



**Office of the City Auditor**

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**Report to the City Council  
City of San José**

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**FIRE DEPARTMENT  
INJURIES: A MORE  
COORDINATED RESPONSE  
AND BETTER FOLLOW-UP  
IS NEEDED**

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**Report 12-07  
September 2012**

September 12, 2012

Honorable Mayor and Members  
Of the City Council  
200 East Santa Clara Street  
San José, CA 95113

## **Fire Department Injuries: A More Coordinated Response and Better Follow-up Is Needed**

Although the number of injuries of Fire Department employees has decreased over the last few years, costs continue to be high and are high compared to other jurisdictions. The Fire Department remains a primary source of workplace injuries within the City with at least 30 full-time equivalent firefighters off duty for the entire year. The most common types of injuries occurring in the Fire Department are strains. This audit focuses on an evaluation of the handling of workplace injuries and the timeliness of treatment and recovery.

### **Finding 1: Better Coordination With Physicians Is Needed to Ensure Timely Treatment, to Effectively Manage Time Off, and to Get Employees Back to Work in a Timely Manner**

Although the City's approval process appears to meet legal requirements for timeliness, delays may be affecting treatment. The City may be able to improve treatments during the first 30 days as allowed by state law and as implemented in some other cities. In addition, we found San José's return to work process is limited by external physicians who may or may not be fully aware of the physical requirements of the employee's regular job and/or available modified duty positions. In contrast, some other cities aggressively monitor employees who are out on disability leave. In our opinion the Fire Department needs to develop a formal and much more aggressive modified duty program and review and update job descriptions that could needlessly limit getting employees back to work. We also recommend that the Fire Department's wellness programs be better coordinated to ensure appropriate follow-up and efficient use of resources. We further recommend that sworn employees returning to the line after long absences be assessed by Employee Health Services for their physical capability. Finally, the cost of backfilling employees who are out of work is significant (conservatively estimated at more than \$5.25 million) and should be tracked to show the costs and benefits of early, comprehensive treatment and a more aggressive modified duty program.

### **Finding 2: The Fire Department's Follow-Up on Injuries and Accidents Is Inadequate**

The City is required by state law to maintain an injury and illness prevention program (IIPP). The Fire Department recently began a major review and update of its IIPP. However, a majority of State-mandated supervisor accident investigation reports that we requested had not been filed, and safety committee meetings appear to be ineffective at monitoring injuries. Moreover, the Department never

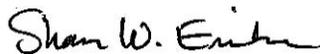
implemented an agreement to hold employees accountable for safety violations and does not regularly review injury trends, particularly since the elimination of the Department Safety Officer. We recommend that the Fire Department prioritize improving its safety culture by dedicating the appropriate personnel with the right authority to enforce and coordinate changes and raise awareness about injuries.

**Finding 3: Premium Pays to Police and Fire Employees Who Are Out on a Disability Cost the City About \$600,000 Annually**

In 2010, California State law changed to require payment of up to one full year of disability leave to qualified sworn employees who are injured on the job. These disability benefits are exempt from income tax. This actually increases take-home pay creating an incentive to stay off work. Although the law requires the City to pay 100 percent of salary, it does not require payment of premium pays to Fire and Police employees while they are out on a disability.

Our report includes a total of 15 recommendations to improve the City's management of Fire injury rates. We will present this report at the September 20, 2012 meeting of the Public Safety, Finance, and Strategic Support Committee. We would like to thank the San José Fire Department, the Human Resources' Workers' Compensation Division, the City Physician, the Office of Employee Relations, and the City Attorney's Office for their time and cooperation during this audit. The Administration has reviewed the information in this report and their response is shown on the attached yellow pages.

Respectfully submitted,



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# Introduction

In accordance with the City Auditor’s Fiscal Year (FY) 2012-13 Audit Work Plan, we have completed an audit of the City of San José Fire Department’s injury rates. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the Objective, Scope, and Methodology section of this report.

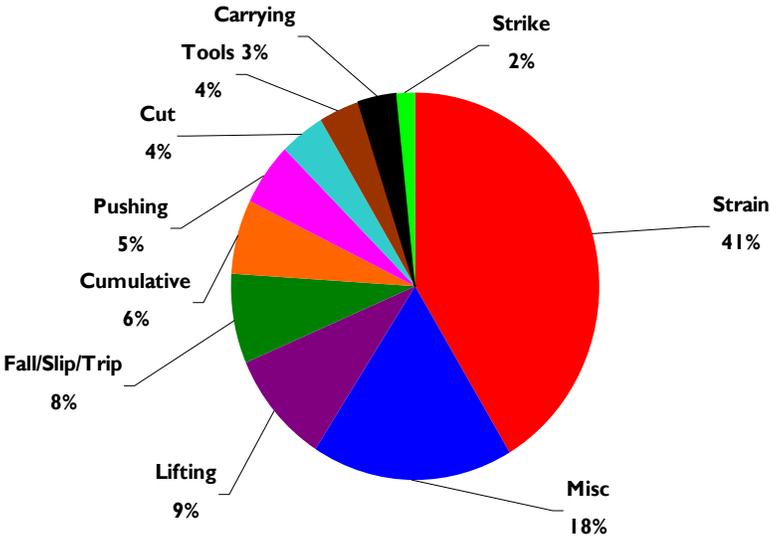
The City Auditor thanks the management and staff of the San José Fire Department, the Human Resources’ Workers’ Compensation Division, the City Physician, the Office of Employee Relations, and the City Attorney’s Office for their time and cooperation during this audit.

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## Background

Firefighting is commonly acknowledged to be a dangerous profession. However, in San José we observed that cumulative injuries that result from responding to non-fire emergency medical calls are responsible for many of the most common injuries. The City’s Workers’ Compensation Division reports that strains are the most common Fire Department injuries. Exhibit I shows the ten most common types of injuries occurring in the Fire Department.

**Exhibit I: Fire Department’s Top Ten Causes of Injury as of June 30, 2012**



Source: Workers’ Compensation Division

This is one in a series of audits related to disability retirement and workers' compensation. Our 2009 citywide audit found that in spite of improvements, the cost of the City's workers' compensation program is higher than comparable California cities and counties. We found that the loss of productive work time and potential overtime costs necessitated additional follow-up in the Fire Department. We also found that workers' compensation and retirement benefits are interwoven and many injured workers file multiple workers' compensation claims in the years just prior to their retirement.

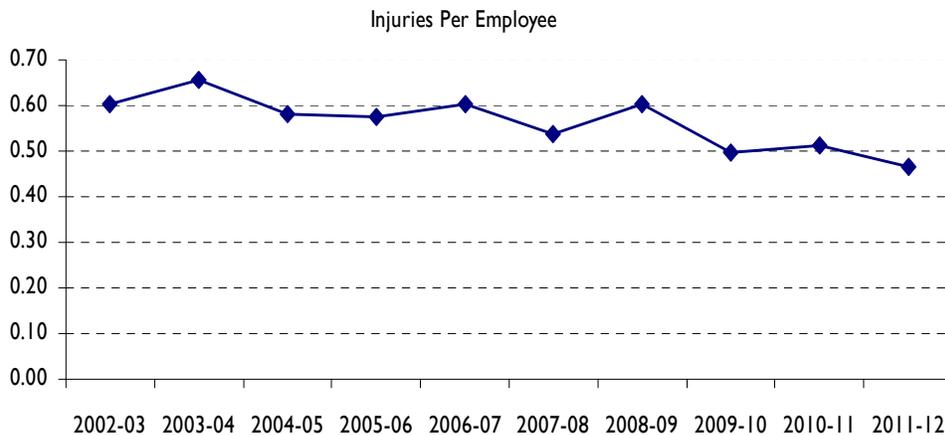
In our 2011 citywide audit of Disability Retirement, we found that employees in the Fire Department retired on a disability at a higher rate than other departments in the City. Specifically, we found that 2 out of 3 firefighters were retiring on a disability – or, in other words, were permanently disabled while working for San José Fire.

This audit focuses on the handling of workplace injuries and the timeliness of treatment and recovery. We should note that the previous two citywide audits made a series of recommendations to reform the workers' compensation and disability retirement processes after finding significant areas for improvement in the City's workers' compensation and retirement practices.

**Number of Injuries Has Been Falling Since FY 2002-03**

Since FY 2008-09 the number of Fire Department injuries (as reported through the workers' compensation system) has been falling, in part because the Department has fewer employees. But, as shown in Exhibit 2, the per capita injury rate has also dropped. Specifically, the Fire Department's current injury rate per capita has dropped to 0.46 injuries per capita in 2011-12, from a high of 0.66 injuries per capita in 2003-04.

**Exhibit 2: Fire Department per Capita Injuries From FY 2002-03 to FY 2011-12**



Source: Workers' Compensation database

In spite of a reduced injury per capita rate, the Fire Department's cost for these injuries continues to be high. Exhibit 3 shows the Fire Department's workers' compensation and disability leave costs since FY 2002-03.

### Exhibit 3: Fire Department Workers' Compensation and Disability Leave Costs<sup>1</sup>

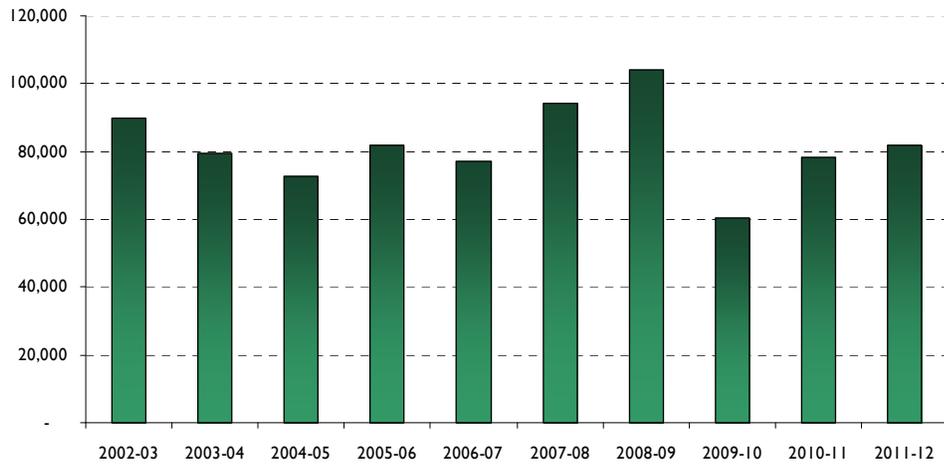


Source: PeopleSoft and Workers' Compensation Data

In addition to costs, the actual disability leave hours taken also continue to be high in the Fire Department, in spite of a reduced injury rate. As shown below, in FY 2011-12 Fire Department employees used a total of about 82,000 disability leave hours. This translates to about 30 FTEs in the Fire Department. Exhibit 4 below shows the actual disability leave hours taken since 2002-03.

<sup>1</sup>The costs reported are actual disability leave costs, which include the disability leave supplement (prior to January 1, 2010), and disability leave benefits as reported by PeopleSoft. Workers' compensation costs include permanent disability, legal, medical and rehabilitation costs as reported by the Workers' Compensation Renaissance database. While the Workers' Compensation Division reports some of the disability leave costs, it does not report all the leave costs. We have included **all** disability leave costs as reported by PeopleSoft. As shown in Exhibit 3, FY 2008-09 total workers' compensation and disability leave costs increased dramatically. However, since FY 2007-08 these costs have been increasing steadily.

