

A G E N D A

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

1333 Main Street, 5th Floor
Columbia, South Carolina 29201
November 20, 2023 10:30 a.m.

Meeting to be held in Hearing Room A

The Commission's Business Meeting will be broadcast live on the Internet via Zoom. Interested parties may access the broadcast at the following link:

Join Zoom Meeting

<https://us02web.zoom.us/j/8249297108?pwd=akcwMkMxSnYzQWFxdEs4V2x6UWtyUT09>

Meeting ID: 824 929 7108

Passcode: 073988

This meeting agenda was posted prior to the meeting and proper advance notice was made to all concerned parties in compliance with requirements in the Freedom of Information Act.

- | | |
|--|---------------|
| 1. CALL TO ORDER | CHAIRMAN BECK |
| 2. APPROVAL OF AGENDA OF BUSINESS MEETING OF NOVEMBER 20, 2023 | CHAIRMAN BECK |
| 3. APPROVAL OF MINUTES OF THE REGULAR BUSINESS MEETING OCTOBER 16, 2023(Tab 1) | CHAIRMAN BECK |
| 4. GENERAL ANNOUNCEMENTS | MR. CANNON |
| 5. APPLICATIONS FOR APPROVAL TO SELF-INSURE (Tab 2) | MS. BROWN |
| 6. DEPARTMENT DIRECTORS' REPORTS | |
| Human Resources (Tab 3) | MS.MCREE |
| Information Services (Tab 4) | MR. PLUSS |
| Insurance and Medical Services (Tab 5) | MR. DUCOTE |
| Claims (Tab 6) | MS. SPANN |
| Judicial (Tab 7) | MS. BRACY |
| Self-Insurance (Tab 8) | MS. BROWN |
| 7. DEPARTMENT OF VOCATIONAL REHABILITATION Monthly Report (Tab 9) | MR. CANNON |
| 8. EXECUTIVE DIRECTOR'S REPORT (Tab 10) | MR. CANNON |
| 9. FINANCIAL REPORT (Tab 11) | MR. CANNON |
| 10. OLD BUSINESS | CHAIRMAN BECK |
| 11. NEW BUSINESS (Tab 12) | CHAIRMAN BECK |
| Walt Barefoot, Esq. Request to address Commission - Form 15 | |
| Proposed amendments to Regulation R67-1602 | |
| 12. EXECUTIVE SESSION | CHAIRMAN BECK |
| 13. ADJOURNMENT | CHAIRMAN BECK |

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TAB 1

THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION
BUSINESS MEETING
October 16, 2023

A Business Meeting of the South Carolina Workers' Compensation Commission was held in Hearing Room A of the Workers' Compensation Commission on Monday, October 16, 2023, at 10:30 a.m. The meeting agenda was posted prior to the meeting and proper advance notice was made to all concerned parties in compliance with requirements in the Freedom of Information Act. The following Commissioners were present:

T. SCOTT BECK, CHAIRMAN
AVERY WILKERSON, COMMISSIONER
R. MICHEAL CAMPBELL, II, COMMISSIONER
MELODY JAMES, COMMISSIONER
CYNTHIA DOOLEY, COMMISSIONER
AISHA TAYLOR, COMMISSIONER

Present also were Keith Roberts, General Counsel; Christy Brown, Self-Insurance Director; Amy Bracy, Judicial Director; Kristen Mcree, HR Director, Wayne Ducote; Kris Pluss, Director of Information Technology; Sonji Spann, Director of Claims; Douglas Mann, IT Consultant and Whitney Klauck, SC Injured Workers Advocates.

Chairman Beck called the meeting to order at 10:46 a.m.

AGENDA

Commissioner McCaskill moved that the agenda be approved. Commissioner Dooley seconded the motion, and the motion was approved.

APPROVAL OF MINUTES – BUSINESS MEETING OF SEPTEMBER 18, 2023

Commissioner McCaskill moved that the minutes of the Business Meeting of September 18, 2023 be approved. Commissioner Dooley seconded the motion, and the motion was approved.

GENERAL ANNOUNCEMENTS

No general announcements.

APPLICATIONS FOR APPROVAL TO SELF-INSURE

Self-insurance applications were presented by Christy Brown, Self-Insurance Director. **Seventeen (17)** prospective members of **Two (2)** funds were presented to the Commission for approval. The applications were:

Palmetto Hospital Trust Fund
AnMed Health Plan, Inc.
AnMed Health System

Conway Hospital Community Services, Inc.
McLeod Health Cheraw
McLeod Health Clarendon
McLeod Health Foundation
McLeod Health Loris Seacoast Hospital
McLeod Healthcare Network LLC
McLeod Health Innovation
McLeod Medical Center Dillon
McLeod Occupational Health LLC
McLeod Physician Associates II
McLeod Regional Medical Center of the Pee Dee, Inc.
Steel Buildings of Darlington, Inc.

South Carolina Home Builders SIF

Azua Concrete LLC
Lawton Construction & Remodeling Service, Inc.
Steel Buildings of Darlington, Inc.

After examination of the applications, it was determined that each complied with the Commission's requirements, and each was recommended for approval.

Commissioner Wilkerson made the motion to approve the applications to self-insure. Commissioner Taylor seconded the motion to approve the applications to self-insure, and the motion was approved.

DEPARTMENT DIRECTORS' REPORTS

Each Department report was submitted in written form and included in the Commission's agenda booklets.

HUMAN RESOURCES

Ms. Mcree presented the Human Resources report. There were no comments or questions from the Commission. Ms. Mcree introduced our new Staff Attorney, Eric Baxley.

INFORMATION TECHNOLOGY DEPARTMENT

Mr. Pluss presented the IT report. There were no comments or questions from the Commission.

INSURANCE AND MEDICAL SERVICES DEPARTMENT

Mr. Ducote presented his report in written form. There were no comments or questions from the Commission.

CLAIMS DEPARTMENT

Ms. Spann presented her report in written form. There were no comments or questions from the Commission.

JUDICIAL DEPARTMENT

Ms. Bracy presented her report in written form. There were no questions from the Commission.

VOCATIONAL REHABILITATION

Mr. Cannon presented the Vocational rehabilitation report.

EXECUTIVE DIRECTOR'S REPORT

Mr. Cannon submitted his report in written form. There were no comments or questions from the Commission.

ADMINISTRATION – FINANCIAL REPORT

Mr. Cannon submitted his report in written form. There were no questions from the Commission.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Approval of the 2024 Full Commission Business Agenda Calendar.

Commissioner Taylor made a motion to the changes on the 2024 Full Commission Agenda Calendar from April 4-6 to April 8-9 and November 1-2 to November 12-13. Commissioner McCaskill seconded the motion.

EXECUTIVE SESSION

There was no executive session.

ADJOURNMENT

Commissioner Campbell made the motion to adjourn. Commissioner Taylor seconded the motion, and the motion was approved.

The October 16, 2023, meeting of the South Carolina Workers' Compensation Commission adjourned at 11:02 am.

Reported October 23, 2023
Arnisha Keitt
Executive Assistant

TAB 2

TAB 3

State of South Carolina



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www.wcc.sc.gov

Workers' Compensation Commission

To: Gary Cannon, SCWCC Executive Director
From: Kristen McRee, Director of Administrative Services
Date: November 20, 2023
Subject: Administrative Department October 2023 Full Commission Report

This report summarizes the Human Resources, Finance, Procurement, and Information Security operations and initiatives during October 2023.

I. Human Resources

In October, the Commission welcomed a new staff attorney to the legal department and hired a second staff attorney who will begin employment in November. This increases the legal department staff by 1/3 in an effort to better serve the needs of our Commissioners, stakeholders, and Administrative Division. Onboarding procedures, including background checks, security protocols (such as the issuance of ID badges, parking and building access cards, and devices), introductory Commission trainings, and related SCEIS transactions are ongoing and are anticipated to conclude in November for the newly onboarded candidates.

