



# Nebraska Workers' Compensation Court **77<sup>th</sup> Annual Report**

## **Fiscal Year 2019**

July 1, 2018 through June 30, 2019

<b>Presiding Judge</b>	<b>Daniel R. Fridrich</b>
<b>Judge</b>	<b>James R. Coe</b>
<b>Judge</b>	<b>J. Michael Fitzgerald</b>
<b>Judge</b>	<b>John R. Hoffert</b>
<b>Judge</b>	<b>Thomas E. Stine</b>
<b>Judge</b>	<b>Julie A. Martin</b>
<b>Judge</b>	<b>Dirk V. Block</b>
<b>Clerk of the Court</b>	<b>Elizabeth A. Gianunzio</b>
<b>Court Administrator</b>	<b>Jill Gradwohl Schroeder</b>

# Report Transmittal

We have the privilege of submitting herewith to the Clerk of the Nebraska Legislature, Chief Justice of the Nebraska Supreme Court, Governor of Nebraska, and the Citizens of Nebraska, the 77<sup>th</sup> Annual Report of the Nebraska Workers' Compensation Court, prepared in accordance with the provisions and requirements of NEB. REV. STAT. § 48-166.

Nebraska Workers' Compensation Court  
By Daniel R. Fridrich, Presiding Judge

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This publication has been prepared by the Nebraska Workers' Compensation Court. Please contact us with questions and comments about this report, workers' compensation in Nebraska, or any of our programs and services.

Nebraska Workers' Compensation Court  
P.O. Box 98908  
Lincoln, NE 68509-8908  
800-599-5155 or 402-471-6468  
<http://www.wcc.ne.gov>

# General Information

## History

Legislation establishing a system for resolving claims of workplace injuries was first enacted in Nebraska in 1913 with the adoption of the Nebraska *Workmen's* Compensation Act (the Act) From then until 1917 the Act was administered by the several state district courts. In 1917, the Legislature created the Compensation Division within the Department of Labor and the commissioner of labor was designated compensation commissioner. To assure stability through longer-tenured judges not subject to political changes and provide a degree of specialization and expertise in a technical area, the 1935 Legislature established the three-judge Workmen's Compensation Court and transferred Compensation Division functions to the court. In 1986, the name of the court was changed to the *Workers' Compensation Court*. By 1988, the workers' compensation bench had grown to seven judges who hear disputed cases throughout the state. The authority and responsibilities of the court are described in Chapter 48, Article 1, of the Revised Statutes of Nebraska (cited as "NEB. REV. STAT.").

## Mission

The mission of the Nebraska Workers' Compensation Court is to administer and enforce all provisions of the Nebraska Workers' Compensation Act, except those committed to the courts of appellate jurisdiction or as otherwise provided by NEB. REV. STAT. § 48-152.

## Organization

The Nebraska Workers' Compensation Court is composed of seven judges who initially are appointed by the governor. Judges are then subject to a retention vote by the electorate three years after appointment and every six years thereafter. Every two years one of the judges is elected by the judges of the court to serve as presiding judge, subject to approval of the Nebraska Supreme Court. The court maintains offices in Lincoln and Omaha, although all court filings must be made in the Lincoln office.

The judge assigned to each case travels to the county in the state where the alleged accident occurred to hear a dispute regarding workers' compensation benefits. The judge then enters a written ruling stating his or her factual and legal conclusions. The judge's decision may be appealed to the Nebraska Court of Appeals. A limited number of appeals may also be heard by the Nebraska Supreme Court, either directly or upon further review of a decision by the Nebraska Court of Appeals.

***The mission of the Nebraska Workers' Compensation Court is to administer and enforce all provisions of the Nebraska Workers' Compensation Act.***

For administrative purposes, the judges and staff of the court are organized into two operating divisions and seven operating sections. The adjudication division, under the direction of the presiding judge, includes the judges and the Office of the Clerk of the Court. The administration division, under the direction of the court administrator, includes the remaining six sections as identified below. The presiding judge is charged with overall responsibility for the functioning of the court, and the court administrator serves as its chief administrative officer.

The **Office of the Clerk of the Court** receives and processes electronic and paper court filings, docket cases, issues summonses, schedules trials and motion hearings, corresponds with the litigants, issues opinions of the court, keeps full and true records of judicial proceedings, and provides administrative and secretarial support for the judges. This section also evaluates procedures used by other state courts to ensure consistency and create efficiencies.

The **Business and Human Resources section** is responsible for the business, financial, and personnel functions of the court. The section administers the second injury program, which provides workers' compensation benefits to qualified workers with a preexisting disability in addition to a work injury occurring before December 1, 1997. Also, this section pays vocational rehabilitation training costs for injured workers in approved plans developed to return them to suitable work. Under federal grants, the section conducts a survey of work-related injuries and illnesses and a data collection program as to fatal workplace injuries sustained in the State of Nebraska.

The **Legal section** reviews settlement applications for adequacy and compliance with the Nebraska Workers' Compensation Act (the Act); conducts mediation conferences to facilitate informal resolution of disputes; informs injured workers, employers, and others of their rights and obligations under the Act; performs research for the judges; provides legal advice to court staff; monitors legislation for potential impact on the workers' compensation system; and manages the court's records retention schedule.

The **Regulatory Programs section** has responsibilities in three distinct areas: Compliance; Medical Services; and Self-Insurance. Compliance activities include enforcing insurance coverage requirements, enforcing the claims handling and reporting obligations of insurers and self-insured employers, and receiving and processing reports of injury and benefit payments. Medical services activities include revising and maintaining schedules of medical and hospital fees, administering the independent medical examiner program, certifying and monitoring managed care plans, and responding to inquiries related to medical issues. Self-insurance activities include reviewing applications for self-insurance approval, monitoring the financial status and payroll records of self-insured employers, and collecting fees and assessments from self-insured employers.

## Fiscal Year Activities

The ***Vocational Rehabilitation section*** is responsible for certifying vocational rehabilitation counselors and job placement specialists, appointing a vocational rehabilitation counselor if the parties cannot agree on the selection, and reviewing and approving proposed vocational rehabilitation plans. This section also monitors the progress of injured workers in approved vocational rehabilitation plans and determines what plan expenses may be reimbursed by the Workers' Compensation Trust Fund.

The ***Public Information section*** responds to requests for records and information, supports a toll-free telephone information line (including language interpretation services, when needed), maintains the court's website, and prepares court publications. Duties of this section include managing the business continuity program for the court.

The ***Information Technology section*** is responsible for the security and maintenance of the computer network, programs, and databases of the court. The section develops and maintains the court's desktop and Internet systems; develops computer programs and applications; coordinates information technology activities with the Supreme Court, state agencies, and vendors; and assists other court sections in performing their statutory responsibilities and creating efficiencies through the use of technology.

Advancements in technology to assist the court in carrying out its statutory responsibilities and create efficiencies for the court and the public it serves were the focus of many court projects in fiscal year (FY) 2019. Effective May 15, 2019, the Nebraska Workers' Compensation Court transitioned to the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3.1 standard for electronic reporting of workers' compensation injury and payment reports. Implementing the IAIABC Claims Release 3.1 standard represents a significant upgrade of the system used in Nebraska for receiving initial reports of injuries as well as payments made by employers and insurers for Nebraska workers' compensation claims, and it aligns these processes with those used in other jurisdictions. This multi-year project impacted all areas of court operations. Efficiencies created by this transition will significantly benefit the court and its trading partners who submit injury and payment information.

Continuing progress in FY 2019 as to eFiling of pleadings with the Clerk of the Court has created efficiencies for the court and litigants who seek to resolve workers' compensation claims. The upgrades to the eFiling system made in FY 2019 provide for electronic service of pleadings and electronic filing of appeals.

## Changes to Court Rules

In addition to the specific activities listed for this fiscal year, the court continues to perform other duties on a regular basis as noted above in the “Organization” section. The activities of the court are described in greater detail in the following pages of this report.

In December 2018, the Nebraska Workers’ Compensation Court adopted the following revisions to its Rules of Procedure.

- The court clarified Rule 2(C)(1) to confirm that privacy rules for pleadings or other documents filed with the court protect personally identifiable information of dependents and minor children.
- Enhancements to the eFiling and eService system provided for in Rule 2, including provisions for eFiling appeals, were adopted.
- Due to a change in the court’s email delivery system from Microsoft Outlook to Google Gmail, the email address for proposed orders was updated to “proposedordersonly@wcc.ne.gov.”
- The court removed from Rule 50(D) language that prohibited or restricted a physician’s ability to refer to a facility in which the physician had an ownership or similar financial or investment interest.

In April 2019, the court adopted the following revisions to its Rules of Procedure.

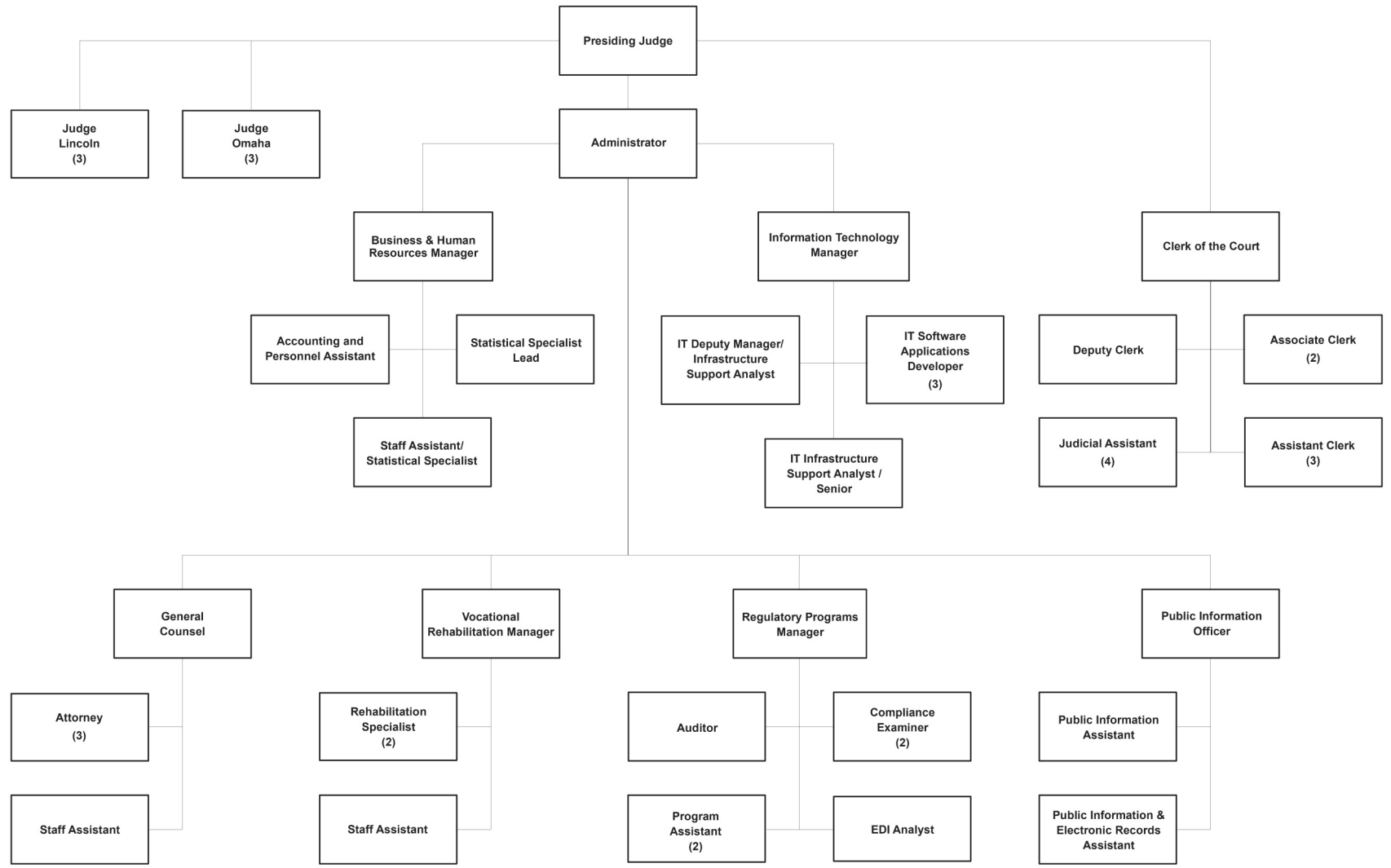
- The court confirmed in Rule 2 that eService is currently available for use in proceedings filed with the Nebraska Workers’ Compensation Court, and that all Nebraska attorneys who are registered with Nebraska.gov may receive documents through eService.
- To remain consistent with a Supreme Court rule adopted in 2018 concerning summary judgment motions, the Nebraska Workers’ Compensation Court adopted the same rule in April 2019. Rule 3(E) requires the moving party to simultaneously file with the court its motion for summary judgment, an Index of Evidence, and an Annotated Statement of Undisputed Facts. All parties must be served with these documents. The opposing party must also file with the court and serve on all parties an Index of Evidence in Opposition along with an Annotated Statement of Disputed Facts.
- The court amended Rule 47 of its Rules of Procedure to state that in cases involving life expectancies, the 2015 United States (U.S.) Life Table shall be used. The 2015 U.S. Life Table was incorporated into the Rules by updating Addendum 2.

