TRAVELERS

Workers Compensation Claim
State Environmental Guide - Massachusetts

MASSACHUSETTS – www.mass.gov/dia

Indemnity issues

Temporary Total Benefits (Post 12/23/91 Injuries) Section (§) 34	• Incapacitated for 1-5 days: No benefits are payable. • Incapacitated for 6-20 days: The employee is entitled to benefits from the sixth day of incapacity **to** the return to work. • Incapacitated for more than 21 days: The employee is entitled to benefits from the first date of incapacity. • Minimum Rate: $359.34 Maximum Rate: $1,796.72 (as of 10/1/2023). • Generally, the average weekly wage (AWW) is computed by averaging the workers preceding 52 weeks earnings history. • 60% of the employee's average weekly wage (*e.g.*, $1000 x .60 = $600.00 temporary total rate). • If applying the 60% brings the temporary total rate below the minimum rate than the minimum rate is paid. Minimum is 20% of State Average Weekly Wage. • An employee may receive temporary total benefits for 156 weeks. • The temporary total rate shall never exceed the State Average Weekly Wage (SAWW). • If the employee's average weekly wage is less than the minimum rate, the employee's temporary total rate will be equal to the average weekly wage.
Temporary Partial Benefits (Post 12/23/91 Injuries) Section (§) 35	• 60% of the difference between the pre-injury average weekly wage and the wage the employee is able to earn after the injury, but no more than 75% of the temporary total rate (*e.g.*, $600 temporary total rate x .75 = $450.00 max partial rate). • An employee may receive temporary partial benefits for 260 weeks, but the total number of weeks an employee may receive benefits under both § 34 and § 35 may not exceed 364. • The 260 week period may be extended to 520 weeks if the insurer agrees, or a judge finds, that the employee's injury has resulted in a loss of function of 75% of sight in either eye, either arm, hand, leg, or foot, or the employee has developed a permanently life-threatening physical condition, or contracted a permanently disabling occupational disease which is of a physical nature and cause.

Indemnity issues

Permanent Partial Benefits – Scarring, Loss of Function and Disfigurement Benefits (Post 12/23/91 Injuries) Section (§) 36	• In order for an employee to be eligible for § 36 benefits, the employee must not have died from any cause within 30 days of an otherwise compensable injury which occurs after 12/23/1991. There is no such time requirement for pre-12/23/91 dates of injury. With regard to when Permanent Impairment benefits are available to the employee, eligibility is triggered by the injured employee reaching a point of maximum medical improvement or MMI. • No benefits are due for purely scar-based disfigurement unless the scarring is on the employee's face, neck or hands • A loss of function or disfigurement needs to be permanent to be compensable (end result). • All awards are based on the SAWW on the date of loss of injury. • Scarring and disfigurement benefits are capped at $15,000 includes limps. • A statutory figure is assigned to each body part's loss of function. To arrive at the benefits due, multiply the assigned figure x the SAWW (*e.g.*, total loss of vision in one eye (39) x SAWW). **The loss of function is determined by AMA Guidelines.**
Permanent Total Benefits (Post 12/23/91) Section (§) 34A	• During the period of permanent and total disability, the insurer shall pay the employee weekly compensation equal to 2/3 of the pre-injury average weekly wage, but no more than SAWW nor less than the minimum compensation rate (*e.g.*, $1000 average weekly wage x 2/3 = $666.66 permanent and total incapacity benefit rate). • An employee may receive permanent and total incapacity benefits as long as the employee is permanently and totally disabled.* An employee may receive permanent and total incapacity benefits prior to the exhaustion of the temporary total and temporary partial incapacity benefits. *(Into the foreseeable future) **(If employee is on a partial disability by order or decision, then must show a "significant worsening" from the injury/not advancing age to receive Section 34A benefits.)
Fatality Benefits (Post 12/23/91) Section (§§) 31 and 32	• An insurer shall pay death benefits to the dependents of an employee if death results from the injury. • A widow or widower will receive a minimum of $110 per week, or 2/3 of the deceased employee's average weekly wage at the time of the industrial accident. • The initial maximum benefit under § 31 is 250 x the state's average weekly wage (SAWW) on the date of the industrial accident, however, the benefits may be extended if the spouse is not fully self-supporting and remains unmarried. If the spouse remarries, each dependent child will continue to receive $60 per week. • In order for death benefits to be due under either § 31 or § 32, the deceased worker must have been married, have children from a previous marriage, or have dependents in fact. • In all cases, the insurer shall pay reasonable burial expenses. In all cases, the insurer shall pay reasonable burial expenses. The death benefits is 8x the state average weekly wage (SAWW). Effective 12/26/2014.

