
JOINT ENFORCEMENT TASK FORCE ON MISCLASSIFICATION AND PAYROLL FRAUD

Wednesday, January 29, 2020
9:00 am – 1:30 pm
Risser Justice Center
120 Martin Luther King Jr. Blvd.
Room 150A
Madison, Wisconsin

Worker's Compensation Division Response to Requests for Information

1. Information Requests

A. Loss taxes and other effect on taxpayers due to worker misclassification:

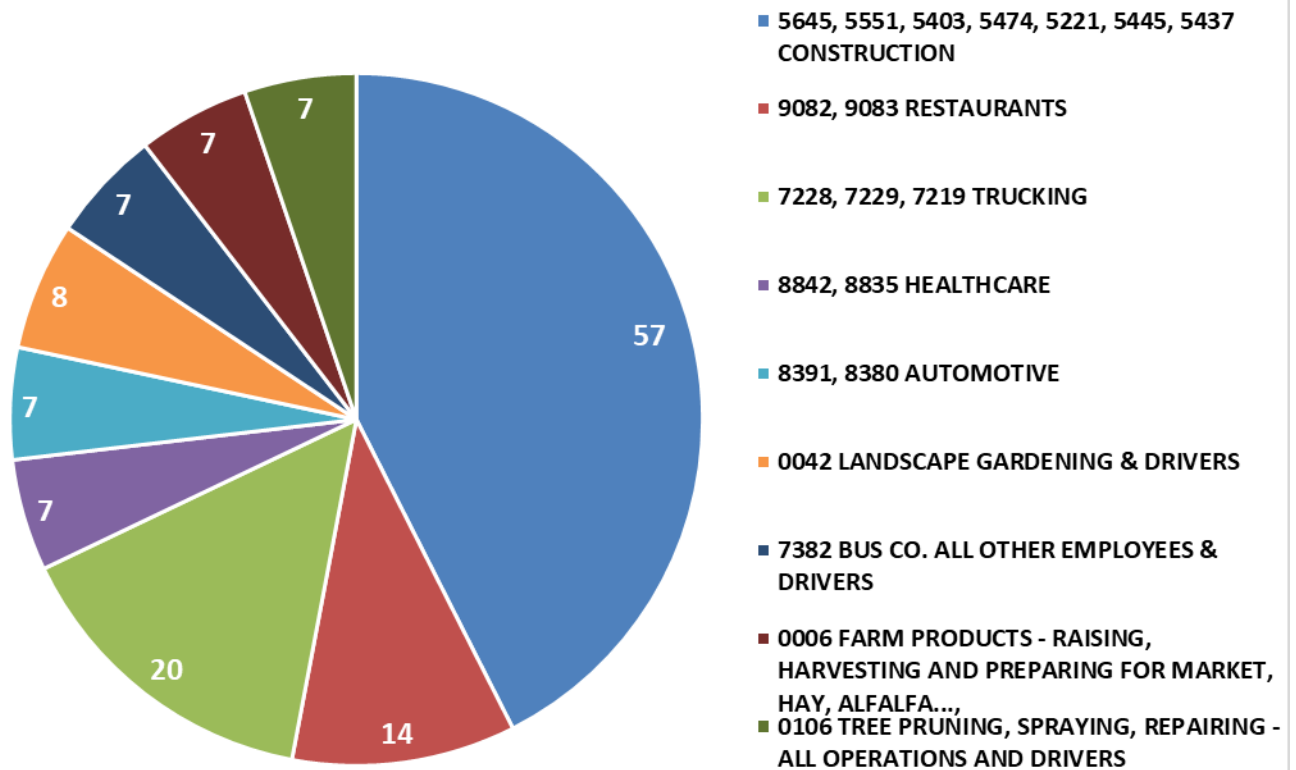
Worker misclassification can lead to a loss of premiums for the insurance industry and higher premiums passed onto insured businesses. The WC Division is unable to estimate loss in taxes but can identify amount of premiums brought in due to compliance (not all of that is related to misclassification). The result of investigations in premium dollars is listed below. Since the last task force in 2009, the average is \$1.37M/year:

