

THE LINK
DEPARTMENT OF WORKERS' CLAIMS
QUARTERLY REPORT
OCTOBER-DECEMBER 2020



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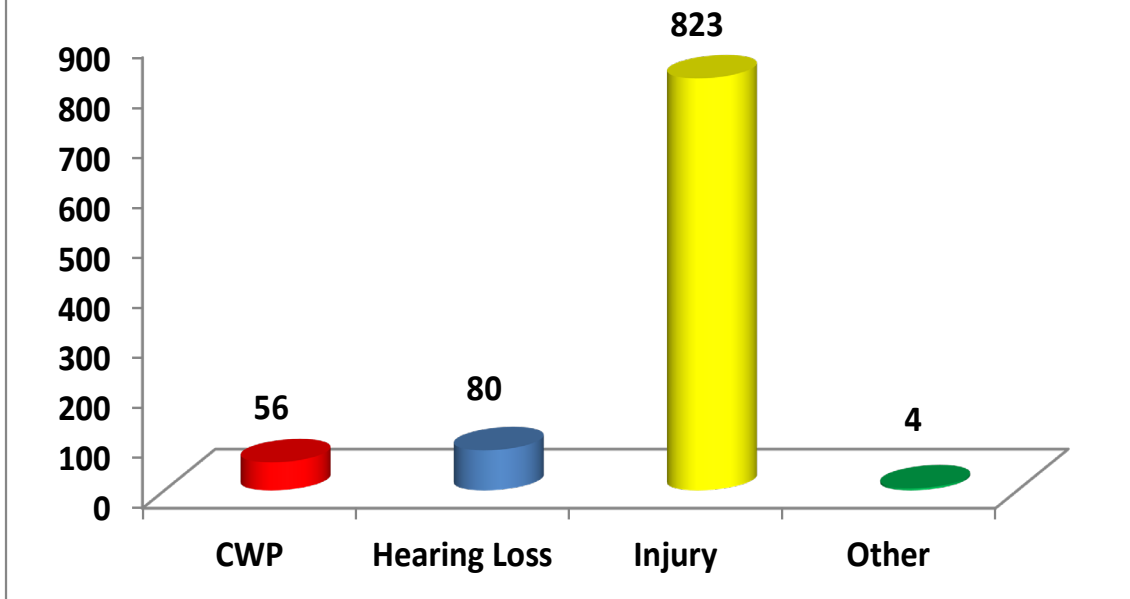
DWC Quarterly Statistics

Distribution of FROI's by Industry

	First *	Claims
	Reports	
Accommodation and Food Services	250	24
Admin. & Support & Waste Mgmt and Remediation Services	443	52
Agriculture, Forestry, Fishing & Hunting	84	9
Arts, Entertainment & Recreation	29	3
Construction	265	49
Educational Services	240	31
Finance and Insurance	48	4
Health Care and Social Assistance	2,837	56
Information	56	6
Mgmt. of Companies & Enterprises	6	0
Manufacturing	864	100
Mining	95	30
Other Services Except Public Admin.	157	14
Professional, Scientific & Technical Services	82	4
Public Administration	1,900	44
Real Estate and Rental & Leasing	36	4
Retail Trade	731	38
Services	0	0
Transportation and Warehousing	2,713	62
Transportation/Public Utilities	0	0
Wholesale Trade	230	22
Unclassified	3	405
Utilities	14	6

*This only includes First Report of Injury (FROIs) submitted via Electronic Data Interchange (EDI) to the DWC.

Claims by Nature Type



Top Ten Causes Of Injury Claims

Fall or Slip	172
Cumulative	142
Lifting	81
Motor Vehicle	67
Strain or Injury By	66
Continual Noise	49
Pushing or Pulling	45
Repetitive Motion	45
Absorption	35
Other Injury	24

QUARTERLY ACTIVITY*

Lost Time First Reports (FROI)	11,084	Re-openings (overruled)	1
Claims Assigned	963	Re-openings (sustained)	0
Re-openings (motion docket)	160		

*The above statistics are derived from the agency database by various dates determined by status code. Specific details may be obtained by contacting the Division of Information Technology and Support Services. Individual section breakdown/statistics represent internal section activity that may differ from DWC database.

Distribution by Body Part (Top Ten)

Claims

Multiple Body Parts	238
Shoulder(s)	97
Low Back	96
Ear(s)	82
Knee	73
Lungs	60
Hand	24
Ankle	20
Foot	19
Multiple Upper Extremities	18



FROIs

Multiple Body Systems	2,499
Lungs	1,827
Multiple Body Parts	928
Low Back	592
Finger(s)	568
Knee	470
Shoulder(s)	400
Hand	397
Ankle	317
Internal Organs	286

Information Technology and Support Services

The Division of Information Technology and Support Services is a part of the Office of Administrative Services in the Office of the Secretary of the Labor Cabinet. The Division supports the DWC and its stakeholders with a wide variety of technology-based services. For example, it provides technical assistance/solutions and guidance to resolve individual user and departmental issues related to technology. It also provides a structured environment that ensures the reliability, accuracy and integrity of data submitted to the DWC through accurate data entry and an Electronic Data Interchange (EDI) system which includes First and Subsequent Reports of Injury as well as Workers' Compensation Proof of Coverage (POC) reporting. The Division scans and maintains required documents or images in an electronic or digital fashion which facilitates an efficient process of storing and retrieving documents for responding to claim requests, first report information and open records requests.



