



James J. Campbell  
Commissioner

# *The Commonwealth of Massachusetts*

## *Department of Industrial Accidents*

*600 Washington Street  
Boston, Mass. 02111*

### CIRCULAR LETTER NO. 296

**TO:** All Interested Persons

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

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

**DATE:** October 1, 1998

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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, 1998, as determined under subsection (2) of §29 of Chapter 151A and promulgated by the Director of Employment and Training, is \$699.91. [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, 1998 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 \$699.91 (one hundred percent of the present SAWW), unless the average weekly wage of the employee is less than the minimum weekly compensation rate of \$139.98 (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 \$699.91 nor less than the minimum weekly compensation rate of \$139.98.

[Recipients of total disability benefits under §34 and § 34A for claims involving injuries occurring before October 1, 1998 should consult Table I and 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, 1998).

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 1999 should be for reimbursements of monies paid during the last calendar quarter of 1998. 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'99 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 §65 COLA and §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 Reimbursement 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 Reimbursement Factor Post 10/1/86
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1938	\$25.63	1.0336	1.0336	24.3498	-	-	-	-	-	-
1939	\$26.49	0.9970	0.9970	23.5593	-	-	-	-	-	-
1940	\$26.41	1.1356	1.1000	23.6306	-	-	-	-	-	-
1941	\$29.99	1.1834	1.1000	21.4824	-	-	-	-	-	-
1942	\$35.49	1.1074	1.1000	19.5295	-	-	-	-	-	-
1943	\$39.30	1.0422	1.0422	17.7541	-	-	-	-	-	-
1944	\$40.96	1.0249	1.0249	17.0346	-	-	-	-	-	-
1945	\$41.98	1.0543	1.0543	16.6206	-	-	-	-	-	-
1946	\$44.26	1.0888	1.0888	15.7644	-	-	-	-	-	-
1947	\$48.19	1.0770	1.0770	14.4787	-	-	-	-	-	-
1948	\$51.90	1.0150	1.0150	13.4439	-	-	-	-	-	-
1949	\$52.68	1.0581	1.0581	13.2448	-	-	-	-	-	-
1950	\$55.74	1.0797	1.0797	12.5177	-	-	-	-	-	-
1951	\$60.18	1.0419	1.0419	11.5941	-	-	-	-	-	-
1952	\$62.70	1.0470	1.0470	11.1281	-	-	-	-	-	-
1953	\$65.65	1.0296	1.0296	10.6281	-	-	-	-	-	-
1954	\$67.59	1.0468	1.0468	10.3229	-	-	-	-	-	-
1955	\$70.75	1.0540	1.0540	9.8619	-	-	-	-	-	-
1956	\$74.57	1.0426	1.0426	9.3567	-	-	-	-	-	-
1957	\$77.75	1.0368	1.0368	8.9741	-	-	-	-	-	-
1958	\$80.61	1.0515	1.0515	8.6556	-	-	-	-	-	-
1959	\$84.76	1.0316	1.0316	8.2318	-	-	-	-	-	-
1960	\$87.44	1.0327	1.0327	7.9796	-	-	-	-	-	-
1961	\$90.30	1.0384	1.0384	7.7268	-	-	-	-	-	-
1962	\$93.77	1.0309	1.0309	7.4409	-	-	-	-	-	-
1963	\$96.67	1.0484	1.0484	7.2177	-	-	-	-	-	-
1964	\$101.35	1.0339	1.0339	6.8844	-	-	-	-	-	-
1965	\$104.79	1.0448	1.0448	6.6583	-	-	-	-	-	-
1966	\$109.48	1.0435	1.0435	6.3731	-	-	-	-	-	-
1967	\$114.24	1.0599	1.0599	6.1076	-	-	-	-	-	-
1968	\$121.08	1.0772	1.0772	5.7626	-	-	-	-	-	-
1969	\$130.43	1.0045	1.0045	5.3495	-	-	-	-	-	-
1970	\$131.02	1.0638	1.0638	5.3254	-	-	-	-	-	-
1971	\$139.38	1.0736	1.0736	5.0059	-	-	-	-	-	-
1972	\$149.64	1.0396	1.0396	4.6627	-	-	-	-	-	-
1973	\$155.57	1.0529	1.0529	4.4850	-	-	-	-	-	-
1974	\$163.80	1.0670	1.0670	4.2596	-	-	-	-	-	-
1975	\$174.78	1.0691	1.0691	3.9921	-	-	-	-	-	-
1976	\$186.85	1.0667	1.0667	3.7341	-	-	-	-	-	-
1977	\$195.31	1.0605	1.0605	3.5008	-	-	-	-	-	-
1978	\$211.37	1.0754	1.0754	3.3010	-	-	-	-	-	-
1979	\$227.31	1.0799	1.0799	3.0696	-	-	-	-	-	-
1980	\$245.48	1.0996	1.0996	2.8423	-	-	-	-	-	-
1981	\$269.93	1.1034	1.1000	2.5848	-	-	-	-	-	-
1982	\$297.85	1.0753	1.0753	2.3498	-	-	-	-	-	-
1983	\$320.29	1.0648	1.0648	2.1852	-	-	-	-	-	-
1984	\$341.06	1.0570	1.0570	2.0522	-	-	-	-	-	-
1985	\$360.50	1.0640	1.0640	1.9416	-	-	-	1.0500	1.7743	-
1986	\$383.57	1.0715	1.0715	1.8247	-	-	-	1.0500	1.6898	0.1350
1987	\$411.00	1.0808	1.0808	1.7030	-	-	-	1.0500	1.6093	0.0936
1988	\$444.20	1.0681	1.0681	1.5757	-	-	-	1.0500	1.5327	0.0430
1989	\$474.47	1.0339	1.0339	1.4752	-	-	-	1.0339	1.4597	0.0155
1990	\$490.57	1.0509	1.0509	1.4267	-	-	-	1.0500	1.4117	0.0150
1991	\$515.52	1.0539	1.0539	1.3577	1.0370	1.0370	1.1932	1.0500	1.3445	0.0132
1992	\$543.30	1.0417	1.0417	-	1.0240	1.0240	1.1506	1.0417	-	-
1993	\$565.94	1.0348	1.0348	-	1.0280	1.0280	1.1237	1.0348	-	-
1994	\$585.66	1.0314	1.0314	-	1.0240	1.0240	1.0930	1.0314	-	-
1995	\$604.03	1.0447	1.0447	-	1.0270	1.0270	1.0674	1.0447	-	-
1996	\$631.03	1.0547	1.0547	-	1.0230	1.0230	1.0394	1.0500	-	-
1997	\$665.55	1.0516	1.0516	-	1.0160	1.0160	1.0160	1.0500	-	-
1998	\$699.91	1.0000	1.0000	-	1.0000	1.0000	1.0000	1.0000	-	-

