

2023 Annual Report



**NORTH CAROLINA
INDUSTRIAL COMMISSION**

LETTER FROM THE CHAIR



On behalf of my fellow Commissioners, the Deputy Commissioners, and all 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 Commission to adjudicate and administer the North Carolina State Tort Claims Act. Today, the Industrial Commission also is charged with administering the Public Safety Employees' Death Benefits Act and the Childhood Vaccine-Related Injury Compensation Program, and it has jurisdiction over the Compensation to Persons Erroneously Convicted of Felonies statute.

In performing its adjudicative role, the Industrial Commission fairly and efficiently decides contested cases. The Commission's judicial officers carefully weigh the evidence in each case, and they apply the law equally to all cases. Every litigant is treated with respect, and our judicial officers render impartial and legally sound decisions.

In addition to adjudicating contested claims, the Commission has numerous administrative and other responsibilities, including processing claim forms, reviewing and approving form agreements and Compromise Settlement Agreements, administering the Commission's Dispute Resolution Program, investigating potential criminal and civil violations of the Workers' Compensation Act and Employee Fair Classification Act, conducting medical bill reviews in workers' compensation cases, and providing assistance with medical case management and vocational rehabilitation in complex workers' compensation cases.

The Commission is fortunate to have dedicated and hardworking employees, many of whom have served the Commission for years. A strong workforce enables the Commission to successfully carry out its important duties and provide its stakeholders with prompt and high-quality service. I am especially proud of our employees' enthusiasm for the work we do and their willingness to go the extra mile for our stakeholders and for each other.

The Commission places great value on its relationships with all of its stakeholders, including worker advocates and business and industry representatives. The Commission actively seeks input from its stakeholders on its procedures and rules, and the Commission encourages its stakeholders to bring questions, concerns, and ideas to our attention so that problems can be solved and improvements can be implemented. We look forward to continuing to work together to fairly administer the North Carolina Workers' Compensation Act, the State Tort Claims Act, and the other statutes within the jurisdiction of the Commission.

Philip A. Baddour, III
Chair
North Carolina Industrial Commission

NORTH CAROLINA INDUSTRIAL COMMISSION

Philip A. Baddour, III, Chair
Myra L. Griffin, Vice-Chair
James C. Gillen, Commissioner

Kenneth L. Goodman, Commissioner
Adrian A. Phillips, Commissioner
Wanda Blanche Taylor, Commissioner

Amber C. May, Chief Operating Officer
Meredith R. Henderson, Executive Secretary
Tammy R. Nance, Chief Deputy Commissioner and Acting Dispute Resolution Coordinator
Robert J. Harris, Senior Deputy Commissioner
April D. Gladkin, Full Commission Chief Administrative Officer and Lead Counsel
Emily Baucom, Clerk of the Industrial Commission
Brittany Walton, Director of Claims Administration
Shannon Wharry, Director of Compliance Division
Sam Constance, Chief, Criminal Investigations & Employee Classification Division
Tim Frost, Chief Information Officer
Gina E. Cammarano, Rulemaking Coordinator
Catherine Ittermann, Director of Employee Classification Section
Liza Nordstrom, Budget Manager

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North Carolina Industrial Commission – At a Glance Report for FY 2022-23

Workers' Compensation Claims Opened	52,703
Orders Issued on Medical Motions	1,690
Deputy Commissioner Section Hearings Held (Excluding Penalty and Contempt)	656
Penalty and Contempt Matters Docketed for Hearing	1,146
Total Appeals to the Full Commission	412
Cases Referred to Mediation	9,062
Orders on Compromise Settlement Agreements	10,943
Overall Settlement Rate	74%
Forms 26A <i>Employer's Admission of Employee's Right to Permanent Partial Disability</i> Agreements Received	5,253
Orders/Dispositions on Forms 24 <i>Application to Terminate or Suspend Payment of Compensation</i>	1,402
Orders/Dispositions on Forms 23 <i>Application to Reinstate Payment of Disability Compensation</i>	259
Cases Handled by Medical Rehabilitation Nurses Section	44
Medical Bills Processed	630
Fraud Cases Reported	28,209
Non-Insured Penalties Collected During FY 2022-23	\$2,052,374

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 also was 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 G.S. 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 conducts a *de novo* review of all appeals and, thus, is the ultimate fact-finding body at the Commission. Appeals from Full Commission decisions are heard by the North Carolina Court of Appeals.

Full Commission Section Summary for FY 2022-23

Appeals in Workers' Compensation and Tort Claims	348
Interlocutory Appeals	28
Medical Motion Appeals	15
Other Appeals	21
Total Appeals to Full Commission	412
Full Commission Orders Issued	528

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 the proper management of the Industrial Commission.

