

MINUTES

METROPOLITAN CIVIL SERVICE COMMISSION

PUBLIC HEARING FOR CIVIL SERVICE RULE CHANGE

JANUARY 8, 2013

The Metropolitan Civil Service Commission met for a Public Hearing meeting on January 8, 2013 in the Civil Service Conference Room, Suite 163, 222 Building, Third Avenue North, Nashville, Tennessee, at approximately 9:05 a.m.

Commission Members present: Chairman William H. Farmer, Vice-Chairman Steve Corbitt, Mr. Michael Allen, Ms. Jo Ann North and Ms. D. Billye Sanders.

Other Members present: Ms. Rita Roberts-Turner, Director of Human Resources – Secretary to the Commission and Ms. Nicki Eke, Metro Legal Department – Attorney to the Commission

Chairman Farmer opened the Public Hearing for discussion. Staff has proposed changes to Civil Service Rule 4.8, Section 4 - In Line of Duty Injury Leave, Section 5 – IOD “Compensation Received” and Section 6 IOD – “Use of Sick Leave”. Staff provided both the current rule and proposed rule changes for review and discussion.

RULE CHANGE - 4.8 – In Line of Duty Injury Leave

Section 4 – “Period of Compensation”

Current

Leave for an injury shall extend for such time as the injured employee is unable to work, but in no event beyond 130 working days for the same or recurring injury. When the Civil Service Medical Examiner determines that the employee is disabled and will not be able to return to work, after full consideration of possible reasonable accommodation, the employee should immediately apply for the appropriate pension. An employee applying for a disability pension is required to notify his Appointing Authority, who will investigate the possibility of accommodating the employee's restrictions before the pension application is processed.

If, after exhausting all 130 working days of injury leave, an employee has returned to work, and in a calendar year subsequent to the year the employee exhausted his six (6) months injury leave, the employee requires surgery for the same or recurring injury, the employee shall receive up to thirty (30) additional working days injury leave per calendar year for the purpose of having surgery performed and recovery from surgery. This additional leave shall be available in any subsequent calendar year following the year the initial 130 work days injury leave was exhausted, so long as the employee is actively at work for the Metropolitan Government.

Proposed

Leave **and/or light duty** for an injury shall extend for such time as the injured employee is unable to work, but in no event beyond **six months of compensation** for the same or recurring injury. When the Civil Service Medical Examiner determines that the employee is disabled and will not be able to return to work, after full consideration of possible reasonable accommodation, the employee should immediately apply for the appropriate pension. An employee applying for a disability pension is required to notify his Appointing Authority, who will investigate the possibility of accommodating the employee's restrictions before the pension application is processed.

If, after exhausting all **six months** of injury leave, an employee has returned to work, and in a calendar year subsequent to the year the employee exhausted his six (6) months injury leave, the employee requires surgery for the same or recurring injury, the employee shall receive up to **six weeks** additional injury leave per calendar year for the purpose of having surgery performed and recovery from surgery. This additional leave shall be available in any subsequent calendar year following the year the initial **six months** of injury leave was exhausted, so long as the employee is actively at work for the Metropolitan Government. (Emphasis added)

RULE CHANGE - 4.8 – In Line of Duty Injury Leave**Section 5 – “Compensation Received”****Current**

During the period of time an employee is on injury leave he shall be entitled to receive his pay as established by the Pay Plan, subject to all other provisions as set out herein.

Proposed

During the period of time an employee is on injury leave he shall be entitled to receive **66 2/3%** of his pay as established by the Pay Plan, subject to all other provisions as set out herein. (Emphasis added)

RULE CHANGE - 4.8 – In Line of Duty Injury Leave**Section 6 – “Use of Sick Leave”****Current**

An employee who is injured on-the-job or develops an occupational illness shall be granted injury leave. Such leave shall not be charged against the employee's sick leave nor may the employee use sick leave for such time with the following exception: An employee shall be allowed to use up to five (5) of his sick days available in each subsequent year for a recurrence of an IOD injury after the initial 130 days of injury leave are exhausted.

Proposed

An employee who is injured on-the-job or develops an occupational illness shall be granted injury leave. Such leave shall not be charged against the employee's sick leave nor may the employee use sick leave for such time with the following exception: An employee shall be allowed to use up to five (5) of his sick days available in each subsequent year for a recurrence of an IOD injury after the initial **six months** of injury leave are exhausted. (Emphasis added)

Discussion:

Finance Director Rich Riebeling

A brief overview was given regarding the change, background and why it is important. Mr. Riebeling said the city has lived up to the benefits and pension obligations for the city's 9,000 employees and 7,900 retirees. Last year, some recommendations were made by the Study and Formulating Committee for pension plan and retiree health benefits. While the overall city is in good shape, the cost of benefits continues to rise at levels far in excess of revenue growth. Benefit costs are one of the largest growth factors we have in our budget. As a result, we need to fine tune certain areas of these plans and benefits in order to prevent the need to take "draconian measures" down the road. The more we can do now to make changes to bring plans and benefits to employees more in line with what we see in the government sector as well as the private sector, the better off we will be preserving the long term commitments we have made to our employees.

