

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

CIRCULAR LETTER NO. 344

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; Attorneys' Fee Schedule; and Reminder that all First Reports of Injury must be filed electronically as of Jan. 1, 2014.

DATE: October 4, 2013 – Effective October 1, 2013

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

- (a) The maximum weekly benefits payable under M.G.L. c. 152;
- (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, 2013 as determined under M.G.L. c. 151A, §29(2) and promulgated by the Commissioner of Unemployment Assistance, is **\$1,181.28** [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, 2013 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 **\$1,181.28** (one hundred percent of the present SAWW), unless the average weekly wage of the employee is less than the minimum weekly compensation rate of **\$236.26** (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 **\$1,181.28** nor less than the minimum weekly compensation rate of **\$236.26**.

[Recipients of total disability benefits under §34 and §34A for claims involving injuries occurring before October 1, 2013 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, 2013).

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 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. In addition, all prior years' CR-28 Form for each claimant who's COLA the insurer is seeking reimbursement must be submitted in FY 2014 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.

First Reports of Injury - As of January 1, 2014, the Department of Industrial Accidents (DIA) will cease accepting paper copies of Form 101 Employers First Report of Injury.

The DIA will require electronic submission of all First Reports of Injury (FRI) beginning January 1, 2014. To that end, all entities required to submit FRIs will have the option of submitting forms via Electronic Data Interchange (EDI) for batch data submissions, secure file transfer for completed PDF forms (Form 101s filled out and transmitted individually) or by filing the FRI forms individually via the DIA website (www.mass.gov/dia) using an authorized online account.

The DIA will begin contacting insurers, self-insurers and TPAs over the next few months to discuss options for submission.

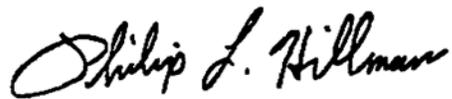
Insurers wishing to utilize EDI can contact Janine Senatore at 617-727-4900 or via email at Janine.Senatore@massmail.state.ma.us. Filing said forms via the online accounts only requires Internet connection and a valid user account.

All insurers, employers, self-insurers, self-insurance Groups and third party administrators who have not yet done so, should obtain a DIA online account that will give access to additional electronic filing options for several DIA forms. The accounts are provided free of charge. Instructions on use of the account and all features will be provided upon obtaining said account.

It is the stated goal of the DIA to have all Board filings conducted electronically within the next 12 to 24 months. We will make more information available on this initiative in the near future.

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@massmail.state.ma.us. Be sure to include your name along with your current e-mail address.

Sincerely,

A handwritten signature in black ink that reads "Philip L. Hillman". The signature is written in a cursive style with a large initial 'P'.

Philip L. Hillman
Director

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 10/1/2013 in accordance with §34B(a) as follows:

<u>SECTION 13A SUBSECTIONS</u>	<u>DOLLAR AMOUNT SPECIFIED</u>	<u>CHANGED TO</u>
(1)	\$700.00 \$350.00	\$1,102.38 \$ 551.19
(2)	\$1,000.00 \$500.00	\$1,574.83 \$ 787.42
(3)	\$500.00 \$250.00	\$ 787.42 \$ 393.71
(4)	\$700.00 \$350.00	\$1,102.38 \$ 551.19
(5)	\$3,500.00	\$5,511.91
(6)	\$1,000.00	\$1,574.83

Table III

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

- (1) 2013 Statewide Average Weekly Wage: \$1,181.28
- (2) Section 34 - Temporary and Total Disability Benefits
 - (a) Rate 60.00%
 - (b) Maximum \$1,181.28
 - (c) Minimum \$ 236.26
- (3) Section 34A - Permanent and Total Disability Benefits
 - (a) Rate 66.67%
 - (b) Maximum \$1,181.28
 - (c) Minimum \$ 236.26

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).