Recent Activities and Initiatives

New Procedure for Report of Mediator Fee Invoices

In response to stakeholder feedback, and in an effort to streamline the collection of fees necessary to support the Commission's operations, the Mediation Section created and implemented a new procedure for the invoicing of Report of Mediator fees during Fiscal Year 2022-23. Under this new procedure, the Commission is now emailing Report of Mediator fee invoices at the time the mediator is appointed. The Report of Mediator invoice is sent to defense counsel by email shortly after the Appointment of Mediator Order is emailed. The new procedure gives employers and carriers additional time to process and pay the \$200 Report of Mediator fee that is required by Rule 11 NCAC 23E .0203(a)(2). While it does not change the Report of Mediator fee due date, employers and carriers can avoid the risk of late payment (which may subject them to statutory penalties and interest) by paying the fee earlier in the process, and they can more efficiently manage and bring closure to their case files.

Permanent Amendment to Mediation Rule 11 NCAC 23G .0104; Change in How Mediation Attendance Method is Determined

On January 19, 2023, the Rules Review Commission approved the permanent amendment to Rule 11 NCAC 23G .0104 that was adopted by the Industrial Commission on November 16, 2022, with technical corrections. The amended rule went into effect on February 1, 2023. The amended rule provides that the attendance method for Industrial Commission mediations shall be the same as the attendance method for Superior Court mediations, as set forth in Rule 4 of the *Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions*. The Industrial Commission deemed this amendment necessary to ensure compliance with G.S. 97-80(c), which states that the Industrial Commission's mediation rules shall be "substantially similar" to the mediation rules for use in the Superior Court division.

Effective May 1, 2023, the North Carolina Supreme Court approved amendments to Rule 4 of the *Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions*. Because Industrial Commission Rule 11 NCAC 23G .0104 now provides that the attendance method for Industrial Commission mediations shall be the same as the attendance method set out in Rule 4 for Superior Court mediations, the way in which the attendance method is determined in Industrial Commission cases changed on May 1, 2023, and is as follows:

If all parties and the mediator agree on the mediation attendance method (which can be remote, in-person, or a hybrid of the two where some parties are participating remotely while others are together in-person), then the mediation will be held using the agreed-upon attendance method.

If an agreement on the attendance method cannot be reached, then attendance will be in-person unless the mediator has designated in the Dispute Resolution Commission's Mediator Information Directory that he or she will only conduct remote mediations.

Provided, however, in all cases, a party who is required to attend the mediation may file a motion with the Industrial Commission Dispute Resolution Coordinator asking that a different method of attendance be ordered. (For example, a party who wishes to participate remotely but who does not object to others participating in-person may file a motion requesting an order allowing a hybrid of remote and in-person attendance at the mediation).

Notable Legislation Since Last Annual Report

House Bill 259, Current Operations Appropriations Act of 2023, Section 31.1(a)

The General Assembly amended G.S. 143-291 by adding subsection (e), which limits tort liability for State employees. This new subsection provides that Article 31 of Chapter 143 is the sole and exclusive remedy for any claim that arises as a result of the negligence of any officer, employee, involuntary servant, or agent of the State while acting within the scope of his office, employment, service, agency, or authority and that the Industrial Commission is the sole and exclusive forum for hearing any such claims.

House Bill 259, Current Operations Appropriations Act of 2023, Section 31.2

Section 31.2 directs the Office of State Budget and Management to adjust the Commission's base budget for each fiscal year of the 2025-2027 fiscal biennium to use proceeds from the insurance regulatory charge established under G.S. 58-6-25 to reimburse the General Fund for operations of the Commission as authorized by G.S. 58-6-25(d)(11).

House Bill 259, Current Operations Appropriations Act of 2023, Sections 31.3(a)-(c)

The General Assembly amended G.S. 97-29(c) to reflect the intent of the General Assembly when it enacted S.L. 2011-287 and to clarify, in response to *Sturdivant v. North Carolina Department of Public Safety*, 887 S.E.2d 85 (N.C. Ct. App. 2023), the employee's requisite burden of proof to establish entitlement to extended compensation. The amendment to G.S. 97-29(c) adds the following language to the statute:

For the purposes of this subsection only, the term "total loss of wage-earning capacity" shall mean the complete elimination of the capacity to earn any wages. "Disability" as defined by G.S. 97-2(9) and "suitable employment" as defined by G.S. 97-2(22) shall not apply to this provision. The Commission may consider preexisting and injury-related physical and mental limitations, vocational skills, education, and experience in determining whether the employee has sustained a total loss of wage-earning capacity.

This amendment to G.S. 97-29(c) applies to claims accrued or pending prior to, on, or after the date on which the amendment became law.

Legislative Recommendations

- The Industrial Commission recommends removing the two-term limit for Deputy Commissioners in G.S. 97-79(b) so that experienced Deputy Commissioners may be reappointed to serve beyond twelve years.
- The Industrial Commission recommends that the General Assembly consider amending G.S. 97-88.2 to specify that the Industrial Commission's 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 that there be parity and consistency in the way business entities are treated in G.S. 97-2(2) regarding individuals who count as an "employee." This will alleviate confusion and make compliance with the workers' compensation laws easier to determine and enforce.

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, the Claims Administration Section 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, the Claims Administration Section processes forms filed by insurers and employers regarding the acceptance or denial of claims, initiation and termination of benefits, and return to work status. The Claims Administration Section also processes occupational disease claims, including conducting research necessary to identify insurance coverage in claims with multiple employers.

