



James J. Campbell  
Commissioner

# *The Commonwealth of Massachusetts*

## *Department of Industrial Accidents*

*600 Washington Street  
Boston, Mass. 02111*

### **CIRCULAR LETTER NO. 289**

**TO:** All Interested Persons

**FROM:** James J. Campbell, Commissioner

**RE:** COLA Payment and Reimbursement Schedules; Maximum and Minimum Weekly Compensation Rates; and Attorneys' Fee Schedule

**DATE:** October 1, 1997

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**This Circular Letter should be used to determine all of the following:**

- (a) The maximum weekly benefits payable under M.G.L. c. 152 (prior to the application of any cost-of-living adjustment required under the statute);
- (b) The minimum compensation rates payable under §34 and §34A;
- (c) The proper amounts of adjustments to compensation required under §34B and §35F for injuries occurring before 12/24/91;
- (d) The proper amounts of adjustments to compensation required under §34B and §35F for injuries occurring on or after 12/24/91;
- (e) The reimbursement amount payable to insurers for COLAs paid on permanent and total or survivors' benefits for injuries occurring on or before October 1, 1986;
- (f) The reimbursement amount payable to insurers for COLAs paid on permanent and total or survivors' benefits for injuries occurring subsequent to October 1, 1986 but before December 24, 1991; and
- (g) Attorneys' fee schedule for claims involving injuries occurring on or after December 24, 1991.

The average weekly wage in the Commonwealth (SAWW) effective October 1, 1997, as determined under subsection (2) of §29 of Chapter 151A and promulgated by the Director of Employment and Training, is \$665.55. [Please consult Table III].

An illustration of the application of this newly established SAWW on weekly benefit rates for claims involving injuries occurring on or after October 1, 1997 is as follows:

The weekly compensation rate for temporary and total disability benefits under §34 shall equal sixty percent of the employee's average weekly wage before the injury, but no more than a maximum weekly compensation rate equal to \$665.55 (one hundred percent of the present SAWW), unless the average weekly wage of the employee is less than the minimum weekly compensation rate of \$133.11 (twenty percent of the present SAWW), in which case said weekly compensation shall equal the employee's average weekly wage. The weekly compensation rate for permanent and total

benefits under §34A shall equal two-thirds of the employee's average weekly wage before the injury, but no more than the maximum weekly compensation rate of \$665.55 nor less than the minimum weekly compensation rate of \$133.11.

[Recipients of total disability benefits under §34 and § 34A for claims involving injuries occurring before October 1, 1997 should consult Table I of this Circular Letter and previous Circular Letters setting forth the requirements of M.G.L. c. 152 and 452 CMR 3.06.]

To calculate the adjustment under §34B\* multiply the claimant's unadjusted weekly compensation by the **ADJUSTED MULTIPLIER FOR TOTAL COMP** (the amount in the fifth column of the attached table for injuries occurring before December 24, 1991 or the amount in the eighth column for injuries occurring on or after December 24, 1991) in the attached table for the claimant's year of injury. For the purpose of calculating adjustments or reimbursements, the year of injury begins on October 1st and ends on September 30th of each year. To be eligible for a COLA under §31 or §34A the date of injury must have occurred at least two years prior to this review date (October 1, 1997).

COLAs for persons receiving partial benefits under §35 are payable only to those employees with an injury date on or after January 1, 1986 but before December 24, 1991 whose injury occurred at least three years prior to this review date. To calculate the adjustment under §35F\* multiply the claimant's unadjusted weekly compensation by the **ADJUSTED MULTIPLIER FOR PARTIAL COMPENSATION** (the amount in the tenth column in the attached Table I) for the claimant's year of injury.

Insurers are entitled to quarterly reimbursements from the Workers' Compensation Trust Fund (WCTF) for certain supplemental benefits (cost-of-living adjustments). When supplemental benefits are paid to permanently and totally disabled recipients or survivors under §34A or §31 as outlined above, complete reimbursement is made where the injury occurred on or before October 1, 1986 using column five. If the injury occurred after that date, the amount reimbursable can be calculated by using the **REIMBURSEMENT FACTOR** (the amount in the eleventh column of the table). For injuries occurring on or after 12/24/91, there is no reimbursement from the WCTF for COLA adjustments made under §34B. Furthermore, there are no reimbursements from the Workers' Compensation Trust Fund for COLA adjustments under §35F for any claim involving the payment of temporary, partial disability benefits under §35.

