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MASSACHUSETTS WORKERS' COMPENSATION

Chapter 152 Overview (Insurer's perspective)

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Always call counsel when a question on Chapter 152 arises, this is a guide on adjusting and defending claims, there remain a lot of nuisances and the case law interpreting these provisions change all the time.

I. INITIAL HANDLING OF A WORKERS' COMPENSATION CLAIM

A. First Report of Employer's Injury (Section 6).

1. When an employee allegedly suffers an injury that results in employee's death or any incapacity to earn wages over 5 days, the employer must:

   a. complete Employer's First Report of Injury (Form 101); and

   b. return the form within 7 days of notice of injury to the DIA, employee, and insurer.

B. Acting on Employee's Claim or Employee's First Report of Injury (Section 7).

1. Within 14 days of receiving Employer's First Report of Injury (Form 101) or Employee's Claim for Benefits (Form 110), INSURER MUST either:

   a. commence paying benefits using Insurer's Notification of Payment (Form 103); or

   b. deny payment, using Insurer's Notification of Denial (Form 104) (Note: Insurer must notify DIA, employee, and employer by certified mail).

      (i) Note: Insurer must specify all reasons for the denial of benefits (or lose them at Conference, Hearing (absent newly discovered evidence). See 452 C.M.R. §1.02 for a list of common defenses to include (a) lack of jurisdiction, (b) late notice, (c) late claim, (d) no personal injury, (e) no injury arising out of and in the course of employment, (f) no disability, (g) no causal relationship between personal injury and disability.

      (ii) Note: Employee always bears the burden of proving his/her claim for benefits **(in reality, insurer has burden to disprove).**

   c. If commencing benefits, the check must be mailed within 14 days (Form 103) or penalties accrue and possible waiver of pay-without-prejudice (PWOP) rights.

2. Penalties - Stiff penalties exist for failure to either commence payment or

deny (with notice) within 14 days, such as:

a. If insurer fails to file *Form 103 (commence payment) or Form 104 (denial) within the 14 days, penalty of $200.00;

b. A 60-day delay, penalty = $2,000.00;
c. A 90-day delay, penalty = $10,000.00.

*The insurer actually has 30 days to mail the Form 103. This exception does not apply to mailing the first benefit check.

Note: An administrative judge can waive penalty if delay was due to events beyond insurer's control. **Thus, discuss with counsel before issuing penalty payment as at times counsel may be able to negotiate it.

C. Payment of a Claim (Section 7).

1. Insurer should secure Average Weekly Wage Computation Schedule (Old Form 117) (AWW) from employer.

   a. AWW Schedule lists employee's weekly compensation for the 52 weeks prior to the injury.

   b. Use this report to calculate employee's AWW and benefits to be paid.

      *Note: AWW Schedule is necessary for insurer to discontinue/modify benefits.

   c. Calculation problems: Important, in MA an adjuster MUST be alert for Seasonal employees, part-time workers, concurrent employment, etc. When appropriate see comparable employee's wages. If seasonal, divisor is 52 weeks, not the number of weeks s(he) worked. CALL COUNSEL TO AVOID STIPULATION TO THE WRONG AWW.

   d. ***State Minimum and State Maximum Rates:*** *Every October 1st the state sets the minimum and maximum weekly rates. Verify if it applies to every case. For example, if the employee's AWW is less then the state minimum, s(he) gets his/her AWW when on Section 34 Temporary Total. Conversely, the employee's Section 34 rate can't exceed the state maximum.* (see last page)

2. On the insurer's Notification of Payment (Form 103), the insurer should note the type of benefits paid.

3. Section 34 (Temporary Total Benefits)

   a. If the employee is totally disabled after the injury, the insurer should pay Section 34 benefits.

   b. Section 34 benefits are paid at 60% of employee's AWW on the date of injury.* note if state minimum or maximum applies.

   c. The employee can collect Section 34 benefits for a maximum of 3 years (156 weeks).

4. Section 35 (Partial Benefits) (Temporary Partial Benefits)

   a. If the employee is only partially disabled following the injury, the employee is entitled to only Section 35 benefits.

   b. To calculate Section 35 benefits, first, calculate the employee's earning capacity after the injury (generally by reference to post-injury earnings).