Human Resources also engaged in recruiting efforts to hire an insurance analyst that will be trained by, and eventually replace an employee that is expected to retire mid-December. The job posting was drafted internally and advertised using the Neogov platform. The posting garnered a strong candidate response which resulted in nearly 30 resumes for review and evaluation by HR and the Claims Department. Interviews will be conducted in November.

In addition to welcoming new staff, our existing IT staff was recognized internally for their superior job performance and efforts in implementing and initiating the information technology legacy modernization project. Their efforts have greatly contributed to the project's successful progress thus far. In addition to gaining the additional training and knowledge required to implement these changes, the IT team has also maintained the Commission's current system and has continued to respond to the Commission's internal infrastructure needs in a timely manner.

The 2023 Open Enrollment period concluded on October 31, 2023. Any changes or elections that were not made by October 31 will not be accepted by PEBA. HR will continue to reconcile any requested changes and review the required PEBA reports through the middle of December to ensure compliance and accurate reporting.

II. Procurement

The Commission has partnered with State Procurement to evaluate utilizing the small purchase procedures permitted by the state procurement code to purchase software licenses for

virtual courtroom services. Use of this service is intended to replace the Commission's current use of Zoom bringing an increased level of efficiency and predictability to virtual proceedings.

III. Information Privacy & Security

In August 2023, the Commission engaged Kuma, LLC to provide data inventory, data mapping, and privacy impact assessment services. To perform the assessment, all department heads submitted to an internal review of data collection, distribution, and storage practices. The purpose of this review is to provide a baseline assessment of the Commission's current business practices relating to personally identifiable information as well as assess the impact of any operational changes effectuated by the legacy modernization project. It is anticipated that any future updates or changes to the processes relating to collection and flow of PII will be documented and monitored by internal Commission staff. The assessment is projected to conclude by the end of the calendar year.

The Commission is also collaborating with Soteria to assess its information security protocols. This study is currently in progress. Soteria will provide feedback relating to type of security protocols (physical, technological, and administrative) implemented (or to be implemented) by the Agency as required by the DIS 200. The requisite staff interviews have been conducted and requested additional documentation has been compiled and submitted for review. Commission administration is looking forward to continuing its tradition of safeguarding our stakeholder information.

TAB 4

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Workers' Compensation Commission

To: Gary Cannon, SCWCC Executive Director
From: Kris Pluss, IT Director
Date: November 14, 2023
Subject: IT Department October 2023 Full Commission Report

This report summarizes the activities and accomplishments for projects and initiatives in the IT Department during October 2023.

I. Systems Operations, Maintenance and Support

EDI

WCC IT meet with Verisk in October to discuss the current status of the EDI Consolidation Project. WCC IT has requested to restart the weekly working meetings and is currently waiting on Verisk to provide availability.

Security

One Phishing email was reported to the WCC IT Team during October.

Reporting

97 Service Desk tickets were received by WCC IT during October 2023.
74 Tickets were assigned a priority of Low.
21 Tickets were assigned a priority of Medium.
2 Tickets were assigned a priority of High.
0 Tickets were assigned a priority of Urgent.

II. Projects, Enhancements and Development

Legacy Modernization

Progress

WCC IT continues to work with external stakeholders to gather feedback and discuss potential system updates. WCC IT is currently working with Progress Professional Services to allow external stakeholders the ability to "opt-in" to notifications online and to allow external stakeholders the ability to enter Protection Requests via eCase. WCC IT has received several requests to adjust the automatic idle timeout feature for eCase. WCC IT will work with Progress Professional Services to adjust the idle timeframe and still maintain security for the system and the users.

SC.Gov – Filing of Forms

WCC IT attended 6 Virtual Meetings with SC.Gov and the Department of Administration's, Digital Governmental Services Division in October. All of the No-Fee Filing Claims Forms and No-Fee Filing Judicial Forms are available for submission in the production environment. WCC IT has coordinated testing with a mixture of state agencies and law firms to pilot the new eSubmission Process. WCC IT is working with Tyler Technologies to incorporate the feedback that is being provided prior to the full launch. WCC IT has begun to test the Judicial Forms that require a fee internally to verify all funds are processed and the submissions are routed to the correct internal Judicial Resources. This will be the next phase of the project that will be piloted by our existing external testers. WCC IT will continue to provide updates to external stakeholders via constant contact email blasts and the wcc.sc.gov website.

TAB 5

State of South Carolina



Workers' Compensation Commission

To: Mr. Gary Cannon
SCWCC Executive Director

From: Wayne Ducote, Jr.
IMS Director

Date: 17-Nov-23

Subj: Insurance and Medical Services Department
October 2023 Full Commission Report

Please find attached information provided to summarize the status and workflow of initiatives currently underway within the Insurance and Medical Services (IMS) Department.

In addition to the statistical data provided, please be advised of the following:

- | | |
|---------------------|--|
| Compliance Division | <ol style="list-style-type: none">1. Reviewing revenue metrics / projections.2. Working with staff to review workflow processes and additional training opportunities.3. Continuing to explore outreach opportunities with stakeholders. |
| Coverage Division | <ol style="list-style-type: none">1. Working with staff to review workflow processes and explore opportunities to enhance service provision.2. Lapse in Coverage (Progress): 87 new registrants; 0 notifications sent. |
| Medical Services | <ol style="list-style-type: none">1. Three medical bill pricing reviews were done in the month of September.2. Bi-monthly meetings have begun with FAIR Health for the 2024 MSPM update. |

While this summary is in no way all-inclusive, it may serve to assist you and our Commissioners in understanding the key initiatives underway in the IMS Department and provide measures by which the Department's effectiveness can be gauged. IMS welcomes any guidance that you and/or our Commissioners can provide concerning our performance and direction.

Employer Rule to Show Cause Hearings and Compliance Activity

The Compliance Division docketed no new RTSC cases and 2 total RTSC cases in the month of October. And, compelled 49 South Carolina employers to come into compliance with the Act. Year to date, 3 new RTSC cases and 6 total RTSC cases have been docketed.

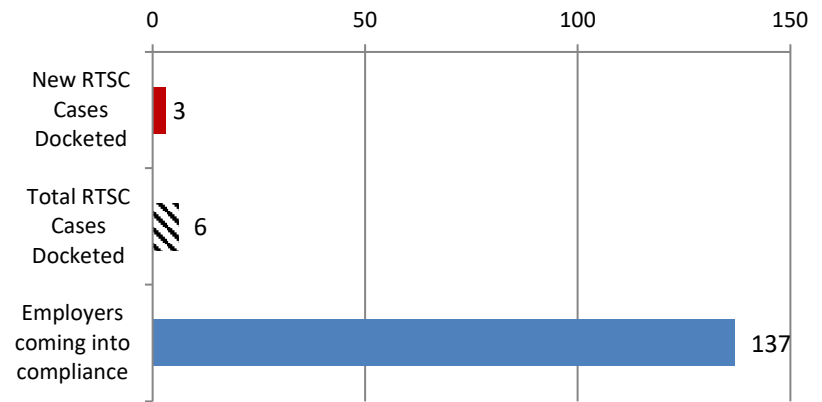
Employers Obtaining Coverage

Year to date, the Compliance Division has compelled 137 South Carolina employers to come into compliance with the Act. In so doing, approximately 931 previously uninsured workers are now properly covered.

