



James J. Campbell
Commissioner

The Commonwealth of Massachusetts

Department of Industrial Accidents

*600 Washington Street
Boston, Mass. 02111*

CIRCULAR LETTER NO. 294

TO: ALL INTERESTED PERSONS
FROM: JAMES J. CAMPBELL, COMMISSIONER
RE: UPDATED FORMS AND REGULATIONS FOR §§ 37/37A CLAIMS
DATE: AUGUST 24, 1998

This circular letter supercedes those previously issued concerning the filing of claims under M.G.L. c. 152, §§ 37/37A. Included please find an updated Form 122 "Request for Section 37 or 37A Proceeding" and Form 123 "Agreement under Section 37 or 37A," and the text of Regulations filed on August 14, 1998.

452 CMR 1.07 (2) (l) sets forth requirements for filing a claim. These requirements are printed on the reverse of the updated Form 122. Any claim previously filed does not have to be refiled on the new form; however, at conciliation the petitioner must provide the documentation specified in this new regulation. A claim for reimbursement shall be accompanied by a certificate stating that it was served on the Office of Legal Counsel. 452 CMR 1.08 (9) describes the scheduling of the conciliation of a claim for reimbursement. 452 CMR 3.05 has been revised, deleting the previous paragraphs, with the revised paragraph 1 referencing the new filing requirements of 452 CMR 1.07 (2) (l).

Requested Changes:

DELETE: existing paragraphs of 452 CMR 3.05 (1) (2) (3) Reimbursement of Benefits for Second Injuries

ADD: 452 CMR 1.07 Claims and Complaints

1.07 (2) (L): A claim requesting reimbursement under M.G.L. c. 152, §§ 37 and 37A shall be made on a form prescribed by the Department which shall be accompanied by both a certificate stating that it was served on the Office of Legal Counsel, and by a petition which sets forth and documents items which include, but are not limited to, the following:

- 1) Employee's job description and duties; educational, military, and employment history; and, vocational training prior to the "subsequent impairment" (i.e. compensable personal injury for which petitioner seeks M.G.L. c. 152, §§37/37A reimbursement; also known as "second injury.")
- 2) Evidence of employer's knowledge of employee's pre-existing physical impairment due to a previous accident, disease or congenital condition as evidenced by such documents as a job application, a pre-employment physical report, or by employer's affidavit attesting that employer knew of the impairment not later than 30 days after the date of employment, or (for injuries occurring prior to 12/23/91) by medical records which existed prior to the date of the subsequent impairment.
- 3) Evidence that a known pre-existing physical impairment was, or was likely to be, a hindrance or obstacle to employment (i.e. medical records evidencing permanent physical restrictions, documented job modifications or accommodations which employer made on behalf of employee).
- 4) All medical records pertaining to the subsequent impairment including attending physician reports, insurance medical examinations, and DIA impartial physician report.
- 5) From the compensation claim involving the second injury, copies of all DIA documents which substantiate the reimbursement which the petitioner seeks, such as:

- (a) Employee Claim Form (110)
- (b) First Report of Injury
- (c) Agreement(s) to Compensation
- (d) Conference Orders, Hearing Decisions and Lump Sum Agreement

- 6) Indemnity record for all reimbursable compensation paid after the 104th week from the date of the onset of disability or death that clearly identify the claimant, the section under which compensation was paid, the dates for which payment was made, and the amount of weekly compensation.
- 7) Medical bills paid for all related reimbursable medical treatment received by employee after the 104th week from the date of the onset of disability. (Computer printouts which clearly identify the claimant, the service providers, and the dates of service constitute satisfactory documentation).
- 8) A description of the subsequent impairment which includes an authoritative medical statement as to how the subsequent impairment is substantially greater (by the combined effects of such impairment and subsequent personal injury) than the disability that would have resulted from the subsequent personal injury alone, or that the subsequent injury was caused by the pre-existing impairment, and, if death results from the subsequent injury, that the death would not have occurred except for such pre-existing physical impairment.