      (i) subtract the earning capacity (EC) from the employee's AWW; and

      (ii) multiply the difference by 60% to produce the Section 35 rate.

   c. The employee cannot receive Section 35 benefits in an amount greater than 75% of what he/she could get under Section 34.

   d. The State sets a standard AWW computation (SAWW). (See the October 1st Circulation Letter.)

      (i) Set every October 1.

      (ii) The insurer may adjust an employee's Section 35 benefits so that the employee's combined Section 35 benefits and weekly earnings do not exceed double the SAWW.

   e. The employee can collect Section 35 benefits for a maximum of 5 years (260) weeks. But, where an employee has received 3 years of Section 34 benefits, the employee can only receive a maximum of 4 years of Section 35 benefits, UNLESS

   f. Section 35 can be extended up to 10 years (520 weeks) if an administrative judge determines any of the following or if the insurer agrees to extend:

(i) a 75% loss of function (bodily) or sense (as specified in Section 36(1) (a,b,e,f,g,h);

(ii) a permanent, life-threatening condition; or

(iii) a permanently disabling occupational disease.

g. Maximum Section 35. This is the <u>most</u> an employee can earn on Section 35. Calculate by taking AWW x 60% (Sec. 34 rate) x 75%. To find out the earning capacity for maximum Section 35 (AWW x 25%).

5. <u>Section 36 (Scarring, Permanent Loss of Function)</u>

a. The amount depends on the type and location, type of injury. <u>See the Circulation Letter for calculations. Usually, a minimum of 6 month post injury or last treatment.</u>

b. Scar-based disfigurement is <u>only</u> awarded for visible disfigurement to face, neck, hands (to wrist).(Pending legislation to increase to full body disfigurement, & index $15,000 cap to current @ $35,000 cap).

*Scars are based on discoloration, width (inches), and length.

*You must use the SAWW from DOI to calculate Section 36 benefits.

c. For the Loss of Function (LOF) calculation, you need a doctor to provide the percentage of loss of the LOF. *<u>Note</u>: The area and whole body are different calculations based on AMA ratings.

d. Note: as of 2013 an Insurer may NOT deduct attorney fee from the amount of the Section 36.

6. <u>Section 13 (Medical Bills)</u>

a. Medical care providers are to verify the bills and describe the service rendered.

b. Bills are to be paid at DIA rates (set by regulation called a Fee Schedule).
***<u>Note</u>: Utilization Review (UR) card must be used even for unaccepted cases. Failure to send a UR card eliminates the employee's need to follow UR protections.**
***<u>Note</u>:** Out-of-state providers <u>cannot</u> require more than Massachusetts DIA rates. See <u>Cicerano v. Home Parenteral Care</u> 6/25/04

c. An employee can be required to submit any treatment to Utilization

Review (UR). See 452 CMR §6.00 for pre-approval that the treatment is reasonably related and necessary as long as a UR card was sent by the UR provider.

7. Section 30 (Medical Treatment)

a. The employee may choose her/his physician, but can only switch once without insurer's permission within the same specialty.

b. The insurer must supply the employee with adequate and reasonable health care services.

c. See the UR note above for this area.

D. Penalties:

1. Section 8(1):

Stiff penalties exist for failure to make "all payments due" within the first 14 days from the date of the order, decision or agreement:

a. If not paid within 14 days = penalty $200.00;
b. If not paid within 45 days = penalty $1,000.00;
c. If not paid within 60 days = penalty $2,500.00
d. If not paid within 90 days = penalty $10,000.00.

See statute language below.

"Any failure of an insurer to make all payments due an employee under the terms of an order, decision, arbitrator's decision, approved lump sum or other agreement, or certified letter notifying said insurer that the employee has left work after an unsuccessful attempt to return within the time frame determined pursuant to paragraph (a) of subsection (2) of this section within fourteen days of the insurer's receipt of such document, shall result in a penalty of two hundred dollars, payable to the employee to whom such payments were required to be paid by the said document; provided, however, that such penalty shall be one thousand dollars if all such payments have not been made within forty-five days, two thousand five hundred dollars if not made within sixty days, and ten thousand dollars if not made within ninety days."

