

COLA and The Annual 'Check Up'

How to Apply COLA to Lifetime Benefits

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COLA and Indemnity Benefits

- ▶ COLA (SAWW)

- ▶ Life Time Benefits and Commutations
 - Theory and Application
 - COLA and Life Time Benefits
 - Attorney Fees – Reductions



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COLA – Cost of Living Adjustment Summary

- ▶ SAWW is calculated using Dept of Labor average weekly wage reported in 1st quarter, compared to prior year first quarter.
 - https://oui.doleta.gov/unemploy/data_summary/DataSum.asp

- ▶ COLA is based on increase of SAWW from year to year.
 - If SAWW decreases, no change is made



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COLA – Summary

- ▶ Maximum/Minimum Wages and TTD Rates
 - LC 4453 (a) (10)
 - Death Benefits – indirectly – [LC 4702 (b); LC 4661.5 = ‘2 year rule’]
- ▶ COLA applies to Life Time Benefits (70% or more)
 - LC 4659 (c)
 - Applied on January 1 of the year after the beginning of PTD or Life Pension, and every January 1 thereafter, for dates of injury Jan 1, 2003 and later



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SAWW – COLA

- ▶ DWC Newsline

November 27, 2023

- ▶ DWC Announces Temporary Total Disability Rates for 2024



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SAWW – COLA

- ▶ From statistics provided by the U.S. Department of Labor: In the 12 months ending March 31, 2023, the California SAWW DECREASED from \$1,651 to \$1,642—a DECREASE OF \$9.

TTD for 2024 DOI – No Change

- ▶ \$364.29 minimum AWE x 2/3 =
 - \$242.86 minimum TTD rate
- ▶ \$2,428.72 maximum AWE x 2/3 =
 - \$1,619.15 maximum TTD rate



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SAWW – COLA

- ▶ Recent SAWW/COLA history:

Year	SAWW	SAWW increase
2024	\$1,642.00	0%
2023	\$1,651.00	5.15924%
2022	\$1,570.00	13.5213%
2021	\$1,383.00	4.377%
2020	\$1,325.00	3.84013%



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COLA – TTD Rate – Effects

TTD for 2024 DOI

Same as for 2023

- ▶ \$364.29 minimum AWE $\times 2/3 =$
 - \$242.86 minimum TTD rate

- ▶ \$2,428.72 maximum AWE $\times 2/3 =$
 - \$1,619.15 maximum TTD rate



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COLA – Effects

- ▶ TTD
 - Death Benefits – can be impacted indirectly

- ▶ Life Time Benefits – 70% or Greater:
 - Life Pension
 - PTD (100%)

- DOI \geq 1/1/2003



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COLA – TTD

- ▶ TTD
 - TTD Rate = $\frac{2}{3}$ of AWE at time of injury
 - Maximum and Minimum Earnings
 - Maximum and Minimum Earnings adjusted annually by SAWW/COLA increases

 - Maximum TTD Rate is capped by actual AWE ($\times \frac{2}{3}$)



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TTD Benefits

- ▶ 2 year rule
 - Benefits paid 2 years after DOI subject to maximum and minimum earnings at time of payment.

 - If Earnings were more than the maximum, or near the minimum on Date of Injury, a TTD Rate adjustment could apply.

- ▶ LC 4656 – 240 weeks for some injuries



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COLA – TTD Rates

	Max AWE	Max TTD
▶ 2016	1692.65	1128.43
▶ 2017	1758.91	1172.57
▶ 2018	1822.91	1215.27
▶ 2019	1877.07	1251.38
▶ 2020	1949.15	1299.43
▶ 2021	2034.47	1356.31
▶ 2022	2309.56	1539.71
▶ 2023	2428.72	1619.15
▶ 2024	2428.72	1619.15



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COLA – Death Benefits?