Imaging

The Imaging Section is responsible for scanning all hard-copy claims and documentation into the agency's Sharepoint Imaging System, the DWC's storage medium and official claims repository.

During this quarter, the Imaging Section scanned 20,694 sheets.

The Mekel Microfilm conversion project continues to process rolls containing claim and agreement documents. To date, the section has converted 1,402 rolls to Multi-image, single PDF documents, with 1,261 more rolls to convert. This information can be accessed through a shared drive.

Open Records

The Open Records Section responds to requests for claim and first report information pursuant to KRS 61.872(2). Requests are received from a variety of outside parties including attorneys, insurance carriers, employers, the Social Security Administration and the general public. Requests may be submitted by mail, email, fax or hand delivery. Currently, charges for copies are 15 cents per photocopied page and 75 cents per microfilmed page. Upon receipt of the request, Open Records staff compiles a cost estimate. The estimate is returned to the requesting party. The request is filled upon receipt of payment from the requestor, and materials are mailed by U.S. Mail or United Parcel Services. Open Records staff is not permitted to fax workers' compensation documentation.

A service of pre-employment screening is available to prospective employers through the Open Records Section. Work injury history may be obtained by submitting a written request along with pre-payment of \$2.00 per Social Security Number submitted. Pursuant to KRS 150.170, the Open Records Section also verifies workers' compensation awards for the Department of Fish and Wildlife for individuals applying for free hunting and fishing licenses.

During this quarter, the Open Records Section processed 1,012 written requests, 1 Fish and Wildlife request and 64 pre-employment requests.

EDI Claims

The EDI Claims personnel monitor the electronic reports submitted to the DWC by insurance carriers when an injury is reported. First Reports of Injury (FROI) and Subsequent Reports of Injury (SROI) are received daily from third-party administrators and insurance carriers through vendors. Each record goes through program edits prior to acceptance and is scrutinized by EDI staff for accuracy. The EDI staff provide assistance and information to third-party administrators and insurance carriers daily on how to file new FROIs/SROIs or to make changes to existing records. This quarter, the EDI Claims Section received and processed 38,690 FROI records and 31,596 SROI records.

EDI Proof of Coverage (POC) Personnel

Every insurance carrier is required by statute to report coverage and cancellation of coverage of workers' compensation insurance issued to the employers in Kentucky. The EDI/POC Section is charged with receiving and maintaining workers' compensation coverage filings for employers doing business in the State of Kentucky. During this quarter, 144,450 proof of coverage transactions were received and processed, 92% of which were accepted.

NCCI

Transactions Processed: 106,648

Acceptance Rate: 89%

CLAIMPORT

Transactions Processed: 37,364

Acceptance Rate: 97%

KACO

Transactions Processed: 42

Acceptance Rate: 40%

KAGC

Transactions Processed: 396

Acceptance Rate: 99%

The EDI/POC Section is also responsible for registering Professional Employer Organizations (PEOs), manually processing mining and mine-related coverage and processing "split coverage/wrap up" POC for Owner and Contractor Controlled Insurance Programs (OCIP and CCIP). During this quarter, the section manually processed 881 coal transactions, with 771 of those being accepted. The DWC maintains files on 147 currently registered PEOs who provide employee leasing services to Kentucky businesses. This quarter the section received 2,297 PEO transactions, of which 2,060 were accepted. Wrap Ups received 606 transactions with 501 accepted for this quarter. Split Coverage received 10 transactions with 7 accepted for the quarter.

Design and Development

- The Design and Development Branch actively develops and maintains in-house programs using C# and .NET.
- The section maintains the SIMBA/LMS, EDI/POC programs and ensures these in-house programs meet the IAIABC standards concerning submitting FROI/SROI and POC data electronically from approved Trading Partners/Vendors.
- Researches, analyzes, and tracks user requests for new programs.
- Meets with management and additional staff for ways of improving current programs.
- Supplies statistical information to management.
- Develops database scripts to enhance productivity for Department of Workers' Claims programs.
- Responsible for SQL database backups, disaster recovery, and optimizing performance of SQL servers.
- Develops in-house user reports, form letters, and on-line forms.
- Enters and/or deletes user SIMBA/LMS security permissions for SQL server security.
- Creates, compiles, and runs queries for the department's monthly, quarterly, annual reports and any additional reports requested.
- Develops scripts for new program designs.
- Assists with the KHRIS timekeeping systems.
- Imports WC Board opinions to the web application monthly to ensure up-to-date reference material is available.
- Staff assists management with deadlines and special projects.

