

### THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF LABOR & WORKFORCE DEVELOPMENT DEPARTMENT OF INDUSTRIAL ACCIDENTS

**DEVAL L. PATRICK GEORGE NOEL** Governor

**RACHEL KAPRIELIAN** Secretary

#### **CIRCULAR LETTER NO. 345**

TO: **All Interested Persons** 

FROM: George Noel, Director

RE: Cost of Living Adjustments (COLA) Payment and Reimbursement

Schedules & Requests; Maximum and Minimum Weekly Compensation

Director

Rates; Attorneys' Fee Schedule.

**DATE:** October 9, 2014 (effective October 1, 2014)

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

The maximum weekly benefits payable under M.G.L. c. 152; (a)

- **(b)** The minimum compensation rates payable under §34 and §34A;
- The proper amounts of adjustments to compensation required under §34B and §35F (c) 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;
- The reimbursement amount payable to insurers for COLAs paid on permanent and (e) total or survivors' benefits for injuries occurring on or before October 1, 1986;
- The reimbursement amount payable to insurers for COLAs paid on permanent and **(f)** total or survivors' benefits for injuries occurring subsequent to October 1, 1986 but before December 24, 1991; and
- Attorneys' fee schedule for claims involving injuries occurring on or after December **(g)** 24, 1991.

The average weekly wage in the Commonwealth (SAWW) effective October 1, 2014 as determined under M.G.L. c. 151A, §29(2) and promulgated by the Commissioner of Unemployment Assistance, is \$1,214.99 [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, 2014 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 \$1,214.99 (one hundred percent of the present SAWW), unless the average weekly wage of the employee is less than the minimum weekly compensation rate of \$243.00 (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 \$1,214.99 nor less than the minimum weekly compensation rate of \$243.00.

[Recipients of total disability benefits under §34 and §34A for claims involving injuries occurring before October 1, 2014 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, 2014).

COLAs for persons receiving partial benefits under §35 are payable <u>only</u> to those employees with an injury date on or after January 1, 1986 but before December 24, 1991 whose injury occurred at least <u>three</u> 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 2015 should be for reimbursements of monies paid during the last calendar quarter of 2014. 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. 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 who's COLA the insurer is seeking reimbursement must be submitted in FY 2015 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 establishing an electronic submission process for COLA reimbursement requests. The new process will be announced at a later date.

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: <a href="Info2@dia.state.ma.us">Info2@dia.state.ma.us</a>. Be sure you to include your name along with your current e-mail address.