Penalties Waived

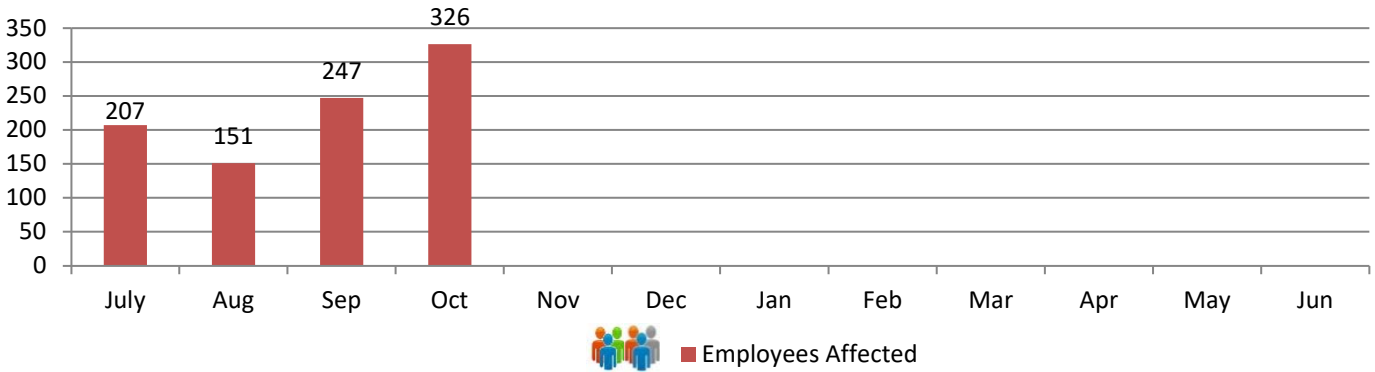
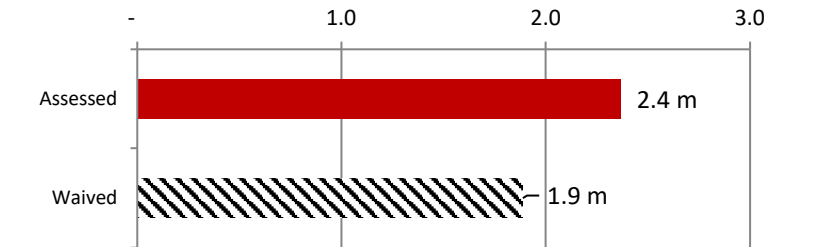
Although the Division has assessed \$2.4 m in fines this fiscal year, \$1.9 m have been waived or rescinded as employers have either obtained insurance coverage or were found not to be subject to the Act.

RTSC and Compliance Activity



Fines and Penalties

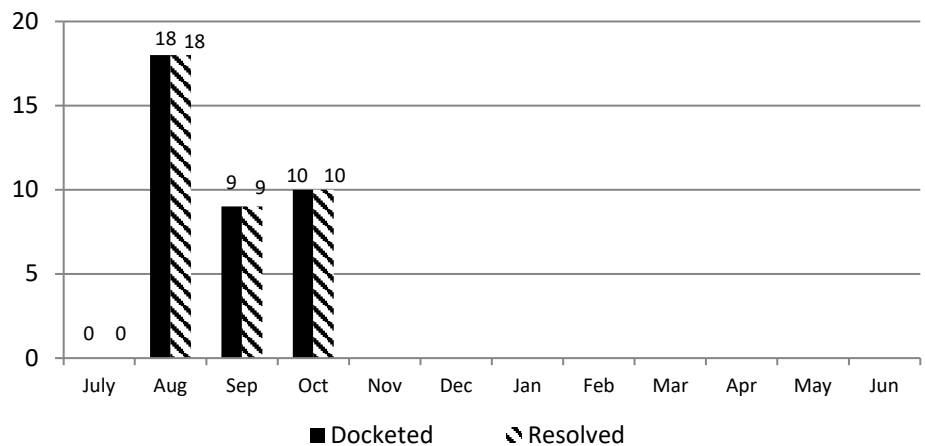
Millions



Carrier Rule to Show Cause Hearings

The Compliance Division manages the Rule to Show Cause process involving the recovery of outstanding carrier fines and penalties. In the month of October 2023, 10 carrier RTSC cases were docketed; 10 cases were resolved for a total of \$10,289.

Year to date, a total of 37 carrier RTSC cases have been docketed, 37 cases for a total of \$40,489 have been resolved.

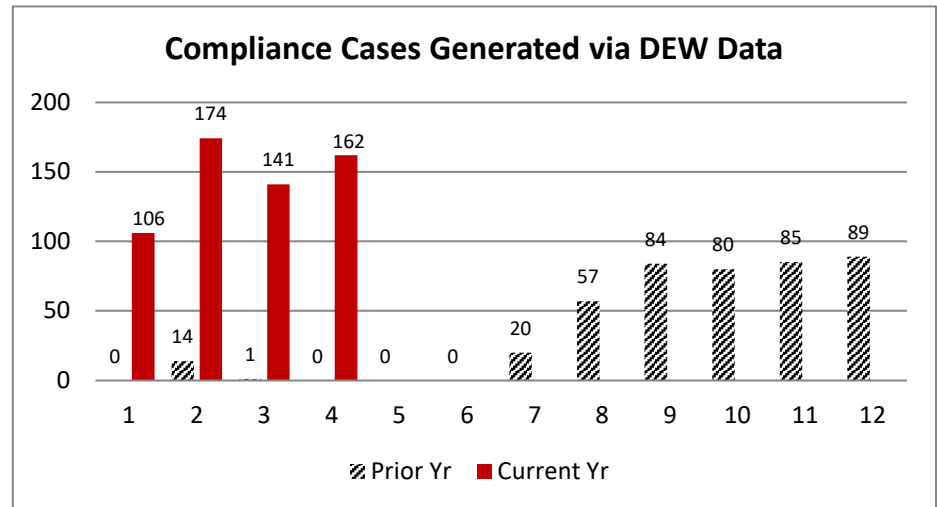
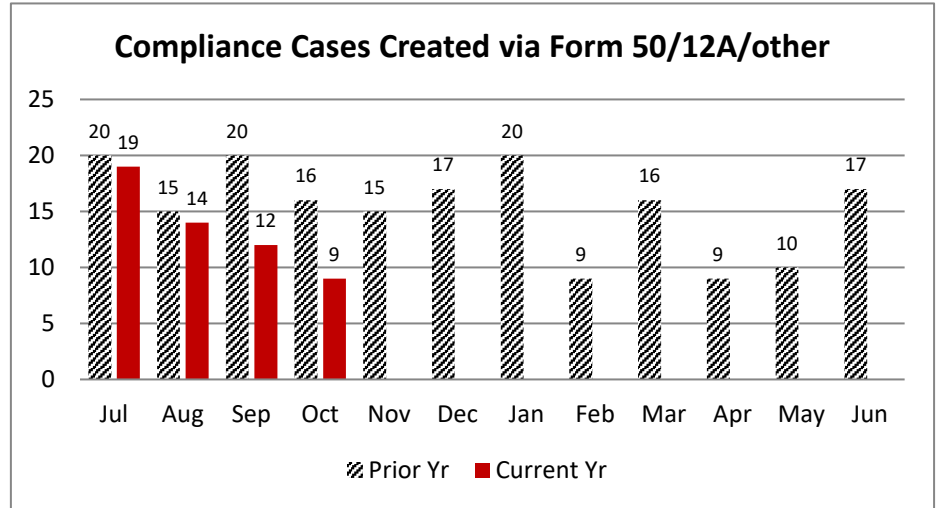


In October 2023, 9 compliance files were created from the combined filings of Form 50's, 12A's, and stakeholder reporting involving uninsured employers.

