

2017

New York State
Workers' Compensation Board

ANNUAL REPORT



Andrew M. Cuomo, Governor
Kenneth J. Munnely, Chair
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Workers'
Compensation
Board

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WORKERS' COMPENSATION BOARD'S 2017 ANNUAL REPORT

Executive Summary

The Workers' Compensation Board (WCB or Board) is pleased to submit its 2017 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, carrier compliance with timely filing of First Reports of Injury (FROIs), and issuance of Stop Work Orders (SWOs) against employers that fail to maintain appropriate workers' compensation coverage.

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

Stop Work Orders

Nearly all employers in New York State are required to secure workers' compensation coverage. Since 2007, the Board has been authorized to assess penalties (WCL § 141-a) or issue a stop work order (SWO) if an employer fails to maintain required workers' compensation coverage. The SWO has proven an

effective vehicle in promoting compliance. Since 2007, the Board has issued approximately 16,000 SWOs, including 1,454 SWOs in 2017. The vast majority of these were issued downstate — 1,064 in the five boroughs of New York City (see A-2).

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 two-thirds of the prior year's statewide average weekly wage (SAWW), as determined by the Department of Labor. In July 2017, the maximum benefit rate was \$870.61, based on a 2016 SAWW of \$1,305.92.

Excluding the lowest category of wages (\$0 to \$299.99), there is a fairly equal distribution of AWW in established claims in 2017. The highest category of wages (SAWW and higher) continues to trend higher each year. In 2017, close to 25% of established claims were in this category (see A-3).

Claims

First Report of Injury

In 2016, the Board challenged insurance carriers to improve and maintain the timeliness of submitting First Reports of Injury (FROIs), starting with a performance goal of 75% and increasing that goal to 85% in 2017. According to NYCRR Section 300.22, a 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. As a result of WCB outreach and education, the compliance rate increased to 65.5% by the first quarter of 2015 and up to 77.6% by the fourth quarter of 2016, when the Board started assessing performance penalties. NYS insurance carriers improved their performance in 2017 and by the fourth quarter submitted approximately 82.1% of all FROIs on time (see A-4).

Subsequent Report of Injury (SROI)

In addition to the FROI reports, the Board also initiated performance standards for compliance on Subsequent Reports of Injury (SROIs). Two additional measures for initial payment of compensation, timely initial payment and timely installment payment have been implemented. The 2017 performance standards for untimely SROIs showing initial payment of compensation start at a goal of 70% in the first quarter of 2017 and progress to 85% in the fourth quarter of 2017. There has been a marked increase in the compliance rate in the four quarters of 2017. Both timely initial payments and timely installment payments are showing compliance rates in excess of 80% and 90%, respectively (see A-4).

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 176,167 in 2017 (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 slight increase in controverted claims in 2017 (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 2017, the Board issued 385,580 resolutions (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. Informal resolutions do not involve hearings; decisions are proposed based on information collected in the electronic case file of the injured worker when there is no significant dispute between the parties. 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 2017 resolutions came about through informal channels, including: conciliation, administrative determinations, and final desk determinations (see A-12).

Approximately 32.7% of resolutions were by conciliation, compared to 29.1% in 2016. The percentage of

administrative determinations is down slightly from 2016 (23.9% vs. 20%), due, in part, to eliminating their issuance in certain cases that do not have any lost time. In the final desk determination category in place since 2016, there were 12,570 resolutions in 2017; as expected, this category increased from 2016 and allowed for more timely hearings for cases with issues (see A-12).

Formal Resolutions

In 2017, the Board held 283,411 hearings (see A-14 and A-15), which produced 152,755 hearing resolutions and 16,708 formal waiver agreements (see A-13). The number of formal resolutions decreased by 7.4% due to the shift to informal resolutions and fewer hearings in 2017 (see A-12).

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 amount of time it takes to resolve appealed cases. Currently, 91% of ARD cases are less than six months old (see A-16).

