

# The Link

Quarterly Activity Report

January -- March 2002



## Governor Paul E. Patton Appoints Greathouse as Commissioner

In March, the Department of Workers' Claims welcomed Larry M. Greathouse as Commissioner. He received Senate confirmation on March 28, 2002.

An Owensboro native, Greathouse is a 1963 graduate of Berea College and received his Juris Doctor in 1969 from the University of Kentucky's College of Law.

No stranger to the Department of Workers' Claims, Governor Patton named Greathouse Chairman of the Workers' Compensation Board in January 1999, after serving as a board member for 11 years. Greathouse's career with the Department, prior to becoming Commissioner, began in 1988 and ended with the expiration of his third term in June 2000.



Commissioner Larry M. Greathouse

*“Workers’ Claims is a very high-profile office that demands the utmost commitment and professionalism ... Larry Greathouse possesses those skills and the knowledge and experience to head this agency.”*

Paul E. Patton,  
Governor

Immediately prior to being appointed Commissioner of the Department of Workers' Claims, Greathouse served as Deputy Secretary of the Justice Cabinet from August 1, 2000 until March 15, 2002. When asked how it felt to be back at the Department, Commissioner Greathouse responded by saying, “ I’m looking forward to this exciting new opportunity and using my background in law and workers' compensation to the benefit of the people of Kentucky”.

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# Quarterly



# Statistics

## QUARTERLY ACTIVITY

|                                   |       |                         |     |
|-----------------------------------|-------|-------------------------|-----|
| Lost Time First Reports of Injury | 8,631 | Dismissals              | 155 |
| Claims Assigned                   | 1,294 | Re-openings (medical)   | 146 |
| Pre-litigated Agreements          | 1,055 | Re-openings (overruled) | 15  |
| Awards                            | 301   | Re-openings (sustained) | 70  |
| Agreements                        | 896   |                         |     |

## Fatalities

The Department of Workers' Claims in cooperation with the Labor Cabinet's Division of Occupational Safety and Health has developed a joint means for monitoring work related fatalities. Although reporting requirements differ between the two programs, both agencies share compassion for the decedents and their families.

There is no greater loss than that of human life. Recognizing this fact, the Department actively monitors a variety of news mediums and information resources to ensure timely notification is received, and survivor's benefits are expeditiously delivered.

During the past three months there have been 24 fatalities reported. Demographically the deaths can be divided into three age groups: employees in their 20's, 30 - 49, and 50 - 69. Workers that comprised the middle age bracket are responsible for 63% of the deaths reported during this quarter, followed by 29% for employees in the 50 to 69 age category. Workers in their 20's were credited with the fewest fatalities, reporting only two (2) deaths this term.

*The construction industry reported 10 deaths during this quarter, leading all other industrial classifications.*