2009	\$799,879.00
2010	\$938,014.00
2011	\$1,205,422.00
2012	\$1,145,081.00
2013	\$694,812.00
2014	\$1,634,048.00
2015	\$1,602,597.00
2016	\$2,059,910.00
2017	\$1,680,822.00
2018	\$1,941,501.00

B. WC uninsured claims be broken down by industry:

There were approximately 226 injuries in Uninsured Employers Fund (UEF) claims from 2009-19, of which 134 were covered by nine industries. The following pie chart shows the top nine industries by number of UEF claims 2009-19 (those with 4 or more injuries during the 10-year period). A complete list is available upon request:

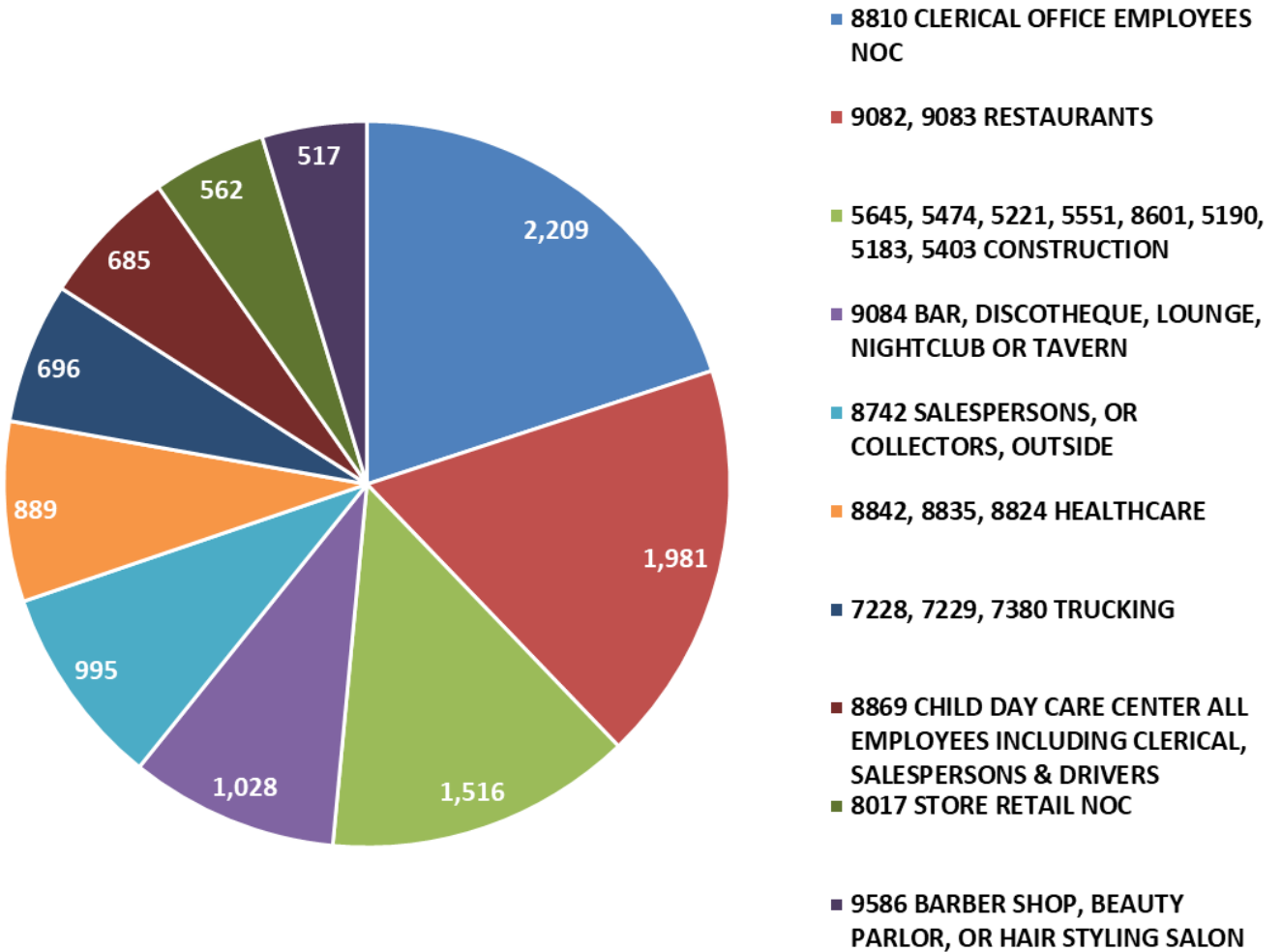
Top 9 Industries by Number of UEF Injuries, 2009-19



