



**Commonwealth of Massachusetts
Executive Office of Labor and Workforce Development**


2015 Work-Related Injuries: New Challenges & New Solutions Conference

Department of Industrial Accidents

Senior Judge Omar Hernández

June 5 & 6, 2015

Work Related Injuries Workshop
June 2015



What is Workers' Compensation?

The Massachusetts Workers' Compensation system is in place to make sure that workers are protected by insurance if they are injured on the job or contract a work-related illness.

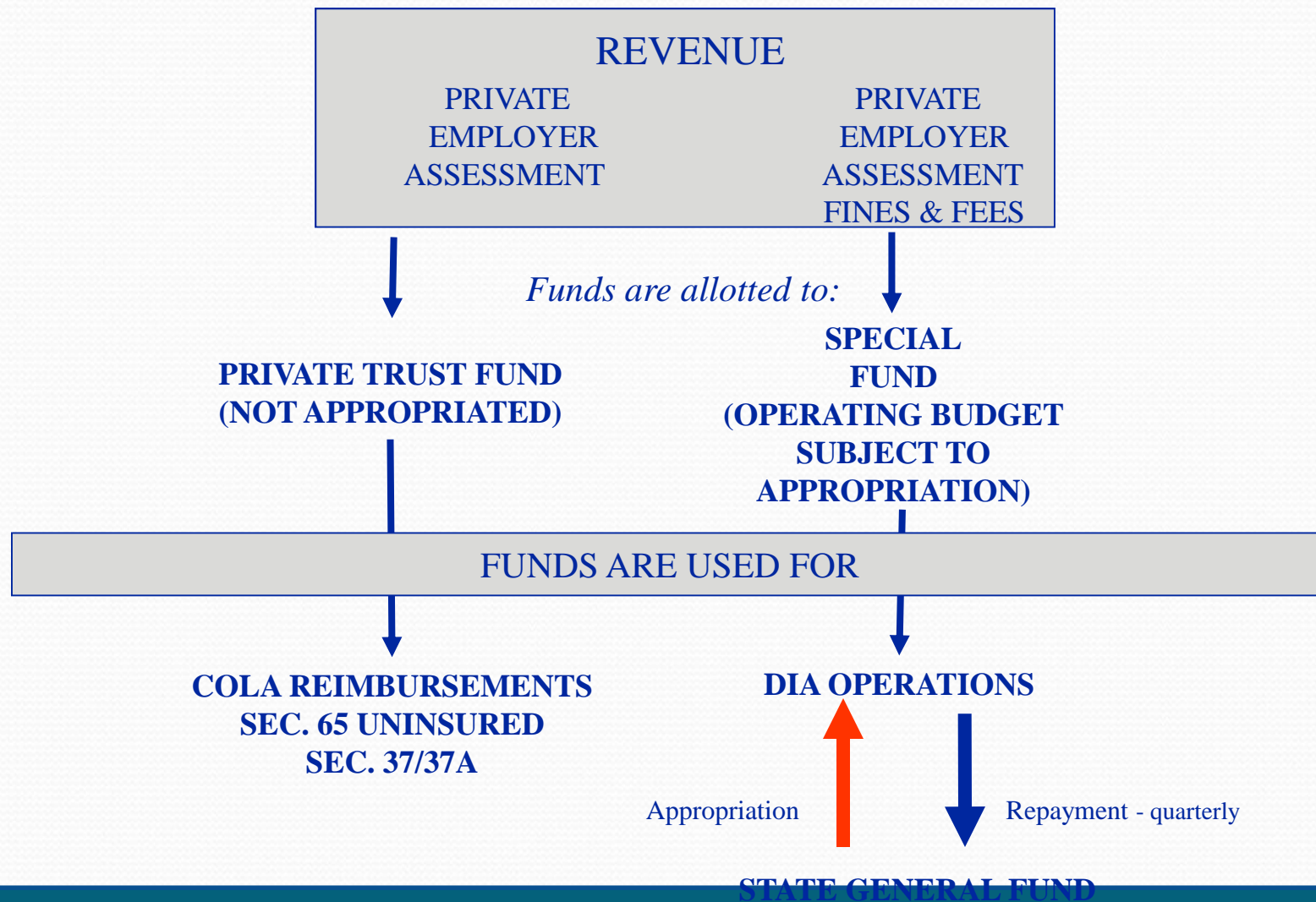
Under this system, employers are required by M.G.L. c. 152, Sec. 25A to provide workers' compensation insurance for all of their employees.

The Department of Industrial Accidents (DIA) is the agency responsible for administering the workers' compensation law in Massachusetts.