Presently, Metro pays 75% of medical and 100% of employee dental. We have a defined pension plan that is funded completely by Metro – no employee contributions. Metro pays IOD medical costs and offers a disability pension, if needed, until the person reaches retirement eligibility. With the goal designed to preserve the broad spectrum of benefits, we do not want to be in the position that has occurred in other states or other communities where they have taken strong measures to discontinue offering various benefits. Some states and jurisdictions are trying to legally challenge pre-existing benefit obligations.

In terms of cost escalation, the IOD program is rising in cost greater than anything else in Metro, including the pension or health obligations. On the medical payment side, we've seen the cost of this program almost double in the last few years. Furthermore, IOD salary replacement pay has also almost doubled in the last few years, from \$1.8 million to \$3.5 million. These are significant costs to the government. Where we are asking the Commission to look at reducing the cost and to consider the long term effect on our ability to continue to fund these programs as they currently exist. Reducing overall costs is important for the long-term retention of these benefits. While costs are important, being able to preserve these benefits on a long term bases is essential as well.

He urged the Commission to adopt the recommendations.

Chairman Farmer said he understood the primary motivation and rationale by the administration was to reduce the program cost. Noting the IOD program costs doubled in the last three years, he inquired as to ***"what was the root cause for the rapid increase? Has there been an analysis of what the cost is and is there abuse in the system we currently have. If so, if it was eliminated, would it help solve this economic problem?"***

Mr. Riebeling deferred to the Human Resources department because they deal with all employees in these matters, especially Police, Fire and other first responders since they have a large number of these injuries. When employees receive 100% of their pay while they are on IOD and do not pay taxes on that income during that period, they are in essence receiving extra money when they are out on injury leave. This may incentivize employees to stay off work and undermines Metro's efforts to return them to work promptly.

HR Deputy Director Jim Kramer

The goals for recommending these changes to the rules were:

- (1) Maintain the solvency of the benefit pension benefit.
- (2) Create an IOD program that encourages a return to work when people are able to return.
- (3) Provide an easy transition from being out on injury on duty to returning to full duty.
- (4) Make sure we have a uniform and equitable IOD program so that it's fair to all the injured employees, co-workers and tax payers.

Mr. Kramer further stated there were three proposed changes to the rules as follows:

- (1) Change the 100% percent untaxed salary replacement to 66 2/3%
- (2) Make light duty assignments count as part of the six month leave entitlement that employees have after suffering a work-related injury
- (3) Replace reference to working days with a set leave duration

First Recommendation - Salary replacement from 100% to 66 2/3%

Currently, employee salary replacement is untaxed and paid at 100%. As this is untaxed, employees bring home a greater take-home salary than when they report to work. 66 2/3% is what workman's comp provides. It's what the State provides so the request is consistent with what most employees get for workman's compensation. The current rules incentivize unnecessarily extending absences, so changing the salary replacement to 66 2/3% should reduce instances of unnecessarily prolonging an absence.

As we examined the data over the last five years, we found that Metro has provided 69,347 days of IOD leave from FY 2008 to 2012. That's equivalent of 266 employees working full time for one year. Over a five year period, one employee had six different IOD claims totaling 678 days. This individual averaged over a hundred days for each of these different absences because this was not a recurring injury, and therefore was not limited to the 130 days.

The IOD salary replacement costs have almost doubled from \$1.87 million to \$3.5 million. Those are the direct costs that Metro incurs by replacing salary at 100%. It does not reflect the indirect cost. Department heads often have to provide overtime to fill vacancies that are created by IOD absences. There are administrative costs around monitoring questionable absences. Case management for example tracks those instances that never seem to heal. Mr. Kramer said a survey was done with the state of TN and insurance companies and other major cities (Memphis, Knoxville, etc.). In every case when you look at it in its totality, Metro's benefit is much better than the benefit that was provided by anyone that we surveyed.

Mr. Farmer asked if IOD compensation is non-taxable under income tax laws (Federal Law). Mr. Kramer said it was. The Commission expressed concern that 66 2/3% would result in take-home pay significantly below their normal take-home. Mr. Riebeling said the idea is to provide a base income but you don't want to pay employees more than their normal earnings. You want to incentivize them to get well, to go through rehab and do what they need to do to get back to work as quickly as possible.