## Statutory Changes

The following legislation, enacted by the Nebraska Legislature in 2019, affected or will impact operations of the Nebraska Workers' Compensation Court and / or substantive issues litigated in the court.

- LB 293 amended NEB. REV. STAT. § 48-1,116 to eliminate a planned transfer of \$1.5 million from the Compensation Court Cash Fund to the General Fund. The transfer was scheduled to occur in June 2019. Elimination of the transfer preserved funding assessed from insurers, self-insured employers, and risk management pools for operations of the court.
- LB 418 provided that while a matter is pending in the Nebraska Workers' Compensation Court, and after receipt of notice, providers or suppliers of services, collection agencies, collectors, or creditors cannot attempt to collect a debt incurred against an employee or his or her spouse for treatment of a work-related injury. Debt collection cannot proceed until final adjudication of the case regarding the debt. These changes are found in NEB. REV. STAT. § 48-148.02.
- LB 418 also amended NEB. REV. STAT. § 48-122 to establish procedures for a non-resident dependent to, any time before the final settlement, file a power of attorney with the Nebraska Workers' Compensation Court designating any suitable person residing in this state to act as attorney-in-fact in proceedings under the Act. NEB. REV. STAT. § 48-122 empowers the court to appoint that person as attorney-in-fact for the non-resident dependent if it determines the interest of the dependent "will be better served by such person than by the consular officer" of the injured employee's nation of citizenship.
- Additionally, LB 418 amended NEB. REV. STAT. §§ 48-193 to 48-197 and 48-1108 to clarify that the State Risk Manager is responsible for administering the State of Nebraska's workers' compensation system for injuries reported by State of Nebraska employees and confirmed certain duties to be performed by the Risk Manager rather than the State Claims Board.

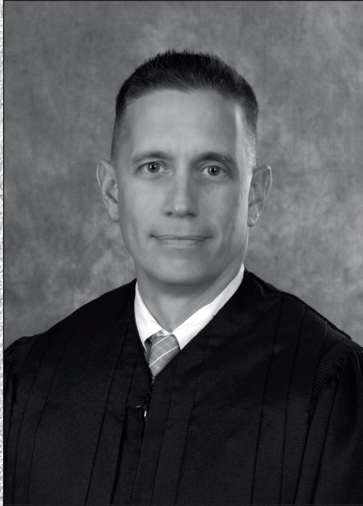
# NEBRASKA WORKERS' COMPENSATION COURT



REVISED  
August 2019



## Judges of the Nebraska Workers' Compensation Court



### **Daniel R. Fridrich, Presiding Judge**

**Office Address:** Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

**Date Appointed:** September 18, 2012.

**Biography:** Graduate of University of Nebraska – Lincoln (BS, 1992); University of Nebraska College of Law (JD, 1996). Former occupations: Served 10 years as Workers' Compensation Senior Counsel with Werner Enterprises, Inc.; attorney with Liberty Mutual Insurance Company; associate attorney with Luebs, Leininger, Smith, Busick & Johnson. Member: Nebraska State Bar Association.

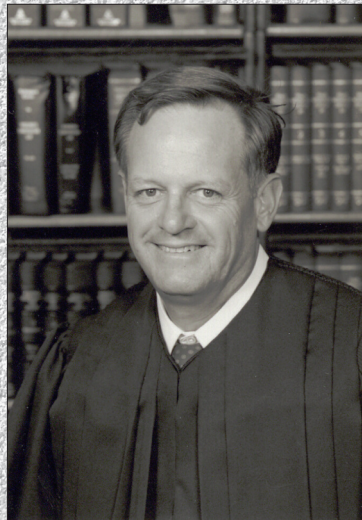


## **James R. Coe, Judge**

**Office Address:** Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

**Date Appointed:** October 7, 1988.

**Biography:** Graduate of University of Nebraska – Lincoln (BS in Business Administration); University of Nebraska College of Law (JD). Partner of Carpenter, Rowen, Fitzgerald, and Coe, 1974–1988. Former member: Rotary Club of Omaha West; Dora Bingel Foundation, Past President.



## **J. Michael Fitzgerald, Judge**

**Office Address:** 1010 Lincoln Mall, Suite 100, Lincoln NE 68508, phone (402) 471-3924, (800) 599-5155.

**Date Appointed:** April 12, 1996.

**Biography:** Graduate of University of Notre Dame (BS, Business Administration); Georgetown University Law Center (JD); Creighton University (Certificate of Completion, Paramedic Training Program). Admitted to practice: Nebraska Supreme Court, United States District Court for the District of Nebraska, United States Court of Appeals for the Eighth Circuit, United States Tax Court. Employee-associate and stockholder partner: Matthews, Kelly, Cannon, and Carpenter, P.C., 1969–1977. Stockholder partner: Carpenter, Fitzgerald, and Coe, P.C., 1978–1983; Miller, Carpenter, Rowen, Fitzgerald, and Coe, P.C., 1983–1987; Carpenter, Rowen, Fitzgerald, and Coe, P.C., 1987–1988; Carpenter, Rowen, and Fitzgerald, P.C., 1988–1996. Member: Nebraska State Bar Association, American Bar Association, American Trial Lawyers Association, Nebraska Trial Lawyers Association, Omaha Bar Association.



## **John R. Hoffert, Judge**

**Office Address:** 1010 Lincoln Mall, Suite 100, Lincoln NE 68508, phone (402) 471-3923, (800) 599-5155.

**Date Appointed:** October 4, 2001.

**Biography:** Graduate of Western Illinois University (BA, high honors, Political Science); University of Nebraska College of Law (JD, with distinction). Associate/Partner: Knudsen, Berkheimer, Richardson & Endacott, LLP (1980–2001). United States Army (1970–1972). Member: Judicial Branch Education Board and Curriculum Committee. Past member: Nebraska Supreme Court Interpreter Advisory Committee (2005–2015); Legal Services of Southeast Nebraska, Board of Directors; Folsom Children’s Zoo and Botanical Gardens, Board of Directors; Nebraska Association of Trial Attorneys; American Judicature Society; and American Trial Lawyers Association.



## **Thomas E. Stine, Judge**

**Office Address:** 1010 Lincoln Mall, Suite 100, Lincoln NE 68508, phone (402) 471-3923, (800) 599-5155.

**Date Appointed:** September 13, 2011.

**Biography:** Graduate of Wayne State College (BS, 1984); University of South Dakota School of Law (JD, 1987). Former occupations: Private Practice (1987– 2000); Assistant Attorney General (2000–2011); Civil Litigation Bureau Chief, Nebraska Department of Justice, Office of the Attorney General (2005–2011). Member: Nebraska State Bar Association (1989– present), serving on the House of Delegates and Leadership Academy Steering Committee. Serves on the Nebraska Supreme Court Technology Committee. Formerly served on the Board of Directors of the Lincoln Community Playhouse.



### **Julie A. Martin, Judge**

**Office Address:** Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

**Date Appointed:** December 23, 2014.

**Biography:** Graduate of University of Nebraska – Lincoln (BS cum laude, 1991); Creighton University School of Law (JD cum laude, 1994). Former occupations: attorney with Nolan, Olson & Stryker; attorney with Rehm, Bennett & Moore. Member: Nebraska State Bar Association.



### **Dirk V. Block, Judge**

**Office Address:** 1010 Lincoln Mall, Suite 100, Lincoln NE 68508, phone (402) 471-3924, (800) 599-5155.

**Date Appointed:** December 8, 2016.

**Biography:** Graduate of University of Nebraska – Omaha (BS, cum laude, Criminal Justice); Creighton University School of Law (JD). Former occupations: Marks Clare & Richards LLC (served as managing member, partner, and associate attorney); Knapp, Mues, Beavers, and Luther (served as associate attorney). Admitted to practice: Nebraska and the U.S. District Court for the District of Nebraska. Member: Nebraska State Bar Association. Recipient of the Martindale Hubbell “AV” peer review rating. Serves on the Board of Directors for CBMC, Inc. and as Master of Ceremonies for the Omaha Leadership Prayer Breakfast.

## Federal Fund

**Federal Fiscal Year 2019 (October 1, 2018 to September 30, 2019)**

The court is designated as the agency in Nebraska to conduct a survey of work-related injuries / illnesses and a data collection program as to fatal injuries pursuant to grants from the U.S. Department of Labor, Bureau of Labor Statistics (BLS). Additional information about these grants is available in the Federal Grant Program section of this report.

Expenses for administering these two federal grants are split evenly between the State of Nebraska and BLS. The state share of expenditures is charged against the Compensation Court Cash Fund, and the federal share is charged against the Federal Fund. Federal monies are requested on a monthly basis and deposited into the Federal Fund. The Nebraska Legislature appropriates a specific sum each year for expenditures from the Federal Fund to the court. This appropriation is based upon an estimated budgeted amount submitted by the court each biennium. The federal grant appropriation is increased or decreased administratively when the federal grant is actually awarded at the beginning of each federal fiscal year. In June of each year, federal funds may be deobligated and the amount to be deobligated is calculated and sent to the BLS as an adjustment to the original grant award. An administrative adjustment to the Nebraska legislative appropriation may also be made at that time.