During this quarter, Design and Development staff implemented modifications to EDI/POC, SIMBA programs, SIMBA reports and SQL databases. Section activity also included the following:

- Installed monthly CompLaw Board Opinions into NXT4
- Submitted requests for addition and removal of SIMBA/LMS and SharePoint accounts
- Answered questions from Trading Partners/Vendors and assisted them in answering questions concerning FROI/SROI & POC electronic filings
- Met with users to discuss issues for upcoming builds, patches and new development
- Attended meetings with DWC sections for Litigation Management System
- Monitored log files for LMS/SharePoint submissions
- Ran queries for specific data as requested by in-house management
- Staff continued work on Division of Special Fund Claims Payment Management System Rewrite Project.

Research Section

The Research Section coordinates the DWC web site, produces all the agency's publications and has the responsibility of processing WC letters that are driven by statute. During this quarter, the Research Section received 213 pieces of mail.

Statute of Limitation letters are generated and processed daily by the Department of Workers' Claims. They are generated by Maintenance Type Codes (MTC) that are submitted on EDI transmissions. These letters serve as a notice to the injured worker of the statutory time limit for filing a work-related injury claim.

MTC codes that generate a statute letter are:

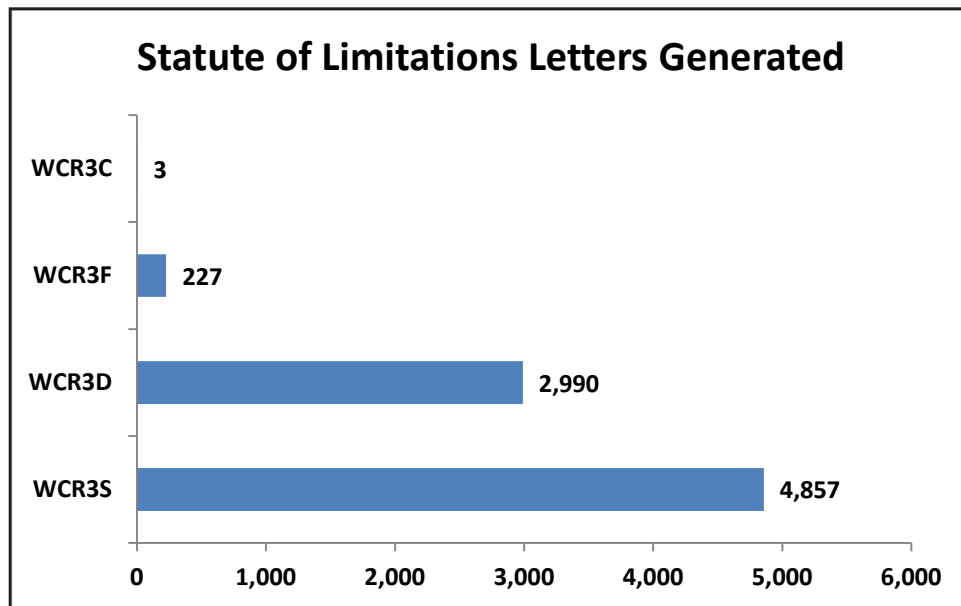
MTC S1-9 (excluding S7) and SD, suspension of benefits (WCR3S)

MTC 04, claim denial from carrier (WCR3D)

MTC with a date of death reported (WCR3F)

MTC01 cancellation with open benefits (acts as a suspension of benefits) (WCR3C)

This chart represents the number of letters generated this quarter.



Fatality letters generated are driven by EDI filings submitted to DWC by the insurance carriers. Follow-up filings by the insurance carrier that contain a date of death trigger a fatality letter. This is not indicative that the fatality actually occurred in the time frame specified.

Office of General Counsel

The attorneys in the Labor Cabinet, Office of General Counsel, Workers' Claims Legal Division, provide legal representation to the Department.

One of the major functions of the Workers' Claims Legal Division is pursuing enforcement actions. Kentucky law requires all employers, except those engaged solely in agriculture, to have workers' compensation insurance or be authorized by the Commissioner to self-insure. If an employer fails to do so, the employer can be penalized or fined \$100.00 to \$1,000.00 per employee for each day the employer fails to comply with the law.

The Workers' Claims Legal Division serves as the prosecutor in enforcement cases in which an employer has been cited and fined for not having workers' compensation coverage. The foremost goal is to have the employer obtain coverage for its employees.

Once coverage is obtained, the Workers' Claims Legal Division attempts to negotiate a settlement of the fine or penalty with the employer. If a compromise cannot be reached, the employer can have its case heard and decided by an Administrative Law Judge.

During this last quarter, the Workers' Claims Legal Division staff and attorneys handled 1 enforcement citation case. A total of \$135,363.00 in enforcement fines and penalties was collected.

The Workers' Claims Legal Division also investigates, resolves and prosecutes unfair claims settlement practice (UCP) allegations. The Workers' Claims Legal Division received five (5) UCP complaints alleging violations of the standards set forth in 803 KAR 25:240.

