

2019 Annual Report



**NORTH CAROLINA
INDUSTRIAL COMMISSION**

LETTER FROM THE CHAIR



On behalf of my fellow Commissioners, Deputy Commissioners, and the employees of the Commission, I am pleased to provide the Industrial Commission's Annual Report.

Established in 1929, the Industrial Commission adjudicates and administers the North Carolina Workers' Compensation Act. In 1949, the General Assembly authorized the Industrial Commission to adjudicate and administer the North Carolina State Tort Claims Act. In addition, the Commission has jurisdiction over the Public Safety Employees' Death Benefits Act, the Childhood Vaccine-Related Injury Compensation Program, and the Compensation to Persons Erroneously Convicted of Felonies statute.

The Industrial Commission made significant progress in several important areas over the past year.

Implementation of a consolidated case management computer system, a project in the planning stages for many years, is finally underway. A vendor selected by the Commission recently started work to design the system. Upon completion, the case management system will greatly improve both the Commission's internal efficiency and its customer-facing technology, including allowing litigants to view case file documents online.

The Industrial Commission continues to support efforts to reduce opioid-related deaths and injuries within the workers' compensation system. In the past year, additional provisions of the Commission's *Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management Treatment in Workers' Compensation Claims* took effect. These provisions require health care providers to review the Controlled Substances Reporting System (CSRS) when prescribing a targeted controlled substance and document any potential contraindications to prescribing the targeted controlled substance in the injured worker's medical record.

The Industrial Commission remains committed to investigating fraud by claimants and non-insured employers, as well as identifying employee misclassification under the Employee Fair Classification Act. To improve compliance with our statutory mandates, the Commission's Employee Classification Section now operates under the newly formed Criminal Investigations and Employee Classification Division. This reorganization provides expanded resources to investigate allegations of employee misclassification.

Finally, to improve customer service when contacting the Industrial Commission's Information Specialists and Claims Section, the Commission implemented a new phone system. Callers now have the option of remaining in queue to speak with an Industrial Commission representative, rather than leaving a voicemail, when calling for information about their claims.

I look forward to building upon the successes of this past year as we continually strive to improve the experience of North Carolinians interacting with the Industrial Commission.

Philip A. Baddour, III
Chair
North Carolina Industrial Commission

NORTH CAROLINA INDUSTRIAL COMMISSION

Philip A. Baddour, III, Chair
Myra L. Griffin, Vice-Chair

Charlton L. Allen, Commissioner
Kenneth L. Goodman, Commissioner

James C. Gillen, Commissioner
Christopher C. Loutit, Commissioner

Mark Tyler, Chief Operating Officer
Meredith R. Henderson, Executive Secretary
Melanie Wade Goodwin, Chief Deputy Commissioner
Robert J. Harris, Senior Deputy Commissioner
Emily Baucom, Clerk of the Industrial Commission
Shannon Wharry, Director of Compliance Division
Sam Constance, Director of Criminal Investigations and Employee Classification Division
Bradley Hicks, Director of Employee Classification Section
Tammy R. Nance, Director of Claims Administration
John C. Schafer, Dispute Resolution Coordinator

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North Carolina Industrial Commission – At a Glance

Report for FY 2018-19

Workers' Compensation Claims Filed	61,776
Orders Issued on Medical Motions	2,118
Deputy Commissioner Workers' Compensation and Tort Hearings Held	4,278
Penalty and Contempt Matters Resolved at the Deputy Commissioner Level	1,506
Total Appeals to the Full Commission	744
Cases Referred to Mediation	9,275
Orders on Compromise Settlement Agreements	12,441
Mediation Settlement Rate	73.04%
Form 26A <i>Employer's Admission of Employee's Right to Permanent Partial Disability Agreements</i> Received	6,243
Orders filed on Form 24 <i>Application to Terminate or Suspend Payment of Compensation</i>	1,533
Orders filed on Form 23 <i>Application to Reinstate Payment of Disability Compensation</i>	212
Cases Handled by the Medical Rehabilitation Nurses Section	34
Medical Bills Reviewed	530
Fraud Cases Reported	8,661
Non-Insured Penalties Collected	\$5,619,154 ¹

¹ This figure is a reduction from FY 2017-18 due to the legislative changes to N.C. Gen. Stat. § 97-94(b)(2018) (see *Notable Legislation* section herein for further discussion).

THE NORTH CAROLINA INDUSTRIAL COMMISSION

Mission Statement

The employees of the North Carolina Industrial Commission are committed to providing excellent customer service through the efficient administration of claims, facilitation of dispute resolution, fair and impartial adjudication of contested cases, careful application of the law, and prompt and courteous responsiveness to all stakeholders.

About the Commission

The North Carolina Industrial Commission is an agency of the State of North Carolina, created by the General Assembly in 1929 to administer the North Carolina Workers' Compensation Act. In 1949, the Industrial Commission was also given authority by the General Assembly to administer the Tort Claims Act. Additionally, the Industrial Commission is charged with efficiently administering the Public Safety Employees' Death Benefits Act, the Childhood Vaccine-Related Injury Compensation Program, and claims under N.C. Gen. Stat. § 148-82 *et seq.* for Compensation to Persons Erroneously Convicted of Felonies.

The Full Commission consists of six Commissioners who are required by statute to devote their entire time to the duties of the Industrial Commission. The Commissioners are appointed by the Governor for staggered six-year terms and confirmed by the General Assembly. The Commissioners sit in panels of three to review appeals from decisions made by Deputy Commissioners located throughout the state to hear workers' compensation and tort claims cases. The Full Commission is the ultimate fact-finding body of the Commission and, therefore, only the findings of the Commissioners and not those of the Deputy Commissioners are deemed conclusive on appeal to the higher courts, if supported by the evidence.

Full Commission Section Summary for FY 2018-19

Appeals in Workers' Compensation and Tort Claims	598
Interlocutory Appeals	126
Medical Motion Appeals	20
Total Appeals to Full Commission	744

Management and Operations

The Chair of the Full Commission is, by statute, the Chief Executive Officer and Chief Judicial Officer of the Industrial Commission. The Chair has the authority to direct and oversee the Industrial Commission and may delegate duties as needed for proper management of the Industrial Commission.

Major Activities and Initiatives

Case Management System

Consistent with Section 15.19 of Session Law 2017-57, the Commission has been engaged in a comprehensive process to modernize its case management system. The Commission selected a vendor and awarded the contract on July 31, 2019. Work began on the new case management system in September 2019, and the new system is projected to go live by June 2020.

The current Industrial Commission case management functions are spread across multiple outdated platforms and systems, leading to inefficient use of staff resources and providing no access for external users to review documents or actions pertaining to their cases. By implementing a consolidated case management system, the Commission will bring multiple internal functions together for improved efficiency and to allow external users to access their case data and documents. This initiative will greatly enhance the Commission's ability to carry out its mission to provide excellent customer service.

Tackling North Carolina's Opioid Epidemic

Last year, the North Carolina Industrial Commission adopted *Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management in Workers' Compensation Claims*. Most of these Rules became effective May 1, 2018. Additional rules requiring health care providers in workers' compensation cases to review the Controlled Substances Reporting System ("CSRS") when prescribing a targeted controlled substance and to document the injured worker's medical records regarding the CSRS review went into effect on November 1, 2018.