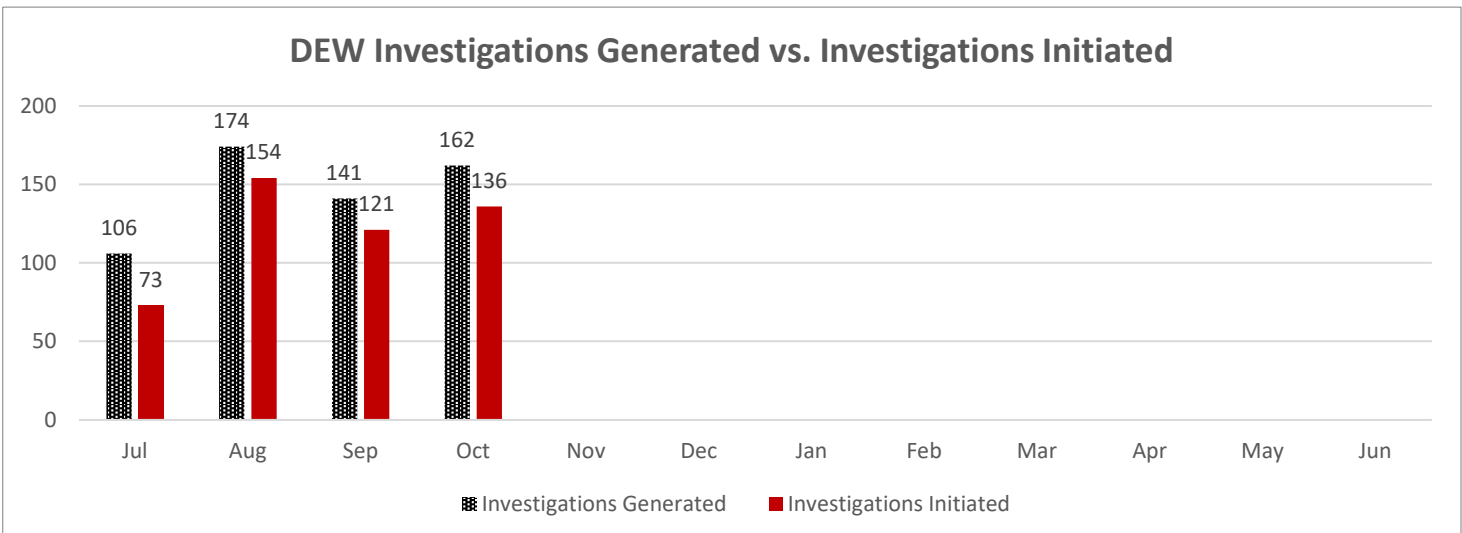
YTD vs. Prior Year total (184): 29%
 Oct 2022 to Oct 2023: 56%
 Current Yr End trend: 88% of 2022-2023
 YTD 2023-2024 v. YTD 2022-2023: 76%

In October 2023, 162 compliance files were generated from the DEW data process.

YTD vs. Prior Year total (430): 136%
 Oct 2022 to Oct 2023: %
 Current Yr End trend: 407% of 2022-2023
 YTD 2023-2024 v. YTD 2022-2023: 3887%



The DEW Data Pool is determined by the total number of potential, non-compliant employers who report wages to DEW with at least 4 employees and who's FEIN does not match with any coverage records in the Commission's coverage database. The investigations generated is the number of compliance investigations generated from the pool. The investigations initiated is the number of compliance investigations initiated from those that were generated.



Carryover Caseload:

The Compliance Division closed October 2023 with 237 cases active, compared to an active caseload of 243 at the close of October 2022.

Cases Resolved:

For the month of October 2023, Compliance Division staff closed-out 162 cases.

Compliance Fines:

In October 2023, the Compliance Division collected \$107,216 in fines and penalties. Year to Date, the Compliance Division has collected \$313,368 in fines and penalties.

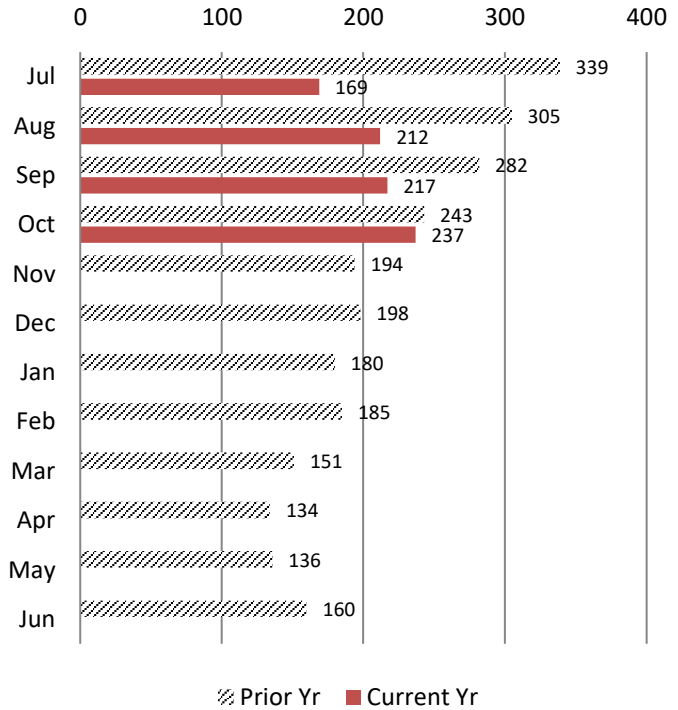
Year to Date vs Prior Year Total (\$483,063): 65%

Oct 2022 vs. Oct 2023: 510%

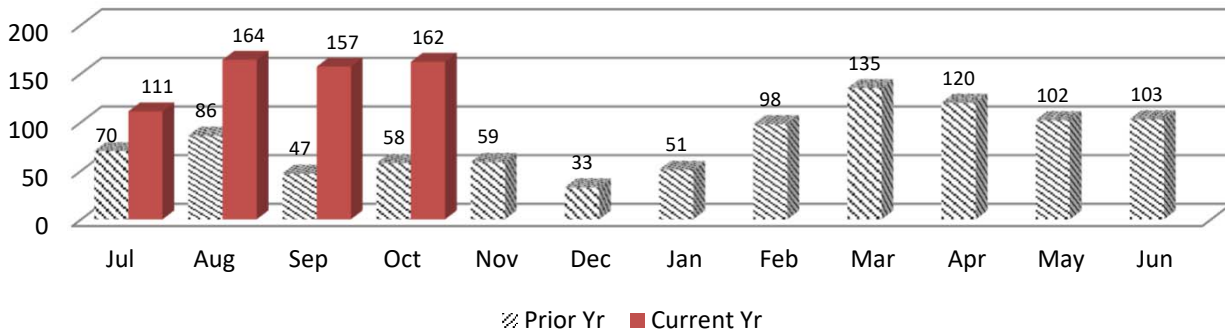
Current Year End trend is 195% of 2022-2023