C. What is the break down by industry of noncompliance?

There were approximately 15,539 UEF penalties issued against employers during 2009-19. The top 10 industries (those with over 500 penalties, which together account for 11,078 of the penalties) is in the following chart. A complete list is available upon request. *Note NOC = Not otherwise classified.*

Top 10 Industries by Number of UEF Penalties, 2009-19



D. Is there evidence of what happens to companies that "go out of business" after some type of classification related investigation or notice of non-compliance?

The WC law allows for personal liability of corporate officers and LLC members, which remains even if the business closes. The UEF System allows for linking of responsible parties in different businesses. With this, we can identify a responsible party with ownership in more than one entity or a subsequent entity. We could create a report from the linked entities/responsible parties on the UEF System.

Doing this would require the following questions/issues to be addressed:

- What would we do with these types? Accelerated investigation timeline? Change law for stiffer penalty?
- We would need to somehow identify them for misclassification purposes. If that were the case, we could have the boots on the ground in UI pay them a visit if they are still open and non-compliant, next time. Maybe flag them to UI for investigation purposes. We want them to be compliant. WC and UI could collaborate on investigating them at the same time.

E. Is there a difference in compliance between large and small employers?

Yes. Large employers are generally insured in the voluntary market and rarely have lapses. In the voluntary market they have the option for the carrier to back-date coverage. They can close

the lapse, with no penalty or have a penalty rescinded after coverage is put in place. Smaller businesses that are not able to find coverage in the voluntary market need to be insured by the Pool. The Pool is not allowed to back-date coverage.

