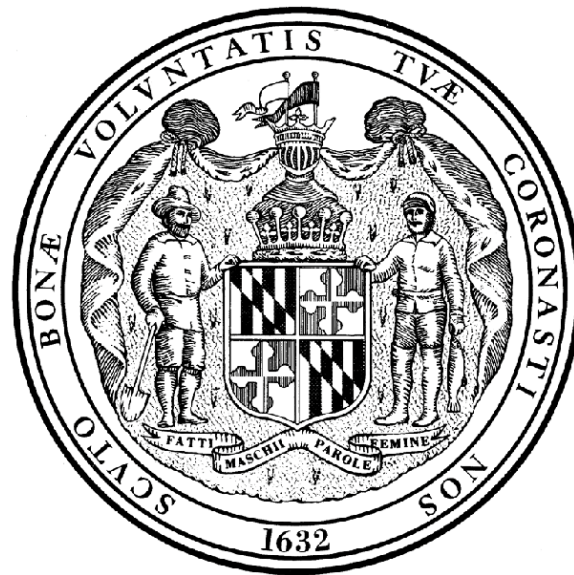


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MARYLAND WORKERS' COMPENSATION COMMISSION



REPORT OF THE TASK FORCE TO STUDY EMPLOYER COMPLIANCE WITH WORKERS' COMPENSATION INSURANCE REQUIREMENTS

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REPORT OF THE TASK FORCE TO STUDY EMPLOYER COMPLIANCE WITH WORKERS' COMPENSATION INSURANCE REQUIREMENTS

INTRODUCTION

The Maryland Workers' Compensation Commission ("WCC") established a multi-agency Task Force in response to a request by the Workers' Compensation Benefit and Insurance Oversight Committee that the Commission consider additional measures for increasing compliance with the requirement that Maryland employers maintain workers' compensation insurance.

TASK FORCE MEMBERS

The Committee members are:

Chairman R. Karl Aumann, WCC, Chairman, and
Commissioner Maureen Quinn, WCC, Co-chairperson

Michele J. McDonald, Assistant Attorney General, WCC
Mary Ahearn, Executive Director, WCC
Steven Jones, Director, Insurance, Compliance & Reporting, WCC
James Himes, Executive Director, UEF
Pamela Randi Johnson, Associate Commissioner, MIA
Betty Mull, Chief, Tax Enforcement, DLLR
Dennis Morton, Director, Contributions Division, DLLR
Susan Bass, Leg. Liaison, Division of Unemployment Insurance, DLLR
Roger Campbell, Assistant Commissioner, MD Occupational Safety & Health,
DLLR

Additional representatives from the WCC, DLLR, MIA and UEF participated in the various task force meetings during the past two years.

Background

Workers' compensation law requires each employer to secure compensation for its covered employees by maintaining insurance with the Injured Workers' Insurance Fund ("IWIF") or an authorized insurer, or by maintaining self-insurance either on its own or by participating in a self-insurance group. Md. Code Ann., Labor & Empl. ("LE") § 9-402 (2008 Repl. Vol.). Whether an employee is a covered employee, and thus, whether the employer is required to secure compensation (through insurance), is determined by the WCC in the adjudication of individual cases -- after the worker has filed a claim for a disabling injury or occupational disease.

If the WCC determines that an employer has failed to secure compensation for a covered employee, the agency will order the employer to obtain insurance with the Injured Workers' Insurance Fund ("IWIF"). LE § 9-407(a). If the employer fails to purchase insurance within 10 days of the order, the WCC will order the employer to pay a penalty equal to six months of premiums with IWIF. LE § 9-407(b).

Under the existing statutory scheme, the WCC is empowered to order an employer to obtain insurance with IWIF and to pay a penalty for noncompliance. The WCC was advised by counsel that these provisions do not, however, provide the agency with independent authority to investigate whether an employer has secured compensation for its covered employees – only to take enforcement action when the WCC is aware that an employer has failed to meet this requirement. The agency does not have the statutory investigatory tools necessary to conduct such inquiries – the authority to enter a business, to examine pertinent records, and to issue subpoenas mandating the attendance of witnesses and the production of documents.