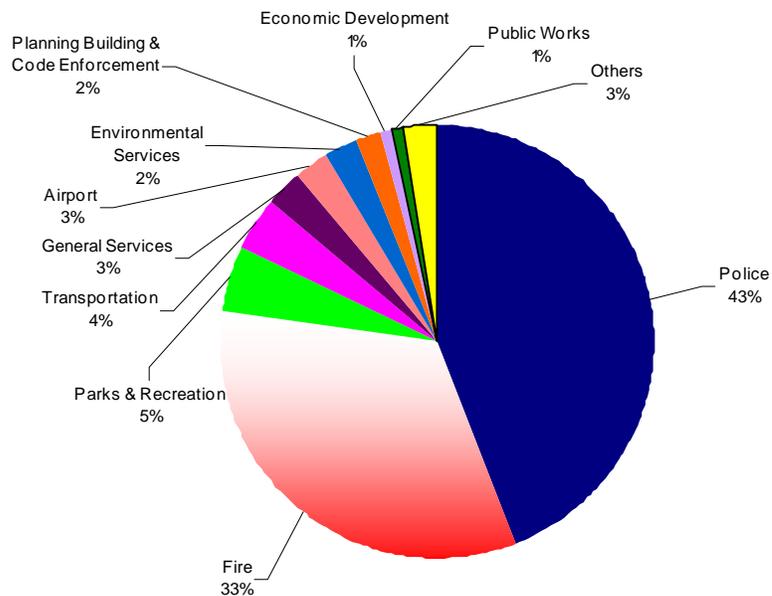
**Exhibit 4: Fire Department Disability Leave Hours Taken Since FY 2002-03**



Source: Auditor summary from PeopleSoft.

The Fire Department remains a primary source of workplace injuries within the City. Exhibit 5 shows that the Fire Department is one of the two most significant users of the City's total workers' compensation system, with the Police Department being the highest.

**Exhibit 5: Citywide Workers' Compensation FY 2011-12 Percentage Costs by Department**

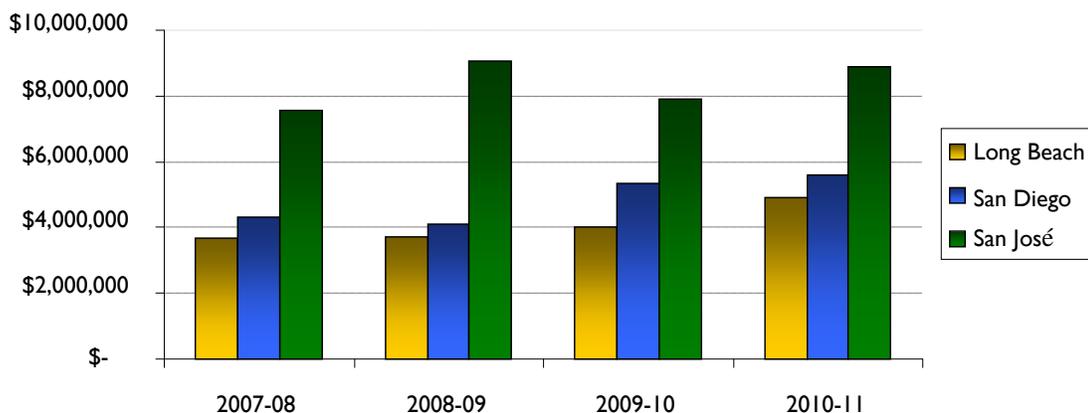


Source: Workers' Compensation Division

### San José Fire Department's Workers' Compensation Costs Are Still Higher than Other Jurisdictions

The City of San Diego and the City of Long Beach provided us with the cost of the workers' compensation claims in their respective fire departments for the past 4 years.<sup>2</sup> As shown in Exhibit 6, San José's costs are higher than either of them.

**Exhibit 6: Comparison of Workers' Compensation Costs Since Fiscal Year 2008 for City of Long Beach, San Diego, and San José Fire Departments**



Source: Information provided by Risk Management staff in Long Beach, San Diego and San José and PeopleSoft.

### A Majority of the City's Firefighters Retire on a Disability

The number of Fire Department personnel filing for disability retirements continues to be high. Exhibit 7 below shows the number of Fire Department disability retirees and beneficiaries as of July 2012. As of August 2012 there were 143 additional pending disability retirements.

**Exhibit 7: Number of Fire Department Disability Retirees and Beneficiaries**

	As of July 2012
Disability Retirements	437
Service Retirements	228
Total	665
<b>Percent Disability</b>	<b>66%</b>

Source: Retirement Services Department

<sup>2</sup> We surveyed 6 jurisdictions (City and County of San Francisco, City of San Diego, City of Long Beach, City of Sunnyvale, County of Santa Clara and City of Phoenix). Only the cities of Long Beach and San Diego provided us workers' compensation costs for their respective Fire departments.

### *The City's Disability Retirement Process*

The City of San José provides disability retirement benefits through its two pension systems – the Police & Fire Department Retirement Plan (Police & Fire) and the Federated City Employees' Retirement System (Federated). As currently written, for sworn employees, the minimum service-connected disability retirement allowance outlined in the City Charter is 50 percent of final compensation for employees who complete at least 20 years of service, are disabled while holding such office or employment, and apply for such retirement while holding such office or employment. The City Charter prescribes that the injured employee must be disabled from doing their job or another job in the same classification, requiring that the City provide a disabled employee a lifetime disability retirement if it is unable to provide the injured employee a job within their own job classification. Further, the City Charter provides that if the City cannot identify another job in the classification that addresses the employee's physical restrictions, the employee is eligible for a disability retirement. This basically means that the City must make a good faith offer of employment.

In June 2012, San José voters overwhelmingly approved changing the pension and disability retirement provisions of the City Charter. Measure B as approved states, *"Shall the Charter be amended to modify retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees, establish pension cost and benefit limitations for new employees, **modify disability retirement procedures**, temporarily suspend retiree COLAs during emergencies, require voter approval for increases in future pension benefits?"* (Emphasis added.)

Because of legal challenges to this ballot measure, it has yet to be implemented. We anticipate significant changes to the disability retirement process described above should Measure B be implemented.

### **Workers' Compensation Statutes and Regulations**

The Workers' Compensation Insurance and Safety Act of 1917, as amended and codified, is in force today. Since its enactment, California workers have been entitled to medical treatment and compensation payments for industrial injuries. All California employers must comply with the workers' compensation laws by either obtaining insurance or, where permitted, insuring themselves. Employers are required to abide by the workers' compensation laws of the State of California and must follow the pronouncements of the Workers' Compensation Appeals Board (WCAB) in rating permanent disability claims and handling disputed claims. The WCAB must approve all permanent disability awards. The City of San José is self-insured, which means that the City has assumed the risk for all organizational losses that may occur.

*California Senate Bill 899*

Over the past twenty years, the California State Legislature has reformed workers' compensation law several times in an effort to be more efficient and cost-effective in providing medical and workers' compensation benefits to injured California workers. In April 2004, the State of California passed Senate Bill 899 (SB 899). The bill introduced major changes in the law and many new provisions, established guidelines for types and costs of treatments, limited the amounts paid for medical services to reasonable charges listed in an official medical fee schedule, and defined the number of medical treatments necessary to cure injured workers. It also added the requirement for a Utilization Review Process (discussed in Finding I).

*State Workers' Compensation Law Provides Sworn Employees with Benefits for Many Presumptive Injuries*

California Labor Code section 3212 defines many injuries that occurred during the course of employment for certain professions as presumptive, which means an employee diagnosed with an occupational disease, injury or condition covered by the presumptive disability law is **automatically** entitled to payment of the full hospital benefits, surgical benefits, medical benefits, permanent disability, legal costs, and death benefits. According to Labor Code section 3212,

*the presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.*

Examples of some *presumptive injuries* include hernia, pneumonia, heart trouble, leukemia (if the member can document exposure), tuberculosis, certain types of cancers, etc. Many firefighter and police officer injuries fall under the presumptive injury statute for the purpose of workers' compensation, but not necessarily for the purpose of disability retirement.<sup>3</sup>

*A Change in State Law in 2010 Required the City to Pay Full Salary to Sworn Employees for up to One Full Year*

Prior to January 2010, sworn employees were entitled to a temporary disability benefit by State law and an additional City-negotiated Memoranda of Agreement Disability Leave Supplement (DLS) for a period of one year for sworn employees. For San José sworn employees, this meant they received 100 percent of pay.

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<sup>3</sup> Without an extensive review of workers' compensation claim history, there is no simple way to determine what percentage of disability retirements were a result of presumptive injuries, and we did not attempt to answer that question.

State law changed in January 2010 and essentially mirrored the City's benefits to its sworn employees. California Labor Code section 4850 now mandates that all California public safety employees receive up to one full year of disability leave at 100 percent of pay. According to section 4850, a police officer, firefighter, probation officer, etc.

*who is employed on a regular, full-time basis, and is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments [...], if any, that would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments...*

These benefits are more commonly known as "4850 benefits".

### **Injury Reporting Process**

When a City of San José employee is injured or becomes ill, either physically or mentally, as the result of his/her job or a workplace crime, the employee may be entitled to workers' compensation benefits. The supervisor must complete a Form 5020 - *Employer's Report of Occupational Injury or Illness*, and give the employee the DWC Form I - *Employee's Claim for Workers' Compensation Benefits*.

*Workers' Compensation Division (Human Resources Department)*

Both injury reporting forms need to be provided to the City's Workers' Compensation claims adjusters in the City's Human Resources Department. Due to the high number of workers' compensation claims filed by the Fire and Police departments, the Workers' Compensation Division has designated adjusters to these two departments. As noted in previous reports, the workers' compensation adjusters have an unacceptably high workload. Currently 9 adjusters (6 of whom are temporary employees) handle 2,659 open Fire and Police department claims, or about 300 open cases per adjuster. The remaining departments' claims are handled by 2 other claims adjusters.

The Workers' Compensation Division uses a stand-alone claims data management system that aids the workers' compensation claims adjusters in managing their caseloads.<sup>4</sup> Workers' compensation adjusters enter the claims data in this database and use it to run various reports on total claims, types of injuries, days off work, etc.

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<sup>4</sup> This system is known as the Renaissance System.

*Dedicated Staffing to Handle Workers' Compensation in the Fire Department*

The Fire Department has designated an in-house analyst to handle and coordinate the processing of all workers' compensation injuries, ensure that forms are completed timely, employees are contacted regularly, and leaves are appropriately used, and to coordinate the return to work program. Until July 2011, the Fire Department had a designated safety officer that would follow-up on injury investigations, coordinate trainings and review injury trends along with other responsibilities. This position was eliminated as part of the budget reductions of FY 2010-11, and responsibilities for the safety officer were divided among various administrative positions. Currently the Department has designated an administrative Battalion Chief as the Safety Program Manager.

*Return to Work Program in the Fire Department*

An employee in the City's Office of Employee Relations coordinates the citywide return-to-work process for the City's non-sworn employees. However, the Fire Department has its own return to work process, and it is up to the Fire Department to work with the restrictions provided by the employee's physician. The Fire Department is able to accommodate some injured workers in temporary modified positions; the Department does not have permanent modified duty positions. Some of the available modified duty positions include: providing assistance with answering calls and clerical work, doing inspections in the Arson Unit, helping with exchange of equipment/clothing at the Department's equipment warehouse,<sup>5</sup> and delivering mail to/from City Hall. Under State workers' compensation law, if a sworn employee refuses the City's offer of modified work when he/she has been released by his/her physician, the City can suspend payment of 4850 benefits or salary continuance.

