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Summary of Mass. Gen. Law C. 152
Applicable for Cases with DOI After December 23, 1991
Effective October 1, 2009

§ 7(1): INSURER'S INITIAL ACTION

- Pay claim (form #103) or file Denial (form #104) **within 14 days** of receipt of employer's FRI (form #101) or Employee's Claim (form #110).
- File forms with the Boston, MA Regional Office, with copies to employee by certified mail and employee's attorney.

§7(2): PENALTIES FOR LATE PAYMENT OR RESPONSE

- \$200 to employee if no denial or payment within 14 days.
- \$2,000 to DIA if no payment or denial within 60 days.
- \$10,000 to DIA if no payment or denial within 90 days.

§8: PAYMENT WITHOUT PREJUDICE

- Pay up to 180 days if: (1) weekly benefits were timely paid within 14 days and (2) Notification of Payment (form #103) filed within 30 days.
- Payment without prejudice may be extended up to a total of one year (form#105) with approval by Conciliator or Judge.
- Termination within pay-without-prejudice period requires **seven days notice** (form #106) to employee and DIA.
- No notice required if employee returns to work and based on actual income. Watch for entitlement to §35 partial benefits.

§8(1): PENALTIES FOR FAILURE TO MAKE ALL PAYMENTS DUE- FROM THE START

- Any failure to make all payments due under the terms of an order, decision or agreement ... within fourteen days (14) the insurer's receipt of such document, shall result in a penalty as follows:
- Penalty of \$200. payable to the employee (15-44 days late)
- Penalty of \$1,000. (45-59 days late)
- Penalty of \$2,500. (60-89 days late)
- Penalty of \$10,000. (90 days or more late)

§8(2): MODIFICATIONS, DISCONTINUANCE AND SUSPENSIONS

- (a) Order or decision (including arbitrator).
- (b) Agreement between the parties (form #113).
- (c) Employee returns to work.

Note: Insurer may be required to reinstate benefits if employee does not remain in work for more than **28 days**. Employee must notify insurer within 21 days of leaving work, by certified mail, but need not provide medical report/note. Also, partial benefits under §35 may be due.

- (d) Medical report of **employee's treating** or **§11A (2) impartial physician** releases employee to return to his former or other suitable job and employer has provided a written offer of employment. §35 partial benefits may be due if the job does not pay the employee his pre-injury average weekly wage.
- (e) Termination within pay-without-prejudice period.
- (f) 15% forfeiture of benefits for employee's refusal to meet with OEVR when found suitable for vocational rehabilitation (§30G).
- (g) Termination of benefits upon natural expiration under §§31, 34, or 35.
- (h) Suspension of benefits for employee's failure to respond to insurer's request for an Earnings Report pursuant to §11D. Overpayments may be recouped at no more than 30% per weekly benefit check.
- (I) Suspension of benefits for employee's failure to attend insurer's §45 medical examination
- (j) Forfeiture during incarceration for conviction of felony or misdemeanor.
- (k) Receipt of unemployment benefits or failure to apply for said benefits upon written request by insurer (§36B).

- (l) Employee has died.

§8(5): PENALTIES FOR FAILURE TO MAKE ALL PAYMENTS--ONCE STARTED

- If the insurer terminates, reduces or fails to make any payments required under this chapter and additional compensation is later ordered, the insurer shall pay the following penalties:
- Penalty payment to the employee equal to twenty per cent (20%) of the additional compensation due on the date of such finding.

§13A: EMPLOYEE’S ATTORNEY’S FEES (AND EXPENSES)

Pursuant to M.G.L. c. 152 § 13A (10), the dollar amounts specified for attorney's fees in §13A, subsections 1 through 6 are changed **effective 10/1/09** in accordance with §34B (a) as follows:

- **No fee is due if Employee’s Claim (form #110) is paid within 21 days of receipt.**
- (1) **\$1,048.11:** payment of **initial liability claim** with or without prejudice prior to §10A Conference.
- (2) **\$1,497.28:** order for payment of **initial liability claim** at §10A Conference.
- (3) **\$747.75:** payment of other than initial liability claim prior to §10A Conference.
- (4) **\$1,048.11:** denial of insurer’s complaint for modification/discontinuance (form #108).

Note: no fee is due if judge adopts insurer’s “last best offer” for weekly compensation and half a fee (**\$524.04**) if judge adopts employee’s last best offer.