- ▶ NOT DIRECTLY
- ▶ Death Benefits
 - In the same manner as TTD
 - 2 year rule
 - Statutory Death Benefit
 - Dependent Minor



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COLA and Death Benefits

- ▶ Mierczynski vs. City of Fullerton – WCAB Panel
- ▶ The WCAB Panel affirmed that COLA does not apply directly to Death Benefits.
- ▶ The 4th District Court of Appeal denied review.
- ▶ while the decision in *Phillips v. Sacramento Municipal Utilities District* (1998) 63 Cal. Comp. Cases 585 (Appeals Board en banc opinion), provides that benefits paid two or more years after date of injury are increased to rate in effect at time of payment, as WCJ found, such payments do not increase beyond amount supported by rate of earnings.



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Death Benefits

- ▶ LC 4661.5 (the ‘two year rule’) should apply to Death Benefits, and that ruling remains in effect
- ▶ Average Weekly Earnings at time of injury are relevant, and serve to set the final cap for Death Benefit rates. TTD/Death benefits are 2/3 of AWE, subject to maximums and minimums that do increase based on COLA.



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Death Benefits – Rate

▶ LC 4702 (b)

“A death benefit in all cases shall be paid in installments **in the same manner and amounts as temporary total disability indemnity** would have to be made to the employee...” minimum \$224

▶ LC 4661.5

...when any temporary total disability indemnity payment is made two years or more from the date of injury, the amount of this payment shall be computed in accordance with the [TTD AWE] in effect on the date each...payment is made...



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Death Benefits – Rate

- ▶ COLA can affect Death Benefits indirectly, but COLA is not directly applied.

Example: 7/8/2016 Injury/Death.

1) $AWE = \$1200 \times 2/3 = \$800.$

2) $AWE = \$2100 \times 2/3 = \$1400.$



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DOI: 7/8/2016 – AWE \$1200

	Max AWE	Min AWE	Death Benefit
▶ 2016	1692.65	253.89	800.00
▶ 2017	1758.91	263.82	800.00
▶ 2018	1822.91	273.44	800.00 – 7/8/18
▶ 2019	1877.07	281.57	800.00 – 1/1/19
▶ 2020	1949.15	292.37	800.00 – 1/1/20
▶ 2021	2034.47	305.16	800.00 – 1/1/21
▶ 2022	2309.56	346.42	800.00 – 1/1/22
▶ 2023	2478.72	364.29	800.00 – 1/1/23
▶ 2024	2478.72	364.29	800.00 – 1/1/24



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DOI: 7/8/2016 – AWE \$2100

	Max AWE	Max TTD	Death Benefit
▶ 2016	1692.65	1128.43	1128.43
▶ 2017	1758.91	1172.57	1128.43
▶ 2018	1822.91	1215.27	1215.17 – 7/8/18
▶ 2019	1877.07	1251.38	1251.38 – 1/1/19
▶ 2020	1949.15	1299.43	1299.43 – 1/1/20
▶ 2021	2034.47	1356.31	1356.31 – 1/1/21
▶ 2022	2309.56	1539.71	1400.00 – 1/1/22
▶ 2023	2478.72	1619.15	1400.00 – 1/1/23
▶ 2024	2478.72	1619.15	1400.00 – 1/1/24



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COLA – Lifetime Benefits

- **Baker v. WCAB** (CA Supreme Court)
 - COLA begins January 1 after entitlement to applicable benefit • [1/20/2004 DOI; no TTD weeks limit in this case]
- **Brower v. David Jones Construction** (WCAB En Banc)
 - PD entitlement is based on end of TTD [TTD cap]

COLA is applied every January 1st AFTER a Lifetime Benefit begins



COMMUTATIONS

- **Commutations and Lifetime Benefits**
 - Attorney fees Reductions to weekly benefit
- **Application of COLA to Lifetime Benefits**
 - How to apply COLA to Lifetime Benefits
 - With and without reductions



Commutations

Paying Benefits in Advance Most frequently = attorney fees



LC 5100 – WCAB approval

LC 5101 – Interest Credit of 3% per annum
built into DEU Commutation templates

Commutations Templates calculate the effect
of the advance payment and interest credit