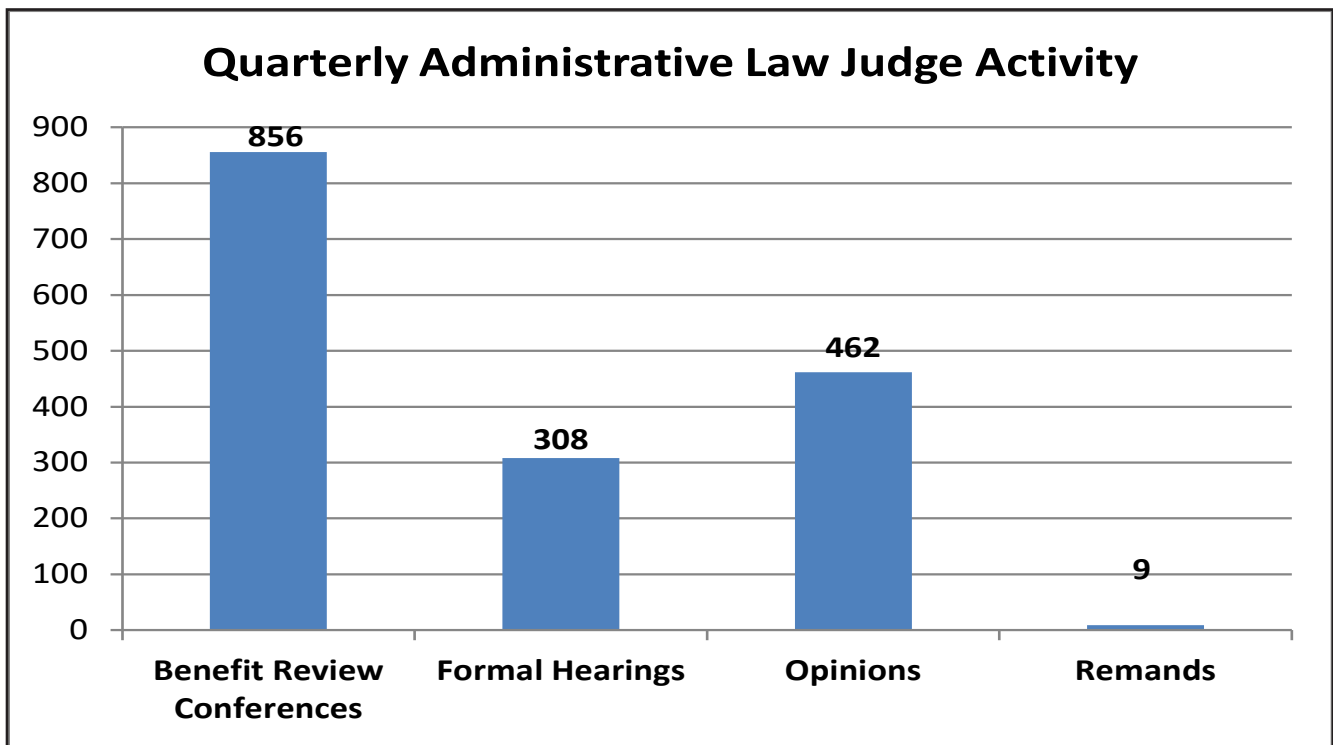
Finally, the Workers' Claims Legal Division litigates any claims brought by or against the Department, reviews and drafts potential legislation or regulations and answers questions on workers' compensation issues for claimants, insurance companies, legislators and the general public.

Administrative Law Judges

The Department of Worker' Claims has 19 Administrative Law Judge (ALJ) positions allocated, 15 of which are currently filled. Each ALJ is appointed by the Governor for a four-year term and is subject to confirmation by the Kentucky Senate. One of the ALJ's is designated Chief Administrative Law Judge (CALJ) pursuant to KRS 342.230(8). ALJ's adjudicate workers' compensation claims by conducting Benefit Review Conferences, presiding over Formal Hearings and issuing Opinions awarding or denying benefit claims.

The Chief Administrative Law Judge presides over the Frankfort motion docket. In addition, the CALJ rules on settlement agreements in unassigned cases and regularly conducts hearings in various enforcement actions. The CALJ supervises ALJ activities, prepares a rotation schedule for the ALJs, plans two adjudicator training sessions annually, and covers dockets for other ALJs on an emergency basis.

As a result of the COVID-19 pandemic and Governor Beshear's declaration of a state of emergency, all in-person proceedings, including benefit review conferences and formal hearings, have been cancelled indefinitely. In lieu of in-person proceedings, the Department of Workers' Claims has instituted a program to conduct proceedings by videoconference.



Mediation Program

In November 2020, the DWC launched a formal mediation program as an alternate means of resolving workers' compensation claims. Under the terms of the program, two ALJ's are assigned monthly on a rotating basis to serve as mediators when the parties to a claim request a referral to mediation. The DWC has promulgated a new administrative regulation, 803 KAR 25:300, to implement the mediation program.