ADD: 452 CMR 1.08 Conciliation

(9) A claim for reimbursement under M.G.L. c. 152, §§ 37 and 37A will be scheduled for conciliation in the Boston Office unless the parties agree in writing, at the time of filing, that it is to be adjudicated at a specified regional office.

ADD: 452 CMR 3.05 Reimbursement of Benefits for Second Injuries

(1) An insurer or self-insurer may file a claim for reimbursement under M.G.L. c. 152, § 10 with the Division of Claims Administration to resolve any controversy arising under M.G.L. c. 152, §§ 37 and 37A, on a form prescribed by the Department as provided in 452 CMR 1:07 (2)(L).



The Commonwealth of Massachusetts
Department of Industrial Accidents – Department 122
 600 Washington Street – 7th Floor, Boston Massachusetts 02111
 Request for Section 37 or 37A Proceeding

DIA USE ONLY

 Check Box: ☐ §37 Claim; ☐ §37A Claim

EMPLOYEE	1. Name: Employee (Last, First, MI)	2. DIA Board No. for Subsequent Injury	3. Date of Subsequent Injury
	4. Home Address (No. & Street, City, State, Zip Code)		
	5. Employer Name & Address		
INSURER	7. Insurer		8. Insurer's Federal I.D. Number
	9. Address of Branch Responsible for Case		
	10. Attorney for Insurer (Name & Address)		11. Attorney's BBO#

Check boxes below to identify all sections of M.G.L. c. 152 relevant to the reimbursement you seek.

Reimbursement for Payments for Subsequent Injury occurring before December 23, 1991:

☐ §30 and ☐ §30A Medical Services and Reports; ☐ §31 and ☐ §32 Surviving Dependents Coverage;
☐ §33 Burial Expenses; ☐ §34 Total Incapacity and ☐ §34A Permanent and Total Incapacity;
☐ §35 Partial Incapacity and ☐ §35A Dependent Compensation ☐ §36 Specific Permanent Injuries and
☐ §36A Death.

Reimbursement for Payments for Subsequent Injury occurring on or after December 23, 1991:

☐ §31 and ☐ §32 Surviving Dependents Coverage; ☐ §33 Burial Expenses; ☐ §34A Permanent and
 Total Disability; ☐ §36A Death; ☐ §30 Medical: only for benefits due under above sections.

Reimbursable Payments made after 104th Week from the date of onset of Disability or Death

(Please indicate Section, Dates, Weeks, Amounts and Total Payments):

1. \$ _____ to _____ = _____ weeks \$ _____	4. \$ _____ to _____ = _____ weeks \$ _____
2. \$ _____ to _____ = _____ weeks \$ _____	5. \$ _____ to _____ = _____ weeks \$ _____
3. \$ _____ to _____ = _____ weeks \$ _____	6. \$ _____ to _____ = _____ weeks \$ _____

Lump Sum (with attorney fees + expenses deducted) Date: _____ Amount: \$ _____

Medical Bills for Reimbursable Services after 104th Week Amount: \$ _____

Total Payments: \$ _____

Benefit Status

12. 104th Week From Disability (MM/DD/YY)	13. Is Employee still receiving compensation? <input type="checkbox"/> Yes <input type="checkbox"/> No
14. Is pre-existing physical impairment due to: <input type="checkbox"/> Previous Accident <input type="checkbox"/> Previous Disease <input type="checkbox"/> Congenital Condition	

Petition

15. Preparer's Name & Title (First, MI, Last)	16. Certificate of Service Attached: Yes <input type="checkbox"/> No <input type="checkbox"/>
17. Preparer's Signature	18. Prepared Date (MM/DD/YY)