Current Offices, Hearing Points, and Service Center Locations



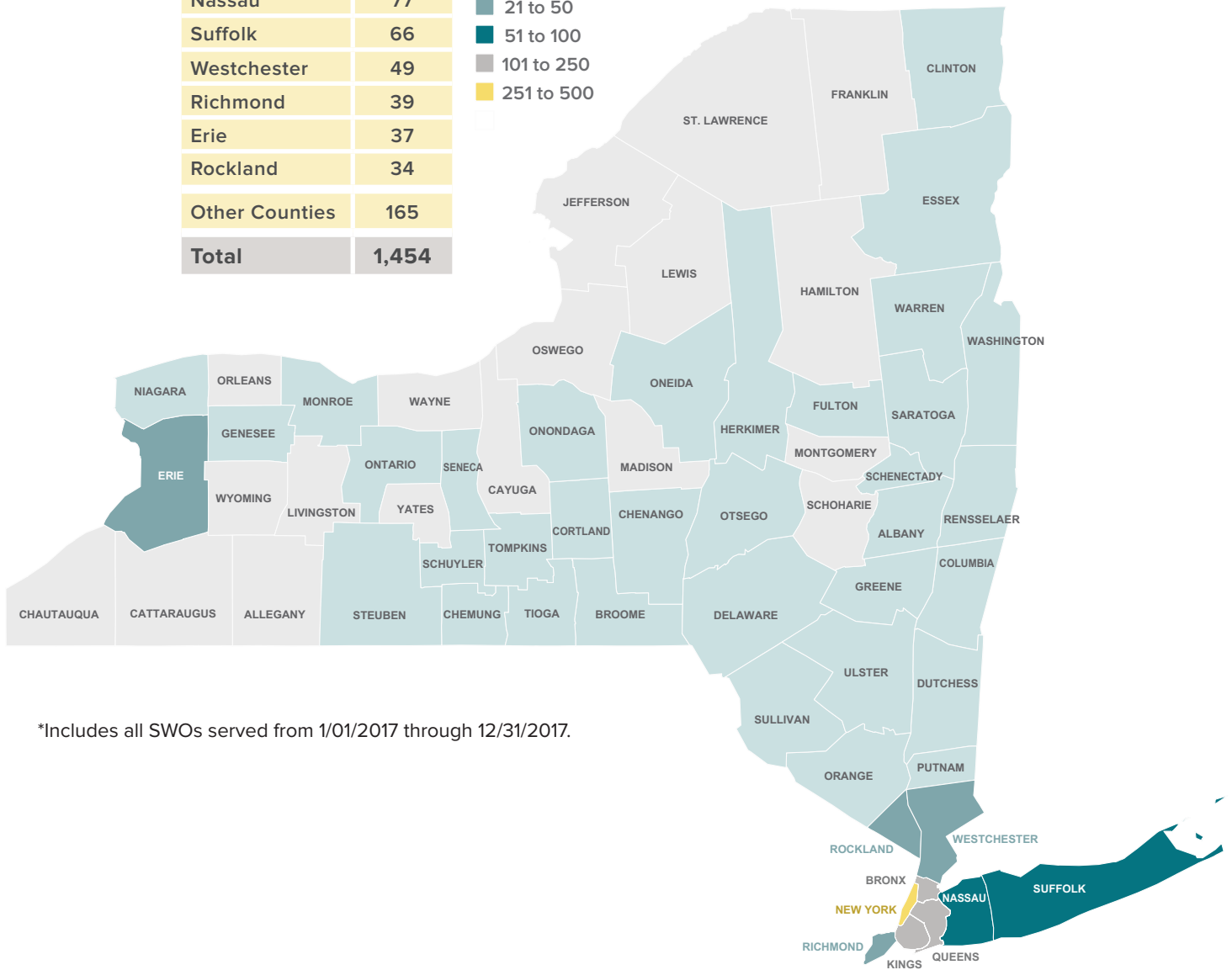
Stop Work Orders (SWOs) Served in 2017*

SWOs Served Top Counties

County Name	Count
New York	314
Kings	234
Queens	232
Bronx	207
Nassau	77
Suffolk	66
Westchester	49
Richmond	39
Erie	37
Rockland	34
Other Counties	165
Total	1,454

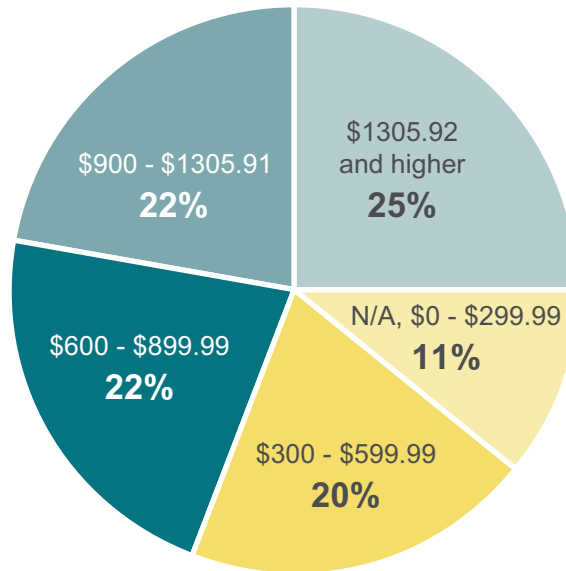
SWOs Served

- 0
- 1 to 20
- 21 to 50
- 51 to 100
- 101 to 250
- 251 to 500



*Includes all SWOs served from 1/01/2017 through 12/31/2017.

Average Weekly Wage For Established Claims* with First Indemnity Award in 2017



Average Weekly Wage For Established Claims with First Indemnity Award in 2013 to 2017

Average Weekly Wage (# and % of Claimants)	First Indemnity Award Year									
	2013		2014		2015		2016		2017	
	#	%	#	%	#	%	#	%	#	%
N/A, \$0 - \$299.99	6,883	9.5%	7,116	9.4%	6,674	8.9%	7,669	9.8%	8,824	11.0%
\$300 - \$599.99	17,894	24.7%	18,022	23.8%	17,060	22.9%	16,841	21.5%	16,324	20.4%
\$600 - \$899.99	17,969	24.8%	18,353	24.2%	17,649	23.7%	17,723	22.6%	17,631	22.0%
\$900 - less than SAWW**	15,251	21.1%	15,970	21.1%	16,004	21.5%	16,718	21.3%	17,361	21.7%
SAWW and higher	14,430	19.9%	16,317	21.5%	17,197	23.1%	19,397	24.8%	19,890	24.9%
Totals	72,427	100.0%	75,778	100.0%	74,584	100.0%	78,348	100.0%	80,030	100.0%

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

**SAWW = Statewide Average Weekly Wage as determined by the NYS Department of Labor.

The established claims data include some previously established claims for which a Board finding during calendar years 2013-2017 amended or reaffirmed the claim’s status. For Administrative and Conciliation resolutions, parties have 30 days to object to the resolution. Since the data is captured in mid-January, some resolutions “duly filed” in December (but not finalized) are not included in the counts for this report. It is estimated that these affirmations account for between 1% and 3% of the total.