Most attorneys will not try to enforce this BUT some will. Many if they are likely to ask for more money will negotiate. The caselaw suggest from "receipt" of the dated triggering document (order, agreement or decision) so there can be times when you argue a day or two from mailing or if counsel did not notify you the same day … some wiggle room might exist.

2. Section 8(5):

For late payment after the initial payment has been made (20% of any later ORDERED benefits). Most of the time if the check is late or fell off autopay the employee will be paid up before a judge has a chance to order the penalty and it disappears.

3. Section 14:

Bad faith or fraud.

II. TERMINATING THE PAYMENT OF BENEFITS

A. During the Pay-Without-Prejudice Period (Section 8(1)) PWOP

1. The insurer may pay the employee benefits for up to 180 days from the first date of disability **(not the date of notice of injury)** without surrendering its right to contest any issue later.
2. Within the 180-day period, the insurer (carrier) may modify or terminate an employee's benefits unilaterally, but, generally, with notice (see below).

    a. The insurer can make a modification/termination where:

        (i) there is evidence of actual income earned by the employee; or

        (ii) the insurer gives the employee and the DIA a minimum of 7 days written notice by certified mail (Form 106). (Duggan v. Blank RB 2003)(do not count day of mailing in 7 day notice).

    b. The insurer should use the Insurer's Notification of Termination or Modification of Benefits During the Pay-Without-Prejudice Period (Form 106). Be sure to:

        (i) Specify all reasons for termination/modification in box/Section 19 of the Form because only these reasons can be raised as defenses later; and

        (ii) Inform the employee that he/she must file a claim in order to receive additional benefits.

3. The adjuster can extend the 180-day PWOP period (Form 105) for up to one (1) year total, but only where:

    a. the agreement sets out the last day of the extension; and

    b. a conciliator, judge, or administrative law judge approves the agreement as not detrimental to the employee's interests; and

B. <u>After the PWOP Period Has Lapsed (Section 8(2))</u>

***Note: Any payment beyond the 180 days, even if it is the first payment, buys liability = accepted case (medical payment only may be an exception).**

1. The insurer may unilaterally modify or terminate/discontinue payment <u>after</u> 180 days <u>only</u> under the following circumstances:

   a. Where allowed by an administrative judge, arbitrator, State court (§8(2)(a));

   b. Employee agrees, in writing, on a DIA Form (§8(2)(b));

   c. Employee has returned to work (§8(2)(c)) (Section 35 may be necessary); **BUT**

   *<u>Note</u>: The Section 34 benefits <u>must</u> resume if:

      (i) the employee leaves work within 28 days; <u>and</u>

      (ii) within 21 days after leaving, the employee informs the insurer <u>and</u> the employer <u>by certified letter</u>, that the disability prevents him/her from return to work (RTW) (§8(3)).

   d. the insurer has possession of **<u>2</u> separate items** indicating the employee is capable of RTW:

      (i) a medical report from employee's <u>TREATING DOCTOR</u> or from the <u>IMPARTIAL DOCTOR (judge's doctor,</u> not Independent Medical Examiner – IME) that indicates the employee is capable of RTW to:

         (a) the job he/she held at the time of injury; or

         (b) to a light-duty job, description <u>authorized</u> by the employee's doctor or Impartial doctor and one that bears a reasonable relationship to employee's work experience, education or training (before or after the injury); and

      (ii) a <u>written job offer</u> from the employer stating a suitable job is open to the employee (§8(2)(d)).

   *<u>Note</u>:

a. Any compensation due will be paid under Section 35.

b. If the employee accepts the job after a modification or termination of benefits, the employee is entitled to a restoration of the former compensation rate, **IF**

(i) the employee leaves the job within 28 days and informs the employer that he/she is not capable physically; or

(ii) the employer fires the employee because the employee is not capable of physically doing the job.

