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Overview of Massachusetts Workers' Compensation Law

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I. STATUTE OF LIMITIATIONS:

Under Section 41 of Chapter 152, time limits are set on compensation claims. Notice of injury to the insurer or insured should be given as soon as practicable after the injury. The employee must file a claim against the insurer within (4) years of knowledge of a causal relationship between his disability and his employment.

II. WAITING PERIOD:

Compensation is payable when the injured employee is incapacitated from earning full wages for five or more calendar days. If incapacity extends beyond twenty-one (21) days, then compensation is payable from the first day forward. If not, compensation is payable from the sixth (6th) day forward. Chapter 152, Section 29

III. PAYMENT WITHOUT PREJUDICE:

In order to pay benefits on a without prejudice basis, compensation benefits must be initiated within fourteen (14) days of receipt of the Form 101, Employer's First Report of Injury, from the insured, or Form 110, Employee's Claim Form from Employee or Employee's attorney. A Form 103 (Notice of Payment without Prejudice) must be filed within (30) days of receipt of the Form 101. Chapter 152, Sections 7 and 8.

IV. ACCEPTED CLAIMS/PENALTIES:

If payment of benefits are started after the fourteen (14) day window, the claim is accepted. If the insurer fails to commence payments or makes a denial beyond the fourteen (14) day period, it will pay the employee a penalty of \$200.00. This penalty will escalate if the payment without prejudice or denial is made thereafter i.e., \$2,000.00 at 60 days and \$10,000.00 at ninety days. These greater penalties are payable to the State Trust Fund not the Employee. Chapter 152, Section 7 (2).

V. 7-DAY NOTICE TO TERMINATE WITHIN PWOP:

To terminate benefits within the 180 day Pay without Prejudice period, and to preserve liability as a defense, the insurer must send its Notification of Termination, Form 106, to have the employee by the 173rd day after the commencement of disability, and it must stop payment on or before the 180th day. Chapter 152, Section 8 (1).

IV. PAYMENT WITHOUT PREJUDICE x ONE YEAR:

If the insurer wishes to extend the Pay without Prejudice Period, for an additional one hundred eighty (180) days, he may do so using Form 105 (Extension of Pay without Prejudice) which is valid only with the employee's signature, and the approval of a Judge or Conciliator. A Form 105 must be submitted to the DIA with the employee's signature and department approval obtained within the initial one hundred eighty (180) day.

An extension of the without prejudice period from 180 days to no more than one year may be terminated with seven (7) days written notice of termination on a Form 106, but the payments may be terminated on the one year anniversary of commencement of benefits without such notice. The Form 106 extension itself shall set out the last day of the without prejudice period, and termination on that last day need not be presaged with a seven (7) day notice.

VII: ACCEPTED CLAIMS AND PAYMENTS:

Determination of compensability should be made within fourteen (14) days of receipt of the Form 101, Employer's First Report, or Form 110 Employee's Claim Form. One of three (3) determinations need to be made within that time period:
1) Accept, 2) Deny, 3) Pay Without Prejudice.

To accept a claim, you must file Form 107, Insurer's Notification of Acceptance, Resumption, Termination or Modification of Workers' Compensation. If you make the initial compensation payment after the fourteen (14) day time period, you have automatically accepted the claim. To deny the claim you must file Form 104, Denial of Payment, and indicate "ALL" reasons for denial of the claim. If you do not list a reason for the denial, you lose it as a defense. Chapter 152, Section 7 (1).

VIII. TEMPORARY TOTAL DISABILITY BENEFITS:

Temporary Total disability benefits are paid beginning on the sixth day of disability at 60% of the employee's Average Weekly Wage (AWW), up to a maximum amount equal to the State Average Weekly Wage (SAWW) in effect at that time. These benefits are payable for a maximum of 156 weeks. Should the compensation rate be less than \$150.00 per week, the employee shall receive \$6.00

for each dependent (including spouse) until the weekly benefits equals \$150.00. Chapter 152, Section 34.

IV. PERMANENT AND TOTAL DISABILITY:

Should the employee become Permanently and Totally disabled, he will receive a 66 2/3rds% of his AWW up to the maximum sum of the SAWW in effect on his date of injury. If he has been receiving benefits for more than two (2) years, he is eligible for a Cost of Living Adjustment (COLA) calculated and payable on October 1st of each year. The purpose of the COLA is to raise the employee's compensation rate in proportion to the yearly increases in the SAWW. The COLA may not be due if payment of it would decrease Social Security Disability payments. Chapter 152, Section 34A and 34B.