*Employee Health Services*

Employee Health Services (EHS) is located within the Human Resources Department. Its mission is to "provide services that ensure employee health, safety and well-being." EHS is staffed with one full-time physician, one medical assistant, one nurse practitioner and a part time nurse practitioner. EHS provides annual physicals to all fire fighters in the Fire Department. EHS also provides input on injured workers' case files, evaluates the medical treatments that outside physicians perform, participates on workers' compensation claims evaluation teams, and assists workers' compensation claims adjusters with the State-required utilization review process. According to EHS, staff time is split between disability retirement reviews, workers' compensation, and other citywide employee health issues.

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<sup>5</sup> More commonly known within the department as "the company store", the warehouse handles all of the Fire Department's equipment needs from procurement to distribution. Units can go there to swap out broken tools, request new equipment, get fitted for uniforms, etc.

*A Number of City and Non-City Personnel Are Involved Following a Fire Employee Injury*

Various departments, staff, and outside entities are involved with the Fire department's workers' compensation and return to work process as shown in Exhibit 8.

**Exhibit 8: A Number of City and Non-City Personnel Are Involved Following a Fire Employee Injury**

City Fire Department	Other City Departments	Non-City
Analyst	Workers' Compensation Claims Adjuster	Utilization Review Contractor
Employee's Supervisor	City Attorney's Office (Workers' Compensation Unit)	Employee's Physician
Supervisor Assigned to Investigate Accident	Employee Health Services	Employee's Physical Therapist, Other Treatment Providers
ClubOne Wellness Coordinator		Employee's Attorney

Source: Auditor summary based on information provided.

**The City Is Reviewing Its Cost-Containment Options**

As of the writing of this report, the City is in the process of reviewing options to outsource services related to the City's Workers' Compensation Program. Specifically, the City is evaluating vendors to perform and/or coordinate one or more of the services in an integrated cost containment program, to include workers' compensation claims administration services, bill review/preferred provider organization (PPO) networks, utilization review, and medical case management. The City Manager's Office is also assessing the costs and benefits of a medical provider network (discussed further in Finding I) and has been conducting an internal review to address workers' compensation concerns across the City.

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**Scope and Methodology**

The objective of our audit was to review the Fire Department's evaluation of workplace injuries and assessment of timeliness of treatment and recovery. To achieve the audit objective we:

- Analyzed injury statistics from the Workers' Compensation database from FY 2002-03 to 2011-12;
- Reviewed Fire Department procedures on safety including its Injury and Illness Prevention Program (IIPP);
- Attended several Fire Department Safety Committee meetings and reviewed available meeting minutes for 2011;

- Determined if injury investigations had been completed for a sample of 48 injuries of employees from different ranks, fire stations, and with varying days out of work;
- From this previous sample, we further selected 7 sworn employees to determine whether requests for treatment were approved in a timely manner and whether treatment was received in a timely manner;
- Reviewed the City Charter, City Municipal Code Sections, and the Memorandum of Agreement (MOA) with San José Fire Fighters Local 230;
- Reviewed pertinent State and Federal Laws - the California Labor Code and the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Surveyed 6 jurisdictions (City and County of San Francisco, City of San Diego, City of Long Beach, City of Sunnyvale, County of Santa Clara and City of Phoenix). We also contacted a private ambulance company (American Medical Response) to discuss its safety practices; and
- Interviewed staff at the Fire Department, City Attorney's Office and Human Resources (Workers Compensation Division).

We should note that while we reviewed the timeliness of treatment provided we did not review the appropriateness or efficacy of any actual treatment.

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# Finding I Better Coordination With Physicians Is Needed to Ensure Timely Treatment, to Effectively Manage Time Off, and to Get Employees Back to Work in a Timely Manner

## Summary

Although the City's approval process appears to meet legal requirements for timeliness, delays may be affecting treatment. The City may be able to improve treatments during the first 30 days as allowed by state law and as implemented in some other cities. In addition, we found San José's return to work process is limited by external physicians who may, or may not, be fully aware of the physical requirements of the employee's regular job and/or available modified duty positions. In contrast, some other cities aggressively monitor their employees who are out on a disability. In our opinion the Fire Department needs to develop a formal and much more aggressive modified duty program which includes ongoing communication and continuous monitoring of an employee's status and work restrictions through the City's Workers' Compensation Division, Employee Health Services, and/or a designated third party. We also recommend that the Fire Department's wellness programs be better coordinated to ensure appropriate follow-up and efficient use of resources. We further recommend that sworn employees returning to the line after long absences be assessed by Employee Health Services for their physical capability. Finally, the cost of backfilling employees that are out of work is significant and should be tracked to show the costs and benefits of early, comprehensive treatment and a more aggressive modified duty program.

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## Even When the City Meets Legal Requirements for Timeliness, Delays May be Affecting Treatment

One of the provisions of the 2004 State workers' compensation reform was the requirement for a utilization review process, whereby a physician assesses whether an injured worker needs a prescribed treatment. The law requires that all decisions must be made in a timely fashion after receipt of the information reasonably necessary to make the determination. According to California Labor Code section 4610, generally,

*prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed **five working days [emphasis added]** from the receipt of the information reasonably necessary to make*

*the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician.*

### **The City Contracts for Utilization Review**

The City contracts with Mitchell International (Mitchell) to conduct State mandated utilization reviews of workers' compensation claims. The purpose of utilization review is to check whether a requested medical treatment or procedure is appropriate given the injury and the diagnosis. The City has contracted with Mitchell to assess the need for certain medical treatments, such as surgeries, that injured workers' physicians have requested. While nurse practitioners may authorize requests for treatment, in accordance with State law, only licensed physicians may modify, delay, or deny requested treatments.

In order to ensure that treatment approvals going through utilization review are approved/denied in a timely manner, the State may impose penalties for untimely or inappropriately modified, delayed, or denied authorizations for treatment. The employee may appeal denied treatment requests. Upon appeal, requested treatment may ultimately be authorized, authorized with modification, or there may be another denial. The most recent review of the City's process by the California Department of Industrial Relations (issued June 2011) gave the City/Mitchell utilization review process a 98.7% performance rating, exceeding the 85% performance standard.<sup>6</sup>

### **Utilization Review Guidelines Allow Some Pre-Certifications by Adjusters**

Certain requests for treatment for injured workers do not have to go through the formal utilization review process. A part of the 2004 workers' compensation reform gave claims adjusters the authority to certify certain treatments rather than send them through the formal process. The City's Workers' Compensation Program Administration developed Utilization Review Guidelines to guide its claims adjusters. Since 2004, the City's guidelines allow its adjusters to routinely certify:

- Chiropractic and physical/occupational therapy,
- Acupuncture,
- Magnetic Resonance Imaging (MRI) studies,
- X-rays,
- Ultrasounds,
- Bone scans, and
- Electrocardiograms.

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<sup>6</sup> [http://www.sanjoseca.gov/auditor/OtherExternal/2010-11/WorkersCompensationUtilizationReview\(DIR\).pdf](http://www.sanjoseca.gov/auditor/OtherExternal/2010-11/WorkersCompensationUtilizationReview(DIR).pdf)

### **Treatment Delays Exist Although City Approvals Met Legal Requirements for Timeliness**

We found that the City- and State-mandated utilization review process was approving the requested treatments in a “timely” manner as required by State law – generally five working days. However, we also found that the actual time to begin treatment can be significant. For example, even though the treatment has to be authorized within five working days, the number of actual days may be longer because of holidays or weekends. Further, scheduling medical appointments or surgeries can take even longer.

We reviewed the timeliness of treatment for a small sample of injured employees that had been out of work for varying periods of time. In six of seven cases, employees were seen by a physician on the day of the injury or within 24 hours of it. In one instance an employee delayed seeking treatment for nearly a month. The following three examples illustrate the types of delays that we found.

- In one example an employee was injured on 6/24/2011 and seen by a doctor on the same day. On 7/5/11 (11 days later), the doctor requested that the employee be approved for physical therapy. The City adjuster approved this request on 7/13/2011 -- eight days after the request was made. The employee’s first physical therapy appointment did not occur until 7/18/2011, or 24 days after the injury. There was no note in the file to explain the delay. The employee returned to work full-duty nearly one month (34 calendar days) after suffering the injury.
- In another example, an employee was injured on 9/19/2011. The next day (9/20/2011) the physician requested approval for an MRI and physical therapy. The MRI was authorized by the City within a day of being requested (on 9/21/2011), however it didn’t happen until 9/28/2011 – seven days later (or nine days after the employee’s injury). The physical therapy was authorized by the City within timelines, however that was seven days after the request was made. The employee returned to work full-duty 23 calendar days after suffering the injury.
- Another employee was injured on 4/13/2011. The employee did not see the doctor for almost an entire month and continued working. When the employee did see the doctor on 5/10/11, the doctor requested an MRI but it was not done until 6/13/2011. Surgery was recommended and the utilization review company (Mitchell) needed additional information before finally approving the surgery on 8/25/2011. The surgery was eventually performed on 10/19/2011. While the employee continued working until the surgery was scheduled he/she was not able to return to work after the surgery was performed until 2/13/2012. He/she missed a total of 39 shifts or about four months.

In two of the three instances, the employees were out of work on fully-paid disability leave while these approvals were being processed and while awaiting treatment. Although we draw no conclusion about whether getting the employee the needed treatment in a timely manner would have helped the employee improve quicker or get back to work faster, timely treatment is the goal.

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### **The City May be Able to Improve Treatment During the First 30 Days**

Per State law the employer has the right to actively manage the employee's treatment for the first 30 days after the injury, unless the employee has previously chosen his/her doctor. The City is not actively taking advantage of this provision. Per California Labor Code section 4600,

*(c) Unless the employer or the employer's insurer has established a medical provider network [...], after 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. [...]. (d)(1) If an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury [...]*

Essentially, this means that the City can require an employee to use a physician or an occupational therapy clinic of the City's choosing unless the employee has pre-designated his/her primary care physician prior to the injury and that physician agreed to this designation in writing. Most of the other jurisdictions we talked to retain some form of case management control in the first 30 days after the injury. They strongly believed that this is one of the most important factors in controlling workers' compensation costs and getting employees back to work in a timely manner.

### **The City Has Designated Certain Medical Providers and Facilities as Preferred Providers But Employees Are Not Required to Use Them**

The City's utilization review company (Mitchell) has agreements with various preferred provider organizations to provide the City with discounted rates through a tiered preferred provider program. There are over 10,000 providers in the preferred provider program that provide services at these discounted rates. According to the City's Workers' Compensation Division, the City could receive a 10 to 25 percent rate discount by using these providers. For 2010-11, the City achieved a savings of over \$500,000 through the employees' use of the preferred providers. However, because the City has not exercised its legal right

to control treatment during the first 30 days after injury, employees are not required to use the preferred providers. As a result, the City is missing out on additional potential savings.<sup>7</sup>

### **Other Cities We Surveyed Actively Manage Employee Injuries in the First 30 Days and Thereafter**

According to the other jurisdictions, contact with physicians and active case management are key to managing costs. Almost all the cities we talked to either have a managed provider network, or contract with an occupational therapy clinic to provide care to the injured employee within the first 30 days. For example, Santa Clara County contracts with three occupational therapy clinics. All fire employees are required to go through these facilities to get treated for the first 30 days.<sup>8</sup> The City of Phoenix is a little different. It has a well-staffed health and wellness center which is able to provide significant health and wellness support. The center was started about 25 years ago and focuses on health and safety programs.