***NOTE:**

1. If the employee is terminated within one (1) year of his resuming work with his prior employer, presumption that the employee is incapable of doing job or it was unsuitable **(see §8(2)(last paragraph))**,

UNLESS

2. the insurer proves otherwise by a preponderance of the evidence at a later proceeding (see end Sec. 35).

e. The insurer receives notification from the Office of Employment Vocational Rehabilitation (OEVR) that employee refuses to participate in job training, rehabilitation (§8(2)(d); (§30G).

f. The employee has exhausted pursuant to Sections 34 or 35 or 31 (death).

g. The employee has been overpaid or failed to respond to insurer's request for an Earnings Report (only every 6 months pursuant to Section 11D) (§8(2)(h)), or for past overpayments.
BE CAREFUL HERE IF ACTING UNILATERALLY!

h. The employee refuses to attend IME (follow 452 CMR 1.06) (§8(2)(i)).

(i) The insurer can suspend, but must:

1. send certified letter to employee and attorney (cc: DIA) stating that the employee was suspended because of a missed IME;

2. attach new IME date (exam not to take place less than

7 days or more than 21 days from notice of suspension; and

3. If employee attends IME, benefits must be reinstated.

i. The employee has been convicted/jailed for felony or misdemeanor, but must reinstate upon release (unless within PWOP period). (§8(2)(j)).

j. The employee is receiving/eligible for unemployment benefits, the insurer can make the employee apply for unemployment benefits (Section 36B). (§8(2)(k)).

k. The employee has died. (§8(2)(l)).

III. LITIGATION AGAINST PAYMENT OF DISCONTINUANCE OF BENEFITS

*Note: Three (3) stages – Conciliation (informal mediation); Conference (oral summary proceedings before administrative judge who will enter a binding order; Hearing (based on appeal of conference order) *de novo*, full evidentiary hearing before the same administrative judge, witness(es)' testimony required..

A. Initiating the Process.

1. **Employee files a claim for benefits with the DIA**.

a. Form 110 – Employee's Claim.

(i) Prerequisites for claim:

(a) employee attached insurer's Denial of Employee's Claim, or

(b) employee waits 30 days from onset of disability.

(ii) Employee must specify the type and amount of benefits he/she is claiming.

(a) If employee returns to work at about same wage prior to Conference, claim is for a "closed period", or

(b) If employee remains out of work, employee seeks back compensation and future compensation.

b. Employee must have a competent medical report indicating:

(i) employee is disabled, and

(ii) said disability is causally related to the industrial accident.

2. Or, **Insurer may wish to file a petition for discontinuance of payments (Form 108).**

a. The insurer must file an Insurer's Complaint For Modification, Discontinuance or Recoupment (Form 108). Attach supporting medical via e-mail to: dia-doc-attach@state.ma.us

b. The insurer must provide medical evidence that employee is not totally disabled **and** an AWW Schedule.

c. Determine a "last best offer" approximately the amount of compensation the employee should receive.

B. The *"Virtual"* Conciliation Process.

*Note: Parties meet virtually via WebEx with the conciliator – informal process. Conciliator has no binding authority but he/she makes recommendations to the administrative judge. At present due to the Pandemic only section 36 cases get to be in person.

*****When a claim for compensation benefits is forwarded to dispute resolution (Conference), the insurer must pay 65% of SAWW fee to the DIA.

C. Conference.

1. Preparation.

a. Conference is to take place within 28 days of the referral to Dispute Resolution (actually takes 4 to 8 weeks depending on the Regional Office).

b. Parties must bring to Conference:

(i) Mandatory Temporary Conference Memorandum (Form 140);

(ii) Non-medical exhibits (injury reports, denials, AWW Schedule, witness statements, stills) and medical exhibits (medial reports, hospital records)(digital formats);

(iii) Accepted cases: A Last Best Offer Sheet (Form 141)

(iv) **<u>To Do Prior to Conference</u>: Interview employee/employer <u>c</u>o-employees, third-party witnesses, private investigator, get videotape and stills to employee's attorney, schedule with judge video player availability, verify AWW, payment history, current IME and current UR status.**

2. <u>After Conference</u>

a. Administrative judge *must* issue order within 7 days of Conference.

b. Where liability is accepted:

(i) Judge must choose one of the party's last best offer, <u>or</u>

(ii) Chose his/her own, giving written rationale (rarely separately specified).

c. Upon receipt of Conference Order, counsel have **<u>14 days to appeal to a hearing</u>.**

(i) Appealing party must file Appeal (Form 121).