X. WIDOW'S BENEFITS:

Survivors Benefits under Section 31 are payable at the same rate as Permanent and Total Disability Benefits to the spouse of the deceased worker, and to other surviving dependents in a somewhat complex breakdown. COLA is due under this Section after two (2) years of any benefit payment. Chapter 152, Section 31 and 34B.

XI. TEMPORARY PARTIAL DISABILITY BENEFITS:

Temporary Partial Disability benefits are due under Section 35 when the employee cannot earn his former AWW due to a work-related disability. The partial rate is equal to 60% of the difference between the earnings the claimant is capable of making and his former AWW. No more than 75% of the Temporary Total disability rate can be paid. No more than the SAWW can be paid under

this section. The maximum time for which these benefits are due is 260 weeks, although in a situation of multiple bodily injury the insurer may pay or a Judge may order that benefits be paid for 520 weeks.

If all 156 weeks of Section 34 benefits are paid, the 260-week exposure of Section 35 is reduced to 208 weeks.

For purposes of determining earnings capacity under the statute, a suitable job or suitable employment shall include any job that the employee is physically and mentally capable of performing, including light-duty work provided said job bears a reasonable relationship to Employee's work history, education, training, and experience, either before or after Employee's industrial injury. Chapter 152, Section 35B (5).

XII. LOSS OF FUNCTION AND DISFIGUREMENT:

Loss of Function and Disfigurements Benefits are due based on a schedule published by the department. This section provides payments to the injured worker for functional loss and disfigurement calculated on multiples of the State Average Weekly Wage (SAWW) in effect on the date of injury. Chapter 152, Section 36 1 (a-k) and 36 (2).

XIII. AVERAGE WEEKLY WAGE:

Computation of Average Weekly Wage is based on the average of employee's gross earnings in the fifty-two (52) weeks prior to the date of injury. Chapter 151, Section 1 (1).

XIV. COLA:

Claimants entitled to a Cost of Living Adjustment under the act in effect since 1991 are receiving either Section 31 or Section 34A benefits. These benefits are recalculated yearly on October 1st. They are payable to the claimant without his application in circumstances where payment of COLA would not decrease payment received under Social Security Disability. If there is any confusion over who should be paid COLA, contact defense counsel. In the past, continued failure of the insurer to pay COLA benefits has been subject to penalty under Sections 8 and 14 of the Massachusetts Statute. Such penalties can be exorbitant. Chapter 152, Section 34B.

XV. MIMUMUM/MAXIMUM COMPENSATION RATE:

Maximum/Minimum compensation rates and AWW in the Commonwealth is recalculated as of October 1st of each year. (A copy of the current AWW table is attached for immediate reference.) The maximum compensation rate is the State Average Weekly Wage in effect during the year (October to October) of injury. The minimum compensation payment is 20% of the maximum in effect but not more than the AWW of the employee. A Form 113 Agreement signed by the claimant, the insurer, and approved by the Department may be used to adjust a dispute on the claimant's AWW. Chapter 152, Section 1 (1) and Section 34.

XVI. LUMP SUM:

In order to settle a claim by lump sum payment, at least one dollar must change hands. The agreement is used to close out rights to future weekly benefits and

Loss of Function and Disfigurement claims. If liability has not been accepted by the insurer, the lump sum settlement may also close out right to future medical care. If liability has been accepted, the future rights to accepted medical diagnosis and its medical treatment/expenses are not closed. Also in accepted cases, the employee maintains the right to seek Board approved vocational rehabilitation at the insurer's expense when he seeks such benefits at the Office of Vocational Rehabilitation within the Department within two (2) years of the Board's approval of a lump sum settlement. Chapter 152, Section 48.

XVII. FAILURE TO PAY COMPENSATION:

Note that the insurer's failure to pay under any agreement within fourteen (14) days of knowledge that payment is due results in a \$200.00 penalty payable to the claimant. This penalty steeply escalates if payment is delayed. (See Section 8 11) regarding failure to pay \$1,000.00 within 45 days; \$2,500.00 within 60 days; and \$10,000.00 within 90 days.)

XVIII. LIENS AND THIRD PARTY SETTLEMENT CREDITS:

All liens against Third Party (Section 15) Civil Action settlements are statutory. If an employee receives workers' compensation benefits for an injury caused by a third party (not the employer), the workers' compensation insurer has a Lien over the third party settlement for its payment to the employee. To be certain of protecting itself, the insurer must file a lien with the pro se claimant or his attorney and with the third party. However, an unfiled lien is still effective. Failure of the third party or claimant to adjust the lien and obtain Board approval by a so-called Section 15 Petition prior to disbursement of the third party settlement will result in a claim against both parties. A claim under Section 14 should be added to this 15 claim for the party's "frivolous" defense of the claim,

should refusal to adjust the lien continue. This is important because the expense of litigating such a claim either at the Department or in Civil Action should not be borne by the workers' compensation insurer, but should be ordered against those parties refusing to adjust the lien.

