



# Workers' Compensation Section

• 3360 West Sahara Ave Ste. 250, Las Vegas NV, 89102 • Phone: (702) 486-9080 • Fax: (702) 486-8712 • Email: [wchelp@dir.nv.gov](mailto:wchelp@dir.nv.gov)

## FREQUENTLY ASKED QUESTIONS (FAQs) COLAs for Permanent Total Disability (PTD) and Survivors' Benefits Claims

### COLA CALCULATION AND PAYMENT:

*Are COLAs that are paid by separate annuities eligible for reimbursement?*

Yes, if the COLA is eligible pursuant to NRS 616C.266 or NRS 616C.268, then it is reimbursable, regardless of the method of payment. The insurer, however, must provide proof to DIR that the COLA payments were made to the claimant by the annuity company just as they would if they were to make the payments themselves directly to the claimant when requesting reimbursement.

*How should insurers pay the increase required by the COLA if the monthly benefit is currently paid by an annuity?*

PTD and Survivors' benefits claims that are paid by annuities are subject to the annual increase required by NRS 616C.473 (PTD) and NRS 616C.508 (Survivors). Insurers are responsible for ensuring the additional amount associated with the increase is paid timely to the injured worker or survivors. This may be accomplished by an additional payment each month directly from the insurer or the insurer may purchase a separate annuity to cover the cost associated with the COLA.

*Do PTD or Survivors' benefits claims with stipulated settlements (legal agreements specifying dollar amounts and/or the timing of payments to be made) qualify for the COLA?*

Yes, all PTD and Survivors' benefits claims qualify for the COLA pursuant to NRS 616C.473 and NRS 616C.508.

*If PTD or Survivors' benefits are ordered to be paid bi-weekly instead of monthly, how should the COLA formula be applied?*

The COLA should be calculated and applied to each bi-weekly payment to ensure the 2.3% annual increase is attained.

*Should the COLA be calculated based on the PTD or Survivors' benefit monthly rate he or she is actually paid each month after offsets are applied?*

**No.** The COLA should be calculated based on the claimant's monthly rate:

- Prior to applying offsets (PPD or subrogation), **and**
- After applying any other legislatively mandated increases.

**FREQUENTLY ASKED QUESTIONS (FAQs), cont.**  
**COLAs for Permanent Total Disability (PTD) and Survivors' Benefits Claims**

**CATCH-UP CALCULATION FOR SURVIVORS' BENEFITS:**

*Are the "catch-up" calculations required for both PTD and Survivors' benefits claims?*

No, the "catch-up" calculations only apply to certain claims for Survivors' benefits pursuant to Secs 5 and 6 of AB 370 (2019).

*Is there an additional, separate payment due to survivors related to the "catch-up" calculation?*

**No. The "catch-up" calculation is not a payment.** There is no pre-January 1 2020 **payment** associated with the "catch-up." It is strictly a calculation that must be made **prior to** applying the 2.3% increase (COLA) to the January 2020 monthly payment.

Example: Using the Example 4 from the training presentation, a Survivors' Benefit claim with a date of injury before 1/1/1989 and subject to the 2.3% catch up compounded 3 times would look like this:

Monthly Rate: \$1000

Monthly Rate after catch-up calculation: \$1070.60

Monthly Rate after catch-up calculation and applying 2.3% COLA in Jan 2020: \$1095.22

December 2019 Monthly Payment: \$1000

January 2020 Monthly Payment: \$1095.22

Reimbursable Amount:  $\$1095.22 - \$1070.60 = \$24.62/\text{month}$  (Cost attributable to the COLA only)

**AMW/RATE VERIFICATION:**

*Why should insurers submit claims that qualify for the annual COLA to DIR for verification?*

Insurers may request reimbursement from the DIR for the additional cost associated with the COLA increase for certain claims. Before DIR will authorize reimbursement, it must be established that the COLA has been calculated correctly. Since the COLA is a percentage increase (2.3%) above the monthly benefit rate, DIR must confirm that the insurer calculated the monthly benefit rate ( $66 \frac{2}{3}\%$  of the Average Monthly Wage or  $AMW \times 2 \div 3$ ) correctly to begin with. **The verification process is to ensure that the monthly benefit rate before applying the COLA is accurate.** The sooner the claim is verified by DIR, the more likely it is that the injured worker or their dependents will receive the correct monthly amount and the insurer will ultimately be able to be appropriately reimbursed the additional cost associated with the COLA by DIR.

