

**Illinois Department of Insurance
Workers' Compensation Fraud Unit**

2020 ANNUAL REPORT



JB Pritzker, Governor

Dana Popish Severinghaus, Acting Director



Illinois Department of Insurance

JB PRITZKER
Governor

DANA POPISH SEVERINGHAUS
Acting Director

February 1, 2021

The Honorable JB Pritzker
Governor
207 State House
Springfield, Illinois 62706

Re: Workers' Compensation Fraud Unit – 2020 Annual Report

Dear Governor Pritzker:

On behalf of the Department of Insurance and pursuant to Sections 25.5(e-5) and 25.5(h) of the Workers' Compensation Act (820 ILCS 305/25.5(e-5) and 820 ILCS 305/25.5(h)), I hereby submit the Workers' Compensation Fraud Unit's 2020 Annual Report.

Respectfully submitted,

Dana Popish Severinghaus, Acting Director
Illinois Department of Insurance

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Exhibit A: North Carolina Form 90

I. Introduction

In 1911, Illinois became one of the first states in the nation to pass comprehensive workers' compensation laws. While state law has changed over the years, the basic principle guiding workers' compensation remains the same: employees and employers deserve a reliable and affordable system of insurance which helps protect employers, injured workers, and their families from financial catastrophe.

Today, state law requires almost every working resident of Illinois to be covered by workers' compensation insurance. Employers provide workers' compensation benefits either by purchasing insurance policies or by paying for the benefits themselves (known as self-insurance). Employers and employees benefit from the state's mandatory system, which allows employers to avoid costly litigation and provide employees protection and compensation for work-related injuries.

The business environment in Illinois could benefit significantly from greater fraud protection because a decrease in fraudulent claims would lead to more cost-effective insurance and, therefore, a more efficient market. The Illinois market is highly competitive, with 345 different companies competing to write direct workers' compensation premiums in FY 2020.

II. 2005 Reforms

In 2005, leaders from the business sector, labor, and government united to address the problems of fraud and non-compliance in the Illinois workers' compensation system. Later that year, the General Assembly passed House Bill 2137, which would become Public Act 94-277. This legislation established in Illinois, for the first time, a statute devoted specifically to criminalizing and combating workers' compensation fraud.

Public Act 94-277, later codified as Section 25.5 of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/25.5), introduced two anti-fraud reforms. First, the Act required the Illinois Department of Insurance (Department) to create an investigative unit, hereafter referred to as the Workers' Compensation Fraud Unit (WCFU).¹ The WCFU is charged with examining allegations of workers' compensation fraud and insurance non-compliance.² Section 25.5(c) of the Act specifically provides that it "shall be the duty of the [WCFU] to determine the identity of insurance carriers, employers, employees, or other persons or entities that have violated the fraud and insurance non-compliance provisions of this Section." 820 ILCS 305/25.5(c).

The Act's fraud and insurance non-compliance provisions constitute the second major anti-fraud reform. Prior to the passage of Public Act 94-277, fraudulent receipt, denial, or application for workers' compensation benefits were not specifically defined as unlawful by the Act. The 2005 reforms established eight specific fraudulent acts:

1. Intentionally presenting or causing to be presented any false or fraudulent claim for the payment of any workers' compensation benefit;
2. Intentionally making or causing to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any workers' compensation benefit;
3. Intentionally making or causing to be made any false or fraudulent statement with regards to entitlement to workers' compensation benefits with the intent to prevent an

¹ Section 25.5 states that the "Division of Insurance of the Department of Financial and Professional Regulation" shall establish the WCFU. Pursuant to Executive Order 4 (2009) and a statute passed by the General Assembly, the Division of Insurance was re-established as the Department of Insurance effective June 1, 2009. Section 25.5 was amended to reflect this change in 2011.

² In addition to the WCFU, the Illinois Workers' Compensation Commission (IWCC), which is separate and apart from the Department, also employs a number of investigators charged with investigating insurance non-compliance pursuant to Section 4 of the Act, which requires employers to provide workers' compensation benefits to employees.