Agreements Section

Agreements (Form 110s) are submitted through the Litigation Management System to be processed and put into record, whether signed by the CALJ or one of the other 15 ALJ's within the Department. Any agreements received prior to assignment to an ALJ (pre-litigation) are reviewed for accuracy and completeness and approved by the CALJ if appropriate. In this quarter, 721 agreements were received by the Agreements Section. Of those, 650 settlement agreements were approved by the CALJ. Section staff also received 16 motions to substitute party. During this period, 5 motions to substitute were approved.

Division of Claims Processing

The Division of Claims Processing conducts two phases of processing: Claims Review and Claims Assignment. Each phase has a distinct role in processing workers' compensation litigated claims filed with the Department of Workers' Claims.

Claims Review

The Claims Processing staff reviews all of the Applications for Resolution of Claim filed with the Department, verifying that filing requirements as outlined in 803 KAR 25:010 are followed. A total of 963 new claims were filed this quarter including 823 injury claims, 4 occupational disease claims, 80 hearing loss claims and 56 coal workers' pneumoconiosis claims. The staff identifies and verifies insurance coverage for all named defendant employers. If no workers' compensation insurance is found, steps are taken to join the Uninsured Employers Fund as a party to the claim. Once the claims have been verified through the Claims Review process, they are assigned to an Administrative Law Judge.

Claims Assignment

For this quarter, a total of 1,033 new and reopened claims were assigned by the Claims Processing staff to ALJ's and scheduled for Benefit Review Conferences. Claims staff processed 160 reopened claims (that were routed to motion docket). In addition, this division contacted and scheduled court reporter services to attend and transcribe 533 hearings; each transcript is examined and verified for payment within the Claims Assignment Section.

Once a claim is final, it is electronically transmitted to the Division to be audited by confirming all documents are present in the electronic file and that there are no pending matters requiring further action by the ALJ before it is closed. A total of 3,364 claims were audited and closed during this quarter.

Workers' Compensation Board and Appeals

Appeals Section

The Appeals Section serves as support for the Workers' Compensation Board, Court of Appeals, and Supreme Court. Appeals Staff enters the appeals information into the DWC database, verifies that briefs filed in each appeal are in compliance with 803 KAR 25:010, Section 21, prepares a weekly roster of requests for additional actions filed on appealed claims, assigns appealed claims to the Workers' Compensation Board, and enters and complies with all pertinent requests from the Court of Appeals and Supreme Court. A total of 49 appeals were filed before the Workers' Compensation Board. When an appeal is final, it is reviewed by the Appeals Section to be routed to an ALJ if further action is required or audited for finality (confirming all documents are contained in the electronic file) before any hardcopy is purged and the file is closed.

This quarter the Board rendered 30 opinions.

The Appeals Section processed the following appeals from the Workers' Compensation Board.

Appeals to Court of Appeals:	11
Court of Appeals Opinions:	15
Appeals to Supreme Court:	10
Supreme Court Opinions:	3

Division of Specialist and Medical Services

Services provided by the Division of Specialist and Medical Services personnel are a vital component to the delivery of quality, timely medical service and assistance to workers injured in the workplace and their families.

The **Medical Services Branch** has 7 main tasks that relate to the mission of the Department of Workers' Claims (DWC). Those tasks are: **(1) Certification of Managed Care Organization's Plans** which encompasses physician certification (AMA licensed); proper legal documentation for the managed care provider (provider contracts, etc.); compliance with Kentucky Revised Statutes (KRS) regarding grievance rights and procedures for claimants and their employees; **(2) Utilization Review (UR) Certification** which assists in determining necessary and appropriate medical care for claimants; **(3) Medical Bill Audit (MBA)** which is to assure compliance with adopted fee schedules; **(4) Hospital Fee Schedule (cost-to-charge)** pursuant to 803 KAR 25:091 and the latest cost report (HCFA-2552) which is supplied by the Kentucky Cabinet for Health and Family Services ; **(5) Pharmacy Fee Schedule** pursuant to 803 KAR 25:092 which mandates using the average wholesale price; **(6) Physician Fee Schedule** pursuant to 803 KAR 25:089 and related medical data supplied by Fair Health Inc. which is an independent nonprofit organization that supplies medical billing data; **(7) University Evaluations** whereby Medical Services personnel schedule statutorily required evaluation appointments for Pneumoconiosis (Black Lung), Hearing Loss and Occupational Disease claimants.

Medical Services 2nd Quarter Report

Currently, there are twenty-eight (28) Managed Care Organizations (MCO) and sixty-two (62) UR/MBA plans certified by DWC.

The Hospital Fee Schedule (cost-to-charge ratio) governs the reimbursement for hospital charges in workers' compensation claims and these ratios are calculated and assigned April 1st each year.

The Department of Workers' Claims assigned the cost-to-charge ratios for 111 in-state hospitals and 155 out-of-state hospitals during FY 2019-2020. Out-of-state hospitals are reimbursed in the same manner as Kentucky hospitals.

**University Evaluations
Hearing Loss**

University of Kentucky
Hearing Loss Claims Received
41

University of Louisville
Hearing Loss Claims Received
40

**Coal Workers Pneumoconiosis (CWP)
(Black Lung)**

Commonwealth Respiratory Consultants
Claims Referred for Evaluations
31

Dr. Ammisetty
Claims Referred for Evaluations
19

Medical Service personnel make and coordinate these evaluation appointments for claimants alleging to have developed CWP. Evaluation Reports are reviewed and transmitted to the employee, employer, insurance adjuster and the Administrative Law Judge to whom the claim is assigned.