Payor Compliance in 2017 by Quarter

Timely First Report of Injury (FROI)

Quarter	Payor Count	Performance Goal	% of FROI Submitted On Time
Quarter 1	728	85%	77.4%
Quarter 2	739	85%	79.7%
Quarter 3	698	85%	82.5%
Quarter 4	719	85%	82.1%

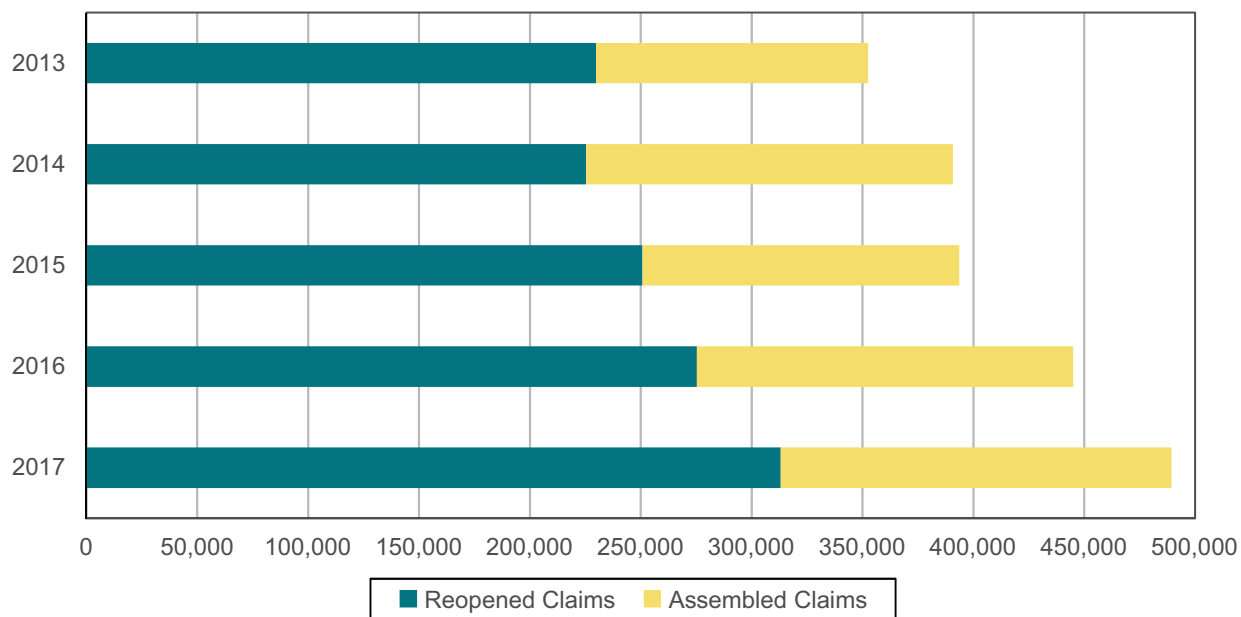
According to NYCRR Section 300.22, for a FROI to be considered timely it must be received within 18 days of the disability event or 10 days from employer knowledge of the event or 10 days from the initial date of disability, whichever is longer.

Timely Payments Subsequent Report of Injury (SROI)

Quarter	Payor Count	% of Initial Payments On Time	% of Initial Installment Payments On Time
Quarter 1	525	80%	89.8%
Quarter 2	459	84.3%	91.2%
Quarter 3	433	84.3%	93.8%
Quarter 4	427	85.4%	94.0%

The performance targets for SROI (% of Initial Payments On Time) were met for each of the quarters in 2017.

Claims Assembled & Reopened From 2013 to 2017



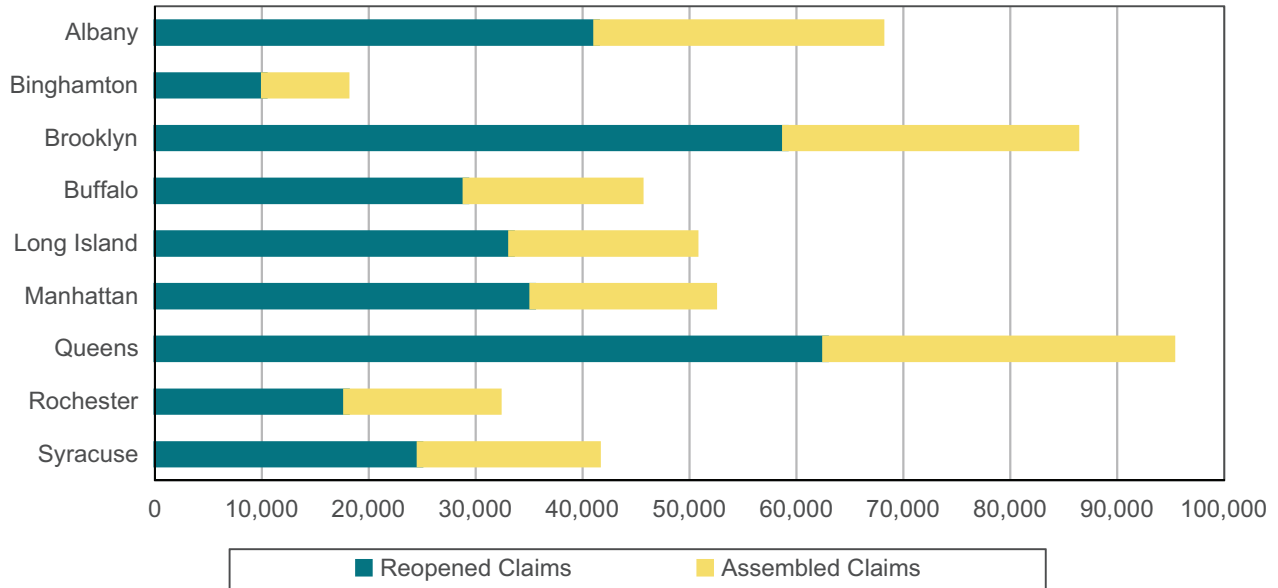
Year	Reopened Claims	Assembled Claims
2013	229,897	122,615
2014	225,450	165,304
2015	250,804	142,830
2016	275,423	169,636
2017	313,223	176,167

