

### 3.01: Scope and Authority

452 CMR 3.00 is promulgated pursuant to MGL c. 152, § 5, as most recently amended, for the purpose of carrying out the provisions of MGL c. 152. The Workers' Compensation Trust Fund (hereinafter, the "Trust Fund") established by MGL c. 152, § 65, shall be administered, and compensation paid, in accordance with the rules as herein published or subsequently amended, and with periodic Circular Letters issued by the Department.

### 3.02: Payment of Benefits For Disabilities Subject To Latency

(1) For purposes of MGL c. 152, § 35C, for claims involving compensation pursuant to §§ 34, 34A or 35, applicable benefits on the first date of eligibility for benefits shall be based on the employee's average weekly wage as of such first date of eligibility for benefits, or, if the employee is not employed on that date, it shall be based on the employee's average weekly wage as of the employee's last date of employment.

For claims involving compensation pursuant to M.G.L. c. 152, § 31, applicable benefits on the first date of eligibility for benefits shall be based on the employee's average weekly wage as of such first date of eligibility, or, if the employee is not employed on that date, it shall be based on the minimum compensation rate provided in M.G.L. c. 152, § 31.

(2) Payment of benefits under MGL c. 152, § § 31, 34, 34A, or 35 within five years of the date of injury shall preclude applicability of MGL c. 152, 35C.

(3) For purposes of MGL c. 152, § 65(2)(b), "adjustments to compensation pursuant to MGL c. 152 § 35C" shall mean any increase in benefits paid to an employee as a result of the applicability of the first subsection of MGL c. 152, § 35C.

### 3.03: Reimbursement For Cost Of Living Adjustments

(1) A person entitled to receive yearly increases in benefits under MGL c. 152, § 31, pursuant to St. 1982, c. 663, § 1, shall continue to receive said benefits on or after November 1, 1986 and shall not be eligible for benefits pursuant to MGL c. 152, § 34B. For the purposes of MGL c. 152, § 65(2)(a), "adjustments to compensation pursuant to MGL c. 152, § 34B" shall not include benefits which are paid under MGL c. 152, § 31, pursuant to St. 1982, c. 663, § 1. Any overpayment by an insurer or self insurer resulting from the promulgation of 452 CMR 3.00 shall be recovered only through the use of future credits and not through a reduction of benefits currently paid.

(2) The initial increase in benefits under MGL c. 152, § 34B shall be payable on the first October 1st subsequent to the date marking the 24-month anniversary of the date of injury. ~~The initial increase in benefits under MGL c. 152, § 35F shall be payable on the first October 1<sup>st</sup> subsequent to the date marking the 36 month anniversary of the date of~~

~~injury.~~ If the date marking the anniversary falls on a review date, the increase is payable as of that review date.

(3) A party requesting reimbursement pursuant to MGL c. 152, § 65(2)(a) or § 65(2)(b), shall file a form prescribed by the Department, received and date stamped by the Department no later than two calendar years from the date on which the benefit payment, for which the reimbursement request being filed, was due.

(4) An employee receiving benefits under MGL c. 152, §§ 31 ~~or~~, 34A, ~~or 35F~~, who has received a written request from an insurer, shall cooperate with the insurer in obtaining or providing any information from the Social Security Administration necessary to the calculation of any adjusted benefits that may be due under MGL c. 152, § 34B ~~and § 35F~~. No insurer shall be required to pay adjusted benefits until all necessary information is available, provided that the insurer has made a good faith effort to obtain that information.

### **3.04: Claims Involving Uninsured Employers**

~~(1) An employee of any uninsured employer shall be entitled, without election and through the Fund, to the weekly compensation and other medical and vocational rehabilitation benefits provided under MGL c. 152. The claimant may proceed to enforce the liability of the uninsured employer under MGL c. 152, §§ 66 and 67. The Trust Fund shall not be liable for any settlement or judgment in a personal injury action brought under MGL c. 152, §§ 66 and 67. The Trust Fund shall not be deemed to be an insurer except as expressly provided by MGL c. 152 and 452 CMR 3.00.~~

(2) As a condition precedent to the filing of a claim against the Trust Fund or to the joinder of the Trust Fund by any party, the claimant or party shall obtain from the Office of Insurance a written certification that, according to the Department's records, the employer was not covered by a workers' compensation insurance policy on the date of the alleged injury. The director of the Office of Insurance or his designee shall sign the certification. When the claimant files the claim with the Office of Claims Administration, the claimant shall attach the certification and also submit a copy of the claim and certification to the Office of Legal Counsel.

(3) A representative of the Trust Fund may controvert any claim filed against the Trust Fund, raise any defense or assert any right granted to a party defendant or complainant under MGL c. 152 and 452 CMR 3.00, and file a complaint for modification or discontinuance based on any recognizable ground in the same manner as an insurer. The reasonable costs of representing the Trust Fund may be paid out of the Trust Fund. However, the Trust Fund shall not be required to pay any filing fee required by MGL c. 152. The ~~Commissioner-Director~~ or his designee may represent the Trust Fund in any administrative or judicial proceeding.

(4) A representative of the Trust Fund may modify or terminate the payment of compensation only on the claimant's return to employment or death, the expiration of an

agreement for the payment of compensation for a closed period, the expiration of a defined statutory period of benefits, the execution of an agreement of modification or discontinuance, including an agreement redeeming future compensation, or the issuance of an order or decision of an administrative judge, the Reviewing Board, or any court of competent jurisdiction.

(5) A claimant filing a claim against the Trust Fund shall notify the Commissioner Director or his designee, in writing, of any personal injury action brought by said claimant against the alleged uninsured employer or any other person. Within 60 calendar days of the receipt of any monies paid in settlement of any such action, or in satisfaction of a judgment in any such action, the claimant shall remit to the Trust Fund an amount equal to the compensation paid by the Trust Fund as of the date of such settlement or judgment, unless the Trust Fund and the claimant agree on the remittance of a lesser amount. Any interest recovered in such action shall be apportioned between the claimant and the Trust Fund, and any attorney's fee shall be paid by the Trust Fund and claimant, in proportion to the amounts received by them in such settlement or judgment. Any future compensation payable by the Trust Fund may be offset by the amount of the settlement or judgment which exceeds the amount of compensation paid by the Trust Fund as of the date of such settlement or judgment, unless the Trust Fund agrees to waive such offset.

(6) In any action brought by the Trust Fund against an uninsured employer under MGL c. 152, § 65(8), the Trust Fund may seek recovery of any costs incurred in the Trust Fund's defense against a claim for compensation or in the prosecution of said action.

(7) For the purposes of MGL c. 152, § 65(2)(e), a claim against the Trust Fund shall not lie when the claimant's injury appears to be covered under the provisions of MGL c. 152, § 18. When a claim has been filed under said section, there shall be no right of joinder against the Fund.

(8) For the purposes of MGL c. 152, § 65(2)(e), no public employer shall be considered to be uninsured.

### **3.05: Reimbursement Of Benefits For Second Injuries**

An insurer or self-insurer may file a claim for reimbursement under MGL c. 152, § 10 with the Division of Claims Administration to resolve any controversy arising under MGL c. 152, §§ 37 and 37A, on a form prescribed by the Department as provided in 452 CMR 1.07(2)(l).