With 50,000 to 60,000 workers' compensation claims being filed each year in Massachusetts, the DIA's twenty-seven Administrative Judges adjudicate 10,000 to 12,000 disputed cases annually.

Department of Industrial Accidents Funding Mechanism

DIA Operating Budget is appropriated by the Legislature. DIA repays the General Fund the full appropriation plus fringe and indirect costs. Payments are made quarterly.





Who is Eligible for Workers' Compensation?

- All employees must be covered (other than sole proprietors).
- Workers' compensation coverage protects employers from most lawsuits.
- Employers without workers' compensation insurance risk BOTH a lawsuit from the employee and a lawsuit by the Workers' Compensation Trust Fund.
- Employees who work for an employer without workers' compensation insurance are covered by the Workers' Compensation Trust Fund.

What do Workers' Compensation Benefits Cover?

- **Medical bills:** prescriptions and co-pays for work-related illness or injury (WRII).
- **Lost Wages:** 60% of the average weekly wage (capped at 60% of the state average weekly wage) if an employee loses five or more calendar days of work as a result of a WRII.
- **Cost of travel:** to and from a doctor's office or medical facility for treatment of a WRII.
- **Disability benefits:** available for those employees who's WRII prevents them returning to work.

Claim Adjudication Process for Massachusetts Workers' Compensation Claim

Employer

Submits Form 101 to insurance company within 7 calendar days following the 5th calendar day of disability. All losses should be reported as early as possible.

Insurance Carrier

Must decide to contest or begin paying benefits within 14 days of receipt of the claim.

Employee

If the claim handler contests, reduces or stops payments, the employee files a Form 110 with the Massachusetts DIA.

Reviewing Board

Three member board of Administrative Law Judges hear cases appealed after Hearing.

Hearing

Formal Proceeding with full testimony. An Administrative Judge files a written Decision.

Impartial Examination

The Impartial Physician conducts an medical examination of the employee and reviews the set of medical records on appeal of the Conference Order.

Conference

Employee, insurance carrier, and the employer appear before an Administrative Judge issues Conference Order.

Conciliation

DIA schedules a proceeding. Conciliator attempts to adjust the claim.

What happens if an Employee suffers a work-related injury or illness?

- The insurer has fourteen days to investigate the claim and determine whether or not to pay the claim.
- If the insurer decides to pay the claim, a Form 103, Insurer's Notification of Payment is sent to the employee and the DIA.
- If the insurer denies the claim, they must send to the employee, a Form 104, by certified mail, the Insurer's Notification of Denial. The form must include the reasons for denial and sent to the DIA.

What happens if an Employee suffers a work-related injury or illness?

- When the insurer denies, reduces or stops payment of benefits, the employee files a Form 110, Employee's Claim with the DIA.
- The employee must submit medical documents to support the claim, including medical reports and medical bills to the insurer and the DIA.
- Upon receipt of the claim, the DIA will schedule a Conciliation.

Conciliation


- This proceeding, scheduled approximately three weeks after the initial filing, is conducted by a Conciliator whose function is to bring the parties together, to receive relevant documents and to discuss possible resolution.
- The Conciliator's function is to ensure that the moving party has presented sufficient evidence of workplace injury and a medical basis for the claim or modification to allow that party to proceed to Conference, the next level.
- Currently, the Conciliation Unit is resolving forty-seven percent of all claims.
- If a voluntary agreement cannot be reached, the claim is referred to an Administrative Judge for a Conference.



Conference

The parties receive a notice of Conference about six weeks prior to the proceeding.

- The Administrative Judge assigned for Conference has jurisdiction and controls all proceedings until issuing a written decision at the Hearing level or presiding over a settlement conference.
- All inquiries about the case status from receipt of the Conference notice forward are directed to the office of the assigned Administrative Judge.



Conference There is limited discovery in the workers' compensation system. Discovery tools are available through regulations, statutes and discovery motions as well as the expected good will of opposing counsel.

- Attorneys are expected to present evidence at Conference sufficient to establish a prima facie claim.
- The employee must be injured while in the course of employment for a particular employer. The injury must be causally-related and arise out of an industrial event, whether it is traumatic in nature or cumulative, as in repetitive injuries or long-term exposures to toxic materials.



Conference

- An employee must produce sufficient medical evidence to prove the diagnosis, causal-relationship, extent of physical limitation and a suggestion as to prognosis.
- In order to comply with the Department's new paperless system, Document Management System (DMS), both parties must electronically submit a set of certified and relevant medical records including those of treating physicians and reports from expert examiners to the Administrative Judge to review prior to issuing an Order.