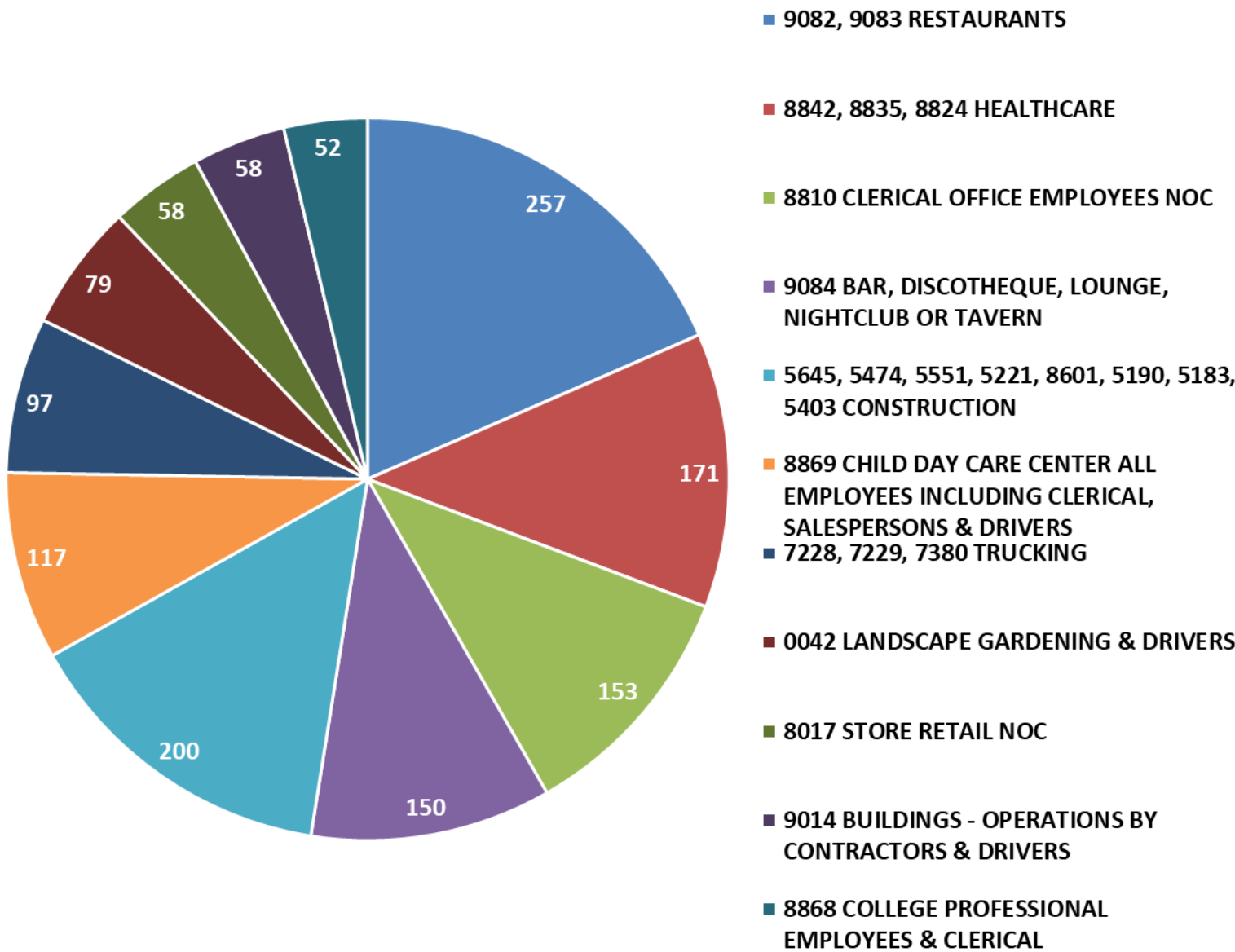
The Wisconsin Compensation Rating Bureau (WCRB) Pool Manual states the following: "To avoid a lapse in coverage, every effort will be made to have the effective date of Pool coverage coincide with the termination date of prior coverage. Back-dating of coverage is not permitted in the Pool. Wisconsin Pool coverage is available to employers who need to satisfy the requirements of the Wisconsin Worker's Compensation Law."

We would need to define small and large in order to quantify the information. We recommend that small employers be defined as having 20 or fewer employees. The Worker's Compensation Division (WCD) has conducted very few investigations with large employers for not having required worker's compensation insurance coverage. The great majority of investigations involved employers with 20 or fewer employees. Please also note "number of employees" in UEF's report is not a hard stop for Investigators. There were 131 employers on the report with zero employees.

F. Is there a way to identify the repeat offenders – by person/company other?

Yes. Any employer with multiple penalty accounts (vs. injury accounts). There were approximately 2,475 multiple penalty accounts for employers from 2009-19. The following table (on next page) shows the top 11 industries with employers that were assigned multiple penalty accounts. There were 1,392 accounts covered by these 11 industries (those with 50 or more multiple penalty accounts). A complete list is available upon request. Note *NOC = Not otherwise classified*.

Repeat Offenders: Top 11 Industries with Employers Assigned Multiple Penalty Accounts, 2009-19



G. Can we quantify the level or percentage of misclassification?

Not in WC through WC's data system.