To assist stakeholders in the North Carolina workers' compensation system in understanding and implementing these Rules, the Commission also adopted a Companion Guide, effective May 1, 2018, including educational materials and suggested forms for facilitation of non-pharmacological pain management and treatment for substance use disorder.

The Commission continues to monitor the effectiveness of the new Opioid Utilization Rules and will amend them as needed to target opioid-related issues in workers' compensation claims.

Formation of Criminal Investigations and Employee Classification Division

As part of the Commission's commitment to investigating fraud by claimants and non-insured employers under the Workers' Compensation Act and investigating reports of employee misclassification under the Employee Fair Classification Act, and to improve compliance with statutory mandates, the Commission's Employee Classification Section now operates under the newly formed Criminal Investigations and Employee Classification Division. This reorganization provides expanded resources to investigate allegations of employee misclassification.

Implementation of New Phone System

To improve customer service when contacting the Industrial Commission's Information Specialists and Claims Section, the Commission implemented a new phone system. Callers now have the option of remaining in queue to speak with an Industrial Commission representative, rather than leaving a voicemail, when calling for information about their claims.

Reallocation of Commission Resources

To realize cost savings without impacting litigants, the Industrial Commission closed the Greenville Regional Office on June 28, 2019. The Commission will continue to serve the citizens of Eastern North Carolina by holding hearings in the Greenville area, and litigant travel

time to hearings will not be affected. The Deputy Commissioners assigned to the Greenville Office were transferred to the Commission's main office in Raleigh.

Notable Legislation

Senate Bill 99, Session Law 2018-5, Section 22.1

Effective July 1, 2018, the General Assembly amended N.C. Gen. Stat. § 97-94, changing the minimum daily penalty amount for not obtaining proper workers' compensation insurance. Under the amended statute, any employer who refuses or neglects to secure adequate workers' compensation insurance is punished \$1.00 per day for each employee, with a minimum penalty of \$20 per day and a maximum penalty of \$100 per day. This is a decrease in the minimum daily penalty amount from the prior law, which had allowed a minimum of \$50 per day. Additionally, the amended statute contains a provision that allows an alternate penalty calculation in cases where the employer was not previously penalized under this section. In these cases where the employer was not previously penalized, the employer may submit evidence that it has obtained workers' compensation insurance along with copies of all payroll records for the period of noncompliance and request the calculation of an alternative penalty by the Commission. Under the statutory formula, the alternative penalty is the cost of the current policy per employee multiplied by the average number of employees during the period of noncompliance, plus an additional penalty of 10%. N.C. Gen. Stat. § 97-94 also was amended to state that the penalty shall not apply to a period of noncompliance that occurred more than three years prior to the date the Industrial Commission first assessed the penalty.

House Bill 220, Session Law 2019-179

Effective July 18, 2019, the General Assembly amended N.C. Gen. Stat. § 58-36-30(b) to allow a workers' compensation insurer or an employer's liability insurer to charge a rate in excess of that promulgated by the North Carolina Rate Bureau on any specific risk if the higher rate is charged in accordance with the rules adopted by the Department of Insurance.

Effective July 18, 2019, the General Assembly also amended N.C. Gen. Stat. § 97-170 to require that a copy of an application for licensure as a self-insurer be filed with the North Carolina Self-Insurance Security Association at the same time the application is filed with the Commissioner of Insurance. Prior to this amendment, a copy of the application was to be filed with the North Carolina Self-Insurance Security Association at least 90 days before the proposed licensing date.

House Joint Resolution 253

On April 22, 2019, the General Assembly confirmed the appointment of James C. Gillen to serve the remainder of an unexpired term as a Commissioner on the Industrial Commission. Commissioner Gillen's term expires on June 30, 2024.

House Joint Resolution 254

On April 22, 2019, the General Assembly confirmed the appointment of Kenneth L. Goodman to serve as a Commissioner on the Industrial Commission for a term beginning May 1, 2019 and expiring April 30, 2025.

Recommendations

The following legislative recommendations are provided in accordance with N.C. Gen. Stat. § 97-78(e):

- The Industrial Commission recommends that the General Assembly consider amending G.S. § 97-88.2 to specify that the sworn law enforcement officers who are employed to conduct the investigations mandated by G.S. §97-88.2 have full law enforcement authority so they can safely and effectively carry out their investigations and take actions to protect their safety and the safety of others.
- The Industrial Commission recommends removing the two-term limit for deputy commissioners in G.S. § 97-79(b) so that the Chair of the Commission has the option of continuing the service of experienced deputy commissioners.
- The Industrial Commission recommends that there be parity and consistency in the way business entities are treated in G.S. § 97-2(2) in terms of individuals who count as an “employee.” This will alleviate confusion and make compliance with the workers’ compensation laws easier to determine and enforce.

Rulemaking Update

On its own initiative, the Industrial Commission conducted an internal review of its rules and sought stakeholder feedback in 2017 and 2018. Internal committees proposed changes necessary to improve and clarify the rules, provide for increased efficiency, or update the Workers’ Compensation Rules, Public Safety Employees’ Death Benefit Act Rules, and Tort Claims Act Rules to reflect current practices. In consultation with stakeholders, the Commissioners reviewed and edited the proposed adoptions, amendments, and repeals to the existing rules.

The proposed changes to the rules went through the formal rulemaking process. On November 15, 2018, the Rules Review Commission approved amendments to 13 rules and the repeal of one unnecessary rule. This first group of rule changes went into effect December 1, 2018.² On December 13, 2018, the Rules Review Commission approved amendments to an additional 10 rules. This second group of rule changes went into effect January 1, 2019.³

At its December 13, 2018 meeting, the Rules Review Commission also approved amendments to Tort Claims Act Rules 11 NCAC 23B .0206 and .0503 and the repeal of 11 NCAC 23B .0207. These rules received more than ten letters of objection, resulting in legislative review pursuant to N.C. Gen. Stat. § 150B-21.3. However, no bills objecting to the rules were filed, making the rule changes effective March 21, 2019.

² Rules 11 NCAC 23A .0101, 11 NCAC 23A .0102, 11 NCAC 23A .0103, 11 NCAC 23A .0108, 11 NCAC 23A .0302, 11 NCAC 23A .0411, 11 NCAC 23A .0503, 11 NCAC 23A .0602, 11 NCAC 23A .0603, 11 NCAC 23A .0608, 11 NCAC 23A .0609A, 11 NCAC 23A .0610, and 11 NCAC 23A .0611 were amended effective December 1, 2018. These rule changes primarily updated the rules with respect to e-filing requirements, removed unnecessary requirements, and encouraged communication between the parties prior to the filing of medical motions.

³ Rules 11 NCAC 23A .0109, 11 NCAC 23A .0502, 11 NCAC 23A .0604, 11 NCAC 23A .0609, 11 NCAC 23A .0617, 11 NCAC 23A .0619, 11 NCAC 23A .0620, 11 NCAC 23A .0701, 11 NCAC 23A .0702, and 11 NCAC 23A .0801 were amended effective January 1, 2019. This group included more substantive changes relating to settlement agreements, motions, extensions of time, administrative appeals, and Full Commission brief requirements.