As mentioned in the background section of this report, the City is in the process of reviewing options to outsource services related to the City's workers' compensation program. City staff is also reviewing options for establishing a Managed Provider Network (MPN). An MPN is an entity or group of health care providers set up by an insurer or self-insured employer and approved by the State Division of Workers' Compensation (DWC's) administrative director to treat workers injured on the job. Under state regulations, each MPN must include a mix of doctors specializing in work-related injuries and doctors with expertise in general areas of medicine. MPNs are required to meet access to care standards for common occupational injuries and work-related illnesses.

The regulations also require MPNs to follow all medical treatment guidelines established by the DWC and allow employees a choice of provider(s) in the network after their first visit. Additionally, MPNs must offer an opportunity for second and third opinions if the injured worker disagrees with the diagnosis or treatment offered by the treating physician. If a disagreement still exists after the second and third opinion, an injured worker in the MPN may request an independent medical review. The State's MPN program became effective Jan. 1, 2005 and employees can be covered by an MPN once a plan has been approved by the DWC administrative director.

Some California jurisdictions, such as the City of San Diego and the City and County of San Francisco, are using MPNs to manage workplace injuries. Based on the results already demonstrated in other jurisdictions, establishment of an MPN for San José employees could improve the timeliness with which employees are

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<sup>7</sup> The City generally does require employees to use contracted MRI providers unless there are none available near their residence (which according to Workers' Compensation is very rare).

<sup>8</sup> Unless they have pre-designated their physician as allowed by State law.

successfully treated and returned to work. However the success of an MPN all depends on the quality of physicians and communications with employees and City staff in ensuring that the employees get the treatment that they need in a timely manner.

**Recommendation #1: To ensure prompt and cost-effective treatment, the City should:**

- a. Explore options to establish a Managed Provider Network and/or to direct employees to use preferred providers for treatment that occurs within the first 30 days after injury; and**
- b. Establish working relationships with medical providers, focusing on timely treatment, good communication, and coordination throughout the period the employee is off work.**

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**Other Cities Aggressively Monitor Employees Who Are Out on Disability Leave**

San José has traditionally relied on the injured employee to provide the physician with critical information about what work is available for modified duty. On the initial medical visit, the City advises the employee to inform the doctor that modified duty might be available. The City has various return to work positions, and attempts to tailor these positions to meet any reasonable restrictions. The employee is also supposed to ask the doctor to provide a written description of the employee's physical restrictions and submit this information to Workers' Compensation immediately. In the case of the Fire Department, the workers' compensation adjuster communicates these restrictions to the analyst in the Fire Department.

As mentioned in the background, an employee in the City's Office of Employee Relations coordinates the citywide return to work process for the City's non-sworn employees, along with other job functions, since the City lost its previous return to work coordinator in 2011. Generally, the City's return to work coordinator works within the written restrictions provided by the employee's physician and has no contact with the employee's physician to discuss those restrictions.

The Fire Department has its own return to work process and it is up to the Fire Department to work with the restrictions provided by the employee's physician. If the employee's physician puts the employee out of work for an extended period of time, there generally is no further communication or follow-up with the physician on the types of restrictions the City can accommodate.

Some other cities aggressively and continuously monitor employees when the employees' physicians have recommended either that they stay home on a disability or return on a modified duty. For example, at the City of Phoenix, when employees are out, they have to report every 7 days to the Health Center and have the Health Center doctor reassess their health to see if they can come back to work. In addition, if they are on modified duty they may be required to report every 30 days to the Health Center. Finally, particularly if the employees are using a physician that the City has not dealt with before, the physician is required to provide an explanation as to why the employee cannot do alternative work. If the physician does not respond in 48 hours, the Health Center will require the employee to report back to the Health Center physician.

The City and County of San Francisco has a similar program. Even when the employee is on a modified duty assignment, the employee has to report to the Fire Department physician every 30 days for an evaluation and to make sure that things are progressing. Those who are out of work have to present a doctor's note on at least a monthly basis. According to staff at the City of San Francisco, having the employer direct care for work-related injuries could potentially save 15 to 25 percent year-over-year in total costs for workers' compensation, depending on the degree to which the City manages where employees are treated for work-related injuries.

### **On-going Contact with Injured Employees Is Important**

We observed that during the time that the employee is out, the only contact that the Fire Department has with relation to the employee's treatment is when they receive the documentation from the doctor/employee regarding the employee's work status. Per Fire Department policy, the employee is required to call in every week to update the Department's workers' compensation analyst on his/her status. Additionally, the Department's workers' compensation analyst sometimes calls and follows-up on the employee's status. However, the City has no mandated follow-up either by the Fire Department or for employees in other departments.

According to "*Employee perspectives on the role of supervisors to prevent workplace disability after injuries*" from the **Journal of Occupational Rehabilitation**:

*There is no substitute for the involvement of immediate supervisors in the return to work planning process. Supervisors should maintain contact with absent workers even when it is unlikely they will return to work early. Finally involving workers and their workmates in a cooperative approach to planning workplace adjustments is more effective than standard approaches and health professional involvement.*

Furthermore, according to the California State Department of General Services Administration:

*The supervisor shall maintain contact with the injured employee, discuss return-to-work with the employee, physician, State Compensation Insurance Fund Claims Adjuster, and departmental return-to-work coordinator and provide progressive recovery reports to his/her superior until the employee recovers from the effects of injury.*

We should note that while contact with the employees is critical, the City needs to balance privacy concerns and the constraints under Federal and State laws including HIPAA against the benefits of contacting the employee on a regular basis. The City should determine the appropriate person to make these kinds of contacts.

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### **The Fire Department's Return to Work Process Is Limited by External Physicians' Assessments**

The Fire Department does attempt to provide some light work on a modified schedule (40 hours per week) for injured employees depending on the restrictions recommended by the employee's physician. These limitations in some instances can be quite detailed and restrictive.

For example, as of July 3, 2012, only 8 of the 51 employees that were out of work on disability had been placed into modified or "light duty" positions. Two of the remaining 43 employees had been cleared by their physicians for modified duty, but had not been placed because of restrictions. The rest of the employees had not been cleared for any kind of work by their physicians. Most of the employees who had not been cleared to return to work on a modified duty schedule lived a significant distance from the City -- in one instance in the State of Idaho (over 600 miles away) and in several others between one and three hours away -- raising the question of whether a firefighter's place of residence has something to do with the employees' reluctance to work with their physician to return to work on a modified schedule.

#### **Employees May Stay Out Even Though the Doctor Has Cleared Them for Modified Duty**

As mentioned above, the Fire Department or the Workers' Compensation Division provides employees' doctors with little or no information regarding possible work that employees could do in a modified capacity. Even though the Fire Department has been successful in accommodating restrictions, in one instance in our sample of seven, the Fire Department was less aggressive that it could have been in accommodating the employee. Specifically the department was unable to find modified duty for an employee that had injured his/her

dominant hand but was otherwise fine and had been released back to work by his/her physician. The employee stayed out of work on full pay for over 2 months before being brought back on modified duty.

In another instance, we found that an employee's doctor cleared an employee in our sample for modified duty but the Fire Department did not get the communication in time to schedule the modified duty. The employee ended up coming to work a month later, after missing 9 shifts.

### **The Fire Department Relies on Employees and Physicians to Communicate Work Restrictions and What Modified Duty Work Is Available**

As mentioned earlier, the Fire Department has little direct communication with physicians about work restrictions, which essentially makes the employees responsible for communicating the available modified duty positions to the physicians. The Fire Department has no assurance that this is actually being done as communication between the employee and the physician is confidential. Workers' compensation claims adjusters are responsible for any communication with the physicians.

Furthermore, although the City's Workers' Compensation Division occasionally sends job descriptions to physicians, it mostly relies on the physicians' prior personal knowledge about the physical requirements of City positions. The City/Department does not regularly communicate restrictions the City can accommodate. Meanwhile, the employee's physician decides how long the employee stays off duty, with little opportunity for oversight or a second opinion as to the employee's capability to perform full or modified duty. While the employee is off-duty, he or she must merely call the Department once per week.

While the City's adjusters are charged with keeping contact with the physicians to monitor an employee's return to work status, their current workload limits aggressive physician contact and monitoring. As mentioned before, as of August 14, 2012, nine of the 11 City claims adjusters have a total of over 2,600 open Police and Fire department workers' compensation claims, or about 300 open sworn claims per adjuster. Employee Health Services could potentially perform this monitoring role, however as described later, their time is primarily spent reviewing disability retirement case files, providing inputs on workers' compensation cases, and providing assistance on citywide employee health issues.

In contrast, the City and County of San Francisco Fire Department's Physician's Office, with input from the employee's treating medical provider, determines when an employee is eligible for a temporary modified work assignment. The Department Physician's Office is responsible for making the final medical determination about the employee's participation in the modified duty program. The Department Physician's Office also monitors the medical limitations of the injured employee until he or she can return to a full duty assignment. The Fire

Department requires employees in a temporary modified duty assignment to report to the Department Physician's Office every 30 days to monitor their medical status and participation in the program. The Physician's Office and the injured employee complete an updated "Acknowledgement of Temporary Modified Work Restrictions" at least every 30 days. San Francisco limits the duration of modified duty to 12 months, with a review by the Physician's Office every 30 days.

In April and May 2011, the City's Workers' Compensation Manager and a representative from the Fire Department met with the two providers/physicians that Fire Department employees most commonly use. They discussed Fire Department job descriptions and the available modified duty accommodations. In addition, according to the Workers' Compensation Division, detailed job descriptions were also provided via email and hard copy to the physicians.

While this one-time effort was a step in the right direction, the job descriptions currently on the City's website are significantly less descriptive than those provided to the above mentioned physicians. Furthermore, the job descriptions provided to the physicians have not been updated since 1999 and have similar physical requirements for differing classifications and ranks, e.g. firefighters and battalion chiefs, that could needlessly limit getting employees back to work.

### **The Fire Department Needs to Develop a Formal and Aggressive Temporary Modified Duty Program**

In order for a return to work program to work, communication with physicians and the employee is critical. According to the California Department of Industrial Relations,

*Getting your employees back to work after an injury is one of the **most important things** [emphasis added] you can do for their health and the health of your business. Workers who return to the job as soon as medically possible have the best outcomes: They recover from their injuries faster and suffer less wage loss. You, your employee and your employee's doctor should communicate openly and frequently for the best results.*

Getting employees back in a timely manner requires on-going communication with physicians and providing employees with meaningful work. For example, the Santa Clara County Fire Personnel Manager has an aggressive temporary modified duty program. That office works closely with physicians to release the employees back to modified duty by making physicians aware of what types of jobs they have available for them, as shown in Exhibit 9.

### Exhibit 9: Examples of Light Duty Projects Available in Santa Clara County Fire Department

<p>LIGHT DUTY: _____ (Release date)</p> <p>Examples of light duty projects are: Clerical, map work, data collection, fire prevention inspections, inventory of equipment, light maintenance, etc. Employee may sit or stand and have freedom to move around as required.</p> <p>Estimate period of time (number of days, weeks, months) employee to be on light duty: _____</p>
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Source: Santa Clara County

When County Fire Department employees are released to light duty, they are generally assigned to a specific project with a beginning and an end. The employee is expected to report on a daily basis. The County's Fire Personnel Manager tries to make sure the job is meaningful and commensurate with the employee's experience.