<b>Fund Balance on October 1, 2018:</b>					\$0
<b>Revenue:</b>					
Intergovernmental Revenue				46,112	
Deobligation June 30, 2018				(4,032)	
Total Revenue					<u>42,080</u>
<b>Expenditures:</b>					
	Legislative	Administrative	Not	Actual	
	Appropriation	Adjustments	Expended	Expended	
Federal Grant Admin.	<u>52,674</u>	<u>(10,594)</u>	<u>0</u>	<u>42,080</u>	
Total Expenditures					<u>42,080</u>
<b>Fund Balance on September 30, 2019:</b>					<u><u>\$0</u></u>

## Compensation Court Cash Fund

Fiscal Year 2019 (July 1, 2018 to June 30, 2019)

The Compensation Court Cash Fund provides for the expense of administering the Nebraska Workers' Compensation Act and for the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court. The fund was established as part of LB 757 from the 1993 session of the Nebraska Legislature (see NEB. REV. STAT. § 48-1,116). The fund replaced the use of general funds, and is financed by assessments against workers' compensation insurers, risk management pools, and self-insured employers (see NEB. REV. STAT. § 48-1,117). Contributions to the fund abate for one year whenever the balance of the fund equals or exceeds three times the amount expended and encumbered in the fiscal year just ending. The Nebraska Legislature appropriates a specific sum each year for operations of the Nebraska Workers' Compensation Court, to be funded from the Compensation Court Cash Fund. The appropriation for fiscal year 2019 was \$6,300,153.

<b>Fund Balance on July 1, 2018:</b>		\$5,865,417.21
<b>Revenue:</b>		
Assessments	5,202,357.00	
Interest	106,604.02	
Miscellaneous Income	106,086.72	
Sale of Surplus Property	599.43	
Total Revenue		<u>5,415,647.17</u>
<b>Expenditures:</b>		
Court Administration (Includes Judges)	4,757,070.00	
Federal Grant Administration	45,310.18	
Voc. Rehab. Administration	295,548.00	
Second Injury Administration *	0.00	
Self-Insurance Administration	78,924.79	
Total Expenditures		<u>5,176,852.97</u>
<b>Fund Balance on June 30, 2019:</b>		<u><u>\$6,104,211.41</u></u>
* Effective July 1, 2018, the court no longer tracks these expenditures.		

## Workers' Compensation Trust Fund

Fiscal Year 2019 (July 1, 2018 to June 30, 2019)

The purpose of the Workers' Compensation Trust Fund is to make second injury benefit payments in accordance with NEB. REV. STAT. § 48-128 and vocational rehabilitation benefit payments in accordance with NEB. REV. STAT. § 48-162.01. The Workers' Compensation Trust Fund is financed by assessments against workers' compensation insurers, risk management pools, and self-insured employers. When the fund equals or exceeds \$2.3 million, no further contributions from employers, insurers, or risk management pools are required. Contributions to the fund resume when the administrator determines payments from the fund will reduce its balance below \$1.2 million.

<b>Fund Balance on July 01, 2018:</b>		\$2,128,830.61
<b>Revenue:</b>		
Assessments	0	
Interest	45,676.89	
Miscellaneous Income	0	
Total Revenue		<u>45,676.89</u>
<b>Expenditures:</b>		
Second Injury Benefits	192,754.47	
Voc. Rehab. Benefits	445,889.07	
Total Expenditures		<u>638,643.54</u>
<b>Fund Balance on June 30, 2019:</b>		<u><u>\$1,535,863.96</u></u>

**Workers' Compensation Trust  
Fund**

**(Transfers\* and Assessments)**

**Second Injury and Vocational  
Rehabilitation Expenditures**

**Assessments, Fiscal Year Ending:**

June 30, 2019 .....	\$0
June 30, 2018 .....	\$0
June 30, 2017 .....	**\$16.00
June 30, 2016 .....	**\$6060.00
June 30, 2015 .....	**\$153.00

\* Beginning balance — transfers from Second Injury and Vocational Rehabilitation Funds totalling \$6,200,991.00 were made on July 1, 2000.

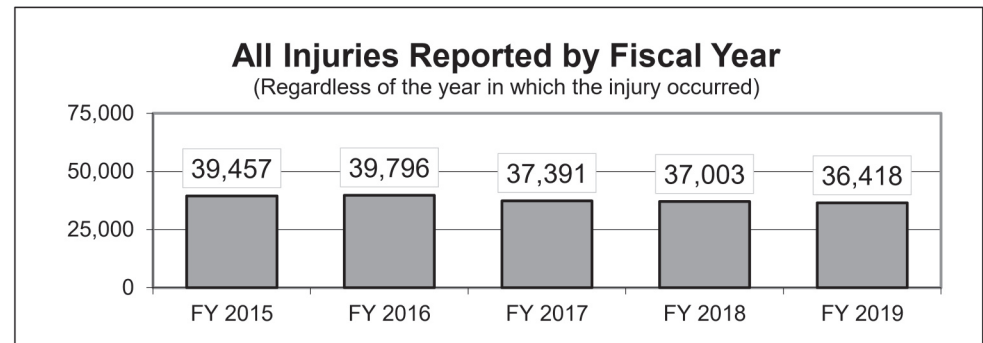
\*\* Adjustment on assessments made in prior years.

<b>Fiscal Year Ending</b>	<b>Second Injury</b>	<b>Vocational Rehabilitation</b>	<b>Total Expenditures</b>
June 30, 2019	\$192,754	\$741,437	\$934,191
June 30, 2018	\$201,386	\$679,988	\$881,374
June 30, 2017	\$205,527	\$834,346	\$1,039,873
June 30, 2016	\$224,931	\$923,827	\$1,148,758
June 30, 2015	\$247,312	\$1,065,985	\$1,313,297



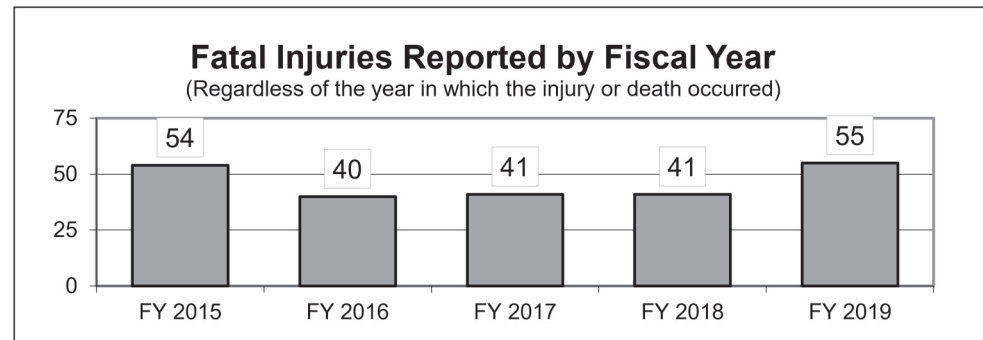
## Fiscal Year Injuries Reported (All Injuries)

The following chart shows injuries reported in recent fiscal years, which run from July 1 through June 30. The chart includes injuries resulting from accidents and occupational diseases. Please note the data collected to date for this fiscal year is not final as there may be late filings and corrections to data during the life of each claim. Our Statistical Reports provide more mature and more detailed information regarding injury and benefit payments by calendar year (<https://www.wcc.ne.gov>).



## Fiscal Year Injuries Reported (Fatal Injuries)

The following chart shows fatal injuries reported in recent fiscal years, which run from July 1 through June 30. The chart includes fatal injuries resulting from accidents and occupational diseases. Please note the data collected to date for this fiscal year is not final as there may be late filings and corrections to data during the life of each claim. Our Statistical Reports provide more mature and more detailed information regarding injury and benefit payments by calendar year (<http://www.wcc.ne.gov>).

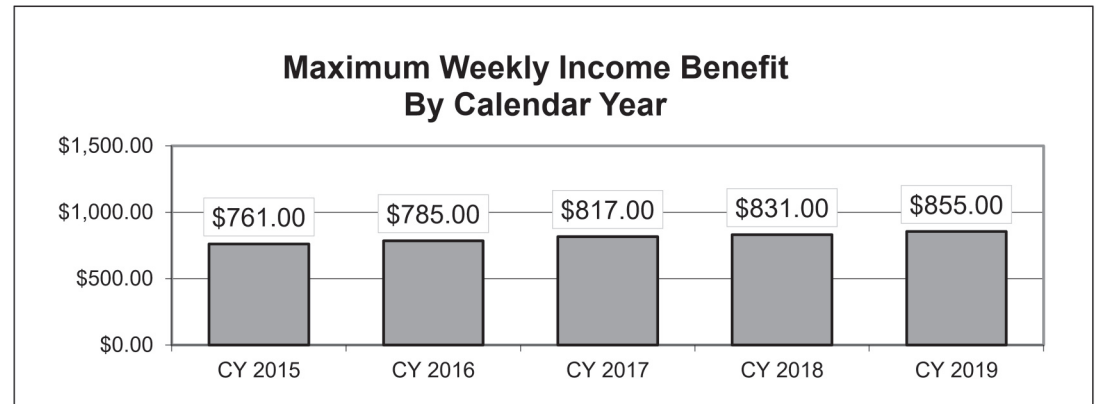


## Weekly Income Benefits and Maximum Rates

Under the Nebraska Workers' Compensation Act, the basic rule regarding weekly income benefits for total disability is that the employee is entitled to two-thirds of his or her average weekly wage, subject to maximum and minimum levels. Changes in the maximum or minimum rates apply to injuries occurring on or after the effective date but not to injuries occurring before that date.

The maximum benefit level is set at 100 percent of the state average weekly wage, as determined by the administrator of the Nebraska Workers' Compensation Court. The calculation excludes federal employees and is made in accordance with NEB. REV. STAT. §§ 48-121.01 and 48-121.02. Based on the state average weekly wage determined by the administrator, the maximum weekly income benefit for injuries occurring in calendar year 2019 is \$855.00. The minimum rate remains at \$49.00 as provided in NEB. REV. STAT. § 48-121.01(2).

A table of maximum and minimum compensation benefits for previous years is available on our website (<http://www.wcc.ne.gov>).



## Litigation Summary

\* Numbers may differ from those shown in the FY 2018 Annual Report due to adjustments to data.

<sup>1</sup> Fiscal years run July 1 through June 30.

<sup>2</sup> Allegations in an initial petition can be litigated separately upon entry of an order allowing such. This results in a further trial and disposition or settlement on the initial petition.

<sup>3</sup> A decision of a judge of the Nebraska Workers' Compensation Court may be appealed to the Nebraska Court of Appeals. A limited number of appeals may also be heard by the Nebraska Supreme Court, either directly or by further review of a decision by the Nebraska Court of Appeals. Appeals from an order, award, or judgment of the compensation court in any such case are made in accordance with the procedures regulating appeals in actions at law from the district courts, except as otherwise provided in NEB. REV. STAT. §§ 48-182 and 48-185.

<sup>4</sup> Other opinions from the Nebraska Supreme Court or Court of Appeals such as: reversed and remanded; reversed; affirmed in part, reversed in part, and in part remanded; affirmed in part, and in part reversed, and any other variations thereof.