- injured worker from making a legitimate claim for workers' compensation benefits;
4. Intentionally preparing or providing an invalid, false, or counterfeit certificate of insurance as proof of workers' compensation insurance;
 5. Intentionally making or causing to be made any false or fraudulent material statement or material representation for the purpose of obtaining workers' compensation insurance at less than the proper rate for that insurance;
 6. Intentionally making or causing to be made any false or fraudulent material statement or material representation on an initial or renewal self-insurance application or accompanying financial statement for the purpose of obtaining self-insurance status or reducing the amount of security that may be required to be furnished;
 7. Intentionally making or causing to be made any false or fraudulent material statement to the WCFU in the course of an investigation of fraud or insurance non-compliance; and
 8. Intentionally assisting, abetting, soliciting, or conspiring with any person, company, or other entity to commit any of the acts listed above.

These eight prohibitions defined the nature and scope of WCFU investigations from 2005 to 2011.

III. 2011 Reforms

In 2011, the General Assembly passed House Bill 1698, which would become Public Act 97-18. The 2011 amendments to Section 25.5 of the Act provided the WCFU with additional tools to combat workers' compensation fraud. The first change enacted was the addition of a ninth prohibition. This provision makes it illegal to "intentionally present a bill or statement for the payment for medical services that were not provided." 820 ILCS 305/25.5(a)(9).

Public Act 97-18 also reformed the sentencing provisions in the Act. Previously, those

convicted of workers' compensation fraud were guilty of a Class 4 felony and required to pay appropriate restitution. The amended sentencing provisions now base the punishment for a violation of the Act's fraud provisions on the value of the property the person convicted of fraud obtained or attempted to obtain. The new sentencing scheme, codified at 25.5(b) of the Act, is as follows:

1. A violation in which the value of the property obtained or attempted to be obtained is \$300 or less is a Class A misdemeanor;
2. A violation in which the value of the property obtained or attempted to be obtained is more than \$300 but not more than \$10,000 is a Class 3 felony;
3. A violation in which the value of the property obtained or attempted to be obtained is more than \$10,000 but not more than \$100,000 is a Class 2 felony;
4. A violation in which the value of the property obtained or attempted to be obtained is more than \$100,000 is a Class 1 felony.

These changes to the sentencing scheme have led to greater interest from prosecutors.

Unfortunately, the changes to the sentencing scheme have also had a number of unintended consequences. As the new sentencing scheme is based upon the monetary value of the fraud committed, an issue exists for a number of violations where a value cannot be quantified. While the new sentencing guidelines work well for cases involving false claims and benefits received by workers' compensation claimants through false statements or fraudulent means, the guidelines pose problems for a number of other violations.

Also, the recent reforms have given the WCFU broader powers of subpoena. While the WCFU utilized the subpoena power granted to the Director of the Department from its inception, the statute now clearly states that the WCFU has "the general power of subpoena of the Department

of Insurance, including the authority to issue a subpoena to a medical provider, pursuant to section 8-802 of the Code of Civil Procedure.” 820 ILCS 305/25.5(c). Section 8-802 of the Code of Civil Procedure, which defines the physician-patient privilege in Illinois, states that “no physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except . . . [upon] the issuance of a subpoena pursuant to Section 25.5 of the Workers' Compensation Act.”³ 735 ILCS 5/8-802. This makes it clear that medical providers not only have to provide the medical records, but may speak to investigators about what would otherwise be privileged.

Additionally, Public Act 97-18 removed the notice requirement from Section 25.5(e) of the Act. Prior to the 2011 amendments, the WCFU was required to contact the target of a potential investigation immediately upon receipt of a complaint, notifying them of the investigation, the nature of the reported conduct, and the name and address of the complainant. This requirement hindered the WCFU greatly in that it made attempts to conduct surveillance futile, as the target was aware of the investigation. The notice requirement also discouraged complainants from coming forward, as they would have their identity and address given to the target of the investigation. Without this requirement, the WCFU can be much more effective as well as more inviting to potential complainants.

