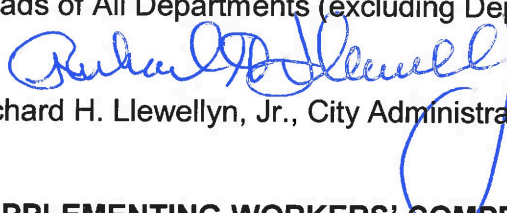


CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: May 10, 2018 (Replaces memo issued December 21, 2009)

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

From: 
Richard H. Llewellyn, Jr., City Administrative Officer

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

Previously, in accordance with Los Angeles Administrative Code (LAAC) Section 4.126, Allowance for Sick Leave, employees were not 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 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. Employees who have exhausted their State Rate Benefit but remain temporarily disabled and off work due to their work-related injury may also use their available accrued compensated time up to the equivalent of their regular salary.

LAAC Section 4.126 and applicable MOU provisions have been revised to remove any conflict with the Andersen decision.

For employees on State Rate who elect to supplement, Legacy Payroll Status Codes 5, 10, and 15 have been created in PaySR for intermittent, 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.

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 \$1,215.27 per week, which went into effect January 1, 2018.

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. Timekeeping issues are discussed in detail in the Personnel Department's Supervisor's Guide to Workers' Compensation, pages 15 through 16 (Revised 6/2016).

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 Frequently Asked Questions, letter re: "Notification of Option to Supplement State Rate Temporary Disability Payments with Accrued Compensated Time" and accompanying "Use of Accrued Time Off Election Form") 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. **Please note:**

- If only 75% sick time is available, supplemental pay will be provided up to 75% of the employee's regular pay, but one hour of 75% sick leave is counted for each hour of 75% sick leave used (same as is the case for non-IOD employees).
- Any 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, letter re: "Notification of Option to Supplement State Rate Temporary Disability Payments with Accrued Compensated Time" and accompanying "Use of Accrued Time Off 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. Please contact the Third Party Administrator at (855) 605-3438 for Fire sworn and civilian claims, (866) 842-1547 for Police sworn claims, or (888) 525-2263 for Police civilian, City Attorney and Personnel Department claims. Payroll-related questions may be directed to the Payroll Help Desk in the Office of the Controller at (213) 978-7400. 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.

RHL:MHA:CEC:0718110

Attachments

- c: Department Personnel Officers
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 employee, as follows:
 - Full-Time Civil Service-(Legacy Code 11)
 - Full-Time Civil Service Exempt (Legacy Code 12)
 - Half-Time Civil Service (Legacy Code 16)
 - Half-Time Civil Service Exempt (Legacy Code 17)
 - Intermittent Civil Service (Legacy Code 06)
 - Intermittent Civil Service Exempt (Legacy Code 07)
- Employees on State Rate are coded as inactive City employees (Legacy Code 27).
- Employees who elect to supplement their State Rate with accrued time will be coded as active City employees with Legacy Code 5 (Intermittent), 10 (Full-Time), or 15 (Half-Time)

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 (except as noted on the "Use of Accrued Time Off Election Form" for certain sworn employees).
- 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 after one pay period of inactive status. Employees pay such benefit premiums 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 email 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) 279-3000, Toll Free (844) 885-2377 or email pensions@lafpp.com.

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

Richard H. Llewellyn, Jr.

CITY ADMINISTRATIVE OFFICER



ERIC GARCETTI
MAYOR

ASSISTANT
CITY ADMINISTRATIVE OFFICERS

PATRICIA J. HUBER
BEN CEJA
YOLANDA CHAVEZ

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 May 10, 2018 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.

AN EQUAL EMPLOYMENT OPPORTUNITY – AFFIRMATIVE ACTION EMPLOYER

1500 CITY HALL EAST, LOS ANGELES, CALIF. 90012-4190 TEL. (213) 473-7500

Recyclable and made from recycled waste. 

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.
- 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.

Note: Except for MOU 22, 23, 24, and 25 sworn members enrolled in a health plan, State Rate is not considered an "active" payroll status unless the State Rate is supplemented with at least 40 hours of sick, vacation, or other compensated time in a two-week, 80-hour pay period. If State Rate is supplemented with at least 40 hours of compensated time in a pay period (20 hours for half-time employees), the City will continue to pay the subsidy for your benefits. **If less than 40 hours** of compensated time will be used in a pay period (20 hours for half-time employees), please contact the Employee Benefits Division at (213) 978-1655 to learn about your coverage options and costs.

Start Date: _____ **End Date:** _____

(If no end date is selected, supplemental pay will terminate when accrued/accumulated time selected below is exhausted or is 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 75% (civilian and sworn employees) or 50% (sworn employees only) sick leave hours, supplemental pay will be provided only up to that percentage of your regular pay.)

Indicate the order you wish to use time 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 further processing. 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 May 10, 2018 and Frequently Asked Questions document.