Sincerely,

George Noel

yearse E. Hall

Director

#### Calculation of COLA Multipliers and Reimbursement Factors Table I - 10-1-2014 Post 10/1/8 (8) 41.952 1939 \$26.49 0.9970 0.997 40.5903 1940 \$26.4 1.135 1.1000 40.7132 1941 \$29.99 1.183 1.1000 37.0120 1942 \$35.49 1.1074 1.1000 33.6473 1943 \$39.30 1.0422 1.0422 30.5884 1944 \$40.96 1.0249 1.0249 29.3487 ---1945 \$41.98 1.0543 1.0543 28.6356 1946 \$44.26 1.088 1.0888 27.1605 ------1947 \$48.19 1.0770 1.0770 24.9456 1948 \$51.90 1.0150 1.0150 23.1623 ---\$52.68 1.058 1949 1.058 22.8194 \$55.74 1.079 1.079 21.5667 1951 \$60.18 1.0419 1.0419 19.9755 \$62.70 1.047 1.0470 19.1727 1952 1953 \$65.65 1.0296 1.0296 18.311 ------1.046 1954 \$67.59 1.0468 17.7856 \$70.75 \$74.5 1955 1.0540 1.0540 16.9912 ------1956 1.0426 1.0426 16.1207 1957 \$77.75 1.036 1.0368 15 4614 \$80.61 1.0515 14.9129 1958 1.051 \$84.76 14.1827 13.7481 1959 1.0316 1.0316 1960 1.0327 1.0327 ---1961 \$90.30 1.038 1.038 13.3126 1962 \$93.77 1.0309 1.0309 12.8199 ---1963 \$96.67 1.048 1.048 12.4354 1964 \$101.35 1.0339 1.0339 11.8611 ---1965 \$104.79 1.0448 1.0448 11.4718 1966 \$109.48 1 043 1 043 10 9803 \$114.2 1.0599 1.0599 10.5228 1967 1968 \$121.08 1.0772 1.0772 9.9283 1969 \$130.43 1.004 1.0045 9.2167 \$131.02 \$139.38 1970 1.0638 1.0638 9.1751 1971 1.0736 1.0736 8.6248 1972 \$149.6 1.0396 1.039 8.0334 1973 \$155.57 1.0529 1.0529 7.7273 1974 \$163.80 1.0670 1.0670 7.3390 1975 \$174.78 1.069 1.069 6.8780 - - -- -1976 \$186.85 1.066 1.0667 6.4336 1977 \$199.3 1.060 1.0609 6.0314 \$211.3 1.075 1.075 5.6873 1978 1979 \$227.3 1.079 1.079 5.288 - -\$245.48 1980 1.0996 1.0996 4.8970 1981 \$269.93 1.103 1.1000 4 4535 \$297.85 1982 1.0753 1.0753 4.0486 1983 \$320.29 1.0648 1.0648 3.7649 - -1984 \$341.06 1.0570 1.0570 3.5357 1985 \$360.50 1.0640 1.0640 3.3450 1.0500 2.8010 1986 \$383.57 1.071 1.0715 3.1438 1.0500 2.667 0.4762 \$411.00 1.0808 1987 1.0808 1.0500 0.393 1988 \$444.20 1.068 1.068 2 7147 1.0500 2 4196 0 295 \$474.4 1989 1.0339 1.0339 2.5415 1.0339 2.3043 0.2372 1990 \$490.5 1.0509 1.0509 2 4581 1.0500 2.2287 0.229 \$515.52 1.0500 0.216 1991 1.0539 1.0539 2.3391 1.0370 1.0370 1.5962 2.122 1992 \$543.30 1.0417 1.0417 1.0240 1.0240 1.5393 1.0417 \$565.94 1.0348 1.0280 1.0348 1993 1.0348 1.0280 1.5032 1994 \$585.66 1.0314 1.0314 1.0240 1.0240 1.4622 1.0314 1995 \$604.03 1.0447 1.0447 1.0270 1.0270 1.4279 1.0447 \$631.03 1.0547 1.0547 1.0230 1.0230 1.3905 1.0500 1996 1997 \$665.55 1.0516 1.0516 1.0160 1.0160 1.359 1.0500 1998 \$699.9 1.071 1.071 1.0210 1.0210 1.3378 1.0500 1999 \$749.69 1.1083 1.1000 1.0206 1.0206 1.3102 1.0500 \$830.89 1.0723 1.0723 1.0500 2000 1.0340 1.0340 1.2838 2001 \$890.94 0.990 0.9906 1.0280 0.990 1.2416 0.9906 \$882.57 1.002 1.0021 1.0210 1.002 1.2534 1.0021 2002 2003 \$884.46 1.038 1.0388 1.0282 1.0282 1.2506 1.0388 2004 \$918.78 1.0433 1.0433 1.0346 1.0346 1.2164 1.0433 \$958.58 1.043 1.043 1.0365 1.0437 2006 \$1,000.43 1.043 1.0431 1.0361 1.036 1.1344 1.043 2007 \$1,043.5 1.047 1.0477 1.0256 1.0256 1.0948 1.0477

Use Northeast Region CPI Use % diff between next and current yr SAWW Use % diff between current CPI and prev CPI

1.0399

1.0002

1.0197

1.0305

1.0195

1.0136

1.0000

1.0013

0.9939

1.0197

1.0305

1.0070

1.0136

1.0000

1.0674

1.0660

1.0725

1.0518

1.0207

1.0136

1.0000

2008

2009

2010

2011

2012

2013

2014

\$1.093.27

\$1,094.70

\$1.088.06

\$1,135.82

\$1,173,06

\$1,181.28

\$1,214.99

1.0013

0.993

1.0439

1.0328

1.0070

1.028

1.0000

1.0013

0.9939

1.0439

1.0328

1.0070

1.0285

1.0000

1.0013

0.9939

1.0439

1.0328

1.0070

1.0285

1.0000

<sup>(2)</sup> Provided by the Massachusetts Division of Unemployment Assistance. (3) (2) Year X+1 / (2) Year X

<sup>(4) (3),</sup> subject to a maximum of 10%.