Conference

- At Conference, the parties provide to the Administrative Judge the procedural history, the factual history and the course of the employee's medical care, status and prognosis.
- The Administrative Judge may ask questions concerning the facts of the claim, the legal theories and/or the law to be applied. The Administrative Judge may ask about potential settlement negotiations.


Conference

- The Conference proceeding offers the insurer's counsel the opportunity to conduct discovery not otherwise available, for example, to inquire about the employee's prior injuries or related medical conditions.
- All inquiries are made through the Administrative Judge; direct examination of the employee is not permitted until Hearing.



Conference The Conference Order can be appealed by either party by filing an Appeal of a Conference Proceeding (Form 121).

- The appeal must be submitted within 14 calendar days of the Conference Order. There is a \$650 fee to appeal the Conference Order if the appeal is based upon a medical issue.
- The medical records are forwarded to the Impartial Physician.
- The fee pays for the employee to be evaluated by an Impartial Physician.
- Currently, there are 152 Impartial Physicians on the DIA roster.




Impartial Examination

The Impartial Physician will review the set of medical records on appeal of the Order. That set must be submitted in a PDF format, clean, without any highlights or extraneous notations.

- Only medical records are sent to the Impartial Physician; bills and other non-medical evidence are excluded. The relevant material must be presented chronologically, by physician and institution.
- Pursuant to Section 11A, the Impartial Physician examines the employee and files a written medical report prior to the Hearing.

Impartial Examination

- The report of the Impartial Physician shall, where feasible, contain a determination of the following: (i) whether or not a disability exists, (ii) whether or not any such disability is total or partial and permanent or temporary in nature, and (iii) whether or not within a reasonable degree of medical certainty any such disability has as its major or predominant contributing cause a personal injury arising out of and in the course of the employee's employment.
- The report shall also indicate the Impartial Physician's opinion as to whether or not a medical end result has been reached and what permanent impairments or losses of function have been discovered, if any.
- The Impartial Physician's report shall constitute prima facie evidence of the matters.



Impartial Examinations On January 15, 2013, the Department of Industrial Accidents increased the Impartial Medical Examination fees after a public hearing held on December 17, 2012. The new fees, pursuant to G. L. c 152, § 11A and 452 CMR 1.14, applied to all appeals of Conference Orders on or after January 17, 2013.


- Impartial Exam and Report \$650
- Second Exam, 8(4) \$650
- Supplemental Report \$200
- Records Review and Report \$300
- No Show Fee/Late Cancellation \$150
- Deposition Fee (First 2 hrs.) \$750
- Deposition Fee (2 hrs. +) \$150 per hour



Hearing

The Hearing is a formal proceeding where the contested issues are heard *de novo*, under the Massachusetts Rules of Evidence and the prescribed DIA Regulations. The prerequisites are a timely appeal of the Conference Order and the report of the Impartial Physician.

- The Hearing is usually held before the same Administrative Judge who presided at the Conference and a court stenographer is assigned to record the Hearing.



Hearing The report of the Impartial Physician is central to the statutory system because it is prima facie evidence at Hearing, perhaps the only medical evidence.

- The Administrative Judge will review the report of the Impartial Physician and if the report answers all of the statutory requirements pursuant to Chapter 152, Sec. 11 A, the Administrative Judge must accept the report as the only medical evidence for the Hearing decision.




Hearing

If one of the parties is able to convince the Administrative Judge, however, that the report is inadequate or that the medical issues are complex, the Administrative Judge may allow additional medical evidence that has evidentiary weight equal to that of the impartial report.

- The Administrative Judge's determination of this issue is very often the key to the outcome of the case.
- Due to the significance of that decision, some Administrative Judges will often discuss settlement potential with the parties prior to ruling on such a motion.

Hearing

- Administrative Judges encourage the parties to engage in realistic settlement discussions on the day of the Hearing as it is often a prime opportunity to resolve a case.
- On occasion, in order to facilitate a possible resolution to the claim, Administrative Judges offer a Pre-trial Conference session, prior to the date of Hearing.
- If the case proceeds to Hearing, the attorneys present testimony, from the employee and witnesses, in support of the claim and the defense.



Hearing The Hearing testimony is usually completed in one day followed by a period of time designated by the Administrative Judge within which counsel must complete medical depositions and if necessary, closing arguments or briefs on relevant legal issues.

- After the Hearing concludes, and all motions are ruled on and necessary depositions are filed, the Administrative Judge issues a formal Hearing Decision containing findings of facts and rulings of law.



Reviewing Board

Any party aggrieved by the Hearing decision can request a review of the decision with the Reviewing Board, the appellate body of the DIA.