#### *Time Limitations on Modified Duty Work*

Due to State law, even if employees cannot be accommodated, the City is still required to pay them full salary under section 4850. Although Santa Clara County limits modified duty to 12 weeks, the City and County of San Francisco limits the modified assignments for up to one year.

Even when an employee is performing only a part of his/her job duty on a modified assignment, sworn employees are entitled to their full salary. Additionally, the Fire Department must backfill their original positions to satisfy minimum staffing requirements. Together, these requirements result in significant cost to the Fire Department. A firefighter's salary can range from \$66,000 annual base starting pay for a firefighter position, to a maximum of \$142,000 annual base pay for a battalion chief. Having these highly paid, sworn and skilled employees performing administrative job duties is costly and inefficient and should be limited. Currently, the City does not have a policy to limit modified duty time. In our opinion it should develop such a policy to ensure that employees do not stay out for unlimited time on a modified schedule.

#### *Meaningful Tasks*

American Medical Response (AMR), a private ambulance company, works closely with physicians to bring its own injured employees back to work as soon as possible. As a first transitional duty assignment, an injured employee is required to complete all required training for the entire year. Then, AMR tries to find meaningful tasks within the employee's work restrictions. Some of these jobs include assisting with dispatch and billing. According to AMR, a good transitional duty program is critical to getting employees back to work as soon as possible. If the employee is out of work for over 365 days over an 18 month period, employment is terminated.

Modified duty positions in the San José Fire Department often involve administrative functions such as filing paper, answering phones, assisting at equipment warehouse, etc. Returning employees are assigned to a variety of functions, including work at the equipment warehouse, the EMS Division, the Training Division, Support Services Division and the Bureau of Field Operations.

**Recommendation #2: We recommend the Administration and the Fire Department develop and implement a comprehensive and aggressive, time-limited modified duty program matched to employee experience and addressing upcoming training needs, where possible. The program should include on-going communication and continuous monitoring of an employee’s status and work restrictions through the City’s Workers’ Compensation Division, Employee Health Services, and/or a designated third party.**

**Recommendation #3: We recommend that the Administration review and update Fire Department job descriptions with more specific descriptions of the physical requirements of what employees actually do on a day-to-day basis, and make the job descriptions and physical requirements easily accessible to physicians.**

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### **The Fire Department Needs to Enforce Its Own Policy of Encouraging Off-Duty Physical Therapy Appointments**

According to the Fire Department’s internal policies, employees are encouraged to make physical therapy appointments during their off-days. Specifically, according to section 4.220 of the Routine Operations Policies and Procedures (ROPP)

*“It is the policy of the City that the employee is responsible for arranging physical therapy appointments on **off-duty** [emphasis added] days to the extent possible. Further, any employee receiving time off from work for physical therapy must have a written prescription for the therapy from the treating physician. The prescription must authorize the therapy, describe the type and duration of treatment, and be signed by the treating physician.”*

We found that the Department does not have processes in place to ensure that this is actually occurring. Instead, it relies on workers’ compensation adjusters to verify whether appointments were legitimate and to confirm that employees could not schedule them on their days off. However, the Workers’ Compensation Division only verifies when employees are out for entire shifts and

does not review shorter appointments. Further, Workers' Compensation staff is not aware of the Department's internal policies. It behooves the Fire Department to enforce its own policies.

The Fire Department speculated that employees may not even be aware of the policy requiring employees to schedule physical therapy appointments during their off-days when possible. For example, one employee in our sample had multiple two to three hour appointments during regular shift hours for physical therapy, without prior notification. We found that the physical therapy facility that the employee used was located in the City of San José, but the employee's place of residence was about 60 miles away. It is not clear to us whether distance played a part in scheduling these appointments during work hours (even though it may be in conflict with department policy).

In 2010-11 Fire Department employees took over 1,000 hours of disability leave in under 5 hour increments, which equaled about \$40,000 in disability leave pay. In our opinion, the department needs to enforce its own policies and ensure that employees make physical therapy appointments during work hours only when it is not possible to do it during their days off.

**Recommendation #4: To ensure compliance with its own policies, we recommend that the Fire Department**

- a. **inform all employees about limiting physical therapy appointments to off-duty days when possible, and**
- b. **develop a process to periodically verify physician's orders if employees routinely take work time off for physical therapy appointments.**

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### **The Fire Department's Wellness Programs Should be Better Coordinated to Ensure Appropriate Follow-up and Efficient Use of Resources**

The Fire Department provides its uniformed employees with various wellness assessments and programs. These include: annual physicals, health risk assessments, and time during regular shifts for work-outs.

#### **Annual Physicals Lack Follow-Through**

Employee Health Services spends considerable effort conducting annual physicals for members covered under the Fire MOA. According to the Fire MOA, the

*City agrees to provide physical examinations for employees under forty-five (45) years of age once (1) every three (3) years. For employees forty-five (45) years of age or older, the City agrees to provide physical examinations once (1) every two (2) years. For employees required to hold a Class A or B drivers license, the City*

*agrees to provide physical examinations as required by law for operators of Fire Service apparatus.*

The Fire Department's Routine Operations Policies and Procedures (ROPP) section 4.220.6 requires annual physicals. Specifically,

*"in accordance with OSHA regulations, all uniformed personnel are required to complete an annual medical exam administered by Employee Health Services. The annual medical exam is mandatory for all uniform personnel, regardless of hire date."*

Furthermore, State law requires that the City provide testing for certain critical job-related functions such as tuberculosis, lung function and certain vaccinations. During this physical, EHS tests each firefighter's range of motion (of neck, shoulders, elbows, wrists, fingers, hips, knees, and toes), reflexes, heart, lungs, hernia, prostate, skin (for moles), pulse, blood pressure, heart rate, vision, eyes, ears, and mouth. EHS also does tuberculosis screening, conducts an audiogram (which measures the ability to hear different frequency tones and different volume levels), a spirometry test (which measures the lungs' ability to inspire and expire air), and performs blood work (for kidney and liver function, anemia, white blood cells, and general organ damage).

In order to test all firefighters, EHS must test four to five firefighters on a daily basis. However, it appears that there is no formal follow-up procedure if the physicals show serious health concerns or raise questions about a firefighter's ability to do his/her job.

### **Follow-up to the Semi-Annual Health Risk Assessments Has Not Been Implemented**

In addition to these annual physicals, the City also mandates its firefighters to undergo semi-annual Health Risk Assessments (HRA). One of the purposes of the HRAs is injury prevention. For 2011-12, the City has contracted with ClubOne to provide semi-annual Health Risk Assessments. Specifically, the City and the Fire Union — the International Association of Fire Fighters Local 230 (Local 230) — agreed to implement a one year pilot health risk assessment program which will be conducted every six (6) months by the San José Fire Department, for a cost of \$115,000 annually.

The ClubOne HRA coordinator assesses firefighters for various wellness indicators such as: resting heart rate and blood pressure, body composition assessment, three minute step test recovery, flexibility, sit-ups, push-ups, and 1.5 mile run/walk. The wellness testing results in a "fit score" for the employee. "fit scores" range from 1 to 6 with 1 being the lowest score and 6 being the highest. In contrast to other years' HRAs, the current agreement allows the Fire Chief to direct any sworn personnel assigned to twenty-four (24) hour duty to participate in a fitness program while on duty, if he/she has a "fit score" of 2 or below is recommended by the Department's ClubOne Wellness Program Coordinator.

As of August 20 2012, the Fire Department reports that 596 employees of 641 employees completed the HRA. Eleven employees received a “fit score” of 2 or below. According to the Fire Department, these employees will be contacted by the Wellness Program Coordinator to develop a customized program, and be retested in 6 months. However, since this is a pilot program it is not yet clear what this follow-up will entail and/or how fitness goals will be set.

In addition to these physicals and wellness exams, firefighters also have and are required to participate in a 90 minute workout program during their work hours. According to the MOA,

*All employees assigned to fire line suppression duties shall receive ninety (90) minutes per shift for exercise or workout needs in accordance with applicable Department policies, provided, however, that this provision shall not entitle any employee to overtime work for the purpose of exercising.*

As discussed above, the City provides Fire Department employees with various wellness and fitness options. Some of these may duplicate what is available to the employees through their employee health plans. Further, in our opinion, the City’s limited resources can be redirected to reduce duplicative services and provide better follow-up for the wellness services that the City does provide.

### **Other Cities Have More Outcome-Based Programs**

Employee medical exams or fitness assessments should ensure that firefighters can perform their basic job functions. According to the IAFF Wellness Fitness Initiative,<sup>9</sup>

*Research has demonstrated the need for high levels of aerobic fitness, muscular endurance, muscular strength, muscular power and flexibility in order to perform safely and effectively in the fire service. Further, while assessing uniformed personnel’s current fitness level is an important part of developing an individualized fitness program, assessment is not, in itself, a fitness program. An effective physical fitness program has several components that must be implemented, including medical clearance and exercise and nutrition programs, to name a few.*

Further, according to the City of Austin, which is part of a Wellness Fitness Initiative task force,

*...medical examinations will be job-related [emphasis added] and the content will be determined with guidance from the IAFF/IAFC Joint Labor Management Wellness-Fitness Initiative and NFPA 1582. Further, the physician’s duty status recommendation and*

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<sup>9</sup> The IAFF, IAFC and 10 pairs of local unions and their municipalities joined together to form the Fire Service Joint Labor Management Wellness-Fitness Task Force. The Task Force has dedicated itself to developing a holistic, positive rehabilitating and educational approach to wellness and fitness programs in the fire service.

*the medical basis for the recommendation will be provided to the Fire Chief for use in making a final duty status determination.*

The City of Phoenix goes even further. It has a tiered system of health risk assessment. The intent is to strengthen individuals so they can withstand the physical demands of their job.

*With early intervention, activities detrimental to the health of the member can be ceased, lifestyles can be altered, medications can be prescribed, and therapy or treatment can be initiated; with the member taking ownership of their overall health and actively participating in their wellness direction. It has always been the policy of the Health Center Medical Director and his staff to recognize potentially health and life threatening maladies and initiate an alternative work assignment or complete work removal in order to preserve the health of the member and initiate proper treatment.*

With this in mind, the Fire Fighter Wellness Labor/Management Subcommittee in Phoenix created a guideline for this purpose entitled the Tier 4 Health Assessment. The Tier 4 Health Assessment is designed to categorize a member's health and place them in a Tier for assessment, monitoring and, *if needed, removal* from active duty field assignment. Exhibit 10 summarizes the Tier 4 Health Assessment Program.

**Exhibit 10: City of Phoenix-Health Assessment Program**

Member found to be in...	Categorization of members		
	Action	Support Available/Initiated/Mandatory	Follow-Up
Tier 1	Encourage to maintain current levels	Available	None needed
Tier 2	Encouraged to increase current levels	Available	None needed
Tier 3	Mandatory referral for health and fitness intervention	Initiated	Mandatory at the date scheduled by doctor
Tier 4	Removal from active duty	Mandatory	Mandatory at the date scheduled by doctor*

\*The reassignment process for those members found to be in Tier 4 status is not intended to be punitive, but rather rehabilitative. The member will receive support in the areas in which he/she is in need including Peer Fitness Trainers, nutritionists and physical therapists. During the time the member is assigned to Alternative Duty, meetings with support staff and daily exercise routines are mandatory in order to expedite the return of that member to full active duty. It will be the discretion of the medical director as to when that member may return to full active duty.