2. Data sharing

A. What MOUs or other data sharing agreements currently exist?

The WC Division has MOUs and other data sharing agreements with the following entities:

- Wisconsin Compensation Rating Bureau
- Wisconsin Department of Revenue (2)
- Department of Natural Resources
- DWD/Unemployment Insurance Division (multiple agreements)
- DWD/Division of Vocational Rehabilitation
- Department of Transportation, Division of Motor Vehicles
- Department of Health Services (multiple agreements)
 - Division of Health Care Access and Accountability
 - Division of Public Health, Bureau of Environmental and Occupational Health
- Department of Safety and Professional Services/Safety and Buildings Unit
- U.S. Department of Health and Human Services Administration for Children and Families/Office of Child Support Enforcement
- Wisconsin State Lab of Hygiene
- Boston University, School of Public Health
- Worker's Compensation Research Institute
- Department of Justice
- Department of Administration/Division of Hearings and Appeals
- Labor and Industry Review Commission

Copies of/details about individual agreements are available upon request.

B. What other data sharing occurs with other agencies or companies?

WC and the Wisconsin Compensation Rating Bureau share WC insurance coverage data as provided in s. 102.31 (8), Wis. Stats.

Other data sharing occurs with the UI Division, Division of Employment and Training, ASU (our TPA) and the state departments of Financial Institutions, Revenue, Transportation, Children & Families and the Office of the Commissioner of Insurance.

C. What laws, rules or policies prohibit or impede data sharing with other governmental agencies, including counties and municipalities?

Section 102.33 (2) (b), Wis. Stats., provides that any record maintained by the department that reveals the identity of an employee who claims worker's compensation benefits, the nature of a claimed injury, the employee's past or present medical conditions, the extent of an employee's disability, the amount, type, or duration of benefits, and any financial information provided to the department by an employer regarding self-insurance are generally confidential and not open to public inspection.

Section 102.31 (8), Wis. Stats., provides that no information from the Wisconsin Compensation Rating Bureau (WCRB) about WC insurance coverage including the names of insured employers, employers' addresses, business status, type, dates of coverage, manual premium code, policy numbers, cancellations, terminations, endorsement and reinstatement dates, obtained by the department may be made public by the department except as authorized by the WCRB.

Additionally, other issues include federal requirements for UI data to be held confidential, as well as DFI registration doesn't require LLC members

D. What laws, rules or policies prohibit or impede data sharing with private companies (for example a developer or contractor looking for construction work, a company looking to subcontract IT work, etc.)?

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3. Input from practitioners –

A. What tools do you currently have that seem to be effective? How do you know they are effective (data)?

- Unemployment Insurance Division (UI) SUITES: Database cross matches are completed weekly and quarterly to identify businesses with employee wage reporting that do not currently have coverage. The weekly cross match tool identifies and generates an average of 12,000 investigations annually. These investigations cover potential misclassification issues. UI Audit information within SUITES is another tool used to gather information regarding ownership, contact information, number of employees and independent contractors, and wage information.
- Wisconsin Compensation Rating Bureau (WCRB) – Spectrum: Policy information is generated from Spectrum identifying and notifying entities that have a cancelled policy or have not renewed a policy. A notification is sent to each entity requesting a response. The cases that are not resolved with a response or coverage put in place generate a new investigation. In 2018, this tool was used to initiate 9,950 investigations.
- The ASU Group: This is our third-party administrator organization used to investigate uninsured claims. Uninsured claims reported to our section generate both the claim investigation and simultaneous compliance investigation. Relevant subjectivity and compliance information gathered by either ASU or the UEF investigator is shared to move each investigation forward.
- Department of Financial Institutions (DFI) Corporate Search: This tool is used to identify the current legal status of an entity, effective date of status, any change in status, and contact and address information. Articles of incorporation and annual reports are requested from DFI to gather ownership information, ownership changes, and entity legal name changes. This information is acted on regularly during investigation and collection processes.
- Department of Transportation (DOT) Public Abstract Request System (PARS): Investigators and Collection Specialists use address information from driver, ID, and vehicle registration provided through this tool to track down owners/responsible parties for both investigation and collection activities. It provides both historical and most recent address and name change information. This information is used regularly to determine the correct individual and their most current address and contact information.
- Wisconsin Court System: Warrants are docketed by county clerks in the Consolidated Court Automation Program (CCAP). These warrants place liens on real property owned by the warranted party. It is a tool to facilitate collections at the time of sale, purchase, or applying for a loan. The lien stops the transaction. It requires a contact be made with the Worker's Compensation (WC) Division to make financial arrangements to satisfy the associated liability. CCAP is also a public tool. Anyone can conduct a search on a business or responsible party and identify outstanding or delinquent liabilities with the Worker's Compensation Division. The WC Division does not file warrants if the debtor pays voluntarily.