The implementation of Electronic Data Interchange (EDI) by all carriers in April 2014 enables the Board to auto-assemble claims upon receipt of the First Report of Injury (FROI). Now, 88% 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 count of **assembled claims** post WCB reform (after September 28, 2008) excludes claims that were assigned a WCB claim number but for which the Board did not receive sufficient information, despite requests, to take further action. The WCB has changed its claim assembly process several times over the past few years. While this makes trend analysis difficult, the number of claims assembled continues to reflect 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.

Claims Assembled & Reopened in 2017 by District Office

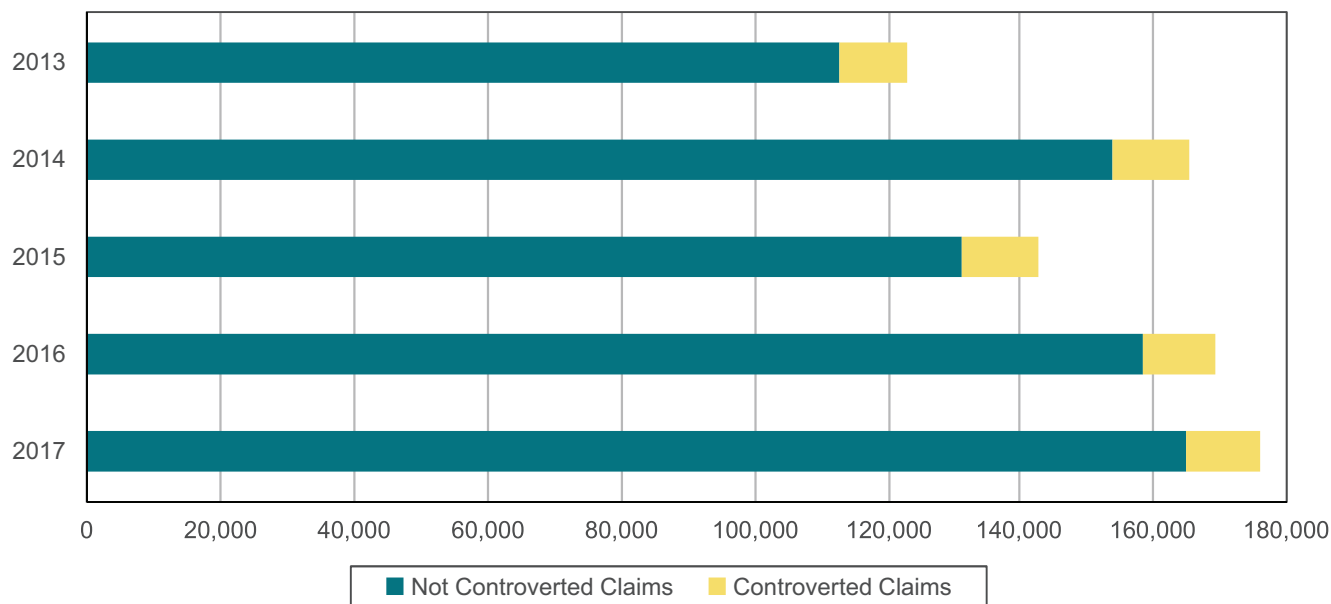


District Office	Reopened Claims	Assembled Claims
Albany	41,247	26,740
Binghamton	10,185	7,766
Brooklyn	58,914	27,303
Buffalo	29,032	16,436
Long Island	33,312	17,270
Manhattan	35,268	17,075
Queens	62,663	32,516
Rochester	17,866	14,332
Syracuse	24,736	16,729
Total	313,223	176,167

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Claims Assembled: Controverted vs. Not Controverted From 2013 to 2017



Year	Total Claims Assembled	Controverted Claims	Not Controverted	Percent Controverted
2013	122,615	9,850	112,765	8.0%
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%

