

Illinois Department of Insurance
Workers' Compensation Fraud and Compliance Unit

2022 ANNUAL REPORT



JB Pritzker, Governor

Dana Popish Severinghaus, Director



Illinois Department of Insurance

JB PRITZKER
Governor

DANA POPISH SEVERINGHAUS
Acting Director

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

Re: Workers' Compensation Fraud and Compliance Unit – 2022 Annual Report

Dear Governor Pritzker:

On behalf of the Department of Insurance and pursuant to Section 25.5(h) of the Workers' Compensation Act (820 ILCS 305/25.5(h)), I hereby submit the Workers' Compensation Fraud and Compliance Unit's 2022 Annual Report.

Respectfully submitted,

Dana Popish Severinghaus, Director
Illinois Department of Insurance

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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 provides employees protection and compensation for work-related injuries.

Until Public Act 102-0037 became effective on July 1, 2021, the Workers' Compensation Compliance Unit was part of the Illinois Workers' Compensation Commission (IWCC). The legislation merged the Workers' Compensation Compliance Unit with the Workers' Compensation Fraud Unit (WCFU), and now the teams work alongside one another within the Department of Insurance ("DOI" or "Department").

WCFU investigates allegations of workers' compensation fraud as provided by Section 25.5 of the Workers' Compensation Act. WCFU's efforts improve Illinois' business environment by investigating and referring fraudulent claims for prosecution. Reducing workers' compensation fraud will lead to more cost-effective insurance and, therefore, a more efficient market. The Illinois market is highly competitive, with 356 different companies competing to write direct workers' compensation premiums in Fiscal Year (FY) 2021.

The Workers' Compensation Compliance Unit enforces Section 4(d) of the Workers' Compensation Act. The unit protects workers by enforcing the Workers' Compensation Act's requirement that employers provide workers' compensation coverage. Ensuring employers provide coverage helps to protect injured workers and their families from financial catastrophe that may arise from a workplace injury. Effective enforcement also helps level the playing field for businesses in Illinois, by requiring employers to comply with the workers' compensation law and holding them accountable when they do not.

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 DOI 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. 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

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.

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 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, 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."² 735 ILCS 5/8-802. This clarifies that medical providers must not only

² 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.

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 by making the target aware of the investigation. The notice requirement also discouraged complainants from coming forward, as they would have their identity and address provided 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 120 days from 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 case was even assigned to an investigator and subpoena compliance took up the majority of the 120 days. However, with that requirement removed, the WCFU can collect all relevant records, complete thorough investigations, and make better referrals to prosecutors, resulting in more convictions.

Finally, the 2011 amendments required 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 issued 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 responses made clear that the Department did 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 at the forefront of using advanced analytics to combat fraud. Both companies, independent of one another, indicated that the information available to the Department was insufficient for purposes of predictive modeling. Additionally, no funding was provided for this mandate and this mandate has never been completed.

One of the WCFU's annual recommendations was for the General Assembly to repeal Section 25.5 (e-5) of the Act for the reasons stated above. During the Spring 2021 legislative session, the General Assembly passed legislation to repeal Section 25.5 (e-5) of the Act. This legislation took effect on July 1, 2021.

IV. Recommendations

Certain adaptations and augmentations could bring important improvements to the WCFU's ability to protect workers and enforce Sections 25.5 and 4(d) of the Workers' Compensation Act.

These include expanding the WCFU by hiring additional investigators to investigate actual or suspected fraud. Accordingly, we are working to hire additional investigators to fully staff the unit.

The WCFU also continues to recommend that the General Assembly consider additional

amendments to Section 25.5 of the Workers' Compensation Act that would 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*, *price* or *premium*, and adding language to the sentencing provisions 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 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.

The Compliance Unit recommends hiring of additional investigators and administrative staff to assist in increasing capacity to track cases pending with IWCC and to initiate and close more investigations. Similarly, improved IT infrastructure, including a CRM platform, would improve the Compliance Unit's ability to manage cases and collaborate with other agencies in investigating worker misclassification. Additionally, while the Compliance Unit continues to work with other state agencies on investigations where appropriate, improved information sharing and cooperation among agencies that investigate, license, or regulate businesses would be helpful in making all agencies' efforts more effective.