<b>Petitions in Fiscal Year <sup>1</sup></b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018*</b>	<b>2019</b>
Petitions Pending at Beginning of Fiscal Year	1,364	1,331	1,370	1,357	1,357
Petitions Filed in Fiscal Year	1,085	1,103	1,053	1,013	970
Reopened Petitions Filed in Fiscal Year	139	146	121	131	115
Bifurcated Petitions <sup>2</sup>	6	6	7	2	20
<b>Total Petitions</b>	<b>2,594</b>	<b>2,586</b>	<b>2,551</b>	<b>2,503</b>	<b>2,462</b>
<b>Dispositions of Pending Cases in Fiscal Year</b>					
Decisions Issued	167	154	173	140	151
Stipulated Awards	34	31	24	30	23
Lump Sum Settlements Approved	210	173	185	189	207
Releases of Liability Filed	516	523	535	517	510
Voluntary or Summary Dismissals	336	335	277	270	236
<b>Total Dispositions</b>	<b>1,263</b>	<b>1,216</b>	<b>1,194</b>	<b>1,146</b>	<b>1,127</b>
<b>Total Petitions Pending at End of Fiscal Year</b>	<b>1,331</b>	<b>1,370</b>	<b>1,357</b>	<b>1,357</b>	<b>1,335</b>

<b>Motions in Fiscal Year <sup>1</sup></b>	<b>2015*</b>	<b>2016</b>	<b>2017*</b>	<b>2018</b>	<b>2019</b>
Motions Filed	3,376	3,578	3,601	3,664	3,329
Motion Dispositions	2,696	2,598	2,792	2,906	2,537
Motion Hearings	582	657	605	617	526

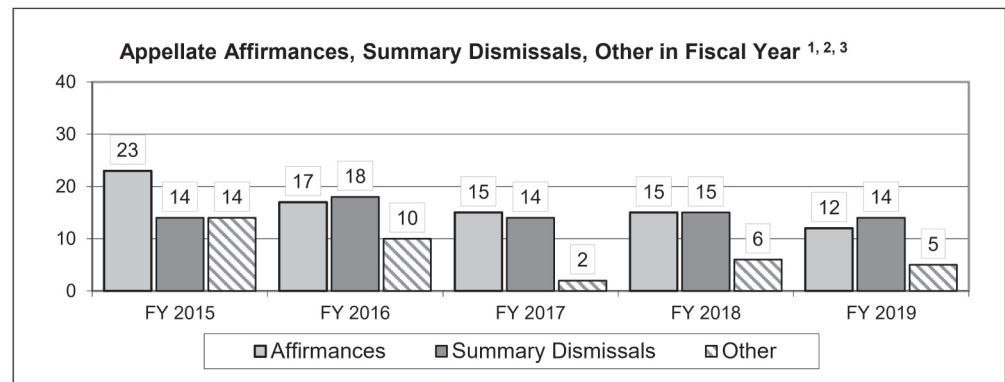
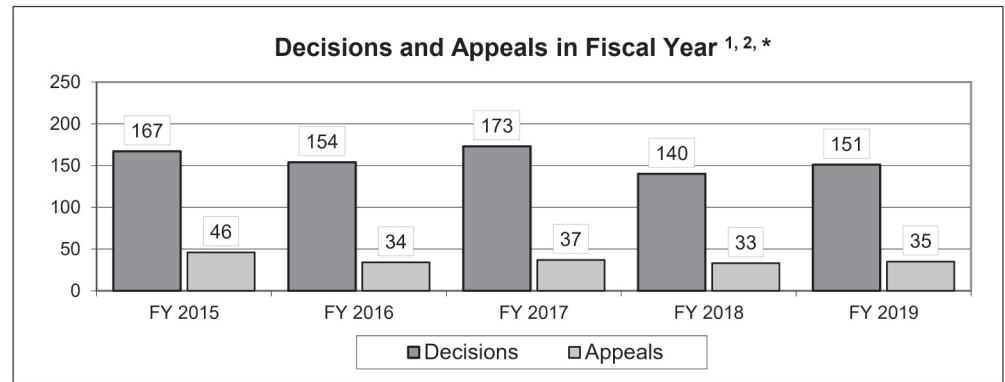
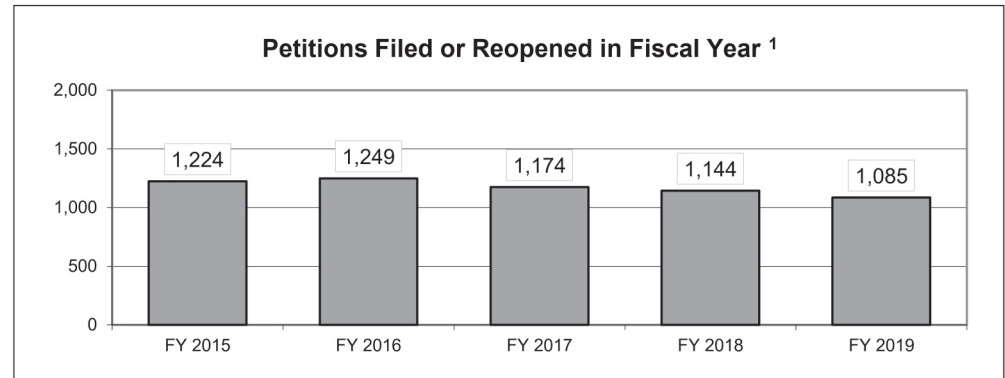
<b>Appeals in Fiscal Year <sup>1, 3</sup></b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Appeals Pending at Beginning of Fiscal Year	32	27	16	22	19
Appeals Filed	46	34	37	33	35
Affirmances by Neb. Supreme Ct. / Ct. Appeals	23	17	15	15	12
Summary Dismissals by Neb. Supreme Ct. / Ct. Appeals	14	18	14	15	14
Other Opinions <sup>4</sup>	14	10	2	6	5
<b>Total Appeals Pending at End of Fiscal Year</b>	<b>27</b>	<b>16</b>	<b>22</b>	<b>19</b>	<b>23</b>

\* Numbers may differ from those shown in the FY 2018 Annual Report due to adjustments to data.

<sup>1</sup> Fiscal years run July 1 through June 30.

<sup>2</sup> A decision of a judge of the Nebraska Workers' Compensation Court may be appealed to the Nebraska Court of Appeals. A limited number of appeals may also be heard by the Nebraska Supreme Court, either directly or by further review of a decision by the Nebraska Court of Appeals. Appeals from an order, award, or judgment of the compensation court in any such case are made in accordance with the procedures regulating appeals in actions at law from the district courts, except as otherwise provided in NEB. REV. STAT. §§ 48-182 and 48-185.

<sup>3</sup> Other opinions from the Nebraska Supreme Court or Court of Appeals such as: reversed and remanded; reversed; affirmed in part, reversed in part, and in part remanded; affirmed in part, and in part reversed, and any other variations thereof.



## Petitions and Applications to Modify Award by County

Generally, a petition or application to modify is heard in the county in which the accident occurred unless the litigants agree to a different location for the hearing (see NEB. REV. STAT. § 48-177). For that reason, the venue for workers' compensation cases could be in any county in Nebraska.

### Petitions and Applications to Modify Award by County in Fiscal Year

Adams	23	Deuel	0	Johnson	4	Red Willow	2
Antelope	2	Dixon	0	Kearney	4	Richardson	3
Arthur	0	Dodge	30	Keith	6	Rock	0
Banner	0	Douglas	349	Keya Paha	0	Saline	17
Blaine	0	Dundy	1	Kimball	2	Sarpy	43
Boone	0	Fillmore	0	Knox	1	Saunders	11
Box Butte	5	Franklin	0	Lancaster	148	Scottsbluff	20
Boyd	0	Frontier	3	Lincoln	15	Seward	9
Brown	0	Furnas	2	Logan	1	Sheridan	1
Buffalo	22	Gage	15	Loup	0	Sherman	0
Burt	3	Garden	1	Madison	20	Sioux	0
Butler	5	Garfield	2	McPherson	0	Stanton	1
Cass	6	Gosper	0	Merrick	3	Thayer	1
Cedar	1	Grant	0	Morrill	4	Thomas	0
Chase	2	Greeley	0	Nance	1	Thurston	1
Cherry	3	Hall	50	Nemaha	1	Valley	3
Cheyenne	5	Hamilton	6	Nuckolls	4	Washington	5
Clay	3	Harlan	1	Otoe	17	Wayne	5
Colfax	7	Hayes	0	Pawnee	0	Webster	0
Cumming	7	Hitchcock	1	Perkins	0	Wheeler	0
Custer	7	Holt	7	Phelps	3	York	9
Dakota	11	Hooker	0	Pierce	1	Out of State	95
Dawes	3	Howard	0	Platte	16		
Dawson	22	Jefferson	2	Polk	1	<b>TOTAL</b>	<b>1,085</b>

## Settlement Summary

<b>Applications for Lump Sum Settlement in Fiscal Year<sup>1, 2</sup></b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Applications Pending at Beginning of Fiscal Year	56	32	59	69	44
Applications Filed in Fiscal Year	844	851	751	687	725
<b>Total Applications</b>	<b>900</b>	<b>883</b>	<b>810</b>	<b>756</b>	<b>769</b>
<b>Dispositions in Fiscal Year</b>					
Applications Approved – No Lawsuit Filed	529	539	459	429	414
Applications Approved – Lawsuit (Past or Pending) Filed	308	254	253	254	278 <sup>3</sup>
Applications – Total Approved	837	793	712	683	692
Applications – Total Disapproved	31	31	29	29	24
<b>Total Dispositions</b>	<b>868</b>	<b>824</b>	<b>741</b>	<b>712</b>	<b>716</b>
<b>Total Applications Pending at End of Fiscal Year</b>	<b>32</b>	<b>59</b>	<b>69</b>	<b>44</b>	<b>53</b>