Commutations

Paying Benefits in Advance

After Payment in Advance, there is an Affect on Future
Benefits

- Reduced weekly benefits
- Benefits ends sooner



Commutations

- ▶ Fixed Benefits – PPD of 1 – 99%
- ▶ Life Time Benefits – PD 70% or greater
 - Life Pension – follows # weeks of PPD
 - PTD (100%) begins at MMI



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Commutations

- ▶ At times, attorney fees might be paid from accrued / unpaid PPD – without commutation
- ▶ The two most common commutations requested / approved are:
 - Off the Far End
 - Uniform Reduction
 - *Be aware of Uniformly Increasing Reduction*
- ▶ There will be separate attorney fee calculations / commutations for a Life Pension case – one for PD, one for LP.
 - If commutation of PD is “off the far end”, benefits end sooner; if Life Pension applies, it results in a gap in benefits between the end of PD and beginning of Life Pension benefits



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Summary – SAWW/COLA Effects on Life Time Benefits

- ▶ Commutations of Attorney Fees
- ▶ Payment of Benefits in Advance
 - Reduces future benefits; Interest credit,
- ▶ COLA applies to 70% or more, 1/1/2003 or later
- ▶ Reduction method
 - COLA applied to Rate Before Reduction
 - If Uniform Reduction, no Change to Benefits for 2024
 - If Uniformly Increasing Reduction, Reduction to Benefit to recipient for 2024



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Commutations

- ▶ There will be separate attorney fee calculations/commutations for a Life Pension case – one for PD, one for LP.
 - If commutation of PD is “off the far end”, benefits end sooner; if Life Pension applies, it results in a gap in benefits between the end of PD and beginning of Life Pension benefits
 - Panel Decision – Kevin Suh v SCIF
 - Disregard LC 4659 a



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Commutations

- ▶ One excel worksheet
 - Which Commutation template
 - Ex A, B, C, D, E, F, G
- ▶ Life Expectancy Tables (needed for lifetime benefit projections – PTD and Life Pension)
 - <http://www.dir.ca.gov/osip/LifeExpectancyTables2014.pdf>
- ▶ Commutation Table 1 applies to benefits with a fixed end date (PPD)
- ▶ Commutation Table 2 (for a male) or Table 3 (for a female) applies to lifetime benefits



Commutations

Methods of Commutation

- A – Commutation of all remaining PD
- B – Commutation of PD “Off the Far End”
- C – Commutation of PD by Uniform Reduction
- D – Commutation of all remaining Life Pension after commencement of LP
- E – Commutation of all remaining Life Pension before commencement of LP
- F – Commutation of portion of remaining Life by uniform reduction of LP
- G – Uniform reduction of deferred Life Pension



Commutations Calculating Future Benefits Reserves/Attorney Fees

- ▶ DOI; AWE; Min/Max Rates; PD Start Date
- ▶ PPD award – calculate end date of PPD
 - **fixed number of weeks of benefits** based on DOI; weekly benefit rate is based on AWE, DOI, level of PD
- ▶ PTD Award – Awarded benefit rate based on TTD rate on DOI [LC 4659 (b)]



Life Time Benefits

- ▶ DOI 1/1/2003 and after
- ▶ Increase current benefits by SAWW/COLA effective 1/1/2024
 - Does not affect benefits that have not begun to accrue.
- ▶ Rate Reduced by “Uniform Reduction”
 - **Increase Rate Before Reduction, then apply Reduction**
 - Uniform Reduction
 - Uniformly INCREASING Reduction



COLA Effects – Life Pension

Example: 2007 DOI

- ▶ 10/16/2010 Award
 - 83% PPD Start date 7/19/2008
 - 641.25 weeks

- ▶ Life Pension Start 11/1/2020
 - Life Pension Start Rate \$177.81

- ▶ Attorney Fees are commuted “from the side”
(By Uniform Reduction)



W:	
WCAB#	
Date:	