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, email, 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. 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 did not have any investigators to work cases for the last seven months of FY 2021 and the first month of FY 2022.

In August of FY 2022, the WCFU hired two full-time investigators, who after a brief training period, began working on cases to reduce the backlog of over 80 pending cases created by the lack of investigators.

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 45 counties: Bureau, Cass, Champaign, Christian, Cook, DeKalb, DeWitt, DuPage, Edgar, Ford, Franklin, Gallatin, Jackson, Jasper, Jefferson, Kane, Kankakee, Knox, Lake, Livingston, Macon, Macoupin, Madison, Marion, Massac, McDonough, McHenry, McLean, Morgan, Ogle, Peoria,

Perry, Richland, Saline, Sangamon, Shelby, St. Clair, Tazewell, Union, Vermilion, White, Whiteside, Will, Williamson, and Winnebago.

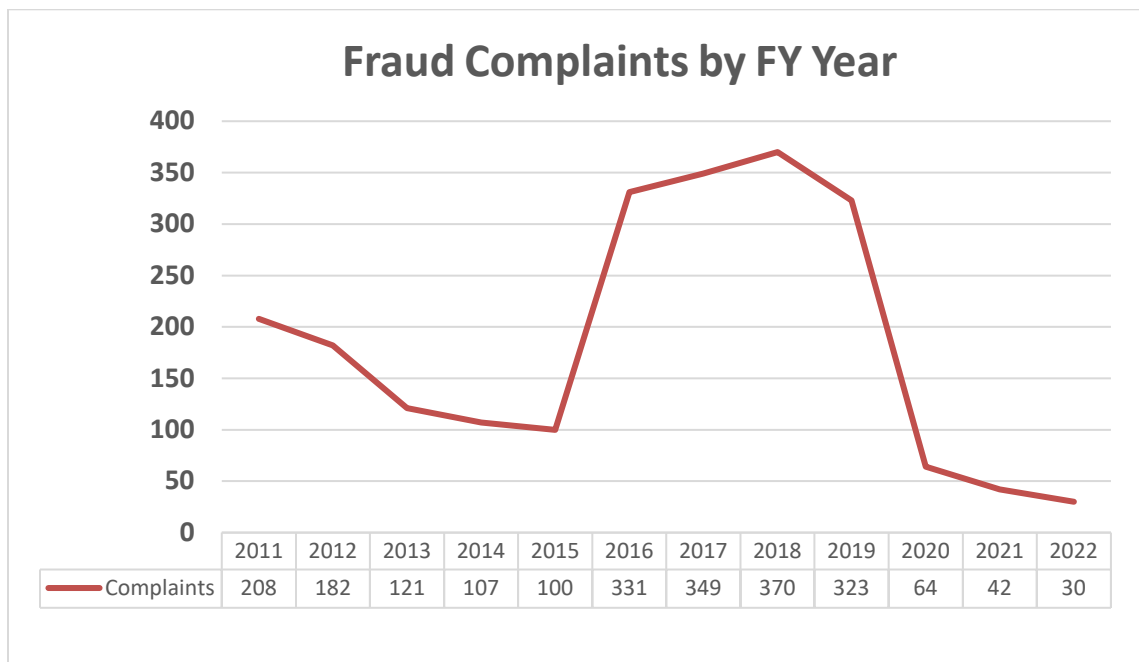
D. Confidentiality

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

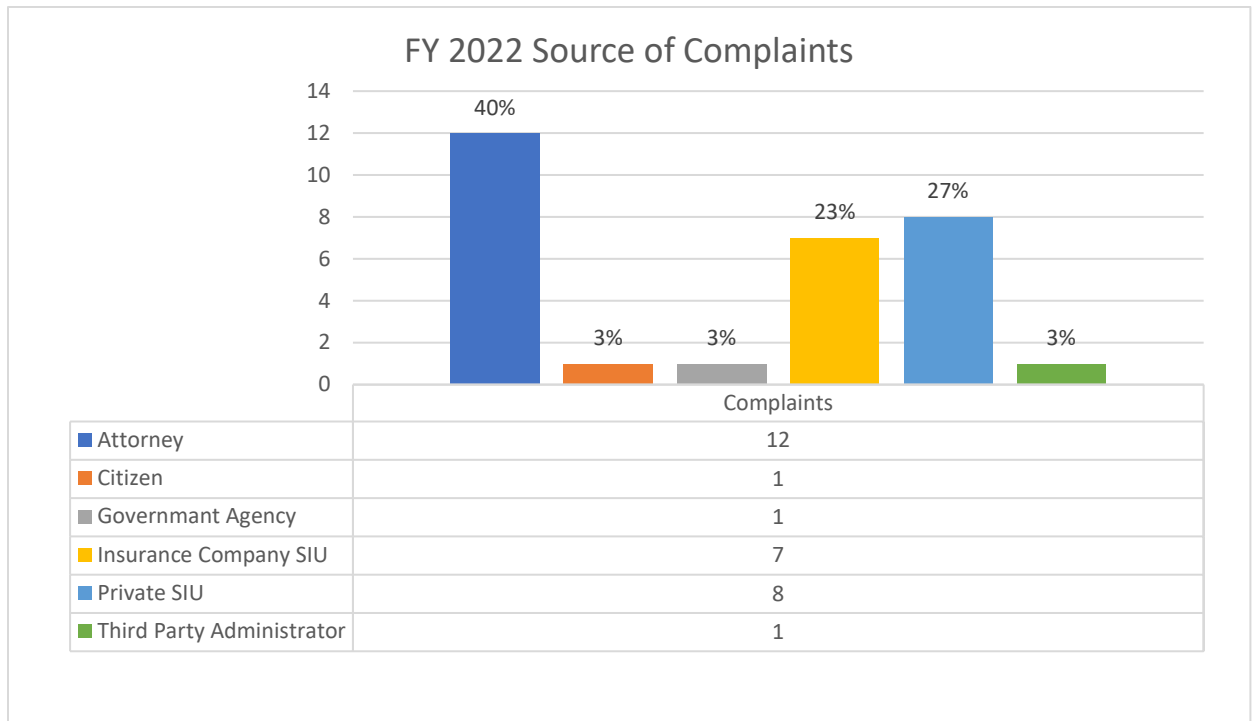
E. Workers' Compensation Fraud Unit Statistics

In FY 2022, the WCFU received 30 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 a remote work environment for their employees.

The chart below shows the number of fraud complaints received by the WCFU since FY 2011:



The 30 complaints received by the WCFU in FY 2022 were submitted by a variety of sources. The graph below shows the origin of the FY 2022 complaints:

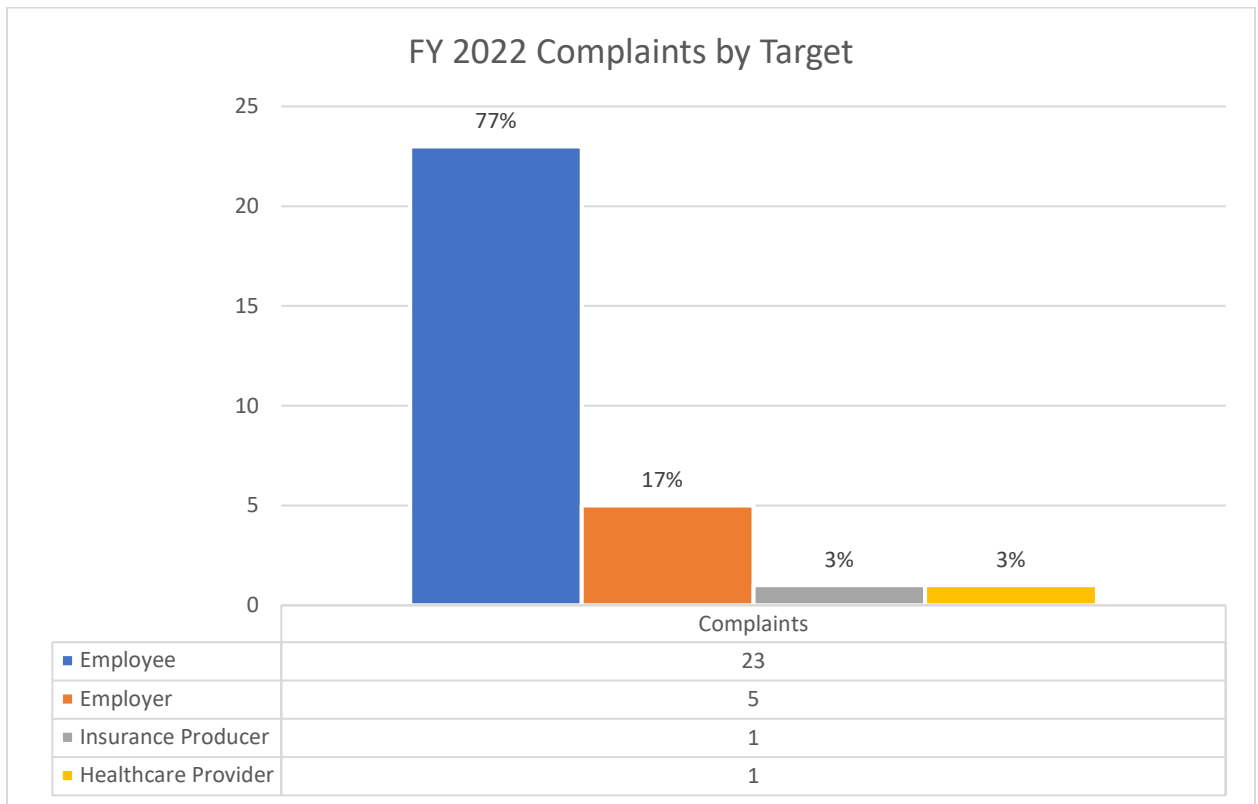


Of the 30 accepted complaints submitted to the WCFU in FY 2022, Special Investigation Units (SIUs) submitted 15 of the complaints, seven were referred by SIUs that worked directly for insurance companies and eight were private SIUs, one was referred on behalf of third-party administrators (TPAs), 12 were referred by attorneys representing the employer, one was referred by a government agency, and one was referred by a private citizen.

Of the 30 accepted complaints received in FY 2022, 10 did not warrant further investigation because of insufficient evidence, lack of jurisdiction, or because the statute of limitations to

prosecute had expired prior to submission. Of the 30 accepted complaints received in FY 2022, 20 were placed in line for investigation. Only one of the cases received by the WCFU in FY 2022 has been assigned for investigation in FY 2022 due to the backlog of older cases, statute of limitations issues regarding older cases and lack of investigators. At the completion of FY 2022, the WCFU had 21 open cases in line for investigation in the WCFU case management system. Of the 21 open cases in line for investigation, 5 cases were received in FY 2022, 13 cases were received in FY 2021, and 3 cases were received in FY 2020.

As detailed earlier in this report, workers’ compensation fraud occurs in many forms. The complaints received in FY 2022 alleged fraud on the part of various workers’ compensation stakeholders. A graph showing the targets of these complaints is located below.



As previously stated, the WCFU had only two full-time investigators for 11 months in FY 2022. The WCFU completed 59 cases that involved allegations of workers' compensation fraud in FY 2022. Of those completed investigations 8 were received in 2018, 17 were received in 2019, 16 were received in 2020, 13 were received in 2021 and 5 were received in 2022.

In FY 2022, the WCFU referred six investigations for possible criminal prosecution to the Office of the Illinois Attorney General or the States Attorney in the county where the offense occurred. Three cases were declined prosecution, one case is still pending a decision by the prosecutor, and two cases were indicted and are pending trial.

In FY 2022, 21 cases were closed due to a settlement agreement at the Illinois Workers' Compensation Commission (IWCC), 14 cases were closed due to the expiration of the statute of limitation to proceed with criminal prosecution, 13 cases were closed due to insufficient evidence to refer the case for possible prosecution and 5 cases were closed due to the WCFU not having jurisdiction to investigate the fraud allegation.