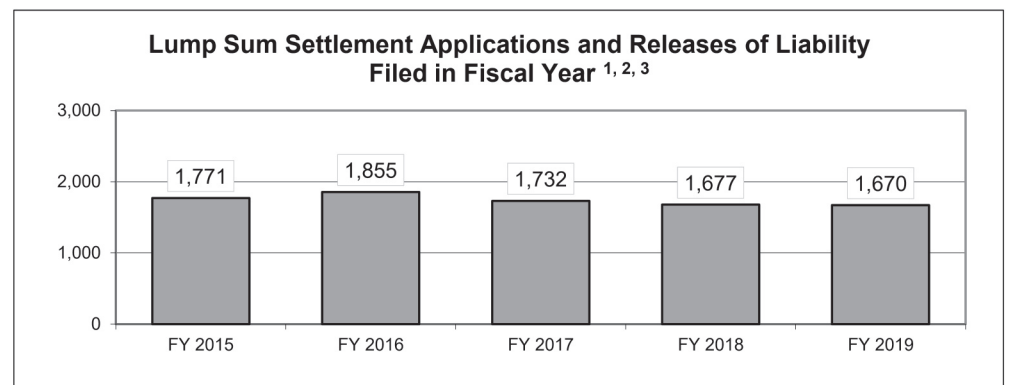
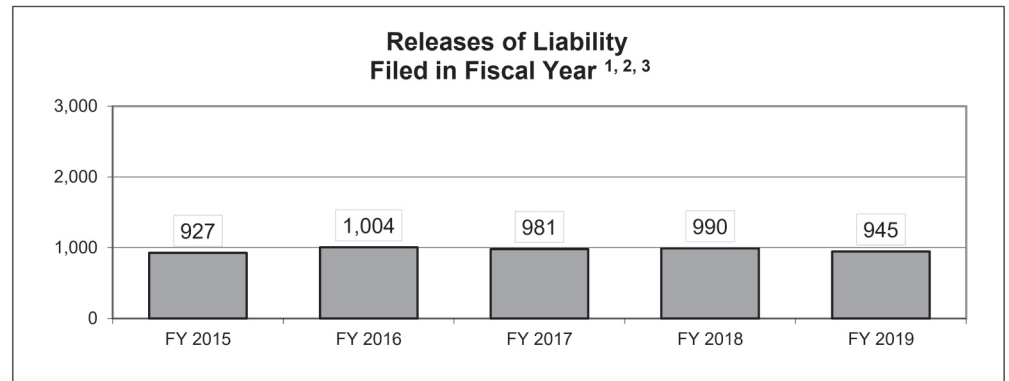
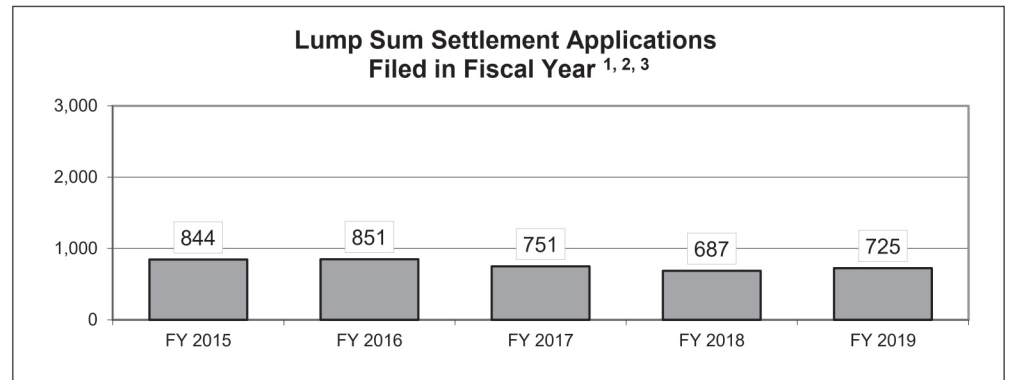
<b>Releases of Liability in Fiscal Year<sup>1, 2</sup></b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Releases of Liability Filed – No Lawsuit Filed	285	333	350	383	350
Releases of Liability Filed – Lawsuit (Past or Pending) Filed	642	671	631	607	595 <sup>3</sup>
<b>Total Releases of Liability Filed</b>	<b>927</b>	<b>1,004</b>	<b>981</b>	<b>990</b>	<b>945</b>

<b>Lump Sum Settlements and Releases of Liability in Fiscal Year<sup>1, 2</sup></b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Lump Sum Settlement Applications	844	851	751	687	725
Releases of Liability	927	1,004	981	990	945
<b>Total Lump Sum Settlements and Releases of Liability Filed</b>	<b>1,771</b>	<b>1,855</b>	<b>1,732</b>	<b>1,677</b>	<b>1,670</b>

<sup>1</sup> Fiscal years run July 1 through June 30.

<sup>2</sup> Pursuant to NEB. REV. STAT. § 48-139, lump sum settlement agreements require court approval. In 2009, the Nebraska Legislature amended this statute to eliminate mandatory court approval of certain settlement agreements and to require the filing of a release of liability for those settlements no longer requiring court approval.

<sup>3</sup> Includes settlements (both Applications for Lump Sum Settlement and Releases of Liability) accounted for in the "Litigation Summary" on Page 17 as to *pending* cases in addition to settlements in cases *previously* litigated.



<sup>1</sup> Fiscal years run July 1 through June 30.

<sup>2</sup> Pursuant to NEB. REV. STAT. § 48-139, lump sum settlement agreements require court approval. In 2009, the Nebraska Legislature amended this statute to eliminate mandatory court approval of certain settlement agreements and to require the filing of a release of liability for those settlements no longer requiring court approval.

<sup>3</sup> Includes settlements (both Applications for Lump Sum Settlement and Releases of Liability) accounted for in the "Litigation Summary" on Page 17 as to *pending* cases in addition to settlements in cases *previously* litigated.

# Office of the Clerk of the Court

## Enhancements to the eFiling System

### ***The Office of the Clerk of the Court:***

- ***keeps a full and true record of the judicial proceedings of the court,***
- ***issues all necessary notices and writs,***
- ***receives and processes court filings,***
- ***dockets cases,***
- ***issues summonses,***
- ***schedules trials and motion hearings, corresponds with the parties,***
- ***issues opinions of the court,***
- ***provides administrative and secretarial support for the judges, and***
- ***evaluates procedures used by other state courts to ensure consistency and create efficiencies.***

The Office of the Clerk of the Court, together with the judges, make up the court's adjudicatory operating division. The Clerk's Office keeps a full and true record of the judicial proceedings of the court, issues all necessary notices and writs, receives and processes court filings, docket cases, issues summonses, schedules trials and motion hearings, corresponds with the parties, issues opinions of the court, provides administrative and secretarial support for the judges, and evaluates procedures used by other state courts to ensure consistency and create efficiencies. A summary of filing and litigation statistics is provided in the "General Information" section of this report.

The Clerk's Office released enhancements to the court's eFiling system in January 2019. Rule 2(D) was amended to allow for these enhancements.

Appeals to the Nebraska Court of Appeals from a Nebraska Workers' Compensation Court decision can now be eFiled, which includes the following pleadings: Notices of Appeal, Praecipes for Transcript of Pleadings, Praecipes for Bill of Exceptions, and supplemental pleadings thereto. The required \$75.00 cash deposit, \$26.00 Court of Appeals fee, and \$1.00 transcript of pleadings fee is charged to the filing attorney's bank account registered with their eFiling credentials at the time the appeal is accepted by the Clerk's Office (if permission to proceed in forma pauperis is not granted). The ability to eFile gives attorneys more time to file their appeal on the filing deadline — up to 11:59:59 p.m. via eFiling rather than by 5:00 p.m. via mail, fax, or hand-delivery.

Electronic Service (eService) was also added to the court's eFiling system. The eService component involves the electronic transmission of documents to any Nebraska attorney representing a party in a case via eFiling. Any Nebraska attorney who has registered to use eFiling thereby agrees to receive eService of any document, other than service of an initial pleading or summons. Non-registered attorneys and self-represented litigants cannot be served using eService, which is consistent with other Nebraska courts.

In an attempt to encourage eFiling and provide a benefit to those attorneys choosing to eFile, the court's eFiling rules were amended to make eFiling registration mandatory for all Nebraska attorneys practicing in the Nebraska Workers' Compensation Court. This rule change is consistent with other Nebraska courts. Practicing attorneys are only required to register for eFiling; such attorneys are not required to eFile all pleadings.

The Clerk's Office has enjoyed positive responses in relation to these enhancements and remains committed to improving court access and efficiency for its users.



## **Cost-Saving Measures**

The Clerk's Office achieved cost savings and improved efficiency on April 1, 2019 by discontinuing use of a 996 square-foot storage area previously used to hold non-active or closed docket files. Returning this storage space to the lessor eliminated \$2,320.53 in monthly rental charges. To achieve this cost-saving goal, the Clerk's Office launched a significant project to digitize the closed docket files for permanent retention. Once these files were digitized, there was no longer a need for the physical storage space.

The Clerk's Office also found other ways to improve staff efficiency and reduce expenses, such as updating procedures to better utilize available technology.

## Legal

The Legal section of the Nebraska Workers' Compensation Court is responsible for reviewing lump sum settlements, facilitating informal dispute resolution, responding to inquiries from the public, performing research for the judges, providing legal advice to the court's administrative staff, monitoring legislation for potential impact on the workers' compensation system, and managing the court's records retention schedule.

Statistics for lump sum settlements processed in FY 2019 (July 1, 2018 through June 30, 2019) are provided in the "General Information" section of this report. As a result of the court's review of lump sum settlement applications, the Legal section identified a total of \$61,723.61 in underpayments of indemnity benefits to or on behalf of injured employees in FY 2019. The section also identified \$34,581.28 in underpayments of medical benefits in the fiscal year. The underpayments involved 21 cases. It should be noted that in cases of underpayment, the court requires the settlement be revised to provide additional compensation to or on behalf of the injured employee in order to ensure compliance with the Nebraska Workers' Compensation Act and that the settlement is in the best interests of the employee or his or her dependents.

The Legal section also prepares summaries of the Nebraska Supreme Court and Court of Appeals decisions relating to workers' compensation. These summaries may be accessed in the Appellate Court Decisions section of our website at (<http://www.wcc.ne.gov>).

## Informal Dispute Resolution

Informal Dispute Resolution (IDR) is available to the following individuals or entities with an interest in a workers' compensation dispute:

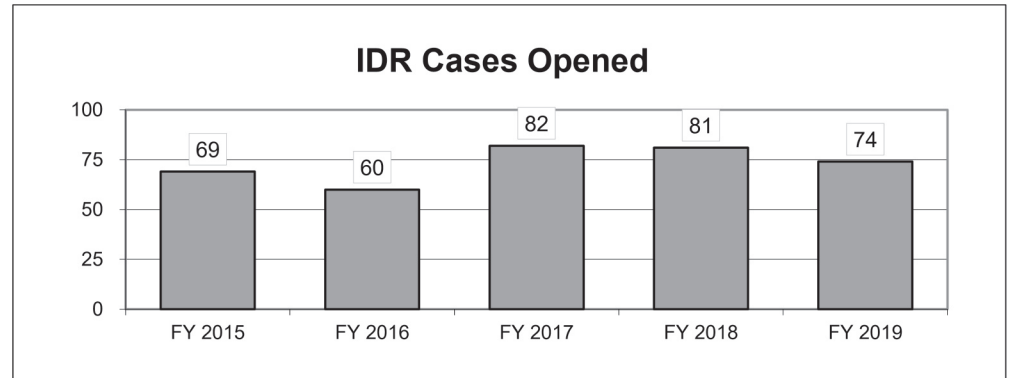
- any party to a workers' compensation dispute or controversy;
- a medical provider who provided medical, surgical, or hospital expenses to an employee involved in the dispute or controversy; or
- any certified vocational counselor providing services to such employee.

The guidelines for the IDR process are found in NEB. REV. STAT. § 48-168 and Rule 48 of the court's Rules of Procedure. Attorneys may participate, but parties to the dispute do not have to be represented. Informal dispute resolution is attempted in all litigated cases in which the worker who claims injury is unrepresented. In addition, a judge may order the parties to participate in IDR. IDR also provides a dispute resolution mechanism for health care providers, vocational rehabilitation counselors, and others who would otherwise have no standing before the court.