**G) COMMUTATION OF A PORTION OF DEFERRED LIFE PENSION
BY UNIFORM REDUCTION OF LIFE PENSION**

Date of birth:	01/06/58	Total weeks PD:	641.25
DOI:	05/01/07	Life pension rate:	\$177.81
PD start:	07/19/08	Gender:	male
DOC:	03/12/16	Amount to commute:	\$20,449.65



1 Determine exact age in years as of date of commutation (DOC).		
1a	# of days from DOS through DOC.....	21250
1b	Divide by average number of days per year.....	365.24
1c	Exact age on DOC.....	58.181
2 Determine number of years between DOC and LP commencement.		
2a	Total weeks of PD.....	641.25
2b	Multiply by 7 days per week.....	7
2c	Total days of PD.....	4488.8
2d	Subtract #days from PD commencement through DOC inclusive.....	2794.0
2e	Number of days from DOC to LP commencement.....	1694.8
2f	Divide by average number of days per year.....	365.24
2g	Period in years from DOC to LP commencement (i.e. deferral period).....	4.640
3 Determine PV of life pension for exact age and deferral period.*		
3a	Enter PV for age 58 and deferral period 4.....	553.39
3b	Enter PV for age 59 and deferral period 4.....	530.23
3c	Difference of 3a and 3b.....	23.16
3d	Multiply by fractional portion of 1c.....	0.181
3e	Interpolation adjustment for age.....	3.65
3f	Enter PV for age 58 and deferral period 4.....	553.39
3g	PV for age 58 and deferral period 5.....	510.86
3h	Difference of 3f and 3g.....	42.53
3i	Multiply by fractional portion of deferral period (from 2g).....	0.640
3j	Interpolation adjustment for deferral period.....	27.22
3k	PV for age below 1c and deferral period below 2g (3a from above).....	553.39
3l	Subtract sum of 3e and 3j.....	30.87
3m	PV for exact age and deferral period on DOC.....	522.52
* Take values from Table 2 - Present Value of Life Pension for a Male, or Table 3 - Present Value of Life Pension for a Female, as dictated by gender.		
4 Calculate amount of reduction in LP rate necessary to produce lump sum.		
4a	Amount to be commuted.....	\$20,449.65
4b	Divide by 3m.....	522.52
4c	Amount of weekly reduction in LP.....	\$39.14
5 Calculate LP rate after commutation.		
5a	LP rate before commutation.....	\$177.81
5b	Subtract weekly reduction in LP (4c from above).....	\$39.14
5c	LP rate after commutation.....	\$138.67
6 Additional interest due for payment after date of commutation:		
	Additional interest due for each day late.....	\$5.60



Commutation of PD “off the far end”

- ▶ LC 4659
- ▶ If PD is at least 70%...life pension is “to be paid during the remainder of life, after payment for the maximum number of weeks specified in Section 4658 has been made”



Method #1 notes:


Method #1 is the Uniform Reduction Method. The weekly deduction remains constant or uniform for the life of the injured worker. The reduction becomes effective on the day after the date of commutation.

Method #2 notes:

Method #2 is the Uniformly Increasing Reduction Method. The weekly reduction increases every year effective January 1st by the same fixed percentage equal to the "Assumed annual SAWW increase" listed above. The initial reduction becomes effective on the day after the date of commutation. For the convenience of the parties, the reductions for the current year plus the next fifteen years are shown below.

(Input year LP starts)	Year	Reduction:
	2024	\$26.67
	2025	\$27.47
	2026	\$28.30
	2027	\$29.14
	2028	\$30.02
	2029	\$30.92
	2030	\$31.85
	2031	\$32.80
	2032	\$33.79
	2033	\$34.80
	2034	\$35.84
	2035	\$36.92
	2036	\$38.03
	2037	\$39.17
	2038	\$40.34
	2039	\$41.55

* The claims administrator is cautioned that when calculating the annual increase in PTD pursuant to LC 4659(c), the applicable SAWW adjustment is to be applied to the pre-reduced PTD rate, i.e. the rate before reduction for any prior commutations.