# Quarterly

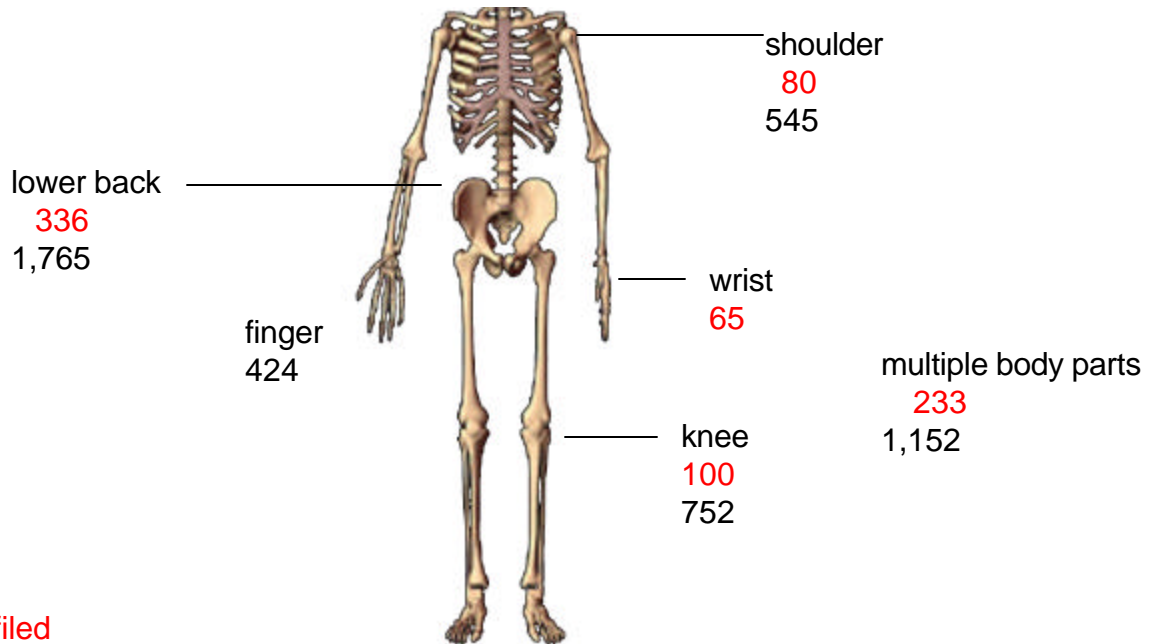


# Statistics

## DISTRIBUTION BY INDUSTRY

|  | CLAIMS | FIRST REPORTS |
|--|--------|---------------|
| Agriculture, Forestry, Fishing                     | 10     | 92            |
| Mining   | 176    | 488           |
| Construction                                       | 152    | 821           |
| Manufacturing                                      | 318    | 2,065         |
| Transportation, Communication,<br>Public Utilities | 99     | 733           |
| Wholesale Trade                                    | 42     | 311           |
| Retail Trade                                       | 151    | 1,233         |
| Finance, Insurance and Real Estate                 | 9      | 95            |
| Services   | 276    | 2,298         |
| Public Administration                              | 48     | 415           |
| Unclassified                                       | 13     | 80            |

## Body Part Distribution (top five)



■ Claims filed

■ First Reports of Injury reported

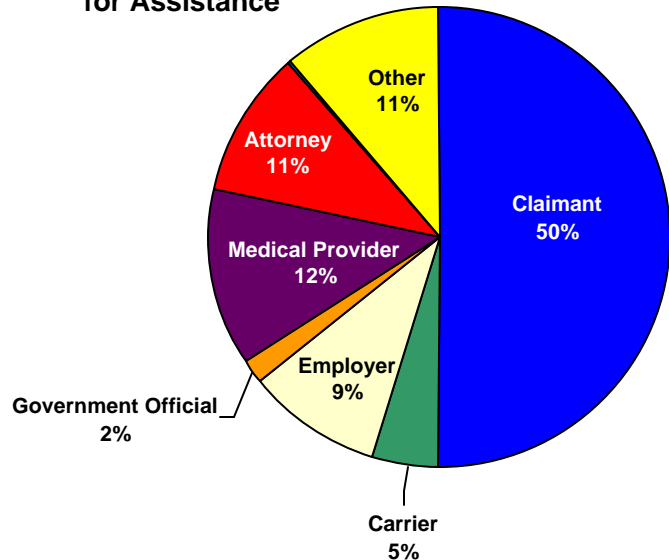
# Division of Ombudsmen and Workers' Compensation Specialists Services

Workers' compensation specialists and ombudsmen received over 3,600 requests for assistance during this reporting period.

The most common topic related to rights and procedures (2,502), questions on the status of a claim (643), and requests for forms (530).

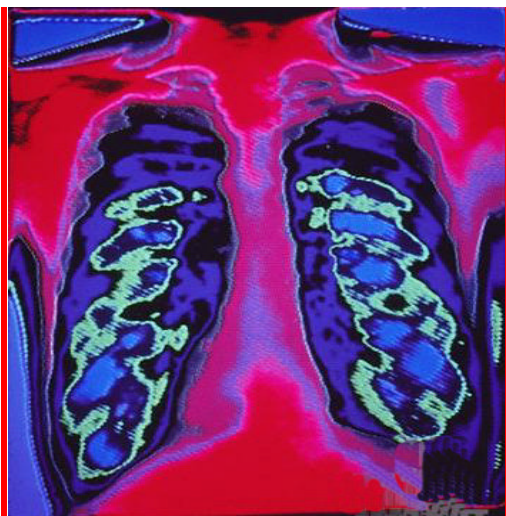
In addition to constituent services, requests for mediation are also handled by the Division of Ombudsmen and Workers' Compensation Specialists Services. Between January and March, the Division received 287 requests for mediation and successfully resolved 163 cases.

Sources of Requests for Assistance



## MEDICAL EVALUATIONS

During this quarter there was a combined total of 55 medical evaluation reports received from the University of Kentucky and University of Louisville medical schools. Additionally, the Department's medical scheduling staff received 67 claims to be scheduled for evaluations at one of the university's medical schools. Of the 67 claims, 37 involved hearing loss and 15 were injury related. There were nine claims involving Coal Workers' Pneumoconiosis (black lung), three involving fumes/chemicals, two retraining incentive benefits cases and one case involving asbestosis.