To apply for reimbursements under §34B(c) for cost-of-living adjustments as calculated above, please complete the attached forms, and forward them to the address given below.

Requests for reimbursements should be submitted at the close of each quarter of the calendar year. Requests submitted during the first calendar quarter of 1998 should be for reimbursements of monies paid during the last calendar quarter of 1997. Please note that, pursuant to §34B(c), reimbursements will be denied to any insurer that has paid supplemental benefits prior to 24 months from the recipient's date of injury.

[\*If the claimant is receiving social security disability benefits the adjusted compensation should be capped at the point where one more dollar in such compensation would have the effect of reducing any social security disability benefits the claimant is receiving. To determine whether and how such a cap should be applied, please refer to Circular Letter 227 dated October 22, 1986.] All requests for reimbursement must be accompanied by a completed CR-28 Form corresponding to the period for which reimbursement is sought. In addition, all prior years' CR-28 Form for each claimant whose COLA the insurer is seeking reimbursement must be submitted in FY'98 to provide that any capital COLA offsets were taken and that no COLA was improperly paid.

CR-28 forms and the Department of Industrial Accidents (DIA) forms for requesting §sec.65 COLA and §sec.34 (b)(c) COLA quarterly reimbursements are available on request.

The schedule of adjusted attorney's fees is contained in Table II. Please note that the new rates apply only to cases involving injuries on or after December 24, 1991. For cases involving injuries before December 24, 1991, the fees remain as set out in §13A.

Department of Industrial Accidents  
Calculation of COLA Multipliers and Reimbursement Factors

**Table I**

Year	Statewide Average Weekly Wage (SAWW)	Annual SAWW Change	Capped Change, Pre 12/24/91	Section 34B Multiplier Pre 12/24/91 Reimburse ment Factor Pre 10/2/86	Annual CPI Change	Capped Change, Post 12/23/91	Section 34B Multiplier, Post 12/23/91	Section 35F Capped Change	Section 35F Multiplier	Section 34B Reimburse ment Factor Post 10/1/86
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1938	\$25.63	1.0336	1.0336	23.1550						
1939	26.49	0.9970	0.9970	22.4033						
1940	26.41	1.1356	1.1000	22.4711						
1941	29.99	1.1834	1.1000	20.4283						
1942	35.48	1.1074	1.1000	18.5712						
1943	39.30	1.0422	1.0422	16.8828						
1944	40.96	1.0249	1.0249	16.1987						
1945	41.98	1.0543	1.0543	15.8051						
1946	44.26	1.0888	1.0888	14.9909						
1947	48.19	1.0770	1.0770	13.7683						
1948	51.90	1.0150	1.0150	12.7842						
1949	52.88	1.0581	1.0581	12.5949						
1950	55.74	1.0797	1.0797	11.9035						
1951	60.18	1.0419	1.0419	11.0252						
1952	62.70	1.0470	1.0470	10.5821						
1953	65.65	1.0296	1.0296	10.1066						
1954	67.59	1.0468	1.0468	9.8164						
1955	70.75	1.0540	1.0540	9.3780						
1956	74.57	1.0426	1.0426	8.8976						
1957	77.75	1.0368	1.0368	8.5338						
1958	80.61	1.0515	1.0515	8.2309						
1959	84.76	1.0316	1.0316	7.8279						
1960	87.44	1.0327	1.0327	7.5881						
1961	90.30	1.0384	1.0384	7.3477						
1962	93.77	1.0309	1.0309	7.0758						
1963	96.67	1.0484	1.0484	6.8635						
1964	101.35	1.0339	1.0339	6.5466						
1965	104.79	1.0448	1.0448	6.3316						
1966	109.48	1.0435	1.0435	6.0604						
1967	114.24	1.0599	1.0599	5.8079						
1968	121.08	1.0772	1.0772	5.4798						
1969	130.43	1.0045	1.0045	5.0870						
1970	131.02	1.0638	1.0638	5.0641						
1971	139.38	1.0736	1.0736	4.7603						
1972	149.64	1.0396	1.0396	4.4339						
1973	155.57	1.0529	1.0529	4.2649						
1974	163.80	1.0870	1.0870	4.0506						
1975	174.78	1.0691	1.0691	3.7962						
1976	186.85	1.0667	1.0667	3.5509						
1977	199.31	1.0805	1.0805	3.3290						
1978	211.37	1.0754	1.0754	3.1390						
1979	227.31	1.0799	1.0799	2.9190						
1980	245.48	1.0996	1.0996	2.7028						
1981	269.93	1.1034	1.1000	2.4580						
1982	297.85	1.0753	1.0753	2.2345						
1983	320.29	1.0648	1.0648	2.0780						
1984	341.08	1.0570	1.0570	1.9515						
1985	360.50	1.0640	1.0640	1.8463				1.0500	1.6898	
1986	383.57	1.0715	1.0715	1.7352				1.0500	1.6093	.1259
1987	411.00	1.0808	1.0808	1.6194				1.0500	1.5327	.0867
1988	444.20	1.0681	1.0681	1.4984				1.0500	1.4597	.0387
1989	474.47	1.0339	1.0339	1.4028				1.0339	1.3902	.0126
1990	490.57	1.0509	1.0509	1.3567				1.0500	1.3445	.0122
1991	515.52	1.0539	1.0539	1.2911	1.0370	1.0370	1.1744	1.0500	1.2805	.0107
1992	543.30	1.0417	1.0417		1.0240	1.0240	1.1325	1.0417		
1993	565.94	1.0348	1.0348		1.0280	1.0280	1.1080	1.0348		
1994	585.66	1.0314	1.0314		1.0240	1.0240	1.0758	1.0314		
1995	604.03	1.0447	1.0447		1.0270	1.0270	1.0506	1.0447		
1996	631.03	1.0547	1.0547		1.0230	1.0230	1.0230	1.0500		
1997	665.55	1.0000	1.0000		1.0000	1.0000	1.0000	1.0000		