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COLA Effects – Life Pension

- ▶ From the DEU Attorney Fee/Commutation Calculator:

* The claims administrator is cautioned that when calculating the annual increase in PTD pursuant to LC 4659(c), the applicable SAWW adjustment is to be applied to the prereduced PTD rate, i.e. the rate before reduction for any prior commutations.



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COLA Effects – Life Pension

Method #1 is the Uniform Reduction Method.

- ▶ “The weekly deduction remains constant or uniform for the life of the injured worker. The reduction becomes effective on the day after the date of commutation.”

5 Calculate LP rate after commutation.

5a LP rate before commutation.....	\$177.81
5b Subtract weekly reduction in LP (4c from above).....	- 39.14
5c LP rate after commutation.....	\$138.67



COLA Effects – Life Pension

Method #2 is the Uniformly Increasing Reduction Method.

- ▶ “The weekly reduction increases every year effective January 1st by the same fixed percentage equal to the "Assumed annual SAWW increase" listed above. The initial reduction becomes effective on the day after the date of commutation. For the convenience of the parties, the reductions for the current year plus the next fifteen years are shown below.”



Uniformly Increasing Reduction

▶ Year	Reduction:
▶ 2020	\$26.67
▶ 2021	\$27.47
▶ 2022	\$28.30
▶ 2023	\$29.14
▶ 2024	\$30.02
▶ 2025	\$30.92
▶ 2026	\$31.85
▶ 2027	\$32.80
▶ 2028	\$33.79
▶ 2029	\$34.80



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Uniformly Increasing Reduction

- ▶ The Reduction increases annually by 3% for the duration of the Life Pension Benefit.
- ▶ Check the Award specifics for the amount of annual increase.
- ▶ Current 'standard' uniform increase is 3% annual.
- ▶ Older Awards might use 4% Annual Increase



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Uniformly Increasing Reduction

- ▶ With a Uniformly Increasing Reduction, the rate before reduction is adjusted by COLA; the weekly reduction is also adjusted, by a fixed percent as established within the Award.
- ▶ This method is far less common now, but had been used more frequently on Awards prior to 2014.



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#1) Uniform (constant) Reduction

- ▶ One formula for calculation of COLA increase:

2020 Start Rate = \$177.81
 • Minus \$39.14 = \$138.67 to the injured worker

2021 COLA = 4.3774%
 • \$177.81 x 1.043774 = \$185.59 (rate before reduction)
 • Minus \$39.14 = \$146.45 to the injured worker

2022 COLA = 13.5213%
 • \$185.59 x 1.135213 = \$210.68 (rate before reduction)
 • Minus \$39.14 = \$171.54 to the injured worker



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Uniform Reduction

- ▶ 2023 COLA = 5.15924%

$$\$210.68 \times 1.0515924 = \$221.55$$

- ▶ The updated rate for 2023, before reduction = \$221.55

For Benefits Payable Effective 1/1/2023:

$$\$221.55 - \$39.14 = \underline{\$182.41 \text{ to the injured worker}}$$

- ▶ 2024 COLA = 0%

For Benefits Payable Effective 1/1/2024:

$$\$221.55 - \$39.14 = \underline{\$182.41 \text{ to the injured worker}}$$



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#1) Uniform (constant) Reduction

- ▶ The Uniform Reduction (\$39.14 in this example) is then subtracted from the updated rate before reduction.

