



# THE COMMONWEALTH OF MASSACHUSETTS

## Department of Industrial Accidents

600 Washington Street, 7th Floor  
Boston, Massachusetts 02111

MITT ROMNEY  
Governor

HENRY J. SWINIARSKI  
Commissioner

KERRY HEALEY  
Lieutenant Governor

### CIRCULAR LETTER NO. 321

**TO:** All Interested Persons

**FROM:** Henry J. Swiniarski, Commissioner

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

**DATE:** September 29, 2006

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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, 2006 as determined under subsection (2) of §29 of Chapter 151A and promulgated by the Commissioner of Unemployment Assistance, is \$1,000.43. [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, 2006 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 **\$1,000.43** (one hundred percent of the present SAWW), unless the average weekly wage of the employee is less than the minimum weekly compensation rate of **\$200.09** (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 not more than the maximum weekly compensation rate of **\$1,000.43** nor less than the minimum weekly compensation rate of **\$200.09**.

**[Recipients of total disability benefits under §34 and §34A for claims involving injuries occurring before October 1, 2006 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, 2006).

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 2007 should be for reimbursements of monies paid during the last calendar quarter of 2006. 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 2007 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.

Note: If you wish to receive future Circular Letters via e-mail, please send your e-mail address to the Department of Industrial Accidents at the following address:

[billt@dia.state.ma.us](mailto:billt@dia.state.ma.us)