YTD 2022-23 (Oct - June) vs YTD 2023-2024: 214%

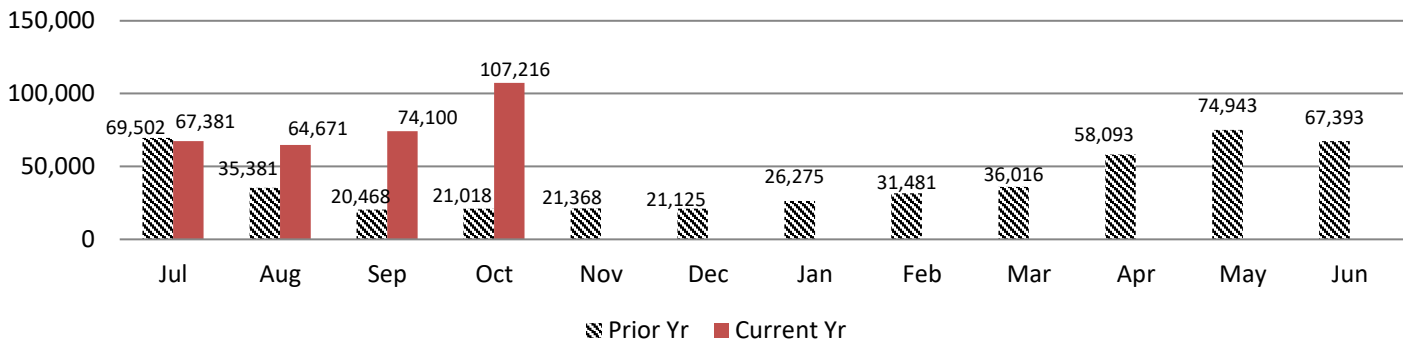
Caseload Pending v. Prior Year



Cases Resolved v. Prior Year



Compliance Fines Collected v. Prior Year

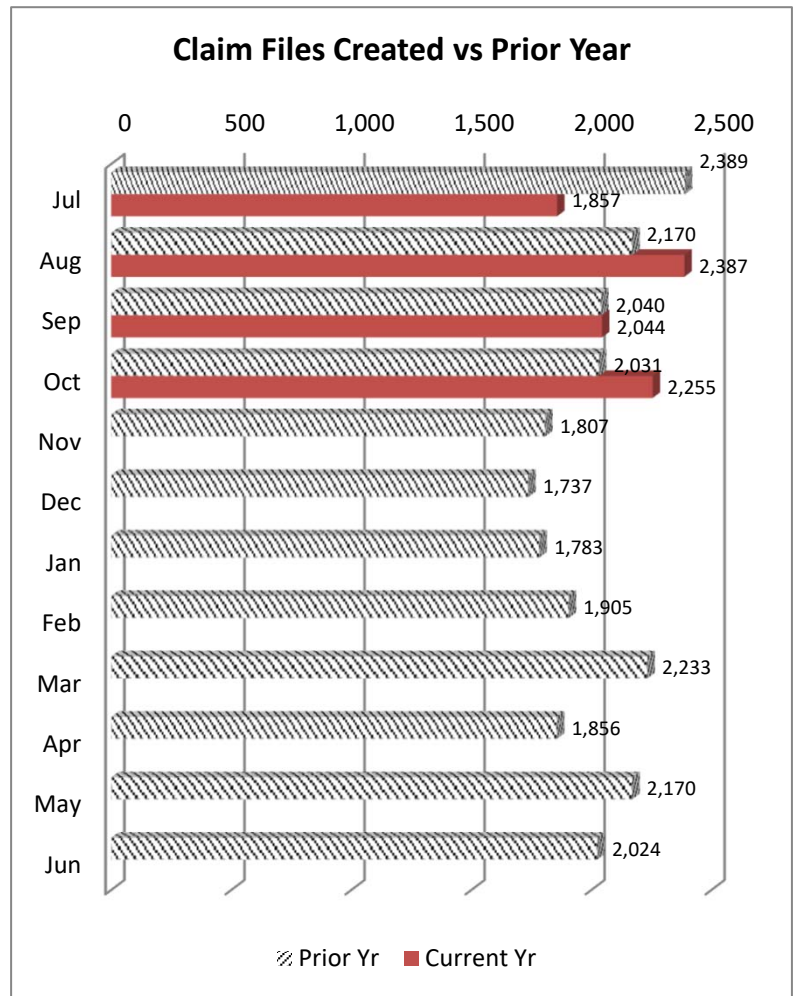


WCC Claim Files:

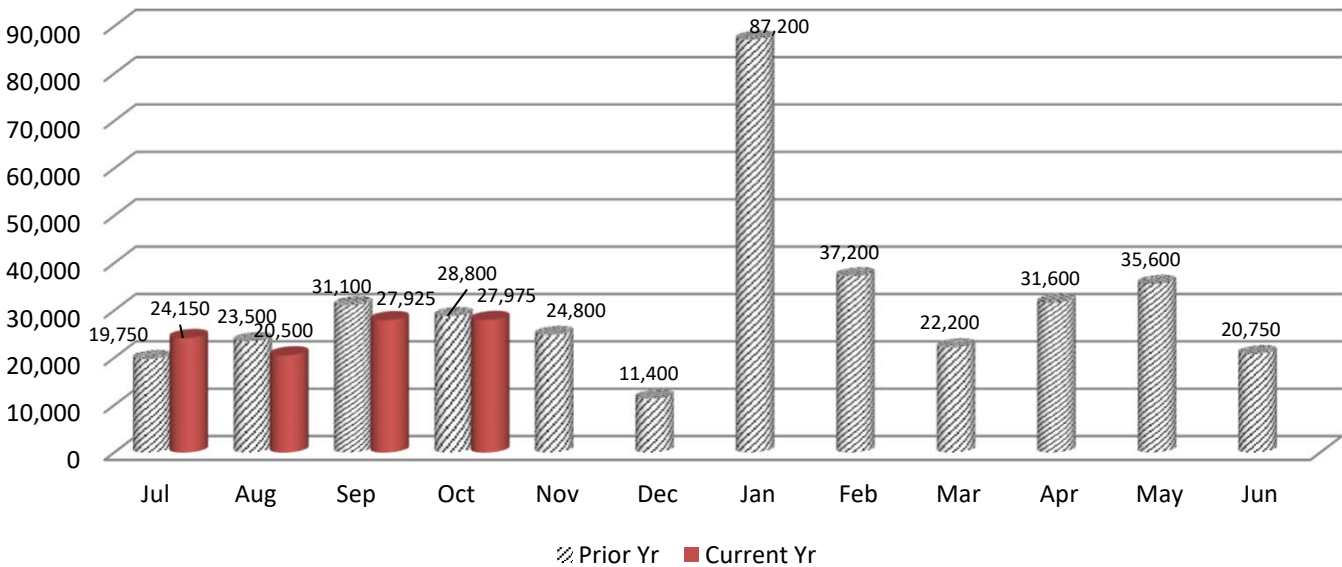
In October 2023, the Coverage Division received a total of 2,255 WCC Claim files. Of these, 1,930 were created through proper carrier filing of a 12A, and 325 were generated as a result of a Form 50 claim filing. Year to Date 8,543 Claim files have been created which is 35% of claim file volume prior year (24,145).

Coverage Fines:

The Coverage Division collected \$27,975 in fine revenue in October 2023, as compared to \$28,800 in Coverage fines/penalties accrued during October 2022. Year on Year, Coverage fines are at 27% of collections for prior year.



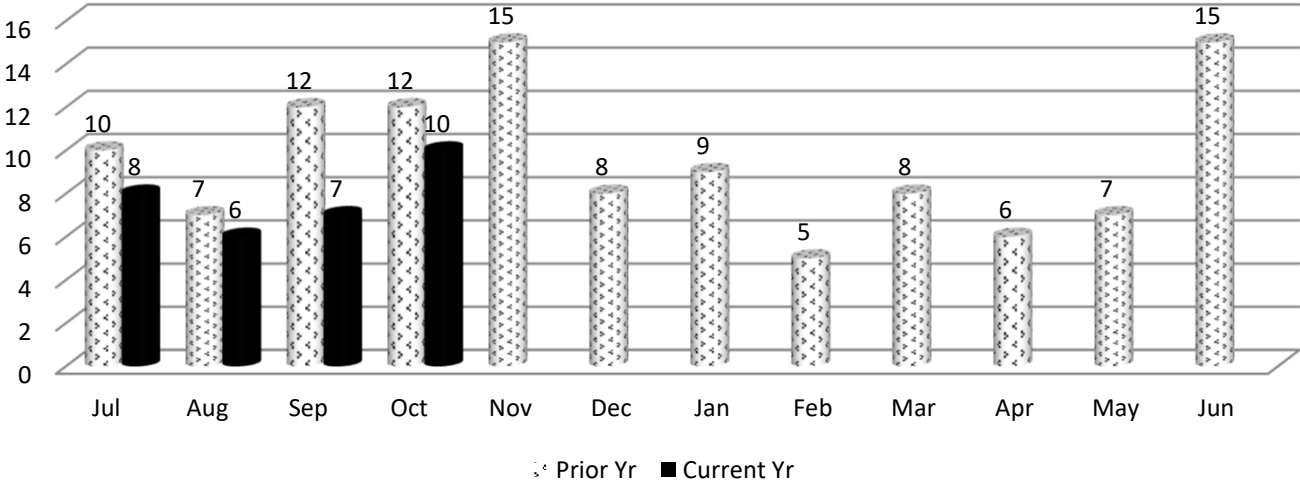
Coverage Fines Collected v Prior Year



IMS MEDICAL SERVICES DIVISION

In October 2023, the Medical Services Division began the month with 7 bills pending review, received an additional 17 bills for review, conducted 14 bill reviews and ended the month with 10 bills pending.