- Wisconsin Department of Financial Institutions: DFI has an online corporate records search that provides information such as registered agent, office address, registration effective date and other information.
- Wisconsin Department of Revenue (DOR):
 1. *Tax Refund Intercept Program (TRIP)*: Upon a warrant being docketed to an entity or responsible party, the liability is certified to DOR. Section 71.93, Wis. Stats., permits the DOR to intercept, or set off, taxpayer refunds, refundable credits and lottery payments against certain state agency debts. This is an effective tool, averaging collections of over \$200,000 annually.
 2. *State Debt Collection (SDC)*: Under the provisions of Section 71.93(8), Wis. Stats., DOR provides debt collection services to DWD. Under the current agreement, WC is required to send debts greater than \$50.00 to DOR for collection purposes. This is an effective tool, since 2017, averaging collections of over \$600,000 annually.

B. What tools or strategy would you recommend in order to be more effective?

- Access to LLC members as a requirement during DFI registration
- UI to have employers update registration information or owners more frequently
- UI business transfer information easier to access to determine owners/officers/members
- WCRB Spectrum to require the ownership information on all policies

C. Do you have the data you need? If not, what do you need and who has it?

- We often need ownership info at both investigation and collection levels
- Business or owners email address
- Place on WC Investigation System to store email address rather than notes
- Ability to send letter via email at same time it is sending the letter via USPS.

D. What barriers do you face - is there a way to break those barriers?

- Bad addresses
- Limited budget for updating IT resources and applications
- Inability to determine if the business is still in operation/possibly more collaboration with agencies/law enforcement to provide an update

E. What education do you do (aside from the enforcement letters already discussed)? What are ways to reach employers and employees to decrease the amount of misclassification?

- UEF staff make presentations on request to trade groups/conferences with a focus on that industry
- OCI/DWD/WCRB all have robust information on respective websites on requirements to have WC insurance, and how to buy it.
- DWD has had a booth at different employer-focused events around the state over the years, but the type of employer that attends these events is normally compliant already with the law; the non-compliant smallest employers typically do not have the resources to attend such events, or they know they are non-compliant and operate "under the radar."
- Potential ideas
 - Poster, distribution associated with UI posters as distribution stream is already set up.
 - Place on website so employers may also print it.
 - Video on basic requirements, where to purchase coverage

- More prominent WC info on a central location on how to start up a business.

F. Do the penalties currently available (in a limited industry) seem to have an effect? Why or why not? What could be changed? What about other industries?

The WC law allows for personal liability of corporate officers and LLC members, which remains even if the business closes. The UEF System allows for linking of responsible parties in different businesses. With this we can identify a responsible party with more than one business. A majority of employers penalized for failure to carry WC insurance are never penalized again. This suggests that the current penalty is sufficient in most cases to deter non-compliance. Given that there are employers with multiple penalties (some exceeding 10), it may be appropriate to consider a graduated penalty structure where the penalty increases beginning with, say, the third or fifth penalty.