat offenders or willfully and knowingly refuse to comply are not extended the same payment plan offer as the employers who cooperate and comply with the coverage requirements.



Non-Compliance Employer Investigation Process

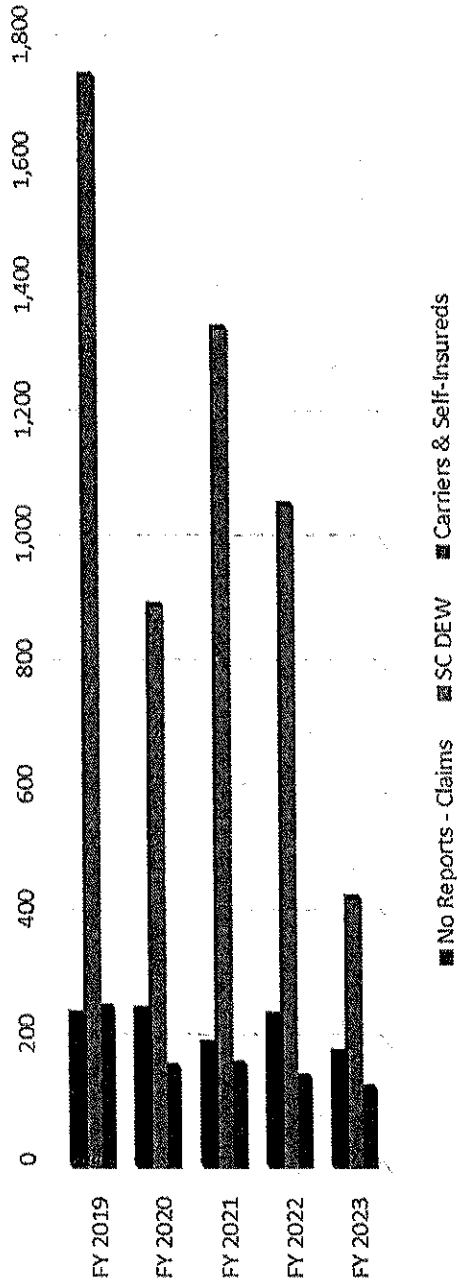
- Claim received and no coverage on file (NCCI, Prior claims, Sec of State, Google)
- Questionnaire sent to Employer, claimant or claimant/attorney 20 days to respond
- No response – Employer sent Notice of Violation letter, if non-compliant 20 days to respond
- No response – case forwarded to Compliance Collections
- No response – Employer sent second letter, warning no response, case will be sent to Rule to Show Cause Hearing
- No response - set for Rule to Show Cause Hearing before Commission
- Order issued imposing Fines and penalties
- SC Department of Revenue GEAR program is used to collect fines from individuals. The GEAR Program currently does not collect from corporate entities.



5-year Compliance Investigations Activity Report

Investigation files created	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
No Reports - Claims	245	252	198	243	184
SC DEW	1,749	900	1,344	1,061	431
Carriers & Self-Insureds	256	161	165	145	127
Total files created	2,250	1,313	1,707	1,449	742

5-year Compliance Investigations Activity





Fine Assessment

- Assessments are calculated by authority of Section §42-5-40, one dollar for each employee at the time of the insurance coming due, but not less than \$10 nor more than \$100 for each day of non-compliance.
- Assessments calculated by authority of Section 42-3-105, \$750 a year of noncompliance with a maximum of \$1,000 a year of noncompliance.
- Employer agrees to come into compliance and obtain coverage, final assessments are negotiated and at the minimum assessments allowed by law.
- Maximum assessments are recorded when the notice of violation and fine letter is created and sent to the employer.
- If the employer provides proof of coverage or staff locates the coverage, the fine is rescinded. The fine will show as "assessed" and "rescinded" in reporting.



Compliance Division

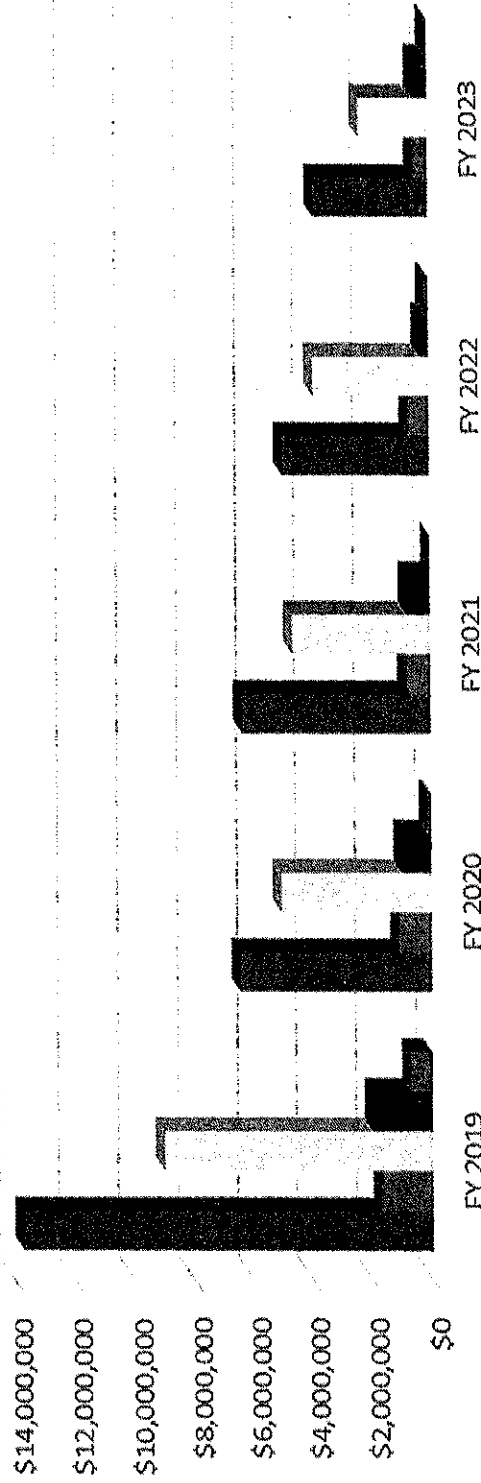
5-year Employer Non-Compliance Fines Activity Report

