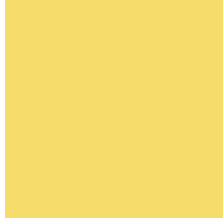




**Workers'
Compensation
Board**

2018



New York State
Workers' Compensation Board
**ANNUAL
REPORT**



Andrew M. Cuomo, Governor
Clarissa M. Rodriguez, Chair

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Executive Summary

The Workers' Compensation Board (Board) is pleased to submit its 2018 Annual Report. Pursuant to Workers' Compensation Law § 153, this report states in detail the work the Board has done in hearing and deciding cases and related aspects of the Board's operations, including assembly and adjudication of workers' compensation claims and carrier compliance.

Board Operations

In addition to the Statewide Administrative Office located in Schenectady, the Board maintains nine District Offices, 13 Customer Service Centers, and three Hearing Points located throughout the state (see A-1). Please see the Board's website for

addresses, directions and parking information, as well as an interactive map of the types of services located at each office at:

www.wcb.ny.gov/content/main/DistrictOffices/MainPage.jsp

Average Weekly Wage

Indemnity benefits are based on the injured worker's average weekly wage (AWW) in the year prior to the accident, subject to statutory maximum benefit rates. Since July 1, 2010, the maximum benefit rate has been 2/3 of the prior year's New York State average weekly wage (SAWW), as determined by the Department of

Labor. In July 2018, the maximum benefit rate was \$904.74, based on the 2017 calendar year SAWW of \$1,357.11.

The distribution of claimants' AWW remained consistent in 2018 with 24.4% of claimants above the SAWW (See A-3).

Claims

First Report of Injury

According to NYCRR Section 300.22, a **First Report of Injury (FROI)** must be received within 18 days of the disability event or 10 days from employer knowledge of the event or 10 days from the initial date of disability, whichever is longer.

The payor compliance initiative started in May 2014, at which time only 38% of **FROIs** were submitted on time. The Board challenged insurance carriers to

improve and maintain the timeliness of submitting **FROIs**, starting with a goal of 70% by the fourth quarter of 2015. As a result of the Board's outreach and education, payors met this performance target with a compliance rate of 71.5%. Over the past three years, New York insurance carriers have continued to improve their performance, submitting approximately 82.4% of all **FROIs** on time in the fourth quarter of 2018 (see A-4). The Board continues to work with payors to achieve the performance target of 85%.

Claims (Continued)

Subsequent Report of Injury (SROI)

In addition to the performance standards implemented for the *FROI*, the Board also initiated performance standards for the *Subsequent Report of Injury (SROI)*. Three additional measures for initial payment of compensation were implemented, including filings showing timely initial payments, timely initial payments and timely installment payments. Both timely initial payments and timely installment payments are showing compliance rates in excess of 85% and 90%, respectively (see A-4). The compliance rate of filings showing timely initial payments steadily increased to 70% by the end of 2018.

Assembled Claims

A claim is assembled once the Board learns of a workplace injury and assigns the claim a Board case number. For the purposes of this report, a claim is assembled when the Board receives a notice of injury and a qualifying medical form. The number of assembled claims totaled 174,239 in 2018 (see A-5 and A-6).

Controverted Claims

In a controverted claim, the insurance carrier or self-insured employer challenges the injured worker's eligibility for workers' compensation benefits. When this happens, a pre-hearing conference is held.¹ The expedited hearing process sets a goal of holding a pre-hearing conference within 30 days and resolving controverted claims within 90 days.

There was a decrease in controverted claims in 2018 (see A-7 and A-8). In most cases, a pre-hearing conference was held within 25 days of the notice of controversy (see A-9).

Established Claims

Regulations require the Board to issue a decision determining employer liability in all claims involving more than one week of lost time, even if the insurer has accepted the claim and is making payment. Effective January 15, 2016, the Board no longer issues determinations in claims that are assembled where there is no compensable lost time and no issues or disputes to resolve. To find liability, the Board must determine that (1) an accident or occupational disease arising out of and in the course of employment occurred, (2) timely notice was given to the employer, and (3) there was a causal relationship between the work injury or illness and the consequential disability. This is known as Accident, Notice, and Causal Relationship or Occupational Disease, Notice, and Causal Relationship (see A-10 and A-11). The Board typically establishes only those cases with compensable lost time.

¹ Insurers file a Notice That Right To Compensation Is Controverted to challenge a claim, but the Board's business rules do not treat a claim as controverted unless a qualifying medical form is filed by an authorized health care provider. In many claims, the insurer withdraws the notice of controversy or the claimant does not pursue the claim.

Claim Resolution

In 2018, the Board issued 423,338 resolutions, an increase of nearly 10% over 2017 (see A-12). By statute, the Board resolves issues in workers' compensation claims through both formal and informal means. Formal resolution refers to the formal hearing process, in which a workers' compensation law judge receives evidence, hears testimony, decides disputed legal and factual questions, and awards benefits. Informal resolutions do not involve hearings; decisions are made based on information collected in the electronic case file of the injured worker. They are proposed by the Board and are not effective if either party objects within 30 days. Two informal resolution processes in place since 2016, in part, allow available hearing calendar time to be utilized for cases with issues: Section 32 Waiver Agreements (March 1, 2016) and Stipulation Agreements (November 2, 2016). Although an informal process is followed to resolve these agreements, the resulting desk determinations are final determinations.

Informal Resolutions

More than half (56%) of 2018 resolutions came about through informal channels, including: conciliation, administrative determinations and final desk determinations (see A-13).

Approximately 33.1% of resolutions were by conciliation, compared to 32.7% in 2017. In the final desk determination category in place since 2016, there were 14,061 resolutions in 2018; as expected, this category increased from both 2016 and 2017, and allowed for more timely hearings for cases with issues (see A-12 and A-13).

Formal Resolutions

In 2018, the Board held 276,320 hearings (see A-14 and A-15), which produced 166,301 hearing resolutions and 19,165 formal waiver agreements (see A-13).

Virtual Hearings

In October of 2017, the Board implemented virtual hearings, a system that enables all parties in a workers' compensation hearing to participate remotely using their computer or mobile device. Through the end of 2018, virtual hearings have been implemented in 92% of Board hearing locations and over 164,000 virtual hearings have been held. Approximately 38% of virtual hearings held in 2018 had at least one remote attendee (see A-16). It should be noted that the number of locations providing virtual hearings increased over the course of 2017 and 2018. It is expected that the percentage of virtual hearings with one or more remote parties of interest will continue to increase during 2019 as all locations provide this service.