CLAIMS ADMINISTRATION SECTION

Mission Statement

The Claims Administration Section seeks to provide prompt, accurate, and efficient claims service to employees, employers, insurance companies, third party administrators, and the citizens of North Carolina.

About the Claims Administration Section

The Claims Administration Section processes documents filed at the inception of a workers' compensation claim and during its pendency. At the outset of a new claim, Claims Administration is responsible for researching insurance coverage, assigning Industrial Commission file numbers, identifying any discrepancies in information provided by employers, insurers, and/or injured workers, and notifying injured workers of their rights under the Workers' Compensation Act. As the claim progresses, Claims Administration processes forms sent in by insurers and employers relative to the acceptance or denial of claims, initiation and termination of benefits, and return to work status. Claims Administration also handles occupational disease claims, including the initiation of those claims and the research necessary to identify insurance coverage in claims with multiple employers.

Additionally, Claims Administration reviews form agreements for payment of death, disfigurement, and permanent partial disability benefits. In conjunction with those agreements, Claims Administration also reviews applications for lump sum payments. At the request of the parties, Claims Administration will provide an advisory opinion in disfigurement claims to assist the parties in reaching agreement on fair and equitable compensation for disfigurement. Claims Administration also handles attorney representation letters, requests for copies of files, interim attorney fee requests, Forms 51, and motions to extend the time to accept or deny a claim. In addition, Claims Administration assesses penalties against employers/insurers who fail to file a Form 60, 61, or 63 within 30 days of receipt of notice by the Industrial Commission of the filing of a Form 18.

Claims Administration provides monthly "action" reports to every carrier/third party administrator/self-insured employer who has complied with Rule 302 by providing the Industrial Commission with their contact information. This monthly report lists all of the entity's claims in which either a Form 18, 19, 60, 61, or 63 was filed during the preceding month. In addition, a separate monthly report of workplace fatalities is provided to the North Carolina Department of Labor. Finally, Claims Administration also operates as a call center to answer inquiries from injured workers, employers/insurers, and attorneys concerning proper form filing, insurance coverage, the status of pending form agreements, and other general questions regarding the Workers' Compensation Act.

Most Frequently Processed Claims Administration-Related Forms

Employers/insurers are required to file a Form 19 First Report of Injury (FROI) when an injured worker has missed more than one day of work OR when more than \$2,000 has been paid in medical benefits. All FROI's must be filed electronically via the Electronic Data Interchange (EDI).

A Form 18 is the Notice of Accident to Employer and Claim of Employee, Representative, or Dependent. A Form 18 must be filed by the injured worker or his/her legal representative within two years of the date of injury or occupational disease⁴, or within two years of the last payment of medical compensation when no other compensation has been paid, or the claim may be barred.

A Form 18B is a Claim by Employee, Representative, or Dependent for Lung Disease, including Asbestosis, Silicosis, and Byssinosis. It is not to be used for other occupational disease claims or for injuries by accident.

A Form 26A is the Employer's Admission of the Employee's Right to Permanent Partial Disability Compensation pursuant to N.C. Gen. Stat. § 97-31. This form is used when the parties agree on the amount of permanent partial disability benefits to be paid to the employee once he/she reaches maximum medical improvement.

A Form 60, 61, or 63 is filed by an employer/insurer in response to a claim for benefits made by an injured worker or his/her representative. One of these three forms must be filed with the Commission via the Electronic Document Filing Portal (EDFP) to admit, deny, or pay without prejudice within 30 days following notice from the Commission of the filing of a Form 18. Failure to file a Form 60, 61, or 63 within 30 days will result in the imposition of sanctions pursuant to N.C. Gen. Stat. § 97-18(j).

Compliance with N.C. Gen. Stat. § 97-18(j)

When Claims Administration processes a Form 18, it sends a letter to the insurer/third party administrator or self-insured employer advising that it has 30 days to file a Form 60, 61, or 63. The Industrial Commission tracks the filing of these forms, and if defendants fail to file a Form 60, 61, or 63 within 30 days following notice that a Form 18 was filed, Claims Administration will enter an Order directing defendants (1) to file a Form 60, 61, or 63 and (2) to pay a sanction in the amount of \$400. Failure to comply with this Order within 30 days shall result in the imposition of further sanctions, including assessment of an additional \$200 penalty. If defendants believe that the sanction was assessed in error, Claims Administration conducts further investigation to determine whether the sanction is indeed warranted. If it is found that defendants in fact complied with N.C. Gen. Stat. § 97-18(j), the sanctions Order will be rescinded. The most common reason for erroneous assessment of a sanction is the existence of duplicate files, which occurs when two or more claims are created for the same injury due to variations in information provided by the parties at the outset of the claim. Once discovered, these files are merged under one IC file number. If examination of the duplicate file shows that a Form 60, 61, or 63 was timely filed, the sanctions Order will be rescinded.

⁴ For an occupational disease claim, the two-year filing requirement is either two years from the date of diagnosis, or two years from being informed by competent medical authority that the condition is work-related, whichever is later.

Claims Administration Section Summary FY 2018-19

Total Claims Opened	61,776
Claims Opened via Form 18 Filing	7,689
Total Forms 18 Filed	17,015
Claims Opened via Form 19 Filing	54,087
Total Forms 19 Filed	107,894
Forms 60, 61, or 63 Processed	54,483
Forms 60 Processed	11,445
Forms 61 Processed	20,736
Forms 63 (Indemnity) Processed	8,224
Forms 63 (Medical Only) Processed	14,078
Forms 26A Received	6,243
Forms 26A Approved	5,878
Death Claims Filed	169
Telephone Calls Answered	22,213
Sanctions Collected for Violation of N.C. Gen. Stat. § 97-18(j)	\$598,400

Forms Compliance Summary Pursuant to N.C. Gen. Stat. § 97-78(g) for FY 2018-19

Total of Forms 18 Processed	17,015
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Forms 60, 61 or 63 Processed Before Form 18 Filed	4,715
Forms 60, 61 or 63 Filed Within 30 Days of Notice of Form 18	<u>7,688</u>
Total Number of Compliant Forms	12,403
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Forms 60, 61 or 63 Filed between 31 and 60 Days of Notice of Form 18	1,934
Forms 60, 61 or 63 Filed between 61 and 90 Days of Notice of Form 18	295
Forms 60, 61 or 63 Filed 91 or More Days after Notice of Form 18	713
Forms 18 with No Forms 60, 61 or 63 Processed by End of FY 2018-19	<u>1,670</u>
Total Number of Claims Not in Compliance	4,612

Forms Compliance Summary Pursuant to N.C. Gen. Stat. § 97-78(g)⁵ for Calendar Year 2018

Total of Forms 18 Processed Calendar Year 2018	16,997
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Forms 60, 61 or 63 Processed Before Form 18 Filed	4,729
Forms 60, 61 or 63 Filed within 30 Days of Notice of Form 18	<u>8,230</u>
Total Number of Compliant Forms	12,959
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Forms 60, 61 or 63 Filed between 31 and 60 Days of Notice of Form 18	1,273
Forms 60, 61 or 63 Filed between 61 and 90 Days of Notice of Form 18	295
Forms 60, 61 or 63 Filed 91 or More Days after Notice of Form 18	333
Forms 18 with no Forms 60, 61 or 63 Processed by End of Calendar Year 2018	<u>2,137</u>
Total Number of Claims Not in Compliance	4,038

⁵ Specific information for each claim not compliant with N.C. Gen. Stat. § 97-18(j) is provided in Addendum A and Addendum B to this Annual Report.

