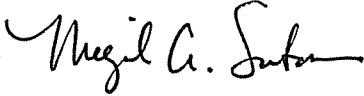


CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: December 21, 2009

To: Heads of All Departments (excluding Department of Water and Power)

From: Miguel A. Santana, City Administrative Officer 

Subject: **SUPPLEMENTING WORKERS' COMPENSATION STATE RATE WITH ACCRUED SICK LEAVE, VACATION TIME OR OTHER COMPENSATED TIME OFF**

Per Los Angeles Administrative Code (LAAC) Section 4.126, Allowance for Sick Leave, employees have not been allowed to utilize their available sick time for industrial injuries. However, based on a California Court of Appeals decision, Andersen v. Workers Compensation Board (2007) 149 Cal. App. 4th 1369, the City Attorney has advised that employees on State Rate may elect to use their accrued sick, vacation or other compensated time off to supplement their State Rate benefit to receive the equivalent of their regular salary.

Since this ruling conflicts with LAAC Section 4.126, the LAAC, applicable MOU provisions, and procedure manuals will be amended under separate notice to address this issue.

For employees on State Rate who elect to supplement, new Payroll Status Codes 15 and 30 have been created in PaySR for full-time and half-time employees, respectively, to allow the use of accrued sick leave, accrued vacation time, or accumulated compensatory time off (CTO) to supplement their State Rate benefit. Employees electing to supplement will receive two checks: one generated from the Workers' Compensation Claims Management System for their State Rate benefit, and one from the City Payroll System for their supplemental pay.

Note: Codes 15 and 30 are not yet operational; the required program changes in PaySR are currently being worked on by the Controller's Office. In the meantime, supplemental checks will need to be processed manually by departmental payroll staff by reverting employees to the payroll code to which they were assigned immediately prior to their being placed on State Rate. Departments will be notified when Codes 15 and 30 are available for use.

Temporary Disability Defined

If a treating physician determines that an employee is unable to work after a job-related injury or illness, the City pays the injured employee up to an aggregate of one year (261 working days) of salary continuation (IOD) in lieu of the lower State-required temporary disability benefit. IOD payments are set by MOUs or the LAAC and continue while an employee is under medical treatment and determined unable to work by the treating physician.

Once IOD has been exhausted and a treating physician still determines that an employee is unable to work, temporary disability continues at the State Rate for a period of time up to an aggregate of one year or longer based on the following dates of injury:

- 1) **Injury Date 4/18/04 or prior**
 - Up to 1 Year IOD and Unlimited State Rate
 - State Rate continues until the employees become Permanent and Stationary, which means they have reached maximum medical improvement.

- 2) **Injury Date 4/19/04 thru 12/31/07**
 - Up to 1 Year IOD and Up to 1 Year of State Rate
 - Within a 2-year window starting from the first IOD check date. First IOD check date would be the payday date.
 - Example: IOD from 3/1/09 - 3/14/09 (10 working days) which is PP19. The 2-year window starts on 3/25/09 when the employee receives his or her check for PP19.

- 3) **Injury Date of 1/1/08 or later**
 - Up to 1 Year IOD and up to 1 Year of State Rate
 - Within a 5-year window starting from the date of injury

As a general rule, State Rate pays two-thirds of an employee's average weekly gross pay from all sources, subject to minimums and maximums set by State law. Currently, the State Rate maximum is \$958.01 per week. This will increase to a maximum of \$986.69 on January 1, 2010.

NEW PROCEDURE

Authorization for IOD/State Rate Time Off:

Time off related to work-related illness or injury, and covered by IOD or State Rate shall continue to be authorized by the Workers' Compensation Analyst by issuance of a duty certificate indicating the period of time covered along with how the time should be recorded for payroll purposes.

Medically necessary absence prior to acceptance of the Workers' Compensation Claim:

The current practice of allowing employees to use sick time until a workers' compensation claim has been accepted and salary continuation (IOD) time approved, remains unchanged. This issue is discussed in detail in the Personnel Department's Supervisor's Guide to Workers' Compensation, pages 13 through 15.

Supplementing State Rate with Accrued Leave Benefits:

Employees who remain off work after one year on salary continuation (IOD) will be eligible to supplement their State Rate with any accrued sick leave, accrued vacation time or accumulated compensatory time off (CTO), in order to receive payment equal to the difference between their State Rate and regular salary, if their regular salary exceeds the State Rate amount being received.

Note: Per California Labor Code Section 4650, the City is obligated to pay temporary disability payments if a work-related injury or illness causes temporary disability. The City initially pays up to one year of IOD, followed by the required payments at State Rate.

Employees cannot opt to use accrued sick leave, accrued vacation time, or accumulated CTO before, or instead of, receiving the State Rate benefit.