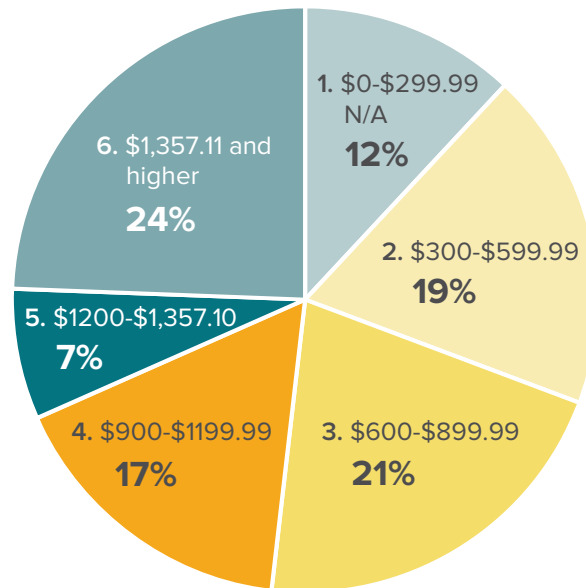
Appeals Process

If one of the parties believes the judge had an error of fact in the decision, that party may raise an objection through an administrative appeal. The Board's Administrative Review Division (ARD) receives all requests for appealed cases. Regulations for Application for Board Review adopted on December 1, 2016, streamline and clarify the process. Over the past few years, the Board has worked diligently to reduce the inventory and amount of time it takes to resolve appealed cases. In 2017, 91% of ARD cases were less than six months old. This number increased to 94% in 2018. Additionally, the inventory of appealed cases has more than halved during the last four years, from 8,404 as of January 1, 2015, to 3,834 on January 1, 2019 (see A-17).

Current Offices, Hearing Points, and Service Center Locations



AWW for Established Claims* with First Indemnity Award in 2018



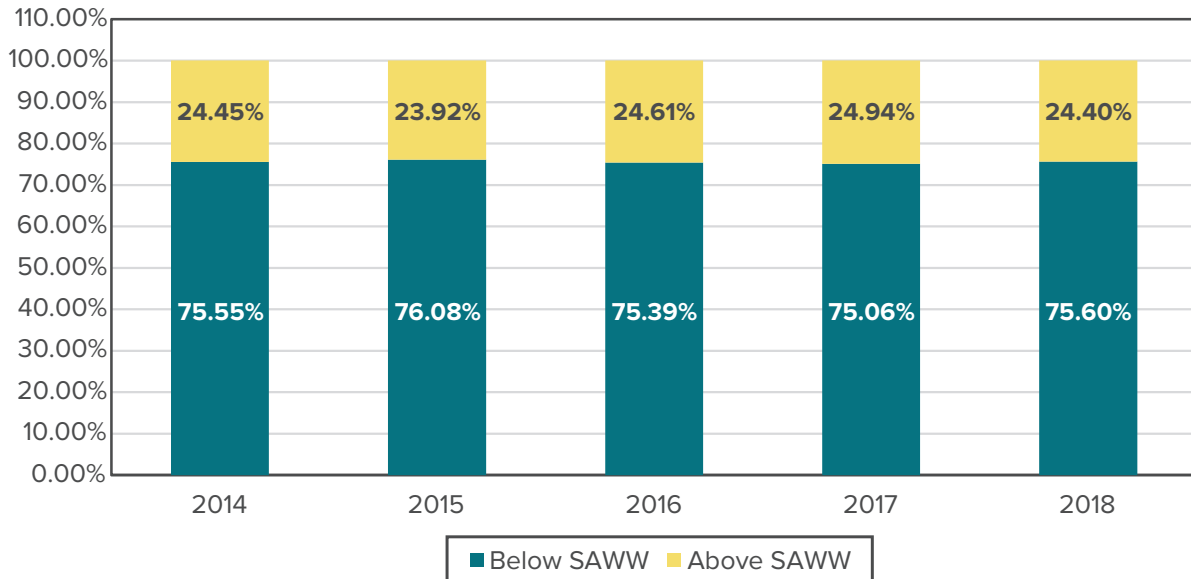
Average Weekly Wage	2018	
	# of Claimants	% of Claimants
1. \$0 - \$299.99, N/A	9,565	11.9%
2. \$300 - \$599.99	15,060	18.8%
3. \$600 - \$899.99	16,902	21.1%
4. \$900 - \$1199.99	13,263	16.6%
5. \$1200 - \$1,357.10	5,786	7.2%
6. \$1,357.11 and higher	19,549	24.4%
Totals	80,125	100.0%

*An “established claim” is one where the Board has made a finding of a work-related accident or injury.

SAWW = Statewide Average Weekly Wage as determined by the New York State Department of Labor. The SAWW is calculated based on the previous calendar year and is reported by the Commissioner of Labor to the Superintendent of Insurance by 3/31.

The established claims in this report include previously established claims for which a Board finding amended or reaffirmed the claim’s status. For resolutions duly filed through the Board’s administrative and conciliation processes, parties have 30 days to object. Since this data is captured in mid-January, some resolutions “duly filed” in December (but not finalized) are not included in the count for this report. It is estimated that these affirmations account for between 1% and 3% of the total.

Average Weekly Wage in Relation to SAWW for Established Claims* with First Indemnity Award in 2014 to 2018



Year	SAWW	Below SAWW	Above SAWW
2014	\$1,212.98	75.55%	24.45%
2015	\$1,266.44	76.08%	23.92%
2016	\$1,296.48	75.39%	24.61%
2017	\$1,305.92	75.06%	24.94%
2018	\$1,357.11	75.60%	24.40%

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Timely First Report of Injury (FROI)

Quarter	Payor Count	Performance Goal	% of FROI Submitted on Time
Quarter 1	754	85%	81.0%
Quarter 2	734	85%	81.8%
Quarter 3	702	85%	82.2%
Quarter 4	752	85%	82.4%