Additionally, the Claims Administration Section reviews form agreements for payment of death benefits, compensation for disfigurement, and permanent partial disability compensation. In conjunction with those agreements, the Claims Administration Section also reviews applications for lump sum payments. At the request of the parties, the Claims Administration Section will provide an advisory opinion in disfigurement claims to assist the parties in reaching agreement on fair and equitable compensation for disfigurement. The Claims Administration Section also handles interim attorney fee requests, Forms 51, and motions to extend the time to accept or deny a claim. In addition, the Claims Administration Section assesses penalties against employers or 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.

The Claims Administration Section provides monthly "action" reports to every carrier, third-party administrator, and self-insured employer who has complied with Rule 11 NCAC 23A .0302 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, the Claims Administration Section 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 or insurers are required to file a Form 19 *First Report of Injury* (FROI) when an injured worker is out of work more than one day OR when more than \$4,000 has been paid in medical benefits. All FROI's must be filed electronically via the Electronic Data Interchange (EDI), except in claims involving non-insured employers, in claims for lung disease, in claims with multiple employers or multiple carriers, or in claims with six-character IC file numbers, in which case the Form 19 shall be filed electronically via the Commission's Electronic Document Filing Portal (EDFP) or as otherwise permitted pursuant to Rule 11 NCAC 23A .0108(a).

A Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* must be filed by the injured worker or his or her legal representative within two years after the injury by accident (or, in cases of an occupational disease, within two years after death, disability, or disablement and being advised by competent medical authority that the employee has an occupationally-related disease, whichever occurs last), or within two years of the last payment of medical compensation when no other compensation has been paid, or the claim may be barred. Provided, however, in occupational disease claims involving the lungs, a Form 18B *Claim by Employee, Representative, or Dependent for Benefits for Lung Disease* should be used instead of a Form 18.

A Form 26A is entitled an *Employer's Admission of Employee's Right to Permanent Partial Disability*. This form is used when the parties agree on the amount of permanent partial disability benefits to be paid to the employee pursuant to G.S. 97-31 once he or she reaches maximum medical improvement.

A Form 60, 61, or 63 is filed by an employer or insurer in response to a claim for benefits made by an injured worker or his or her representative. One of these three forms must be filed with the Industrial 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 G.S. 97-18(j).

Compliance with G.S. 97-18(j)

When the Claims Administration Section 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 the defendants fail to file a Form 60, 61, or 63 within 30 days following notice that a Form 18 was filed, the Claims Administration Section 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 results in the imposition of further sanctions, including assessment of an additional \$200 penalty.

If defendants believe that the sanction was assessed in error, the Claims Administration Section conducts further investigation to determine whether the sanction was assessed in error. If it is found that defendants, in fact, complied with G.S. 97-18(j), the sanctions Order is 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 Industrial Commission file number. If examination of the duplicate file shows that a Form 60, 61, or 63 was timely filed, the sanction Order is rescinded.

Industrial Commission Form 18 Filing Trends

In Fiscal Year 2022-23, 15,310 Forms 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* were filed, which is almost identical to the number of Forms 18 filed in the previous fiscal year. The number of Forms 18 filed in Fiscal Year 2022-23 remains notably lower than in Fiscal Year of 2018-19, which was completely pre-pandemic, and during which the number of Forms 18 filed was 19,280.

Claims Administration Section Summary FY 2022-23

Total Claims Opened	52,703
Claims Opened via Form 18 Filing	6,113
Total Forms 18 Filed	15,310
Claims Opened via Form 19 Filing	46,590
Total Forms 19 Filed	89,798
Forms 60, 61, or 63 Processed	44,945
Forms 60 Processed	9,758
Forms 61 Processed	17,474
Forms 63 (Indemnity) Processed	7,813
Forms 63 (Medical Only) Processed	9,900
Forms 26A Received	5,253
Forms 26A Approved	4,885
Death Claims Filed	197
Telephone Calls Answered	26,530
Sanctions Collected for Violation of G.S. 97-18(j)	\$470,505

Forms Compliance Summary Pursuant to G.S. for FY 2022-23

Total of Forms 18 processed in Fiscal Year 2022-23 15,310

Forms 60, 61 or 63 processed before Form 18 Filed 4,235

Forms 60, 61 or 63 filed within 30 days of notice of Form 18 4,713

Total Number of Claims in Compliance 8,948

Forms 60, 61 or 63 filed between 31 and 60 days of notice of Form 18 1,543

Forms 60, 61 or 63 filed between 61 and 90 days of notice of Form 18 286

Forms 60, 61 or 63 filed 91 or more days after notice of Form 18 505

Forms 18 with no Forms 60, 61 or 63 processed by end of FY 2022-23* 2,430

**NOTE: 704 of these 2,430 claims are ones in which the Form 18 was filed less than 30 days before the end of FY 2022-23. Therefore, these 704 claims have been excluded from the "Total Number of Claims Not in Compliance" listed immediately below and included in Addendum A. The status of these 704 claims (i.e., whether or not a Form 60, 61, or 63 was filed within 30 days of notice of the Form 18) will be reflected in next year's Annual Report.*

Total Number of Claims Not in Compliance (See Addendum A for specific claim information) 4,060

CLERK'S OFFICE

Mission Statement

The Clerk's Office ensures that 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 is the clearinghouse for documents filed pursuant to Industrial Commission Rule 11 NCAC 23A .0108, which requires most documents filed with the Commission to be transmitted electronically. The Clerk's Office processes workers' compensation hearing requests, State tort claims, claims filed under the Public Safety Employees' Death Benefits Act, and claims filed under the Compensation to Persons Erroneously Convicted of Felonies statute. The Clerk's Office also processes requests for copies of files and certified copies of files.

