

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Alex Gurza

**SUBJECT:** Work-Related Injuries and Illnesses

**DATE:** December 19, 2013

Approved



Date 12/19/13

## Information

### Background

Recently, questions have arisen about the benefits that a City employee receives if they have a work-related injury or illness. The purpose of this memo is to provide a brief summary and clarification on several issues related to workers' compensation benefits and disability retirement benefits. There have also been questions related to disability retirement benefits. We will be providing a follow-up information memo on the disability retirement process that will provide further analysis and answers to specific questions, including providing different disability retirement scenarios.

There are various benefit programs that apply to employees who have been involved in a work related injury or illness. The benefit programs that employees may be eligible for include:

- Workers' Compensation Benefits
- Long-term Disability Insurance
- Return to Work Program
- Disability Retirement Benefits

### Workers' Compensation Benefits

Workers' Compensation is the primary program for work-related injuries or illnesses. According to the California Department of Industrial Relations<sup>1</sup>, Workers' Compensation benefits are state mandated and designed to:

- Provide an employee with the medical treatment needed to recover from a work related injury or illness

<sup>1</sup>Source: Department of Industrial Relations Website

- Partially replace the wages lost while an employee is recovering (Police Officers and Firefighters receive **full** pay for up to year for time off of work due to work related injuries or illnesses.)
- Help the employee return to work

The California Department of Industrial Relations<sup>2</sup> lists five basic benefits of Workers' Compensation insurance. Those benefits are briefly summarized below:

1. **Medical Care:** Paid for by the City to help the employee recover from an injury or illness caused by work. An employee can be eligible to receive medical, surgical, and hospital services and supplies that would be deemed reasonably required to cure or to relieve the sustained injury or illness. This can include supplies, such as crutches, reasonable transportation cost, and medical costs including the costs of any required medications. All medical payments are made pursuant to the State's Official Medical Fee Schedule. An injured worker can continue to receive treatment for a work related injury as long as medically necessary, including after leaving employment.
2. **Temporary Disability Benefits:** Payments by the City if the employee loses wages because the injury prevents the employee from doing his or her usual job while recovering. The amounts paid are set by State law. In the case of sworn police and fire personnel, an eligible employee may receive **full salary** in lieu of temporary disability benefits for one year. This is codified in the California Labor Code, §4850.
3. **Permanent Disability Benefits:** Payments by the City, based on the State's Permanent Disability Rating Schedule, if the employee does not recover completely. Permanent disability benefits may still be awarded even if the employee returns to his/her usual and customary occupation. These benefits may be paid to former employees who have retired from the City or otherwise are no longer working for the City.
4. **Supplemental Job Displacement Benefits (if the date of injury is in 2004 or later):** Vouchers paid by the City to help pay for retraining or skill enhancement if the employee does not recover completely and cannot perform their usual job due to the disability and the City does not offer other work to the employee.
5. **Death Benefits:** Statutory payments paid by the City to the employee's spouse, children or other dependents if the employee dies from a job injury or illness.

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<sup>2</sup> **Source:** Department of Industrial Relations [Frequently Asked Questions](#)

### Costs of Workers' Compensation Benefits

Although Workers' Compensation Benefits are mandated by State law, the City pays for the costs of the benefits. Since the City is self-insured for Workers' Compensation, the costs of Workers' Compensation Benefits are paid directly by the City.

Last fiscal year, the City spent \$28 million on Workers' Compensation costs, which includes the cost of paying police officer and firefighters' full pay for up to a year of off of work due to work-related injuries/illnesses. Of the \$28 million spent last fiscal year, \$14.96 million was spent on police officers and firefighters.

Due to the high costs of workers' compensation benefits, the City Auditor conducted an audit of the program in 2009. The Audit concluded that the City's cost were high in relation to comparable cities and counties. As part of the City Auditor's report, "Audit of the City of San Jose's Workers' Compensation Program," several recommendations were made to assist in the reduction of program costs. These recommendations included, but were not limited to, implementing a Workers' Compensation offset for the Police and Fire Department Plan since police officers and firefighters were able to receive both Workers' Compensation benefits and disability retirement benefits.

In response to the recommendations included in the Auditor's report, the City Council directed the Administration to develop a comprehensive program to address the total cost of workers' compensation. As one component of the program, on October 16, 2012, Council voted to approve a two-year pilot program to utilize the services of a third-party administrator to handle a portion of the City's claims administration. The transition to a third-party administrator began in July 2013. The next step in the reform program is to implement a Medical Provider Network (MPN). An MPN is an entity or group of health care providers set up by an insurer or self-insured employer and approved by Division of Workers' Compensation (DWC) to treat workers injured on the job. Under state regulations, each MPN must include a mix of doctors specializing in work-related injuries and doctors with expertise in general areas of medicine. The MPN will be implemented effective on January 1, 2014.