*The Department of Workers' Claims is currently promulgating practice regulations to address the changes associated with House Bill 348.*

## Division of Claims Processing

During this quarter, there were 111 Notices of Appeal filed with the Department and 148 rulings issued by the Workers' Compensation Board.

Currently there are 89 cases awaiting decision, eighteen of which are being held in abeyance awaiting decisions on previously filed appeals concerning similar issues. Ten claims are in abeyance awaiting a decision from the Supreme Court in *McDowell vs Jackson Energy*. This case challenges the constitutionality of KRS 342.730 (4), specifically focusing on the Social Security cut off. Eight claims involve various issues relating to the AMA Guides. The remainder of appeals held in abeyance relate to very specific issues and will remain pending until each question is answered by court decision.



During the 2002 Legislative Session, the Senate confirmed the reappointment of Workers' Compensation Board Member, John Anthony Gardner, whose term will expire January 4, 2006.

## Administrative Law Judges

During the third fiscal year quarter, the Administrative Law Judges held 1,520 benefit review conferences and 599 formal hearings. Additionally, the ALJs produced 457 opinions and issued 29 decisions in claims on remand from the Workers' Compensation Board, Court of Appeals, and the Kentucky Supreme Court.

The Senate confirmed the following Administrative Law Judge appointments: R. Scott Borders and Lawrence F. Smith (with terms to expire December 31, 2003); Richard M. Joiner and Bonnie C. Kittinger (with terms to expire July 14, 2004). Confirmation on reappointments included John Barry Coleman, J. Landon Overfield, Irene C. Steen and Donna H. Terry (with terms to expire December 31, 2005).

## Office of General Counsel

Between January and March, the Office of General Counsel received 47 citation cases and 11 Unfair Claims Practice cases, with fines and penalties collected totaling \$49,890. Additionally, the Office of General Counsel referred six cases to the Department of Insurance for fraud investigation.

Revisions to Administrative Regulations during this quarter included: 803 KAR 25:010 (Procedure for Adjustment of Claims) and 803 KAR 25:089 (Workers' Compensation Medical Fee Schedule for Physicians) both of which became effective January 14, 2002.

# Division of Information and Research

The Division of Information and Research routinely responds to open records requests submitted by various entities. Of particular interest during this quarter was the facts, figures, statistics and projections requested by members of the 2002 General Assembly. Below are highlights of some of the research conducted during this period.

HB 348 proposed changes in the medical protocols used to diagnosis Coal Workers' Pneumoconiosis (black lung disease).

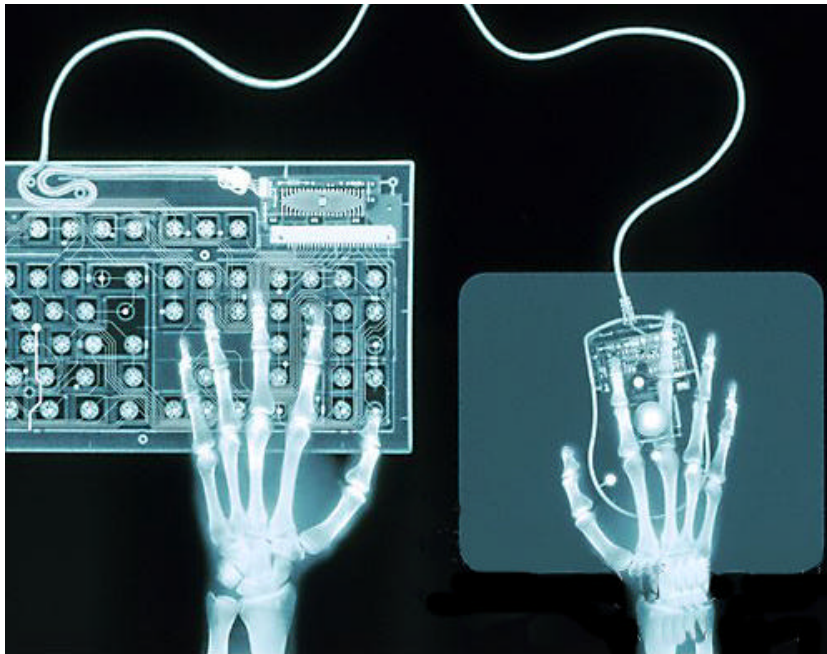
Possible revisions of eligibility criteria involved the research staff of the Department of Workers' Claims in collecting and comparing data on x-ray B Readers, CT Scans and pulmonary function testing. Costs of various diagnostic methods and tools were included in the research and projections that were provided.