The Clerk's Office ensures that filings are properly identified and delivered electronically to the appropriate Commission staff. The Clerk's Office also is responsible for filing and serving all Full Commission decisions, as well as certain 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 motions to withdraw requests for hearing and motions to consolidate cases for hearing. It is now mandatory for attorneys to use EDFP, the Commission's Electronic Data Filing Portal, 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 Clerk's Office assembles exhibits and filings into electronic working files for each case on appeal and prepares and electronically distributes the Full Commission hearing calendars. The Clerk's Office 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. Finally, the Clerk's Office maintains the Commission's attorney database by adding new attorneys and updating attorney contact information upon receipt.

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 Commission. The Clerk's Office no longer provides central scanning services for the Commission. Instead, all incoming documents are now scanned by the Commission section handling the particular type of document.

Clerk's Office Summary for FY 2022-23

Requests that Claim be Assigned for Hearing	6,188
Requests for Hearing in Non-Insured Cases	149
Amended Requests that Claim be Assigned for Hearing	266
Administrative Appeals to Deputy Commissioners	346
Appeals (Requests for Hearing) in Penalty Assessment Cases	41*
Responses to Hearing Requests	5,475
Attorney Representation Letters and Other Correspondence	17,660
Requests for Copies of Files	9,845
Tort Claims Filed	739
Total Appeals to the Full Commission Processed	412
Cases Sent for Transcription	306
Full Commission Calendars Generated	57
Certified Copies of Files	31
Attorney Withdrawal Orders	960**
Orders/Dispositions on Administrative Motions	342***

*In February 2023, the Deputy Commissioner Section began processing these appeals.

**The Clerk's Office resumed the review of Attorney Withdrawal Motions in September 2022.

***The Clerk's Office resumed the review of Administrative Motions in October 2022.

COMPLIANCE DIVISION

Mission Statement

The Compliance Division seeks to work effectively 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 G.S. 97-93 and G.S. 97-94. An employer is non-insured if the employer is subject to the North Carolina Workers' Compensation Act but does not carry workers' compensation insurance and 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 non-compliant employers who may be in violation of the requirement to maintain workers' compensation insurance coverage. The Compliance Division also receives alerts from the Industrial Commission's Employee Classification Section, which are generated by the Employee Classification Application (ECA). The ECA utilizes data from multiple State agencies.

As a result of the leads generated by the NETS system, the Industrial Commission initially assessed \$8,315,189 in penalties for Fiscal Year 2022-23. After alternative penalties were calculated under G.S. 97-94(b2), the penalties assessed were reduced by \$2,982,110, thus resulting in a modified penalty assessment of \$5,333,079 for Fiscal Year 2022-23.

The Industrial Commission's collection of penalties in Fiscal Year 2022-23 totaled \$2,052,374. This includes penalties that were assessed during a prior fiscal year but not collected until Fiscal Year 2022-23. As noted below, the Industrial Commission's collection of penalties continues to be impacted by the COVID-19 pandemic because the Commission has continued to exercise reasonable discretion and flexibility in its collection procedures.

In Fiscal Year 2022-23, the Compliance Division brought 644 non-insured employers into compliance with their obligation to obtain workers' compensation insurance coverage.

Compliance Division Procedures to Ensure Economic Well-Being of North Carolina Citizens and Businesses During COVID-19 Pandemic

During Fiscal Year 2022-23, the Compliance Division continued to exercise flexibility in its procedures so as to help promote the financial recovery and well-being of North Carolina individuals and business entities impacted by the COVID-19 pandemic.

