

Metropolitan Transportation Authority

Administration of Self-Insured Workers' Compensation Plans

Report 2018-S-33 | September 2020

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the Metropolitan Transportation Authority's (MTA) self-insured agencies administer their workers' compensation plans to ensure they meet the self-insurers' regulatory obligations, including those related to employee claimants. We reviewed actions taken by the following three constituent agencies: New York City Transit (excluding Staten Island Railway), MTA Bus Company, and Triborough Bridge and Tunnel Authority. The audit period was from July 1, 2015 to June 30, 2018.

About the Program

Every year, tens of thousands of New Yorkers suffer an injury or occupational illness related to their work. Almost all employees are covered by the Workers' Compensation Law (Law), which ensures that such employees receive speedy and adequate replacement benefits as well as medical coverage. The Workers' Compensation Board (WCB) was created to adjudicate claims and ensure that employers provide coverage to their injured employees. Virtually all employers in New York State must provide workers' compensation, and are required to buy insurance against the cost of occupational injury and illness by using a private insurance carrier, or the State Insurance Fund, or by electing to self-insure or participating in group self-insurance. Three of the MTA's agencies – New York City Transit, MTA Bus Company, and Triborough Bridge and Tunnel Authority – are self-insured and administer their own workers' compensation claims in accordance with the Law.

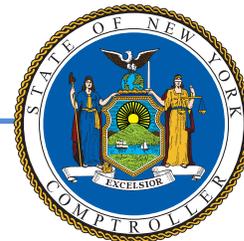
Key Findings

We found that there is room for improvement in how the MTA's three self-insured agencies are administering their workers' compensation plans to ensure they meet the self-insurers' obligations.

- Inconsistent processes and application of the Law across agencies have resulted in late, inaccurate, or sometimes missed administration of benefits, placing an undue financial burden on injured employees. Each of the three self-insured agencies administers its own plan and uses its own procedures for processing claims, and the MTA does not monitor the procedures being used. From July 1, 2015 to June 30, 2018, the three agencies were penalized 547 times by the WCB, totaling \$576,030, for violations of the Law, including late payments, late reporting to the WCB, and late objections to claims. We found workers' compensation payments made beyond the time frames required by Law, including one payment made 33 days late.
- Workers' compensation payment processing for the three self-insured agencies is complex and requires a coordinated effort among several departments. While officials and key employees understand their roles and responsibilities, no one clearly understands the entire process.

Key Recommendations

- Create and implement a workers' compensation manual to guide claims processing for all self-insured agencies.
- Develop a common procedure for processing payments for workers' compensation claims for the three constituent agencies.



**Office of the New York State Comptroller
Division of State Government Accountability**

September 25, 2020

Mr. Patrick J. Foye
Chairman
Metropolitan Transportation Authority
2 Broadway
New York, NY 10004

Dear Mr. Foye:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit titled *Administration of Self-Insured Workers' Compensation Plans*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Law	Workers' Compensation Law	<i>Law</i>
MTA	Metropolitan Transportation Authority	<i>Auditee</i>
MTA Bus	MTA Bus Company	<i>Agency</i>
TBTA	Triborough Bridge and Tunnel Authority	<i>Agency</i>
TPA	Third-party administrator	<i>Key Term</i>
Transit	New York City Transit	<i>Agency</i>
WCB	Workers' Compensation Board	<i>Agency</i>

Background

Every year, tens of thousands of New Yorkers suffer an injury or occupational illness related to work. Almost all workers are covered by the Workers' Compensation Law (Law), which ensures that such employees receive speedy and adequate replacement benefits as well as medical coverage. The Workers' Compensation Board (WCB) was created to adjudicate claims and ensure that employers provide coverage to their injured employees. Virtually all employers in New York State must provide workers' compensation, and are required to buy insurance against the cost of occupational injury and illness by using a private insurance carrier, or the State Insurance Fund, or by electing to self-insure or participating in group self-insurance.