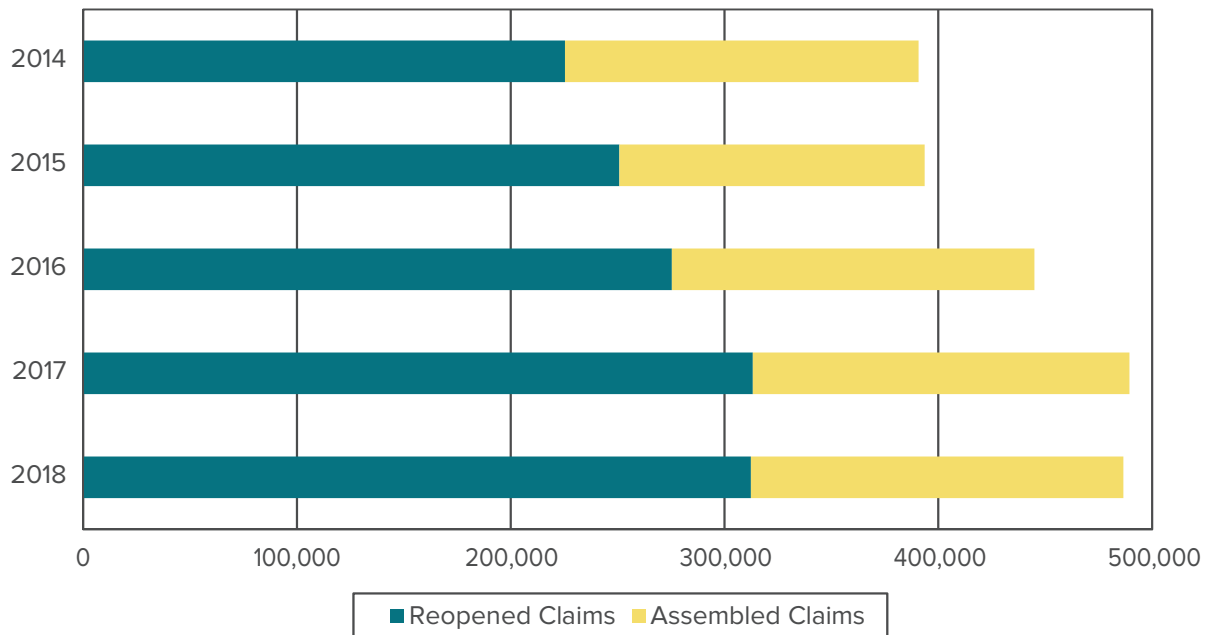
According to NYCRR Section 300.22, for a **FROI** to be considered timely it must be received within 18 days of the disability event or 10 days from employer knowledge of the event or 10 days from the initial date of disability, whichever is longer. The Board began measuring timely **FROI** submissions in the 4th quarter of 2015 with a performance goal of 70% timely submission.

Timely Payments Subsequent Report of Injury (SROI)

Quarter	Payor Count	% of Filings Showing Initial Payments on Time	% of Initial Payments on Time	% of Initial Installment Payments on Time
Quarter 1	438	67.5%	89.7%	94.2%
Quarter 2	410	68.4%	89.9%	94.2%
Quarter 3	393	68.6%	90.1%	94.8%
Quarter 4	397	70.3%	89.9%	94.3%

The performance targets for **SROI** (% of Initial Payments on Time) were met for each of the quarters in 2018. The Board began measuring timely initial payments in the 1st quarter of 2017 with a performance goal of 70% timely submission. As of the 4th quarter of 2018, the goal is 85%.

Claims Assembled and Reopened From 2014 to 2018



Year	Reopened Claims	Assembled Claims
2014	225,450	165,304
2015	250,804	142,830
2016	275,423	169,636
2017	313,223	176,167
2018	312,315	174,239

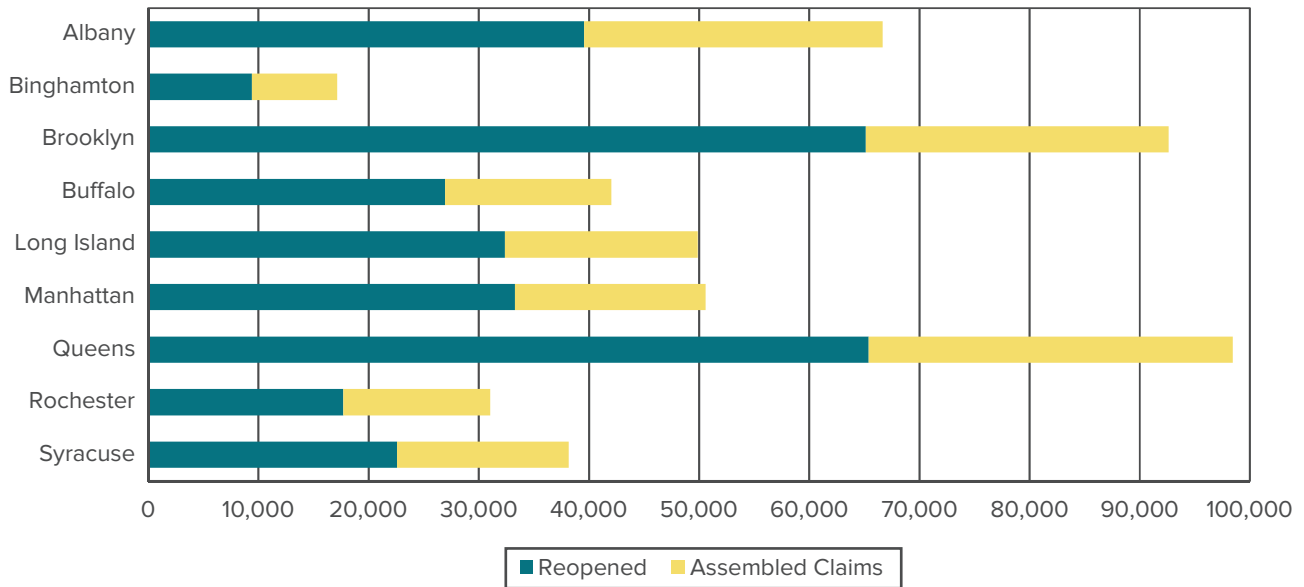
The implementation of Electronic Data Interchange (EDI) by all carriers in April 2014 has enabled the Board to auto-assemble claims upon receipt of the **First Report of Injury (FROI)**. Now, 86.6% of assembled claims are auto-assembled. When the carrier learns of the disability event (workplace injury), it must file a **FROI** with the Board. The higher number of assembled cases since 2014 reflects the effectiveness of EDI, which in turn supports the Board’s efforts to monitor and ensure compliance with filing and payment obligations.

A **reopened claim** is one that has been reactivated to resolve new issues following a finding that no further action was necessary.

The number of **claims assembled** reflects the number of reported workplace injuries for which the agency may be called upon to resolve issues, monitor compliance, and ensure the timely and appropriate payment of benefits. The count of assembled claims includes both accepted and controverted claims under the Workers’ Compensation Law, Volunteer Firefighters’ Benefit Law, and Volunteer Ambulance Workers’ Benefit Law.