Source: City of Phoenix

We should note that according to the Phoenix Fire Department, this tiered system was introduced after a long roll-out period. Further, in the past few years only 5-6 employees have not met the minimum standards. Finally, removing an employee from line duty if he/she has not met the basic minimum requirements of their job is a last resort in cases where the employee could be a danger to him/herself and others due to the nature of the job.

### **The City and the Fire Safety Committee Agreed to Outcome-Based Annual Physicals but Never Implemented Them**

In San José, the Fire Department and the City Employee Health Services Department never implemented a Safety Committee recommendation to implement an outcome-based annual physical. Specifically, in 2009, the Fire Department, in coordination with Employee Health Services, Workers' Compensation Division and the Safety Committee (which includes members of Local 230) had recommended and agreed that during the annual physicals Employee Health Services would inform the Fire Department when employees were not fit for line duty. Further, annual physicals were to incorporate recommendations from the NFPA 1582 (National Fire Protection Association Standard on Comprehensive Occupational Medical Program for Fire Departments). As recommended by NFPA 1582, the Fire Department had proposed testing employees for aerobic capacity. If the annual medical exam brought into question an employee's ability to meet minimal thresholds, the employee would receive temporary medical restrictions to light duty and be removed from line duty until his/her medical situation was addressed.

#### **Recommendation #5: The Administration and Employee Health Services should streamline and refocus the annual physicals by**

- a. removing duplication and focusing on job-specific and State-mandated requirements, and**
- b. developing a process for handling those individuals who are unable to meet pre-determined minimum fitness thresholds. This may be subject to meet and confer and could be applicable to other employees in physically demanding positions around the City.**

### **Fire Department Employees Return to Work After Long Absences Without Being Assessed for Their Physical Ability**

We found that San José employees who have been out of work can return to work immediately without being tested for their physical ability to do the job. When an employee returns to work after a disability, the City relies entirely on the employee's physician to determine the employee's physical ability. However,

as discussed above, the City usually has little to no communication with the physician about what exactly a firefighter's job entails. Further, the City has no way of knowing whether being away from the field for a long period has hampered the employee's ability to effectively perform his/her job functions.

For example, one employee in our sample was completely off work for about 4 months (or 39 shifts) and returned back to full-duty after this long leave of absence. In this case, even though the employee's physician cleared the employee medically, the City had no assurance that this employee would be able to perform his/her job at the same level that he/she did prior to being out for such a long period of time.

Other cities do it differently. For example, the City and County of San Francisco requires all fire employees that have been out for more than 6 months to undergo a physical agility test. The County of Santa Clara requires its employees to go through a physical agility test if they have been out for more than 90 days. Testing employees that haven't been on active line duty prior to returning to full-time line duty would provide the City with assurance that the employee can do his/her job, and keep the employee and his/her colleagues safe.

### *Entry Level Firefighters Undergo the Job-Specific California Physical Agility Test but Never Take It Again*

Entry level San José firefighters undergo the California Physical Agility Test (CPAT). The CPAT is a rigorous physical test which incorporates fire fighter job duties into the testing. The CPAT is a pass/fail test consisting of eight physical tasks representative of actions typically performed by firefighters. These include: 1) stair climb, 2) equipment carry, 3) forcible entry, 4) rescue, 5) hose drag, 6) ladder raise, 7) search, and 8) ceiling breach and pull. According to the CPAT preparation guide, "a proper physical fitness program should be specific for the job of a fire fighter. It should include all of the major areas of physical fitness and be a total body program." Once entry level San José firefighters pass the CPAT, they are never again required to undergo a job-specific physical test.

Some of the basic ongoing requirements of a fire fighter as described in the City's job description include lifting and carrying up to 65 pounds without assistance and 150 pounds with assistance. During emergency situations, the firefighter may be required to lift more than 300 pounds with assistance if available, and remove patients during auto extrication or similar environments. In addition, firefighters must be able to frequently handle/grasp weights of less than 20 pounds and be able to power grasp when performing heavy lifting, pushing or pulling while using the fire hose.

While different types of physicals and exams have different purposes, the goal is to ensure that all firefighters are in a physical condition to perform these basic job functions. As mentioned before, job descriptions need to be up to date particularly if employees are going to be tested on those requirements.

**Recommendation #6:** To ensure that Fire employees returning to the field from a long absence of any kind are physically able to perform their job functions, the City should develop a policy and process to require them to undergo a physical agility test. This may be subject to meet and confer, and could be applicable to employees in other physically demanding positions around the City.

### **Employee Health Services Resources Should be Redirected and Refocused**

Employee Health Services (EHS) provides the Fire Department with annual physicals for fire fighters and reviews applications for disability retirement. Currently, EHS is staffed with a full-time physician, a medical assistant, a nurse practitioner and a part-time nurse practitioner. As discussed in this finding, annual physicals take a significant portion of the physician's time, do not result in any follow-up, and some components of the test may duplicate wellness exams available through the employees' own health plan. Even though the MOA with Fire allows the City to provide a physical for employees returning from long leaves of absence, in fact this is rarely done. Finally, EHS has little involvement with getting employees back to work, reviewing modified duty restrictions or contacting employees that are out on a disability to determine their current treatment status.

As mentioned above, medical practitioners play a dominant role in other cities. Their role includes reviewing modified duty options, evaluating the employee's ability to do the job after returning from leaves of duty, testing employees for fitness for duty, and calling employees that are out on leave to determine status of treatment. In our opinion, EHS may be well-positioned to take on these roles and its current role should be reevaluated.

**Recommendation #7:** We recommend that the Administration clarify and reevaluate the role of Employee Health Services, including, potentially, its role in:

- a. testing employees' physical abilities to return to work after long leaves of absence,
- b. the Fire Department's return to work process, and
- c. regularly contacting physicians to clarify employee restrictions and provide them with details about the City's ability to accommodate the various restrictions.

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**The Cost for Backfilling Employees Who Are Out of Work Is Significant and Should be Tracked**

According to Article 33 of the MOA between the City and Local 230, the City has agreed to maintain a minimum level of Fire Department staffing at all times. Essentially this means that if a full-time firefighter is absent, his/her position must still be staffed. The Fire Department does this through relief personnel or, depending on concurrent needs to fill vacation or sick leave, through overtime. The decision is up to the Battalion Chief.

We found that in 2011-12 alone, Fire Department employees used a total of about 82,000 disability leave hours, costing \$2.75 million. This translates to about 30 FTEs in the Fire Department. Using an entry level firefighter's base pay we **conservatively** estimate that backfilling these hours at even the lowest possible rate would cost the City an additional \$2.5 million (not using overtime). While this may be a small percentage of the Fire Department's total payroll expense,<sup>10</sup> \$5.25 million it is still significant. Having that many employees out because of injuries is a cost that the Fire Department, in our opinion cannot afford.<sup>11</sup>

Developing goals for reducing injuries and disability costs is good governance. For example, AMR sets cost-reduction and injury reduction targets for each of their local operations. If injury rates go over goal, that impacts the budget. If the rates are lower than the target, savings are rolled over to the next year. Local operations are also charged if they don't bring employees back to work in a timely manner.

In our opinion, regular tracking of disability leave, setting reduction targets, and tracking disability leave cost impacts on the Department are first steps to developing a safety culture (discussed further in Finding 2) in the Department.

**Recommendation #8: To ensure proper attention is given to the cost of workplace injuries, the Fire Department should**

- a. work with the Workers' Compensation Division to develop and report on the total costs of disability leave (including the cost of backfilling employees on disability leave), and**
- b. develop goals to reduce these costs by getting employees back to work as soon as possible.**

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<sup>10</sup> The Fire Department's adopted personal services budget for 2011-12 was \$151.8 million.

<sup>11</sup> While the Workers' Compensation Division does provide most of the workers' compensation costs it does not report all disability leave costs. As shown in Exhibit 2 in the background section of this report, disability leave costs are a significant portion of the total workers' compensation costs and should be included.

## **Finding 2 The Fire Department’s Follow-Up on Injuries and Accidents Is Inadequate**

### **Summary**

The City is required by state law to maintain an injury and illness prevention program (IIPP). The Fire Department recently began a major review and update of its IIPP. However, a majority of the state-mandated supervisor accident investigation reports that we requested had not been filed, and safety committee meetings appear to be ineffective at monitoring injuries. Moreover, the Department never implemented an agreement to hold employees accountable for safety violations and does not regularly review injury trends, particularly since the elimination of the Department safety officer position.

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### **The City Is Required by State Law to Maintain an Injury and Illness Prevention Program**

In California every employer has a legal obligation to provide and maintain a safe and healthful workplace for employees under the California Occupational Safety and Health Act of 1973. Per the California Code of Regulations, Title 8, every employer is required to “*establish, implement and maintain an effective Injury and Illness Prevention Program.*” As of 1991, a written, effective Injury and Illness Prevention Program (IIPP) is required for every California employer. These elements are required:

- Management commitment/assignment of responsibilities;
- Safety communications system with employees;
- System for assuring employee compliance with safe work practices;
- Scheduled inspections/evaluation system;
- Accident investigation;
- Procedures for correcting unsafe/unhealthy conditions;
- Safety and health training and instruction; and
- Recordkeeping and documentation.

The San José Fire Department has an IIPP. The goal of the Fire Department’s IIPP “is to reduce the number of injuries and illnesses to an absolute minimum, not merely in keeping with, but surpassing the best experiences of cities similar to San José.” Portions of the Fire Department’s Injury and Illness Prevention Program (IIPP) date to 1994; the Department last updated some portions in 2009. Recently the Department has begun a process of a major review and update of the IIPP and has designated a senior staff person to complete it.

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**The Fire Department Was Unable to Provide Over Half of the Mandated Supervisor Accident Investigation Reports We Requested**

In case of an accident/injury, the Fire Department's Incident and Injury Prevention Program (IIPP) requires a supervisor to thoroughly investigate each and every reported accident and document this investigation in a Supervisor's Accident Investigation Report (SAIR). The purpose of the SAIR is to ensure that injuries are thoroughly investigated by the employee's immediate supervisor, hazardous conditions are immediately corrected, and that future accidents are prevented. The SAIR is then forwarded through the chain of command to the level of the Deputy Chief of the Fire Department. Oral counseling is to be provided to the employee by his/her supervisor if the person investigating the accident or senior staff up the chain of command deems the accident preventable. However, this oral counseling is not routinely documented in the employees' file

We sampled 48 documented injuries over the course of 2011 to determine whether the supervisors had completed the required accident investigations. We found that these SAIRs were not completed for nearly 52% of the injuries in our sample. Further, the Fire Department did not have a process to centrally store these SAIRs and track the SAIRs to ensure that they were all completed.<sup>12</sup>

San José's Department of Transportation (DOT) has a very well documented accident investigation process discussed below, that has been in place for some time. All injuries and near-misses are investigated and SAIRs are stored with the DOT Safety Officer. Further, supervisors are expected to discuss these investigations at the DOT's monthly *Crash, Injury, and Near Miss Review Board* meeting (described below). This committee's sole purpose is to discuss, investigate and make recommendations on accident and injury prevention. We will discuss this in detail below.