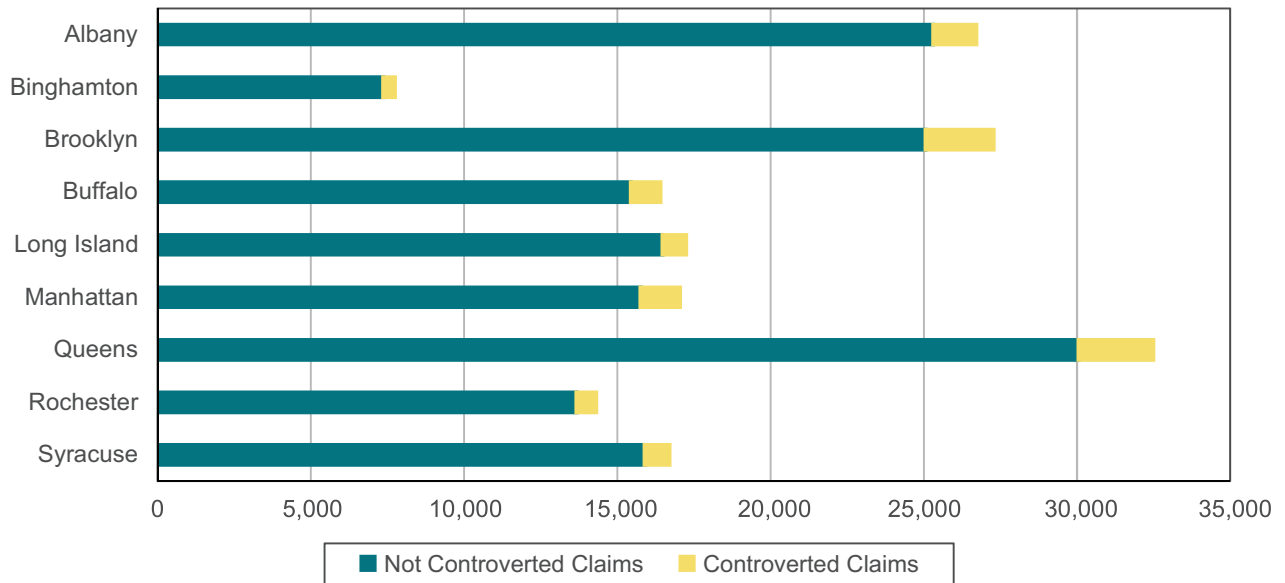
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A **controverted claim** is one for which the Board has received:

- 1) "Notice That Right To Compensation Is Controverted" indicating that the Carrier disputes the claim, and
- 2) qualifying medical documentation.

Claims Assembled: Controverted vs. Not Controverted in 2017 by District Office



District Office	Total Claims Assembled	Controverted Claims	Not Controverted	Percent Controverted
Albany	26,740	1,460	25,280	5.5%
Binghamton	7,766	421	7,345	5.4%
Brooklyn	27,303	2,265	25,038	8.3%
Buffalo	16,436	1,018	15,418	6.2%
Long Island	17,270	814	16,456	4.7%
Manhattan	17,075	1,343	15,732	7.9%
Queens	32,516	2,488	30,028	7.7%
Rochester	14,332	686	13,646	4.8%
Syracuse	16,729	857	15,872	5.1%
Total	176,167	11,352	164,815	6.4%

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, 88% 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.

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- 1) “Notice That Right To Compensation Is Controverted” indicating that the Carrier disputes the claim, and
- 2) qualifying medical documentation.

Pre-Hearing Conferences (PHC) Held From 2013 to 2017 Median Days from Controversy to PHC by Year

Year	Total PHC	Median Days from Controversy to PHC
2013	9,387	26
2014	10,266	25
2015	11,427	25
2016	12,487	25
2017	13,350	25

A **controverted claim** is one for which the Board has received:

- 1) "Notice That Right To Compensation Is Controverted" indicating that the Carrier disputes the claim, and
- 2) qualifying medical documentation.

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 2013 to 2017 by Claim Type and Year

Year Established	Total Claims Established	WCL Claims (1)	VFBL Claims (2)	VAWBL Claims (3)
2013	104,137	103,579	509	49
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

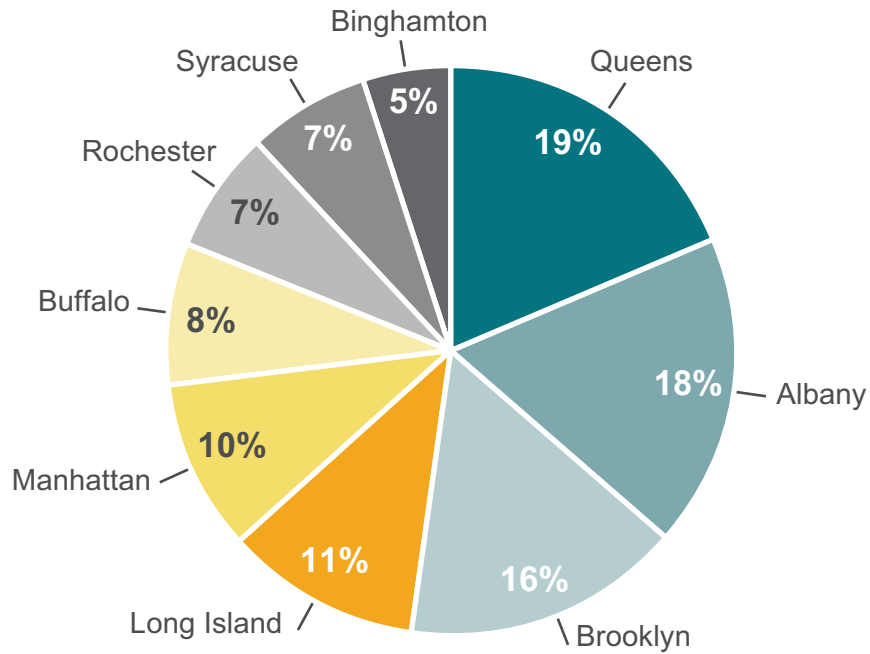
- (1) Claims under the Workers' Compensation Law
- (2) Claims under the Volunteer Firefighters' Benefit Law
- (3) Claims under the Volunteer Ambulance Workers' Benefit Law

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

The established claims data includes some previously established claims for which a Board finding during calendar years 2013-2017 amended or reaffirmed the claim's status. For Administrative and Conciliation resolutions, parties have 30 days to object to the resolution. Since the data is captured in mid-January, some resolutions “duly filed” in December (but not finalized) are not included in the counts for this report. It is estimated that these affirmations account for between 1% and 3% of the total. The established claims data includes all established claims regardless of whether the claims had compensable lost time.