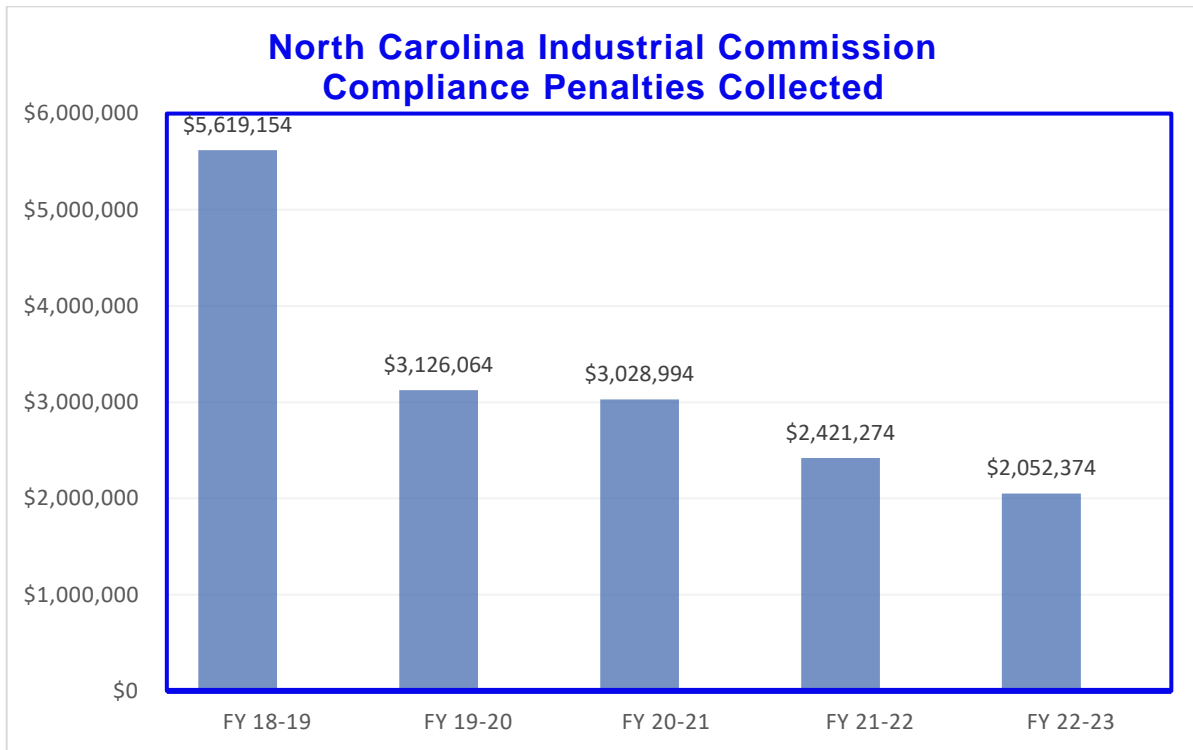
More specifically, the Compliance Division undertook the following actions:

- Employers were provided with reasonable extensions of deadlines to obtain workers' compensation insurance policies and present required Certificates of Insurance before being referred to the Criminal Investigations Division. This allowed employers to avoid the risk of criminal sanctions on top of civil penalties.
- Employers were provided with initial 30-day extensions, upon request, of non-insured penalty due dates. Additionally, employers could obtain further extensions in 30-day increments, if deemed reasonable and if supported by appropriate documentation, such as financial statements.

Non-Insured Cases for FY 2022-23

Non-Insured Hearings Docketed before the Industrial Commission	136
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Non-Insured Cases Resolved by Compliance Division (Penalties Assessed or Cases Otherwise Closed)	6,102
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CRIMINAL INVESTIGATIONS AND EMPLOYEE CLASSIFICATION DIVISION

Mission Statement

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

About the Criminal Investigations and Employee Classification Division

In Fiscal Year 2022-23, the Industrial Commission's Criminal Investigations and Employee Classification Division initiated 9,411 investigations into potential violations of the Workers' Compensation Act and Employee Fair Classification Act. 247 employers were brought into compliance with the Workers' Compensation Act, and 740 employees who had been misclassified as independent contractors were identified.

CRIMINAL INVESTIGATIONS

About Criminal Investigations

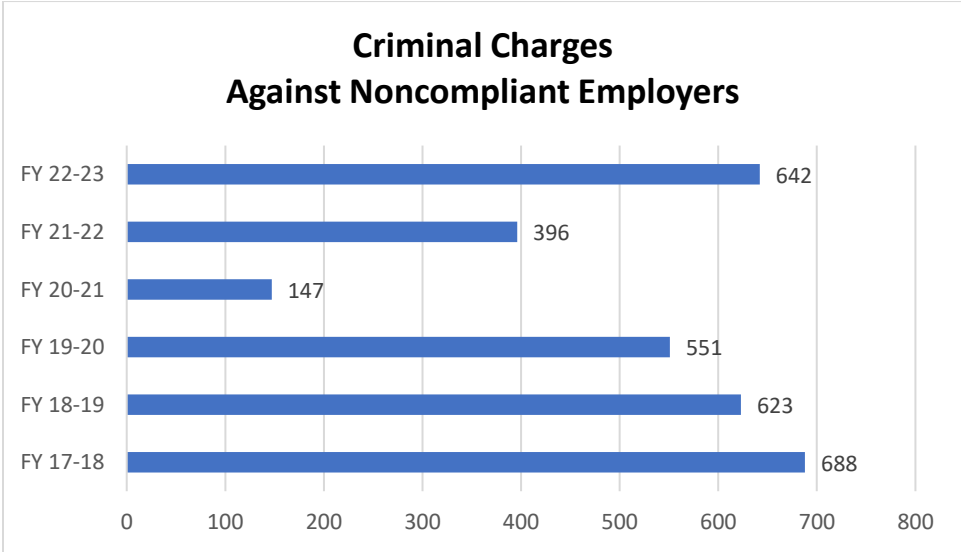
Criminal Investigations operates as a law enforcement agency and is responsible for conducting criminal investigations in cases of suspected workers' compensation fraud and violations related to workers' compensation claims involving employees, employers, insurers, health care providers, attorneys, and vocational rehabilitation providers. Investigators examine all criminal complaints filed with the Industrial Commission regarding failure of employers to maintain workers' compensation insurance coverage (G.S. 97-94(d)); fraud on the part of employees with regard to obtaining workers' compensation benefits (G.S. 97-88.2); fraud on the part of employers with regard to deducting workers' compensation premiums from employees' salaries (G.S. 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 Criminal Investigations staff consists of six sworn law enforcement officers and two administrative positions. During Fiscal Year 2022-23, Criminal Investigations processed a total of 28,209 cases, including 642 misdemeanor charges for failure to maintain workers' compensation insurance in violation of G.S. 97-94(d). In addition, 166 employers were issued warnings for failure to maintain workers' compensation insurance coverage in violation of G.S. 97-94(d) and were brought into compliance. These cases were pursued through field investigations and administrative analysis of data utilizing the Noncompliant Employer Tracking System (NETS), the Employment Classification Application (ECA), and other available technology.