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Claims Assembled and Reopened in 2018 by District Office



District Office	Reopened Claims	Assembled Claims
Albany	39,553	27,117
Binghamton	9,392	7,744
Brooklyn	65,139	27,484
Buffalo	26,945	15,100
Long Island	32,374	17,490
Manhattan	33,273	17,299
Queens	65,383	33,042
Rochester	17,691	13,357
Syracuse	22,565	15,606
Total	312,315	174,239

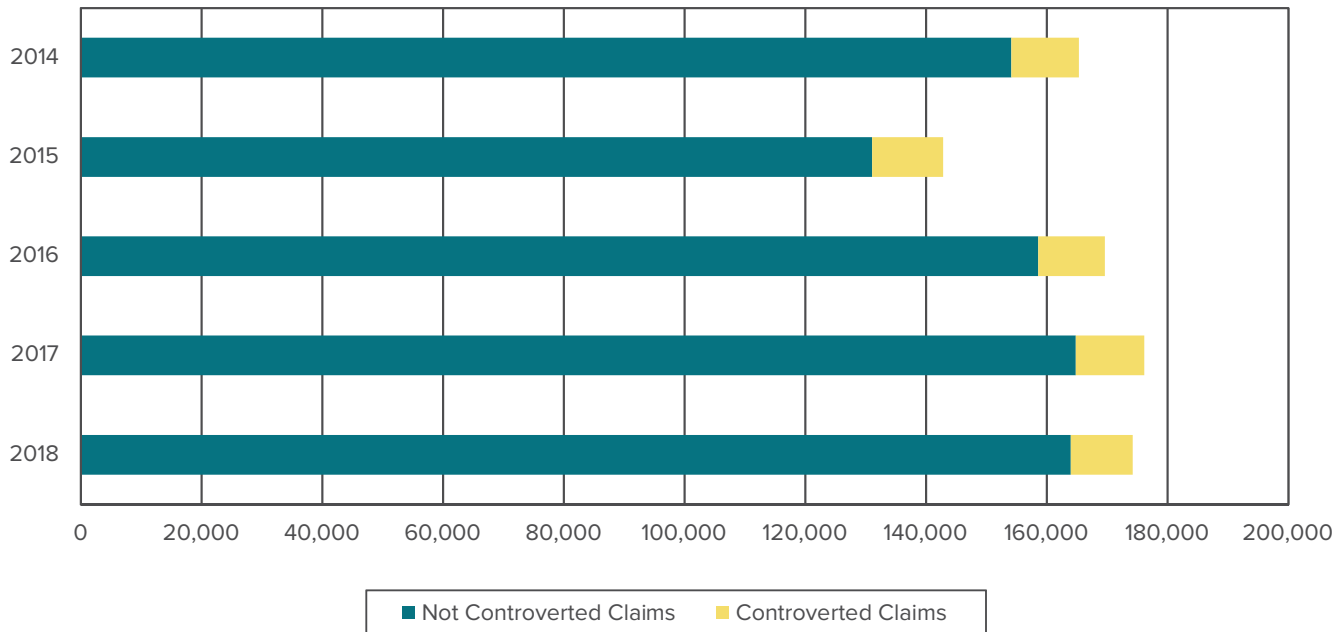
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A-7

Claims Assembled: Controverted vs. Not Controverted From 2014 to 2018

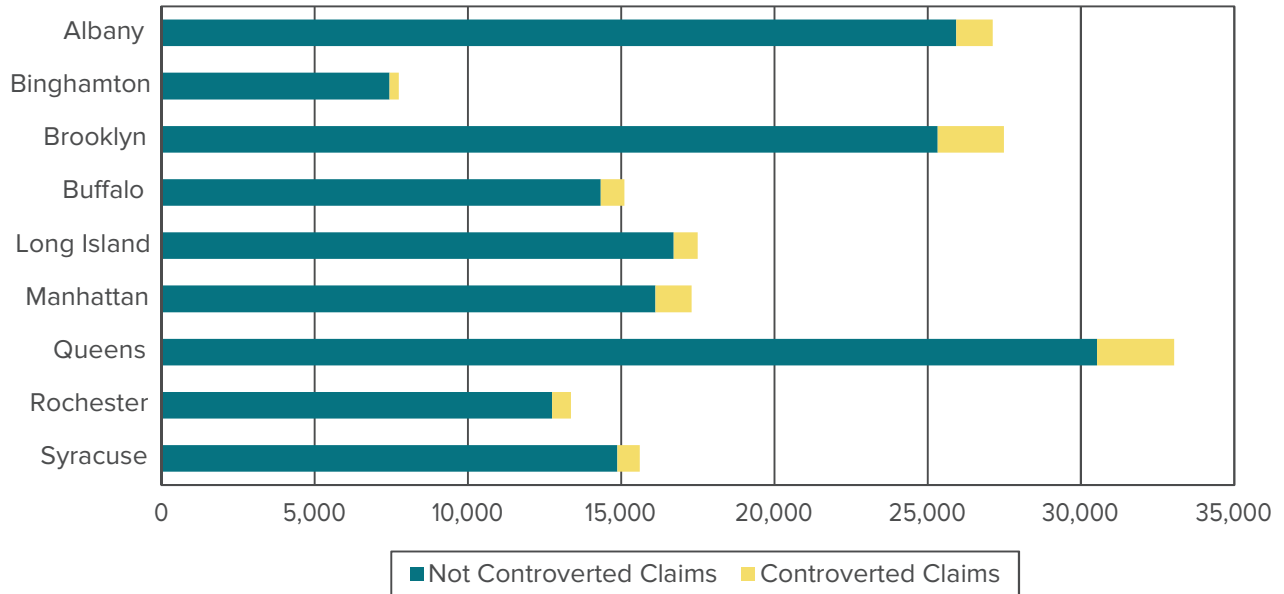


Year	Total Claims Assembled	Controverted Claims	Not Controverted	Percent Controverted
2014	165,304	11,175	154,129	6.8%
2015	142,830	11,743	131,087	8.2%
2016	169,636	11,063	158,573	6.5%
2017	176,167	11,352	164,815	6.4%
2018	174,239	10,246	163,993	5.9%

A **controverted claim** is one for which the Board has received both notice that right to compensation is controverted (indicating that the carrier disputes the claim), and qualifying medical documentation.

