

THE COMMONWEALTH OF MASSACHUSETTS

Department of Industrial Accidents

1 Congress Street, Suite 100
Boston, Massachusetts 02114-2017

DEVAL L. PATRICK
Governor

PAUL V. BUCKLEY
Commissioner

TIMOTHY P. MURRAY
Lieutenant Governor

CIRCULAR LETTER NO. 336

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 6, 2010 – *Effective October 1, 2010*

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, 2010 as determined under M.G.L. c. 151A, §29(2) and promulgated by the Commissioner of Unemployment Assistance, is **\$1,088.06** [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, 2010 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 **\$1,088.06** (one hundred percent of the present SAWW), unless the average weekly wage of the employee is less than the minimum weekly compensation rate of **\$217.61** (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 **\$1,088.06** nor less than the minimum weekly compensation rate of **\$217.61**.

[Recipients of total disability benefits under §34 and §34A for claims involving injuries occurring before October 1, 2010 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, 2010).

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 2011 should be for reimbursements of monies paid during the last calendar quarter of 2010. 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.

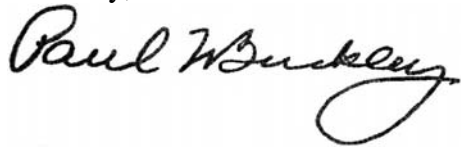
[*If the claimant is receiving Social Security disability benefits the adjusted compensation should be capped at the point where one more dollar in such compensation would have the effect of reducing any Social Security disability benefits the claimant is receiving. All requests for reimbursement must 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 2011 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: 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, looping "y" at the end.