Indemnity issues

Vocational Rehabilitation	• Under 452 CMR § 4.05, whenever an insurer makes payments and liability is established, the Office of Education and Vocational Rehabilitation (OEVR) may contact the injured employee to determine whether an initial interview is appropriate to determine their suitability and eligibility for vocational services. • After reviewing the employee's age, educational background, disability, restrictions, work skills and history, vocational interests, financial needs and earnings, the Review Officer assigned to the claim will determine the employee's eligibility for service. • The OEVR does not provide vocational services. Rather, private vendors must be retained by insurers to perform such services if an employee is deemed suitable. • If an Employee fails to attend the mandatory meeting, and fails to appear again pursuant to a certified letter, OEVR may notify the employee pursuant to § 30G that the employee is not entitled to weekly compensation during the period of refusal to attend the mandatory meeting. 452 CMR § 4.09. • An employee, who fails to cooperate with the vendor assigned to the claim after a suitability determination has been made, may suffer a 15% reduction in weekly compensation benefits. However, a team meeting must occur prior to the implementation of the aforementioned reduction. The benefits must be reinstated when the services commence. • An employee may seek vocational services for 2 years following the approval of a lump sum settlement, if liability is accepted.
Cost of Living Adjustments Section (§) 34B  some (43).dpw **Cost of Living Adjustments.docx**	• An employee who is receiving benefits pursuant to § 31 or § 34A may qualify for cost of living adjustments (COLA). • To qualify, the injury must occur 24 months prior to the yearly October 1 review date. • The COLA benefit is limited to a maximum of 5%, which may never be more than 3 times the base benefit and must not affect Social Security Disability benefits. The COLA max cannot exceed $1,796.72 (effective 10/1/23) regardless of the date of injury.
Pay Without Prejudice Section (§) 8	• 180 days if weekly benefits timely paid within 14 days of First Report of injury or Initial Written Claim. The 180 day period can be extended up to 360 days by agreement of the parties before the expiration of the initial time period. • In order to terminate or modify benefits during the payment without prejudice period, the insurer must give the employee and Division of Administration at least 7 days' notice not counting day mailed. • No 7 day notice is required if the employee returns to work and the modification is based on an adjustment due to the employee's actual wages. • The Notification of Termination must include all grounds and factual basis and advise the employee how to file a claim for benefits.
Settlement Allowed	Under the law, employers with an experience modification that could be affected by the settlement must give a written consent for the settlement between the insurer and the employee. (§ 48.) Employer consent is required from an insured for up to five years from the expiration of the policy period in which the injury occurred. It can be replaced by an affidavit from the carrier attesting to the reason(s) why the insured is no longer subject to experience modification within that timeframe. Claims older than 5 years may be settled without an employer's written consent.

