

452 CMR 3.00: WORKERS' COMPENSATION TRUST FUND

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3.01: SCOPE AND AUTHORITY

452 CMR 3.00 IS PROMULGATED PURSUANT TO M.G.L. C. 152, § 5 FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF M.G.L. C. 152. THE WORKERS' COMPENSATION TRUST FUND (TRUST) ESTABLISHED BY M.G.L. C. 152, § 65, SHALL BE ADMINISTERED, AND COMPENSATION PAID, IN ACCORDANCE WITH 452 CMR 3.00 AND WITH PERIODIC CIRCULAR LETTERS ISSUED BY THE DEPARTMENT.

3.02: PAYMENT OF BENEFITS FOR DISABILITIES SUBJECT TO LATENCY

(1) FOR PURPOSES OF M.G.L. C. 152, § 35C, FOR CLAIMS INVOLVING COMPENSATION PURSUANT TO M.G.L. C. 152, §§ 34, 34A OR 35, APPLICABLE BENEFITS ON THE 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 SUCH FIRST 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, ON THE MINIMUM COMPENSATION RATE PROVIDED IN M.G.L. C. 152, § 31.

(2) PAYMENT OF BENEFITS UNDER M.G.L. C. 152, §§ 31, 34, 34A, OR 35 WITHIN FIVE YEARS OF THE DATE OF INJURY SHALL PRECLUDE APPLICABILITY OF M.G.L. C. 152, § 35C.

(3) FOR PURPOSES OF M.G.L. C. 152, § 65(2)(B), "ADJUSTMENTS TO COMPENSATION PURSUANT TO M.G.L. C. 152, § 35C" SHALL MEAN ANY INCREASE IN BENEFITS PAID TO AN EMPLOYEE AS A RESULT OF THE APPLICABILITY OF THE FIRST SUBSECTION OF M.G.L. C. 152, § 35C.

3.03: REIMBURSEMENT OF COST OF LIVING ADJUSTMENTS

(1) A PERSON ENTITLED TO RECEIVE YEARLY INCREASES IN BENEFITS UNDER M.G.L. C. 152, § 34B, OR TO ST. 1982, C. 663, § 1, SHALL CONTINUE TO RECEIVE SAID BENEFITS ON OR AFTER NOVEMBER 1, 2017. A PERSON SHALL NOT BE ELIGIBLE FOR BENEFITS PURSUANT TO M.G.L. C. 152, § 34B. FOR THE PURPOSES OF M.G.L. C. 152, § 65(2)(A), "ADJUSTMENTS TO COMPENSATION PURSUANT TO M.G.L. C. 152, § 34B" SHALL NOT INCLUDE BENEFITS WHICH ARE PAID UNDER M.G.L. C. 152, § 31, PURSUANT TO ST. 1982, C. 663, § 1, OR ANY OVERPAYMENT BY AN INSURER OR SELF INSURER RESULTING FROM THE PROMULGATION OF THIS REGULATION. SUCH BENEFITS SHALL BE RECOVERED ONLY THROUGH THE USE OF FUTURE CREDITS AND NOT THROUGH AMOUNTS CURRENTLY PAID.

(2) THE INITIAL INCREASE IN BENEFITS UNDER M.G.L. C. 152, § 34B SHALL BE PAYABLE ON OR AFTER OCTOBER 1, 2017. SUBSEQUENT TO THE DATE MARKING THE 24-MONTH ANNIVERSARY OF THE DATE OF INJURY, IF THE DATE MARKING THE ANNIVERSARY FALLS ON A REVIEW DATE, THE INCREASE IS PAYABLE ON THE NEXT REVIEW DATE.

(3) A PARTY REQUESTING REIMBURSEMENT PURSUANT TO M.G.L. C. 152, § 65(2)(A) OR § 65(2)(B) SHALL FILE A FORM PRESCRIBED BY THE DEPARTMENT, RECEIVED AND DATE STAMPED BY THE DEPARTMENT, WITHIN MORE THAN TWO CALENDAR YEARS FROM THE DATE ON WHICH THE BENEFIT PAYMENT, OR THE DATE OF REIMBURSEMENT REQUEST BEING FILED, WAS DUE.

(4) AN EMPLOYEE RECEIVING BENEFITS UNDER M.G.L. C. 152, §§ 31 OR 34A, WHO HAS RECEIVED A WRITTEN REQUEST FROM AN INSURER, SHALL COOPERATE WITH THE INSURER IN OBTAINING THE NECESSARY INFORMATION FROM THE SOCIAL SECURITY ADMINISTRATION NECESSARY TO THE CALCULATION OF BENEFITS THAT MAY BE DUE UNDER M.G.L. C. 152, § 34B. NO INSURER SHALL BE REQUIRED TO PAY ADJUSTED BENEFITS UNTIL ALL NECESSARY INFORMATION IS AVAILABLE, PROVIDED THAT THE EMPLOYEE MAKES A GOOD FAITH EFFORT TO OBTAIN THAT INFORMATION.