The time limit for the WCFU to conduct a fraud investigation was removed from Section 25.5(e) of the Act. Previously, the WCFU had to complete its investigation within one hundred twenty (120) days of the time a complaint was received. Given the resources available, this limitation often proved to be impossible to comply with as the time limit started to run before the

³ The language in Section 8-802 of the Code of Civil Procedure concerning subpoenas pursuant to Section 25.5 of the Illinois Workers' Compensation Act was added by PA 97-18.

case was even assigned to an investigator, and subpoena compliance took up the majority of the one hundred twenty (120) days. However, with that requirement removed, the WCFU can collect all the relevant records, complete thorough investigations, and make better referrals to prosecutors, resulting in more convictions.

Finally, the 2011 amendments require that the WCFU procure and implement a system utilizing advanced analytics inclusive of predictive modeling, data mining, social network analysis, and scoring algorithms for the detection and prevention of fraud, waste, and abuse by January 1, 2012.

The Department and the WCFU did issue a Request for Information (RFI) regarding this system in March of 2012 in the hopes of receiving information regarding how to draft a Request for Proposal (RFP) to obtain such a system. The Department received a number of responses. To date, no system has been procured. It has become increasingly clear that the Department does not possess the type of data necessary to fuel such an advanced analytics system. Neither the WCFU, nor any other division of the Department, collects the type of claims and medical data necessary to do effective data mining or predictive modeling. In early 2015, this determination was confirmed by representatives from two large workers' compensation carriers who are at the forefront of using advanced analytics to combat fraud. Both companies, independent of one another, indicated that the information available to the Department is insufficient for purposes of predictive modeling. Additionally, no funding has ever been provided for this mandate.

Despite the fact that the system has yet to be procured and implemented as required by statute, the WCFU has several recommendations regarding opportunities for additional fraud prevention and detection of fraud, waste, and abuse, including a number of recommendations made in the 2013 through 2019 Annual Reports.

IV. Recommendations

First, the WCFU recommends that the General Assembly repeal Section 25.5(e-5) of the Act for the reasons stated above. The Department believes the state would be better served by expanding the WCFU by hiring additional investigators to investigate actual or suspected fraud.

Additionally, the WCFU again recommends that insurance companies, employers, and third-party administrators responsible for issuing checks for temporary disability benefits pursuant to the Act include language on those checks requiring the injured employee to affirmatively state they remain entitled to the disability benefits being paid. In the case of temporary total disability benefits, the WCFU recommends that injured employees also be required to indicate that they are not employed elsewhere. Unfortunately, this suggestion may have a limited effect on combating fraud as more and more benefits are being paid via direct deposit. Also, the WCFU again recommends that injured employees be required to submit a form to the IWCC on a monthly basis, similar to the North Carolina Industrial Commission's Form 90,⁴ regarding any employment or earnings during that time period.

The WCFU continues to recommend that the General Assembly consider additional amendments to Section 25.5 of the Workers' Compensation Act that would amend the language of Section 25.5(a)(5) to remove any ambiguity as to whether cases involving the underreporting of payroll may be charged under this section by replacing the word *rate* with *amount* and add language to the sentencing provisions of Section 25.5(b) to account for violations of the Act that do not have associated dollar amounts.

The WCFU also continues to recommend that the General Assembly consider adding language to Section 25.5 of the Workers' Compensation Act concerning statements made to

⁴ Attached as Exhibit A

medical providers outside the State of Illinois for injuries that are the subject of claims before the Illinois Workers' Compensation Commission. In the past few years, the WCFU has received a number of complaints concerning possible fraud by injured workers where treatment was sought in neighboring states and alleged misstatements were made to doctors in the neighboring state in an effort to obtain benefits pursuant to the Illinois Workers' Compensation Act. As the statements are made outside Illinois, there is no jurisdiction to prosecute the alleged misstatements in Illinois despite the obvious connection to the state. The WCFU suggests that the General Assembly consider adding language that would specifically convey jurisdiction to prosecute such out-of-state statements in Illinois.