CLERK'S OFFICE

Mission Statement

The Clerk's Office seeks to ensure all filings intended for the Executive Secretary's Office, the Deputy Commissioner Section, and the Full Commission are promptly and appropriately catalogued in the Commission's electronic document repository and routed to the appropriate Commission staff. All cases to be heard by the Commission are timely placed on a docket and moved through the system efficiently and expeditiously.

About the Clerk's Office

The Clerk's Office was established to be the clearinghouse for documents filed pursuant to the Commission's filing Rule 11 NCAC 23A .0108, which requires most documents filed with the Commission to be transmitted electronically. The Clerk's Office ensures filings are properly identified and delivered electronically to the appropriate Commission staff. The Clerk's Office is also responsible for filing and serving all Full Commission decisions, as well as some decisions from the Deputy Commissioner Section. In addition, the Clerk's Office provides customer support to stakeholders who have questions about filing procedures or who may initially misfile documents. Ultimately, the Clerk's Office is responsible for the integrity of the Commission's files. In addition to overseeing the Clerk's Office and administering Rule 11 NCAC 23A .0108, the Clerk of the Commission acknowledges appeals to the Court of Appeals and rules on various administrative motions, including attorney withdrawals, motions to withdraw requests for hearing, and motions to consolidate cases for hearing. Documents filed via the Commission's Electronic Document Filing Portal (EDFP) now average 32,484 per month. Beginning in 2019, it became mandatory for attorneys to use EDFP to file documents in claims filed under the State Tort Claims Act.

Docketing responsibilities of the Clerk's Office include processing requests for hearings and appeals, as well as processing related documents filed in all types of cases administered by the Commission, including workers' compensation and state tort claims. For cases appealed to the Full Commission, the Clerk's Office organizes the evidentiary exhibits of record, orders official hearing transcripts, and provides copies of the transcripts to the parties. The section assembles exhibits and filings into electronic working files for each case on appeal and prepares and electronically distributes the Full Commission hearing calendars. The section also serves as the custodian for recordings of Commission hearings and coordinates assignments of court reporters for hearings before the Deputy Commissioners and the Full Commission. In addition, the Clerk's Office provides trial court administration for workers' compensation cases for the Deputy Commissioner Section.

The Clerk's Office maintains the Commission's attorney database by adding new attorneys and updating attorney contact information upon receipt. The section processes state tort claims, claims filed under the Public Safety Employees' Death Benefits Act, and erroneous conviction cases. The Clerk's Office also processes requests for copies of files and certified copies of files.

The Clerk's Office continues to support the Commission's goal of becoming a paperless organization. Since most documents are filed with the Commission electronically, there has been a dramatic decrease in the amount of incoming paper documents required to be scanned by the Clerk's Office's scanning department. This change has allowed staff to allocate more time to projects scanning older paper files to decrease the Commission's paper storage space, with the goal of a future cost savings.

Clerk's Office Summary for FY 2018-19

Requests that Claim be Assigned for Hearing	7,093
Requests for Hearing in Non-Insured Cases	148
Amended Requests that Claim be Assigned for Hearing	277
Administrative Appeals to Deputy Commissioners	479
Appeals (Requests for Hearing) in Penalty Assessment Cases	423
Responses to Hearing Requests	5,654
Attorney Representation Letters and Other Correspondence	13,471
Requests for Copies of Files	7,616
Tort Claims Filed	765
Appeals to the Full Commission	598
Medical Motion Appeals	20
Cases Sent for Transcription	397
Full Commission Calendars Generated	49
Attorney Withdrawal Orders	1,819
Orders/Dispositions of Administrative Motions	718
Certified Copies of Files	25
Scanned Documents Uploaded to Electronic Case Files	16,744

COMPLIANCE DIVISION

Mission Statement

The Compliance Division seeks to effectively work with businesses operating in North Carolina to ensure compliance with the insurance requirements of the North Carolina Workers' Compensation Act.

About the Compliance Division

The Compliance Division identifies and investigates cases involving employers who are operating as non-insured employers in violation of N.C. Gen. Stat. § 97-93 and N.C. Gen. Stat. § 97-94. An employer is considered non-insured if the employer is subject to the North Carolina Workers' Compensation Act but does not carry workers' compensation insurance or does not obtain a license from the Commissioner of Insurance as a self-insured employer. The Compliance Division investigates referrals to determine whether an employer is subject to the Workers' Compensation Act and, if so, whether the employer is compliant in terms of insurance requirements. An administrative penalty can be assessed for a period that the employer was subject to the Act but not compliant with insurance requirements. The Compliance Division also assists the North Carolina Department of Justice with the enforcement and collection of penalty assessments and facilitates adjudication of contested penalty cases and settlements.

The Compliance Division uses a database known as the Noncompliant Employer Tracking System (NETS). NETS is a software tool that analyzes data sources from other State agencies to identify potential noncompliant employers who may be in violation of the North Carolina Workers' Compensation Act's requirement to maintain workers' compensation insurance coverage. The Compliance Division also receives alerts from the Industrial Commission's Employee Classification Section that are generated by the Employee Classification Application, which is a computer application that also utilizes data from multiple state agencies.

As a result of the leads generated by the NETS system, the Industrial Commission initially assessed \$23,862,974⁶ in penalties for FY 2018-19. After alternative penalties were calculated under N.C. Gen. Stat. § 97-94(b2), the amount assessed was reduced by \$4,634,449, thus resulting in a modified assessed amount of \$19,228,525 in penalties for FY 2018-19. The Industrial Commission's collection of penalties in FY 2018-19 totaled \$5,619,154.⁷ The collection of penalties and fines was impacted by the July 1, 2018 legislative changes to N.C. Gen. Stat. § 97-94.

The Compliance Division brought 1,296 non-insured employers into compliance by ensuring that these employers obtained workers' compensation insurance coverage.

⁶ This amount includes penalties assessed as a result of alerts referred by the Employee Classification Section to the Compliance Division and investigated by the Compliance Division.

⁷ This amount includes penalties collected from alerts referred by the Employee Classification Section to the Compliance Division and investigated by the Compliance Division. This total includes, in part, amounts collected during FY 2018-19 due to penalties assessed in prior fiscal years.