### Long-Term Disability Insurance

The City does not participate in California State Disability Insurance (SDI). However, it is important to note that SDI does not cover work-related injuries<sup>3</sup>.

Instead, the City offers voluntary long-term disability (LTD) insurance through Standard Insurance Company. Information about LTD insurance can be found here:

<http://sanjoseca.gov/DocumentCenter/View/1239>

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<sup>3</sup> **Source:** Employment Development Department Workers' Compensation Website

This benefit is currently 100% employee paid and can cover up to two-thirds of an employee's gross monthly salary. The plan offered by Standard Insurance Company provides a greater benefit than SDI, which includes covering disabilities that occur on or off the job. An employee is considered "disabled" and eligible to receive LTD benefit if the employee is not working in their own occupation and is unable to perform their occupation with any continuity or the employee is working in their own profession but is unable to earn 80% or more of their pre-disability wages as a result of physical disease, injury, pregnancy, or mental disorder.

Standard Insurance offers two options to City employees: LTD-30 and LTD-60.

Standard Insurance offers two options to City employees that work 20 or more hours per week: LTD-30 and LTD-60, under which benefits begin after 30 or 60 days of continuous disability, respectively. LTD benefits are tax-free under current tax law. Long-term disability income deducts certain incomes, including sick pay, executive leave, temporary workers' compensation benefits, disability or retirement benefits and any income from work activity while the employee is considered disabled. LTD is available to employees for up to two years for not being able to work in their own occupation or until age 65 for not being able to work in any occupation. If an employee becomes disabled after age 61, they would be subject to maximum benefit periods as listed in the Standard Insurance brochure linked above.

Measure B states that the City may provide matching funds for employees who incur long-term reductions in compensation as a result of work related injuries, but who do not qualify for a disability retirement. The City proposed to the San Jose Police Officers' Association paying 50% of the City's current LTD-60 plan or paying the difference between the contribution for the total cost of the LTD-30 plan and the City's contribution for the LTD-60 plan, but no agreement has been reached.

### **Return to Work**

Employees who have on the job injuries are directed through the Return to Work process. A physician may provide the returning employee with a description of the work the employee can and cannot do. These work restrictions may be temporary while waiting for improvement in an employee's condition or considered permanent if the employee has reached maximum medical improvement. Upon receipt of the employee's work restrictions, the City will make reasonable accommodations for employees who are unable to perform the essential functions of the job. Requests for reasonable accommodation will be evaluated on a case-by-case basis.

Once temporary medical restrictions have been provided to the department, any modified duty available should be identified in the employee's regular position. Occasionally, a department is not able to provide a reasonable accommodation in the employee's regular position based on the employee's temporary work restrictions. In such cases, the department notifies the Return to Work coordinator, which continues the Interactive Process with the employee. The Interactive Process includes reviewing the specific limitations of the employee's work restrictions and to identifying potential placement opportunities in other departments.

If an employee has permanent work restrictions, the Return to Work coordinator reviews the employee's permanent work restrictions as part of the Interactive Process. The Return to Work coordinator will first meet with the employee and the employee's current department to discuss if the employee's work restrictions are able to be reasonably accommodated within that department. In the event that the department cannot provide reasonable accommodation for the employee's permanent restrictions, the Return to Work coordinator will review other potential placement opportunities City-wide. If no positions are available, then other reasonable accommodations will be considered, such as an unpaid leave of absence.

### **Disability Retirements**

A disability retirement is a benefit of the City's pension system. It is separate from the Workers' Compensation benefits provided to injured workers. It is also separate from Long Term Disability Insurance.

A disability retirement is generally a lifetime pension received by an employee who is considered disabled under the definition of the pension plan. A disability retirement normally occurs if all of the other efforts to return the employee to work have failed. Employees who are permanently unable to work can apply for a disability retirement.

It is important to note that Workers' Compensation benefits and Disability Retirement benefits may be for the **same** injury or illness. Under CalPERS, the state retirement system, as well as the Federated City Employees' Retirement System, there is a coordination of benefits. This generally results in an offset (or reduction) of one benefit. Prior to Measure B, police officers and firefighters could receive **both** Workers' Compensation benefits (including permanent benefits) **and** disability retirement benefits. For police officers in Tier 2, the City does not pay workers' compensation benefits for disability on top of retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability.

Due to the concerns with the high number of employees who received disability retirements, the City Auditor conducted an audit in 2011 entitled, "Disability Retirement: A Program in Need of Reform." In the Auditor's report, it was noted that two out of three Fire personnel and one out of three Police personnel were retiring on a service-connected disability. The number of disability retirements was higher in San Jose than in comparable agencies. One of the Auditor's recommendations was to change the requirement for considering someone "disabled" for purposes of a disability retirement. The Auditor recommended limiting disability retirement benefits to those employees who are incapable of engaging in any gainful employment. This definition would be similar to the definition used by the U.S. Social Security Administration.