**Recommendation #9: We recommend the Fire Department on an on-going basis**

- a. track whether supervisors complete and return all Supervisor's Accident Investigation Reports (SAIRs) to the appropriate employee and up the chain of command in a timely manner, and**
- b. require a designated employee to cross-check and verify that each documented injury has a completed SAIR on file.**

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<sup>12</sup>In July 2012, the Department changed how it tracked SAIRs. A Battalion Chief has been assigned to coordinate and ensure that all SAIRs are completed and filed with the Department designated [workers' compensation] analyst in the Fire Department. Given that this new process has just been put in place, we will review the progress during the City Auditor's recommendation follow-up process.

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## State Law Requires the City's Safety Committees to Review Injuries and Recommend Preventative Measures

Title 8 of the California Code of Regulations **requires** covered employers to include a procedure to investigate occupational injury or occupational illness. The procedure must include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard. Further, per the California Code of Regulations,

*“the safety committee is supposed to review results of the periodic, scheduled worksite inspections; investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submit suggestions to management for the prevention of future incidents; review investigations of alleged hazardous conditions brought to the attention of any committee member.”*

### **The Fire Department's Safety Committee Meetings Are Ineffective at Monitoring Injuries**

As part of this audit, the City Auditor's Office staff observed three safety committee meetings and reviewed minutes of the available safety committee meeting minutes for 2011. The Workers' Compensation Division Manager is a facilitator for these meetings and provides a written summary of the injuries that occurred during the previous month at each meeting.

From April to July 2012, Fire Department employees documented 108 injuries. However, the Safety Committee never discussed the nature of the injuries or future prevention of similar injuries. In two of the three meetings we attended the Committee never got to the agenda item for discussing injuries due to time constraints. Instead, the focus of the discussions were operational items, such as improving communication channel safety, safe disposal of firefighter gear, response at the County jail, etc. While these items are clearly important, we found that previous safety committees also had no meaningful discussion of the employee injuries that had just happened. In part this may be because the summaries of injuries provided at the safety committee meetings do not go into any detail about the actual cause of the injuries. For this the Fire Department would have to rely on the SAIR. But, as we demonstrated earlier, the SAIR may or may not have been completed.

It should be noted that there is also some reluctance to discuss workplace accidents and injuries because of concerns related to employee medical privacy. State and Federal laws do not preclude the discussion of workplace accidents and injuries at these safety committee meetings, so long as personally identifiable health information is not revealed.

*DOT's Accident Review*

We found that the City's Department of Transportation (DOT) has committed to bring about a culture by having a more effective safety program. DOT has a *Crash, Injury, and Near Miss Review Board*. This Board consists of senior management and supervisors that rotate membership. In DOT's case the purpose of this Board is to **discuss** and **prevent** injuries. It requires the presence of the employee's supervisor to discuss any investigations following an accident or near miss using a completed document similar to the Fire Department's SAIR. The employee's identity is not revealed, but injury details are. Further, corrective actions are recommended and the Board follows up on previous recommendations. Exhibit II illustrates this follow-up process. The department deputy director must review and sign the form.

**Exhibit II: Department of Transportation's Accident Investigation Form (Corrective Action Follow-up)**

Recommended Corrective Action	Risk Code*	Responsible Party/ Supervisor	Completion Date	
			Projected	Actual
*Risk Codes Class I      Catastrophic (Correction time-frame-Immediately) Class II     Critical (Correction time-frame- Within 24 hours) Class III    Marginal (Correction time-frame- Within 7 days) Class IV     Negligible (Correction time-frame- Within 30 days)				

Source: Department of Transportation

In our opinion, the Fire Department cannot operate an effective safety program without focusing on the actual causes of actual workplace accidents and injuries.

**Recommendation #10: In compliance with California Code of Regulations guidelines, we recommend that the Fire Department's safety committee review the results of:**

- a. periodic, scheduled worksite inspections;
- b. investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submit suggestions to management for the prevention of future incidents; and
- c. investigations of alleged hazardous conditions brought to the attention of any committee member.

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### **The Fire Department Never Implemented a Formal Process to Hold Employees Accountable for Safety Violations**

In its 2009 Workers' Compensation audit report, the City Auditor had recommended that the Administration "[...] include the accomplishment of safety goals as one of the goals to be considered in the city's performance review process in which the City Council reviews each department's performance during the budget study sessions each spring." In its response to this recommendation the City Administration agreed to include a safety component in the annual performance review process. In order to do this, the Department was required to maintain a log of all safety violations that resulted in disciplining an employee that violated safety policies. This was never done.

The Fire Department's IIPP mandates that employees have to adhere to safety policies. Per the IIPP "personnel are required to observe all safety rules established for their protection and guidance, abide by all laws and regulations, use safety equipment and devices provided or required, and to always work in a manner which safeguards them and their fellow workers". Further, the IIPP requires the Fire Department to develop and enforce safety and health rules, and require that employees cooperate with these rules as a **condition** of employment.

Even though the IIPP requires employees to be accountable when accidents are deemed to be preventable, employees only receive oral counseling. This oral counseling is simply documented on the SAIR (which as shown above is oftentimes not completed). In our opinion, in order to emphasize and prioritize safety the Department should make not only management, but also employees accountable for following safety procedures by including safety as a component of the annual performance evaluations.

### **DOT Has Prioritized Safety, Reducing Injuries, and Holding Employees Accountable**

We found that other departments within the City of San José have a more effective accident investigation process. The Department of Transportation has designated a safety officer and requires its supervisors to complete an Occupational Injury/Illness/Near Miss Investigation Form which is similar to the Fire Department's SAIR. The safety officer is responsible for ensuring that these investigations are completed.<sup>13</sup> The difference is the required corrective action and timeline for completion as shown above in Exhibit 11.

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<sup>13</sup> We should note that the Fire Department eliminated its Safety Officer position due to budget cuts in July 2011. Prior to July 2011 the Safety Officer was responsible for all investigations.

In order to hold employees accountable, the DOT also requires a safety component as part of its performance evaluation process. To receive a favorable performance evaluation the employee is expected to demonstrate the following knowledge, skills and behaviors related to **Safety and Wellness**:

- Be generally aware of his/her surroundings, and exercise reasonable caution;
- Follow safe work practices
- Regularly inspect vehicles/tools/equipment;
- Maintain vehicles/tools/equipment in good working order and properly store them;
- Use tools/equipment properly and for their intended purpose;
- Observe appropriate safety precautions (e.g: wears seatbelt; practices defensive driving; correctly implements traffic control; uses equipment safeguards; etc.);
- Use appropriate Personal Protective Equipment (PPE) and/or ergonomic devices;
- Maintains an efficient and safe workspace layout;
- Complies with the DOT Lifting Policy (to be developed);
- Identifies and reports safety hazards/concerns to supervisor or Safety Officer;
- Knows what the IIPP is, where to find it, and what is in it; and
- Knows applicable emergency procedures.

**Recommendation #11: To ensure that safety is prioritized in the Fire Department, we recommend that the Department include a safety component as part of each employee's annual performance evaluation.**

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### The Fire Department Does Not Routinely Review Injury Causes and Trends

The Fire Department does not routinely review aggregate injury trends or causes of injuries available through the City's Workers' Compensation Division. Given that SAIRs are not always completed, the Department cannot use those for analysis of the causes of injuries either. In addition to discussing current injuries, reviewing and analyzing injury data is critical to making key management decisions related to equipment purchases and training. We have been told that previous safety officers did review safety trends and make recommendations, but this has not happened since the safety officer position was eliminated due to budget constraints.

Other entities have used data analytics to make significant changes to their internal process. For example, according to the AMR, as a result of a review of back injuries among its workforce, the company purchased different lifting equipment for a purchase price of over \$10 million. They anticipate that this will pay for itself within 2 years. Similarly, the City of Phoenix, after tracking back injuries, saw a 50 percent reduction in those injuries when they changed their patient lifting equipment. The City of Phoenix can even project the types of future injuries based on past data. Based on a review of injury trends, the City's own DOT changed its vehicle exit policy after observing an increase in injuries when employees exit their vehicle.

#### *Need for Training Targeted at Reducing Injuries*

In addition to making decisions on equipment, opportunities exist to provide targeted training. For example, most of the Fire Department's calls relate to medical emergencies, however, none of the medical emergency response training directly addressed employee safety and current injury trends. We found that the last training that addressed employee injury trends was in 2010. It simply involved employees reading a safety policy.

In contrast, the ambulance company we interviewed has a very high-profile and proactive employee injury awareness program. Supervisors are provided a safety theme on a monthly basis and are expected to discuss these themes with at least 90% of their employees. Themes are made highly visible through the use of posters, talking cards for supervisors, and letters to employees.

Without analyzing injury data, the Fire Department will not be able to provide its employees with dynamic training on current injury trends. In order to prioritize and provide visibility to the issue of employee safety within the Fire Department, trainings should incorporate employee safety trends. In our opinion, the Department should provide this training on a regular basis.

**Recommendation #12: We recommend that the Fire Department review injury data and incorporate the review results into regular safety trainings.**

#### *Need for HIPPA Training*

In addition, certain designated employees need to receive training on current privacy laws in the context of workers' compensation. All employees who will have access to information about employee injuries need HIPAA training. The Fire Department does not currently provide this as part of its annual training -- even to its paramedic and emergency medical technician employees. Other

employees that should potentially be provided this training include supervisors (battalion chiefs), members of the safety committee, senior staff and the Fire Department analyst who handles workers' compensation cases.

**Recommendation #13: We recommend that the Fire Department provide workers' compensation and HIPAA privacy training to all relevant employees.**

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### Prioritizing Safety and Creating a Safety Culture

While the injuries continue to drop, disability retirements continue to be unacceptable high pointing to a pervasive culture problem within the Fire Department. The Fire Department's injury rate has been a concern in the City. Due to budget constraints, Fire Department staffing has been reduced and the City can ill afford to have dozens of firefighters on disability leave. We believe that the department needs to prioritize and increase the visibility of safety in the department and prioritize injury prevention, training, and creating a safety culture among its employees.

Prior to July 2011, the department had a dedicated safety officer whose job was to respond to and investigate serious incidents, review supervisor accident investigations and ensure that they were completed, respond to fire and vehicle incidents, and provide weekly reports of injuries in the Fire Department. In addition, the safety officer reviewed accident trends and scheduled trainings and issued safety bulletins. In July 2011 this position was eliminated. The safety officer was generally a battalion chief. The current directive in the Fire Department is to parse out some of the safety officer job duties among various battalion chiefs. Currently for emergency incidents, the incident commander assigns safety officer responsibilities to an individual for that incident. In addition, the Department has recently designated an administrative Battalion Chief as the Safety Program Manager. The department's designated [workers' compensation] analyst is responsible for many of the administrative functions such as keeping track of SAIRs, contacting employees when they are out on a disability, coordinating the return to work program, etc. How these duties will be coordinated on a department-wide basis is a concern. The recommendations in this report, such as ensuring timely and accurate completion of accident investigation reports, coordination with Employee Health Services and the Workers' Compensation Division, and enhanced modified duty programs, will all require dedicated staff time.

In contrast, Santa Clara County Fire Department has a designated Fire Personnel Manager to focus on injuries and getting employees back to work. This employee also coordinates with physicians and the County nurse to ensure that employees are getting needed treatment in a timely manner.