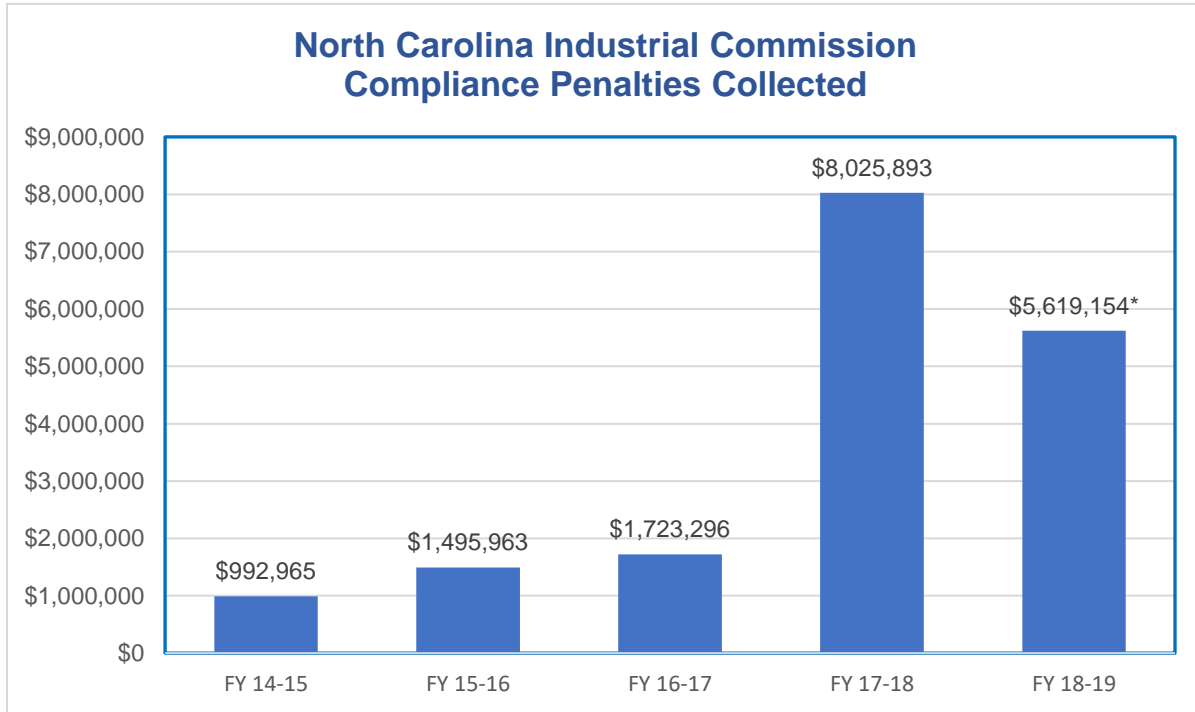
Non-Insured Cases for FY 2018-19

Non-Insured Hearings Docketed before the Industrial Commission

213

Non-Insured Resolved by Compliance Division
(Penalties Assessed or Case Otherwise Closed)

5,106



* This figure is a reduction from FY 2017-18 due, in part, to the legislative changes to N.C. Gen. Stat. § 97-94(b)(2018) (see *Notable Legislation* section herein for further discussion).

CRIMINAL INVESTIGATIONS AND EMPLOYEE CLASSIFICATION DIVISION

Mission Statement

The Criminal Investigations and Employee Classification Division seeks to serve the citizens of North Carolina by investigating potential criminal violations of the Workers' Compensation Act and by identifying and investigating businesses that engage in the activities of employee misclassification.

About the Criminal Investigations and Employee Classification Division

The Industrial Commission has combined its Criminal Investigations and Employee Classification Sections into the Criminal Investigations and Employee Classification Division. This re-organization provides expanded resources to investigate allegations of employee misclassification.

CRIMINAL INVESTIGATIONS

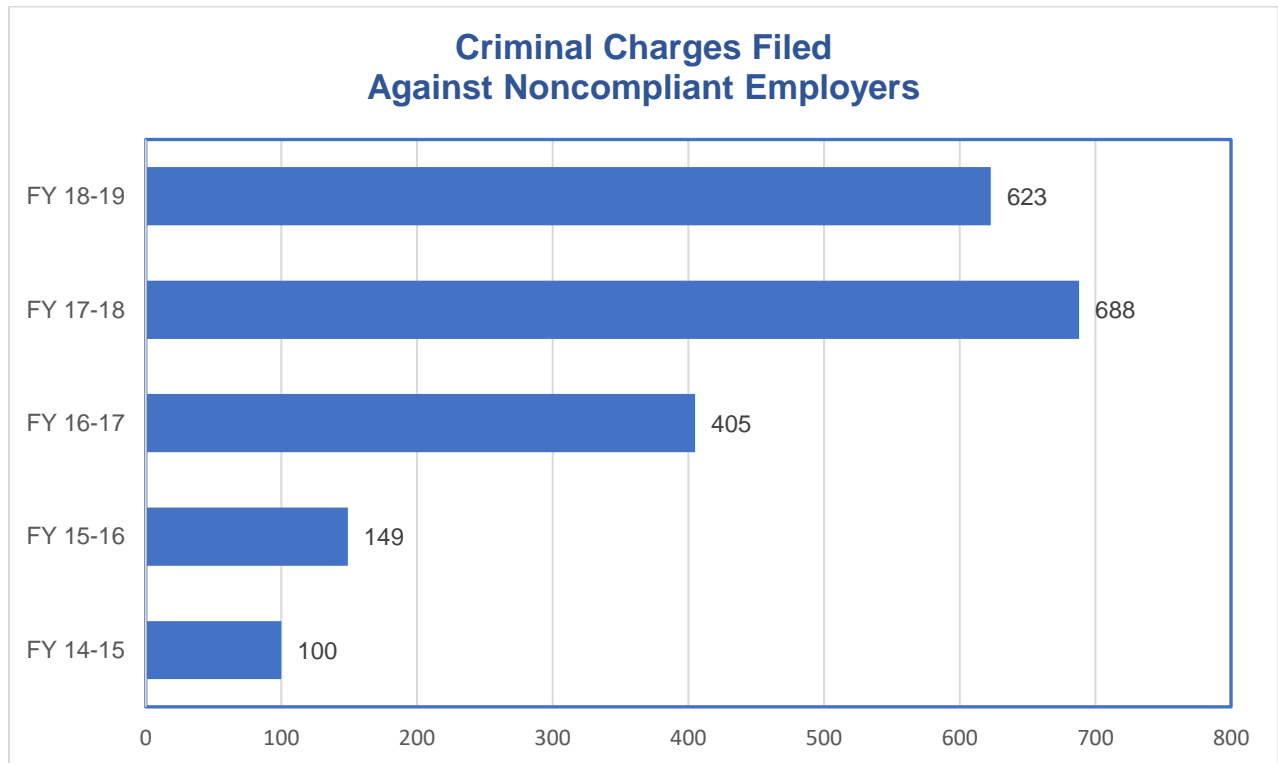
About Criminal Investigations

This part of the Division operates as a law enforcement agency and is responsible for conducting criminal investigations into cases of suspected workers' compensation fraud and violations related to workers' compensation claims involving employees, employers, insurers, health care providers, attorneys, and vocational rehabilitation providers. Fraud investigators examine all criminal complaints filed with the Commission regarding failure of employers to maintain workers' compensation insurance (N.C. Gen. Stat. § 97-94(d)); fraud on the part of employees with regard to obtaining workers' compensation benefits (N.C. Gen. Stat. § 97-88.2); fraud on the part of employers with regard to deducting workers' compensation premiums from employees' salaries (N.C. Gen. Stat. § 97-21); medical payment fraud; and any other claims arising out of violations of Chapter 97 by employees or employers. Criminal Investigations works with judicial officials and other law enforcement agencies throughout the state to resolve cases related to the above matters in criminal court.