The number of established cases in 2017 is lower, in part, due to the discontinuation of administrative determinations (AD-NSL) for medical-only cases as of January 15, 2016.

Claims Established in 2017 by District Office



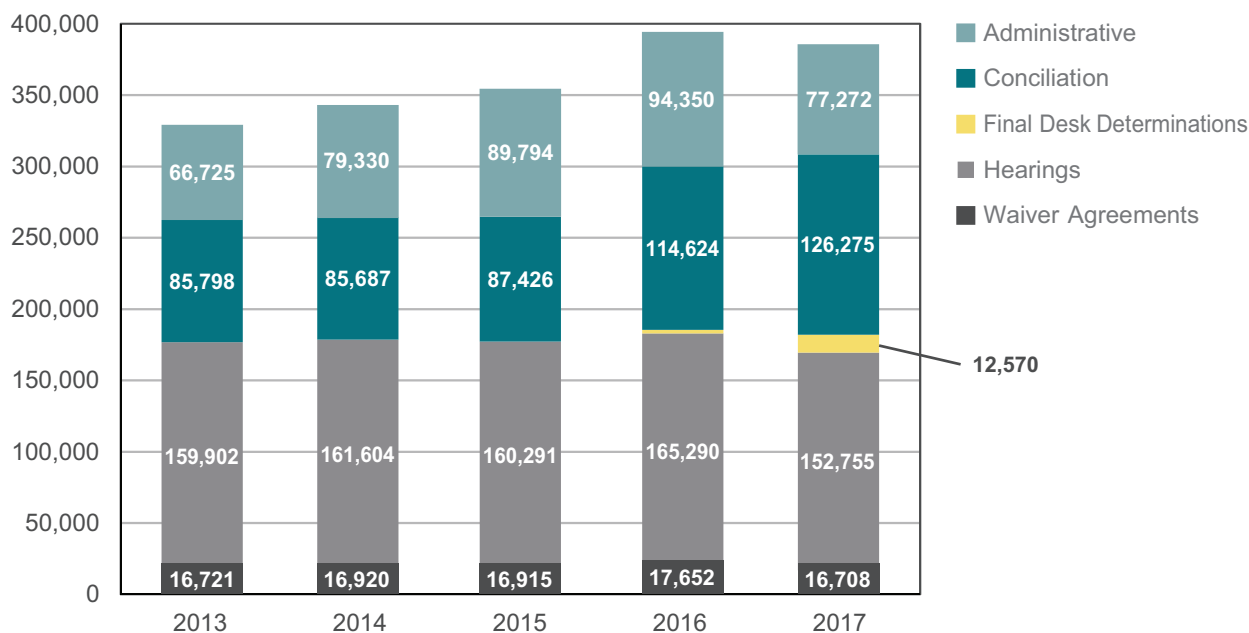
District Office	Claims Established
Albany	17,732
Binghamton	4,587
Brooklyn	16,318
Buffalo	8,132
Long Island	10,661
Manhattan	10,264
Queens	18,752
Rochester	6,534
Syracuse	6,775
Total	99,755

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AD-NSL decisions are no longer being issued for claims with no compensable lost time, effective January 15, 2016.

Claim Resolution by Board Processes 2013 to 2017



Claim Resolutions	Resolution Year				
	2013	2014	2015	2016	2017
Administrative	66,725	79,330	89,794	94,350	77,272
Conciliation	85,798	85,687	87,426	114,624	126,275
Final Desk Determinations	-	-	-	2,381	12,570
Hearings	159,902	161,604	160,291	165,290	152,755
Waiver Agreements	16,721	16,920	16,915	17,652	16,708
Total	329,146	343,541	354,426	394,297	385,580

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

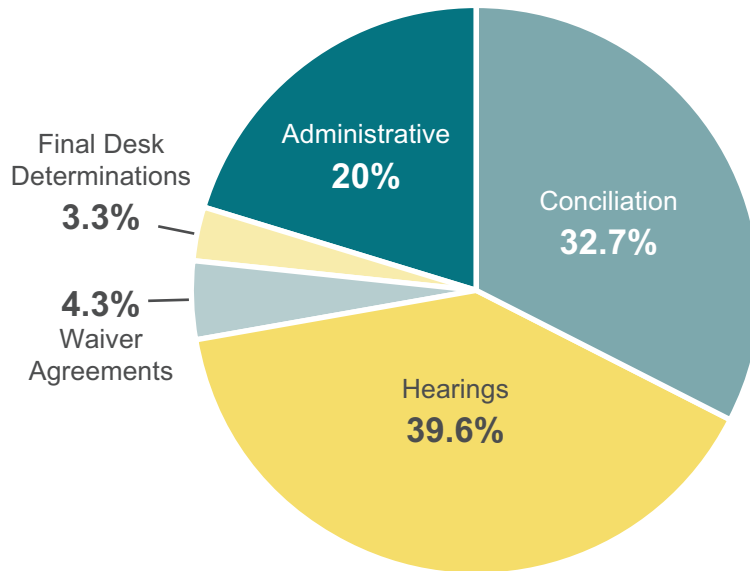
Conciliation provides an informal and prompt resolution of the claim based upon the cooperation of both parties: the injured worker and the insurance carrier/self-insured employer.

