



Aug. 26, 2014

The Honorable Cynthia Ming-Mei Lee, Presiding Judge
Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, CA 94102

Dear Presiding Judge Ming-Mei Lee:

The Civil Grand Jury issued its report entitled, "Inquiry into the Operation and Programs of the San Francisco Jails," in June of 2014.

One of the findings from the reports states:

"More than 50 deputies are presently out on long term disability. Their positions are being held, preventing the hiring of new deputies. This results in serious overtime costs and additional responsibilities and workload for staff. The City has a policy of limiting the time an employee receives temporary disability payments, which leads to eventual permanent disability status and financial closure, thereby opening up positions for new hires."

The City and County of San Francisco (City) Department of Human Resources (DHR) agrees with this finding, with clarifications to Recommendations 1a and 1b as noted later in this response. Programs administered by DHR are specifically mentioned in two other recommendations related to that finding:

"Recommendation 1c: The Sheriff's Department should review its safety programs with the Workforce Development Division, analyze the cause of worker injuries, and update safety education programs for both staff and inmates."

"Recommendation 1d: Communication between the Sheriff's Department and the appropriate City personnel in the Worker's Compensation Division who adjust workers' compensation claims should occur on a regular basis to review ongoing status of all outstanding claims."

In regard to Recommendation 1c:

The DHR Workers' Compensation Division (as opposed to the Workforce Development Division) is well-suited to work with the Sheriff's Department on analysis of worker injuries and development of safety education programs for staff. The DHR Workers' Compensation Division will further analyze the cause of worker injuries and proactively assist the Sheriff's Department with this analysis. Neither the DHR Workers' Compensation Division, nor the Workforce Development Division have the necessary expertise in the specialized area of inmate health and safety to assist the Sheriff's Department in reviewing and updating safety education programs for inmates.

Disposition: DHR will implement the portions of Recommendation 1c within its purview.

In regard to Recommendation 1d:

Over the last year the DHR Workers' Compensation Division revamped its claims team for the Sheriff's Department and implemented a close communications process. The DHR Workers' Compensation Division claims team communicates on a weekly basis with the assigned staff at the Sheriff's Department to review ongoing status of outstanding claims, and regularly conducts claim reviews to ensure claims are being brought to closure.

Disposition: This recommendation has been implemented.

While DHR is not mentioned in any other recommendations, the following information may be helpful in further understanding the Sheriff's Department's workers' compensation parameters.

Recommendation 1a states:

“The City's policy for limited-time temporary disability payments should be followed for the Sheriff's Department, thereby eventually moving any work injury claim to permanent disability status and financial closure of those claims, opening positions for new hires.”

When employees are unable to perform their regular duties while recovering from work-related illnesses or injuries they are entitled to temporary total disability (TTD) benefits. The time during which an employee may receive TTD payments while recovering from a work-related injury or illness is governed by state workers' compensation law and medical opinion. State Labor Code section 4850 provides public safety employees with full salary for up to one year in the event they are unable to perform their duties while recovering from a compensable injury or illness. After that time, the law provides an additional year during which TTD payments may be made. As such, deputies may conceivably receive 104 weeks of payments during a period of temporary disability. The specific amount of time an individual employee is off work depends on a doctor's medical opinion as to when the employee may return to work.

If the employee becomes permanently disabled from the job, Labor Code Sections 4850.3 and 4850.4 require the department to provide advance disability pension payments to safety officers who are members of the Public Retirement System. Such payments must generally be made during the pendency of the industrial disability retirement application process. During this time, the Sheriff's Department is unable to move the employee out of his or her position and is thus prevented from filling the position.

While the City works to influence legislation, these laws are currently beyond the control of both the Sheriff's Department and the DHR Workers' Compensation Division.

Where the City can exercise more control over TTD costs is by helping departments bring employees back to work on modified duty. Even if an employee is unable to perform his or her regular duties, it may be possible for the employee to perform other work while recovering. The DHR Workers' Compensation Division has worked with the Sheriff's Department to help lower its TTD costs by bringing employees back to work on modified duty for longer periods while they recover from their injuries.

Recommendation 1b states:

“The Board of Supervisors should request an audit conducted by the Budget and Legislative Analyst of payments made on behalf of the Sheriff’s Department for workers compensation claims and related overtime costs.”

While not without challenges, it may be possible for the DHR Workers’ Compensation Division and the Sheriff’s Department to correlate workers’ compensation disability days with overtime costs.

I hope this information assists the Civil Grand Jury in its process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Susan Gard", with a stylized flourish at the end.

Susan Gard, Chief of Policy
City and County of San Francisco Human Resources Department

C: Government Audit and Oversight Clerk
Sheriff’s Department
DHR Workers’ Compensation Division Director