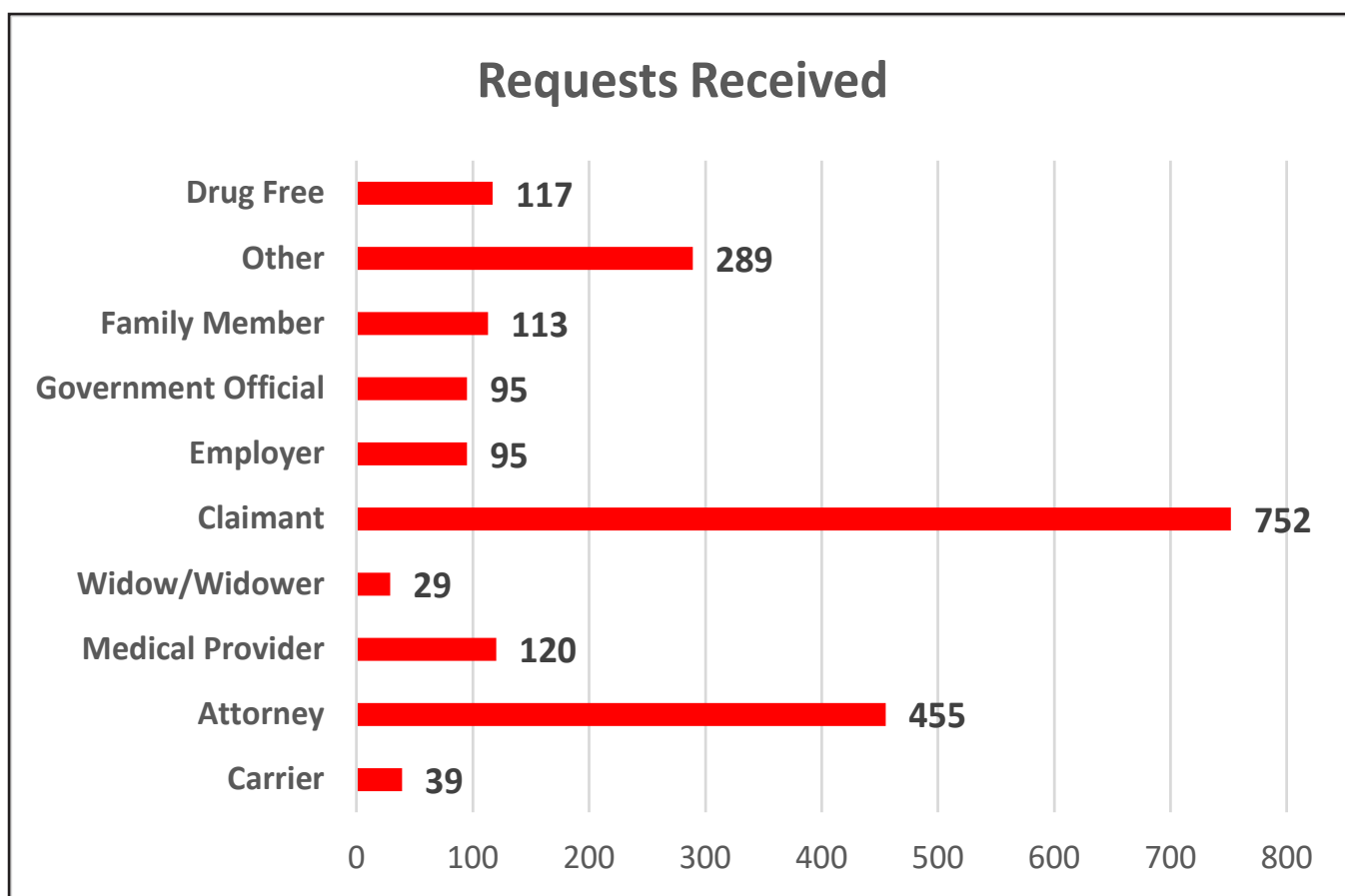
Workers' Compensation Specialists (KRS 342.329)

The Workers' Compensation (WC) Specialist Branch is tasked with providing assistance to claimants, attorneys, medical providers, employers, family members of claimants and Administrative Law Judges.