Additionally, the target of a case that was completed and referred to the McHenry County States Attorney's Office in FY 2017 was indicted on 16 charges related to that investigation by a McHenry County Grand Jury in FY 2017 and has been pending trial on those charges since FY 2017. On May 9, 2022, the target of that investigation plead guilty to one count of Workers' Compensation Fraud for violation of Section 305/25.5(a)(2) of the Act, a Class 2 Felony. The remaining charges were dismissed. The target was also ordered to pay \$94,504.21 in restitution.

During the FY 2022 year, the WCFU received numerous complaints and inquiries via the DOI telephone fraud hotline, DOI email fraud 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

and completed by the WCFU in FY 2022.

VI. Workers' Compensation Compliance Operations

A. Complaints

The Compliance Unit investigates violations of Section 4(d) of the Workers' Compensation Act (820 ILCS 305/4(d)), which concerns employers' obligations to provide workers' compensation coverage for their employees. The Compliance Unit initiates investigations from a variety of sources, including employer-respondents in cases brought before the IWCC who are alleged to lack coverage, as well as tips from the public, including sources who may wish to remain anonymous.

Between July 1, 2021, and June 30, 2022, the Compliance Unit received 163 allegations of noncompliance: 160 arising from IWCC claims and three raised by members of the public. In addition, the Compliance Unit was referred 43 complaints from the Illinois Department of Labor (IDOL) for violations of the Employee Classification Act (820 ILCS 185/20). Of the 206 allegations reported (including Employee Classification Act Complaints) between July 1, 2021, and June 30, 2022, the Compliance Unit has opened 77 investigations. Of the remaining allegations of noncompliance, 20 employers actually had workers' compensation coverage, two employers have settled, two employers have been referred to collections, and six allegations have been closed. The remaining 99 allegations are awaiting investigation.

B. Case Resolutions

Investigations referred to the Compliance Unit can be resolved via informal hearing, referred to the Attorney General's Office for formal hearing before the IWCC, or closed. During the reporting period, the Compliance Division resolved 23 cases through informal hearing, referred 15 to the Attorney General's Office for formal hearing, and closed 35 cases.

C. Other Activity

The Compliance Unit worked with the Attorney General's Office to secure two emergency work stop orders during FY 2022. These orders shut down the operations of two businesses whose employees were engaged in dangerous work without workers' compensation coverage until they obtained coverage.

In addition to enforcing compliance, the Compliance Unit seeks reimbursement to the Injured Workers' Benefit Fund (IWBF). Specifically, reimbursement is sought from a noncompliant employer where the IWBF has paid an award to the noncompliant employer's employee. During FY 2022, the Compliance Unit began an initiative to evaluate past years' IWBF cases to determine which required additional collection efforts. Additionally, the Compliance Unit notifies employers when an award has been entered against them in cases where the award has also been entered against the IWBF.

VI. Building Relationships

For both WCFU and the Compliance Unit, building relationships with other investigative agencies, state's attorney's offices, business and labor advocacy groups, the workers' compensation bar and other stakeholders makes both teams more effective. These relationships yield to both teams reliable tips of fraud and noncompliance, help us to ensure referred cases are ready for indictment and prosecution, and provide us with an opportunity to educate the public about employers' responsibility to provide coverage.

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

helps establish 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 Special Investigation Units (SIU) 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) did not know 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 to assist them in better understanding the Illinois Workers' Compensation Act and the responsibilities of the WCFU.

In FY 2022, the Workers' Compensation Compliance Unit completed 64 outreach visits to business and labor organizations to discuss employers' obligations to provide workers' compensation coverage and encourage reporting of noncompliance. These efforts have led to the inclusion of workers' compensation education materials by these organizations in communications with their members and to credible referrals of noncompliance. In addition, the

Compliance Unit developed education materials drafted in English, Spanish, Polish, Chinese, Ukrainian, Polish, and Tagalog, which are available on the Department of Insurance website for printing and distribution.