The insurer, as part of a third party Section 15 Petition, may obtain rights to offset future compensation benefits against the claimant's recovery under the so-called Hunter offset. Sometimes insurers waive all or a portion of the third party settlement lien in consideration for lump sum settlement of a case.

XIV. UTILIZATION REVIEW:

All Mass DIA medical providers must put requests for medical expenses through the insurer's Utilization Review provider process prior to giving care. If the service is rendered prior to submitting through Utilization Review, the procedure may be denied or subject to post UR Analysis. The insurer must provide medical care providers with the address and phone number of the Utilization Review agent. See Chapter 152, Section 13 and 3V and Mass Req Title 452, Chapter 6:00 Utilization Review and Quality Assessment.

XX. LITIGATION: CONCILAITON, CONFERENCE & HEARING:

When an issue arises that the claimant and insurer cannot agree upon, the issue can be taken to Conciliation (the first level of Dispute Resolution) in an attempt to resolve the dispute. The Conciliator will attempt to resolve the issue between the parties or at least limit the areas of dispute. The Conciliator is also required to write a recommendation to the Conference Judge should the case be sent on to that second level of Dispute Resolution. The Conciliator also has power to administratively withdraw an Insurer's Complaint for Modification or

Discontinuance and an Employee's Claim for benefits if insufficient documents or substantiation be offered in support. Usually, the Conciliator will hold the matter before him or her for a designated period so that moving party can submit the appropriate information, or the parties can resolve the dispute (Thirty days is common). Chapter 152, Section 10.

If the matter has not been resolved at Conciliation, it is forwarded to a Conference where a Judge is empowered to issue a Temporary Conference Order, which will consist of a Denial or Order To Pay all or part of the claim(s) or insurer's Complaint. Such Conferences will usually involve a medical issue, but may also involve legal disputes. Chapter 152, Section 10A.

Either or both parties may appeal a Conference Order to a full Hearing which is the third level of Dispute Resolution. Temporary Orders are enforceable against insurers in Superior Court. Insurers must pay benefits and medicals even if liability or coverage are an issue on Appeal. Chapter 152, Section 11.

Prior to any Hearing on a medical issue dispute, an Impartial Medical Examination is usually held. The Impartial Medical Examiner will issue a Report (IPE Report) containing his opinion on the disputed issues; diagnosis, prognosis, disability, causation, and permanency.

The impartial report has prima facie effect. It may be the only medical evidence at Hearing, unless the Hearing Judge finds that that medical situation is complex or the report is inadequate. If the Hearing Judge makes either finding, additional medical evidence may be allowed. Such evidence is usually allowed for the so-called Gap period: the time between the injury and the Impartial Exam, but may be allowed for any period of claimed disability, where applicable. Chapter 152, Section 11A.

At Hearing, testimony is taken, the Rules of Evidence apply, and medical depositions may be ordered. A decision will issue, but generally after a wait of several months or more. The benefits (or denial of benefits) effective at Conference stay in effect until the Hearing decision is filed.

XXI. EMPLOYEE'S ATTORNEY'S FEES:

Attorney's fees are calculated under Section 13A of the statute. Fees differ in amount according to the procedural level of the claim and other litigation criteria. Fees are generally due if a claim of the employee is adjusted twenty-one (21) days or later after the filing of the claim and whenever employee prevails at Conciliation, Conference, or Hearing. Chapter 152, Section 13A.

XXII. OVERPAYMENT:

All insurer compensation overpayments are recoverable from the claimant. The insurer is allowed to take a unilateral recovery of overpayments from the ongoing weekly benefits of the employee up to 30% of those weekly benefits (Section 11D (4)). Loss of Function or Disfigurement Section 36 benefits are also a reservoir for collecting past overpayments.

XXIII. CONCLUSION:

This summary of a Massachusetts Workers' Compensation Law is a brief overview of a complex statutory scheme (Chapter 152) administered by a large and far-flung state bureaucracy (DIA) with its own judiciary (IAB) and regulatory authority (Title 452 1.00 *et seq.* Code of Mass Regulation) Careful review of the original sources of law and regulation and close consultation with

defense counsel/DIA practitioners is necessary to understand fully and to adjust effectively Massachusetts workers' compensation disputed claims.

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