The WCFU continues to suggest that Sections 25.5(a) and (b), which define the offense of and penalties for Workers' Compensation Fraud, be re-codified within Article 17 of the Illinois Criminal Code, which includes crimes of deception and fraud, including the offense of Insurance Fraud.

Finally, the WCFU suggests that new legislation, requiring Certificates of Insurance (COIs) only be issued by the insurance carrier, be added to the Illinois Insurance Code. Certificate fraud continues to be a problem in this state. The WCFU has investigated numerous cases in the past few years involving false COIs. These cases have not only involved employers issuing false COIs to obtain work, but also insurance producers issuing COIs for policies that were never issued. This type of fraud often results in employers, especially general contractors, being assessed additional workers' compensation premium from their insurance carriers when annual premium audits reveal that sub-contractors have provided false COIs. This type of fraud is preventable, and could be all but stopped, if the insurance companies that wrote the underlying insurance policies also issued the COIs. Additionally, certificate holders could be notified by the insurance carrier if and when

a policy was cancelled.

V. WCFU Operations

Section 25.5(c) of the Act charged the Department with establishing the WCFU. The Department established the WCFU in 2006 and now oversees its operations, investigations, personnel, and progress.

A. Complaints

The WCFU tracks reports of workers' compensation fraud. Complainants are required by statute to identify themselves and can report fraud by regular mail, electronic mail, or by calling a toll-free telephone number (1-877-WCF-UNIT or 1-877-923-8648). After receiving a report, the WCFU supervisor reviews each complaint to determine whether the complaint alleges a violation of the Act's fraud provisions that warrants investigation. In conducting this review, the supervisor assigns a case number to each complaint and enters it into the WCFU's case management system. If necessary, the supervisor contacts the complainant or requests additional information to complete the review process. If the report is frivolous, legally insufficient, or unsubstantiated, the investigation ceases and the report is closed. If the supervisor finds evidence sufficient to justify further inquiry, the case is assigned for investigation.

B. Investigations

The primary responsibility of the WCFU is to conduct investigations and refer worthy cases for prosecution. To fulfill this task, WCFU investigators spend countless hours each year conducting field investigations, reviewing surveillance footage, issuing numerous subpoenas, and reviewing insurance, payroll, medical, and other records. An investigation begins after the WCFU supervisor assigns it to an investigator.

In 2015, the WCFU began the process of hiring full-time investigators to bring the unit to its maximum complement of five investigators, which was accomplished by late 2016. This increase in staff has allowed for more investigations to be assigned and completed and lessened the impact the departure of a single investigator had on the unit.

While structurally similar, each investigation differs based upon a host of factors, including the nature and quality of the initial complaint. Most investigations involve: (1) review of documentary and physical evidence; (2) detailed background checks of persons related to the case (*e.g.*, investigative targets and witnesses); and (3) interviews of persons related to the case (*e.g.*, complainants, witnesses, insurance company personnel, medical treatment providers, and the investigative target).

It should be noted that due to the departure of full-time WCFU investigators and the inability to replace the vacated full-time investigator positions, the WCFU had only one full-time investigator in FY2020. This is the lowest number of full-time investigators the WCFU has worked with since its inception. The WCFU is currently in the hiring process to add several full-time investigators in FY 2021.

C. Referrals for Prosecution

At the conclusion of each investigation, a review of the sufficiency of evidence is conducted. If the inquiry does not produce evidence deemed sufficient to convict an individual or entity of workers' compensation fraud, the case is dismissed. Investigations that produce sufficient evidence to convict are referred to the Attorney General's office or the State's Attorney of the county where the offense occurred. The power to decide whether to file criminal charges rests solely with the prosecutor who receives the WCFU referral.

The WCFU is building working relationships with relevant prosecuting authorities. Since its creation, the WCFU has referred cases to, and worked with, State's Attorneys representing forty-three (43) counties: Bureau, Cass, Champaign, Christian, Cook, DeKalb, DeWitt, DuPage, Edgar, Ford, Franklin, Gallatin, Jackson, Jasper, Jefferson, Kane, Kankakee, Knox, Lake, Livingston, Macon, Macoupin, Massac, McDonough, McHenry, McLean, Morgan, Madison, Ogle, Peoria, Perry, Saline, Sangamon, Shelby, St. Clair, Tazewell, Union, Vermilion, White, Whiteside, Will, Williamson, and Winnebago.