3.04: CLAIMS INVOLVING UNINSURED EMPLOYERS

- (1) THE TRUST FUND SHALL NOT BE LIABLE FOR ANY SETTLEMENT OR JUDGMENT IN A PERSONAL INJURY ACTION BROUGHT UNDER M.G.L. C. 152, §§ 66 AND 67. THE TRUST FUND SHALL NOT BE DEEMED TO BE LIABLE FOR SUCH SETTLEMENT OR JUDGMENT 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 THE TRUST FUND BY ANY PARTY, THE CLAIMANT OR PARTY SHALL OBTAIN FROM THE EMPLOYER A WRITTEN CERTIFICATION THAT, ACCORDING TO THE DEPARTMENT'S RECORDS, THE EMPLOYER IS COVERED BY A WORKERS' COMPENSATION INSURANCE POLICY ON THE DATE OF THE ALLEGED INJURY. THE EMPLOYER OR THE OFFICE OF INSURANCE OR HIS DESIGNEE SHALL SIGN THE CERTIFICATION. WHEN THE CLAIMANT FILES A CLAIM WITH THE OFFICE OF CLAIMS ADMINISTRATION, THE CLAIMANT SHALL ATTACH THE CERTIFICATION. THE CLAIMANT 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 COUNTERCLAIMANT UNDER M.G.L. C. 152 AND 452 CMR 3.00, AND FILE A COMPLAINT FOR MODIFICATION OR DISCONTINUANCE OF BENEFITS ON ANY RECOGNIZABLE GROUND IN THE SAME MANNER AS AN INSURER. THE REASON FOR SUCH CONTROVERT REPRESENTING THE TRUST FUND MAY BE PAID OUT OF THE TRUST FUND. HOWEVER, THE TRUST FUND IS NOT BE REQUIRED TO PAY ANY FILING FEE REQUIRED BY M.G.L. C. 152. THE 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 BENEFITS ONLY ON THE CLAIMANT'S RETURN TO EMPLOYMENT OR DEATH, THE EXPIRATION OF AN ANNUITY, THE PAYMENT OF COMPENSATION FOR A CLOSED PERIOD, THE EXPIRATION OF A DEFINED STATEMENT OF BENEFITS, THE EXECUTION OF AN AGREEMENT OF MODIFICATION OR DISCONTINUANCE OF BENEFITS, AN AGREEMENT REDEEMING FUTURE COMPENSATION, OR THE ISSUANCE OF AN ORDER OF MODIFICATION BY 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 DIRECTOR OR HIS DESIGNEE, IN WRITING, OF ANY PERSONAL INJURY ACTION BROUGHT BY SAID CLAIMANT AGAINST AN UNINSURED EMPLOYER OR ANY OTHER PERSON. WITHIN 60 CALENDAR DAYS OF THE RECEIPT OF SUCH ACTION, OR PAID IN SETTLEMENT OF ANY SUCH ACTION, OR IN SATISFACTION OF A JUDGMENT IN AN 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 AGREES TO PAY ONLY ON THE REMITTANCE OF A LESSER AMOUNT. ANY INTEREST RECOVERED IN SUCH ACTION SHALL BE PAID 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 SUCH 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 PAY ONLY ON THE REMITTANCE OF A LESSER AMOUNT.
- (6) IN ANY ACTION BROUGHT BY THE TRUST FUND AGAINST AN UNINSURED EMPLOYER UNDER M.G.L. C. 152, § 65(8), THE TRUST FUND MAY SEEK RECOVERY OF ANY COSTS INCURRED IN THE TRUST FUND IN SUCH ACTION AGAINST A CLAIM FOR COMPENSATION OR IN THE PROSECUTION OF SAID ACTION.
- (7) FOR THE PURPOSES OF M.G.L. C. 152, § 65(2)(E), A CLAIM AGAINST THE TRUST FUND SHALL BE FILED WITH THE TRUST FUND WHEN THE CLAIMANT'S INJURY APPEARS TO BE COVERED UNDER THE PROVISIONS OF M.G.L. C. 152, § 65(2)(E). WHEN A CLAIM HAS BEEN FILED UNDER SAID SECTION, THERE SHALL BE NO RIGHT OF JOINT LIABILITY OF THE TRUST FUND.
- (8) FOR THE PURPOSES OF M.G.L. C. 152, § 65(2)(E), NO PUBLIC EMPLOYER SHALL BE CONSIDERED UNINSURED.

3.05: REIMBURSEMENT OF BENEFITS FOR SECOND INJURIES

AN INSURER OR SELF-INSURER MAY FILE A CLAIM FOR REIMBURSEMENT UNDER M.G.L. C. 152, § 37 AND 37A, ON A FORM PRESCRIBED BY THE DEPARTMENT AS PROVIDED IN 452 CMR 1.00.

REGULATORY AUTHORITY

452 CMR 3.00: M.G.L. C. 152, § 5.