Sincerely,



Henry J. Swiniarski  
Commissioner

Calculation of COLA Multipliers and Reimbursement Factors

Table 1

Year	Extended Average Weekly Wage (SAWW)	Annual SAWW Change	Capped Change, Pre 12/23/91	Section 34B Multiplier Pre 12/23/91 Reimbursement Factor Pre 12/23/91	Annual CPI Change	Capped Change, Post 12/23/91	Section 34C Multiplier Post 12/23/91	Section 25F Capped Change	Section 35F Multiplier	Section 34D Reimbursement Factor Post 10/1/98
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1938	\$25.63	1.0336	1.0336	34.5437	-	-	-	-	-	-
1939	\$26.49	0.9970	0.9970	33.4223	-	-	-	-	-	-
1940	\$26.41	1.1356	1.1000	33.5235	-	-	-	-	-	-
1941	\$29.99	1.1834	1.1000	30.4759	-	-	-	-	-	-
1942	\$35.49	1.1074	1.1000	27.7054	-	-	-	-	-	-
1943	\$39.30	1.0422	1.0422	25.1887	-	-	-	-	-	-
1944	\$40.98	1.0249	1.0249	24.1659	-	-	-	-	-	-
1945	\$41.98	1.0543	1.0543	23.5788	-	-	-	-	-	-
1946	\$44.26	1.0888	1.0888	22.3642	-	-	-	-	-	-
1947	\$48.19	1.0770	1.0770	20.5403	-	-	-	-	-	-
1948	\$51.90	1.0150	1.0150	19.0720	-	-	-	-	-	-
1949	\$52.68	1.0581	1.0581	18.7898	-	-	-	-	-	-
1950	\$55.74	1.0797	1.0797	17.7581	-	-	-	-	-	-
1951	\$60.18	1.0419	1.0419	18.4479	-	-	-	-	-	-
1952	\$62.70	1.0470	1.0470	15.7869	-	-	-	-	-	-
1953	\$65.65	1.0296	1.0296	15.0775	-	-	-	-	-	-
1954	\$67.59	1.0468	1.0468	14.6447	-	-	-	-	-	-
1955	\$70.75	1.0540	1.0540	13.9908	-	-	-	-	-	-
1956	\$74.57	1.0426	1.0426	13.2739	-	-	-	-	-	-
1957	\$77.75	1.0368	1.0368	12.7310	-	-	-	-	-	-
1958	\$80.61	1.0515	1.0515	12.2793	-	-	-	-	-	-
1959	\$84.76	1.0316	1.0316	11.6781	-	-	-	-	-	-
1960	\$87.44	1.0327	1.0327	11.3202	-	-	-	-	-	-
1961	\$90.30	1.0384	1.0384	10.9617	-	-	-	-	-	-
1962	\$93.77	1.0309	1.0309	10.5560	-	-	-	-	-	-
1963	\$96.67	1.0484	1.0484	10.2393	-	-	-	-	-	-
1964	\$101.35	1.0339	1.0339	9.7665	-	-	-	-	-	-
1965	\$104.79	1.0448	1.0448	9.4459	-	-	-	-	-	-
1966	\$109.48	1.0435	1.0435	9.0413	-	-	-	-	-	-
1967	\$114.24	1.0599	1.0599	8.6645	-	-	-	-	-	-
1968	\$121.08	1.0772	1.0772	8.1751	-	-	-	-	-	-
1969	\$130.43	1.0045	1.0045	7.5890	-	-	-	-	-	-
1970	\$131.02	1.0638	1.0638	7.5549	-	-	-	-	-	-
1971	\$139.38	1.0736	1.0736	7.1017	-	-	-	-	-	-
1972	\$149.64	1.0398	1.0398	6.6148	-	-	-	-	-	-
1973	\$155.57	1.0529	1.0529	6.3628	-	-	-	-	-	-
1974	\$163.80	1.0670	1.0670	6.0430	-	-	-	-	-	-
1975	\$174.78	1.0691	1.0691	5.6633	-	-	-	-	-	-
1976	\$186.85	1.0667	1.0667	5.2975	-	-	-	-	-	-
1977	\$199.31	1.0605	1.0605	4.9863	-	-	-	-	-	-
1978	\$211.37	1.0754	1.0754	4.6830	-	-	-	-	-	-
1979	\$227.31	1.0799	1.0799	4.3546	-	-	-	-	-	-
1980	\$245.48	1.0998	1.0998	4.0323	-	-	-	-	-	-
1981	\$269.93	1.1034	1.1000	3.6670	-	-	-	-	-	-
1982	\$297.85	1.0753	1.0753	3.3336	-	-	-	-	-	-
1983	\$320.29	1.0648	1.0648	3.1001	-	-	-	-	-	-
1984	\$341.06	1.0570	1.0570	2.9113	-	-	-	-	-	-
1985	\$360.50	1.0640	1.0640	2.7543	-	-	-	1.0500	2.3063	0.4480
1986	\$383.57	1.0715	1.0715	2.5886	-	-	-	1.0500	2.1965	0.3921
1987	\$411.00	1.0808	1.0808	2.4159	-	-	-	1.0500	2.0919	0.3240
1988	\$444.20	1.0681	1.0681	2.2353	-	-	-	1.0500	1.9923	0.2430
1989	\$474.47	1.0339	1.0339	2.0927	-	-	-	1.0339	1.8974	0.1953
1990	\$490.57	1.0509	1.0509	2.0240	-	-	-	1.0500	1.8352	0.1889
1991	\$515.52	1.0539	1.0539	1.9261	1.0370	1.0370	1.4072	1.0500	1.7478	0.1783
1992	\$543.30	1.0417	1.0417	-	1.0240	1.0240	1.3569	1.0417	-	-
1993	\$565.94	1.0348	1.0348	-	1.0280	1.0280	1.3251	1.0348	-	-
1994	\$585.66	1.0314	1.0314	-	1.0240	1.0240	1.2891	1.0314	-	-
1995	\$604.03	1.0447	1.0447	-	1.0270	1.0270	1.2588	1.0447	-	-
1996	\$631.03	1.0547	1.0547	-	1.0230	1.0230	1.2257	1.0500	-	-
1997	\$665.55	1.0518	1.0518	-	1.0160	1.0160	1.1982	1.0500	-	-
1998	\$699.91	1.0711	1.0711	-	1.0210	1.0210	1.1793	1.0500	-	-
1999	\$749.69	1.1083	1.1000	-	1.0206	1.0206	1.1551	1.0500	-	-
2000	\$830.89	1.0723	1.0723	-	1.0340	1.0340	1.1317	1.0500	-	-
2001	\$890.94	0.9906	0.9906	-	1.0280	0.9906	1.0945	0.9906	-	-
2002	\$882.57	1.0021	1.0021	-	1.0210	1.0021	1.1049	1.0021	-	-
2003	\$884.46	1.0388	1.0388	-	1.0282	1.0282	1.1026	1.0388	-	-
2004	\$918.78	1.0433	1.0433	-	1.0346	1.0346	1.0724	1.0433	-	-
2005	\$958.58	1.0437	1.0437	-	1.0365	1.0365	1.0365	1.0437	-	-
2006	\$1,000.43	1.0000	1.0000	-	1.0000	1.0000	1.0000	1.0000	-	-

Notes

(2) Provided by the Massachusetts Division of Unemployment Assistance.  
 (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 Statistics  
 (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 10/1/06 in accordance with §34B(a) as follows:

<b><u>SECTION 13A SUBSECTIONS</u></b>	<b><u>DOLLAR AMOUNT SPECIFIED</u></b>	<b><u>CHANGED TO</u></b>
<b>(1)</b>	<b>\$700.00</b>	<b>\$985.01</b>
	<b>\$350.00</b>	<b>\$492.50</b>
<b>(2)</b>	<b>\$1,000.00</b>	<b>\$1,407.15</b>
	<b>\$500.00</b>	<b>\$703.57</b>
<b>(3)</b>	<b>\$500.00</b>	<b>\$703.57</b>
	<b>\$250.00</b>	<b>\$351.79</b>
<b>(4)</b>	<b>\$700.00</b>	<b>\$985.01</b>
	<b>\$350.00</b>	<b>\$492.50</b>
<b>(5)</b>	<b>\$3,500.00</b>	<b>\$4,925.03</b>
<b>(6)</b>	<b>\$1,000.00</b>	<b>\$1,407.15</b>