The information on the next page is provided pursuant to G.S. 97-88.2(e). The 28,108 reported cases of employer fraud included allegations of employers not carrying workers' compensation insurance and allegations of employers making unlawful payroll deductions. These cases were generated from various sources, including NETS and ECA technology, calls received on the Criminal Investigations & Employee Classification Division hotline, and proactive enforcement operations.

FY 2022-23 Fraud Investigations under the Workers' Compensation Act

	Employees	Employers	Insurers	Health Care Providers	Attorneys	Rehabilitation Providers	<u>Total</u>
Fraud Cases Reported	83	28,108	7	3	3	5	28,209
Fraud Cases Pending	26	427	2	0	0	1	456
Fraud Cases Closed	57	27,681	5	3	3	4	27,753



EMPLOYEE CLASSIFICATION

About the Employee Classification Section

Employee misclassification is defined in G.S. 143-786(a)(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 an 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 Criminal Investigations and Compliance Divisions of the Industrial Commission, as well as with other State agencies, and utilizes 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 2022-23, a total of 9,411 employee misclassification reports/alerts came through the ECA for investigation, and the Criminal Investigations & Employee Classification Division (in conjunction with the Compliance Division of the Industrial Commission) investigated and resolved a total of 8,799 reports/alerts, representing reports/alerts that came through the ECA either in Fiscal Year 2022-23 or in prior fiscal years.

Of the 8,799 reports/alerts investigated and resolved in Fiscal Year 2022-23, 6,093 employers were found to be in compliance with the Workers' Compensation Act; 2,002 employers were found not to be subject to the Workers' Compensation Act; 457 employers were found to be no longer in business; and 247 employers were found to be subject to the Workers' Compensation Act, non-insured, and brought into compliance with the Act. Of these 247 non-insured employers that were brought into compliance, 242 were referred by the Compliance Division to the Commission's Deputy Commissioner Section for consideration of a penalty assessment.

A total of \$3,858,810 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 G.S. 97-94(b2), the amount assessed was reduced by \$1,709,872.84, thus resulting in a modified assessed amount of \$2,148,937.16 in penalties for Fiscal Year 2022-23 based upon referrals from the Employee Classification Section.

In Fiscal Year 2022-23, \$591,377.20 of the Commission's penalty collections came from non-insured employers who were referred to the Compliance Division by the Employee Classification Section. This includes penalties collected in cases referred during a prior fiscal year but not collected until Fiscal Year 2022-23. (These penalty collections are included in the Compliance Division's total penalty collections of \$2,052,374 for Fiscal Year 2022-23).

North Carolina Division of Employment Security Statistics Related to Employee Misclassification

The Criminal Investigations & Employee Classification Division shares information about employee misclassification identified during field investigations and reports/alerts through the ECA with the North Carolina Division of Employment Security.

As a result of 4,292 audits performed by the North Carolina Division of Employment Security Tax Audit Unit of the Tax Department, \$8,452,525,997 in reported wages was audited and 16,387 workers were found by the Division of Employment Security to be misclassified from the third quarter of 2022 through the second quarter of 2023. This resulted in \$1,329,659 in taxes assessed by the Division of Employment Security.

North Carolina Department of Labor Statistics Related to Employee Misclassification

The North Carolina Department of Labor shared information from 96 of its 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 56 complaints to the Employee Classification Section.

As a result of investigations performed by the North Carolina Department of Labor, \$42,811 in wages was found to be due to employees who were found by the Department of Labor to be misclassified, \$30,161 in wages was paid to employees who were found by the Department of Labor to be misclassified, \$7,952 in penalties was assessed by the Department of Labor in these cases, and \$4,252 in penalties was collected by the Department of Labor in these cases.

NC DOL DISCLAIMER: All amounts are subject to change since issued penalties are not always paid in a timely manner; penalties that are not paid are sent out for collection. Further, any wages noted to be owed to an employee may not be immediately collected. All efforts are made to provide the most accurate information possible at the time the report is submitted, but the final totals may change as penalties or wages may be paid after the close of the fiscal year.