**FREQUENTLY ASKED QUESTIONS (FAQs), cont.**  
**COLAs for Permanent Total Disability (PTD) and Survivors' Benefits Claims**

***What calculations are reviewed by DIR for accuracy as part of the verification process for eligible claims?***

- Average Monthly Wage (AMW) – insurer to provide supporting documentation for the calculation
- Benefit Rate – PTD and Survivors' benefits are monthly benefits (unless otherwise specified as part of a stipulated settlement) and should be calculated as  $AMW \times 2 \div 3$  (66-2/3% of the AMW), up to the maximum monthly benefit for the date of injury as identified in the Fiscal Year Maximum Compensation Chart published by the DIR.
- Catch-up Calculation – for certain Survivors' benefit claims only - this calculation must be done prior to applying the COLA. See page 2 of this document for an example.

***The verification process requires insurers to submit the appropriate Verification Form and documentation to support the AMW calculation. If documentation to support the AMW calculation of is not available, should I submit the claim for verification anyway?***

Yes. The omission of AMW documentation does not automatically disqualify a claim from being verified. WCS will review such claims on a case by case basis. If an insurer plans to request reimbursement for the claim, then the insurer should submit the claim for verification even if supporting documentation is not available.

***How do I submit claims to DIR for verification?***

Forms and Instructions for submitting claims for verification can be found on the DIR/WCS website.

**REQUESTING REIMBURSEMENT:**

***When can I submit a request for reimbursement for payments related to COLAS?***

Requests for reimbursement must be submitted to DIR on or before March 31 for the previous calendar year COLA payments. Before DIR will consider a request for reimbursement, the claim must have gone through the verification process for the AMW and benefit rate calculations.

***How do I submit claims to DIR for reimbursement?***

The Form and Instructions for submitting claims for reimbursement can be found on the DIR/WCS website.

**FREQUENTLY ASKED QUESTIONS (FAQs), cont.**  
**COLAs for Permanent Total Disability (PTD) and Survivors' Benefits Claims**

*I have a Subsequent Injury claim that is eligible for COLA reimbursement. Should I request reimbursement for the costs associated with the COLA from the Subsequent Injury Fund or through the COLA reimbursement process?*

Insurers should request reimbursement for costs associated with COLAs for **eligible claims** through the COLA reimbursement process. Requests for reimbursement from the Subsequent Injury Funds for these costs will be denied. (Insurers may request reimbursement for costs associated with COLAs for claims **not eligible** for reimbursement through the COLA reimbursement process - PTD claims with dates of injury or occupational disease disablement on or after January 1, 2004 and Survivors' Benefits (Death) claims with dates of injury or occupational disease disablement on or after July 1, 2019 – through the Subsequent Injury Funds as regular claim costs.)

**COLAs AND ASSESSMENTS:**

*How do the COLA payments effect my regular Workers' Compensation assessment?*

Expenses related to COLA payments should be included as part of reported claims expenditures and are included in the calculation of the assessment for each insurer.

*What is the Special COLA Assessment and who pays it?*

Each year beginning in 2021, DIR will levy a “special” COLA assessment on **all** workers' compensation insurers to cover the total amount approved for reimbursement to insurers for the prior calendar year COLA payments.

*How will the COLA reimbursement be funded?*

The reimbursement for PTD COLAs will come from interest in the Uninsured Claims Account as well as a “special” COLA assessment. The reimbursement for Survivors' Benefits will come from a “special” COLA assessment.