The WCB has prescribed a process for handling claims in a timely manner according to the Law. To file a claim for workers' compensation, an employee must immediately obtain the necessary medical treatment and notify their supervisor about the accident and how it occurred. The employee must also notify the employer of the accident in writing and file a claim with the WCB. The employee's doctor must submit a preliminary medical report to the WCB, the employer or its insurance carrier, the injured employee, and the worker's representative (if any). Within 10 days of notification of the accident, the employer must report the injury to the WCB and, if the employer is not self-insured, its insurance carrier. Next, within 14 days of the employer reporting the injury to the WCB, the insurer must provide the injured worker with a written statement of their rights under the Law. If lost time exceeds 7 days, the insurer must begin paying benefits within 18 days from the date the employer reports the injury to the WCB. If the claim is disputed, the insurer must inform the WCB, the injured worker, and the worker's representative (if any). The insurer must continue to make payments to the injured employee (if the case is not being disputed), and must notify the WCB when compensation is stopped or modified.

To qualify as a self-insurer, an employer must furnish to the Chair of the WCB satisfactory proof of its ability to pay compensation. Once qualified, an employer that plans to self-insure may do so by becoming an individual self-insurer or becoming a member of a self-insured group. A local government entity that has not obtained a workers' compensation insurance policy may also self-insure.

The Metropolitan Transportation Authority (MTA) is a State public authority composed of several entities, including: New York City Transit (Transit), MTA Bus Company (MTA Bus), Triborough Bridge and Tunnel Authority (TBTA), Long Island Rail Road, and Metro-North Railroad.

Transit, which operates subways and buses and administers paratransit service throughout New York City, is budgeted for 50,129 employees. MTA Bus is budgeted for 3,984 employees and operates local bus service in the Bronx, Brooklyn, and Queens and express bus service in these boroughs and Manhattan. TBTA operates all crossings within New York City (seven bridges and two tunnels) and is budgeted for 1,589 employees.

Audit Findings and Recommendations

We found that the MTA and its three self-insured agencies need to improve their administration of their self-insured workers' compensation plans to ensure they meet the self-insurers' obligations. Inconsistent processes and application of the Law among the three agencies have resulted in late claim appeals and late, inaccurate, or sometimes missed administration of benefits, placing an undue financial burden on injured employees.

The MTA does not administer the self-insured workers' compensation plans for its agencies. Each agency (Transit, MTA Bus, and TBTA) administers its own plan, and uses its own procedures for processing claims. The MTA does not monitor the procedures being used. Transit and TBTA document, in manuals, the processes from the initial report of an injury up to the point of acceptance or denial of a claim, but there is no documentation for processes past that point. MTA Bus does not have a documented manual; it instead relies on the knowledge and experience of senior staff members. TBTA uses a third-party administrator (TPA) to process its claims. MTA Bus and TBTA use an internal process, and Transit uses yet another internal process to handle these functions.

Violations of Workers' Compensation Law

WCB Assessed Penalties

Based on WCB records, during the period of July 1, 2015 to June 30, 2018, MTA Bus, Transit, and TBTA were penalized 547 times for failure to comply with time frames prescribed by the Law, representing 93 percent of all WCB penalties across the three agencies for this time period. The penalties for the three self-insured agencies totaled \$576,030. Of these 547 penalties, Transit was responsible for 433 penalties, including 65 for appealing without reasonable grounds and 88 for failure to file a notice or report requested or required by the WCB. MTA Bus was responsible for 96 penalties, including 29 for appealing a decision it had already appealed and that had already been upheld and 6 for either dilatory tactics or unjustified lack of preparedness which caused a hearing to be continued or adjourned. TBTA had 18 penalties, including 2 for instituting or continuing an appeal without reasonable grounds and 1 for filing a late appeal without just cause.

Late Notice of Controversy

The Law requires insurers (employers) to controvert, or object to, workers' compensation claims within 18 days of disability or within 10 days of learning of an alleged accident, whichever is greater. If the WCB has to notify the employer, the employer must object within 25 days of the date that a notice that the case has been indexed has been mailed.