A-8

Claims Assembled: Controverted vs. Not Controverted in 2018 by District Office



District Office	Total Claims Assembled	Controverted Claims	Not Controverted	Percent Controverted
Albany	27,117	1,188	25,929	4.4%
Binghamton	7,744	302	7,442	3.9%
Brooklyn	27,484	2,159	25,325	7.9%
Buffalo	15,100	772	14,328	5.1%
Long Island	17,490	781	16,709	4.5%
Manhattan	17,299	1,184	16,115	6.8%
Queens	33,042	2,509	30,533	7.6%
Rochester	13,357	614	12,743	4.6%
Syracuse	15,606	737	14,869	4.7%
Total	174,239	10,246	163,993	5.9%

A **controverted claim** is one for which the Board has received both notice that right to compensation is controverted (indicating that the carrier disputes the claim), and qualifying medical documentation.

Median Number of Days From Controversy to Pre-Hearing Conference (PHC) by Year

Year	Total PHC	Median Days from Controversy to PHC
2014	10,266	25
2015	11,427	25
2016	12,487	25
2017	13,350	25
2018	14,833	25

The governing Board regulation directs that the Pre-Hearing Conference be held within 30 days. This benchmark is consistently met by the Board.

Claims Established From 2014 to 2018 by Claim Type and Year

Year Established	Total Claims Established	WCL Claims (1)	VFBL Claims (2)	VAWBL Claims (3)
2014	124,878	124,164	643	71
2015	134,126	133,268	790	68
2016	101,703	101,225	437	41
2017	99,755	99,336	398	21
2018	105,966	105,568	378	20

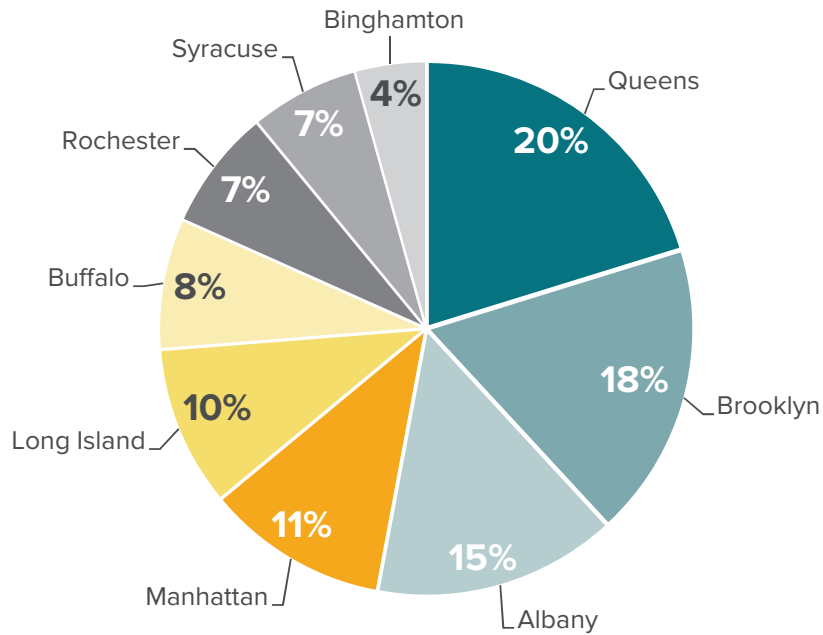
- (1) Claims under the Workers' Compensation Law
- (2) Claims under the Volunteer Firefighters' Benefit Law
- (3) Claims under the Volunteer Ambulance Workers' Benefit Law

An "established claim" is one where the Board has made a finding of a work-related accident or injury.

The established claims in this report include previously established claims for which a Board finding amended or reaffirmed the claim's status. For resolutions duly filed through the Board's administrative and conciliation processes, parties have 30 days to object. Since this data is captured in mid-January, some resolutions "duly filed" in December (but not finalized) are not included in the count for this report. It is estimated that these affirmations account for between 1% and 3% of the total.

A-11

Claims Established in 2018 by District Office

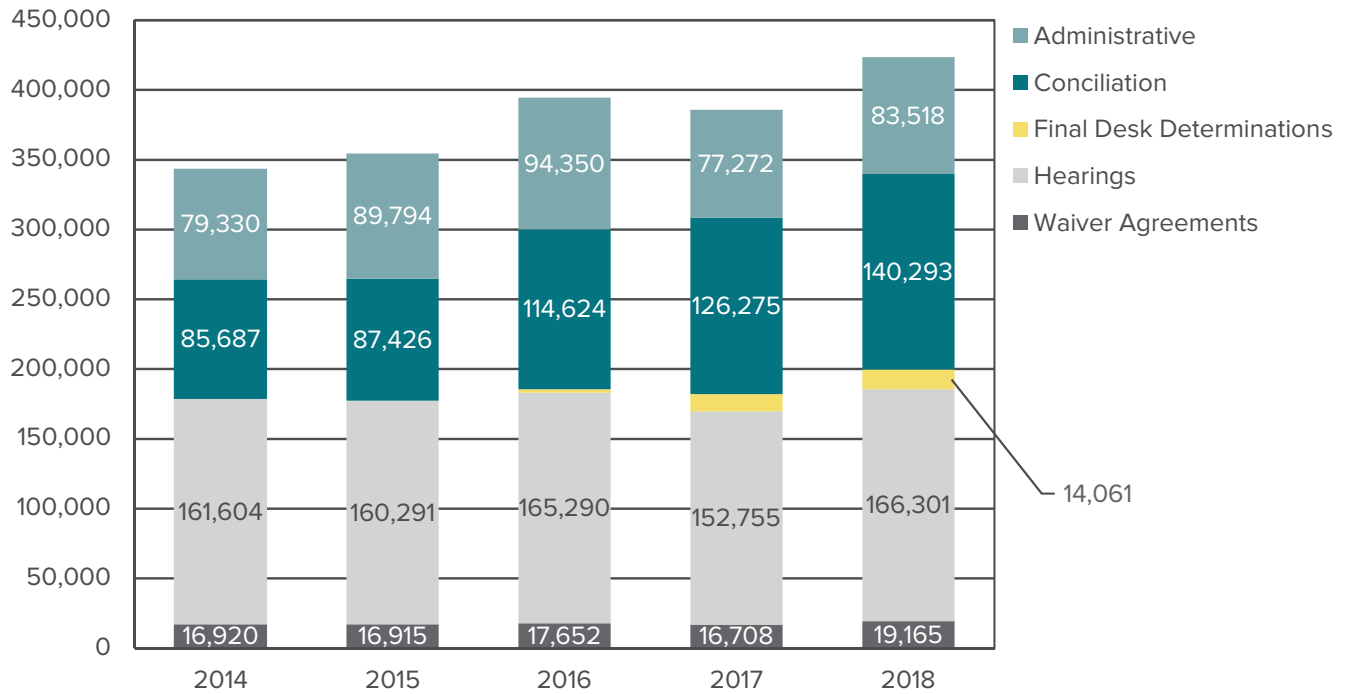


District Office	Claims Established
Albany	15,681
Binghamton	4,585
Brooklyn	18,977
Buffalo	8,408
Long Island	10,349
Manhattan	11,718
Queens	21,429
Rochester	7,795
Syracuse	7,024
Total	105,966