Final Desk Determinations reflect final desk decisions, which are identified by WCB 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.

Waiver Agreements settle any or all issues in a claim for workers' compensation benefits, subject to the Board's approval.

Claim Resolutions by Board Processes in 2017



Claim Resolution	Number of Resolutions	Percentage of Resolutions
Informal	216,117	56.0%
Administrative	77,272	20.0%
Conciliation	126,275	32.7%
Final Desk Determinations	12,570	3.3%
Formal	169,463	44.0%
Hearings	152,755	39.6%
Waiver Agreements	16,708	4.3%
Total	385,580	100.0%

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

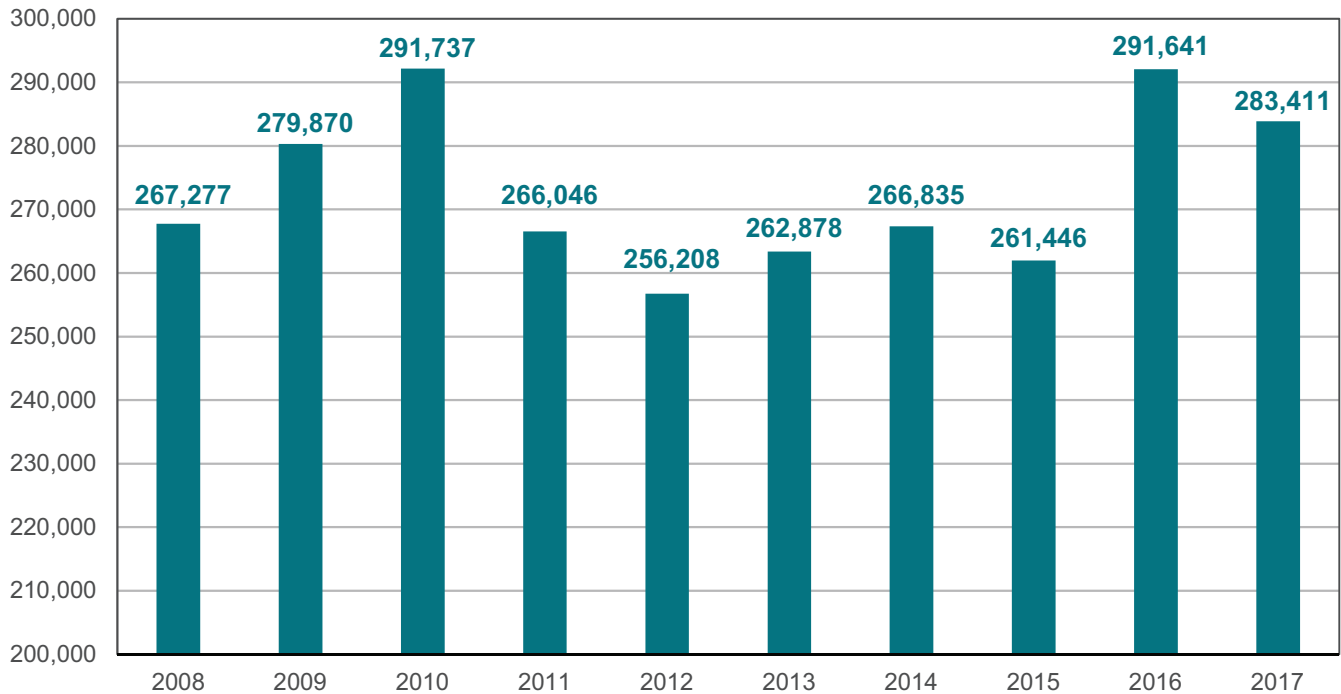
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Number of Hearings Held from 2008 to 2017 Ten-Year Trend