Indemnity issues

Cap on benefits, exceptions	

Medical issues

Initial Choice of Provider	The employer has the right to designate a health care provider for the first visit, if the employer has a preferred provider arrangement entered into under this section. After the first visit, the employee has the right to choose his/her own health care providers. The employee may change these providers one time without the permission of the insurer. To change providers again, the employee will need the insurer to agree to the change. The insurer has the right to send the employee to see its doctor for an evaluation of capacity. (§ 30.)
Change of Provider	When referred by the treating health care professional to another provider in a particular specialty, the employee may also change once to a different provider in such specialty. In cases of emergency or where the insurer or administrative judge agrees, the employee may seek treatment from additional providers. (§ 30.)
Medical Fee Schedule	A medical fee schedule was first authorized in the late 1960s. The Division of Health Care Finance and Policy (DHCFP) has statutory authority to regulate rates of payment for hospitals and health care providers providing services covered by insurers and other purchasers under the Worker's Compensation Act. In 2002, the Massachusetts legislature mandated that DHCFP use the same levels of prescription fees for workers compensation as for Medicaid. (§ 30.) There is no set percent over Medicare; it varies.
Managed Care	Any insurer may enter into a preferred provider arrangement in compliance with the requirements of chapter 176 of the General Laws and the regulations. If an insurer enters into a preferred provider arrangement for health care services required under this chapter, those employees who are subject to the arrangement shall receive such care in the manner prescribed by the arrangement; provided, however, that a worker may receive immediate emergency treatment from a health care provider who is not a member of the managed care organization, and the insurer shall pay the reasonable and necessary costs of such treatment. (§ 30.)
Utilization Review	Insurers and self-insurers are required to undertake utilization review for health care services rendered to injured workers on and after October 1, 1993, either by performing utilization review themselves or by contracting with agents who provide utilization review services. (452 CMR § 6.00 *et seq.*)
Treatment Guidelines	Treatment guidelines were accepted and per statute M.G.L. c. 152 promulgated on July 1, 1993, to be used for all health care services rendered on or after October 1, 1993. These treatment guidelines cover a total of 28 medical conditions and are meant to cover the majority of tests and treatments for each condition for which they apply. The treatment guidelines are not mandatory but are meant to be used as “guides” and it is expected that up to 10% of treatments may deviate from the guidelines.
Generic Drug Substitution	The state mandates generic substitution.
Medical Mileage Reimbursement Rate	• The current reimbursement rate is .58.5 ¢ per mile. • Employees are reimbursed for traveling to and from medical visits and for parking and toll fees.
Network Information	Corvel.
Ability to Terminate Medical Treatment	No limit on medical treatment reasonably and necessarily required to cure or relieve the injury. Can use IME to help stop excessive treatment. Can use IME to file to terminate medical treatments or benefits at the DIA; if not related,

Medical issues

	reasonable or necessary even in settled cases with medicals open
Settlement Allowed	No. (Yes if a no liability case)
Cap on benefits, exceptions	

Other Issues

Compensability Decision Timeframe	Compensability decision made within 14 days.
WC Hearing Docket Speed	Conciliation: The first proceeding scheduled on a contested claim is an information conciliation, which is held within a few weeks of the claim being received by the DIA. At conciliation an attempt is made to settle the issues in dispute. If an agreement is not reached, the claim is referred to a conference before an Administrative Judge. Conference: The conference is the first proceeding before a judge. The insurer and the employee must be present at the conference. The judge will issue an order of payment or denial. Either side may appeal this within 14 days but could be extended for up to one year for cause in the discretion of the Director of the DIA. If the case is appealed, it will proceed to the hearing stage. Impartial Medical Examination: If there is a medical dispute at the conference, the judge will order an examination by an impartial medical examiner, whose report will be *prima facie* evidence of the matters contained therein. (§ 11A.) Hearing: At a full hearing the same Administrative Judge who presided at the conference considers all of the evidence. After reviewing all the information available, the judge will then issue a written decision. If either party believes the judge made an error of fact, or exceeded his/her authority with the ruling, the party has 30 days from the filing date of the decision to file an appeal to the Reviewing Board. Reviewing Board: This board is made up of six Administrative Law Judges, three of whom will examine the hearing transcripts, and may ask for oral argument from the attorneys for both parties. This panel can reverse the Administrative Judge's decision. Reviewing Board decisions can be appealed to the Massachusetts Appeals Court. Hearing docket speed: 1 – 1 ½ years. Outcome of hearings: Varies by judge
Staff Counsel	Law Offices of Steven B. Stein Two Financial Center, 60 South Street, Suite 1000 Boston, MA 02111 617-772-2800.
Hearings require attorney or claim handler participation	Attorney.
Occupational Diseases	"Personal injury" includes infectious or contagious diseases if the nature of the employment is such that the hazard of contracting such diseases by an employee is inherent in the employment.
Second Injury Fund availability Second Injury Fund.docx	For injuries after 12/23/91: A claim for reimbursement can be made for up to 75% of all benefits paid under §§ 30 (Medical), 31, 32 and 33 (Death), 34A (Permanent and Total), and 36A (Death or Brain Damage) after 104 weeks. Four elements of proof must be established. Section 37A (Veteran's Disability Recovery exists) (50% first 104 weeks 100% after).
Other Offset Opportunities	Unemployment is a dollar for dollar offset on any partial due.
EDI	Claims EDI Release 3: FROI only (1/1/2014)

Other Issues

In-State Adjusting Required	No
License or Certification Required	No