- The appeal must be received within thirty calendar days from the date of the Hearing decision with a Form 121, Appeal to the Reviewing Board. This form must be accompanied with a fee of thirty percent of state average weekly wage at the time of the appeal.
- The aggrieved party must show that the Hearing decision was beyond the scope of the Administrative Judge's authority, arbitrary or capricious or contrary to law.



Reviewing Board

- The Reviewing Board is comprised of Administrative Law Judges, three of whom will examine the Hearing transcripts. They may ask for additional written legal briefs or oral arguments from the parties.
- The Reviewing Board can reverse or uphold the decision of the Administrative Judge, or can remand the case to the Administrative Judge for further findings.
- Either party may appeal the Reviewing Board decision to the Court of Appeals within thirty days of the Review Board decision.

Office of Educational & Vocational Rehabilitation

- The mission of Office of Education and Vocational Rehabilitation (OEVR) is to assist injured workers who have accepted or established liability under MGL c. 152, to return to meaningful employment through the delivery of vocational rehabilitation services.
- To qualify for these services, an injured worker must have residual restrictions due to their work related injury that prohibits a return to his/her pre-injury job.
- The central goal of vocational rehabilitation services is to return employees to their pre-injury average weekly wage.
- OEVR facilitates agreements to return workers to meaningful and gainful employment with a focus on wage replacement.



Office of Investigations

- M.G.L. c. 152, Sec. 25A requires all employers operating in the Commonwealth to provide workers' compensation insurance for their employees.
- M.G.L. c.152, Sec. 25C provides that the DIA Office of Investigations shall investigate those businesses, organizations or other entities that employ one or more persons, be it full or part time, as defined by M.G.L. c. 152, Sec. 1, and determine if said business, organization, or entity has obtained the proper workers' compensation insurance coverage.



Enforcement Efforts

- By avoiding these requirements, an employer creates an unfair business advantage against those who operate in conformity with state law and shifts the cost of uninsured injuries to those businesses that are abiding by the law.
- Uninsured injuries cost law abiding Massachusetts businesses between \$6,000,000 and \$8,000,000 each year.
- Through enforcement efforts, the DIA strives to lower insurance costs.



Investigation Process

A Stop Work Order (SWO) suspends the employer's operations immediately. The employer is fined \$100 per day until a workers' compensation insurance policy is obtained and a policy is verified by the DIA.

- The Employer may file an appeal which will allow the employer to continue operating. However, the fine increases to \$250 per day until the employer either prevails at the appeal (if so, the SWO would be rescinded and no fine would be levied) or obtains a verifiable policy and pays the full fine.
- The DIA may seek a criminal complaint if the employer fails or refuses to comply with an SWO or is a repeat offender.

How to Reduce Workers' Compensation Insurance Costs

Pre-Loss Objective

Education

- Comprehensive Safety & Health education and training program.

Joint Labor-Management Safety Committees

- These committees provide a structure for identifying and correcting health and safety concerns.
- Employee participation and involvement is fundamental to the success of any occupational health and safety program.

How to Reduce Workers' Compensation

~~Insurance Costs~~ Post-Loss Objectives

Medical Attention

- Speedy and efficient medical attention can reduce long-term disability and lessen insurance premiums.

Injury report

- Complete all forms in a timely manner.

Information

- Maintain contact with employee, the adjuster, medical providers and all involved parties.

Return to Work

- Job or tool modification can help return employees back to work and prevent future injuries.

Workplace Safety Grant Program

- DIA awards workplace safety training grants via a competitive bidding process to qualified employers and organizations.
- Grants provide employers and organizations with funds to improve workplace safety and prevent injuries.
- DIA's Office of Safety issues \$800,000 in safety grants each year to 150 employers.
- Each year thousands of workers receive safety training through this program.



2014 Accomplishments

Streamlined the scheduling process for all cases by merging the Impartial Medical Unit and the Central Scheduling Unit.

- Implemented “Walk-in Lump Sum” program to expedite case settlements where appropriate and in the best interest of the employee. The program reduced wait time from four to six weeks to twenty-four hours.
- The Conciliation unit resolved forty-seven percent of cases during FY 2014.
- Appointed three new Administrative Judges.
- Reduced timeframe between Conciliation and Conference from five months to two months in all regions.

2014 Accomplishments

- Innovative Educational Outreach: An all-day, first of its kind "Workers' Comp and Circumstances: Practicing in MA, RI and in Between " Conference was held in October 2014.
- Established by DIA's Senior Judge Omar Hernández, Rhode Island's Chief Judge George Healy, and Deborah Kohl, Esq. of the Workers' Compensation section of the MA Bar Association. The 2nd Conference is targeted for 2015 and will include additional New England states.
- The Senior Judge, as the DIA representative, helped found the Massachusetts Chapter of Kids' Chance of America, a national organization with a sole mission of furnishing scholarships to children of deceased or seriously injured workers' compensation victims.