D. Confidentiality

The confidentiality of all fraud reports and associated medical records is strictly maintained in accordance with the relevant statutes and is only shared in the course of referring a case for prosecution or in complying with other lawful requests.

VI. Building Relationships

WCFU investigators have learned many valuable lessons since the unit was established in 2006. Primary among them is the importance of building working relationships with various law enforcement authorities. WCFU investigators work to aid prosecutors in the exercise of their discretion. Cases referred for prosecution are presented clearly and succinctly. WCFU investigators are committed to their investigations and, for this reason, assist the Illinois Attorney General or respective State's Attorney throughout any criminal case. This level of communication and continued assistance establishes trust, which improves future referrals and prosecutions.

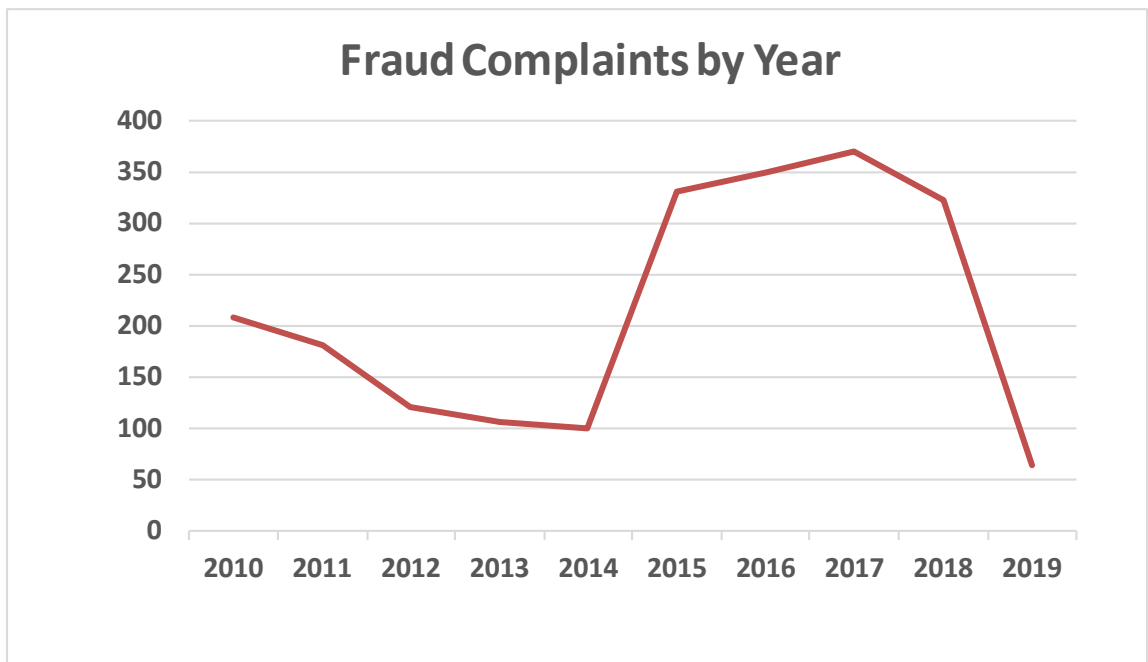
As the WCFU has grown in experience over the years, the WCFU's cooperation and coordination with other investigative and law enforcement agencies has also grown. WCFU

investigators have worked with the Federal Bureau of Investigation, the Postal Inspector's Office, the Drug Enforcement Administration, the Internal Revenue Service, U.S. Department of Labor, state medical investigators, local police departments, the Illinois State Police, insurance companies SIU units and numerous State's Attorney investigators. Investigators also share non-confidential information with organizations dedicated to identifying and stopping fraud conspiracies, including the National Insurance Crime Bureau.