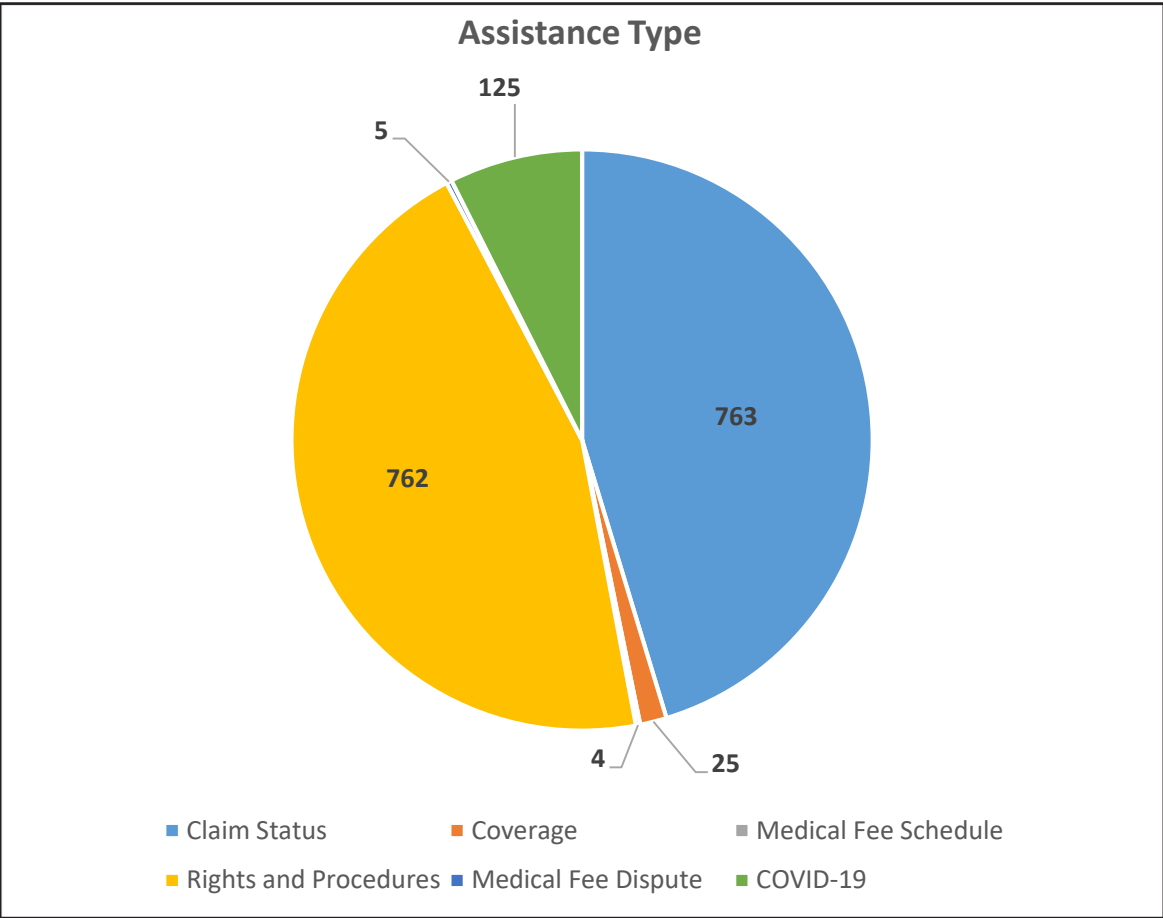
Individuals seeking assistance may call, toll free, 1-800-554-8601. Additional information may be found on the Department of Workers' Claims web site: www.labor.ky.gov/workersclaims.

WC Specialists provide intervention service (i.e. assist with resolving issues between claimants, insurance adjusters and medical providers) on issues that might otherwise have to be resolved by an Administrative Law Judge. The specialists are supervised by an Attorney/Chief Specialist.

The other entities within the WC Specialists Branch are: Drug Free Workplace Certification Program (803 KAR 25:280); Vocational Rehabilitation Program (KRS 342.710); Retraining Incentive Benefits (RIB) Program (803 KAR 25:120); and Workplace Fatality Reporting.



Beginning in October 2016, with the advent of the Litigation Management System (LMS), the Worker's Compensation Specialists acquired additional tasks of assigning user Access Numbers, and assisting Pro Se claimants with filing claims. WC Specialists also assist law firms, insurance companies and other authorized entities with non-technical navigation of LMS.



Drug Free Workplace

This is a voluntary program which allows employers (private or governmental) to promote a workplace free from drugs. Employers must submit a drug free workplace plan, make application to DWC and upon satisfactory review will be certified by the Commissioner. Upon satisfactory completion of the process, the employer (private) may be eligible for a 5% reduction of its worker's compensation insurance premium pursuant to KRS 304.13-167(6).

Plans Denied

18

Plans Renewed

61

Workplace Fatality Report

Tracks workplace fatalities (with assistance from OSHA).

Fatalities

19

Vocational Rehabilitation

KRS 342.710 permits retraining for those who are unable to perform work for which they have previous training or experience due to the effects of work-related injury. Evaluations are scheduled to determine aptitude, educational level and employment interest. The test results are provided to all parties and assistance is offered to the injured worker.

New Cases

0

Retraining Incentive Benefits (RIB)

This program dedicated to individuals who contract Coal Workers' Pneumoconiosis (Black Lung) and is designed to facilitate training to enable transition to an alternative work environment. The program provides for attainment of a GED and other bona fide training and education programs for those who do not desire to or cannot reenter the coal mining profession.