2014 Accomplishments

- Implemented EDI filing of First Reports of Injury increasing electronic filings to 88%.
- The Department of Industrial Accidents has increased employer compliance by averaging 2,300 stop work orders a year making the workplaces safer across the state.
- Provided funding for safety training to 39 employers and/or organizations to train 15,000 workers.
- Answered an estimated 20,000 customer calls.
- Expanded access to DMS via mobile devices.
- Established Wi-Fi Network for all DIA offices.

2014 Accomplishments

- The Massachusetts workers' compensation system is among the top systems in the country according to online trade publication "WorkCompCentral.com".
- The Oregon Bureau of Labor and Industries annual review of all workers' compensation premiums for 2014 reported that Massachusetts had the fourth lowest premium rates in the United States.
- Document Management System allows the DIA to save \$250,000 annually in mailing costs and allows the parties mobile access to files at anytime.



2015 Challenges

The DIA is rebuilding its Storage Area Network (SAN) to improve performance and maintain long-term stability in its network systems. The SAN is the location where all major documents, files and information. The new SAN is critical to the health of the DIA network.

- The DIA is embarking on a database system upgrade for its Case Management System (CMS). CMS is the mainstay system for the agency and is mission critical to the dispute resolution process. Our CMS is currently running on Oracle 10g software which is out-of-date and is no longer supported. We are in the process of upgrading to Oracle 12c - the latest version. This is expected to be completed in early FY 2016.



2015 Challenges

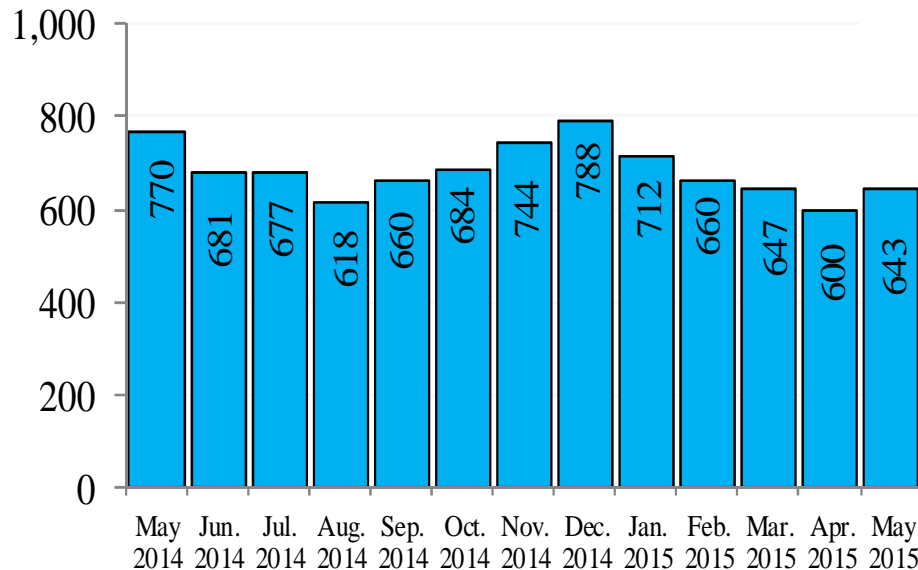
The DIA along with the Workers' Compensation Section of the Massachusetts Bar Association and the Health Care Services Board are in the process of a comprehensive review of opioid use in workers' compensation cases and exploring alternative treatments and developing a specific proceeding to address opioid use cases.

- Place all Dispute Resolution forms online which would also allow parties to submit appeal fees online. This will allow the DIA to process forms more efficiently and decrease timeframes between events.
- Establish a new event, the Pre-Hearing Conference. This event will provide the parties an opportunity to resolve issues prior to the Hearing and this will allow cases to move more efficiently through the DIA system.