Medical Bills Pending Review v. Prior Year



TAB 6

State of South Carolina

1333 Main Street, 5th Floor
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TEL: (803) 737-5700
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Workers' Compensation Commission MEMORANDUM

To: Gary Cannon, Executive Director

From: Sonji Spann, Claims Director

Date: November 20, 2023

Re: Claims Department October 2023 Full Commission Report

Attached is the Statistical Report for the Claims Department for the period July 1, 2023-October 30, 2023 for the Business Meeting on November 20, 2023.

Claims activities are in Column (a) with the totals for the period ending October 2023 in column (o). Column (q) reflects the percentage change when comparing the totals for same period in the current fiscal at the totals for the same period in last fiscal year. The total Claims Activities, for this period have decrease 2% when compared to the same period from last fiscal year.

The number of cases Reviewed shows a 7% increase; cases Closed increased 3% the Fines Assessed reflects a 3% increase; and the Total Fines Paid decreased by 37% respectively when compared to the same period last fiscal year.

I will be happy to answer any questions you or the Commissioners have.

Claims Department Statistical Report

FY2023-2024

July 1, 2023 - June 30, 2024

Claims Activities	July	August	Sept	Oct	FY23-24 Total	FY22-23 Total	% Diff from prev year
(a)	(b)	(c)	(d)	(e)	(o)	(p)	(q)
Forms 15-I	927	1,174	1,020	1,194	4,315	4,496	-4%
Forms 15-II/Forms 17	670	742	687	732	2,831	3,723	-24%
Forms 16 for PP/Disf	43	39	55	60	197	859	-77%
Forms 18	4,716	5,293	4,979	5,183	20,171	19,405	4%
Forms 20	514	624	503	578	2,219	2,319	-4%
Form 50 Claims Only	267	309	263	4	843	1,159	-27%
Form 61	628	756	670	772	2,826	2,715	4%
Letters of Rep	123	178	119	2	422	733	-42%
Clinchers	601	679	613	748	2,641	3,198	-17%
Third Party Settlements	17	21	22	28	88	111	-21%
SSA Requests for Info	44	39	36	46	165	117	41%
Cases Closed	1,927	2,270	2,132	2,314	8,643	8,388	3%
Cases Reviewed	1,947	2,479	3,407	4,430	12,263	11,451	7%
Total	12,424	14,603	14,506	16,091	57,624	58,674	-2%
					-		
Total Fines Assessed	241	444	290	291	1,266	1,230	3%
Form 18 Fines	230	414	230	212	1,086	1,047	4%
Total Amt Paid	\$33,200	\$33,400	\$30,050	\$45,000	\$ 141,650	\$ 242,700	-42%

TAB 7

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Workers' Compensation Commission

November 13, 2023

To: Gary Cannon
Executive Director

From: Amy A. Bracy
Judicial Director

RE: Monthly Judicial Report for October 2023

In October, the Judicial Department began processing the Claim only Form 50, a function previously handled by the Claims Department and Letters of Representation which prior to October was a function split between Claims and Judicial.

During the month of October, the Judicial Department processed nine hundred thirty-five (935) requests for hearings (claimant and defense pleadings). Comparing the numbers from the same period last year, claimant pleadings are up 8% and defense pleadings experienced an 12% increase. The department received one hundred thirty-three (133) Motions, a 9% decrease compared to the same period last year and one hundred fifty-seven (157) clincher conference requests, a 4% increase compared to the same time last year.

There were forty-eight (48) Single Commissioner Hearings conducted during the past month, twenty-one (21) pre-hearing conferences held, and three (3) Full Commission hearings held. A total of five hundred eighteen (518) Orders (Single Commissioner Orders, Consent Orders and Administrative Orders) were served at the single Commissioner level, thirty-six (36) of those were Decision and Orders that resulted from hearings that went on the record and one hundred sixty-one (161) were Motion Orders that were a result of Motions ruled upon by Commissioners.

There were two hundred fifty-one (251) Informal Conferences requested during October and seventy-three (73) were conducted.

There were twenty-five (25) regulatory mediations scheduled and sixty-four (64) requested mediations. Totals are up 2% and 14% in the respective categories for the same period last year. The Judicial Department was notified of forty-six (46) matters resolved in mediation, with the receipt of Forms 70. This category's total is up 13% compared to this period last year. This does not include mediations that take place outside of what is reported to the Commission.

In the month of September, Judicial received zero (0) Notice of Intent to Appeal to the Court of Appeals and zero (0) to the Circuit Court.

TAB 8

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Workers' Compensation Commission

MEMORANDUM

To: Gary Cannon
Executive Director

From: Christy Brown
Self-Insurance Director

Date: November 20, 2023

Subject: Monthly Self-Insurance Department Report for the month of October 2023

During the month of October, the self-insurance department collected \$120,095 in self-insurance taxes from 7 self-insureds and conducted 4 audits of self-insured individual employers. Year to date the department has collected and deposited \$1.4 million dollars in self-insurance tax funds.

We received 8 applications for membership in 2 self-insured fund(s). The applications were rewed, processed, and given a pre-approval the same day they were received per 42-5-25 (B). As a result, there are 4,855 additional employees who will now be covered under the self-insurance program.

TAB 9

No report submitted at the time of publication.

TAB 10

State of South Carolina



Workers' Compensation Commission

Executive Director's Report

November 20, 2023

Meetings and Other Activities

The Executive Director met with various staff to discuss administrative services matters, TPA and insurance carrier issues and preparation of the presentation to the House Legislative Oversight Committee on Fraud. He attended the presentation to the HLOC Fraud Committee; staff training on dealing with an active shooter; the SC Bar reception honoring the Commissioners and traveled to Clemson to make a presentation the Dr. Heisl's Forestry Class about workers' compensation.

Constituent /Public Information Services

For the month of October, the Executive Director's and the General Counsel's offices had 183 contacts with stakeholders.

Financial Transactions Activity

During the month of October, the Director's office processed and approved 16 travel expense reports, 116 invoices and 48 deposits for DOA to process in the SCEIS system.

SCWCC Stakeholder Electronic Distribution List

For the month of October, the Office had 1,558 (one thousand fifty-eight) deletions to the email distribution list due to duplicates of inactive email accounts.

Advisory Notices

During the month of October, the office posted one (1) notice on the Commission's website and emailed it to the distribution list.

TAB 11

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Workers' Compensation Commission

MEMORANDUM

TO: COMMISSIONERS

FROM: Gary Cannon, Executive Director

DATE: October 16, 2023

RE: FINANCIAL REPORT – FY Period ending October 30, 2023

Attached is the Budget vs. Actual Report for the General Fund and Earmarked Fund for the fiscal year period ending October 30, 2023. The benchmark for this period is 33%.

Expenditures – General Fund – Annual Budget \$2,985,961

The total expenditure for the General Fund for this period is \$939,848 or 31% of the annual budget. Page 3 and 4 reflects the balances of funds appropriated by the General Assembly for the IT System Modernization Project.

Expenditures – Earmarked Fund – Annual Budget \$5,607,845

The Earmarked Fund (38440000) financials begin on page 5 with the total expenditures found on page 9. The total expenditures for this period are \$1,475,090 which is 26% of budget.

Revenues – Earmarked Annual Budget \$3,157,092

The Commission posted \$1,247,960 in Earmarked Fund operating revenues for this period, which is 40% of the annual budget. Accounts with shortfalls in the revenues collected will be covered transfers from the Self-Insurance Taxes collected and retained by the Commission.