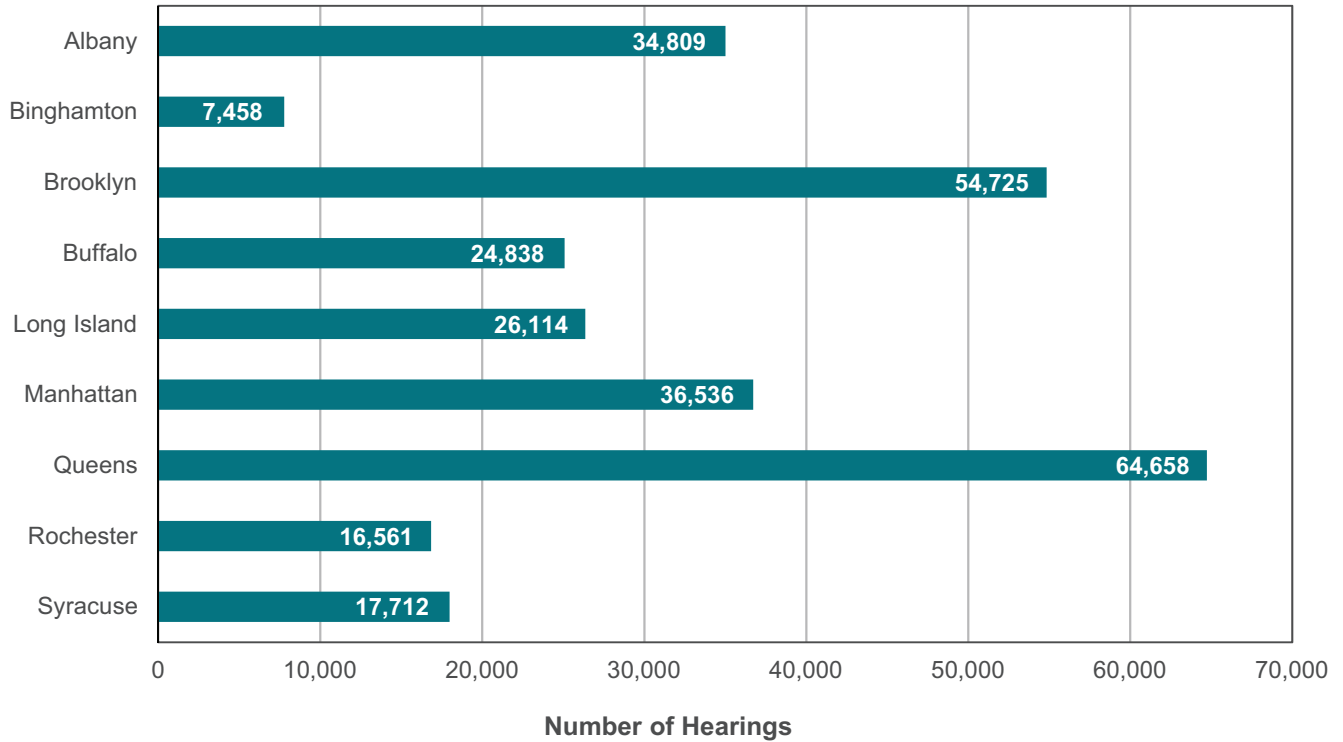


Year	Total Hearings Held
2008	267,277
2009	279,870
2010	291,737
2011	266,046
2012	256,208
2013	262,878
2014	266,835
2015	261,446
2016	291,641
2017	283,411

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. For comparison purposes, the 2016 hearing count (excluding Section 32 hearings) is 272,811.

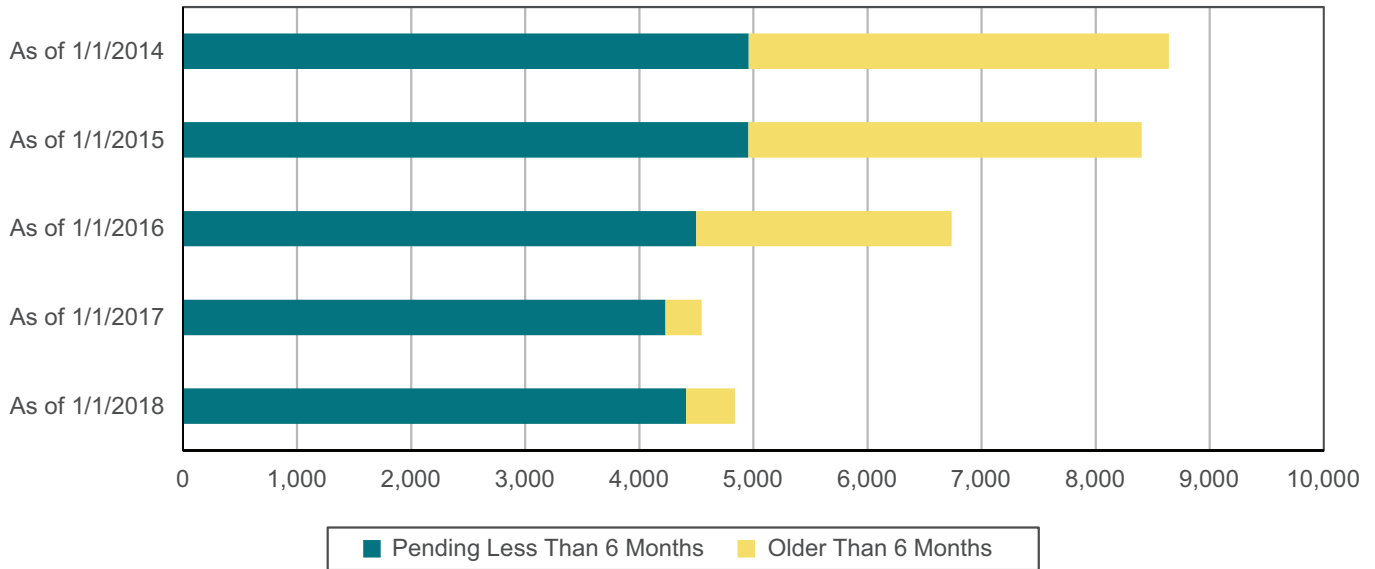
Hearing Count in 2017 by District Office



District Office	Number of Hearings	Distinct Claim Count per District
Albany	34,809	26,740
Binghamton	7,458	7,766
Brooklyn	54,725	27,303
Buffalo	24,838	16,436
Long Island	26,114	17,270
Manhattan	36,536	17,075
Queens	64,658	32,516
Rochester	16,561	14,332
Syracuse	17,712	16,729
Total	283,411	176,167

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.

Appealed Claims Inventory Five-Year Trend



As of Date	Inventory	Older than 6 Months	Percentage Pending < 6 Months
1/1/2014	8,644	3,684	57%
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%

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.