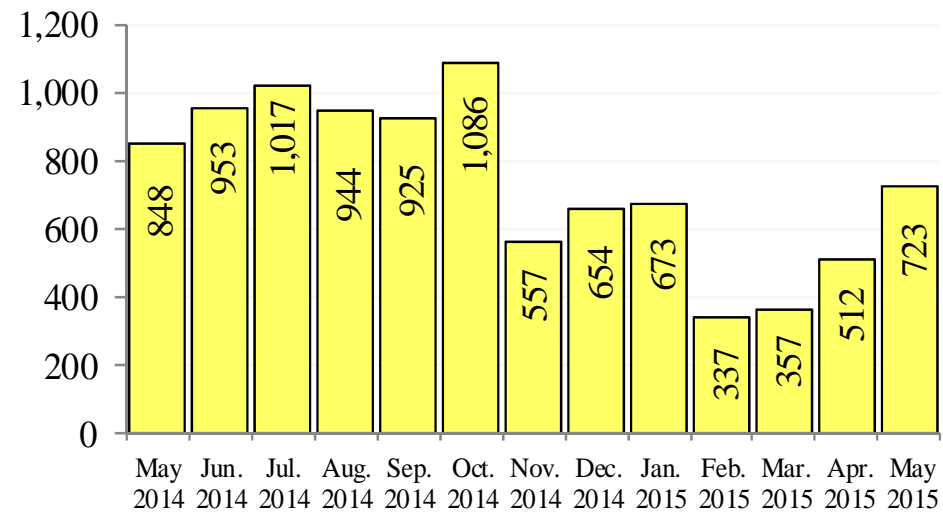
Conference and Hearing Queues – May 2015

Dispute Resolution: Fluctuations in the conference queue will depend upon number of cases being referred from conciliation, judges scheduling cycles and regional variations.

Hearing Queue



Conference Queue



Conference and Hearing Queues: The May 2015 Conference queue is 723 cases, which is up when compared to the April figure of 512. Currently, the average waiting period for a conference is between 8 and 10 weeks. The May 2015 Hearing queue is 643. This is up slightly compared to the April figure of 600.

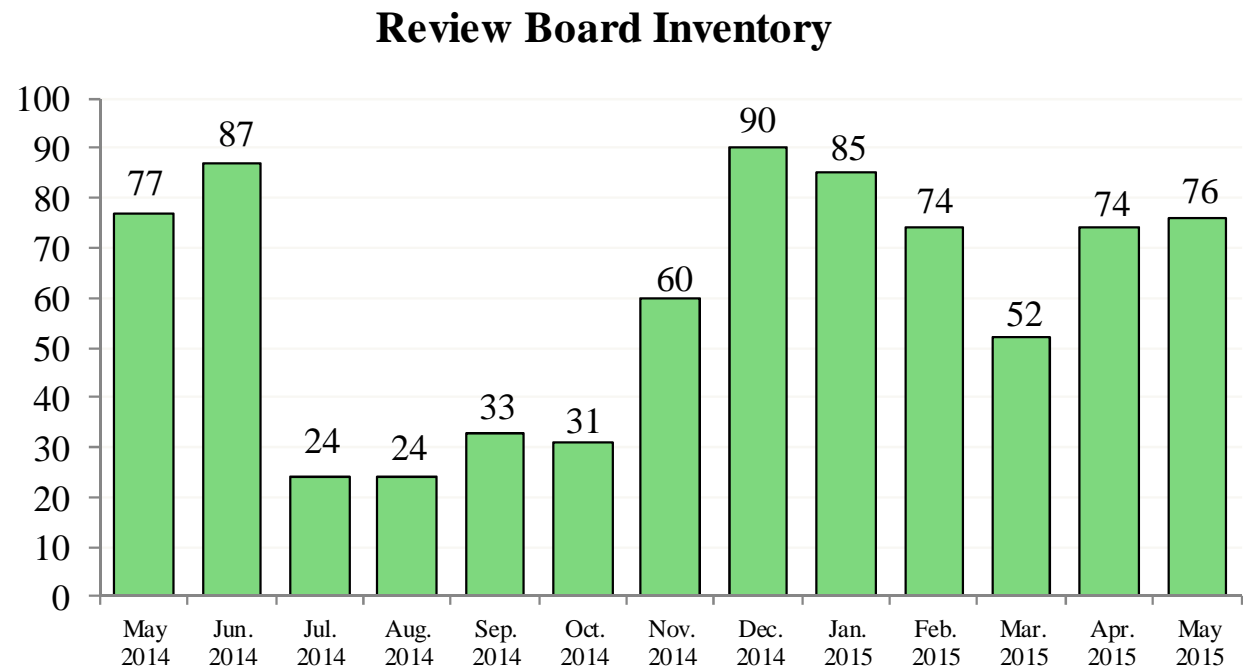
Conf. Sched.: 537 Hear. Sched.: 647
 Orders issued: 376 Appeals to RB: 12

	% Claimant recv. WC – 110 filed	% Claimant recv. WC. – no 110
Conference	48%	85%
Hearing	73%	76%

Estimated

Reviewing Board Inventory – May 2015

Reviewing Board inventory of cases on appeal for the month of May 2015 is 76 cases. This is nearly unchanged as compared to the April inventory of 74.