We found that, for one of the claims reviewed, Transit objected 34 days beyond these time frames. In the claim, we found Transit was informed of the alleged accident on May 5, 2018, and the first day of disability was May 6, 2018. However, Transit did not object to the claim until June 27, 2018.

Transit contended that the notice filing date is triggered only by a disability event and not by mere knowledge of the incident. A disability event, as defined by New York Codes, Rules and Regulations, is any accident “resulting in personal injury that has caused or will cause a loss of time from regular duties of one day beyond the working day or shift on which the accident or alleged accident occurred.” As such, Transit maintains that it is not the date of the accident, but rather the date of the first lost time from work, that starts the 18-day time frame.

While we acknowledge Transit’s interpretation of the Law, it does not explain the full delay. We note Transit’s claim history shows this employee lost 135 days of work due to the injury. Delayed actions and late objections on a workers’ compensation claim further delay the payment of benefits to claimants, adding undue financial burden.

TBTA Monitoring of Its Third-Party Administrator

In an arrangement authorized under the Law, TBTA uses a TPA to process its workers’ compensation claims from inception to the determination of the claimant’s entitlement. Once the claim processing is completed, the information is returned to TBTA for payment.

During our review, we found, and the TPA admitted, that it provided an incorrect payment calculation to TBTA, which was then used to pay the claim. The claimant was underpaid by \$368 due to this error. While TBTA officials maintain that they work closely with the TPA on a daily basis through regular interactions and monitoring of the workers’ compensation files, they noted that they do not recalculate the payment amount for accuracy before information is sent for processing. Officials stated that they review the notification summarizing what a claimant is owed for the pay period and send the information to payroll. They stated that they may not catch an error during this review.

Establishing and following a process for review of payment calculations could reduce future errors that result in underpayments or excess payments.

MTA Workers’ Compensation Payment Processes and Oversight

Workers’ compensation payment processing for the three self-insured agencies is complex and requires a coordinated effort among several departments at Transit, MTA Bus, TBTA, and MTA Headquarters. While officials and key employees understand their roles and responsibilities, no one clearly understands the entire process.

Due to the complexity of the processes and resulting issues, we recommended that the MTA develop a common procedure for processing payments for workers’ compensation claims for the three constituent agencies. In response, the MTA stated that State legislation enacted in 2019 has required a series of MTA reforms, including the creation of an organizational restructuring plan.

Officials further explained that the legal departments of all agencies are to be fully consolidated and, when this occurs, the workers' compensation groups will be centralized. This restructuring had not occurred as of February 7, 2020.

Recommendations

- 1.** Create and implement a workers' compensation manual to guide claims processing for all self-insured agencies.
- 2.** Document review procedures for claims processed by the TPA.
- 3.** Develop a common procedure for processing payments for workers' compensation claims for the three constituent agencies.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the three MTA self-insured workers' compensation agencies administer their plans to ensure they meet the self-insurers' obligations, including those to employee claimants. We reviewed actions taken by the following three constituent agencies: Transit (excluding Staten Island Railway), MTA Bus, and TBTA. The audit period was from July 1, 2015 through June 30, 2018.

To accomplish our objective and evaluate the relevant internal controls, we reviewed laws, policies, procedures, and guidelines related to processing workers' compensations claims. We reviewed claimant records to ensure that those claims were processed in accordance with the Law. We interviewed Transit, MTA Bus, and TBTA management and employees to evaluate internal controls related to workers' compensation.