- ▶ The updated weekly benefit beginning

$$1/1/2021: \$185.59 - \$39.14 = \$146.45$$

$$1/1/2022: \$210.68 - \$39.14 = \$171.54$$

$$1/1/2023: \$221.55 - \$39.14 = \underline{\$182.41}$$

- ▶ No changes for 2024

$$1/1/2024: \$221.55 - \$39.14 = \underline{\$182.41}$$



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COLA Application to LP

COLA	Rate Before A	Reduction B	Benefit C
2020	\$177.81	\$39.14	\$138.67
2021 4.3774%	\$185.59	\$39.14	\$146.45
2022 13.5213%	\$210.68	\$39.14	\$171.54
2023 5.15924	\$221.55	\$39.14	\$182.41
2024 0%	221.55	\$39.14	\$182.41
2025 TBD	+ COLA	\$39.14	A minus B
2026 TBD	+ COLA	\$39.14	A minus B



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#2) Uniformly Increasing Reduction

Year	Reduction (3% annual increase)
2020	\$26.67
2021	\$27.47
2022	\$28.30
2023	\$29.14
2024	\$30.02
2025	\$30.92
2026	\$31.85



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#2) Uniformly Increasing Reduction

	• Rate Before	Reduction	Benefit
	A	B	C
▶ 2020	\$177.81	\$26.67	\$151.14
▶ 2021	\$185.59	\$27.47	\$158.12
▶ 2022	\$210.68	\$28.30	\$182.38
▶ 2023	\$221.55	\$29.14	\$192.38
▶ 2024	\$221.55	\$30.02	\$191.53
▶ 2025	+ COLA	\$30.92	A minus B
▶ 2026	+ COLA	\$31.85	A minus B



COLA and PTD Awards

- ▶ Usually Retroactive Accrued PTD benefits
- ▶ DEU Calculations – as of 11/17/21
 - 12/3/2021 Award
- ▶ EG: PTD to begin 2016 at \$428.89/week

2015	\$0.00	2.005750%	2015	\$169.49	\$1,103.29
2016	\$428.89	2.278908%	2016	\$169.26	\$1,128.43
2017	\$445.67	3.911946%	2017	\$175.88	\$1,172.57
2018	\$461.90	3.64187%	2018	\$182.29	\$1,215.27
2019	\$475.62	2.97119%	2019	\$187.71	\$1,251.38
2020	\$493.88	3.84013%	2020	\$194.91	\$1,299.43
2021	\$515.50	4.37735%	2021	\$203.44	\$1,356.31
2022	\$585.20	13.52133%	2022	\$230.95	\$1,539.71



Calculator - multi-purpose

1) Indemnity total for date range:

	Start Date	End Date	#Weeks (inclusive)	Rate of Indemnity	Amount of Indemnity
1	10/26/2016	12/31/2016	9.5714	\$428.89	\$4,105.09
2	1/1/2017	12/31/2017	52.1429	\$445.67	\$23,238.51
3	1/1/2018	12/31/2018	52.1429	\$461.90	\$24,084.79
4	1/1/2019	12/31/2019	52.1429	\$475.62	\$24,800.19
5	1/1/2020	12/31/2020	52.2857	\$493.88	\$25,822.87
6	1/1/2021	11/17/2021	45.8571	\$515.50	\$23,639.36
7			0.0000		\$0.00
			Sum = 264.1429	Sum =	\$125,690.81



Summary – SAWW/COLA Effects

- ▶ Effect on Benefits
- ▶ Direct Effect
 - LC 4453 (a) (10)
 - New TTD Maximum and Minimum Rates
 - DOI 1/1/2022
 - LC 4650 (c)
 - Life Pension (DOI on or after 1/1/2003)
 - PTD (DOI on or after 1/1/2003)
- ▶ Indirect Effect
 - 2 Year Rule – LC 4661.5
 - Ongoing or Accrued TTD
 - Ongoing or Accrued Death Benefits – LC 4702 (b)



Summary – SAWW/COLA Effects on Benefits from Commutations

- ▶ Commutations of Attorney Fees
- ▶ Payment of Benefits in Advance
 - Reduces future benefits; Interest credit,
- ▶ COLA applies to 70% or more, 1/1/2003 or later
- ▶ Reduction method
 - COLA applied to Rate Before Reduction
 - If Uniform Reduction, no Change to Benefits for 2024
 - If Uniformly Increasing Reduction, Reduction to Benefit to recipient for 2024



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