Comparisons were made with other 'mining' states, as well as neighboring states, to learn of their medical protocols and standards used in the determination of workers' compensation claims, specifically Coal Workers' Pneumoconiosis.

Pre-filed by E. Scorsone and W. Blevins, SCR7 was a concurrent resolution establishing a task force on cumulative trauma and repetitive stress disorders. The Department of Workers' Claims was requested by the Senate Leadership Office to provide information on repetitive stress injuries for the past 10 years.

## Results:

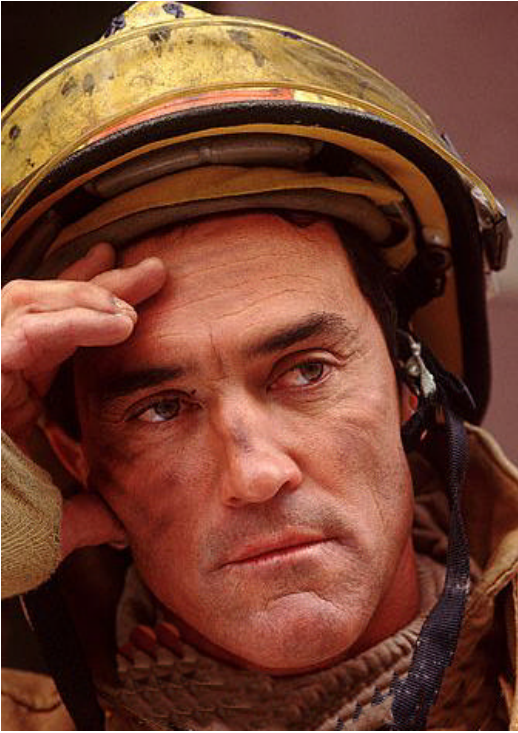
A total of 32,407 cumulative injuries were reported to the Department between January 1, 1992 and January 1, 2002. Of these injuries, 7,631 were reported as *carpal tunnel syndrome* while 24,776 were classified as *other cumulative injuries*.



The most commonly injured body parts were wrist (8,896), lower back (4,465) and knee (1,800). There were 6,238 injuries involving multiple body parts and 1,614 involving multiple upper extremities.

The top five occupations plagued by repetitive stress injuries and/or cumulative injuries were laborers, not construction (2,627), miscellaneous machine operators (1,935), assemblers (1,876), textile sewing machine operators (1,588) and truck drivers (1,307).

