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M.G.L. c.152, § 29 – Required Incapacity Periods

- 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 through the return to work.
- Incapacitated 21 days or more: The Employee is entitled to benefits from the first date of incapacity.

M.G.L. c.152, §§ 31, and 32 – Benefits In The Event Of Death

- 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 two-thirds 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 would have to be married, have children from a previous marriage, or have dependents in fact.
- In all cases, the Insurer shall pay reasonable burial expenses, not to exceed eight times the state average weekly wage.

M.G.L. c.152, § 34 - Temporary Total Incapacity Benefits (Post 12/23/91 Injuries)

- An Employee's temporary total incapacity benefit rate is equal to 60% of the Employee's average weekly wage (i.e. $1,000 average weekly wage x .60 = $600 temporary total incapacity rate).
- An Employee may receive temporary total incapacity benefits for 156 weeks.
- The temporary total rate shall never exceed the SAWW.
- The following are the maximum and minimum weekly compensation rates from 10/01/14 through 9/30/22:

	10/01/14	10/01/15	10/01/16	10/01/17	10/01/18	10/01/19	10/01/20	10/1/21	10/1/22
Maximum	$1,214.99	$1,256.47	$1,291.74	$1,338.05	$1,383.41	$1,431.66	$1,487.78	$1,694.24	$1,765.34
Minimum	$243.00	$251.29	$258.35	$267.61	$276.68	$286.33	$297.56	$338.85	$353.07

- If the Employee's average weekly wage is less than the minimum compensation rate, the Employee's temporary total rate will be equal to the average weekly wage.

M.G.L. c.152, § 35 - Temporary Partial Incapacity Benefits (Post 12/23/91 Injuries)

- During any period of partial disability, the Insurer shall pay the Employee 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 incapacity rate (i.e. $600 temporary total incapacity benefit rate x .75 = $450 maximum partial rate).
- An Employee may receive temporary partial incapacity 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.

M.G.L. c.152, § 34A – Permanent and Total Incapacity Benefits (Post 12/23/91 Injuries)

- During the period of permanent and total disability, the Insurer shall pay the Employee weekly compensation equal to two-thirds of the pre-injury average weekly wage, but no more than SAWW nor less than the minimum compensation rate (i.e. $1,000 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.

M.G.L. c.152, § 34B - Cost of Living Adjustments

- An employee that is receiving benefits pursuant to §31 or § 34A may qualify for cost-of-living adjustments (COLA).
- To qualify, the injury must occur twenty-four 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.

M.G.L. c.152, § 36 – Scarring, Loss of Function and Disfigurement Benefits

- In order for an injured worker 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 December 23, 1991. There is no such time requirement for pre December 23, 1991 dates of injury.
- 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.
- All awards are based on the SAWW on the date of injury. (See chart above for the most recent rates)
- Scarring and disfigurement benefits are capped at $15,000.
- 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 (i.e. total loss of vision in one eye (39) x SAWW.)

Mileage Reimbursement

- The current reimbursement rate is .585 cents per mile.
- Employees are reimbursed for traveling to and from medical visits and for parking and toll fees.

Limitations of Actions

- An Employee must file a claim for benefits within 4 years from the date the Employee first became aware of the causal relationship between his or her disability and employment.

Vocational Rehabilitation Services

- Under 452 CMR § 4.05, whenever an Insurer makes payments, 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 services.
- 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, that Employee is not entitled to benefits during the period of refusal.
- 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 two years following the approval of a lump sum settlement, if liability is accepted.