At the request of the Joint Audit Committee, the Workers' Compensation Benefit and Insurance Oversight Committee ("Oversight Committee") discussed at several meetings whether a specific agency should be given responsibility for pro-actively ensuring employers' compliance with the requirement that employers secure compensation through insurance for their covered employees. As an outgrowth of these meetings, the WCC proposed that a task force be established to evaluate: (1) the best methods for identifying uninsured employers prior to the filing of a claim, and (2) appropriate penalties for noncompliance.

Procedures Currently Utilized by WCC to Enforce Employer Compliance

The WCC currently employs two processes for validating and enforcing compliance. First, when a claim is filed, the employer's workers' compensation coverage is verified by reviewing whether the employer's insurer has reported a current policy for the employer to the National Council on Compensation Insurance, Inc. ("NCCI"), as required under COMAR 14.09.01.05. If the insurer fails to file notice of the policy within 30 days of the policy's effective date, the WCC may fine the insurer. The NCCI proof of coverage database is also available to the public through the WCC's website.

When an order is issued by a Commissioner against a non-insured employer in any claim, the WCC may direct the employer to obtain insurance and to submit proof of that insurance within ten days. A Show Cause order will be issued if the employer fails to provide proof of insurance. Continued lack of compliance will result in an order to secure insurance with IWIF.

The WCC also utilizes a process to determine whether a cancelled policy (as reported to NCCI) has been reinstated or replaced with another policy. *See* LE § 9-402 (employer required to secure compensation through insurance) and § 9-1108 (an employer's failure to secure compensation that will be effective on the date that insurance is cancelled is a misdemeanor). If no coverage is found, which may be due to a delay in updating the

NCCI database with new policies, the WCC will contact the employer and provide the employer an opportunity to submit proof of coverage.

Summary of Task Force Meetings and Recommendations

The Task Force met on several occasions, beginning in June 2006, and most recently in August 2008. Over the last two years, various state officials and agency representatives have actively participated in the meetings. These discussions have focused on various methods used by employers to avoid securing workers' compensation coverage (*e.g.*, misclassification of workers as independent contractors), other jurisdictions' efforts to enforce insurance coverage, appropriate penalties including the value of criminal versus civil penalties, individual agency responsibilities, capabilities and needs, coordination of agency efforts, and prior and prospective legislation.

As a result of these meetings, the Task Force recommends:

- That the WCC and Unemployment Insurance, Contributions Division, DLLR work cooperatively to share insurance coverage, employment and wage data for the purpose of identifying employers who are required to secure compensation or report wages.
- That the WCC and Maryland Occupational Safety & Health Program ("MOSH") share accident investigations for the purpose of identifying non-compliant employers.
- That legislation be enacted clarifying the WCC's authority to conduct investigations and granting the WCC investigatory powers and resources. That the legislation provide for enhanced and more readily calculable penalties for non-compliance. That penalties for noncompliance accrue to the Uninsured Employers' Fund ("UEF") and that UEF may bring civil actions to collect the penalties.

Implementation **Interagency Coordination**

The WCC and DLLR have developed and executed a Memorandum of Understanding ("MOU"), which permits the two agencies to match records for the purpose of identifying employers who report unemployment insurance tax information (wages) but do not maintain workers' compensation insurance, and vice versa, as well as notifying DLLR of the employers adjudicated by the WCC (after a workers' compensation claim is filed) to be uninsured. It is anticipated that this sharing of data will expand both agencies' ability to identify noncompliant employers before claims are filed.

MOSH has provided the WCC with sample accident investigation reports and the WCC is currently examining these reports to help identify noncompliant employers.

Additionally, the UEF has agreed to provide the WCC with a list of employers who have repeatedly been found to be uninsured. This data is being added to the list generated by the WCC periodically to verify current insurance

The WCC would like to be able to receive data from the Department of Assessments & Taxation when new businesses are formed in Maryland to investigate whether insurance coverage has been obtained. Initial inquiries have been made to explore this possibility.

Legislation

At the last meeting of the Task Force, the WCC presented a draft legislative proposal that would provide the WCC with additional authority and responsibility to address the workers' compensation insurance coverage problem in Maryland. There was consensus by the members of the Task Force as to the proposed legislation with an opportunity to provide written comments on the proposal. Subsequent changes to the proposal have been made to incorporate these comments. The proposed legislation is expected to improve the ability of the WCC to address the problem of inadequate workers' compensation insurance coverage by Maryland employers.