Program Participants

0

Division of Security & Compliance

Security Branch

The Security Branch regulates companies that have been approved by the Commissioner of The Department of Workers' Claims to self-insure their workers' compensation liabilities as opposed to purchasing primary coverage. A self-insured company is required to deposit security. The security must be a bond, letter of credit, or deposit contract. The security is used to pay injured employees in the event a company is insolvent or defaults on its workers' compensation liabilities. The DWC currently holds security deposited by 86 current and 378 former self-insured employers.

The security branch reviews audited financial statements annually in order to determine if the self-insured employer sufficiently is financially viable enough to maintain self-insured status. Twenty-eight (28) financial statements were reviewed this quarter.

Self-insured employers are required to submit loss reports on an annual basis. One of the main duties of the branch is providing data and information to the Commissioner to utilize in setting the required amount of security. The Branch conducts reviews using loss data when assessing the amount of required security. Twenty-four (24) reviews were completed this quarter.

Formerly self-Insured employers must wait a period of 5 years before seeking a reduction in the amount of security held by the DWC. Subsequent reduction requests may be made no more frequently than every two years. The Branch requests updated loss reports and audited financial statements in order to review the security reduction request and submits the result to the Commissioner for decision. There were no self-insured employer reviews this quarter.

A reserve is the estimated amount necessary to pay a claim to its conclusion. There are two types of reserves:

- 1) Indemnity (income benefits payable); and
- 2) Medical

Adequate reserves must be reported to assure the proper amount of security is deposited. The Branch reviews the loss data to ensure self-insured employers are reporting adequate reserves. No external medical reviews were conducted this quarter.



Compliance Branch

The Compliance Branch consists of two sections:

- 1) Enforcement Section; and
- 2) Administrative Processing Section

Enforcement Section

The Enforcement Section's primary function is to ensure employers provide insurance coverage as required by statute. This is achieved through the work of its 11 investigators. The investigators cover Kentucky's 120 counties from field offices located throughout the state. The investigators make on-site inspections to ensure employers have workers' compensation insurance. The investigators also follow up on leads generated by section staff, referrals submitted to DWC by telephone and through the department's website, and in matters involving the Uninsured Employer Fund (UEF).

Non-compliant employers are subject to citations and civil penalties issued by the Commissioner. The investigators also conduct presentations throughout the state in order to educate employers on their workers' compensation requirements and to encourage compliance.

As a result of the COVID-19 pandemic and Governor Beshear's declaration of a state emergency, on-site investigations were suspended this quarter. The Branch's investigators conducted 3,267 investigations remotely, through the internet, social media and telephonically.

The Commissioner issued 39 citations to employers for failure to comply with the requirements imposed by KRS Chapter 342.

Administrative Processing Section

The Administrative Processing Section is responsible for multiple tasks involving Coverage and Citations that include the following:

- 1) Prepare citation docket and process citations payments. Prepare citation files for remittance to General Counsel's office.
 - a) The branch processed \$121,938.00 in collected penalties, which includes penalties paid in full to the Branch and collections received by our legal division from contested citations.
 - b) Collected penalties are deposited into a fund created by KRS 342.920. These funds are used to pay benefits to employees injured before March 1, 1997 when their employer's security is exhausted.
- 2) Maintain Employee Written Notice of Rejection of the Workers' Compensation Act (Form 4s). The proper filing of this form permits an employee to waive the right to protection under the Kentucky Workers' Compensation Act.
 - a) 433 Form 4s received
 - b) 259 Form 4s approved
 - c) 1,006 Form 4s mailed upon request
- 3) Ninety-eight (98) certifications of coverage were issued this quarter to Administrative Law Judges, private attorneys and open records requests.
- 4) Process Professional Employer Organizations (PEOs), Wrap Up, and Split Coverage Applications.
 - a) Currently there are 274 registered Professional Employer Organizations (PEOs) who provide Employee Leasing services to Kentucky businesses.
 - b) Currently there is eight (8) approved Wrap Up/Special Project consisting of 918 contractors for said projects.
 - c) Currently there are two (2) businesses who have applied and been approved for Split Coverage.

Division of Workers' Compensation Funds

The Division of Workers' Compensation Funds is responsible for the administration of the Special Fund. The Special Fund is liable for part of the income benefits awarded for certain occupational injuries and diseases resulting from incidents or last exposures occurring prior to Dec. 12, 1996. The division pays approximately \$43 million in benefits per year to nearly 4,000 disabled workers or surviving dependents.

Prior to July 1, 2017, the Division of Workers' Compensation Funds also administered the Coal Workers' Pneumoconiosis Fund. Pursuant to HB 377 of the 2017 Regular Session of the General Assembly, the assets and liabilities of the Coal Workers' Pneumoconiosis Fund were transferred to Kentucky Employers Mutual Insurance as of July 1, 2017.

Benefits are funded by assessments on workers' compensation insurance premiums collected by the Kentucky Workers' Compensation Funding Commission. For more information on the Kentucky Workers' Compensation Funding Commission, visit their web site at <http://www.kwcfc.ky.gov/>.