Second Recommendation - Change Injury on Duty - light duty application

IOD leave is intended to provide continuation and job security until such time the employee can return to his regular duties with or without accommodation or is determined as disabled from performing the essential duties of his job. Light Duty fits within that definition, as it also provides salary continuation and job security during those absences. So while it fits the purpose of IOD leave departments, such as Police, Fire, Sheriff's Office, and others are reducing or eliminating their light duty programs. Since these programs do not count against that six month leave entitlement, it extends the absence, potentially for an indefinite period depending on how the light duty is structured. Light duty is regarded as the best practice for transitioning injured employees back to work. Under the proposed rules, it assists departments and the duration of absence is no longer a question. It's a six month absence regardless of whether they perform light duty or not. This change would motivate departments to use employees for light duty. It would allow the employee to receive their full salary. Co-workers could benefit as well. If you have an employee who can't perform all essential functions of their job, they may still be able to come in and execute some of the tasks which would relieve the overall work load co-workers would likely absorb during the absence.

Final Recommendation

The current rule refers to "130 working days" and "six months" interchangeably. It is written as though the two are the same, and for non-traditional shifts they are not, such as those who are scheduled 10 or 12 hour shifts. In those cases, "130 working days" allows an absence of more than six months. Changing the language to refer to weeks or months makes it equitable across departments and positions to insure everyone receives the same benefit.

Closing

Metro General Hospital made very similar changes in 2011, reducing their program from 100% to 66 2/3%. Additionally, they started counting light duty as work related injury leave time. They have seen a 53% reduction in the number of injury claims that requires absence from work and a 66% reduction in the cost of those claims. They have also seen a change in employee behavior.

Even with the changes proposed, Metro's injury on duty package provides better coverage for employees than the other programs in TN. It will also help manage the program while protecting the pension benefit that is provided for those who suffer permanent disabling injuries on the job. (See the attached BPS&M's breakdown / differences.)

The Commission asked a series of questions regarding an overview of potential abuse issues and the current review process.

In the discussion it was noted that case management is assigned to IOD situations where there is concern about abuse and the need to coordinate care. The Commission asked to whom the case management provider reports. Mr. Kramer said they are contracted by Metro Government and provide Metro with information. They will attend doctors' visits with the injured employee. The Commission asked how they were compensated and were informed that the contractor submits an invoice for all the work performed with that particular patient. The Commission asked if Metro had considered using incentives with case management workers on private contract with the Government to review IOD claims. Mr. Riebeling said that had not been addressed at that time.

HR Director Rita Roberts stated there is a Safety employee at Metro HR who is addressing the matter of reducing injuries with other departments and possibly putting into place safety personnel to work on these issues.

Chairman Farmer asked if there was anyone from the public who wanted to make comments. The following people came forward to present their concerns about the proposed changes to the Injury On Duty program. In addition, Fire provided an analysis of comparable programs offered by the other government entities.

Union

Doug Collier, President of SEIU
Mark Young, President of Fire Local 140
Gary Hargis, Vice President of Fire Local 140
Robert Weaver, Fraternal Order of Police
Addis Kendall, Fire Local 140

Department Heads

Chief Steve Anderson, Police Department
Interim Director – Chief Billy Lynch, Fire Department

Police Employees

Ben Cantrell
Richard Lowery
Officer Brent Hoadley
Melvin Brown

Firefighters

David Powell
Peter Powell
Bobby Connelly
Stan Bailey
Christiana Byers
Michael Boatman
Carrie Thomas

Public Works

Rodney Davis

Chairman Farmer noted that the Commission would not be able to act on this matter today but will discuss the information that was presented today at the February 12, 2013 meeting. Mr. Farmer said he felt the bulk of the financial issue is Fire and Police. Mr. Riebeling said he was correct. Ms. Sanders asked for facts and figures regarding the General Hospital program change and questioned the percentage amount that should be used for those who are in public safety and those who are not. She also asked what could be done to improve the safety issues in each

department. HR Director Rita Roberts-Turner said the department is presently working with Safety Manager Stephen Cain for those improvements and will bring his findings to the Commission. Chairman Farmer asked Mr. Kramer to review the union analysis of benefits. He also stated that Interim-Director Chief Billy Lynch suggested that decision making, regarding IOD's, should be returned back to Department Heads. A question was raised to Mr. Riebeling regarding employees currently on IOD and would they remain at 100% now. He said those employees would stay at 100%. The change to the IOD would only affect those injured after the effective date.

With no additional questions raised by the Commission or comments from the public, the meeting adjourned at 11:35 a.m.

ATTEST:

APPROVED:



**Ms. Rita Roberts-Turner, Director
of the Human Resources Department
Secretary to the Civil Service Commission**



**William H. Farmer, Chairman
of the Civil Service Commission**