Self-Insurance Tax Funds

The amount budgeted from the Self-Insurance Tax for the Commission is \$2,500,000. The amount received for this period is \$1,484,755.

TAB 12

State of South Carolina

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Workers' Compensation Commission

MEMORANDUM

TO: COMMISSIONERS

FROM: Gary Cannon, Executive Director

DATE: August 28, 2023

RE: Request from Stephen Samuels, Esq.

Stephen Samuels, Esq. requested to appear before the Commissioners at the Business Meeting in August to discuss the recent changes to the Form 15.



MEMORANDUM OF LAW

**South Carolina Workers' Compensation Commission
In Re: Amended Form 15**

On Behalf of the South Carolina Employers' Advocacy Association

Please allow this memorandum of law to serve as the official position of the South Carolina Employers' Advocacy Association as it pertains to the utilization of the Form 15 in workers' compensation legal practice. This shall address arguments raised by the Injured Workers' Advocates that seek to conflate and confuse the intentions of the South Carolina Workers' Compensation Act and its associated Regulations.

It can be stated without contention that the genesis, termination, suspension, and resumption of temporary benefits are governed by the South Carolina Workers' Compensation Act (hereinafter, the "Act"). There are a multitude of statutes and regulations that must be consulted to ensure proper compliance with the laws of our State in this regard. Though the Injured Workers' Advocates (hereinafter "IWA") seek to assert that there is a blanket "60-day hearing" relating to an employee's inquest into suspension and termination of temporary benefits both before and after the 150-day (notice of injury) period, such a result was not intended by our Legislature.

S.C. Code Ann. § 42-9-260 (2015) serves as the starting point of our analysis, as it addresses when temporary benefits may commence,¹ the reasons afforded to employers to

¹ S.C. Code Ann. § 42-9-260(A) (2015).

terminate or suspend benefits within 150 days² and employee's recourse when such benefits are terminated or suspended within that period,³ and when an employer is entitled to a 60-day hearing.⁴ Although mentioned in this same statute,⁵ the termination and suspension of benefits beyond 150 days is a creature of regulation, and it is those regulations that are controlling in situations beyond 150 days.

According to subsection (F) of section 42-9-260, “[a]fter the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause...” It is clear that, based on the plain language of the law, the suspension and termination of benefits beyond the 150-day period is governed by the Commission's regulations that are contained in Chapter 67. Specifically, S.C. Reg. 67-505 and -506 govern the suspension and termination of temporary benefits beyond 150 days.

It is plainly apparent from a reading of S.C. Reg. 67-506 (governing termination of temporary benefits after 150 days) that such benefits shall not be terminated without prior approval from the Commission. The burden is placed on the employer to request a hearing via Form 21 filing. And though temporary benefits may be terminated beyond 150 days in several instances, the only statutorily designed manner in which an employer is granted the right to a “60-day hearing” is where an employee has reached Maximum Medical Improvement. Otherwise – since the Legislature and regulatory scheme have not specifically crafted other carve-outs intentionally

² S.C. Code Ann. § 42-9-260(B) (2015).

³ S.C. Code Ann. § 42-9-260(C) (2015).

⁴ S.C. Code Ann. § 42-9-260(D) (2015).

⁵ S.C. Code Ann. § 42-9-260(F) (2015).

granting such a right – the employer must wait the “normal” time period before a hearing is scheduled to be heard by the Commission.

Conversely, when temporary compensation has been *suspended* beyond the 150-day period pursuant to S.C. Reg. 67-505, the employee is explicitly provided with a method for requesting a hearing. S.C. Reg. 67-505(H) states that “[i]f the employer’s representative refuses to reinstate temporary compensation after the fifteen day period above, the claimant may request a hearing according to R. 67-207.” Of course, S.C. Reg. 67-207 provides an employee with the ability to request a hearing via Form 15, Form 50, or Form 52, where appropriate. It must be noted that the circumstances must be applicable for the particular form to be filed requesting a hearing. For example, it can be stated without argument that an employee who files a Form 52 where there is no death related to the claim will not be allowed to proceed to a hearing based on that form. As such, where an employee attempts to circumvent the statute and regulations concerning termination and suspension of temporary benefits beyond 150 days by filing a Form 15, Section III, the Commission must not set a hearing in that matter, as there is no authority requiring a 60 day hearing.

To address the use of the Form 15 – both in its present version and in versions past – there is no dispute as to Section I. The employer must complete this section whenever temporary compensation starts or resumes, and when the compensation rate changes during a claim. Section II is also for use by the employer, but is only available within 150 days of notice of the injury.⁶ Because the employer has been provided another avenue by which to have their rights adjudicated

⁶ See Form 15, Section II (“This section shall be used only within 150 days after notice to employer of the injury.”). The prior Form 15, Section II stated “[t]his section may be used only within 150 days after notice to employer of injury.”).

– namely, a Form 21 filing – the Commission has made it abundantly clear that Section II is only available in limited circumstances. The applicability and use of Section III to an employee is much the same, as highlighted below.

Under the revised version of the Form 15, Section III, the “if...then...” nature of the language indicates that Section III may only be utilized by an employee “[i]f the employer’s representative has terminated or suspended temporary compensation *during the first 150 days* pursuant to section 42-9-260...” (emphasis added). Though not as plainly stated, the prior version of the Form 15, Section III contained the same instruction. The Section III was only intended for use where the “employer’s representative...stop[ped] temporary compensation within 150 days...” Both versions of the Form 15, Section III make a direct reference to Section II. Thus, it must follow that the inclusion is done with purpose. That purpose highlights the fact that Section III of the Form 15 is only applicable where there has been a Form 15, Section II filed by the employer. Though the IWA argues this would yield an absurd result and prejudice the employee, its true battle lies not with the drafting of the Form 15, but rather with the Legislature of our state and the regulations drafted by our Commission.

Respectfully, it must be noted that the memorandum submitted on behalf of the IWA misstates the law in multiple respects. This reckoning is not submitted to inflame any individual members of the IWA, nor is it used as an opportunity to engage in posturing, but SCEAA would be remiss if certain aspects of their memorandum are not addressed.

The IWA’s assertion that “a claimant whose disability payments have been suspended or terminated must be granted a hearing within sixty days of filing the request” and its reliance on S.C. Code Ann. § 42-9-260(C) (2015) to justify the same is misplaced. When the Legislature

includes statutory language that is not present elsewhere, it must be given its full effect and the statute must be read so that “no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

While section 42-9-260(C) (2015) does allow for a sixty-day hearing, the context must be obtained from a reading of the same provision. “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” J&H Grading & Paving, Inc. v. Clayton Constr. Co., Inc., 892 S.E.2d 558, 562 (S.C. Ct. App. 2023), reh'g denied (Oct. 11, 2023). In this instance, the following language is plain: “[a]n employee whose disability payments have been terminated or suspended *pursuant to this section* may request a hearing to have the payments reinstated...” S.C. Code Ann. § 42-9-260(C) (2015) (emphasis added). In order to align with the full text of section 42-9-260, the language of “pursuant to this section” must be read in alignment with the other portions of that text. See Mun. Ass'n of S.C. v. AT & T Commc'ns of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (“The language must also be read in a sense which ‘harmonizes with its subject matter and accords with its general purpose.’”). It must be followed that, where language is used in one instance but not in another, particularly in the same section of the Code, the natural conclusion is that the omitted language shall not be read into the law where it is not mentioned. See State v. Leopard, 349 S.C. 467, 472–73, 563 S.E.2d 342, 345 (Ct. App. 2002) (“The canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’”).