# Division of Information and Research

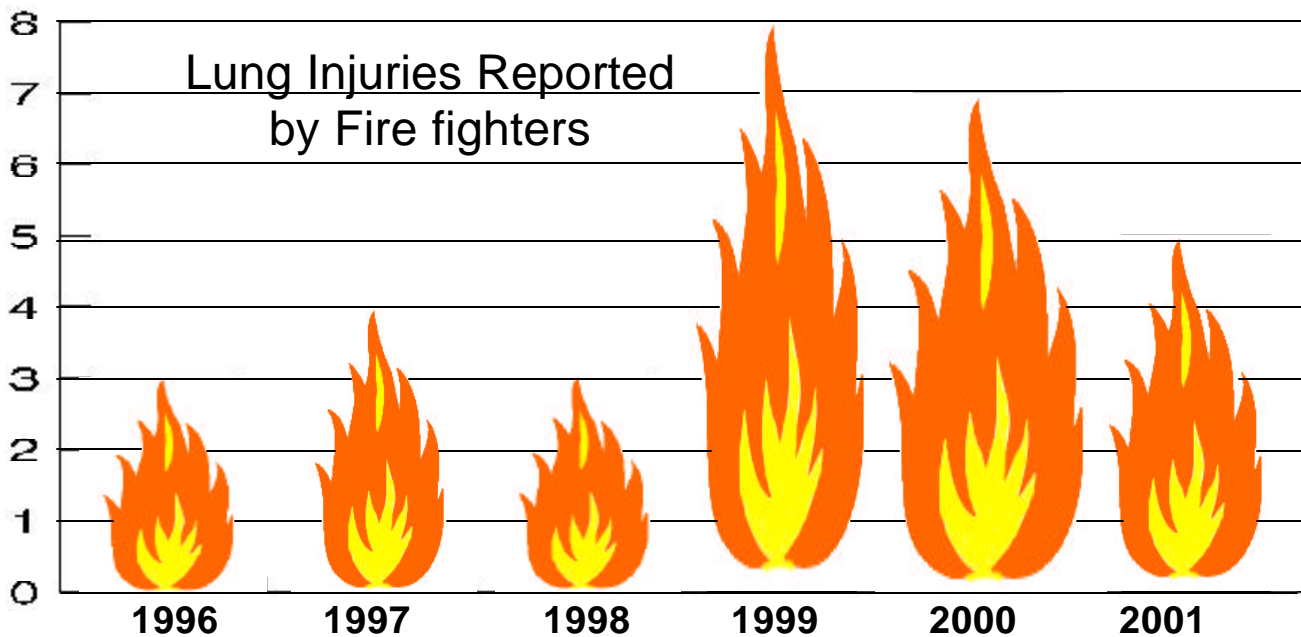


In response to the filing of HB 104, the Benchmarking Section conducted research on fire fighter injuries and diseases. Sponsored by J. Jenkins and J. Arnold Jr., HB 104 established a presumption that heart or lung disease in a fire fighter was occupationally related if the employee had worked as a fire fighter for five or more years.

**Results:** A total of 30 fire fighter lung injuries were reported to the Department of Workers' Claims between January 1, 1995 and January 1, 2002. Based on return to work dates reported to the Department of Workers' Claims, most fire fighters averaged 3.5 lost days of work; however, three accident reports were no lost time injuries.

Twenty-five of the 30 injuries were reported as respiratory disease, one of which was listed as a coal miner.

Based on the date of hire, two fire fighters had approximately ten years on the job at the time of injury; one had four years, one had three years, and six workers had less than one year on the job.



# Division of Security and Compliance

The Division of Security & Compliance focuses its resources on ensuring that nonexempt Kentucky employers maintain workers' compensation insurance coverage.

## **Self-Insurance**

The Self-Insurance Branch focused heavily on retrieving and reviewing loss data and simulated premium calculations for the individual self-insurers during this quarter. Self-insured companies were instructed to submit new loss data by February 15, 2002. The auditors reviewed data received for accuracy and to confirm that it matched the information reported to the Department for Employment Services.

Routine activities of the branch include completion of surety calculations and surety revisions, analysis of corporate financial statements, preparation and completion of simulated premium calculations and examinations of self-insured group funds. These, in addition to various other duties, are all designed to ensure that adequate security exists to fund the workers' compensation obligations of self-insured employers.

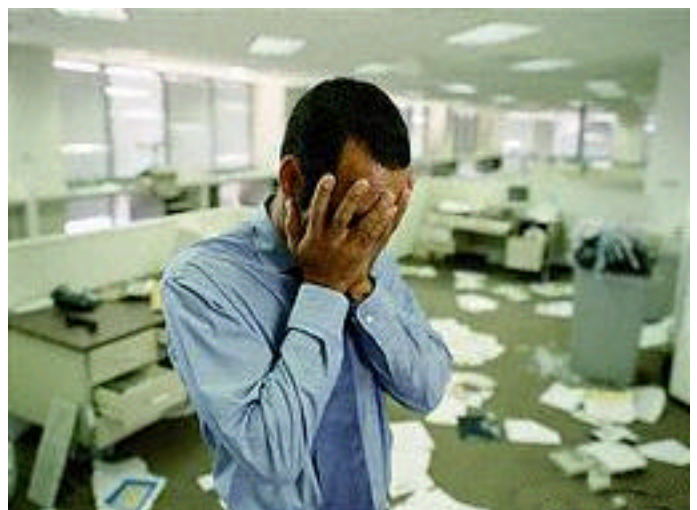
Group Self-Insurance Funds - The Department of Workers' Claims completed its examination of KACo, finding no significant irregularities. The department is currently examining the financial condition of the Kentucky Leagues of Cities Self-Insurance Fund. These examinations are conducted by a Department of Insurance examiner with the assistance of Department of Workers' Claims staff.

Self-Insured Guaranty Funds - Three guarantee associations were established in 1996 for the purpose of protecting workers and their dependents in the event of insolvency of a self-insured. For the first few years, these funds were not required to administer any bankruptcies.

Bankruptcy filings by Fruit of the Loom and K-Mart have prompted transfers to the Guaranty Fund and establishment of investment and accounting procedures to appropriately administer funds to cover workers' compensation obligations.

