

The Municipal RISK MANAGER

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Unemployment Compensation Fund Proudly Serving Members For 35 Years

MMA's Unemployment Compensation Fund (UC Fund) was created in 1978 at the request of MMA members to assist them in meeting their obligations under the Employment Security Act in an efficient and cost effective manner.

The UC Fund membership is composed of municipalities and other public and related non-profit entities that are individually self-insured but administered as a group. Within the Fund, each member has a separate account. Members make quarterly payments into their account, based on rates developed by MMA's consulting actuary. Claims are paid out of the member's own account. The UC Fund pays the State monthly for unemployment claims paid to former employees and reports these payments to each member. Even if the member's account is overdrawn because of high claims activity, the UC Fund continues to pay their monthly claims reimbursement to the state. This service provides our members with cost stability throughout a calendar year.

The Maine Department of Labor classifies MMA's UC Fund members as Direct Reimbursement Employers. In other words, the Fund reimburses the Maine DOL on a member's behalf only when a member has unemploy-



Ruth VanArsdale Unemployment Compensation Fund Coordinator

ment claims from present or former employees.

The primary benefits for program participants include:

- **MODERATION OF CASH FLOW:** Each December members of the UC Fund are notified of their contribution obligation for the next calendar year. The amount of the contribution is fixed for the year and addi-

tional payments are not required in the event a large sum is paid out in claims.

- **SIMPLIFICATION:** Communications and reporting to the Department of Labor are simplified. All mail for the UC Fund members from the Maine DOL is directed to MMA. In most cases the Fund Coordinator can resolve any issues raised. Members' UC wage reports also come to MMA for uniform reporting each quarter. The UC Fund Coordinator is available to answer unemployment compensation questions.

- **DIVIDENDS, INTEREST AND EXCESS BALANCES:** Dividends, interest, and excess balances are returned to members, based on the determination of MMA's consulting actuary that there is a sufficient bal-

ance in each member's account to pay claims for the next year. Dividends are not guaranteed from year to year and their award depends not only on the claims but must also be approved by the MMA Executive Committee. The MMA Executive Committee oversees the operations of the UC Fund.

- **TECHNICAL GUIDANCE:** Technical Guidance is available from MMA staff in preparing for fact findings and appeal hearings, preparing wage reports, Requests for Separation Information, wage audits and other unemployment issues that may arise. Many of you have most likely worked directly with our Unemployment Coordinator Ruth VanArsdale who has over 20 years of experience handling unemployment issues.

The benefits of belonging to the UC fund are most evident during difficult fiscal times. A recent example is the 2008 recession which generated a 65% rise in claims by year's end. Claims remained incredibly high for four years and we are just now witnessing claims returning to the "average" level of the previous 10 years. Throughout these difficult years, the UC Fund committed to maintaining a conservative funding strategy, and thus was able to support our members through this period of high claims and extended benefits without sacrificing the financial stability of the Fund.



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Exempt Boilers

Steve Sawyer, Northeast Field Manager, Risk Control Boiler Machinery, Travelers

The State of Maine Chief Boiler Inspector recently sent out a clarification of the rules and requirements regarding boilers that are considered exempt from inspections. The exempt boilers in question are hot water heating units rated less than 200,000 btu and located in municipal or school buildings.

These boilers, as they are identified during regular inspections, will be tagged like all other boilers and reported to the State as exempt from further certificate inspections. Once the Chief confirms that the boiler meets all Code requirements and does meet the exemption, no further inspections for certificates will be required.

The exempt boilers do have to meet the ASME requirements for code of construction and the controls/safety devices standard. The initial tagging of the boilers and the controls and safety devices issue is what has been recently clarified for requirements. Previously, many exempt boilers had not been held to the current standard for controls and safety devices based on the belief that they were "exempt". This is not the case. The exempt boilers will be held to the current standard for controls and safety devices. This may lead to some members having to upgrade the controls and safety devices on some boilers that had previously been allowed and upgrade new installations as well. The inspector will notify the owner via letter of whatever needs to be completed for the boiler in question to meet the requirements. The State is notified via the inspection report. Upon the initial notification, the State will follow up with the owner to ensure compliance with any orders of correction.

Below are selected excerpts from the Maine Boiler Law and Rules confirming various responsibilities regarding

boilers and pressure vessels.

32 §15121. DUTIES OF OWNERS OF BOILERS AND PRESSURE VESSELS

1. Responsibility for inspection. It is the responsibility of the owner to arrange for an inspection of a boiler or pressure vessel and to prepare the boiler or pressure vessel for inspection. The late inspection fee set by the Director of the Office of Professional and Occupational Regulation within the department under section 15104-C may be assessed against the owner if an inspection report is not submitted within 60 days of the expiration of the most recent inspection certificate.