REQUIREMENTS TO FILE CLAIMS UNDER §§37/37A

1. After you file this claim it will be scheduled for conciliation in the Boston Office unless the parties agree in writing, at the time of the filing, that it is to be adjudicated at a specified regional office.
2. A claim requesting reimbursement under M.G.L. c. 152, §§ 37 and 37A shall be made on Form 122 and it shall be accompanied by both a certificate stating that it was served on the Office of Legal Counsel, and by a petition which sets forth and documents items which include, but are not limited to, the following:
 - a) Employee's job description and duties; educational, military, and employment history; and, vocational training prior to the "subsequent impairment" (i.e. compensable personal injury for which petitioner seeks G.L. c. 152, §§37/37A reimbursement; also known as "second injury.")
 - b) Evidence of employer's knowledge of employee's pre-existing physical impairment due to a previous accident, disease or congenital condition as evidenced by such documents as a job application, a pre-employment physical report, or by employer's affidavit attesting that employer knew of the impairment not later than 30 days after the date of employment, or (for injuries occurring prior to 12/23/91) by medical records which existed prior to the date of the subsequent impairment.
 - c) Evidence that a known pre-existing physical impairment was, or was likely to be, a hindrance or obstacle to employment (i.e. medical records evidencing permanent physical restrictions, documented job modifications or accommodations which employer made on behalf of employee).
 - d) All medical records pertaining to the subsequent impairment including attending physician reports, insurance medical examinations, and DIA impartial physician report.
 - e) From the compensation claim involving the second injury, copies of all DIA documents which substantiate the reimbursement which the petitioner seeks, such as:
 - (1) Employee Claim Form (110)
 - (2) First Report of Injury
 - (3) Agreement(s) to Compensation
 - (4) Conference Orders, Hearing Decisions and Lump Sum Agreement
- f) Indemnity record for all reimbursable compensation paid after the 104th week from the date of the onset of disability or death that clearly identify the claimant, the section under which compensation was paid, the dates for which payment was made, and the amount of weekly compensation.
- g) Medical bills paid for all related reimbursable medical treatment received by employee after the 104th week from the date of the onset of disability. (Computer printouts which clearly identify the claimant, the service providers, and the dates of service constitute satisfactory documentation).
- h) A description of the subsequent impairment which includes an authoritative medical statement as to how the subsequent impairment is substantially greater (by the combined effects of such impairment and subsequent personal injury) than the disability that would have resulted from the subsequent personal injury alone, or that the subsequent injury was caused by the pre-existing impairment, and, if death results from the subsequent injury, that the death would not have occurred except for such pre-existing physical impairment.



The Commonwealth of Massachusetts
DEPARTMENT OF INDUSTRIAL ACCIDENTS - Department 123
600 Washington Street - 7th Floor, Boston, Massachusetts 02111
AGREEMENT UNDER Section 37 or 37A

PLEASE PRINT OR TYPE.

EMPLOYEE	1. Employee Name (Last, First, MI)		
	2. Home Address (No. & Street, City, State, Zip Code)		
	3. Employer Name		
	4. Employer Address (No. & Street, City, State, Zip Code)		

INSURANCE	5. Insurance Carrier Name	6. Insurance Company Address
	7. Name & Address of Person Able to Verify Information	
	8. Telephone	

9. Paid Through (MM/DD/YY)	10. First Date of Disability (MM/DD/YY)	11. If Employee Died, Enter Date of Death
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12. Total Amount to be reimbursed under Section 37 ☐ or 37A ☐ (Check One) \$ _____ %

13. Is employee still receiving weekly compensation benefits? Yes ☐ No ☐ If yes, please fill out the following

TYPE OF WEEKLY COMPENSATION

a. ☐ Total Disability - Temporary (§34)

b. ☐ Total Disability - Permanent (§34A)

c. ☐ Partial Disability (§35)

d. ☐ Dependent Coverage (§35A)

e. ☐ Surviving Dependents Coverage (§31)

f. ☐ Other (Specify) _____

COMPENSATION AMOUNT

\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____

I hereby certify that the information contained herein is a true accounting of all payments made to the above named employee.

Signature of Insurer's Authorized Representative

Prepared Date (MM/DD/YY)

Name & title (Last, First, MI)

I hereby agree to and authorize the following reimbursement to be made per the provisions of this agreement.

Signature for the Office of The Legal Counsel

Date (MM/DD/YY)

Name & title (Last, First, MI)

DIA BOARD NO. §37 or 37A§
Claim