Employer Non-Compliance		FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Fines						
Assessed		\$13,677,514	\$6,414,012	\$6,323,211	\$4,911,577	\$3,828,237
Collected		\$1,688,380	\$1,072,940	\$785,893	\$686,193	\$483,063
Waived		\$8,982,857	\$5,007,957	\$4,594,131	\$3,865,319	\$2,280,350
Rescinded		\$1,957,069	\$955,341	\$743,245	\$274,798	\$469,622
Uncollectable		\$714,576	\$118,600	\$3,311	\$112,603	\$80,170

- Waived = negotiated settlement as a result of employer compliance.
- Rescinded = commission error/fine assessed in error.
- Uncollectable = employer out of business or unable to contact.



5-year Employer Non-Compliance Fines Activity



■ Assessed ■ Collected ■ Waived ■ Rescinded ■ Uncollectable

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
% collected vs. assessed	12%	17%	12%	14%	13%
% not collected vs. assessed	85%	95%	84%	87%	74%

Note: % doesn't = 100 because amounts are running totals and carry over from month to month and FY to FY.

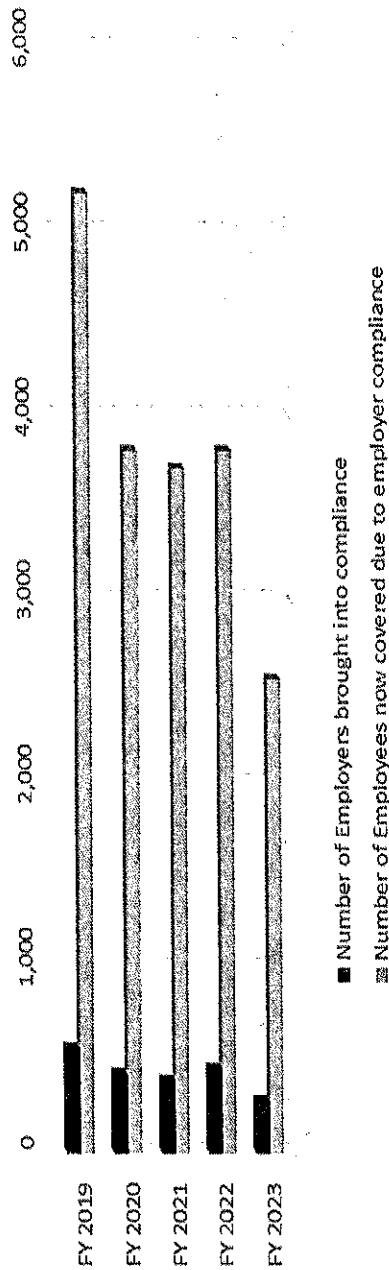


5-year Employer Compliance Activity Report

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Number of Employers brought into compliance	571	433	397	460	287
Number of Employees now covered due to employer compliance	5,212	3,813	3,718	3,814	2,573

Avg # of employees / employer 9 9 9 8 9

5-year Employer Compliance Activity





Fines and Assessments For Failure to File Reports



Coverage Division Insurance Carriers and Self-Insureds

- Fines and penalties are assessed against insurance carriers and self-insureds for failure to file forms or for failure to file required forms timely, pursuant to §42-19-30 and §42-3-105.
- The fines consist of 12A/FROI fines, 12M/Annual Minor Medical Report fines and penalties, and Late Reporting of Coverage fines.
- The fines can be appealed within 30-days of assessment, pursuant to R.67-1401.
- The fines are only rescinded in the event of an assessment error by the Commission or a valid appeal by the insurance carrier, the self-insured, or a third-party administrator.



Coverage Division

5-year Coverage and Failure to File Reports Activity

Coverage Fines	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Assessed	\$271,900	\$167,500	\$252,750	\$352,710	\$433,850
Collected	\$234,900	\$131,050	\$200,300	\$280,540	\$380,300
Rescinded	\$45,850	\$28,750	\$43,350	\$45,470	\$34,800

5-year Coverage and Failure to File Reports Activity

