



CITY COMMISSION AGENDA REQUEST



DATE May 18, 1995
SUBJECT Claims Settlement Policy Amendment
AMOUNT
SOURCE
OMB

- Bid/Contract/Lease
Change Order
Budget Transfer/Supple. Appropriation
Status Report
[X] Policy/Discussion
Other (Specify):

REQUEST ACTION ON: May 24, 1995

ISSUE SUMMARY

As the Risk Management Program continues to mature, a larger number of claims continue to develop especially in the area of workers' compensation. With recent changes in the Florida Workers' Compensation Law and with the advent of the Americans with Disabilities Act (ADA), the potential size of certain workers' compensation claims has been magnified. As part of the process of continually re-evaluating our procedures it is felt that a more structured process needs to be defined to determine the best means of handling and resolving some of these more serious workers' compensation claims.

HISTORY

The City operates a self-funded insurance program for its liability and workers' compensation expenses which is administered by the Risk Management Office in the Asset/Liability Management Division of the City Treasurer-Clerk's Office. The claims associated with this self-insurance program are handled by the City's Third-Party Administrator (TPA), Crawford & Company. The area of workers' compensation is very strictly regulated by the State Department of Labor & Employment Security, Division of Workers' Compensation. Through both statutory and case law, the medical treatment and costs as well as indemnity (lost time wages) payments are very well-defined and calculated. The State requires a number of forms and reports to be filed and payments to be made according to specific timelines. In addition, the State has procedures in place to handle complaints through the mediation process with all decisions and settlements subject to the approval of the appropriate workers' compensation judges. In FY '94, the City had 622 workers' compensation claims with a total incurred value (paid and reserved) of over \$1.1 million dollars.

RECOMMENDED ACTION:

Approve Option 1 as recommended and requested by Staff.

Linda B. Smith
Linda Smith, Asset/Liability Management Administrator

Robert B. Inzer
Robert B. Inzer, City Treasurer-Clerk

An overwhelming majority of these claims are medical only claims (no lost time) with only 10-15% of these claims involving indemnity or lost wages which account for a majority of the dollars incurred.

### **FACTS AND ISSUES**

From time to time an employee may suffer an injury which results in some degree of permanent disability. The determination that the employee has a permanent disability and has reached maximum medical improvement is a process that may take from six months to two years to reach conclusion. Unfortunately, this may occasionally result in a situation where the disability is such that the employee is unable to return to and perform his/her previous job. If this is the case and reasonable accommodations cannot be made to allow the employee to perform the essential functions of the job, current workers' compensation law says that the employer will offer that employee another job. If no job is offered and the employee is terminated, the City faces potentially serious implications relative to violation of both the workers' compensation law and the ADA, including the likelihood of a fine and a lawsuit stemming from such a violation. Hence, in these certain situations where an employee cannot return to work and where the City has no other job offer to extend, it may be beneficial to both the City and the employee to "wash out" or settle the claim. In a washout, the employee is offered a lump sum of money which generally represents the present value of the claim. The City benefits in some of these situations by eliminating the continued administrative and legal expenses associated with the continuation of such a claim as well as eliminate any potential ADA claim by obtaining a release as part of the settlement. Incidentally, under the revisions of the 1994 Workers' Compensation Law, these settlements are basically calculated by determining what the employees future wages as well as future medicals would be as per statutory law, and then discounting this figure to present value. In addition, attorney's fees for the employee's attorney, if applicable, will be included in this settlement amount. If both parties agree to such a settlement, it must be approved by the appropriate workers' compensation judge before it is valid. Obviously, these situations are ones that must be looked at very carefully to determine what is best for the employee and for the City. Since it is not particularly difficult to obtain some degree of a permanency rating from an injury, the City must be very cautious not to become too liberal in the settlement of these type of claims to avoid the proverbial opening of the floodgates if you will.

Since there now is increased pressure and in some cases incentive, to settle some of these claims, we feel like a more defined process needs to be in place to assure the best course for the City is taken in these situations. An amendment to the City Claims Settlement Policy is proposed to identify and authorize such a process to resolve these claims in a manner consistent with other procedures which are already in place, and in compliance with Florida statutory and case law. This process would involve the creation of a Workers' Compensation Oversight Committee consisting of the following persons or their representatives:

- 1) City Treasurer-Clerk
- 2) City Attorney
- 3) City Manager
- 4) Risk Manager
- 5) Workers' Compensation Adjuster

The proposed additions to the existing Claims Settlement Policy are found in the attachment.

**FISCAL IMPACT**

There would be no immediate fiscal impact as a result of this policy amendment. The dollars that would be paid in the settlement of these claims would come from the Risk Management Claims Budget or from the actuarially determined loss reserve depending on the date of the original injury.

**OPTIONS**

- 1) Approve the policy modification as described and recommended by Staff.
- 2) Direct Staff to modify policy in some other manner.
- 3) Do not approve the recommended policy modification and direct staff to take other direction.

**RECOMMENDATIONS**

Approve Option 1 as recommended and requested by Staff.

**ATTACHMENTS**

Claims Settlement Policy - 200CP

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