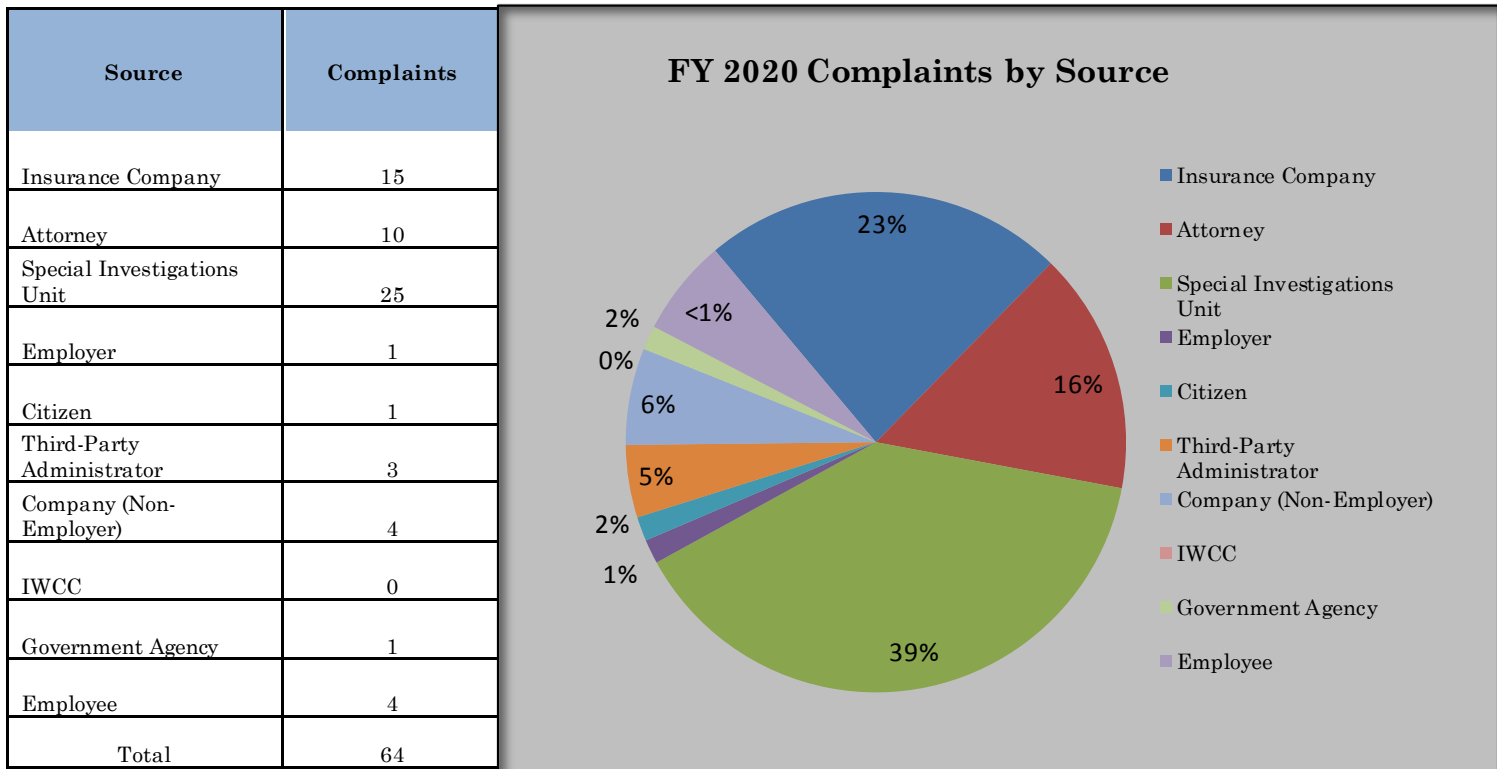
The progress of WCFU investigations over the years has improved the general public's understanding of workers' compensation fraud investigations. In the past, some complainants (*e.g.*, employers, insurers, employees) were confused about what kind of evidence the WCFU needed to successfully investigate an allegation of fraud. Establishing working relationships with workers' compensation stakeholders has helped to clarify the type of information that is required to prove workers' compensation fraud. To advance those efforts, the WCFU conducts a variety of educational presentations to public prosecutors and private law firms, as well as the insurance industry, self-insureds, other state agencies, and third-party administrators, in an effort to assist them in better understanding the Illinois Workers' Compensation Act and the responsibilities of the WCFU.