Paul V. Buckley
Commissioner

Calculation of COLA Multipliers and Reimbursement Factors

Table I - Corrected 10/07/2010

Year	Statewide Average Weekly Wage (SAWW)	Annual SAWW Change	Capped Change, Pre 12/24/91	Section 34B Multiplier Pre 12/24/91 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	37.5204	-	-	-	-	-	-
1939	\$26.49	0.9970	0.9970	36.3498	-	-	-	-	-	-
1940	\$26.41	1.1356	1.1000	36.4599	-	-	-	-	-	-
1941	\$29.99	1.1834	1.1000	33.1454	-	-	-	-	-	-
1942	\$35.49	1.1074	1.1000	30.1321	-	-	-	-	-	-
1943	\$39.30	1.0422	1.0422	27.3928	-	-	-	-	-	-
1944	\$40.96	1.0249	1.0249	26.2827	-	-	-	-	-	-
1945	\$41.98	1.0543	1.0543	25.6443	-	-	-	-	-	-
1946	\$44.26	1.0888	1.0888	24.3231	-	-	-	-	-	-
1947	\$48.19	1.0770	1.0770	22.3395	-	-	-	-	-	-
1948	\$51.90	1.0150	1.0150	20.7426	-	-	-	-	-	-
1949	\$52.68	1.0581	1.0581	20.4355	-	-	-	-	-	-
1950	\$55.74	1.0797	1.0797	19.3136	-	-	-	-	-	-
1951	\$60.18	1.0419	1.0419	17.8886	-	-	-	-	-	-
1952	\$62.70	1.0470	1.0470	17.1697	-	-	-	-	-	-
1953	\$65.65	1.0296	1.0296	16.3982	-	-	-	-	-	-
1954	\$67.59	1.0468	1.0468	15.9275	-	-	-	-	-	-
1955	\$70.75	1.0540	1.0540	15.2161	-	-	-	-	-	-
1956	\$74.57	1.0426	1.0426	14.4367	-	-	-	-	-	-
1957	\$77.75	1.0368	1.0368	13.8462	-	-	-	-	-	-
1958	\$80.61	1.0515	1.0515	13.3550	-	-	-	-	-	-
1959	\$84.76	1.0316	1.0316	12.7010	-	-	-	-	-	-
1960	\$87.44	1.0327	1.0327	12.3138	-	-	-	-	-	-
1961	\$90.30	1.0384	1.0384	11.9220	-	-	-	-	-	-
1962	\$93.77	1.0309	1.0309	11.4806	-	-	-	-	-	-
1963	\$96.67	1.0484	1.0484	11.1362	-	-	-	-	-	-
1964	\$101.35	1.0339	1.0339	10.6221	-	-	-	-	-	-
1965	\$104.79	1.0448	1.0448	10.2733	-	-	-	-	-	-
1966	\$109.48	1.0435	1.0435	9.8332	-	-	-	-	-	-
1967	\$114.24	1.0599	1.0599	9.4235	-	-	-	-	-	-
1968	\$121.08	1.0772	1.0772	8.8911	-	-	-	-	-	-
1969	\$130.43	1.0045	1.0045	8.2537	-	-	-	-	-	-
1970	\$131.02	1.0638	1.0638	8.2166	-	-	-	-	-	-
1971	\$139.38	1.0736	1.0736	7.7239	-	-	-	-	-	-
1972	\$149.64	1.0396	1.0396	7.1942	-	-	-	-	-	-
1973	\$155.57	1.0529	1.0529	6.9200	-	-	-	-	-	-
1974	\$163.80	1.0670	1.0670	6.5723	-	-	-	-	-	-
1975	\$174.78	1.0691	1.0691	6.1594	-	-	-	-	-	-
1976	\$186.85	1.0667	1.0667	5.7615	-	-	-	-	-	-
1977	\$199.31	1.0605	1.0605	5.4013	-	-	-	-	-	-
1978	\$211.37	1.0754	1.0754	5.0931	-	-	-	-	-	-
1979	\$227.31	1.0799	1.0799	4.7360	-	-	-	-	-	-
1980	\$245.48	1.0996	1.0996	4.3854	-	-	-	-	-	-
1981	\$269.93	1.1034	1.1000	3.9882	-	-	-	-	-	-
1982	\$297.85	1.0753	1.0753	3.6257	-	-	-	-	-	-
1983	\$320.29	1.0648	1.0648	3.3716	-	-	-	-	-	-
1984	\$341.06	1.0570	1.0570	3.1664	-	-	-	-	-	-
1985	\$360.50	1.0640	1.0640	2.9955	-	-	-	1.0500	2.5083	0.4872
1986	\$383.57	1.0715	1.0715	2.8154	-	-	-	1.0500	2.3889	0.4265
1987	\$411.00	1.0808	1.0808	2.6276	-	-	-	1.0500	2.2752	0.3523
1988	\$444.20	1.0681	1.0681	2.4312	-	-	-	1.0500	2.1668	0.2644
1989	\$474.47	1.0339	1.0339	2.2760	-	-	-	1.0339	2.0636	0.2124
1990	\$490.57	1.0509	1.0509	2.2014	-	-	-	1.0500	1.9958	0.2055
1991	\$515.52	1.0539	1.0539	2.0948	1.0370	1.0370	1.4879	1.0500	1.1840	0.9108
1992	\$543.30	1.0417	1.0417		1.0240	1.0240	1.4351	1.0417		
1993	\$565.94	1.0348	1.0348		1.0280	1.0280	1.4014	1.0348		
1994	\$585.66	1.0314	1.0314		1.0240	1.0240	1.3633	1.0314		
1995	\$604.03	1.0447	1.0447		1.0270	1.0270	1.3313	1.0447		
1996	\$631.03	1.0547	1.0547		1.0230	1.0230	1.2964	1.0500		
1997	\$665.55	1.0516	1.0516		1.0160	1.0160	1.2673	1.0500		
1998	\$699.91	1.0711	1.0711		1.0210	1.0210	1.2472	1.0500		
1999	\$749.69	1.1083	1.1000		1.0206	1.0206	1.2216	1.0500		
2000	\$830.89	1.0723	1.0723		1.0340	1.0340	1.1971	1.0500		
2001	\$890.94	0.9906	0.9906		1.0280	0.9906	1.1576	0.9906		
2002	\$882.57	1.0021	1.0021		1.0210	1.0021	1.1685	1.0021		
2003	\$884.46	1.0388	1.0388		1.0282	1.0282	1.1661	1.0388		
2004	\$918.78	1.0433	1.0433		1.0346	1.0346	1.1342	1.0433		
2005	\$958.58	1.0437	1.0437		1.0365	1.0365	1.0961	1.0437		
2006	\$1,000.43	1.0431	1.0431		1.0361	1.0361	1.0576	1.0431		
2007	\$1,043.54	1.0477	1.0477		1.0256	1.0256	1.0469	1.0477		
2008	\$1,093.27	1.0013	1.0013		1.0399	1.0013	0.9965	1.0013		
2009	\$1,094.70	0.9940	0.9940		1.0002	0.9940	0.9941	0.9940		
2010	\$1,088.06	1.0000	1.0000		1.0000	1.0000	1.0000	1.0000		

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

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

<u>SECTION 13A SUBSECTIONS</u>	<u>DOLLAR AMOUNT SPECIFIED</u>	<u>CHANGED TO</u>
(1)	\$700.00	\$1,042.82
	\$350.00	\$520.89
(2)	\$1,000.00	\$1,488.30
	\$500.00	\$743.26
(3)	\$500.00	\$743.26
	\$250.00	\$372.08
(4)	\$700.00	\$1,042.82
	\$350.00	\$520.89
(5)	\$3,500.00	\$5,209.00
(6)	\$1,000.00	\$1,488.30

Table III

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

- (1) 2010 Statewide Average Weekly Wage: \$1,088.06
- (2) Section 34 - Temporary and Total Disability Benefits
 - (a) Rate 60.00%
 - (b) Maximum \$1,088.06
 - (c) Minimum \$ 217.61
- (3) Section 34A - Permanent and Total Disability Benefits
 - (a) Rate 66.67%
 - (b) Maximum \$1,088.06
 - (c) Minimum \$ 217.61

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).

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.

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

Signed: _____
Name: _____
Title: _____
Organization: _____
Phone #: _____
Date: _____

FOR INTERNAL USE ONLY

Comments:

Payment Approved: _____

Date: _____