<sup>(5)</sup> Cumulative product of (4)

<sup>(6)</sup> Provided by Bureau of Labor Statistics.

<sup>(7)</sup> Minimum of (4) and (6).

<sup>(8)</sup> Cumulative product of (7).

<sup>(9) (3)</sup> subject to a maximum of 5%.

<sup>(10)</sup> Cumulative product of (9)

<sup>(11) (5) - (10)</sup> 

#### 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 10/1/2014 in accordance with \$34B(a) as follows:

SECTION 13A	DOLLAR	CHANGED TO
<b>SUBSECTIONS</b>	<u>AMOUNT</u>	
	SPECIFIED	
(1)	\$700.00	\$1,117.37
	\$350.00	\$ 558.68
(2)	\$1,000.00	\$1,596.24
	\$500.00	\$ 798.12
(3)	\$500.00	\$ 798.12
	\$250.00	\$ 399.06
(4)	\$700.00	\$1,117.37
	\$350.00	\$ 558.68
(5)	\$3,500.00	\$5,586.84
(6)	\$1,000.00	\$1,596.24

Table III

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

(1) 2013 Statewide Average Weekly Wage: \$1,214.99

(2) Section 34 -Temporary and Total Disability Benefits

(a) Rate 60.00% (b) Maximum \$1,214.99 (c) Minimum \$ 243.00

(3) Section 34A - Permanent and Total Disability Benefits

(a) Rate 66.67% (b) Maximum \$1,214.99 (c) Minimum \$ 243.00

#### **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).



Secretary

# THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF LABOR & WORKFORCE DEVELOPMENT DEPARTMENT OF INDUSTRIAL ACCIDENTS

Governor

RACHEL KAPRIELIAN

GEORGE NOEL
Director

From: Mail To:	
	COLA Processing
	DIA Office of Legal Counsel
	· · · · · · · · · · · · · · · · · · ·
	Boston, MA 02114-2017
Dear Sir or Mad	lam:
Chapter 572 of treimbursements	find a request, pursuant to M.G.L. c. 152, Section 65 (as amended by the Acts of 1985), for Cost of Living Adjustment (COLA) for COLA's paid on behalf of claimants totaling This request is being submitted for the following category ONLY:
Ψ	This request is being submitted for the following category ONLT.
_	Injuries occurring on or before 10/1/86
_	Injuries occurring after 10/1/86
of Massachusett	under pains and penalties of perjury that all laws of the Commonwealth s governing assessments and regulations thereof have been complied ed, and that all information is, to the best of my knowledge, correct.
SIGNED:	NAME:
TITLE:	PHONE #:
<b>DATE:</b>	
COMMENTS:	FOR INTERNAL USE ONLY

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

<b>Total Reimbursement Due</b>	

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 recieves 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.

### DIA TRUST FUND M.G.L. c. 152 § 34B(c) COLA REIMBURSEMENT REQUEST PAYMENT QUARTER \_\_\_\_\_ / \_\_\_\_ TO \_\_\_\_ / \_\_\_\_ TO \_\_\_\_ / \_\_\_\_ / \_\_\_\_ FROM: Mail To: COLA Processing **DIA Office of General Counsel** 1 Congress Street, Suite 100 Boston, MA 02114-2017 Attached please find a request, pursuant to M.G.L. c. 152 § 65, for Cost of Living Adjustment (COLA) reimbursements for COLA's paid on behalf of \_\_\_\_\_ claimants totaling \$\_\_\_\_. This request is being submitted on behalf of \_\_\_\_\_\_ Insurer. I hearby certify under pains and penalties of perjury that all laws of the Commonwelth 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. I hereby certify that there is no pending litigation in any of the named cases, that there is no payment being made by the Social Security Administration in the named cases that would affect eligibility for supplemental COLA benefits, and that the employer(s) named have not chosen to opt-out pursuant to M.G.L. c. 152. Name: \_\_\_\_\_ Organization: Phone #: \_\_\_\_\_ FOR INTERNAL USE ONLY Payment Approved: \_\_\_\_\_ Comments:

Date: \_\_\_\_\_

MASSACHUSETTS DEPARTMENT OF INDUSTRIAL ACCIDENTS