VII. Statistics

From 2011 to 2020, the WCFU received an average of 215 complaints of fraud per year. In FY 2020, the WCFU received 64 allegations of fraud, considerably less than the complaints received in prior years. This is believed to be due to the COVID-19 pandemic and many businesses implementing stay at home work orders. The chart below shows the number of fraud complaints received by the WCFU since 2010:



The complaints received in FY 2020 were submitted by a variety of sources. The table and graph below show the origin of the FY 2020 complaints:

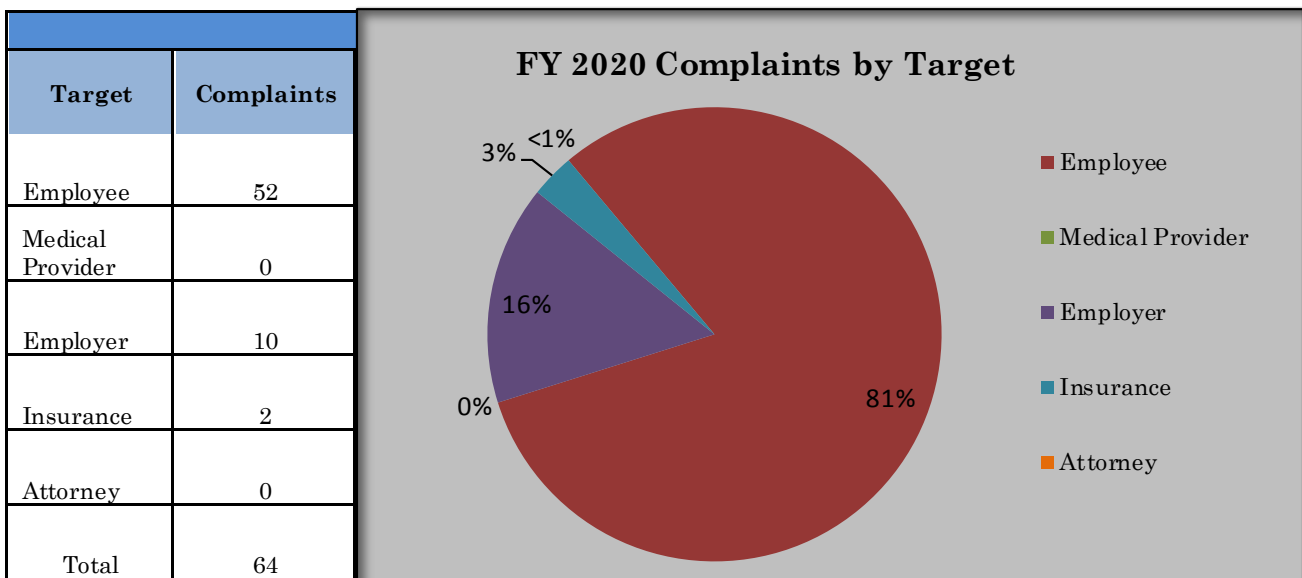


Of the 64 complaints submitted by Special Investigation Units (commonly referred to as SIUs), 15 were referred on behalf of insurance companies, 25 were private SIUs, three were referred on behalf of third-party administrators (TPAs), 10 were referred by attorney’s representing the employer, four were referred by employees, and five were referred on behalf of employers.

Of the 64 accepted complaints received in FY 2020, 36 complaints did not warrant further investigation because of insufficient evidence, lack of jurisdiction, or because the statute of limitations expired. Of the 64 accepted complaints received in FY 2020, 28 complaints were placed in line for investigation. None of the cases received by the WCFU in FY 2020 have been

assigned for investigation due to the backlog of older cases. At the completion of FY 2020, the WCFU had 55 open cases in line for investigation in the WCFU case management system.

