



JOEL M. PRESSMAN  
Commissioner

# *The Commonwealth of Massachusetts*

## *Department of Industrial Accidents*

*600 Washington Street  
Boston, Mass. 02111*

**CIRCULAR LETTER NUMBER 244(A)**  
**{Amended with revised Petitions}**

**TO: All Interested Parties**

**FROM: Joel M. Pressman, Commissioner**

**RE: Request for Proceedings under Section 37 or 37A of G.L. c.152**

**DATE: July 1990**

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In processing the first insurers' petitions for reimbursement under §§37 and 37a, the need for a more detailed sample petition has become apparent.

The department and the Office of Attorney General have drafted new sample petitions which should assist insurers and self-insurers in case preparation.

Should you have any questions, please contact Susan Morong, Claims Manager for the §37/37A unit at 727-2200 ext. 3437.

The following is the full text of C.L. 244 for your records:

All insurers or self-insurers seeking reimbursement for benefits under G.L. c.152, §§37 and 37A, for injuries occurring on or after December 10, 1985, must petition for said reimbursement with the Office of the Attorney General at the following address:

Industrial Accident Division  
Office of the Attorney General  
131 Tremont Street  
Boston, Massachusetts 02110

The Office of the Attorney General defends the Fund as set forth under Sections 37 and 37A.

For injuries occurring on or after December 10, 1985 and before November 1, 1986, reimbursement may be sought under §37 in an amount not to exceed 50 percent of all compensation subsequent to that paid for the first 104 weeks of disability.



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### Petition for Reimbursement under M.G.L. c.152, §37

Employee..... \_\_\_\_\_

Employer..... \_\_\_\_\_

Insurer..... \_\_\_\_\_

DIA Board Number..... \_\_\_\_\_

Date of Subsequent Injury..... \_\_\_\_\_

1. Nature of employee's work and work history:

Describe the nature of the work performed by the employee prior to the (subsequent) injury; give the employee's employment history, educational background and vocational training.

2. Pre-existing physical impairment:

(a) Attach copies of dated medical records or physicians' reports which reflect that the employee, prior to commencement of or retention in employment with the insured, underwent treatment with a medical provider for a physical impairment. Such material should indicate that the employee did not have complete recovery from the impairment or that the employee's resultant physical condition was susceptible to recurrence.

If hospital record, attach certified copy. If offered document is a physician's report or office note, it should be accompanied by the physician's c.v. or by a statement of the physician's qualifications from a registry of licensed physicians or professional reference compilation.

and

(b) Attach a concise summary of the content of the original records presented in 2 (a), giving a brief description of the preexisting condition, known dates of treatment for such condition, dates and nature of any relevant objective tests, and dates and nature of any relevant surgical procedures.

3. Impairment was likely hindrance or obstacle to employment:

(a) Provide medico-vocational information or legal precedents showing that the employee's physical condition is or was likely to be a hindrance or obstacle to employment to someone with an employment background and training similar to that of the employee.

and/or

(b) Document that the employee's pre-existing physical impairment posed a hindrance to the employee in obtaining employment. Cite any occasions when the employee applied for new work, disclosing his or her pre-existing impairment, and was denied work or delayed in obtaining work because the prospective employer considered the employee's pre-existing impairment an obstacle to employment.

and/or

(c) Provide a signed statement from the employee enumerating specific prior applications for employment in which the employee was denied an otherwise available job and told by the prospective employer that his or her application was rejected because of the pre-existing impairment.

4. Employer's knowledge:

(a) If the insured knew of the employee's pre-existing impairment prior to or within thirty days of hire, indicate the insured's source of information in this regard. Attach personnel record or other documentation substantiating this knowledge.

or

(b) If the insured did not have personal knowledge of such impairment, attach copies of medical records or reports which predate the employee's commencement of work with the insured or with retention of the employment of the employee and which reflect that the employee, underwent treatment with a medical provider for a physical condition or complaint.

If hospital record, attach certified copy. If offered document is a physician's report or office note, it should be accompanied by the physician's c.v., or, by a statement of the physician's qualifications from a registry of licensed physicians or professional reference compilation.

5. Personal injury sustained while employed by the insured:

Provide all of the following information:

- (a) Date of Injury
- (b) Name of Employer/ Insured
- (c) Board Number
- (d) Nature of Injury and bodily part(s) for which insurer accepted liability or was found liable for treatment.
- (e) Medical records reflecting treatment for this injury
- (f) If the employee died as a result of the personal injury, list names of any surviving spouse, and the names and birthdates of any dependents within the meaning of G.L. 152 s. 31.

6. Resulting disability substantially greater:

Attach a medical report from the employee's treating physician which states that the disability that ensued after the personal injury at the insured's was substantially greater (or resulted in the employee's death) by reason of the combined effects of such impairment and the subsequent personal injury than that disability which would have resulted from the subsequent personal injury alone. The physician should set forth the bases for his or her opinion in this regard. Attach the physician's c.v. or statement of qualifications from a directory of licensed physicians. If no such medical report from the treating physician is available, explain why it is not, and, if you wish, provide alternate medical documentation.

7. Notice of lump sum proceeding:

If the case has been settled, indicate how liability had been established prior to the settlement, and document that the office of the Attorney General was provided with notice of the proceeding at which the lump sum was approved.



TO: ALL INTERESTED PARTIES  
FROM: JOEL PRESSMAN, COMMISSIONER  
RE: NOTIFICATION TO ATTORNEY GENERAL ON LUMP SUM REQUESTS IN  
CASES INVOLVING §§ 37 OR 37A  
DATE: MAY 1, 1990

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Any insurer or self-insurer intending to file a petition for reimbursement under §§ 37 or 37A in any case in which a lump sum proceeding is pending must, as provided in § 37, notify the Office of the Attorney General of any such pending lump sum conference.

Such notice to the Attorney General must include:

- \* the scheduled date of the lump sum conference, and
- \* notice of the insurer or self-insurer's election

The notice of election must indicate whether the insurer or self-insurer chooses to afford the Attorney General an opportunity to appear and be heard, with all rights reserved, including the right to contest the applicability of §§ 37 or 37A in any case where liability to pay compensation has not been established, at the time of the proceedings on the §§ 37 or 37A petition or at the time of the lump sum conference.

If the insurer or self-insurer elects to afford the Attorney General an opportunity to appear and be heard at the lump sum proceeding, the following information (which must ultimately be submitted with a petition for reimbursement) must accompany the insurer or self-insurer's notice of the lump sum conference:

A copy of the finalized lump sum papers, including all documentation supporting entitlement to reimbursement, in addition to the following information:

1. Amount payable for attorney services (not reimbursable)
2. Amount, if any, allocable to weekly benefits that, but for the settlement, would have been paid in the first 104 weeks of disability given documentation of the employee's average weekly wage, compensation rate and earnings capacity (not reimbursable)
3. Amount, if any, allocable to weekly benefits that, but for the settlement, would have been paid after the first 104 weeks of disability given documentation of the employee's average weekly wage, compensation rate and earnings capacity
4. Amount, if any, allocable to medical costs for services performed or projected to be performed in the first 104 weeks (not reimbursable)
5. Amount, if any, allocable to § 36 benefits that became due only after 104 weeks
6. Amount, if any, allocable to cost-of-living-adjustments (COLA) (not reimbursable)
7. Amount, if any, allocable to rehabilitation services (not reimbursable)
8. Amount, if any, allocable to medical costs for services performed or projected to be performed after the first 104 weeks.