2. Obtain inspection certificate. The owner of a boiler or pressure vessel shall submit the inspection certificate fee as set under section 15104-C within 60 days of notification from the board that the inspection report required under section 15120 has been received by the board. Failure to submit the required fee within the 60 days provided may result in the assessment of a late certificate fee as set under section 15104-C.

3. Failure to qualify for inspection certificate. The owner of a boiler or pressure vessel that does not qualify for an inspection certificate shall take the boiler or pressure vessel out of operation until the required repairs have been made and a new inspection certificate has been issued.

4. Notify board when required repairs made. The owner of a boiler or pressure vessel shall notify the board when required repairs have been made and provide the board with satisfactory evidence of completion.

5. Notify board when boiler or pressure vessel removed. The owner of a boiler or pressure vessel shall notify the board within 30 days of the removal of the boiler or pressure vessel.

6. Change of ownership. The owner of a boiler or pressure vessel shall notify the board of a transfer of ownership within 30 days of such a transfer.

7. Failure to comply. In addition to the remedies available under this chapter, an owner of a boiler or pressure vessel who fails to comply with the provisions of this chapter or rules adopted by the board is subject to the provisions of Title 10, section 8003, subsection 5 whether or not the boiler or pressure vessel has a current inspection certificate, except that, notwithstanding Title 10, section 8003, subsection 5, paragraph A-1, subparagraph 3, a civil penalty of up to \$3,000 may be imposed for each violation.

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION 174 BOARD OF BOILERS AND PRESSURE VESSELS Chapter 13 – Low Pressure Boilers

SUMMARY: This Chapter establishes specific requirements for the identification, construction, installation, inspection, and operation of low pressure boilers. Consistent with 32 M.R.S.A. § 15102(1), the Board's rules regulate only those heating boilers located in schoolhouses or owned by municipalities and includes remote central heating plants. This Chapter also establishes specific requirements for low pressure "process" boilers and water heaters with a heat input greater than 200,000 Btu/hour.

1. Exceptions to this Chapter.

Hot water heating boilers and hot water supply boilers are exempt from the certificate inspection process provided the following conditions are met:

(1) The boilers are constructed and installed in accordance with the Board rules and pass an initial instal-

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The Celebrations Continue

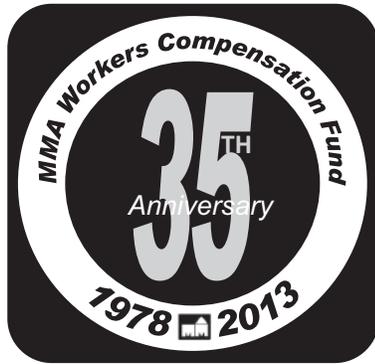
Workers Compensation Fund Turns 35

We are happy to announce that this January marks the 35th anniversary of the Workers Compensation Fund.

The MMA Workers Compensation Fund was formed in 1978 with a unified group of eleven municipalities. The Workers Compensation Fund (WC Fund) has matured to be an industry leader in coverage and service, with today's membership standing at more than 570 municipalities and quasi-public entities. Participation in the Fund allows members to meet the statutory requirements of the Maine Workers Compensation Act while receiving the benefit of rate stability and professional risk management assistance. The WC Fund provides opportunities for cost savings by combining contributions with other members who have similar exposures, utilizing specifically designed loss prevention programs and practicing proactive claims management.

The WC Fund also rewards members who maintain good loss experience with the potential of receiving dividends. Since 1996 the WC Fund Trustees have annually authorized the payment of dividends to eligible members. We are delighted to announce that the WC Fund has returned in excess of **\$7 MILLION** to their members in the form of dividend checks.

Risk Management Services (RMS) staff, under the direction of the RMS Director and Underwriting, Loss Control, and Claims Managers, handle all functions locally out of MMA's Augusta office. In-house underwriting, marketing, loss control and claims management services are provided by



experienced, knowledgeable professionals of the Risk Management Services staff residing right here in Maine.

Service to Members Includes:

- Claims Management by MMA's staff of licensed claims representatives
- Simplified claims reporting available via online, mail, or fax
- On-site training and seminars on relevant matters for members
- Return To Work programs
- Nurse Case Manager Support
- Preferred provider/10-day doctor coordination
- Regular claims reports provided to members
- Claim file reviews at member locations
- 24-hour emergency claims service

The WC Fund also provides Risk Management Loss Control Consultants to assist members in minimizing hazards, exposures and losses. Experienced Loss Control Consultants who specialize in municipal hazards are individually assigned to all members at no additional cost. Loss Control Consultants are available to perform on-site and regional training in specialty topics as well as conduct surveys and assessment of physical conditions, safe work procedures, and assess the effectiveness of current safety efforts.