At least one month prior to the end of IOD, the employing Department Personnel Section must notify the injured workers in writing (see attached IOD Employee Notification/Election Form and Frequently Asked Questions) that they may elect one of the following:

1. To receive only those benefits provided under workers' compensation law, i.e. State Rate, or
2. To elect to supplement their State Rate benefits with their accrued sick leave, accrued vacation time, or accumulated CTO.

For employees choosing to supplement, the City's Notification Letter/Election Form requires employees to select the order in which they wish to use their accrued time off and the effective date to initiate the supplement. It is the employees' responsibility to verify available accrued hours with their Department Payroll Section.

The notification informs employees that usage of their time will be continuous until the employing Department is notified in writing to discontinue the supplement, accrued time is exhausted or is insufficient to cover mandatory retirement deductions, or upon their return to work.

Employing Department Payroll Sections will be responsible for authorizing and tracking the use of sick leave, vacation time, or CTO used by employees to supplement their State Rate benefit.

- If only 75% sick time is available, supplemental pay will be provided up to 75% of the employee's regular pay (same as is the case for non-IOD employees).
- Any mandatory furlough time or other reduced schedule hours will be subtracted from an employee's biweekly regular hours when calculating hours available to supplement.

Please see the attached Frequently Asked Questions and IOD Employee Notification Letter/Election Form for additional detailed information. Questions regarding a specific claim may be directed to the appropriate Workers' Compensation Analyst at (213) 473-3400 for civilian claims or (626) 407-0400 for sworn claims. Payroll-related questions may be directed to the Payroll Section of the Office of the Controller at (213) 978-7452. Any questions regarding this correspondence may be directed to Chief Management Analyst Dave Noltemeyer, Personnel Department Workers' Compensation Division at (213) 473-3374 or via e-mail at david.noltemeyer@lacity.org.

MAS:CEC:kh567

Attachments

c: Department Personnel Directors
Department Payroll Supervisors

FREQUENTLY ASKED QUESTIONS

Regarding Supplementing State Rate

1. How are IOD and State Rate paid?

- IOD is paid through the Payroll System (PaySR), like your regular paycheck.
- State Rate is paid through the Workers' Compensation (WC) Claims Management System.
- Supplemental Pay will be paid in a separate check through PaySR.
- If you supplement, you will receive two checks, one from PaySR and one from the WC Claims Management System.
- Questions regarding the Supplemental check should be directed to your Department Payroll Section.
- Questions regarding the State Rate check should be directed your assigned Workers' Compensation Analyst.

2. What is my payroll status?

- Employees on IOD are coded as active City employees (Payroll Code 11).
- Employees on State Rate are coded as inactive City employees (Payroll Code 27).
- Employees who elect to supplement their State Rate with accrued time will be coded as active City employees with new Payroll Codes (15 for full-time, and 30 for half-time employees).

3. What is taxable?

- State Rate and IOD are not taxable.
- Sick leave, Vacation or other compensated time is taxable.
- The supplemental check with sick, vacation or CTO is taxable.

4. Will employee benefits (health/dental insurance subsidies) be paid by the City or employee while supplementing State Rate?

- If State Rate is supplemented with at least 40 hours of sick, vacation or overtime (CTO) in a two-week pay period (20 hours of compensation in a two-week pay period for half-time employees), the City will continue to pay for benefits.
- City pays for benefits while on IOD.
- City does not pay for health/dental benefits if only receiving State Rate (No supplement).
- Employees on State Rate are responsible for paying their own premiums through COBRA, after one pay period of inactive status. Employee pays COBRA benefits directly to insurance carrier.

5. Will employees accrue seniority while supplementing their State Rate?

- Seniority accrues for the supplemented hours used while on State Rate, consistent with the existing Civil Service rules for non-industrial injured employees.
- Seniority accrues while on IOD.
- Seniority does not accrue if only receiving State Rate (No supplement).

6. Will employees accrue sick leave while supplementing their State Rate?

- Sick leave will accrue for the supplemented hours compensated while on State Rate, consistent with the existing rules for non-industrial injured employees.
- Sick leave accrues while on IOD.
- Sick leave does not accrue if only receiving State Rate (No supplement).

7. Will employees accrue vacation time while supplementing their State Rate?

- Vacation time will accrue for the supplemented hours compensated while on State Rate, consistent with the existing rules for non-industrial injured employees.
- Vacation time accrues while on IOD, consistent with current rules for deducting absences.
- Vacation time does not accrue if only receiving State Rate (No supplement).

8. Will civilian employees contribute to their retirement and receive service credit while supplementing their State Rate?

- Civilian employees will receive service credit towards their retirement as a result of their full LACERS contribution rate being deducted from their supplemental check. Note: The supplementing of employees' State Rate will be terminated at the point that their retirement contribution would exceed the amount of the supplemental pay.
- For additional information contact: LACERS, Toll Free (800) 779-8328 or LACERS.services@lacity.org.