Calculation of COLA Multipliers and Reimbursement Factors

Table I - 10-1-2013

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 10/2/98	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	40.7882	---	---				
1939	\$26.49	0.9970	0.9970	39.4641	---	---				
1940	\$26.41	1.1356	1.1000	39.5836	---	---				
1941	\$29.99	1.1834	1.1000	35.9851	---	---				
1942	\$35.49	1.1074	1.1000	32.7137	---	---				
1943	\$39.30	1.0422	1.0422	29.7397	---	---				
1944	\$40.96	1.0249	1.0249	28.5345	---	---				
1945	\$41.98	1.0543	1.0543	27.8411	---	---				
1946	\$44.26	1.0888	1.0888	26.4070	---	---				
1947	\$48.19	1.0770	1.0770	24.2535	---	---				
1948	\$51.90	1.0150	1.0150	22.5197	---	---				
1949	\$52.68	1.0581	1.0581	22.1863	---	---				
1950	\$55.74	1.0797	1.0797	20.9683	---	---				
1951	\$60.18	1.0419	1.0419	19.4212	---	---				
1952	\$62.70	1.0470	1.0470	18.6407	---	---				
1953	\$65.65	1.0296	1.0296	17.8031	---	---				
1954	\$67.59	1.0468	1.0468	17.2921	---	---				
1955	\$70.75	1.0540	1.0540	16.5198	---	---				
1956	\$74.57	1.0426	1.0426	15.6735	---	---				
1957	\$77.75	1.0368	1.0368	15.0324	---	---				
1958	\$80.61	1.0515	1.0515	14.4991	---	---				
1959	\$84.76	1.0316	1.0316	13.7892	---	---				
1960	\$87.44	1.0327	1.0327	13.3666	---	---				
1961	\$90.30	1.0384	1.0384	12.9433	---	---				
1962	\$93.77	1.0309	1.0309	12.4642	---	---				
1963	\$96.67	1.0484	1.0484	12.0903	---	---				
1964	\$101.35	1.0339	1.0339	11.5320	---	---				
1965	\$104.79	1.0448	1.0448	11.1535	---	---				
1966	\$109.48	1.0435	1.0435	10.6757	---	---				
1967	\$114.24	1.0599	1.0599	10.2309	---	---				
1968	\$121.08	1.0772	1.0772	9.6529	---	---				
1969	\$130.43	1.0045	1.0045	8.9610	---	---				
1970	\$131.02	1.0638	1.0638	8.9206	---	---				
1971	\$139.38	1.0736	1.0736	8.3856	---	---				
1972	\$149.64	1.0396	1.0396	7.8106	---	---				
1973	\$155.57	1.0529	1.0529	7.5129	---	---				
1974	\$163.80	1.0670	1.0670	7.1354	---	---				
1975	\$174.78	1.0691	1.0691	6.6871	---	---				
1976	\$186.85	1.0667	1.0667	6.2551	---	---				
1977	\$199.31	1.0605	1.0605	5.8641	---	---				
1978	\$211.37	1.0754	1.0754	5.5295	---	---				
1979	\$227.31	1.0799	1.0799	5.1418	---	---				
1980	\$245.48	1.0996	1.0996	4.7611	---	---				
1981	\$269.93	1.1034	1.1000	4.3299	---	---				
1982	\$297.85	1.0753	1.0753	3.9363	---	---				
1983	\$320.29	1.0648	1.0648	3.6605	---	---				
1984	\$341.06	1.0570	1.0570	3.4376	---	---				
1985	\$360.50	1.0640	1.0640	3.2522	---	---		1.0500	2.7232	0.5290
1986	\$383.57	1.0715	1.0715	3.0566	---	---		1.0500	2.5935	0.4630
1987	\$411.00	1.0808	1.0808	2.8527	---	---		1.0500	2.4701	0.3826
1988	\$444.20	1.0681	1.0681	2.6394	---	---		1.0500	2.3525	0.2869
1989	\$474.47	1.0339	1.0339	2.4710	---	---		1.0339	2.2404	0.2306
1990	\$490.57	1.0509	1.0509	2.3899	---	---		1.0500	2.1669	0.2231
1991	\$515.52	1.0539	1.0539	2.2742	1.0370	1.0370	1.5748	1.0500	2.0638	0.2105
1992	\$543.30	1.0417	1.0417		1.0240	1.0240	1.5186	1.0417		
1993	\$565.94	1.0348	1.0348		1.0280	1.0280	1.4830	1.0348		
1994	\$585.66	1.0314	1.0314		1.0240	1.0240	1.4426	1.0314		
1995	\$604.03	1.0447	1.0447		1.0270	1.0270	1.4088	1.0447		
1996	\$631.03	1.0547	1.0547		1.0230	1.0230	1.3718	1.0500		
1997	\$665.55	1.0516	1.0516		1.0160	1.0160	1.3409	1.0500		
1998	\$699.91	1.0711	1.0711		1.0210	1.0210	1.3199	1.0500		
1999	\$749.69	1.1083	1.1000		1.0206	1.0206	1.2927	1.0500		
2000	\$830.89	1.0723	1.0723		1.0340	1.0340	1.2666	1.0500		
2001	\$890.94	0.9906	0.9906		1.0280	0.9906	1.2249	0.9906		
2002	\$882.57	1.0021	1.0021		1.0210	1.0021	1.2366	1.0021		
2003	\$884.46	1.0388	1.0388		1.0282	1.0282	1.2339	1.0388		
2004	\$918.78	1.0433	1.0433		1.0346	1.0346	1.2001	1.0433		
2005	\$958.58	1.0437	1.0437		1.0365	1.0365	1.1600	1.0437		
2006	\$1,000.43	1.0431	1.0431		1.0361	1.0361	1.1192	1.0431		
2007	\$1,043.54	1.0477	1.0477		1.0256	1.0256	1.0801	1.0477		
2008	\$1,093.27	1.0013	1.0013		1.0399	1.0013	1.0531	1.0013		
2009	\$1,094.70	0.9939	0.9939		1.0002	0.9939	1.0517	0.9939		
2010	\$1,088.06	1.0439	1.0439		1.0197	1.0197	1.0581	1.0439		
2011	\$1,135.82	1.0328	1.0328		1.0305	1.0305	1.0377	1.0328		
2012	\$1,173.06	1.0070	1.0070		1.0195	1.0070	1.0070	1.0070		
2013	\$1,181.28	1.0000	1.0000		1.0000	1.0000	1.0000	1.0000		

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

Notes:

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