

THE COMMONWEALTH OF MASSACHUSETTS

Department of Industrial Accidents

600 Washington Street, 7th Floor
Boston, Massachusetts 02111

DEVAL L. PATRICK
Governor

PAUL V. BUCKLEY
Commissioner

TIMOTHY P. MURRAY
Lieutenant Governor

CIRCULAR LETTER NO. 332

TO: All Interested Persons

FROM: Paul V. Buckley, Commissioner

RE: Cost of Living Adjustments (COLA) Payment and Reimbursement Schedules & Requests; Maximum and Minimum Weekly Compensation Rates; and Attorneys' Fee Schedule.

DATE: October 2, 2009 – *Effective October 1, 2009*

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 December 24, 1991;
- (d) The proper amounts of adjustments to compensation required under §34B and §35F for injuries occurring on or after December 24, 1991;
- (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, 2009 as determined under M.G.L. c. 151A, §29(2) and promulgated by the Commissioner of Unemployment Assistance, is **\$1,094.70** [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, 2009 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 **\$1,094.70** (one hundred percent of the present SAWW), unless the average weekly wage of the employee is less than the minimum weekly compensation rate of **\$218.94** (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 disability benefits under §34A shall equal two-thirds (66.67%) of the employee's average weekly wage before the injury, but not more than the maximum weekly compensation rate of **\$1,094.70** nor less than the minimum weekly compensation rate of **\$218.94**.

[Recipients of total disability benefits under §34 and §34A for claims involving injuries occurring before October 1, 2009 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 Table I (see attached) 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, 2009).

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 of Table I. 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 Table I). For injuries occurring on or after December 24, 1991, 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 2010 should be for reimbursements of monies paid during the last calendar quarter of 2009. 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.

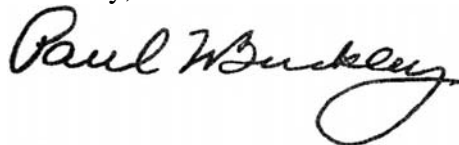
[*If the claimant is receiving Social Security disability benefits the adjusted compensation should be capped at the point where one more dollar in such compensation would have the effect of reducing any Social Security disability benefits the claimant is receiving. To determine whether and how such 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 2010 to provide that any capital COLA offsets were taken and that no COLA was improperly paid.]

Please be advised that the Department of Industrial Accidents (DIA) will be promulgating new forms for insurers requesting COLA reimbursement under §65, §34B(c) fully and partially reimbursable, §34B(c) partially reimbursable with Social Security offset, §35A – dependency component, §35B – rate enhancement component, §35C – latency component, §51A – rate enhancement component. These new forms will be posted on DIA's website [www.mass.gov/dia] within the next week. No request for reimbursement pursuant to §34B may be submitted to dispute resolution unless 90 days have elapsed from the date of filing said request with the Workers' Compensation Trust Fund.

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 electronically, please send an e-mail with the subject line "Please add to Circular Letter list" to the Department of Industrial Accidents at the following address: Info2@dia.state.ma.us. Be sure you to include your name along with your current e-mail address.

Sincerely,

A handwritten signature in black ink that reads "Paul V. Buckley". The signature is written in a cursive style with a large, sweeping flourish at the end.

Paul V. Buckley
Commissioner

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 10/1/09 in accordance with §34B(a) as follows:

<u>SECTION 13A SUBSECTIONS</u>	<u>DOLLAR AMOUNT SPECIFIED</u>	<u>CHANGED TO</u>
(1)	\$700.00	\$1,048.11
	\$350.00	\$524.04
(2)	\$1,000.00	\$1,497.28
	\$500.00	\$747.75
(3)	\$500.00	\$747.66
	\$250.00	\$373.89
(4)	\$700.00	\$1,048.11
	\$350.00	\$524.04
(5)	\$3,500.00	\$5,240.44
(6)	\$1,000.00	\$1,497.28

Table III

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

- (1) 2009 Statewide Average Weekly Wage: \$1,094.70
- (2) Section 34 - Temporary and Total Disability Benefits
 - (a) Rate 60.00%
 - (b) Maximum \$1,094.70
 - (c) Minimum \$ 218.94
- (3) Section 34A - Permanent and Total Disability Benefits
 - (a) Rate 66.67%
 - (b) Maximum \$1,094.70
 - (c) Minimum \$ 218.94

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).