The staff consists of six sworn law enforcement officers and one administrative position. During FY 2018-19, Criminal Investigations processed a total of 8,661 cases, including 623 misdemeanor charges and one felony charge for failure to maintain workers' compensation insurance in violation of N.C. Gen. Stat. § 97-94(d). One felony count of workers' compensation fraud in violation of N.C. Gen. Stat. § 97-88.2 was also charged. These cases were pursued through field investigations and administrative analysis of data utilizing the NETS system and other available technology.

**Persons Investigated for Fraud under the
Workers' Compensation Act for FY 2018-19⁸**

	Employees	Employers	Insurers	Health Care Providers	Attorneys	Rehabilitation Providers	Totals
Number of Fraud Cases Reported	157	8,494 ⁹	8	2	0	0	8,661
Number of Fraud Cases Pending	26	313	0	0	0	0	339
Number of Fraud Cases Closed	131	8,181	8	2	0	0	8,322



⁸ The summary is provided in accordance with N.C. Gen. Stat. § 97-88.2(e).

⁹ The 8,494 cases addressed allegations of fraud such as an employer not carrying workers' compensation insurance and unlawful deductions made by employers. These cases are generated from NETS, calls received on the investigation hotline, and proactive enforcement operations.

EMPLOYEE CLASSIFICATION SECTION

About the Employee Classification Section

Employee misclassification is defined in N.C. Gen. Stat. § 143-786(5) as avoiding tax liabilities and other obligations imposed by Chapters 95, 96, 97, 105, or 143 of the North Carolina General Statutes by misclassifying an employee as an independent contractor. Pursuant to Session Law 2017-203, the Employee Classification Section was established within the Industrial Commission under the Employee Fair Classification Act. The Employee Classification Section's statutory mandate includes, among other duties, receiving and investigating reports of employee misclassification; coordinating with and assisting all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification; coordinating with relevant State agencies and district attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification; and providing all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, North Carolina Division of Employment Security, North Carolina Department of Revenue, and North Carolina Industrial Commission to facilitate investigation of potential violations of Chapters 95, 96, 97, 105, or 143 of the North Carolina General Statutes.

The Employee Classification Section collaborates with the Compliance Division of the Industrial Commission and with other state agencies and uses the Employee Classification Application (ECA) to identify and investigate potential employee misclassification. The ECA was developed in collaboration with SAS, Inc., the Government Data Analytics Center (GDAC), and other state agencies.

Employee Classification Section Statistics

In Fiscal Year 2018-19, a total of 5,186 employee misclassification reports/alerts came through the Employee Classification Application.

The North Carolina Department of Labor shared information from 121 of their investigations involving suspected employee misclassification to be entered into the ECA by the Employee Classification Section. Additionally, the North Carolina Department of Labor Wage and Hour Bureau referred 8 callers to the Employee Classification Section, and the North Carolina Department of Labor Occupational Safety and Health Division referred 4 callers to the Employee Classification Section.

The Employee Classification Section shared 2,075 of the reports/alerts that came through the Employee Classification Application with the Compliance Division of the Industrial Commission or with the North Carolina Division of Employment Security. (1,259 reports/alerts were shared with the Industrial Commission's Compliance Division and 816 reports/alerts were shared by the with the North Carolina Division of Employment Security).

Of the 1,259 reports/alerts shared with the Compliance Division and investigated by the Compliance Division, the Compliance Division found 465 employers to be subject to the Workers' Compensation Act and non-insured. These non-insured employers were referred by the Compliance Division to the Commission's Deputy Commissioner Section for consideration of a penalty assessment.

A total of \$8,630,661 in penalty assessments was made initially by the Industrial Commission against non-insured employers based upon referrals from the Employee Classification Section. After alternative penalties were calculated under N.C. Gen. Stat. § 97-94(b2), the amount

assessed was reduced by \$1,737,435, thus resulting in a modified assessed amount of \$6,893,226 in penalties for FY 2018-19 based upon referrals from the Employee Classification Section. A total of \$1,040,256¹⁰ in penalty collections was made by the Industrial Commission from non-insured employers in FY 2018-19, based upon referrals from the Employee Classification Section.

North Carolina Division of Employment Security Statistics Related to Employee Misclassification

As a result of audits performed by the North Carolina Division of Employment Security, 9,615 workers were found by the Division of Employment Security to be misclassified from the third quarter of 2018 through the second quarter of 2019. This resulted in \$1,405,273 in taxes assessed by the Division of Employment Security.

North Carolina Department of Labor Statistics Related to Employee Misclassification

As a result of investigations performed by the North Carolina Department of Labor, \$37,572 in wages were found to be due to employees who were found by the Department of Labor to be misclassified, \$37,480 in wages were paid to employees who were found by the Department of Labor to be misclassified, \$11,029 in penalties were assessed by the Department of Labor in these cases, and \$5,774 in penalties were collected by the Department of Labor in these cases.

North Carolina Department of Revenue Statistics Related to Employee Misclassification

The North Carolina Department of Revenue currently does not have initiatives that are specifically designed to identify cases of employee misclassification. However, the Department of Revenue's Schedule C Initiative and 4% ITIN Withholding Initiative potentially may identify employers who are misclassifying workers as independent contractors when the workers are, in fact, employees. The Department of Revenue may attempt to reclassify the workers, depending on the facts of the case. The Schedule C Initiative performs audits of taxpayers who have overstated expenses or understated income based upon their Federal Schedule C. The 4% ITIN Withholding Initiative is designed to identify and audit any taxpayer who has made payment to an ITIN holder under a 1099-Misc but fails to withhold 4% income tax. There is no data available at this time to determine how many, if any, of the assessments and collections made by the Department of Revenue in Fiscal Year 2018-19 were related to cases involving employee misclassification.

¹⁰ This amount is included in the Compliance Division's total penalties collected for FY 2018-19.

DEPUTY COMMISSIONER SECTION

Mission Statement

The Deputy Commissioners, Special Deputy Commissioners, paralegals, and legal assistants of the North Carolina Industrial Commission endeavor to fairly, impartially, and efficiently adjudicate contested claims by careful application of the law; by adherence to rules and procedures; and by providing timely and exemplary customer service to all parties.

About the Deputy Commissioner Section

Deputy Commissioners expeditiously resolve all controversies between injured workers, employers, carriers, providers, various citizens of the State of North Carolina, and the State of North Carolina that arise primarily under the Workers' Compensation Act and the State Tort Claims Act. The Deputy Commissioners provide citizens an opportunity to be heard in a professional, ethical, and courteous manner, and render legally sound and impartial decisions after thoroughly considering the positions of all parties and applying the law.

Deputy Commissioners conduct full evidentiary hearings throughout the State, hear administrative motions, conduct administrative appeal hearings, review complex form agreements, review settlement agreements, and handle other matters. In addition to the cases described in the tables below, the Deputy Commissioner Section made 13 Public Safety Employees' Death Benefits Act determinations.

Claims Set for Hearings

Number of Claims Docketed for Hearings	5,910 ¹¹
Cases Heard	4,278

Summary of Final Determinations Entered and Cases Settled

Compromise Settlement Agreements Approved	2,045
Final Determinations Entered (Opinion & Awards and Decisions & Orders)	1,071
Cases Dismissed with Prejudice	611
Cases Dismissed without Prejudice	247
Cases Continued and/or Removed from the Hearing Docket	2,524

¹¹ Excludes penalty and contempt hearings but includes inmate tort motions and full evidentiary hearings.