***As a result of its review of settlements, the Legal section identified \$96,304.89 in underpayments in FY 2019:***

- ***\$61,723.61 in underpayments of indemnity benefits to or on behalf of injured employees***
- ***\$34,581.28 in underpayments of medical benefits***

Mediation can be an empowering process because it allows the participants to be involved in the outcome of the dispute rather than face the risk and uncertainty of submitting issues to a judge for determination. Many IDR inquiries can be resolved without the need for a mediation conference simply through information and education provided by the mediation coordinator.



Mediation conferences are conducted by the section’s staff attorneys, who address a variety of issues. Trained in the essential skills of mediation, these attorney-mediators do not advocate or make decisions on behalf of either party; rather, they facilitate discussions to assist litigants in identifying ways to resolve their disputes without the need for a trial. In FY 2019, the court’s attorney-mediators addressed issues involving choice of physician, payment for vocational rehabilitation services, vocational rehabilitation counselor services and fees, indemnity benefits, loss of earning power, and medical expenses.

Mediation through the court is voluntary absent an order by a judge. In 44 cases, or 70 percent of all closed cases, at least one party declined to participate or did not respond to the request. Cases may be closed for a variety of other reasons as shown in the table on the next page.

**IDR Cases Closed in Fiscal Year 2019**

Party(s) Declined to Consent	35
No Response by Party(s)	12
Withdrawn — Various Reasons	9
No Agreement	7
Full Agreement	3
Petition Dismissed	1
<b>Total</b>	<b>67</b>

## Regulatory Programs

The responsibilities of the Regulatory Programs section are divided into three categories:

- Medical Services (comprising development and maintenance of fee schedules, a independent medical examiner system, and managed care plans).
- Compliance
- Self-Insurance

## Medical Services Activities

Section staff are available to respond to inquiries from a variety of sources concerning the choice of physician rule, the application and use of the various medical and hospital fee schedules, the Independent Medical Examiner program, managed care, and other questions relating to medical, surgical, and hospital services under the Nebraska Workers' Compensation Act.

## Fee Schedules

Medical fee schedules establish the maximum fee a provider of medical services for a workers' compensation claim may collect from an employee or employer. Different fee schedules apply depending on the type and location of the medical service provided.

Section staff are charged with collecting data from payors and certain hospitals in order to develop the Diagnostic Related Group Inpatient Hospital Fee Schedule and the Trauma Services Inpatient Hospital Fee Schedule, both of which are established in NEB. REV. STAT. § 48-120.04. The data is collected through the use of a web-based data entry system that allows those reporting to directly enter the information through the court's website.

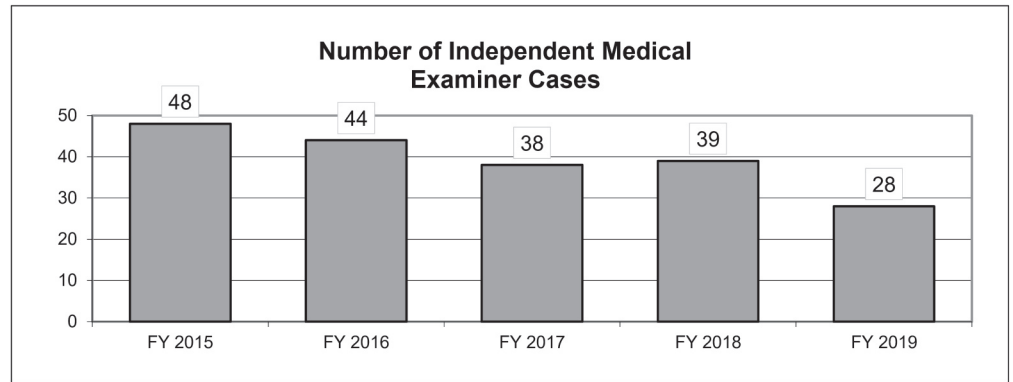
Regulatory Programs staff also collect data and make recommendations regarding the other fee schedules published by the court. That work includes updates to the Schedule of Fees for Medical Services, which applies to services by physicians and other licensed health care providers performing medical services within the scope of their respective practices. Rule 26 of the court's Rules of Procedure establishes the methodology for creating and updating this fee schedule.

## Independent Medical Examiner System

Once a dispute arises regarding the medical condition of the employee or related issues, either the employee or employer may request opinions from an Independent Medical Examiner (IME). The parties may agree on a physician to evaluate the medical disputes or may request assignment of a court-approved IME. The IME system was designed to give the employer and employee an additional means of resolving disputes outside the judicial process. To serve as a qualified IME, physicians

must complete an application and be approved by the judges of the court. Currently there are 122 court-approved IME physicians who specialize in varying disciplines.

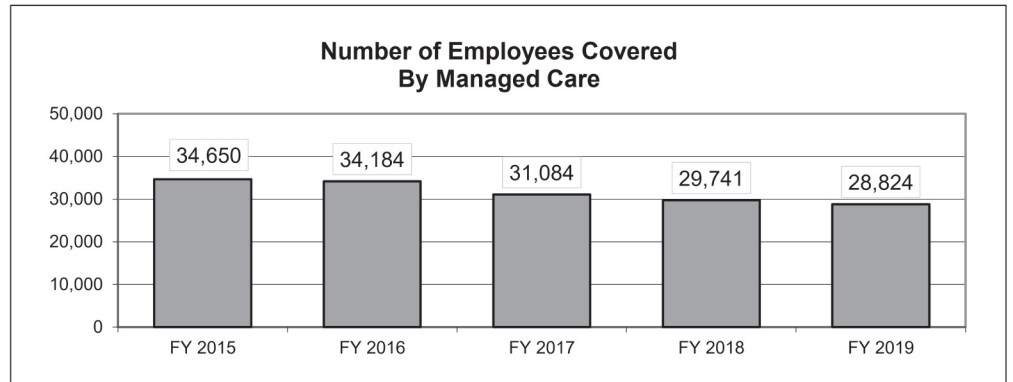
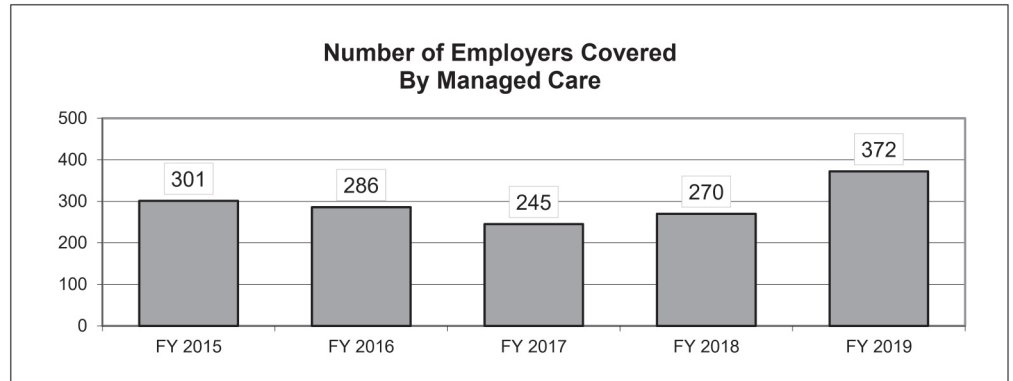
During FY 2019, 28 IME cases were opened. Sixteen requests for assignment of a court-approved IME were submitted by an attorney representing an injured employee and nine were submitted by a workers' compensation insurer or the insurer's attorney on behalf of the employer. There were two requests submitted by an employee and one was ordered by the court. The following chart shows IME cases opened during the last five years.



### Managed Care Plans for Workers' Compensation

A table showing current information about managed care plans certified by the court for workers' compensation purposes may be accessed in the Regulatory Programs section of our website (<http://www.wcc.ne.gov>). On June 30, 2019 there were 372 employers and 28,824 employees covered by the certified managed care plans. The charts on the following page show the trend in covered employers and employees.

## Compliance Activities



One of the most important enforcement activities of the Regulatory Programs section is to identify employers who do not have insurance coverage as required by the Nebraska Workers' Compensation Act (the Act). One component of the court's compliance efforts is to inform employers about statutory requirements that workers' compensation coverage must be in effect. In past years, the court sent a letter to each new corporation registered with the office of the Nebraska Secretary of State. Due to changes in the format of the data that was received from the Secretary of State, the program was temporarily suspended last fiscal year. The court is in the process of developing a method for handling the new data format in order to resume sending informational letters to new business in the upcoming fiscal year.

Section staff also monitor the court's electronic proof of coverage information for employers whose coverage has been cancelled or not renewed to identify employers who may not have coverage in

place. If the coverage was cancelled or not renewed because the business ceased operation or obtained a replacement workers' compensation policy, no action would be needed. If coverage was still required, compliance examiners notified and educated the employers to ensure they secured workers' compensation insurance. If the efforts of Regulatory Programs section staff did not result in compliance, the case was then referred to the Office of the Attorney General for further action. During FY 2019, letters were sent to 4,652 employers whose coverage had been cancelled or not renewed. New or alternative coverage had voluntarily been secured by most of them and was confirmed by the court. In response to follow up efforts by the section, 484 employers were brought into compliance with their statutory obligation to obtain workers' compensation coverage. Additionally, 103 cases were referred to the Attorney General, who collected a total of \$52,219 in penalties from employers who failed to obtain required workers' compensation coverage. The Nebraska State Constitution provides that the money collected for these fines is for the use and support of schools in Nebraska.

Workers' compensation insurers, risk management pools, and self-insured employers are also required to report injuries and payments relating to injuries in accordance with the Act and the court's Rules of Procedure. In FY 2019, section staff processed 50,619 reports relating to work-related injuries or occupational illnesses and 74,254 reports involving payments of compensation and expenses relating to work-related injuries or occupational illnesses. Section staff process the electronic reports and also code and manually enter the remaining paper reports.

Please note that the number of reports processed does not directly correlate with the total number of work-related injuries or occupational illnesses reported during the fiscal year, as described in the "General Information" section of this report. A work-related injury or occupational illness typically involves multiple reports that must be submitted during the normal course of each claim. These include the original injury and payment reports, as well as any applicable follow-up reports involving data changes / corrections, denials, cancellations, claim suspensions / acquisitions, and multiple types of payment-related reports that may be periodically submitted during the course of a claim.

Once processed, the data is examined and maintained for statistical purposes. The section maintains a database of court-approved EDI trading partners to assist with data quality assurance duties. Section staff also enforce those reporting requirements, request missing injury reports and monitor for their receipt, clarify discrepancies on existing reports, and obtain missing information from employers or insurers.

***In response to efforts by this section, 484 employers were brought into compliance with their statutory obligation to obtain workers' compensation coverage.***

***Additionally, 103 cases were referred to the Attorney General, who collected a total of \$52,219 in penalties from employers who failed to obtain required workers' compensation coverage.***



## **Self-Insurance Activities**

In FY 2019, section staff transitioned to receipt of EDI claims data in the International Association of Industrial Accident Boards and Commissions release 3.1 standard, which is the newest national standard for the electronic reporting of first and subsequent report information. The transition will allow section staff to shift the focus of the EDI program from the time-consuming processing of claim information to the efficient analysis of the data submitted. The goal is to have more accurate data on the nature and costs of workers' compensation claims in Nebraska.