- (5) **\$5,240.44:** Hearing on insurer’s discontinuance complaint (form #108) or employee’s claim (form #110). No fee if insurer withdraws complaint no less than five calendar days of Hearing.
- (6) **\$1,497.28:** employee prevails on insurer’s appeal to Review Board.
- (7) **No Fee** paid by insurer when employee appeals to the Review Board and employee prevails. Employee pays fee.
- (8) **15%:** Lump sum without liability accepted.
20%: Lump Sum with liability accepted.
- (9) **Reasonable costs and attorney’s fees** for dates of injury prior to November 1, 1986 for Hearings requested by employee or insurer and employee prevails.
- (10) Insurer may deduct attorney’s fee from what is owed the employee within the first month if fee is the result of an award pursuant to §§ (1)-(6), but employee shall not receive less than 78% of what is owed.

§29: PAYMENT OF DISABILITY BENEFITS

- Employee must be incapacitated from earning full wages for **five or more calendar days** before becoming eligible for §35 partial or §34 total benefits. Otherwise, benefits are paid from the sixth day.
- Once employee is **incapacitated for 21 days**, benefits are payable from the first date of disability.
- Current SAWW (and maximum compensation rate) is **\$1,094.70**.
- Current minimum compensation rate is **\$218.94**.
- Mileage reimbursement rate is **.45 per mile (effective 8/1/08)**.
- Former SAWW is available at DIA Webpage or from our offices.

§35: TEMPORARY PARTIAL DISABILITY

- 60% of the difference between the employee's pre-injury average weekly wage and earnings.
- Maximum partial disability is 75% of §34 rate (even when using the minimum SAWW or actual earnings for the Section 34 rate).
- Maximum duration is 260 weeks (five years).
- May be increased up to 520 weeks upon agreement or a finding of 75% loss of function under §36(1)(a), (b), (e), (f), (g), or (h); i.e., loss of sight, arms, hands, legs, or feet, or based on permanently disabling occupational diseases.
- Maximum number of combined §35 and 34 cannot exceed 364 weeks (seven years), unless finding of 75% loss of function or agreement, then up to 520 weeks (ten years).
- Employee may not receive more than two times the SAWW when combining §35 benefits and actual earnings. Insurer may reduce to amount equal to two times the SAWW.
- No §35F COLA for cases after December 23, 1991.

§34: TEMPORARY TOTAL DISABILITY

- 60% of average weekly wage for the 52 weeks prior to date of injury (§1.1).
- Maximum benefit equal to SAWW.
- Minimum benefit equal to 20% of SAWW (1991 Amendment eliminated this benefit).

- Maximum duration is 156 weeks (three years).
- If AWW is less than the minimum compensation rate (20% of SAWW), then §34 rate equals AWW.

§34A: PERMANENT AND TOTAL DISABILITY

- Two-thirds of employee’s pre-injury AWW.
- Not to exceed SAWW.
- Minimum benefit equal to 20% of SAWW.
- **Payable for life.**
- §34B COLA is payable on the first of October of every year after award of benefits and two years have elapsed since the date of injury.

§36: SPECIFIC PERMANENT INJURIES

- No benefits payable if death occurs within 30 days of date of injury.

§36(k): DISFIGUREMENT

- No benefits payable for purely scar-based disfigurement unless on the employee’s **face, neck, or hands**.
- \$15,000 maximum benefit.
- **Face:** (32 times the SAWW* for maximum disfigurement).

Linear scar, no discoloration	2.00 x SAWW per inch.
Linear scar, with discoloration	3.25 x SAWW per inch.
Wide scar, no discoloration	3.50 x SAWW per inch.
Wide scar, with discoloration	6.50 x SAWW per inch.
- **Hand, Fingers and Wrist:** (22 x SAWW for maximum disfigurement).

Linear scar, no discoloration	1.00 x SAWW per inch.
Linear scar, with discoloration	1.75 x SAWW per inch.
Wide scar, no discoloration	2.00 x SAWW per inch.
Wide scar, with discoloration	2.50 x SAWW per inch.
- **Neck:** (22 x SAWW for maximum disfigurement).

Linear scar, no discoloration	1.00 x SAWW per inch.
Linear scar, with discoloration	1.50 x SAWW per inch.
Wide scar, no discoloration	1.75 x SAWW per inch.
Wide scar, with discoloration	2.50 x SAWW per inch.

§36A: BRAIN DEATH CASES

- No benefits payable if death occurs within 45 days of date of injury.

§50: INTEREST

- 10% per annum from the date of receipt of the Employee's Claim (form #110) by the DIA on claims unpaid within 60 days if later ordered at §10A Conference or §11 Hearing.
- Interest due on \$200 penalty if applicable under §7(2).
- Interest may be due on penalties.
- DIA Website has a Section 50 interest calculator that is interactive and updated occasionally. Simply go to http://www.mass.gov/Elwd/docs/dia/forms/sec_50_calculator.xls
- Or, go to *moriartywc.com*.