We sampled 65 claimant files (30 from Transit, 20 from MTA Bus, and 15 from TBTA). Thirty claims were random samples from the three entities. For the other 35 claims, we took a judgmental sample based on the total benefits paid over the number of days of work lost due to a claimed incident. We reviewed the supporting documentation for the sample of \$2,028,559 claims of the reported \$120,241,481 total benefits paid from July 1, 2015 to June 30, 2018. Our samples were not designed to be projected to the entire population.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft version of our audit observations to MTA officials for their review and comment. Their comments were considered in preparing this final report and are attached at the end in their entirety. MTA officials generally agree with our recommendations and reported they have taken steps to implement them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Metropolitan Transportation Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments

2 Broadway
New York, NY 10004
212 878-7000 Tel

Patrick J. Foye
Chairman and Chief Executive Officer



Metropolitan Transportation Authority

State of New York

September 4, 2020

Mr. Brian Reilly
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236-0001

RE: Draft Report #2018-S-33 (Administration of Self-Insured Workers' Compensation Plans)

Dear Mr. Reilly:

This is in reply to your letter requesting a response to the above-referenced draft report.

I have attached for your information the comments of Thomas J. Quigley, MTA General Counsel, which address this report.

Additionally, I will be working with staff to ensure that management is following up on and enforcing the audit's recommendations, where appropriate, and requesting regular, interim reports to that effect.

Sincerely,

A handwritten signature in cursive script that reads "Pat Foye".

Patrick J. Foye
Chairman and Chief Executive Officer

c: Anni Zhu, Chief of Staff to the MTA Chairman and Chief Executive Officer
Michele Woods, Auditor General, MTA Audit Services

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Construction & Development
MTA Bus Company

Memorandum

Date September 1, 2020

To Patrick J. Foye, Chairman, Metropolitan Transportation Authority

From Thomas J. Quigley, General Counsel, MTA 

Re **New York State Comptroller's Request for Response to the Audit Report
"Administration of Self-Insured Workers' Compensation Plans" 2018-S-33**

New York City Transit Authority, MTA Bus Company, and the Triborough Bridge and Tunnel Authority have reviewed the Office of the State Comptroller's Draft Audit Report on Administration of Self-Insured Workers' Compensation Plans (2018-S-33). The agencies have reviewed the Office of the State Comptroller's recommendations and respond as follows:

1. *Recommendation 1: Create and implement a worker's compensation manual to guide claims processing for all self-insured agencies.*

The MTA agrees with this recommendation. As described in our response to Recommendation #3 below, all MTA Agency Legal Departments are targeted to be fully consolidated into the MTA Office of the General Counsel as part of the MTA's Transformation Plan approved by the MTA Board in July 2019. As part of centralizing Workers' Compensation, all relevant policies and procedures will be reviewed and the goal is to establish a manual in order to ensure the uniform processing of claims. Due to the COVID-19 pandemic, the target date for implementation of this recommendation is the Fourth Quarter of 2021.

2. *Recommendation 2: Document review procedures for claims processed by the TPA.*

The MTA agrees with this recommendation. As described in our response to Recommendation #3 below, all the MTA Agency Legal Departments are targeted to be fully consolidated into the MTA Office of the General Counsel as part of the MTA's Transformation Plan approved by the MTA Board in July 2019. As part of centralizing Workers' Compensation, all relevant policies and procedures will be reviewed and the goal is to establish a set of uniform procedures. Due to the COVID-19 pandemic, the target date for implementation of this recommendation is the Fourth Quarter of 2021.

3. *Recommendation 3: Restructure the MTA's workers' compensation operations under one operating center.*

The MTA agrees with this recommendation. The New York State Legislature required a series of MTA reforms and directed the MTA to develop a personnel and reorganization plan by June 30, 2019. In response, the MTA partnered with AlixPartners to prepare a Transformation Plan which was approved by the MTA Board in July 2019. The Transformation Plan called for the MTA to refocus on core objectives and to centralize all operating support focusing agencies on service delivery. While implementation of the Transformation Plan has been delayed due to the COVID-19 pandemic, the Legal Departments of all MTA agencies are targeted to be fully consolidated into the MTA Office of the General Counsel. When that occurs, Workers' Compensation will be centralized. The target date for implementation of this recommendation is the Second Quarter of 2021.

We ask that the OSC consider this response when issuing a final report.

Contributors to Report

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