**Table III**

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

- (1) 2006 Statewide Average Weekly Wage**
- (2) Section 34 - Temporary and Total Disability Benefits**
  - (a) Rate 60.00%**
  - (b) Maximum \$1,000.43**
  - (c) Minimum \$ 200.09**
- (3) Section 34A - Permanent and Total Disability Benefits**
  - (a) Rate 66.67%**
  - (b) Maximum \$1,000.43**
  - (c) Minimum \$ 200.09**

**Notes:**

- (1) Provided by the Massachusetts Division of Unemployment Assistance**
- (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).**



THE COMMONWEALTH OF MASSACHUSETTS

Department of Industrial Accidents

600 Washington Street, 7th Floor
Boston, Massachusetts 02111

MITT ROMNEY
Governor

HENRY J. SWINIARSKI
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KERRY HEALEY
Lieutenant Governor

From:

Four horizontal lines for address information.

Mail To:

COLA Processing
DIA Office of Administration
P.O. Box 9104, Essex Station
Boston, MA 02112-9104

Dear Sir or Madam:

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 pains and penalties of perjury that all laws of the Commonwealth of Massachusetts 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: \_\_\_\_\_

**MASSACHUSETTS DEPARTMENT OF INDUSTRIAL ACCIDENTS**  
**DIA TRUST FUND M.G.L. c. 152 § 34B(c) COLA REIMBURSEMENT REQUEST FORM**  
 PAYMENT QUARTER \_\_\_\_ / \_\_\_\_ / \_\_\_\_ TO \_\_\_\_ / \_\_\_\_ / \_\_\_\_

For assistance in completing this form please see page 2 for directions.

A	B	C	D	E	F	G	H	I	J	K	L
DIA Board #	Claimant & Employer Names	Claimant's Address	Claimant's Social Security #	Date of Injury	Date of Eligibility for Benefits	Weekly Compensation (Base Benefits)	COLA Multiplier (POST 10/1/86 ONLY)	Weekly Adjustment Paid (Supplemental Benefits)	Total Weekly Compensation Paid	# of Weeks Paid	Reimbursement Due

**Total Reimbursement Due** \_\_\_\_\_

NOTE: A signed COLA Cover Sheet and all supporting documentation must accompany this form to be considered for reimbursement.

MASSACHUSETTS DEPARTMENT OF INDUSTRIAL ACCIDENTS  
DIA TRUST FUND M.G.L. c. 152 § 34B(c) COLA REIMBURSEMENT REQUEST FORM  
DIRECTIONS

NOTE: The Workers' Compensation Trust Fund will only reimburse *Insurers* for COLA payments.

- A. Please make sure that the correct Board Number is in this column.
- B. Be sure to include both parties.
- C. This is the address at which the employee/widow receives payment.
- D. Include claimant's social security number.
- E. Date of injury as stated on the Form 110.
- F. For § 31 (Widow Benefits) the date for this column is the date of the employee's death. For § 34A (Permanent and Total Incapacity Benefits) the date for this column is the date of injury.
- G. The base benefit is equal to the amount ordered to be paid to the employee/widow on a weekly basis.
- H. See current circular letter for appropriate § 34 adjustments, multipliers and reimbursement factors.
- I. Supplemental benefit is equal to the Base Benefit times the COLA multiplier minus the Base Benefit.
- J. Total amount paid to employee/widow per week. This number should be the Base Benefit plus the Supplemental Benefit.
- K. Total number of weeks in the quarter in which a payment was made to the employee/widow.
- L. The amount to be reimbursed to the Insurer will be equal to the Supplemental Benefit times the number of weeks paid in the quarter.

**SUPPORTING DOCUMENTATION:**

- The COLA request form must be accompanied by a signed COLA Cover Sheet.
- Proof of Payments – Insurers must provide an indemnity record of what has been paid out. This will also ensure that the request has been made in a timely fashion.
- Proof that Payments were Proper –
  - The Insurer will be required to submit a copy of the order, decision or agreement for each case it wishes to be reimbursed on.
  - The Insurer must sign the COLA Cover Sheet under the pains and penalties of perjury, and therefore should complete an CR-28 form with the Social Security Administration to ensure that the COLA payments were in fact not offset by SSA payments.
  - For § 34A claims the Insurer must also submit recent medicals on the employee, thereby backing up the statement of permanent and total disability.