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Claims Resolution by Board Processes 2014 to 2018



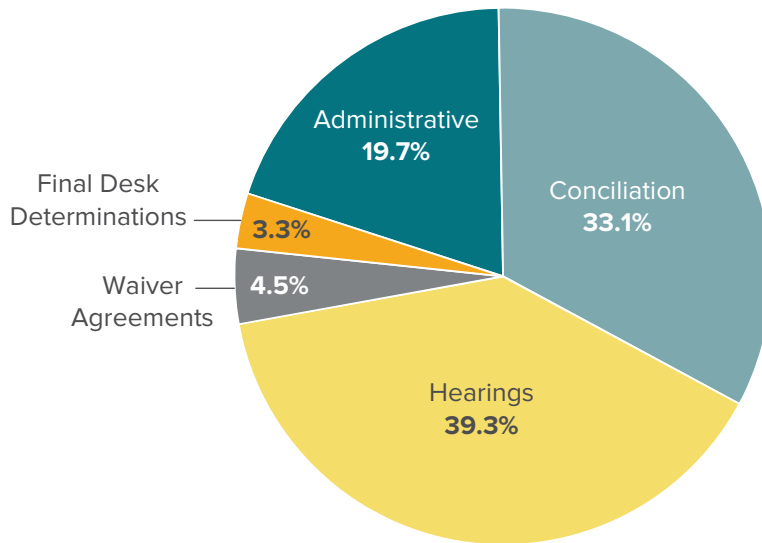
Claim Resolutions	Resolution Year				
	2014	2015	2016	2017	2018
Administrative	79,330	89,794	94,350	77,272	83,518
Conciliation	85,687	87,426	114,624	126,275	140,293
Final Desk Determinations	-	-	2,381	12,570	14,061
Hearings	161,604	160,291	165,290	152,755	166,301
Waiver Agreements	16,920	16,915	17,652	16,708	19,165
Total	343,541	354,426	394,297	385,580	423,338

Administrative includes Administrative Determinations, Administrative Closures and Cancellations. (A claim is cancelled if it is determined to be a duplicate.)

Conciliation provides an informal and prompt resolution of the claim based upon the cooperation of both parties: the injured worker and the insurance carrier/self-insured employer.

Final Desk Determinations reflect final desk decisions, which are identified by Board decision forms (NOSD-SL, NOSD-NSL, C67-D, C68A-D, and PD-32). The PD-32 waiver agreement has been in effect since March 1, 2016. The stipulation agreements have been in effect since November 2, 2016.

A claim resolved by the **Hearing** process is one for which a judge has determined that no further action by the Board is necessary at the conclusion of the hearing; this includes Pre-Hearing Conferences. A Pre-Hearing Conference provides a mechanism for the identification of issues and relevant evidence and permits parties of interest to assess their case and to resolve outstanding issues prior to scheduling a hearing regarding those issues. The count of hearings also includes Administrative and Full Board Review resolutions.



Claim Resolution	Number of Resolutions	Percentage of Resolutions
Informal	237,872	56.2%
Administrative	83,518	19.7%
Conciliation	140,293	33.1%
Final Desk Determinations	14,061	3.3%
Formal	185,466	43.8%
Hearings	166,301	39.3%
Waiver Agreements	19,165	4.5%
Total	423,338	100.0%

Administrative includes Administrative Determinations, Administrative Closures and Cancellations. (A claim is cancelled if it is determined to be a duplicate.)

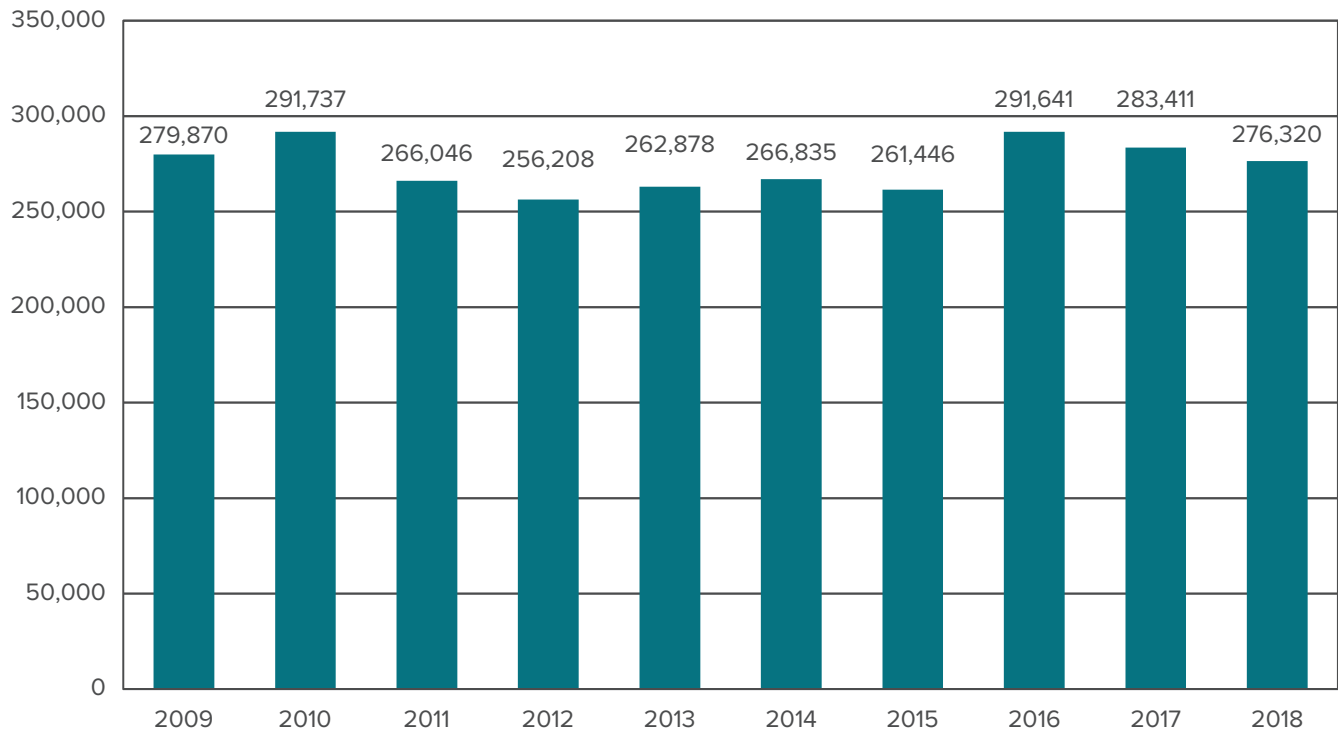
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A-14

