



THE COMMONWEALTH OF MASSACHUSETTS

Department of Industrial Accidents

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

DEVAL L. PATRICK
Governor

PHILIP L. HILLMAN
Director

TIMOTHY P. MURRAY
Lieutenant Governor

CIRCULAR LETTER NO. 342

TO: All Interested Persons

FROM: Philip L. Hillman, Director

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

DATE: October 9, 2012 – Effective October 1, 2012

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

- (a) The maximum weekly compensation payable under M.G.L. c. 152;
- (b) The minimum weekly compensation rates payable under §34 and §34A;
- (c) The proper amounts of adjustments to weekly compensation required under §34B and §35F for injuries occurring before December 24, 1991;
- (d) The proper amounts of adjustments to weekly compensation required under §34B for injuries occurring on or after December 24, 1991;
- (e) The reimbursement amount payable to insurers for COLA 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 COLA 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, 2012 as determined under M.G.L. c. 151A, §29(2) and promulgated by the Commissioner of Unemployment Assistance, is **\$1,173.06** (Please consult Table III).

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 **\$1,173.06** (one hundred percent of the present SAWW), unless the average weekly wage of the employee is less than the minimum weekly compensation rate of **\$234.61** (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 **\$1,173.06** nor less than the minimum weekly compensation rate of **\$234.61**. (See Table III)

To calculate the adjustment under §34B multiply the claimant's unadjusted weekly compensation by the multiplier corresponding to the date of injury (the amount in the fifth column of the attached Table I for injuries occurring before December 24, 1991 or the amount in the eighth column for injuries occurring on or after December 24, 1991). 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, 2012).

COLA payments 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 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 (COLA). When COLA benefits are paid pursuant to §34A or §31 as outlined above, 100 % 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 paid under §34B for the COLA year beginning October 1, 2012. Furthermore, there are no reimbursements from the WCTF for COLA paid pursuant to §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 forms supplied at mass.gov/dia and forward them to the mailing 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 2013 should be for reimbursements of monies paid during the last calendar quarter of 2012. 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.

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 contained therein 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 to include your name along with your current e-mail address.

Sincerely,



Philip L. Hillman
Director

Mailing address for COLA reimbursements requests:

Department of Industrial Accidents
COLA Reimbursement Unit
Workers' Compensation Trust Fund
1 Congress Street, Suite 100
Boston, MA 02114-2017