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 may identify employers who are misclassifying workers as independent contractors. 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 identifies and audits taxpayers who have made payment to an ITIN holder under a 1099-Misc but have failed to withhold 4% in income tax. In Fiscal Year 2022-23, the Department of Revenue's 4% ITIN Withholding audits resulted in \$10,210,022 in additional tax, penalties, and interest due, and its Schedule C Initiative audits resulted in \$9,864,591 in additional tax, penalties, and interest due.

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, insurance carriers, 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 and courteous manner, and they 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.

Claims Set for Hearings

Number of Claims Docketed for Hearings (excluding penalty and contempt)	4,305
Number of Hearings Held (excluding penalty and contempt)	656

Summary of Final Determinations Entered and Cases Settled

Compromise Settlement Agreements Approved	1,739
Final Determinations Entered (Opinion & Awards and Decisions & Orders)	626
Cases Dismissed with Prejudice	33
Cases Dismissed without Prejudice	40
Cases Continued and/or Removed from the Hearing Docket	2,065
Public Safety Employees' Death Benefits Act Determinations	25
Compensation to Persons Erroneously Convicted of Felonies Determinations	1

Employer Noncompliance and Contempt

In FY 2022-23, the Deputy Commissioner Section assessed 623 penalties against non-insured employers. In addition, the Deputy Commissioner Section disposed of 251 matters in contempt proceedings.

Penalty & Contempt Proceedings

Penalties Assessed	623
Penalty Matters Docketed for Hearing	861
Contempt Matters Docketed for Hearing	285

REPORT PURSUANT TO G.S. 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 211 Emergency and Expedited Medical Motions in FY 2022-23. G.S. 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 208 Emergency and Expedited Medical Motions within the statutorily mandated time frames and three¹ outside the statutorily mandated time frames.

Full Evidentiary Medical Motions/Emergency Medical Motions

Expedited Medical Motions	188
Emergency Medical Motions	23
Total Medical Motions	211

¹ Case #1: Date Filed: 07/27/22; Date of Final Disposition: 10/11/22; Days Exceeding 75 Days: 1
Case #2: Date Filed: 08/24/22; Date of Final Disposition: 11/08/22; Days Exceeding 75 Days: 1
Case #3: Date Filed: 02/13/23; Date of Final Disposition: 05/02/23; Days Exceeding 75 Days: 3

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. The office is responsible for the review and approval or disapproval of the vast majority of Compromise Settlement Agreements filed with the Industrial Commission. The Executive Secretary's Office also is responsible for reviewing and deciding Forms 24 *Application to Terminate or Suspend Payment of Compensation* and Forms 23 *Application to Reinstate Payment of Disability Compensation*. Telephone hearings often are held regarding these applications. In addition, Orders are issued after review of Administrative Motions, Third Party Settlements, and a variety of other issues.

Executive Secretary's Office Summary for FY 2022-23

Orders on Compromise Settlement Agreements	9,204
Orders on Third Party Distributions	704
Orders/Dispositions on Forms 24 <i>Application to Terminate or Suspend Payment of Compensation</i>	1,402
Orders/Dispositions on Forms 23 <i>Application to Reinstate Payment of Disability Compensation</i>	259
Orders on Medical Motions	1,464
Orders/Dispositions on Administrative Motions*	3,310
Orders on Motions to Withdraw as Counsel*	339
Total Orders/Dispositions	16,682

*The Clerk's Office resumed handling Attorney Withdrawal Motions in September of 2022 and resumed handling certain Administrative Motions in October of 2022.

REPORT PURSUANT TO G.S. 97-78(g)(2) REGARDING EXPEDITIOUS RESOLUTION OF DISPUTES FOR MEDICAL COMPENSATION

The Executive Secretary's Office issued 1,464 Orders on Medical Motions in FY 2022-23. Two of the Orders were filed more than 75 days after the filing of the motion requesting relief, one due to a clerical error and the other due to a joint request by the parties to hold the motion in abeyance pending informal resolution of the dispute.

WORKERS' COMPENSATION INFORMATION SPECIALISTS

Mission Statement

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

About the Workers' Compensation Information Specialists

The Ombudsman Program, whose staff are referred to as "Information Specialists," is operated in accordance with G.S. 97-79(f) to provide unrepresented claimants, employers, and other parties with information about Industrial Commission policies and procedures regarding workers' compensation. In addition, the Information Specialists provide information regarding tort claims against State agencies and other matters under the jurisdiction of the Industrial Commission.

Number of Calls Answered (English)	5,330
Number of Calls Answered (Spanish)	918
Total Calls Answered	6,248
Number of Walk-Ins	2
Correspondence (Letters & E-mails) Answered	4,953
Informational Packets Mailed	177

INFORMATION TECHNOLOGY SECTION

Mission Statement

The Information Technology (“IT”) Section promotes and supports the Industrial Commission's effective use of information technology hardware and software solutions so as to enable the Industrial Commission to fulfill all aspects of its operations.