Number of Hearings Held from 2009 to 2018, Ten-Year Trend



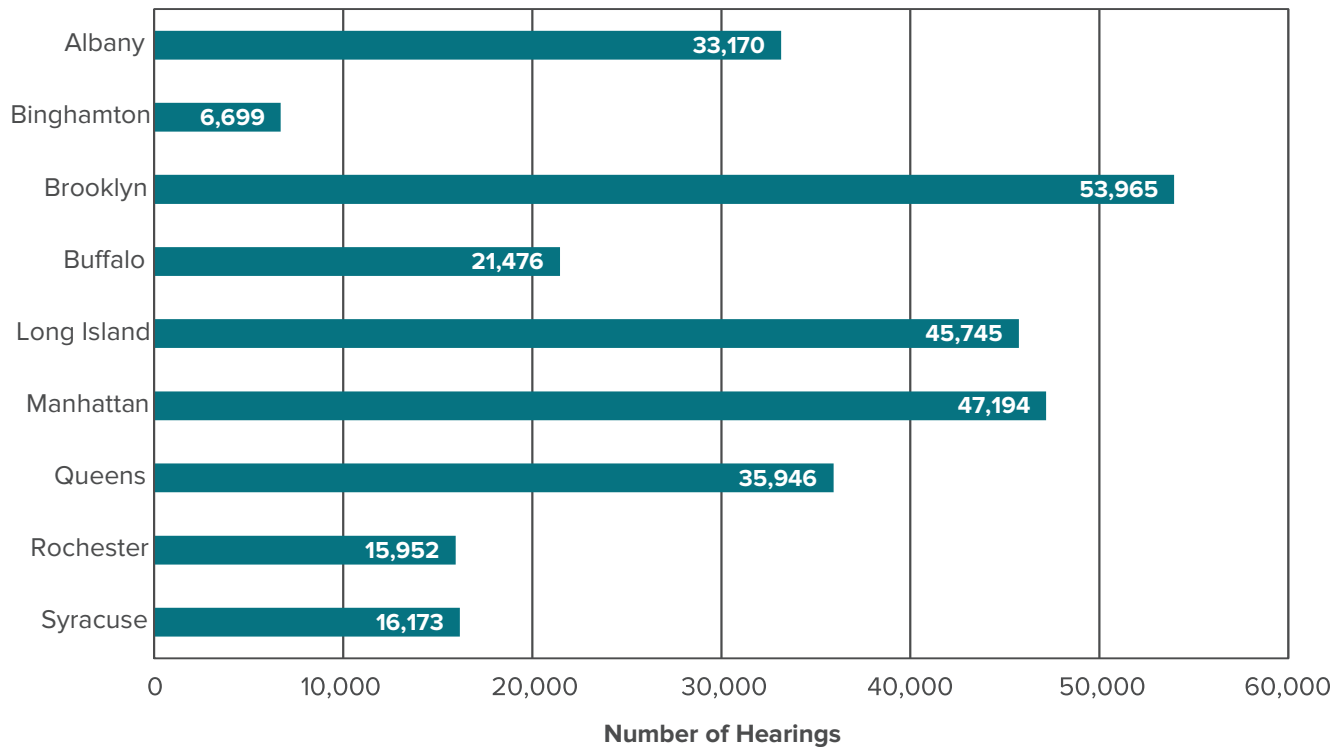
Year	Total Hearings Held
2009	279,870
2010	291,737
2011	266,046
2012	256,208
2013	262,878
2014	266,835
2015	261,446
2016	291,641
2017	283,411
2018	276,320

Through 2015, the number of hearings excludes commissioner hearings, board panel reviews and Section 32 waiver agreements. It includes hearings held at district offices, customer service centers and hearing point locations. Starting in 2016, the count includes Section 32 hearings.

If a hearing was held to resolve the issues in more than one claim for an individual injured worker, then the total number of hearings in this report reflects the total number of claims addressed at the hearing.

A-15

Hearing Count in 2018 by District Office



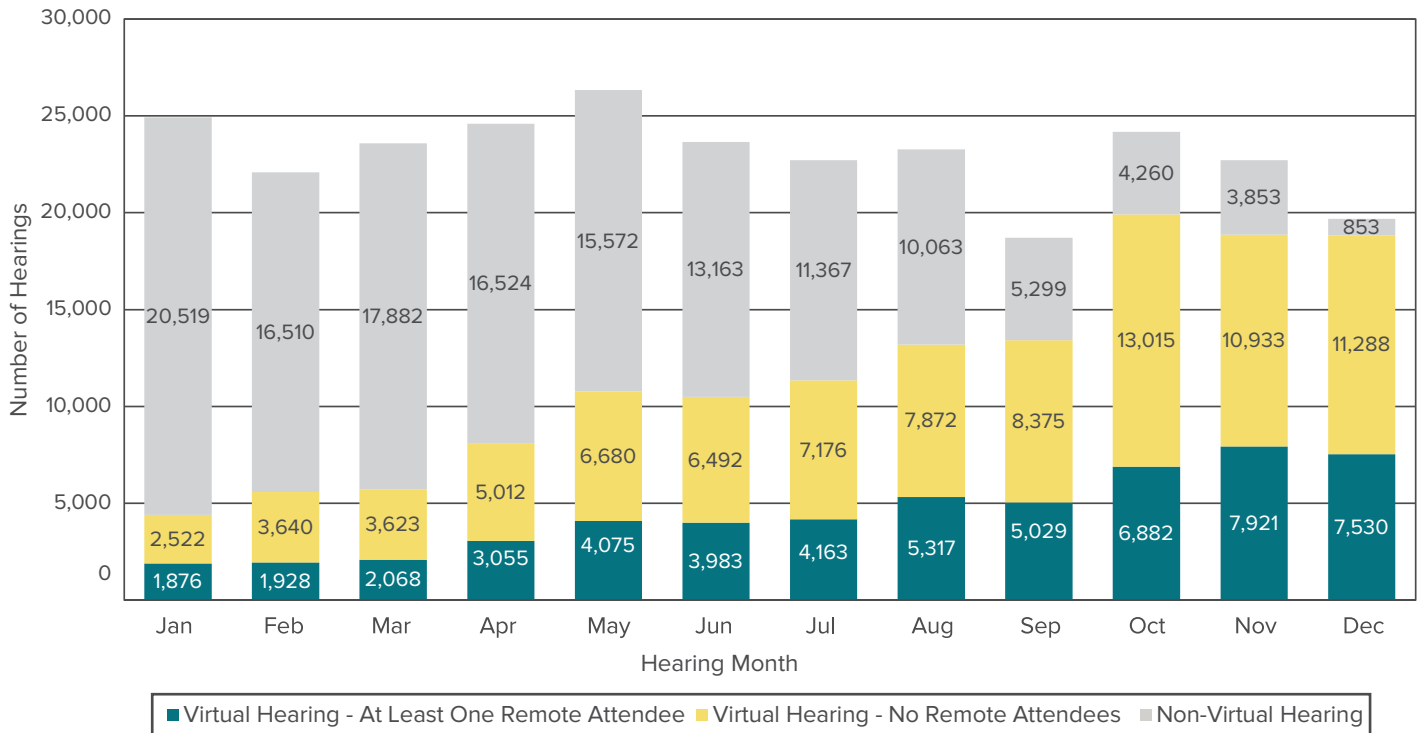
District Office	Number of Hearings	Distinct Claim Count per District
Albany	33,170	27,117
Binghamton	6,699	7,744
Brooklyn	53,965	27,484
Buffalo	21,476	15,100
Long Island	45,745	17,490
Manhattan	47,194	17,299
Queens	35,946	33,042
Rochester	15,952	13,357
Syracuse	16,173	15,606
Total	276,320	174,239