Other Figures

	FY2015*	FY 2014	FY2013
Impartial Medical Exams Scheduled:	3,339	4,376	4,838
Fee Waivers Granted:	85	22	51
Exam Fees Collected:	\$1,597,658	\$2,018,883	\$1,771,021

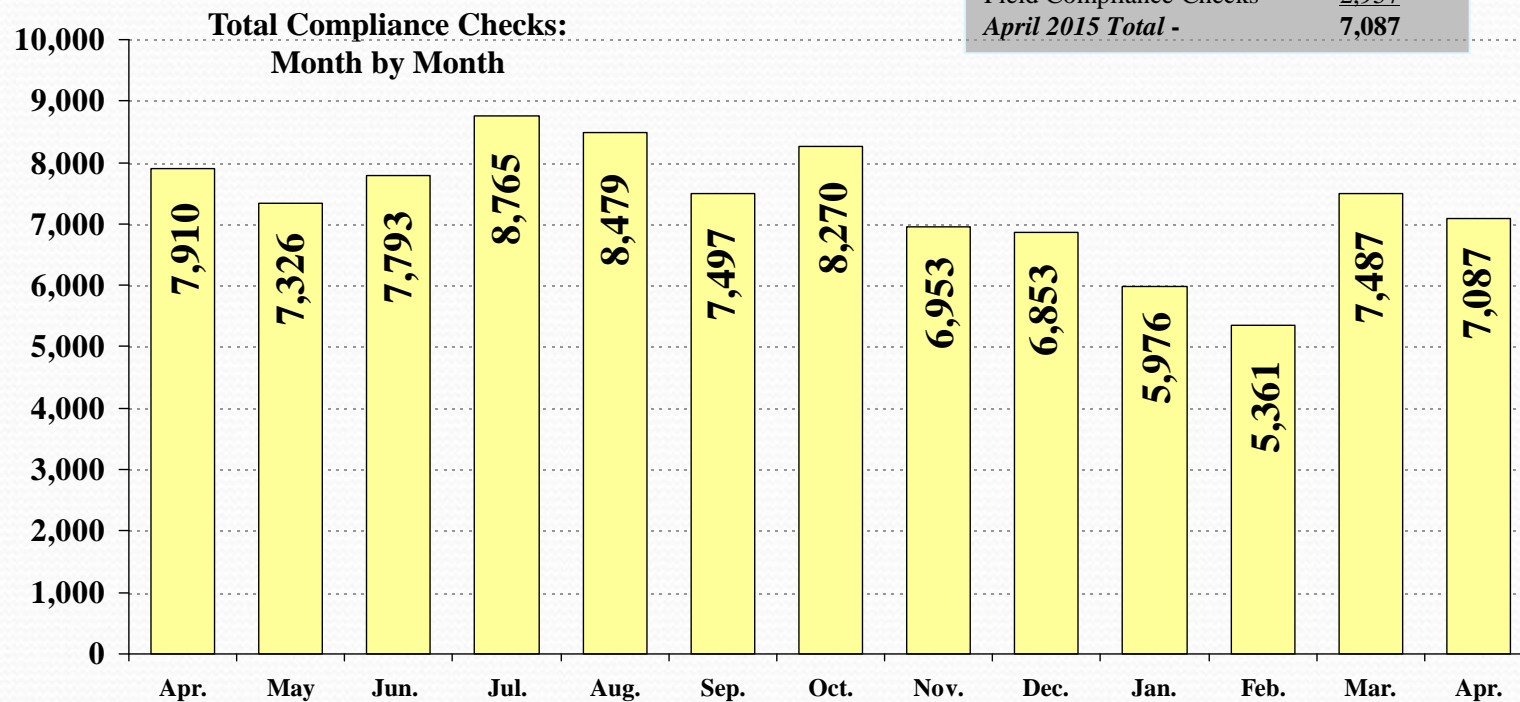
*FY 2015 as of 4/30/2015

*Work Related Injuries Workshop
June 2015*

The DIA conducted 7,087 total compliance checks in the month of April. As a result of these efforts an estimated 10,066 workers have been brought under workers' compensation insurance coverage during the current fiscal year. During FY 2014 we estimate that number of workers was 5,954.