Employer Noncompliance

In FY 2018-19, the Deputy Commissioner Section assessed 1,998 penalties against non-insured businesses. In addition, the Deputy Commissioner Section disposed of 389 matters in contempt proceedings, the majority of which were related to penalty enforcement.

Penalty & Contempt Proceedings

Penalties Assessed	1,998
Penalty Matters Docketed for Hearing	1,117
Contempt Matters Docketed for Hearing	389

REPORT PURSUANT TO N.C. GEN. STAT. § 97-78(g)(2) REGARDING EXPEDITIOUS RESOLUTION OF DISPUTES FOR MEDICAL COMPENSATION

Expeditious Resolution of Emergency and Expedited Medical Motions

The Deputy Commissioner Section disposed of 336 Emergency and Expedited Medical Motions in FY 2018-19. N.C. Gen. Stat. § 97-25 requires that Expedited Medical Motions be fully resolved within 75 days of filing, including calendaring, conducting a full evidentiary hearing, completing all discovery, and the filing of an Opinion and Award. Importantly, the statute further requires that the discovery phase, including depositions of physicians and experts, be completed within 60 days of filing the Motion. Deputy Commissioners disposed of 333 Emergency and Expedited Medical Motions within the statutorily-mandated time frames and 3 outside the statutorily-mandated time frames.¹²

Full Evidentiary Medical Motions/Emergency Medical Motions

Expedited Medical Motions	285
Emergency Medical Motions	51
Total Medical Motions	336

¹² Case	Date Filed	Date of Final Disposition	Days Exceeding 75 Days
1	11/28/2018	2/12/2019	1
2	12/11/2019	4/1/2019	36
3	1/28/2019	4/28/2019	15

EXECUTIVE SECRETARY'S OFFICE

Mission Statement

The Executive Secretary's Office is committed to assisting all parties to workers' compensation claims in a professional manner through informed administrative rulings, consistent processes, and prompt and courteous communication.

About the Executive Secretary's Office

The Executive Secretary's Office handles administrative review of issues for the Industrial Commission. This office is responsible for the review and approval or disapproval of the vast majority of Compromise Settlement Agreements filed with the Industrial Commission. This section is responsible for reviewing and deciding Form 24 *Applications to Terminate or Suspend Payment of Compensation* and Form 23 *Applications to Reinstate Payment of Disability Compensation*. Telephone hearings are often held in regard to these applications. In addition, Orders are issued after review of medical and other administrative motions and third-party settlements.

Orders on Compromise Settlement Agreements	10,387
Orders on Third Party Distributions	640
Orders/Dispositions on Form 24 <i>Applications to Terminate or Suspend Payment of Compensation</i>	1,533
Orders/Dispositions on Form 23 <i>Applications to Reinstate Payment of Disability Compensation</i>	212
Orders on Medical Motions	1,782
Orders/Dispositions on other (Non-Medical) Administrative Motions	3,815
Total Orders/Dispositions	18,369
Total Number of Calls and Voicemails Answered by Executive Secretary's Assistant	1,539

REPORT PURSUANT TO N.C. GEN. STAT. § 97-78(g)(2) REGARDING EXPEDITIOUS RESOLUTION OF DISPUTES FOR MEDICAL COMPENSATION

The Executive Secretary's Office issued 1,782 Orders on Medical Motions for FY 2018-19. One of the Orders was filed more than 75 days after the filing of the motion requesting relief. This motion was filed on December 18, 2018, and the Order was issued on May 13, 2019, due to clerical oversight.

WORKERS' COMPENSATION INFORMATION SPECIALISTS

Mission Statement

The Information Specialists strive to provide callers and visitors with accurate and knowledgeable information in a prompt and courteous manner.

About the Workers' Compensation Information Specialists

The Ombudsman¹³ Program is operated in accordance with N.C. Gen. Stat. § 97-79(f) to provide unrepresented claimants, employers, and other parties with information about Industrial Commission policies and procedures. In addition, the Workers' Compensation Information Specialists can provide information regarding tort claims against State Departments and Agencies and other matters under the jurisdiction of the Industrial Commission and related statutes and rules.

Number of Calls Answered (English)	18,563
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Number of Calls Answered (Spanish)	463
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Total Calls Answered	19,026
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Number of Walk-Ins Assisted	22
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Correspondence (Letters & E-mails) Answered	1,410
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Informational Packets Mailed to Citizens	258

¹³ The Industrial Commission working title for an "Ombudsman" is an "Information Specialist."

INFORMATION TECHNOLOGY SECTION

Mission Statement

The Information Technology (“IT”) Section seeks to identify, facilitate, innovate, implement, and support the information systems technology hardware and software solutions which enable the North Carolina Industrial Commission to fulfill all aspects of its Mission Statement.

What We Do

To accomplish its mission, the IT Section has the following objectives:

- Provide excellent customer service to the Commission’s internal and external customers.
- Identify, design, facilitate, innovate, implement, and support hardware and software solutions.
- Safeguard the information, information systems, and information systems infrastructure of the Commission.
- Design, develop, manage, and maintain the information technology systems management and strategies for the Commission.

In support of these objectives, the IT Section has the following responsibilities:

- Develop plans and procedures for technical and operational processes.
- Develop software programs and upgrades.
- Manage and maintain agency software applications and software licenses.
- Maintain and upgrade information systems technology hardware.
- Administer databases.
- Manage data security and access.
- Provide technology training and internal end-user hardware, software, and network support.

Accomplishment Summary for FY 2018-19

The Section continues to work with each Commission section to anticipate, innovate, identify, and/or address each section’s information systems technology hardware and software needs and solutions. The IT Section continues to work to improve and/or enhance information technology services for Industrial Commission external and internal customers.

IT Section Accomplishments

Case Management System Project

The IT Section participated in the issuance of a Request for Proposal and subsequent award of a contract for the consolidated case management system described under the *Major Activities and Initiatives* section of this report. In the upcoming year, the IT Section will continue to help facilitate, manage, and implement the case management system project.

Cisco WebEx Teams Virtual Collaboration and Video Conferencing

The IT Section continues to leverage the capabilities of its Cisco WebEx Teams virtual collaboration and video conferencing applications, technology, and hardware solutions. The Industrial Commission regional offices utilize these collaboration resources to conduct and/or participate in internal/external meetings/collaborations as well as training and presentations. The IT Section continues working with each Commission section to identify business case uses for the Cisco WebEx Teams virtual collaboration and video conferencing applications solutions and Cisco WebEx Teams technology/hardware.

Voice Over IP (VoIP) Contact Center Phone System Project

The IT Section has replaced the Industrial Commission's Nortel Phone PBX-based Call Center technology with a new VoIP-based Contact Center solution. The new VoIP Contact Center solution provides the Industrial Commission and its customers with a more reliable, efficient, and greatly improved Contact Center experience.

Greenville Regional Office Consolidation Project

The IT Section successfully managed the transition of all technology, network, and telephone hardware during the consolidation of the Industrial Commission's Greenville regional office to the Industrial Commission's main office in Raleigh.