9. Will sworn employees contribute to their retirement and receive service credit while supplementing their State Rate?

- Since retirement varies with the associated Tier, please contact Fire and Police Pensions for additional information: (213) 978-4545, Toll Free (800) 787-2489 or pensions@lacity.org.

10. Will other deductions continue?

- Excluding deferred compensation and taxes, all regular mandatory and voluntary deductions are taken from IOD checks.
- Other than legal garnishments, no mandatory or voluntary deductions are taken from State Rate only checks.
- All mandatory deductions will be taken from the supplemental check, as long as the paid amount is large enough to cover the deductions. Note: The supplementing of employees' State Rate will be terminated at the point that their mandatory deductions exceed the amount of the supplemental pay.
- Employees who want voluntary deductions taken from their supplemental check will need to complete a Payroll Deduction Card to be submitted to the Controller's Office

CITY OF LOS ANGELES

CALIFORNIA

**EMPLOYING
DEPARTMENT**
200 SAMPLE STREET
LOS ANGELES, CA 90012



ANTONIO R. VILLARAIGOSA
MAYOR

DATE

Injured Employee's Name
Address
City, State Zip Code

RE: NOTIFICATION OF OPTION TO SUPPLEMENT STATE RATE TEMPORARY DISABILITY PAYMENTS WITH ACCRUED COMPENSATED TIME (SICK LEAVE, VACATION, AND OVERTIME (CTO))

CLAIM # _____

Dear [name of employee],

Our payroll records indicate that (select one of the following):

- The temporary disability benefits you have been receiving in the form of IOD salary continuation will end shortly. At that time, if you remain unable to return to work, as determined by your treating physician, you will be placed on temporary disability payments at the State Rate.
- You are currently receiving temporary disability benefits at the State Rate; or your State Rate benefit has been exhausted but you are still disabled and remain off work.

State Rate is equal to two-thirds of your average weekly gross pay from all sources, subject to minimums and maximums set by State law. These payments are calculated by your assigned Workers' Compensation Analyst and are processed through the Workers' Compensation Claims Management System.

You may elect to use your accrued sick leave, accrued vacation time, or accumulated compensatory time off (CTO) up to the equivalent of your regular salary:

- To supplement your State Rate check; or
- To receive compensation in the event you become ineligible for temporary disability at the State Rate, either because you exhausted such benefits or you are no longer temporarily disabled, and remain off work due to this work-related injury.

See attached memo from the Office of the City Administrative Officer dated December 21, 2009 and answers to Frequently Asked Questions for additional information on supplementing your State Rate benefit.

Please complete and return the attached Use of Accrued Time Off Election Form to your Department Payroll Section. Contact your Department Payroll Section to determine your available time.

USE OF ACCRUED TIME OFF ELECTION FORM

Workers' Compensation Claim # _____

Select from one of the following:

- I decline to supplement my State Rate benefit and elect to receive only those State Rate temporary disability payments provided under Workers' Compensation law. While on State Rate, I will be responsible for paying my health/dental benefits through COBRA.
- I elect to supplement my State Rate benefit with accrued or accumulated compensated time up to the amount of my regular salary on the date and in the order indicated below.
- I elect to use my accrued or accumulated compensated time as indicated below, up to the amount of my regular salary, since I am no longer eligible for State Rate benefits but remain off work disabled due to this work-related injury.

Start Date: _____ End Date: _____

(If no end date is selected, then supplemental pay will terminate when accrued/accumulated time selected below is exhausted or insufficient to cover the mandatory retirement deduction).

Enter Total Number of Hours Requesting (in all combined categories of time selected below) to Supplement up to My Regular Salary Each Pay Period (or enter "Maximum"): _____

(Please contact your Department Payroll Section if you need assistance in determining the maximum number of hours that represents the difference between your State Rate benefit and your regular salary per pay period. If supplementing with only 75% (civilian and sworn employees) or 50% (sworn employees only) sick leave, supplemental pay will be provided only up to that percentage of your regular pay.)

Indicate the order you wish to use by entering the numbers 1-5 next to each type of compensated time listed below. If you do not want a particular category of time used, write "Do Not Use" on the line next to the category. 100% sick time must be used prior to use of partial pay sick time:

- 100% Sick Time _____
- 75% Sick Time _____
- 50% Sick Time (sworn only) _____
- Vacation Time _____
- Overtime (CTO) _____

Sign below, retain a copy for your personal records, and send the original back to your Department Payroll Section for processing accordingly. This form must be received and approved by your Department at least 14 calendar days prior to your Supplementing start date selected above, in order for a Supplemental pay check to be issued for the pay period with the start date you selected.

Print Name: _____

Signature: _____ Date: _____

By signing this form, I acknowledge that I have read the accompanying Notification Letter with attached Memorandum from the Office of the City Administrative Officer dated December 21, 2009 and Frequently Asked Questions document.