As detailed earlier in this report, workers' compensation fraud occurs in many forms. The complaints received in FY 2020 alleged fraud on the part of various workers' compensation stakeholders. A table and graph showing the targets of these complaints is below:



As previously stated, the WCFU had only one full-time investigator in FY 2020. The WCFU investigated 18 allegations of workers' compensation fraud in FY 2020. Of these investigations, nine were received in 2017 and nine were received in 2018. Ten of the 18 assigned investigations were completed in FY 2020.

In FY 2020, the WCFU referred four investigations for possible criminal prosecution. Three of the investigations were referred to the Office of the Illinois Attorney General, and one

was referred to the Champaign County State's Attorney's Office. Of the cases referred for criminal prosecution in FY 2020, one was an investigation that was received in 2017, and three were investigations that were received in 2018.

Of the investigations referred for criminal prosecution in FY 2020, the target of one investigation was indicted by a Champaign County Grand Jury for one count of Workers' Compensation Fraud, and three investigations were declined criminal prosecution by the Attorney General's Office.

Additionally, in FY 2020, 12 cases were closed due to a settlement agreement being reached at the Illinois Workers' Compensation Commission (IWCC), and two cases were closed due to the expiration of the statute of limitation to proceed with criminal prosecution.

During the FY 2020 year, the WCFU received numerous complaints and inquiries via the telephone hotline, email hotline and U.S. mail that were anonymous and /or did not have sufficient information to meet the filing requirements to create a case file in the WCFU case management system. Therefore, they are not included in the number of cases received by the WCFU in FY 2020.

North Carolina Industrial Commission

REPORT OF EARNINGS

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

(EMPLOYER/INSURANCE CARRIER TO COMPLETE THIS SECTION)

Employee's Name _____			Employer's Name _____ () _____ Telephone Number _____		
Address _____			Employer's Address _____ City _____ State _____ Zip _____		
City _____ State _____ Zip _____			Insurance Carrier _____		
() _____			Carrier's Address _____ City _____ State _____ Zip _____		
Home Telephone _____			Carrier's Telephone Number _____		
Sex <input type="checkbox"/> M <input type="checkbox"/> F			Fax Number _____		
Social Security Number _____			Date of Birth _____		

To Employees: The Employer/Insurance Carrier periodically needs to verify your continuing eligibility for workers' compensation benefits and to update their records. **You are required to complete Page 2 of this Report of Earnings and return it to the insurer or employer address provided on page 2 of this form within 15 days after receipt of this form, even if you have no earnings.**

****YOUR WORKERS' COMPENSATION BENEFITS MAY BE SUSPENDED IF YOU FAIL TO COMPLETE THIS REPORT IN A TIMELY MANNER.****

NOTICE TO EMPLOYEES RECEIVING WORKERS' COMPENSATION

When you are receiving weekly workers' compensation benefits, YOU MUST REPORT ANY EARNINGS YOU RECEIVE TO THE INSURANCE CARRIER (OR EMPLOYER IF THE EMPLOYER IS SELF-INSURED) THAT IS PAYING YOU THE BENEFITS. "Earnings" include any cash, wages or salary received from self-employment or from any employment other than the employment where you were injured. Earnings also include commissions, bonuses, and the cash value for all payments received in any form other than cash (e.g., a building custodian receiving a rent-free apartment). Commissions, bonuses, etc., earned before your disability do not constitute earnings that must be reported.

You must report any work in any business, even if the business lost money or if profits or income were reinvested or paid to others.

Your endorsement on a benefit check or deposit of the check into an account is your statement that you are entitled to receive workers' compensation benefits. Your signature on a benefit check is a further affirmation that you have made no false claims or statements or concealed any material fact regarding your right to receive workers' compensation benefits.

MAKING FALSE STATEMENTS FOR THE PURPOSE OF OBTAINING WORKERS' COMPENSATION BENEFITS MAY RESULT IN CIVIL AND CRIMINAL PENALTIES.

TIME PERIOD COVERED BY THIS REPORT: _____ to _____
(Employer/Insurance Carrier must complete)