Compliance examiners additionally respond to a large volume of phone inquiries from a wide range of sources and on a variety of topics. Topics frequently addressed include: medical issues, insurer identification and contact information, benefit calculation, payment explanation, delay in receiving benefits, and general rights and obligations. Often, callers identify situations in which employers are uninsured, injury reports are not being filed, and insurers, employers, or risk management pools are not complying with other obligations under the Act. Section staff investigate the specific cases, encourage voluntary compliance, and request appropriate legal action when necessary. A total of 194 case investigations were opened last fiscal year as a result of the above activities.

The Regulatory Programs section is responsible for reviewing applications from individual employers to self-insure their workers' compensation liability, determining and collecting fees and assessments, and monitoring the employers' continued ability to meet their financial obligations under the Nebraska Workers' Compensation Act. Self-insurance privileges are subject to periodic review and renewal. The Regulatory Programs section conducts periodic on-site audits of payroll records.

At the beginning of each calendar year, the court calculates and collects the necessary assessments for the state's General Fund, the Compensation Court Cash Fund, and the Workers' Compensation Trust Fund from employers self-insured for the prior calendar year. The assessments are based on the number and classification of employees, payroll, and benefits paid during the previous calendar year. Additional assessments are made in support of the Nebraska Department of Insurance for carrying out the Insurance Fraud Act. As of June 30, 2019, there were 38 employers approved for self-insurance. For calendar year 2019 assessment purposes, there were 41 self-insurers (employers who were self-insured for all or part of calendar year 2018). In addition, the State of Nebraska is self-insured by statute and is not included in any of the statistics that follow.

### Self-Insurers by Major Industrial Division

As of June 30, 2019

Manufacturing	8
Services	8
Transportation and Public Utilities	8
Government (not including the State of Nebraska)	6
Retail	4
Insurance	2
Wholesale	2
<b>Total</b>	<b>38</b>

### Self-Insurance Status by Calendar Year

Calendar Year	# of Self-Insurers	# of Employees	Gross Payroll
2018	41	130,987	\$5,184,956,320
2017	41	120,473	\$4,880,752,328
2016	41	131,074	\$4,695,054,446
2015	41	131,053	\$4,288,208,704

**NOTE:** 2019 figures are not available at time of publication

# Vocational Rehabilitation

## Certification of Vocational Rehabilitation Counselors and Job Placement Specialists

## Appointment of Vocational Rehabilitation Counselors

One of the primary purposes of the Nebraska Workers' Compensation Act (the Act) is restoration of the injured employee to gainful employment following an injury arising out of and in the course of employment. See NEB. REV. STAT. § 48-162.01. Toward that end, the duties of the Vocational Rehabilitation section can be divided into three broad categories: certifying vocational rehabilitation counselors and job placement specialists; appointing counselors when parties cannot agree; and reviewing, approving, and monitoring vocational rehabilitation plans.

Vocational rehabilitation services under the Act can only be provided by individuals who have been certified by the court. Rules 39 to 41 of the court's Rules of Procedure contain the requirements for certification. At the end of FY 2019, there were 69 court-certified private vocational rehabilitation counselors, 27 who are based in Nebraska, and 75 court-certified job placement specialists, 30 who are based in Nebraska.

The court may appoint a counselor to provide vocational rehabilitation services and / or a loss of earning power evaluation to an injured worker. Vocational rehabilitation services are designed to restore a worker to suitable employment after injury. A loss of earning power evaluation may be performed to evaluate an injured worker's ability to earn income, so the employer or insurer knows how much to compensate the worker for permanent effects of certain injuries.

When an injured worker claims entitlement to vocational rehabilitation services or seeks a Loss of Earning Power (LOEP) evaluation, the worker and the employer (or the employer's workers' compensation insurer) must try to agree upon a vocational rehabilitation counselor to evaluate the worker and provide needed services. If they cannot agree, one of them can ask the court to appoint a counselor.

A case is opened by the Vocational Rehabilitation section when notice of agreement to a counselor or a request for appointment of a counselor is filed with the court, or if a judge of the court orders appointment of a counselor or vocational rehabilitation services. Of the 322 cases opened in FY 2019, the court appointed 146 counselors and the parties were able to agree upon a counselor in 145 cases. Thirty-one other cases were opened and closed before a counselor was appointed, generally because the worker didn't qualify for services or the worker withdrew the request.

*One of the primary purposes of the Act is to restore injured workers to gainful employment following work injuries.*

## Vocational Rehabilitation Plans

<b>Opened Cases with Services</b>	<b>Appointed</b>	<b>Agreed To</b>
Voc. Rehab. Services and Loss of Earning Power Evaluation	64	23
Voc. Rehab. Services Only	23	34
Loss of Earning Power Evaluation Only	59	88
<b>Total</b>	<b>146</b>	<b>145</b>

An employee who claims entitlement to vocational rehabilitation services is evaluated by the agreed to or appointed counselor in order to determine whether it is necessary to develop a vocational rehabilitation plan to restore the employee to suitable employment following a work-related injury. If a plan is developed, the level of services to be provided is based on priorities outlined in NEB. REV. STAT. § 48-162.01. No higher priority may be utilized unless all lower priorities have been determined to be unlikely to result in suitable employment for the injured employee that is consistent with the priorities listed below. This determination is made by the vocational rehabilitation counselor and a vocational rehabilitation specialist or judge of the compensation court. The priorities are listed in order from lower to higher priority:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer;
- (c) A new job with the same employer;
- (d) A job with a new employer; or
- (e) A period of formal training which is designed to lead to employment in another career field.

Prior to implementation, all vocational rehabilitation plans must also be evaluated and approved by a specialist employed by the court or a judge of the court. A total of 66 court-approved vocational rehabilitation plans had start dates in FY 2019. Vocational rehabilitation plans generally include job placement or formal training. Such plans may also include additional vocational rehabilitation supportive services such as general educational development, adult basic education, English language learning, computer training, or on-the-job training.

At the end of FY 2019, there were 180 open cases being monitored by the Vocational Rehabilitation section. A vocational rehabilitation plan of some type is involved in 50 of those open cases. The remaining open cases are those in which vocational rehabilitation needs are being assessed, plans are in development, or files are held in abeyance for medical reasons or while claims are being litigated.

<b>Vocational Plans Monitored At Fiscal Year End</b>	
Associate Degree	32
Bachelors or Other Advanced Degree	8
Certificate / Other Training	6
Job Placement	4
<b>Total</b>	<b>50</b>

When an injured employee is in a court-approved vocational rehabilitation plan, the following costs are paid by the Workers' Compensation Trust Fund administered by the court: tuition, books, tools, other appropriate fees and costs, and board, lodging, and/or travel in some circumstances. Total disbursements from the Compensation Court Cash Fund and Workers' Compensation Trust Fund for vocational rehabilitation purposes are shown in the "General Information" section of this report.

Vocational rehabilitation counselor fees for the evaluation of the employee, development and implementation of a vocational rehabilitation plan, and preparation of an LOEP evaluation are paid by the employer or workers' compensation insurer. This includes charges by job placement specialists or interpreters, if necessary. The employer or insurer is also responsible for temporary disability benefits while the employee is participating in a court-approved vocational rehabilitation plan.

## Public Information

The court's Public Information section:

1. Educates the public regarding Nebraska workers' compensation law and procedural rules.

The section responds to inquiries received on the court's information line (800-599-5155 or 402-471-6468) and email help desk. The section also disseminates information by means of the court's website (<http://www.wcc.ne.gov>) and publications.

Employees are provided with a copy of their injury reports within 10 calendar days of injuries being reported, basic information regarding their rights and obligations under the Nebraska Workers' Compensation Act, and the court's contact information.

2. Maintains an inventory of court records and provides access to public records maintained by the court.
3. Manages the court's business continuity program.

## Education

### Information Line

The court's information line (800-599-5155 or 402-471-6468) enables the court to serve the public efficiently and saves the cost of long-distance calling. Interpreter services for more than 240 languages are available for callers.

The section provides answers to commonly asked questions, usually within 24 hours. Calls can also be transferred to other sections of the court for more information. Court staff do not provide opinions or legal advice.

Information line calls come from employees, employers, attorneys, insurers, medical providers, vocational rehabilitation providers, researchers, and others in Nebraska and throughout the nation.

The information line received 5,925 calls in FY 2019, an average of 113.9 calls per week or 23.9 calls per business day.

### Website

The Public Information and Information Technology sections coordinate to develop and maintain the court's website (<http://www.wcc.ne.gov>), which has been steadily upgraded since its inception in 1996 to better serve the public and make use of ever-improving technology:

- The court's entire web presence was redesigned and relaunched in FY 2019 using Google Sites for the web pages, Google Forms for the dynamic web forms, and Google Blogger for distributing court news. Google's built-in search functionality is a major benefit to the re-launched website, as it allows the public to more quickly locate information.
- A number of useful web applications are available, including a coverage look-up tool (which allows the public to search for workers' compensation insurance for a particular employer on a particular date), a records request form, a searchable database of court decisions and orders, benefit calculators.
- Most of the court's publications and forms are available in portable document format (PDF). Some of the court's forms have been converted to Google Forms format. Regardless of format, all forms can be completed electronically.
- The website is designed to maximize readability in any web browser, at any screen resolution (including handheld devices such as tablets and cellphones).

In FY 2019, the court also implemented Google Analytics to track traffic on our website. The website received 275,153 views and downloads of individual web pages during the fiscal year. Also during this period, the court received 2,429 emails through its "Contact Us" email help desk, available on our website (<http://www.wcc.ne.gov>).

## Publications

The section produces and maintains an inventory of court publications. Public Information staff work with other sections of the court to assist with design, content development, and editorial style. The section delivers finished documents to be printed and / or published on the court website.

The section also produces and maintains a number of forms used for self-represented litigants; insurance coverage, medical and vocational rehabilitation purposes; reporting workers' compensation injuries and payments; and requesting records.

A complete listing of available publications and forms, some of which are available in both English and Spanish, may be found on the court website (<http://www.wcc.ne.gov>).

As part of publication development, the section coordinates public hearings and public meetings for the purpose of amending the court's procedural rules. Two new editions of our Rule Book will have been published in 2019 as a result of such public hearings and public meetings.

## **Court Records**

### **Records Inventory**

As part of the Records Management team, the section supports the Records Officer and coordinates with the other sections of the court in maintaining an inventory of court records. The section also assists with the process of documenting record dispositions to be reported to the Secretary of State.

### **Record Searches**

The section fulfills all requests for records submitted to the court, including reports of workers' compensation injuries and payments, pleadings and exhibits entered into evidence, records of insurance coverage, workers' compensation-related statistics, and other records filed with and maintained by the court. The section fulfilled 10,969 requests for records in FY 2019. The section fulfills most requests within four business days.

## **Business Continuity Program**

The purpose and objective of the Business Continuity Program (BCP) is to develop, exercise, and maintain plans that enable the court to respond to disruptive events. Components of the program include facility-specific Emergency Procedures, a court-wide Continuity of Operations Plan (COOP), and an Information Technology Disaster Recovery Plan.

The public information officer serves as the BCP facilitator. The BCP facilitator maintains and updates all program documentation, plans annual program preparedness sessions, coordinates with all program team members to assist them in meeting their mission essential functions, and notifies the court administrator of potentially disruptive events.