In subsection (C), the use of “pursuant to this section,” particularly when viewed in stark contrast to subsection (F) and its direct reference to Commission regulations, serves to indicate to the reader that the distinction between the pre-150-day and post-150-day periods are handled differently in multiple respects. To wit, within 150 days, the employer is provided with a mechanism for termination or suspension of temporary benefits without a hearing before the Commission; thereafter, a hearing must be held wherein the Commission must make such determination. Likewise, the employee is granted an expedited hearing where temporary benefits are stopped within the 150-day period; however, the same grant is not extended beyond this time period. SCEAA would like to note that an employer’s right to an expedited hearing is also spelled out in limited circumstances, as is the prerogative of the lawmakers of our state.⁷

Patently, the IWA is taking an isolated view of subsection 42-9-260(C) of the South Carolina Code (2015) without viewing it in *pari materia* with the other provisions of this statute and overarching regulatory scheme. As the South Carolina Court of Appeals has succinctly elucidated, “*meaning can be obscured rather than revealed if words are isolated and cut off from context*. We are interpreting a rule, not a dictionary entry, and how words are arranged often determines meaning; as Mark Twain explained, it’s ‘the difference between the lightning-bug and the lightning.’” *Ex parte Travelers Home & Marine Ins. Co. v. Stringfellow*, 427 S.C. 238, 241, 830 S.E.2d 718, 720 (Ct. App. 2019), *reh’g denied* (Aug. 5, 2019), *cert. denied* (Jan. 16, 2020) (emphasis added). To accept otherwise would render the plain and unambiguous language in subsection 42-9-260(F) regarding a temporal distinction in procedure after the 150 day expiration superfluous, which clearly cannot be countenanced. *See State v. Sweat*, 379 S.C. 367, 377, 382,

⁷ S.C. Code Ann. section 42-9-260(D) (2015).

665 S.E.2d 645, 651, 654 (Ct. App. 2008) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous”) (quotation omitted); *see also Prot. & Advocacy for People with Disabilities, Inc. v. Buscemi*, 417 S.C. 267, 274, 789 S.E.2d 756, 760 (Ct. App. 2016) (“When interpreting a statute, courts must presume the legislature did not intend to do a futile act.”) (quotation omitted).

Of course, the Regulations must also be consulted, and a review of the same confirms this distinction.⁸ S.C. Reg. 67-504 provides the employer with further guidance on how to terminate or suspend benefits within 150 days, and also draws a clear line of reference back to section 42-9-260. *See* S.C. Reg. 67-504(A) (“The employer’s representative may terminate or suspend temporary compensation *during the first one hundred fifty days...pursuant to Section 42-9-260.*”) (emphasis added). Also contained therein are instructions on use of the Form 15, Sections II and III by the employer and employee. Notably absent from the regulations discussing suspension and termination of benefits beyond 150 days are similar instructions.⁹ Instead of using the Form 15, Section III, the employee’s recourse for alleged improper suspension of temporary benefits is the request of a hearing pursuant to S.C. Reg. 67-207.

Though the IWA argues that “[w]ithin the first 150 days, the regulations provide only for termination,” and cite to Reg. 67-504 for this proposition, that is simply a misreading of the regulation. It appears that the IWA’s interpretation solely looks to the heading of that particular regulation, and not to the language of the text. In all 3 subsections of Reg. 67-504, both termination

⁸ For additional insight into this distinction, *see Fredrick v. Wellman, Inc.*, 385 S.C. 8, 682 S.E.2d 516, (Ct. App. 2009).

⁹ The significance of inclusion in one instance and exclusion in another is discussed above through the canon of *expressio unius est exclusio alterius* and *inclusio unius est exclusio alterius*.

and suspension are addressed.¹⁰ Benefits may clearly be suspended within the first 150 days for various reasons, to include medical non-compliance¹¹ and refusal of suitable employment.¹² Further, the IWA's proposed reading elects to omit the plain language of section 42-9-260(B) and its edict that "[o]nce temporary disability payments are commenced, the payments may be terminated *or suspended*...within the first one hundred fifty days..." (emphasis added). If the IWA's interpretation were to be enforced, it would lead to a clear contradiction by the regulations of the statutory scheme of the Act. And although administrative bodies are given deference in interpretation of statutes and the promulgation of its regulations, contradictions by the regulations must be overruled by the plain language of the statute. See Kiawah Development Partners, II v. South Carolina Dep't of Health & Env't Control, 411 S.C. 16, 766 S.E.2d 707 (2014).

As to the IWA's assertion that a form of *stare decisis* must take effect with the previous version of the Form 15, SCEAA points out that precedent shall not serve as the "end all be all," particularly where that precedent is not faithful to the text. See Proctor v. Whitlark & Whitlark, Inc., 414 S.C. 318, 332, 778 S.E.2d 888, 895 (2015) (It is well-established that we need not blindly adhere to established precedent. See McLeod v. Starnes, 396 S.C. 647, 654, 723 S.E.2d 198, 202 (2012) ("When the court is asked to follow the line marked out by a single precedent case it is not at liberty to place its decision on the rule of *stare decisis* alone, without regard to the grounds on which the antecedent case was adjudicated.... An original case could not possibly gain authority

¹⁰ S.C. Reg. 67-504(A) ("The employer's representative may terminate or suspend... When compensation is terminated or suspended..."); S.C. Reg. 67-504(B) ("To terminate or suspend..."); and S.C. Reg. 67-504(C) ("The claimant may request a hearing to dispute the termination or suspension of temporary compensation...").

¹¹ See S.C. Code Ann. § 42-15-60 and -80.

¹² See S.C. Code Ann. § 42-9-190 (2015).

by a mere perfunctory following on the principle of *stare decisis*.” (quoting State v. Williams, 13 S.C. 546, 554–55 (1880))”).

Under an appropriate reading of these statutes and regulations concerning termination and suspension of temporary benefits – both before and after the 150-day period – due process is not obviated, as the employee has other appropriate avenues through which a challenge may be made. Most notably, an employee is able to file a Form 50 to request a hearing before a Commissioner and may, at that time, make any such argument deemed fit and appropriate. Again, there exists no blanket right for either the employee or the employer to a “60-day hearing.” Instead, this allowance has been carved out by the Legislature for limited circumstances deemed to be of such importance that a carve-out was necessary.

Finally, to address the case attached to the IWA memorandum, Alexander v. South Carolina Workers’ Compensation Commission & PharMerica, Docket No. 2021-CP-40-05489, there is no ultimate determination made by the presiding Circuit Court judge. Instead, there are generalizations made by that judge and the matter was remanded to the Commission to conduct a hearing. In that Order, however, the Honorable Allison Lee noted that “[n]either Form 15 nor Form 50 appear to allow for special circumstances to obtain a hearing related to TTD within a sixty-day period when compensation has been stopped outside of the one-hundred-and-fifty-day time period.” Order at Page 4. SCEAA would agree with this note, as there are no special circumstances afforded to an employee as it pertains to an expedited hearing beyond the 150-day period. That is supported neither by statute, regulation, Commission decision, nor other case law. Additionally, Judge Lee found that the “Form 15 fails to address what happens when payments are terminated outside of the one-hundred-and-fifty-day period.” Order at Page 5. Again, SCEAA would agree,

as the Form 15, Sections II and III are circumscribed from use outside of that 150-day period. To rule otherwise would be to consciously ignore the stated language of the Form itself.

In conclusion, the revised version of the Form 15 currently in use is faithful to the strictures of the Act and Regulations. It clearly elucidates the procedure that must be followed and its applicability, or lack thereof, to request a hearing or stop temporary benefits outside of 150 days. The Commission, in its vast discretion and authority, has elected to not grant expedited hearings in various situations, and this decision must be enforced. As such, SCEAA asserts that a 60-day hearing regarding temporary benefits and the use of a Form 15, Section III are only available to an employee within 150 days. Thereafter, an employee must request a hearing via Form 50, which provides ample due process and a right to be heard. Therefore, the present version of the Form 15 should remain in effect.

Respectfully submitted,



Michael E. Chase, Esq.
Legal Advisor – SCEAA
11/9/2023