MEDIATION SECTION

Mission Statement

The Mediation Section endeavors to effectively, fairly, and efficiently administer the Industrial Commission's mediation program, with the goal of empowering the parties in pending cases to take an active role in the resolution of their disputes, to minimize the need for hearings and appeals, to expedite the dispute resolution process, and to enable the Industrial Commission to devote its adjudicatory resources to those cases not conducive to settlement.

About the Mediation Section

When a claim is contested, the parties are generally referred to mediation as a way of resolving the claim without a formal hearing. Cases usually bypass mediation when an injured worker is not represented by an attorney. The Mediation Section oversees this process by educating the stakeholders concerning mediation theories and procedures, ruling on any motions related to mediation, and by ensuring that the parties and mediators adhere to certain timelines, move the case forward, and submit the required forms and reports. While the mediators who serve in these cases are generally not State employees, the Industrial Commission's mediators must complete a formal mediation training program and be certified by the Dispute Resolution Commission. Pursuant to Rule 11 NCAC 23G .0203, the Mediation Section issues \$200 fee invoices for the processing of the *Report of Mediator* forms in workers' compensation cases.

The Mediation Program has continued to be very successful and resilient despite a wide variety of changes in the workers' compensation field. The success and resiliency of the program is especially evident in its settlement rate at mediation which exceeded 72.5% for the 5th straight fiscal year. Prior to the 2014-15 fiscal year, the annual settlement rate at mediation conferences had exceeded 72.5% only once during the initial twenty years of the program. The settlement rate at mediation increased from 72.91% in the 2017-18 fiscal year to 73.04% in the 2018-19 fiscal year. Likewise, the overall settlement rate, which includes those cases that are resolved prior to scheduled mediation conferences, increased from 76.02% to 76.53%.

Most cases are referred to mediation upon the filing of Form 33 Requests for Hearing pursuant to the Commission's automatic referral procedures. Over the past two fiscal years, the volume of cases automatically referred to mediation was substantially lower due to a 12.22% decrease in the filing of requests for hearing in workers' compensation cases. Nevertheless, there has only been a 6.16% decrease in the overall number of cases referred to mediation over that two-year period because of an increase in voluntary mediation. Thus, more than 8,500 cases were referred to mediation for the 18th straight fiscal year. In addition, there was only a 3.87% decrease in the amount of report of mediator processing fees collected over the same two-year period, as the Industrial Commission collected \$1,583,600 in processing fees for these reports in FY 2018-19.

Mediation Section Summary for FY 2018-19

Cases Referred to Mediation	9,275
Settlement Rate at Mediation Conferences	73.04%
Overall Settlement Rate	76.53%

MEDICAL FEES SECTION

Mission Statement

The Medical Fees Section is committed to providing prompt and efficient service by performing timely and accurate bill processing, answering inquiries regarding the Industrial Commission's Medical Fee Schedule, and assisting with the resolution of medical fee disputes.

About the Medical Fees Section

The Medical Fees Section reviews bills for medical services provided as a result of a workers' compensation claim when a carrier or employer needs assistance. Medical bills are reviewed and adjusted in accordance with the Commission's Medical Fee Schedule and then returned to the insurance carrier, third-party administrator, or self-insurer handling the claim. The Medical Fees Section also responds to medical bill inquiries, assists with resolving medical fee disputes informally, and assists in updating the Medical Fee Schedule. In accordance with N.C. Gen. Stat. § 97-26(i), the Industrial Commission adopted a Medical Provider Fee Dispute Resolution Procedure in Rule 11 NCAC 23A .0614.

Medical Bills Processed

Total Bills Processed	530
Inpatient Hospital	158
Physician	333
Miscellaneous, Dental, and Chiropractic	39
Bills Awaiting a Response	0

Summary of Medical Provider Fee Disputes Processed

Total Cases Received	230
Paid	84
Resolved, Payment Pending	10
Referred for Legal Review	0
Unfounded	20
Pending	116
Amount Paid to Providers Following Fee Dispute Resolution (May include payments from disputes filed in prior fiscal years)	\$110,040

MEDICAL REHABILITATION NURSES SECTION

Mission Statement

The North Carolina Industrial Commission Medical Rehabilitation Nurses Section administers the mandatory training courses for Rehabilitation Professionals and collaboratively facilitates and coordinates high quality and effective medical care and rehabilitation such that an injured worker's maximum level of functionality is optimized, both physically and mentally.

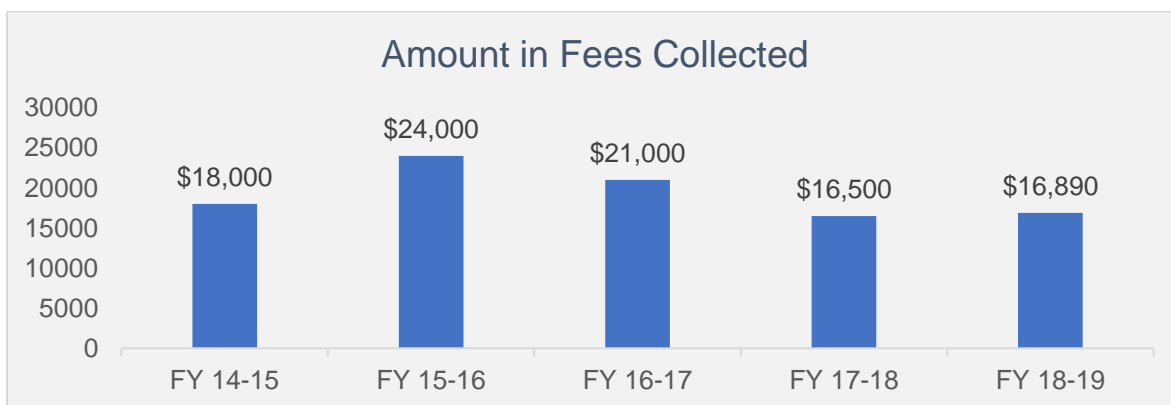
About the Medical Rehabilitation Nurses Section

The Nurses Section is responsible for the provision of the Industrial Commission's Mandatory Rehabilitation Professional Training, acknowledgment of the Form 25N *Notice of Assignment of Rehabilitation Professional*, and the maintenance of the Industrial Commission Registry of Workers' Compensation Rehabilitation Professionals. The mandatory training is required for all Rehabilitation Professionals who work on workers' compensation cases in North Carolina. The mandate requires a comprehensive initial training course for all Rehabilitation Professionals and a "refresher" course that must be completed every five years to maintain "Qualified" status. Fees are collected for these courses.

The Nurses Section is also tasked with providing medical rehabilitation consultative services to a variety of North Carolina workers' compensation audiences, including injured workers, insurance carriers, attorneys, rehabilitation professionals, and health care providers when ordered or requested. The Nurses Section assists with case management and medical rehabilitation needs in the event difficulties interfere with the ongoing progress of returning injured workers to their maximum functional capabilities.

Nurses Section Summary of FY 2018-19

Total Cases	34 ¹⁴
Acknowledged Form 25N's (Notice of Assignment of Rehabilitation Professional)	12,889
Rehabilitation Professionals Trained	274



¹⁴ This number is significantly lower than recent years because the Commission was without a Rehabilitation Nurse Consultant for several months of FY 2018-19.

Industrial Commission

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