Calculation of COLA Multipliers and Reimbursement Factors

Table I - 10-1-2012

Year	Statewide Average Weekly Wage (SAWW)	Annual SAWW Change	Capped Change, Pre 12/24/91	Section 34B Multiplier 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	40.8865	-	-	-	-	-	-
1939	\$26.49	0.9970	0.9970	39.6110	-	-	-	-	-	-
1940	\$26.41	1.1356	1.1000	39.7309	-	-	-	-	-	-
1941	\$29.99	1.1834	1.1000	36.1191	-	-	-	-	-	-
1942	\$35.49	1.1074	1.1000	32.8354	-	-	-	-	-	-
1943	\$39.30	1.0422	1.0422	29.8504	-	-	-	-	-	-
1944	\$40.96	1.0249	1.0249	28.6407	-	-	-	-	-	-
1945	\$41.98	1.0543	1.0543	27.9447	-	-	-	-	-	-
1946	\$44.26	1.0888	1.0888	26.5053	-	-	-	-	-	-
1947	\$48.19	1.0770	1.0770	24.3437	-	-	-	-	-	-
1948	\$51.90	1.0150	1.0150	22.6036	-	-	-	-	-	-
1949	\$52.68	1.0581	1.0581	22.2689	-	-	-	-	-	-
1950	\$55.74	1.0797	1.0797	21.0464	-	-	-	-	-	-
1951	\$60.18	1.0419	1.0419	19.4935	-	-	-	-	-	-
1952	\$62.70	1.0470	1.0470	18.7101	-	-	-	-	-	-
1953	\$65.65	1.0296	1.0296	17.8694	-	-	-	-	-	-
1954	\$67.59	1.0468	1.0468	17.3564	-	-	-	-	-	-
1955	\$70.75	1.0540	1.0540	16.5812	-	-	-	-	-	-
1956	\$74.57	1.0426	1.0426	15.7319	-	-	-	-	-	-
1957	\$77.75	1.0368	1.0368	15.0885	-	-	-	-	-	-
1958	\$80.61	1.0515	1.0515	14.5531	-	-	-	-	-	-
1959	\$84.76	1.0316	1.0316	13.8405	-	-	-	-	-	-
1960	\$87.44	1.0327	1.0327	13.4163	-	-	-	-	-	-
1961	\$90.30	1.0384	1.0384	12.9914	-	-	-	-	-	-
1962	\$93.77	1.0309	1.0309	12.5106	-	-	-	-	-	-
1963	\$96.67	1.0484	1.0484	12.1353	-	-	-	-	-	-
1964	\$101.35	1.0339	1.0339	11.5751	-	-	-	-	-	-
1965	\$104.79	1.0448	1.0448	11.1949	-	-	-	-	-	-
1966	\$109.48	1.0435	1.0435	10.7154	-	-	-	-	-	-
1967	\$114.24	1.0599	1.0599	10.2689	-	-	-	-	-	-
1968	\$121.08	1.0772	1.0772	9.6888	-	-	-	-	-	-
1969	\$130.43	1.0045	1.0045	8.9942	-	-	-	-	-	-
1970	\$131.02	1.0638	1.0638	8.9538	-	-	-	-	-	-
1971	\$139.38	1.0736	1.0736	8.4168	-	-	-	-	-	-
1972	\$149.64	1.0396	1.0396	7.8396	-	-	-	-	-	-
1973	\$155.57	1.0529	1.0529	7.5409	-	-	-	-	-	-
1974	\$163.80	1.0670	1.0670	7.1620	-	-	-	-	-	-
1975	\$174.78	1.0691	1.0691	6.7120	-	-	-	-	-	-
1976	\$186.85	1.0667	1.0667	6.2784	-	-	-	-	-	-
1977	\$199.31	1.0605	1.0605	5.8859	-	-	-	-	-	-
1978	\$211.37	1.0754	1.0754	5.5501	-	-	-	-	-	-
1979	\$227.31	1.0799	1.0799	5.1609	-	-	-	-	-	-
1980	\$245.48	1.0996	1.0996	4.7788	-	-	-	-	-	-
1981	\$269.93	1.1034	1.1000	4.3460	-	-	-	-	-	-
1982	\$297.85	1.0753	1.0753	3.9509	-	-	-	-	-	-
1983	\$320.29	1.0648	1.0648	3.6741	-	-	-	-	-	-
1984	\$341.06	1.0570	1.0570	3.4505	-	-	-	-	-	-
1985	\$360.50	1.0640	1.0640	3.2643	-	-	-	1.0500	2.7333	0.5309
1986	\$383.57	1.0715	1.0715	3.0680	-	-	-	1.0500	2.6033	0.4647
1987	\$411.00	1.0808	1.0808	2.8633	-	-	-	1.0500	2.4794	0.3839
1988	\$444.20	1.0681	1.0681	2.6493	-	-	-	1.0500	2.3612	0.2881
1989	\$474.47	1.0339	1.0339	2.4802	-	-	-	1.0339	2.2488	0.2314
1990	\$490.57	1.0509	1.0509	2.3989	-	-	-	1.0500	2.1749	0.2240
1991	\$515.52	1.0539	1.0539	2.2828	1.0370	1.0370	1.6041	1.0500	2.0714	0.2114
1992	\$543.30	1.0417	1.0417		1.0240	1.0240	1.5472	1.0417	-	-
1993	\$565.94	1.0348	1.0348		1.0280	1.0280	1.5109	1.0348	-	-
1994	\$585.66	1.0314	1.0314		1.0240	1.0240	1.4698	1.0314	-	-
1995	\$604.03	1.0447	1.0447		1.0270	1.0270	1.4353	1.0447	-	-
1996	\$631.03	1.0547	1.0547		1.0230	1.0230	1.3977	1.0500	-	-
1997	\$665.55	1.0516	1.0516		1.0160	1.0160	1.3663	1.0500	-	-
1998	\$699.91	1.0711	1.0711		1.0210	1.0210	1.3446	1.0500	-	-
1999	\$749.69	1.1083	1.1000		1.0206	1.0206	1.3170	1.0500	-	-
2000	\$830.89	1.0723	1.0723		1.0340	1.0340	1.2906	1.0500	-	-
2001	\$890.94	0.9906	0.9906		1.0280	0.9906	1.2480	0.9906	-	-
2002	\$882.57	1.0021	1.0021		1.0210	1.0021	1.2598	1.0021	-	-
2003	\$884.46	1.0388	1.0388		1.0282	1.0282	1.2572	1.0388	-	-
2004	\$918.78	1.0433	1.0433		1.0346	1.0346	1.2228	1.0433	-	-
2005	\$958.58	1.0437	1.0437		1.0365	1.0365	1.1817	1.0437	-	-
2006	\$1,000.43	1.0431	1.0431		1.0361	1.0361	1.1402	1.0431	-	-
2007	\$1,043.54	1.0477	1.0477		1.0256	1.0256	1.1287	1.0477	-	-
2008	\$1,093.27	1.0013	1.0013		1.0399	1.0013	1.0743	1.0013	-	-
2009	\$1,094.70	0.9940	0.9940		1.0002	0.9940	1.0717	0.9940	-	-
2010	\$1,088.06	1.0439	1.0439		1.0197	1.0197	1.0531	1.0439	-	-
2011	\$1,135.82	1.0333	1.0333		1.0305	1.0305	1.0328	1.0333	-	-
2012	\$1,173.06	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 10/1/2012 in accordance with §34B(a) as follows:

<u>SECTION 13A SUBSECTIONS</u>	<u>DOLLAR AMOUNT SPECIFIED</u>	<u>CHANGED TO</u>
(1)	\$700.00	\$1,094.74
	\$350.00	\$547.37
(2)	\$1,000.00	\$1,563.91
	\$500.00	\$781.95
(3)	\$500.00	\$781.95
	\$250.00	\$390.51
(4)	\$700.00	\$1,094.74
	\$350.00	\$547.37
(5)	\$3,500.00	\$5,473.62
(6)	\$1,000.00	\$1,563.91

Table III

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

- (1) 2012 Statewide Average Weekly Wage: \$1,173.06
- (2) Section 34 - Temporary and Total Disability Benefits
 - (a) Rate 60.00%
 - (b) Maximum \$1,173.06
 - (c) Minimum \$ 234.61
- (3) Section 34A - Permanent and Total Disability Benefits
 - (a) Rate 66.67%
 - (b) Maximum \$1,173.06
 - (c) Minimum \$ 234.61

Notes:

- (1) Above is provided by the Massachusetts Division of Unemployment Assistance.