Maine Municipal Association would like to take this opportunity to thank our loyal and dedicated Members of the Workers Compensation Fund for

giving us the honor of providing service for 35 years. It is our pleasure to partner with our members to protect Maine's number one asset, the employees of Maine. We are proud that the Fund continues to be an excellent example of Maine local governmental cooperation. 🏠

Exempt Boilers *(cont'd)*

lation inspection;

(2) The heat input to any one object is less than 200,000 Btu/hour; and

(3) The aggregate heat input of the plant is less than 300,000 Btu/hour.

Orders of Correction

When the Chief Inspector issues an order of correction to an owner stating that a boiler or pressure vessel requires repair, the owner must submit satisfactory written evidence that the repairs have been completed by the time specified. The Chief Inspector must not issue a new inspection certificate for a boiler or pressure vessel that requires repair.

The most common control or safety device requirements for exempt boilers that result in an order of correction are those to install a low water fuel cutoff device with manual reset and/or to install a high temperature limit control with manual reset. Each of these are important safety devices designed to prevent the continued operation of the boiler if an unsafe condition exists.

In closing, exempt boilers may not require an inspection certificate but they are required to be constructed and installed in accordance with all Maine laws and rules. Inspectors will ensure exempt object compliance as they conduct regular annual inspections of member facilities. 🏠

Workers' Compensation Alert

LD 1913 This legislation, entitled "An Act to Review and Restructure the Workers' Compensation System", provides the most significant changes to the Workers' Compensation Act since enactment of the 1992 Act. Although the legislative changes were not all that the business community had hoped for, we believe that they will significantly improve the system, both from a cost and administrative standpoint. Some of the provisions of the legislation become effective on August 30, 2012, and the benefit changes generally apply to injuries on and after January 1, 2013. Highlights of the provisions are as follows:

- For injuries beginning January 1, 2013, the time required for employees to provide notice of injury to the employer is reduced from 90 days to 30 days, restoring the provision which was in effect for several years prior to 1993. Section 217 is amended, so that there is a presumption that there is no work available for an employee involved in an approved rehabilitation program, making it somewhat more difficult to attempt to reduce or terminate the benefits of such an employee during that timeframe. The presumption may be rebutted by evidence demonstrating that the employee should be working or looking for work in addition to participating in the program, and that there is work available for the employee.
- For injuries from January 1, 2013 forward, the maximum compensation rate increases to 100%, rather than 90%, of the State Average Weekly Wage. For injuries beginning January 1, 2013, compensation rates are calculated based upon two thirds of the pre-injury average weekly wage, rather than 80% of the after-tax average weekly wage.
- Section 205 (9) (B) (2) is amended, so that when the employer is required to file a Petition for Review to reduce or terminate benefits, and relief is

granted by decree, relief may be taken at the time of decree, rather than deferring relief until an appeal is exhausted.

- Section 213, governing partial incapacity benefits and the durational limit of those benefits, was amended, so that the permanent impairment threshold for injuries from January 1, 2006 through December 31, 2012 is in excess of 12%. This means that, for these injuries causing partial incapacity, the durational limit of 520 weeks of benefits applies unless the permanent impairment resulting from the injury exceeds 12%. Prior to this enactment, the Workers' Compensation Board (WCB) had been unable to effectively determine an appropriate permanent impairment threshold for these injuries.

- For injuries beginning January 1, 2013, partial incapacity cases are generally limited to 520 weeks of incapacity benefits, unless, at the expiration of 520 weeks of benefits, the employee is working and earning 65% or less of the original average weekly wage, with the earnings legitimately reflecting earning capacity, and if the permanent impairment from the injury is in excess of the 18%. The extreme financial hardship standard for extended benefits under the existing section 213 is maintained, so that the employee may apply for extended benefits in such cases if the 520 week durational limit otherwise applies. The new extended benefit provision (earnings of less than 65% of the average weekly wage and permanent impairment above 18%) is designed to capture relatively severe injury cases in which the employee, with a relatively high average weekly wage, has returned to work with a significant earning incapacity, so that these workers are not subject to the 520 week durational limit.

- The Appellate Division of the WCB is created as a mechanism for direct appeals from hearing officer deci-

sions. Prior to the enactment of this provision, Maine was the only jurisdiction in the nation in which a party to workers' compensation litigation did not have a right of appellate review of an initial decision.

- Section 306 is amended, so that a tolling of the two-year statute of limitations occurs only if the employer is required to file a First Report of Injury and fails to do so. This restores the law which was in effect prior to an amendment of the statute and interpretation of that amendment by the Law Court in *Wilson v. Bath Iron Works* in 2008, holding that the statute of limitations is tolled until a First Report is filed, even if the employer was not required to file a First Report. ♣

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UC Fund 35 Years *(cont'd)*

The MMA UC Fund would like to thank our loyal Membership. Of our 233 members, almost 75% have been in the Fund since its inception in 1978. Please join us as we salute our members for their many years of sound employment practices and extraordinary efforts to help control claims. ♣



The Municipal Risk Manager

The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or other qualified professional of your own choice.

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