(ii) If case involves an Impartial, payment of the Impartial fee ($650.00), called the appeal fee, <u>within 10 days of the appeal</u> (or at the same time).

(iii) Should be sent by certified mail or hand-delivered to the Boston DIA.

(iv) If the appeal or fee is late, can petition the commissioner for an <u>extension</u> – must show <u>good cause</u>.

d. **If benefits are <u>*ordered*</u>, the insurer <u>must</u> commence payment as ordered (even if appealed). The insurer <u>must</u> pay interest as required under §50 <u>*if ordered*</u>. The insurer may elect to withhold some future money toward its share of the employee's attorney fee (§13A(10)). Note: If money is withheld, <u>be careful</u> not to over withhold as a penalty can be created. Discuss with counsel for the correct procedure.**

D. <u>Hearing.</u>

1. <u>General Considerations</u>

a. Same judge at the Conference (when possible).

b. Procedure is similar to a Bench Trial (District Court).

(i) Rules of Evidence apply loosely.

(ii) Witnesses are sworn and court reporter is present.

(iii) Parties must submit "pre-trial" forms (issue sheets).

(a) Parties identify claims and issues.

(b) Parties name witnesses and submit method used to offer medical evidence.

(c) Employee provides biographical information, job history, medical summary.

c. Judge is required to write the decision within 28 days after the medical deposition is completed.

*Note: It can take 1 year for a decision. During this time, Conference Order remains in force.

2. Hearing Involving Impartial Examiners

a. Same as regular hearing, but no independent medical evidence without judge's consent.

b. Impartial system is designed to avoid "dueling doctors".
BIG NOTE: By statute (Section 11A) the impartial's opinion is the only evidence to be considered by the judge in most cases (prima facie evidence).

c. If Impartial's report is deemed inadequate, or case involves complex medical issues, other medical evidence may be requested (judge need not allow).

E. Reviewing Board.

1. Any aggrieved party from hearing decision may appeal to the Reviewing Board.

a. File Form 112.

b. Appeal must be filed within 30 days of date of decision.

c. Appealing party must submit fee = 30% SAWW.

2. Reviewing Board's Scope of Review = narrow

a. Only reverse it if they find the administrative judge's decision was:

(i) beyond the scope of the administrative judge's authority,

(ii) arbitrary or capricious; and

(iii) contrary to law.

b. In cases involving causal relationship or extent of disability, Reviewing Board will generally **defer** to an administrative judge if evidence in decision supports his decision.

c. Reviewing Board generally permits legal question, former employment status, or defining new terms or provisions.

IV. SETTLEMENT

Lump Sum (§48)(4) $1500.00 rule (1 month disabled- only a rebuttable presumption).

For every $1,500.00 of settlement, the employee can be barred from returning to work with insured for one (1) month (Tip- Always enforce this right because in Massachusetts we can not require (or even condition settlement) on a resignation. The $1,500 rule provides separation between employee and insured.

Theory: A lump sum is for future anticipated benefits. So technically, if not enforced, the employee could return to work the day after the lump sum is approved and suffer a new injury and start the worker's compensation clock on a new injury.

V. SECTION 45 – IME EXAMINATIONS

A. By Right.

1. Section 45 allows insurer to have employee examined "from time to time" during the continuance of disability. The presumption is the location will be a scheduled for a reasonable time and place from where the employee lives.

B. Duties.

1. Employee: The employee must attend, can bring his own doctor with him/her. Cannot refuse or **obstruct** or his/her benefits can be suspended during period of refusal and forfeited (see below).

2. Insurer: The insurer must furnish a copy of the exam report to Board (and the employee). It can be used as medical evidence at the conference by the employee but not at the hearing unless also used by the insurer.

C. Consequences (see Section 8(2)(i) and 452 CMR 1.06(i)).

1. **The refusal or obstruction by the employee can result in the unilateral suspension of benefits until the employee complies and may forfeit benefits during the suspension. Be very careful to correctly apply all of the requirements under 452 CMR 1.06(i) if you chose to unilaterally suspend. (Call Counsel, failure to suspend correctly could result in a penalty).**

VI. MISCELLANEOUS PROVISIONS

A. Interest.
Section 50.
Must be paid by statute when ordered, **self operating**. DIA has provided software for free to assist in calculating. Paste the link below then select Section 50 interest calculator. http://www.mass.gov/lwd/workers-compensation/online-services/

Failure to pay interest could result in significant Section 8 penalties. Interest is also due on some penalties (Carl Grundy v. Penske) (RB 2008).