**Notes:**

- |   |   |                                     |
|---|---|-------------------------------------|
| (2) Provided by the Massachusetts<br>Division of Employment and Training. | (5) Cumulative product of (4)               | (9) (3) subject to a maximum of 5%. |
| (3) (2) Year X / (2) Year(X-1).   | (6) Provided by Bureau of Labor Statistics. | (10) Cumulative product of (9)      |
|   | (7) Minimum of (4) and (6).                 | (11) (5) -                          |
|   |   | (10)                                |
| (4) (3), subject to a maximum of 10%.                                     | (8) Cumulative product of (7).              |                                     |

**Table II****TABLE OF ATTORNEYS' FEES**

(NOTE: These new rates apply only to cases involving injuries occurring on or after 12/24/91.)

Pursuant to M.G.L. c. 152 § 13A(10), the dollar amounts specified for attorney's fees in section 13A, subsections 1 through 6 are changed effective 10/1/97 in accordance with § 34B(a) as follows:

<b>SECTION 13A SUBSECTIONS</b>	<b>DOLLAR AMOUNT SPECIFIED</b>	<b>CHANGED TO</b>
<b>(1)</b>	<b>\$700.00</b>	<b>\$822.06</b>
	<b>\$350.00</b>	<b>\$411.03</b>
<b>(2)</b>	<b>\$1,000.00</b>	<b>\$1,174.41</b>
	<b>\$500.00</b>	<b>\$587.21</b>
<b>(3)</b>	<b>\$500.00</b>	<b>\$587.21</b>
	<b>\$250.00</b>	<b>\$293.61</b>
<b>(4)</b>	<b>\$700.00</b>	<b>\$822.06</b>
	<b>\$350.00</b>	<b>\$411.03</b>
<b>(5)</b>	<b>\$3,500.00</b>	<b>\$4,110.30</b>
<b>(6)</b>	<b>\$1,000.00</b>	<b>\$1,174.41</b>

**Table III**

**Department of Industrial Accidents  
Calculation of Weekly Benefits**

<b>(1)</b>	<b>1997 Statewide Average Weekly Wage</b>	<b>\$665.55</b>
<b>(2)</b>	<b>Section 34—Temporary and Total Benefits</b>	
	<b>(a) Rate</b>	<b>60.00%</b>
	<b>(b) Maximum</b>	<b>\$665.55</b>
	<b>(c) Minimum</b>	<b>\$133.11</b>
<b>(3)</b>	<b>Section 34 —Permanent and Total Benefits</b>	
	<b>(a) Rate</b>	<b>66.67%</b>
	<b>(b) Maximum</b>	<b>\$665.55</b>
	<b>(c) Minimum</b>	<b>\$133.11</b>

**Notes:**

**(1)** Provided by the Massachusetts Division of Employment and Training

**(2),(3)** Derived from (1), and MGL c.152, Section 34, as follows:

**(2a),(3a)** Maximum reimbursement rate.

**(2b),(3b)** (1).

**(2c),(3c)** 20% x (1).