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 users;
- Identify, innovate, design, facilitate, implement, and support Industrial Commission information systems technology hardware and software solutions;
- Safeguard the information, information systems, and information systems infrastructure of the Industrial Commission; and
- Design, develop, manage, and maintain the information technology systems and assets of the Industrial 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 Industrial Commission software applications and licenses;
- Maintain and upgrade information systems technology hardware;
- Manage, track, and maintain the Commission’s information technology assets;
- Manage Industrial Commission data security and access; and
- Provide technology training and internal end-user hardware, software, and network support.

Case Management System Update

The new case management system project continues to move forward and will replace several legacy systems, transitioning the Commission to a modernized, cloud-based solution.

In addition to further development, the project team has been addressing challenges related to migrating the Commission’s data and document repositories, focusing on additional testing to ensure reliability, and preparing the training curriculum for internal and external users.

Upon go-live, the external customer-facing portal will provide improved document filing, real-time docket listings, and paperless management of many administrative requests.

MEDIATION SECTION

Mission Statement

The Mediation Section administers the Industrial Commission's mediation program effectively, fairly, and efficiently, 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, expedite the dispute resolution process, and enable the Industrial Commission to devote its adjudicatory resources to those cases not conducive to settlement.

About the Mediation Section

The Mediation Section educates the Commission's stakeholders concerning mediation theories and procedures, orders and enforces the mediation deadlines set forth in the Commission's mediation rules, processes Industrial Commission mediation forms, and invoices Report of Mediator fees. The Mediation Section's Dispute Resolution Coordinator rules on all mediation-related motions.

Mediations and Settlements

When a claim is contested and one or both parties has requested a hearing, the case normally is ordered into mediation by the Dispute Resolution Coordinator so that the parties can attempt to settle their dispute at mediation before proceeding to hearing. One exception is when an injured worker is not represented by counsel, in which case the Dispute Resolution Coordinator usually enters an order dispensing with mediation. When a case is settled, the parties enter into a Compromise Settlement Agreement, which must be reviewed by the Industrial Commission pursuant to G.S. 97-17, G.S. 97-82 and Rule 11 NCAC 23A .0502. Even if a claim is not contested, the parties may choose to mediate their case in an effort to enter into a Compromise Settlement Agreement. Cases such as these are not ordered into mediation; instead, they are voluntarily mediated. While not ordered into mediation, these voluntary mediations still fall under the jurisdiction of the Industrial Commission's Mediation Section. The mediators who serve in Industrial Commission cases must complete a formal mediation training program and be certified by the Dispute Resolution Commission. Most of these mediators also have significant workers' compensation experience as a result of having practiced law in the field of workers' compensation and/or mediating workers' compensation cases for many years.

G.S. 97-73(e) limits the fees the Industrial Commission may charge to support its receipt-funded operations. Pursuant to Rule 11 NCAC 23E .0203, the Commission charges a \$200 fee to process the *Report of Mediator* form that must be filed by the mediator in each workers' compensation case. Under this same rule, the Commission charges a \$400 fee to review a Compromise Settlement Agreement that is submitted in a workers' compensation case.

The number of cases referred to mediation in Fiscal Year 2022-23 was 9,062, which was a small increase from the prior fiscal year. This enabled the Commission to continue to generate receipts for *Report of Mediator* fees at a steady and healthy level. The overall settlement rate in Fiscal Year 2022-23 was 74%, which is essentially the same as the overall settlement rate during the prior fiscal year.

Mediation Section Summary for FY 2022-23

Cases Referred to Mediation	9,062
Overall Settlement Rate	74%
Report of Mediator Fees Received	\$1,936,750
Compromise Settlement Agreement Fees Received	\$4,343,900.76
Forms MSC5 (<i>Report of Mediator</i> forms) Processed by Mediation Section	8,846
Forms MSC4 (<i>Designation of Mediator</i> forms) Processed by Mediation Section	8,473

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 Industrial 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, resolves medical fee disputes, and assists in updating the Medical Fee Schedule. In accordance with G.S. 97-26(i), the Industrial Commission has adopted a Medical Provider Fee Dispute Resolution Procedure by rule (Rule 11 NCAC 23A .0614).

Medical Bills Processed

Total Bills Processed	630
Inpatient Hospital	214
Physician	343
Miscellaneous, Dental, and Chiropractic	73
Bills Awaiting a Response	0

Summary of Medical Provider Fee Disputes Processed

Total Cases Received	155
Paid	89
Resolved, Payment Pending	15
Referred for Legal Review	0
Unfounded	37
Closed	0
Pending	14
Amount Paid to Providers Following Fee Dispute Resolution	\$105,163.35

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 Industrial Commission Mandatory Rehabilitation Professional Training, acknowledgment of the Form 25N *Notice of Assignment of Rehabilitation Professional*, and the maintenance of the Industrial Commission's 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 taken every five years to maintain "Qualified" status.

The Nurses Section also is 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 issues arise regarding returning injured workers to their maximum functional capabilities.

Nurses Section Summary for FY 2022-23

Total Cases	44
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Acknowledged Forms 25N (<i>Notice of Assignment of Rehabilitation Professional</i>)	14,998
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Rehabilitation Professionals Trained	378
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Industrial Commission

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