This was not the only guarantee association that had bankruptcy issues during this quarter. Golden Oak Mining defaulted on making payments due under the Kentucky Workers' Compensation Act, resulting in the Department of Workers' Claims call of the posted surety and transfer to the Kentucky Coal Employers' Self-Insurance Guaranty Fund. The Fund continued benefit payments and contracted with a third party administrator, permitting a relatively seamless transition.

Financially Stressed Insurance Companies - The Department has been confronted with the potential bankruptcy of several large insurance carriers who were providing surety bonds and excess insurance to numerous self-insured employers. Consequently,





# Division of Security and Compliance

the Self-Insurance Branch has implemented procedures to monitor the financial strength of all insurance companies providing surety and excess insurance to self insured employers

Frontier Insurance Company proved to be the most significant carrier providing more than \$80 million of surety bonds and excess insurance to several of the largest coal companies in Kentucky. Frontier was placed into rehabilitation by New York's Department of Insurance in August 2001. By the time this occurred, all self-insured employers had found other suitable surety except for AEI Resources Inc.

While unable to obtain replacement surety, AEI continued to operate, utilizing Frontier Insurance bonds. Beginning in the fall of 2001, the DWC (while continuing to hold the Frontier bonds) began to receive additional surety from AEI Resources, Inc. By March 2002, an extra \$16 million had been placed with the Department. The DWC believes that the \$16 million surety, a combination of bonds and letters of credit, represent an adequate and appropriate amount to require for the security of the associated losses.

Frontier Insurance Company continues to be a concern. Quaker Coal, a former self-insured employer, defaulted on its workers' compensation claims in the summer of 2000 with Frontier as the surety underwriter. Although significant considerations were extended to Frontier Insurance by the Department to permit the carrier to honor its obligations, the carrier has refused to reciprocate. Approximately \$1.77 million remains unpaid by Frontier on surety bonds that have been called by the Department, bonds necessary to allow the Guaranty Fund to efficiently administer the former self-insured employer's workers' compensation obligations. The Department is currently seeking relief via legal avenues and we believe the court will affirm our right to the funds.

However, it may be months before the outcome is known. Other insurance carriers continue to experience financial difficulty, which will impact the Commonwealth's workers' compensation program. Legion Insurance Company was placed into rehabilitation by Pennsylvania's Department of Insurance during the past quarter. Two self-insured employers used Legion for their excess coverage and two former self-insured employers used Legion



for surety bonds. Both employers using Legion for excess coverage have substituted other carriers and the DWC is working with the two former self-insured employers to substitute adequate surety. The DWC has also experienced an increase in the number of requests for bond reductions and inquiries regarding surety alternatives.

Continued hardening of the surety and excess insurance market is expected during the next several months most likely lasting into 2003 before it bottoms out. This market cycle is being driven by underwriting restrictions originating in the reinsurance industry as a result of the terrorist attacks and questionable financial oversight as evidenced by the Enron debacle. This lack of capacity at reasonable levels of collateral is expected to adversely impact the self-insured employers possibly driving some into the voluntary market.

# Division of Security and Compliance

## Coverage

The Coverage Branch continued their preparation for the upcoming changes related to the Department of Workers' Claims's information system redesign. A change in the reporting process for KEMI, the Commonwealth's competitive workers' compensation carrier, is tentatively scheduled for July 1, 2002. As a result of this, we anticipate the decrease in the total number of filings to have a most significant and positive impact for the staff.

The Department of Workers' Claims continues to permit EDI-POC transactions directly from KEMI and from two outside vendors serving the regulated public. Additional vendors remain a possibility, but will be considered only after completing adequate testing to ensure an appropriate success rate.

The number of proof of coverage transactions received and processed from all vendors for this quarter totaled 59,674, with an overall acceptance rate of 85%.

## Enforcement

The Department recognizes the need to be proactive in the identification of non-compliant employers. To this end, the Department of Workers' Claims maintains a field staff of 10 investigative compliance officers whose job is to utilize various state databases and other diagnostic tools as they seek to confirm coverage and identify employers operating in conflict with the statute.



The Commissioner issued 138 citations to employers for noncompliance and collected \$51,956 in penalties during this quarter. Compliance officers conducted 2,929 investigations and found 399 employers not in compliance with the law concerning workers' compensation coverage



*This agency does not discriminate on the basis of race, color, national origin, religion, age or disability in employment or provision of services.*

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