Enforcement and Compliance – May 2015

Office Compliance Checks	4,130
Field Compliance Checks	2,957
April 2015 Total -	7,087

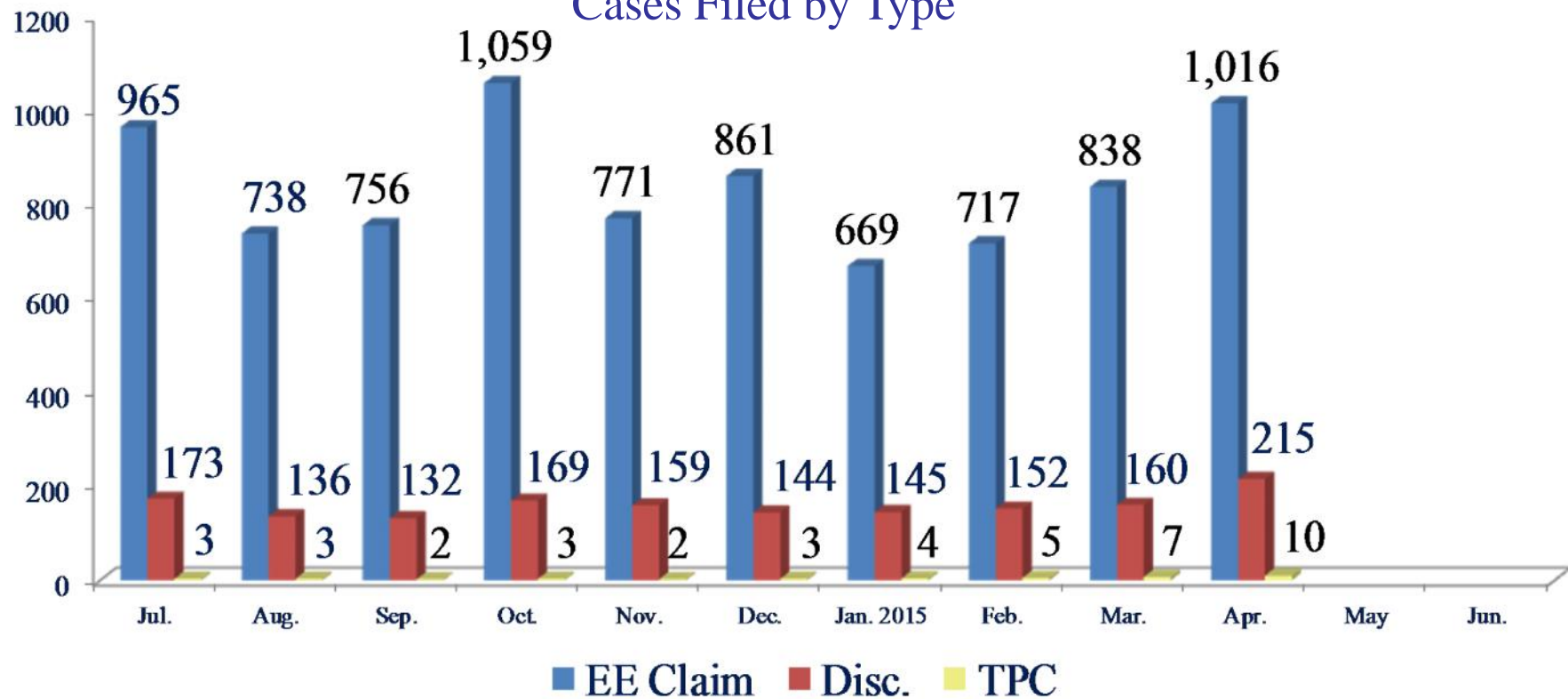


Estimated number of MA workers now covered by WC insurance as the result of an SWO (FY 2015):

July 2014	579	October	491	January 2015	505	April	5,866
August	532	November	329	February	309	May	
September	663	December	405	March	487	June	
FY' 15 1 st Qtr.	1,642	FY' 15 2 nd Qtr.	2,867	FY' 15 3 rd Qtr.	4,200	FYTD	

Workers' Compensation Claims, May 2015

Cases Filed by Type



	July	Aug.	Sep.	**Oct.	Nov.	Dec.	Jan. '15	Feb.	Mar.	Apr.	May	Jun.
*TOTAL CASES:	**1,141	877	890	1,231	932	1,008	818	874	1,005	1,241		
MANUAL	838	654	639	909	685	712	521	619	713	873		
WEB OLF:	303	223	251	322	247	296	297	255	292	368		

TOTAL CASES: MANUAL: 7,163 WEB ONLINE: 2, 854 TOTAL CASES: 10,017 (July – Apr.)

MONTHLY BREAKDOWN: C – 1,016 ; D - 215 ; TPC - 10 TOTAL BREAKDOWN: C - 8,390; D – 1,585 ; TPC – 42

* CASES = CLAIMS, DISC, TPC **5 WK MONTH

Contacts

Linda Edmonds Turner, Ph.D.

Director

617-727-4900, ext.7356

Linda.Turner2@massmail.state.ma.us

Omar Hernández

Senior Judge

617-727-4900 ext. 7306

Omar.Hernandez@massmail.state.ma.us

Department of Industrial Accidents
One Congress Street, 10th Floor
Boston, MA 02114