In March 2019, the court successfully participated in its first remote COOP exercise to test the viability of the plan in the event of a pandemic disruption. Rather than the usual tabletop exercise, all COOP team members participated by means of remote meeting connectivity from a variety of computing devices and from a variety of locations within and outside of our facilities.

Actual disruptive events involving the COOP in FY 2019 included issues with mail delivery and water restrictions due to state-wide flooding as well as an electrical outage at our Lincoln facilities.

In May 2019, the BCP facilitator attended the 2019 National Pandemic Summit, hosted by the National Center for State Courts, University of Nebraska Medical Center (UNMC), Nebraska Judicial Branch, and State Justice Institute. This event provided an opportunity for state court judges, administrators, and business continuity professionals to increase their knowledge about potential perils relating to pandemics as well as best practices for responding to them. The event also provided an opportunity to tour the world-renowned Nebraska Biocontainment Unit and National Quarantine Center on the UNMC campus.

***The court successfully participated in its first remote COOP exercise to test the viability of the plan in the event of a pandemic disruption. Team members participated by means of remote meeting connectivity from a variety of computing devices and from a variety of locations within and outside of our facilities.***



# Information Technology

The Information Technology (IT) section is responsible for the security, administration and maintenance of the court's computer systems and network. This includes court data relating to the adjudication process, reports of injury, settlements, and vocational rehabilitation maintained in an Oracle database. Electronic Data Interchange (EDI) software systems provide processing of injury, payment, and proof of coverage reporting. Electronic Filing (eFiling) software systems provide processing of judicial filings. This section assists all other court sections in performing their statutory responsibilities and creates efficiencies through the use of technology. This section continually works with the Office of the Chief Information Officer (OCIO) for state network connectivity. It also collaborates with the IT sections of the Supreme Court, Probation, and Legislature on joint projects and the sharing of technology.

## Fiscal Year Activities

The court manages its data through desktop programs and web applications, utilizing an Oracle RDS database as its primary information repository. The database currently contains more than 23 years' worth of information, going back to calendar year 1996 for reports of injury. The database also contains historical injury-related information for purposes of performing cross-year statistical analysis. The IT section has developed and maintains over 500 program units in COBOL, Delphi, and Visual Studio. The section also provides support for ReportServer, a reporting system used by WCC staff for producing reports and data extracts from the database.

## Supreme Court Support

This section worked closely with the Supreme Court's IT group to migrate its Mandatory Continuing Legal Education (MCLE) system to Amazon Web Services (AWS). This required coordination between an external Oracle database support entity, an external MCLE application support entity, the WCC IT team, and the Supreme Court IT team. The entire MCLE system is now supported by the external support entities. Hosting MCLE on AWS provides the Supreme Court with increased security and availability. Additionally, the WCC IT team continues to assist and collaborate with the Supreme Court on overall network and system administration for the Nebraska Judicial Branch.

## Amazon Web Services (AWS)

The court's Oracle database was migrated to Amazon Web Services (AWS). The AWS Oracle RDS system provides secure hosting for Oracle data with geographical redundancy options reaching across the United States. Amazon manages all of the licensing as part of the hosting solution, which removes the burden from the court. The IT section conducted multiple stress tests on the data before and after migration, and continues to monitor all Oracle traffic for performance enhancements.

Routine database maintenance such as updates and upgrades are now easily managed through the AWS system, replacing the need for assistance from external Oracle support entities. This has resulted in very significant cost savings.

### **Email System**

One of the section's biggest projects was moving the court's email system to Google G Suite. The demand for email reliability and security reached the point that IT was asked to look at email system alternatives. The court already had G Suite licensed for management of Chromebooks and other Google services, so the transition to G Suite was done at no additional cost. This allowed the court to cancel certain enterprise licenses, which has created a very large cost savings overall. In addition to the cost savings, the utilization of G Suite has opened the door to additional productivity software such as Google Mail, Google Calendar, Hangouts Chat, Hangouts Meet, and many more Google products.

### **Chrome OS**

In keeping court technology current, IT has made a shift to utilizing Chrome OS devices. Court conference rooms have been upgraded to Chromeboxes for video conferencing. All personnel needing remote access are now issued a Chromebook, which gives the court additional security peace of mind, while also providing a large cost savings.

### **Delphi Conversion**

The conversion of all legacy Delphi applications to Visual Studio continued in FY 2019. The conversion, which began in FY 2017, became necessary because Delphi no longer supports the version IT originally used for application development. Microsoft's Windows 10 "Software as a Service" (SaaS) release schedule puts Delphi at risk of being permanently unusable every six months. This can have a critical impact because the IT field no longer commonly uses the Delphi legacy-programming language, leading to staffing and knowledge transfer concerns. This ongoing conversion project has an estimated three-year timeline.

### **ReportServer Implementation**

Oracle no longer supports its Discoverer database querying software. Microsoft's Windows 10 "Software as a Service" (SaaS) release schedule puts Discoverer at risk of being made permanently unusable every six months. The critical impact of this risk led to finding an alternative software called "ReportServer." WCC staff use this reporting system for producing reports and data extracts from the Oracle database.

## **Google Cloud Platform (GCP)**

The IT section has started making use of Google Cloud Platform (GCP) to accommodate court needs when it comes to hosting applications, servers, and databases in the cloud. This is very similar to what is currently being done with Amazon Web Services (AWS), and creates additional flexibility by utilizing multiple providers. Two internal systems that will be moving into GCP are Supply Request and Expense Reimbursement to simplify the end-user experience.

## **Security**

The court is a participating member of the OCIO's Security Architecture Workgroup (SAW). The ideas and policies created from the SAW group generate the policies for the Nebraska Information Technology Commission and State Government Council.

***The Information Technology section is responsible for the security, administration and maintenance of the court's computer systems and network.***

## Federal Grant Program

The federal Occupational Safety and Health Act of 1970 (OSHA) became an official part of the nation's labor laws in 1971. With its passage, Congress declared its intent ". . . to assure as far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

Under this Act, employers are required to keep records of all work-related deaths, any diagnosed occupational illnesses and any occupational injuries which involve loss of consciousness, restriction of work or motion, transfer to another job, or require medical treatment beyond first aid. Employers with more than 10 workers are required to maintain a log (OSHA No. 300), a summary of occupational injuries and illnesses (OSHA No. 300A), and a supplementary record (OSHA No. 301) of each occurrence within the calendar year. The Nebraska Workers' Compensation Court's *Form 1, First Report of Alleged Occupational Injury or Illness*, may be used in place of the OSHA No. 301 form to report Nebraska work-related injuries and illnesses.

These records are retained at the work site for five years and must be available for inspection by representatives of the U.S. Department of Labor and the U.S. Department of Health and Human Services. Employers with fewer than 11 employees and those employers who conduct business in one of the low hazard industries specified by OSHA are generally exempt from these recordkeeping requirements unless they are notified of the necessity to maintain these records for a given year for statistical purposes.

## Nebraska Occupational Injury and Illness Survey – 2018

In order to measure and evaluate the efforts in reducing work-related injuries and illnesses, a standardized system to collect, compile and analyze the health and safety statistics was established and implemented. This standardized system enables data users to identify those industries that need improvement, furthers monitoring and education programs, and allows employers to compare their incidence rates with other employers in the same industry.

The Nebraska Workers' Compensation Court has cooperated with the U.S. Department of Labor, Bureau of Labor Statistics (BLS) since 1971 in conducting an annual survey of Nebraska employers, through which these essential work injury and illness statistics are gathered. Beginning with the 2008 survey, local and state government units in addition to private sector have been surveyed.

***OSHA was created in 1970 "to assure as far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."***

## Series Breaks

Although the Survey of Occupational Injuries and Illnesses (SOII) began collecting data in 1972, users are advised against making comparisons across the entire time period due to series breaks in the classification systems used to code SOII data. Case circumstance information is categorized according to the BLS Occupational Injury and Illness Classification System (OIICS) by event or exposure, nature of injury or illness, part of body, and source of injury or illness. Occupation is classified according to the Standard Occupational Classification (SOC) and industry by the North American Industry Classification System (NAICS). Please review the SOII Occupational Safety and Health Changes to OIIS, NAICS and SOC web page ([https://www.bls.gov/iif/osh\\_notice11.htm](https://www.bls.gov/iif/osh_notice11.htm)) to access the changes that have occurred over your time period of interest.

## Census of Fatal Occupational Injuries (CFOI) – 2017

The Census of Fatal Occupational Injuries (CFOI) Program was developed by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) to provide a timely and accessible census of work-related fatalities. The CFOI program is a federal/state cooperative program. In Nebraska, CFOI is conducted by the Nebraska Workers' Compensation Court. This is the 26<sup>th</sup> year that CFOI has been conducted in all 50 states and the District of Columbia.

In 2017, CFOI used multiple data sources including death certificates, workers' compensation reports, medical examiner reports, and other available federal and state administrative records, to compile a complete, verifiable count of Nebraska fatal workplace injuries. The census covers all traumatic occupational fatalities, including those resulting from injuries to the self-employed, laborers on small farms, government workers, and others too difficult to identify from a single data source. Please note that the types of workers included in these statistics may vary from those covered by the Nebraska Workers' Compensation Act.

Besides comprehensive counts of fatal work injuries, the 2017 census provides information on the demographic characteristics of the deceased workers (including age, gender, and race), the occupations and industries the decedents worked in, and the circumstances of their tragedies. This wealth of information on hazards in Nebraska workplaces yields vital insights to aid in preventing future workplace fatalities. Safety and health researchers are able to study patterns of fatal work injuries, identify hazardous activities and equipment, and alert workers to these dangers.

## 2017 Census Results

Results of the Nebraska Census of Fatal Occupational Injuries are available on the BLS website (<https://www.bls.gov/iif/oshstate.htm#NE>). The 2017 census recorded 35 fatal workplace injuries during 2017, down from 60 during the previous year. Other findings of the census include:

- The leading fatal event was transportation incidents, accounting for 20 (57 percent) of fatal occupational injuries in 2017. Contact with objects and equipment followed with seven fatalities (20 percent). Falls, slips, and trips accounted for four fatalities (11 percent).
- Among industry groups, the largest number of fatal work injuries was in agriculture, forestry, fishing and hunting with 12 (34 percent). Transportation and warehousing followed with five (14 percent). Arts, entertainment, and recreation incidents accounted for two (6 percent) fatal injuries.
- Eleven (31 percent) of those fatally injured were 65 years and over. Ten (29 percent) were 55 to 64 years of age. Another six (17 percent) were 35 to 44 years of age.
- Twenty-seven (77 percent) of those fatally injured were white, non-Hispanic.
- Thirty-three (94 percent) of those fatally injured were men.
- Twenty-three (66 percent) were wage and salary workers. The remainder of those fatally injured were self-employed.

## Additional Information

Information regarding federal grant program survey and census results by calendar year may be accessed in the BLS Reports section of our website (<http://www.wcc.ne.gov>).

*The 2017 census recorded 35 fatal workplace injuries during 2017, down from 60 during the previous year.*

## Contact Us



Please contact us with questions and comments about this report, workers' compensation in Nebraska, or any of our programs and services.

Nebraska Workers' Compensation Court

P.O. Box 98908

Lincoln, NE 68509-8908

800-599-5155 or 402-471-6468

<http://www.wcc.ne.gov>