Notification of Payment

- The Insurer must pay or deny a claim within 14 days of receipt of the First Report of Injury or the Employee's written claim for weekly benefits, whichever is received first.
- The Insurer loses the right to make payments without prejudice if it does not make timely payment.
- If the Insurer fails to make a timely payment, it may "buy back" its defenses if it pays a $200 penalty to the Employee.
- If a payment is being made within 14 days, a Form 103 must be filed within 30 days of receipt of the Employer's First Report of Injury or an Employee's written claim for weekly benefits. The Insurer should indicate that it intends to pay without prejudice.
- An Insurer may pay benefits for a period of 180 calendar days from the commencement of disability without affecting its right to contest any issues.
- The parties may enter into an agreement to extend the 180-day payment without prejudice period for up to one calendar year by the filing of the Form 105 provided that the agreement sets out the last day of the extension and either a conciliator, administrative judge or administrative law judge approves the agreement.
- Please note that the agreement must be approved prior to the 173rd day of incapacity.
- If the Insurer pays beyond the payment without prejudice period, the claim is deemed accepted and the Insurer may not raise any liability defense and loses the option to unilaterally modify or terminate benefits.

Denial of Payment

- If the Insurer chooses to deny the claim it must be done within 14 days of receipt of an Employer's First Report of Injury or an Employee's Claim for Benefits. The Insurer must list all the grounds and state the factual bases for the denial.
- The Notification of Denial (Form 104) must be mailed to the Employer, Department of Industrial Accidents and by Certified Mail to the Employee, within 14 days of receipt of the notice of claim.
- The Insurer may not subsequently raise issues not indicated on the Notification of Denial. Therefore, it is sound practice to deny the claim on as many grounds as possible, thus preserving all issues that may be contested.
- The Insurer must advise the Employee on how to file a claim for benefits.
- The only exception to the 14-day filing is if the Insurer has additional grounds for denial that are based on newly discovered evidence.

Termination or Modification During the Payment Without Prejudice 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-day notice.
- 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. It is good practice to file a Form 107 indicating the return to work.
- The Notification of Termination must include all grounds and factual bases and advise the Employee how to file a claim for benefits.
- The Notification of Termination must be sent to the Employee by certified mail.

Termination of Benefits

- Once a claim has been accepted, the Insurer may terminate or modify weekly benefits as follows:
- Pursuant to an order or decision of an arbitrator, an administrative judge, the reviewing board or court;
- By Agreement (Form 107);
- The Employee has returned to work. However, an Insurer must resume compensation unilaterally if an Employee returns to work and becomes disabled within 28 calendar days of return to his or her employment if the Employee notifies the Insurer and Employer by certified mail within 21 calendar days of becoming unable to work due to the disability;
- The Insurer has possession of a medical report from the Employee's treating physician or an impartial physician concluding that the Employee is physically and mentally capable of returning to his or her previous job or another suitable job AND a written report from the Employer that a suitable position is open and available to the Employee;
- The Employee has exhausted §§ 31, 34 or 35 eligibility; or
- The Employee has died.

Appeal Process

- An aggrieved party must file an appeal of a conference order for a hearing within 14 days of the filing of the order.
- An order will be a permanent resolution if an appeal is not filed within 14 days. However, a party can petition the commissioner of the Department of Industrial Accidents and a hearing may be permitted if "justice and equity require it." There is a one-year limit on such a request.
- Any aggrieved party can appeal to the Reviewing Board within 30 days of the filing of a hearing decision (Form 112).
- Any party aggrieved by the Reviewing Board's decision may appeal within 30 days to the Appeals Court.

M.G.L. c.152, § 11D(2), (3) - Recoupment

- If an Insurer receives an Earnings Report which indicates that it has overpaid the Employee, the Insurer is entitled to recover the overpayment by unilateral reduction of weekly benefits by no more than 30% per week, of any remaining compensation owed to the Employee.
- If the Insurer has paid compensation pursuant to a Conference Order and subsequently receives a decision from a judge or a court which indicates that it has overpaid the Employee, it may recover such overpayment by unilateral reduction of weekly benefits in the same manner referenced above.
- Where overpayments have been made that cannot be recovered in the above manners, recoupment may be sought by filing a complaint with the Department of Industrial Accidents (Form 108) or bringing an action in Superior Court.