B. COLA.
Section 34B (post-1991).
Applies to Section 34A or Section 31 only. COLA rate varies every October 1st.
If employee is on SSDI, be sure to have a CR-28 form completed.

C. **Hiccups in benefit payments.**
When an employee "falls off auto-pay" after having been properly started, a Section 8(5) and/or Section 8(1) penalty could be due. Generally, Section 8(5) or a penalty of 20% of the later ordered underpaid benefits. **Note-** If no benefits are timely paid within the first 14 days or longer, Section 8(1) could apply and that penalty structure goes as high as $10,000.

D. **Use of Experts/Evidence.**

1. **Surveillance.** Highly used but generally not effective. Most effective when done on multiple days and demonstrates the employee acting inconsistently with claimed limitations or working. Still is a valuable resource for the attorney to use at the Conference when appropriate.

2. **LMS/Vocational witness.** Necessary on a case by case basis, confer with Counsel. Many run of the mill extent of disability cases do not require the expense but even in low wager earner cases, could be strategically helpful.

3. **IME. See above.**

4. **Pear Eady's Case, Mass. App. CT. 2008**. Judge can't pick an earning capacity out of the air, need to set earning capacity based on factual evidence applicable to the employee's ability to presently earn with his/her limitations in the current open labor market. **(LMS may be necessary).**

5. **Catalano's Case,** No. 20-P-957 (Mass. App. Ct. Apr. 12, 2021). Earning capacity for former union worker could be a minimum wage job. Ch. 152 is a wage replacement system.

E. **Subrogation.**

Section 15; 3rd party lien rights. The DIA has a Section 15 interactive petition on its webpage – use tab 2 if you need to customize and maximize the Hunter rights. Don't automatically waive Hunter when there is a compromise of the lien amounts. Pain & Suffering allocations due to Curry case will alter the insurer's recovery; consult counsel to provide maximum recovery.

F. **Medical Set-Aside.**

On any without-liability settlements, consideration should be given to Medicare's rights, if any. Failure to do so could result in significant future litigation and costs.

G. **No Interlocutory Appeal**

All payments must be timely made after the issuance and receipt of an order, decision or Agreement or other document requiring payment. Failure to do so could result in penalties under one or both of Section 8(1) and 8(5). In Massachusetts worker's compensation, an appeal does not stay the obligation to make all necessary payments. See, Pacellini v. Cape Cod Fireplace Shop, AJ, P. Costigan (no ability of AJ to stay penalties pending decision or conference order due to appeal). See also Paul Levesque v. Travelers, J. McCarthy 2/16/07.

H. **Hunter Rights and Curry Pain & Suffering, Eisner Loss of Consortium Allocation /Reduction.**

Whenever the insurer settles a case and a 3rd party case exists, the insurer must be aware that it has a right to recover parts of its lien out of any 3rd party settlement proceeds. In many cases, the insurer will have a credit reducing its future weekly medical payments where the 3rd party settlement exceeds the insurer lien. Do not waive your Hunter rights without first considering what is being given away. See above comment on the pain and suffering **Curry** allocations, and Eisner loss of

consortium (try to limit to no greater then 20% when possible; since 2015 it is very difficult to do so).

I. **Conditions for Settlement.**

General Rule: The insurer **CAN'T** require the employee to sign a resignation or a general release as a condition of its lump sum settlement. Substantial penalties can be applied if this occurs. Be sure to discuss this with counsel where appropriate. See – MGL Ch. 152, Sec 48(3).

J. **MGL Ch. 152 Sec. 37 (Second Injury Fund).**

In many cases, the insurer should examine if it has any rights under Section 37. It could have access to reimbursement from the Trust Fund where there can be a claim that the employee's prior medical condition (predating the DOI) made the current injury substantially greater by combining with it **and** the employer was aware of the prior injury or disability **and** had accommodated for it. This only applies when the insurer has paid Section 34A (permanent and total) or Section 31 (Widow) benefits and benefits generally paid after the first 104 weeks.