### **Disability Retirement Reform**

Under the provisions included in the City Charter through the passage of Measure B, the eligibility to receive a disability retirement has been modified to include the following language: "City employees must be incapable of engaging in any gainful employment for the City, but not

yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made." An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

An employee who does not receive a disability retirement would receive a regular service retirement when they meet the age and service requirements. Measure B also states that those who will qualify for disability retirements are those who are not yet eligible to retire, in terms of age and service. This provision stems from the City Auditor's finding that thirteen of the twenty-two disability retirement cases that were reviewed during for the audit were approved for those who already had been approved for service retirements and sought a change in status. In addition, many of the approved disability retirements were granted to those who worked until the day they were eligible to service retire and then applied for disability retirements.

Measure B provides that the determinations of disability retirements will be made by an independent panel of medical experts. In addition, the City will no longer pay workers' compensation benefits on top of disability retirements without an offset to the service connected disability retirement. This offset already occurs in the Federated system. As part of the litigation regarding Measure B, the City has stipulated that these provisions, in addition to other sections of Measure B, will not be implemented before July 1, 2014 for current Tier 1 employees.

Under Measure B, an employee who is injured permanently and cannot return to his or her job or to any other job within the City for Federated employees and within their department for Police and Fire employees would still be eligible to receive a disability retirement. If they are able do another job within the City or their department, the City Administration will make every effort to offer a vacant position to the employee. If a vacant position were not immediately available, the employee could be offered a position as soon as one is available. The City's Return to Work Program policy has been modified to reflect this. Until a vacancy is available, an injured worker may be able to continue to receive Workers' Compensation benefits and Long-Term Disability benefits that they may be entitled to.

The below two issues have been raised to the City Administration and will be the subject of further review and analysis:

- The duration of time that could exist between the determination that an employee can perform another position and the availability of a vacant position. As noted above, a vacant funded position must exist for a permanently injured employee to be offered a position.
- The potential difference in pay between an employee's incumbent position and the redeployed position. As noted above, Long-Term Disability Insurance is available as a means of minimizing this concern.

### **Consent Decree – Police Department**

In 2005, the City implemented the Exempt Officers Equality Program as part of a stipulated agreement to settle a disability discrimination lawsuit in federal court, known as the Consent Decree for police officers in the Police Department. Under this Program, those officers who are permanently restricted from performing the forcible arrest function or are otherwise permanently physically restricted from a patrol assignment or are so restricted on a long term basis.. In 2005, the City and the Police Department identified 30 "Tier 1"<sup>4</sup> positions for officers that qualify for this Program. The positions could not involve the arrest function or strenuous activity. The Consent Decree also designated "Tier 2" positions. Exempt and non-exempt officers could compete for the Tier 2 position on an equal basis.

At one time, the maximum number of "Tier 1" exempt officer positions was determined to be 30 officers. The Consent Decree held that the 30 positions were to be the maximum number of exempt positions. After five years, the City could make a subsequent determination on the maximum number of exempt officers, subject to meet and confer obligations. The Consent Decree, however, states that "nothing in the consent decree prevents an interim determination should drastic changes in staffing resulting from budgetary cuts, or other economic situations, occur." In October 2011, the City and San Jose Police Officers' Association agreed to reduced the maximum number of exempt positions to ten (10). As we consider options for Police Department employees on modified duty, increasing the maximum number of exempt officers is an option that can be explored further.

### **Conclusion**

There are various benefits that may be provided to an employee who has a work-related injury or illness – from temporary disability benefits to long-term disability benefits, and a disability retirement. The City's workers' compensation and disability retirement benefits are designed to mitigate the adverse impacts of work-related injuries and illnesses.

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<sup>4</sup> Tier 1 and Tier 2 in this case refer to the positions that were to be made available to the "exempt" officers. It does not refer to retirement benefits.

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Since work-related injuries and illnesses can vary significantly, the benefits received by a particular employee will vary. The primary goal, however, is first to avoid work-related injuries to the extent possible. When an injury does occur, the goal is to provide timely and effective medical care so that the employee can return to work. Although recent questions about the benefits received by an injured worker have focused on disability retirement, it is important to note that whether or not an employee qualifies for a disability retirement, the employee still may be receiving Workers' Compensation benefits. Those benefits can include medical care and permanent disability benefits. In addition, the employee may also be eligible to receive long term disability benefits through Long-Term Disability Insurance.

While this memo covers a broad discussion of benefits available for work-related injuries, other more specific questions have been raised about disability retirement benefits. We will be providing a follow-up information memo on the disability retirement process that will provide further analysis and answers to specific questions, including providing different disability retirement scenarios.



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