The number of hearings excludes commissioner hearings and board panel reviews. It includes hearings held at district offices, customer service centers and hearing point locations.

If a hearing was held to resolve the issues in more than one claim for an individual injured worker, then the total number of hearings in this report reflects the total number of claims addressed at the hearing.

A-16

Virtual Hearings in 2018



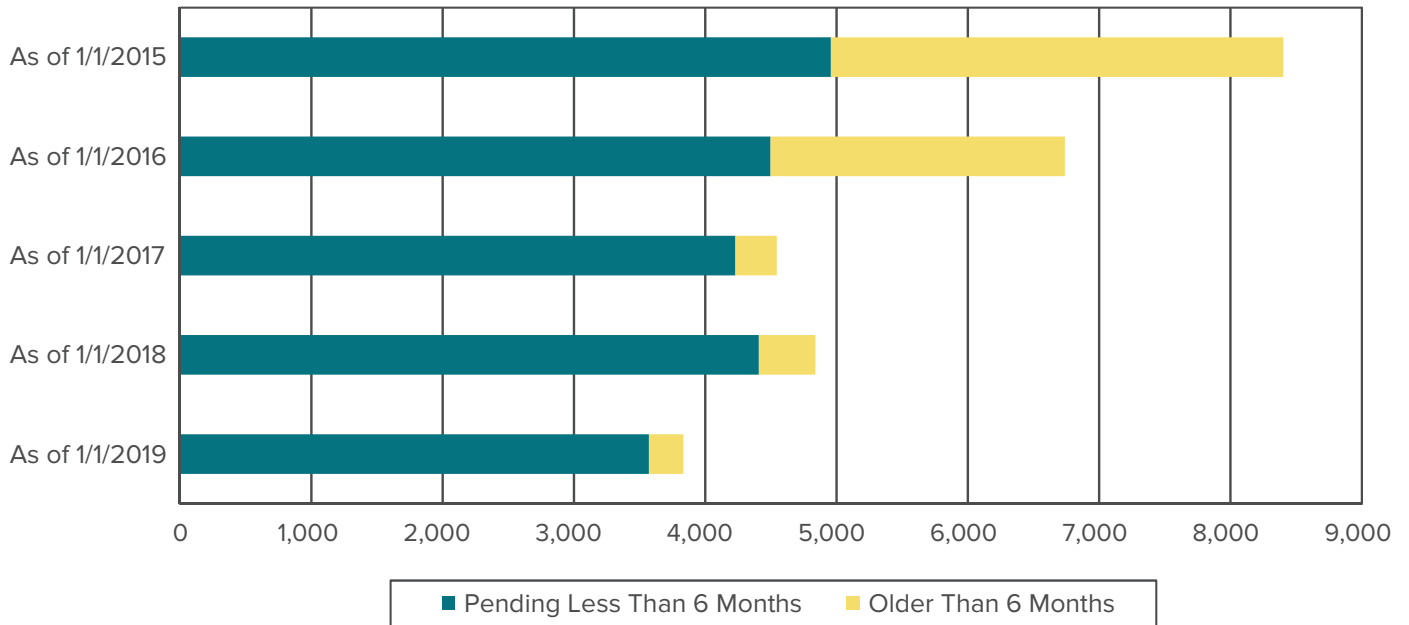
Hearing Month	Total Hearings	Total Virtual Hearings Held	Virtual Hearings With At Least One Remote Attendee	Percentage With At Least One Remote Attendee
January	24,917	4,398	1,876	42.7%
February	22,078	5,568	1,928	34.6%
March	23,573	5,691	2,068	36.3%
April	24,591	8,067	3,055	37.9%
May	26,327	10,755	4,075	37.9%
June	23,638	10,475	3,983	38.0%
July	22,706	11,339	4,163	36.7%
August	23,252	13,189	5,317	40.3%
September	18,703	13,404	5,029	37.5%
October	24,157	19,897	6,882	34.6%
November	22,707	18,854	7,921	42.0%
December	19,671	18,818	7,530	40.0%

A remote attendee is one who participates in a virtual hearing by using the Board’s virtual hearing application and excludes those who appear in person.

If a hearing was held to resolve the issues in more than one claim for an individual injured worker, then the total number of hearings in this report reflects the total number of claims addressed at the hearing.

A-17

Appealed Claims Inventory, Five-Year Trend



As of Date	Inventory	Older than 6 Months	Percentage Pending < 6 Months
1/1/2015	8,404	3,445	59%
1/1/2016	6,740	2,240	67%
1/1/2017	4,547	315	93%
1/1/2018	4,840	430	91%
1/1/2019	3,834	262	94%

Age is measured from the application date of the administrative review. Accuracy of age depends on availability and accuracy of the appeal application date of the claim.



Workers' Compensation Board

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