The Maximum and Minimum Compensation Rate for Workers' Compensation Benefits
NOTE: The maximum and minimum compensation rate for workers' compensation benefits are set each year on October 1st by the Commissioner of the Division of Unemployment Assistance, as defined in MGL c. 152, § 1, as follows:

(10) "Maximum weekly compensation rate", one hundred per cent of the average weekly wage in the commonwealth according to the calculation on or next prior to the date of injury by the deputy director of the division of employment and training."
(11) "Minimum weekly compensation rate", twenty per cent of the average weekly wage in the commonwealth according to the calculation on or next prior to the date of injury by the deputy director of the division of employment and training."

As of 12/24/91, § 34 benefits run for up to 156 weeks.

SAWW Modified every October 1st

Date	Maximum	Minimum Rate

SAWW Modified every October 1st

Date	Maximum	Minimum Rate
10/01/2023	$1,796.72	$359.34
10/01/2022	$1,765.34	$353.07
10/01/2021	$1,694.24	$338.85
10/1/2020	$1,487.78	$297.56
10/1/19	$1,431.66	$286.33
10/1/18	$1383.41	$276.68
10/1/17	$1338.05	$267.61

Mileage Reimbursement Rates

Effective 5/15/22
$0.585 a mile

Prior rate 5/14/22- 8/1/08:
$0.45 a mile

CHEAT SHEET AS OF 10/1/23
Section 1 Calculating AWW

Generally, use the employee's 52 weeks of earnings prior to the industrial injury. Where the employee failed to work a full 52 weeks, many methods are permitted. Usually, divide the number of weeks worked from the gross wages if the employee has a reasonable sample of weeks. The insurer can demand a comparable employee or look at past work history.

If the employee is a **seasonal worker** (bus driver, landscaper, outdoor painter, lifeguard) then the gross wages must be divided by 52 weeks and NOT the number of weeks actually worked. A good indication of a seasonal employee is s/he is laid off and collecting unemployment yearly.

(Ex. Gross wages of bus driver is $25,000, actually worked 38 weeks, the AWW is $480.76) ($25,000 / 52) and **NOT** $657.89

Section 34 Temporary Total Weekly Benefits – 156 weeks

60% of the employee's AWW (ex: Gross wages $1,000; Section 34 rate is $600)
(Ex. AWW of $1,000 x .60)

MAX: The employee's Section 34 rate can't exceed the state maximum set October 1st.
(Ex. Gross wages of $2,500; for injuries on or after 10/01/23 SAWW is $1,796.72).

MIN: The minimum of $359.34 applies if the AWW is higher than $359.34 and when you x 60% it drops below. The employee gets the $359.34. (Ex. Gross wages of $400; for injuries on or after 10/01/23 minimum is $359.34. Section 34 rate is actually $359.34 and NOT $240). If his/her AWW is $300.00 the employee gets $300 as his/her Section 34 rate and $225.00 as the maximum Section 35 rate.

Section 35 Temporary Partial Weekly Benefits – 260 weeks (more or less)

Maximum partial is 75% of the Section 34 rate above. If very low wages call me.*

(Ex. AWW of $1,000, Section 35 maximum is $450.00; ($1,000. x .60 = $600 x .75 = $450.00) **OR** ($600.00 x .75 = $450.00)

OR When employee is currently working and making less
(Ex. Current earnings (CE) - AWW x 60%) but (not to exceed max partial amount)

(Ex. Prior AWW = $1,000; CE = $500; Sec. 35 = $300.00; **Max 35 = $450)**
($1,000 - $500 = $500. $500 x .60 = $300.00) but if CE=$100, Sec. 35 =$450 NOT 540*)

Current SAWW as of 10/01/23
Maximum **$1,796.72** Minimum **$359.34**
NEW Mileage: as of 5/15/2022 $0.585
Mileage: old - **Effective 8/1/08:** $0.45 a mile

Commencement of Benefits or Denial: 14 days of receipt by insurer of either Form 101 or 110
If decision is to deny. 14 days of receipt by insurer File Form 104..