Notes:

(2) Provided by the Massachusetts Division of Employment and Training.

(3) (2) Year X / (2) Year(X-1).

(4) (3), subject to a maximum of 10%.

(5) Cumulative product of (4)

(6) Provided by Bureau of Labor Statistic

(7) Minimum of (4) and (6).

(8) Cumulative product of (7).

(9) (3) subject to a maximum of 5%.

(10) Cumulative product of (9)

(11) (5) - (10)

**.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 10/1/98 in accordance with § 34B(a) as follows:

<u>SECTION 13A SUBSECTIONS</u>	<u>DOLLAR AMOUNT SPECIFIED</u>	<u>CHANGED TO</u>
(1)	\$700.00	\$835.24
	\$350.00	\$417.62
(2)	\$1,000.00	\$1,193.20
	\$500.00	\$596.60
(3)	\$500.00	\$596.60
	\$250.00	\$298.30
(4)	\$700.00	\$835.24
	\$350.00	\$417.62
(5)	\$3,500.00	\$4,176.20
(6)	\$1,000.00	\$1,193.20

**Table III**

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

(1)	1998 Statewide Average Weekly Wage	\$699.91
(2)	Section 34—Temporary and Total Benefits	
	(a) Rate	60.00%
	(b) Maximum	\$699.91
	(c) Minimum	\$139.98
(3)	Section 34 —Permanent and Total Benefits	
	(a) Rate	66.67%
	(b) Maximum	\$699.91
	(c) Minimum	\$139.98

**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).

**MASSACHUSETTS DEPARTMENT OF INDUSTRIAL ACCIDENTS**  
**DIA TRUST FUND (M.G.L. c. s. 34B(c) COLA REIMBURSEMENT REQUEST**  
 PAYMENT QUARTER \_\_\_/\_\_\_/\_\_\_ TO \_\_\_/\_\_\_/\_\_\_

**CHECK ONE:**

- \_\_\_ Form contains ONLY Injuries ON/BEFORE 10/1/86  
 \_\_\_ Form contain ONLY Post 10/1/86 Injuries

BOARD #	CLAIMANT & EMPLOYER	ADDRESS	DATE OF ELIGIBILITY FOR s. 31, s.34A BENEFITS	WEEKLY ADJUSTMENT PAID (SUPPLEMENTAL BENEFITS)	PRE-WEEKLY ADJUSTED WEEKLY COMPENSATION (BASE BENEFITS)	POST - 10/1/86 ONLY 34B(c) REIMBURSEMENT FACTOR	WEEKLY REIMBURSEMENT	WEEKS PAID	REIMBURSEMENT DUE

**NOTE:** See current circular letter for appropriate Section 34 adjustments multipliers and reimbursement factors.

**PRE 10/1/86 CASES:** for cases with an injury date on or before 10/1/86, simply copy the "supplemental benefit" in the "weekly reimbursement" column and multiply the weekly reimbursement" to the number of week (of the payment quarter) to obtain the reimbursement due.

**POST 10/1/86 CASES:** This box should be filled in only where the injury date was after October 1, 1986. For these cases the base benefit is multiplied by the reimbursement factor to obtain a weekly reimbursement amount which is then multiplied by the number of weeks(of the paymetn quarter) to obtain the reimbursement.



James J. Campbell  
Commissioner

The Commonwealth of  
Massachusetts  
Department of Industrial Accidents  
600 Washington Street  
Boston, Massachusetts 02111

From:

Mail To:

COLA Processing

DIA Office of Administration

P. O. Box 9104, Essex Station

Boston, MA 02112-9104

Gentlemen:

Attached please find a request, pursuant to M.G.L. c.152, Section 65 (as amended by Chapter 572 of the Acts of 1985), for Cost of Living Adjustment (COLA) reimbursements for COLA's paid on behalf of \_\_\_\_\_ claimants totaling \$ \_\_\_\_\_. This request is being submitted for the following category ONLY:

\_\_\_\_\_ Injuries occurring on or before 10/1/86

\_\_\_\_\_ Injuries occurring after 10/1/86

I hereby certify under the penalties of perjury that all laws of the Commonwealth governing assessments and regulations thereof have been complied with and observed, and that all information is, to the best of my knowledge, correct.

SIGNED: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE #: \_\_\_\_\_

DATE: \_\_\_\_\_

FOR INTERNAL USE ONLY

COMMENTS:

\_\_\_\_\_  
PAYMENT

APPROVED \_\_\_\_\_

DATE: \_\_\_\_\_