As mentioned before, the ambulance company we interviewed goes even further. They have a dynamic awareness program based on injury trends. Every month they produce a poster/talking card. Every supervisor is required to talk to 90% of their employees about the “safety issue of the month”. They also send letters to their employees on various safety issues. Further, operators take pictures of “unsafe” practices and they put them up in the office with a question -- “what’s wrong with this picture?” The back of the picture describes what’s wrong with the picture. They change the picture/theme every month. According to AMR, focusing attention on the importance of safety can change employee culture.

In our opinion, having the right employee (position) dedicated to this is critical to making that change.

#### *Tone at the Top*

While dedicated department-wide safety/administrative personnel are important, line supervisors are the best choice to investigate individual accidents and incidents. But line supervisors should also be accountable to the safety committee, and upper management involvement is critical and sets the tone for the organization and can lead to a organizational culture change. The City’s own Department of Transportation has well established safety program with a visible upper management presence and buy-in. As mentioned before, we found that the DOT not only has a more effective safety program but also holds employees accountable by including safety as a measure of an employee’s performance during the annual performance evaluation process. Further, DOT’s Crash, Injury, and Near Miss Review Board includes upper management and supervisors that rotate membership. It requires the presence of the employee’s supervisor to discuss any investigations following an accident or near miss using a completed document similar to the Fire Department’s SAIR. The department deputy director must review and sign the form. In addition, a 2009 Safety Culture Assessment of the Department of Transportation (done by an outside consultant) found the DOT fully compliant with the department managing, leading and promoting safety. Further, according to the report,

*As a way of demonstrating their commitment to safety, managers and senior managers are encouraged to personally attend and participate in the training sessions so they are aware of the strengths and weaknesses of the controls being instituted that are to help ensure the safety of their staff*

This may be why DOT has been able to reduce its workers’ compensation costs from about \$1.2 million in 2007-08 to about \$831,000 in 2011-12 -- a reduction of more than 30 percent.

**Recommendation #14: We recommend that the Fire Department prioritize improving its safety culture by dedicating the appropriate personnel with the right authority to enforce and coordinate changes and raise awareness about employee injuries.**

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## **Finding 3 Premium Pays to Police and Fire Employees That Are Out on a Disability Costs the City About \$600,000 Annually**

### **Summary**

In 2010, California State law changed to require payment of up to one full year of disability leave to qualified sworn employees. Disability benefits are exempted from income tax. This tax exemption increases the take home value of the benefits received by sworn personnel. Although the law requires the City to pay 100 percent of salary, it does not require payment of premium pays and the City continues to pay premium pays to Fire and Police employees while they are out on a disability.

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### **In 2010, California State Law Changed to Require Payment of 4850 Benefits**

As mentioned before, California Labor Code section 4850 requires that California public safety employees be entitled to up to one full year of disability leave at 100 percent of pay. Specifically section 4850 requires that

*[a firefighter or a police officer, among others who is,] employed on a regular, full-time basis, and is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments [...], for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, [...].*

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### **The City Continues to Pay Premium Pays to Fire and Police Employees While They Are Out on a Disability**

The City is required by law to pay its fire and police employees their full salary while out on disability leave. However, under State law, the City is not required to continue paying premium pays to its sworn employees. Premium pays are generally additional pay provided for performing a special function or having a special job specific skill.<sup>14</sup> While the Police MOA makes the City contractually obligated to also pay premium pays along with the 4850 benefit while a sworn police employee is out on a disability, the Fire MOA does not. Specifically,

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<sup>14</sup> Current premium pays for sworn Police and Fire personnel include EMT, HIT, Higher Class pay, Paramedic, Bilingual, Merge Unit, Canine Unit pay, etc.

according to the Police MOA, *an Officer in a premium pay status [...], shall not lose such premium pay while off on job related disability leave.* The Fire MOA is silent on this subject, but the City has continued to pay Fire employees premium pays while they are out on a disability.

Premium pays constitute a significant portion of an employee's paycheck. In the case of Fire employees, we estimate that in 2010-11 the City paid over \$300,000<sup>15</sup> in premium pays to Fire employees that were out on a disability. In our opinion, premium pays are for being part of a special unit, or for providing a special skill and should not be paid when the employee is out on a disability.

*The County of Santa Clara Has Discontinued Paying Premium Pays to Employees Out on a Disability*

The County of Santa Clara does not pay its Fire employees differential (premium) pays while paying the 4850 benefits. In 2012, the County negotiated language in its MOA to address this. Per the agreement, *“Effective immediately upon the ratification of this Extension Agreement, the Department shall provide up to one year of Labor Code Section 4850 benefits at the **base rate of pay** that **excludes** all differential pay.”*

**Recommendation #15: We recommend that subject to meet and confer with the bargaining units, the City should discontinue its practice of paying Fire and Police employees' premium pays when the employees are off of work due to a disability.**

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<sup>15</sup> Police employees received over \$250,000 in premium pays while out on a disability.

# Conclusion

Workers' compensation costs and disability retirement rates remain high. We found that the Fire Department needs better coordination with physicians to ensure timely treatment, to effectively manage time off, and to get employees back to work in a timely manner. In addition we found that the Fire Department's follow-up and investigation of injuries is inadequate and should be improved. Finally, premium pays to police and fire employees that are out on a disability costs the City about \$600,000 annually.

## RECOMMENDATIONS

Recommendation #1: To ensure prompt and cost-effective treatment, the City should:

- a. Explore options to establish a Managed Provider Network and/or to direct employees to use preferred providers for treatment that occurs within the first 30 days after injury; and
- b. Establish working relationships with medical providers, focusing on timely treatment, good communication, and coordination throughout the period the employee is off work.

Recommendation #2: We recommend the Administration and the Fire Department develop and implement a comprehensive and aggressive, time-limited modified duty program matched to employee experience and addressing upcoming training needs, where possible. The program should include on-going communication and continuous monitoring of an employee's status and work restrictions through the City's Workers' Compensation Division, Employee Health Services, and/or a designated third party.

Recommendation #3: We recommend that the Administration review and update Fire Department job descriptions with more specific descriptions of the physical requirements of what employees actually do on a day-to-day basis, and make the job descriptions and physical requirements easily accessible to physicians.

Recommendation #4: To ensure compliance with its own policies, we recommend that the Fire Department a) inform all employees about limiting physical therapy appointments to off-duty days when possible, and b) develop a process to periodically verify physician's orders if employees routinely take work time off for physical therapy appointments.

Recommendation #5: The Administration and Employee Health Services should streamline and refocus the annual physicals by

- a. removing duplication and focusing on job-specific and State-mandated requirements, and
- b. developing a process for handling those individuals who are unable to meet pre-determined minimum fitness thresholds. This may be subject to meet and confer

## Fire Department Injuries

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and could be applicable to other employees in physically demanding positions around the City.

**Recommendation #6:** To ensure that Fire employees returning to the field from a long absence of any kind are physically able to perform their job functions, the City should develop a policy and process to require them to undergo a physical agility test. This may be subject to meet and confer, and could be applicable to employees in other physically demanding positions around the City.

**Recommendation #7:** We recommend that the Administration clarify and reevaluate the role of Employee Health Services, including, potentially, its role in:

- a. testing employees' physical abilities to return to work after long leaves of absence,
- b. the Fire Department's return to work process, and
- c. regularly contacting physicians to clarify employee restrictions and provide them with details about the City's ability to accommodate the various restrictions.

**Recommendation #8:** To ensure proper attention is given to the cost of workplace injuries, the Fire Department should

- a. work with the Workers' Compensation Division to develop and report on the total costs of disability leave (including the cost of backfilling employees on disability leave), and
- b. develop goals to reduce these costs by getting employees back to work as soon as possible.

**Recommendation #9:** We recommend the Fire Department on an on-going basis,

- a. track whether supervisors complete and return all Supervisor's Accident Investigation Reports (SAIRs) to the appropriate employee and up the chain of command in a timely manner, and
- b. require a designated employee to cross-check and verify that each documented injury has a completed SAIR on file.

**Recommendation #10:** In compliance with California Code of Regulations guidelines, we recommend that the Fire Department's safety committee review the results of:

- a. periodic, scheduled worksite inspections;
- b. investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submit suggestions to management for the prevention of future incidents; and
- c. investigations of alleged hazardous conditions brought to the attention of any committee member.

Recommendation #11: To ensure that safety is prioritized in the Fire Department, we recommend that the Department include a safety component as part of each employee's annual performance evaluation.

Recommendation #12: We recommend that the Fire Department review injury data and incorporate the review results into regular safety trainings.

Recommendation #13: We recommend that the Fire Department provide workers' compensation and HIPAA privacy training to all relevant employees.

Recommendation #14: We recommend that the Fire Department prioritize improving its safety culture by dedicating the appropriate personnel with the right authority to enforce and coordinate changes and raise awareness about employee injuries.

Recommendation #15: We recommend that subject to meet and confer with the bargaining units, the City should discontinue its practice of paying Fire and Police employees' premium pays when the employees are off of work due to a disability.

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# Memorandum

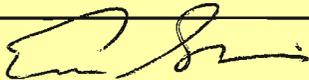
**TO:** Public Safety, Finance and  
Strategic Support Committee

**FROM:** Alex Gurza  
William McDonald

**SUBJECT:** SEE BELOW

**DATE:** September 10, 2012

Approved



Date 9/10/12

**SUBJECT: RESPONSE TO 2012 AUDIT OF FIRE DEPARTMENT INJURIES**

## **BACKGROUND**

In August 2012, the City Auditor's Office completed an audit entitled "Fire Department Injuries: A More Coordinated Response and Better Follow-up is Needed," which included 15 recommendations. The audit has been reviewed by the Fire Department, Human Resources Department, and Office of Employee Relations and the Administration is in general agreement with the recommendations. This memorandum contains the coordinated response of those departments to the specific recommendations.

### **Recommendation #1**

*To ensure prompt and cost-effective treatment, the City should:*

- a. *Explore options to establish a Managed Provider Network and/or to direct employees to use preferred providers for treatment that occurs within the first 30 days after injury; and*
- b. *Establish working relationships with medical providers, focusing on timely treatment, good communication, and coordination throughout the period the employee is off work.*

The Administration agrees with this recommendation. As noted in the Audit Report, the City is in the process of reviewing options to outsource services related to the City's Workers' Compensation Program, including evaluating vendors to perform and/or coordinate one or more of the services to include workers' compensation claims administration services, bill review/preferred provider organization (PPO) networks, utilization review, and medical case management. The City anticipates improvement in the area of prompt and cost effective treatment following the potential implementation of such an integrated cost containment program.

### **Recommendation #2**

*We recommend the Administration and the Fire Department develop and implement a comprehensive and aggressive, time-limited modified duty program matched to employee experience and addressing upcoming training needs, where possible. The program should*

*include on-going communication and continuous monitoring of an employee's status and work restrictions through the City's Workers' Compensation Division, Employee Health Services, and/or a designated third party.*

The Administration agrees with this recommendation. A "formal" modified duty process will be further developed to provide reasonable accommodation for an employee's return to the interim phase of a temporary light duty assignment. Currently, training needs are factored into the return to work process and we endeavor to provide training opportunities whenever possible to employees who are unable to perform the regular duties of their positions.

The Fire Department is also in the process of developing a peer "reach out" program whereby the employee's supervisor will contact the injured employee at two-week intervals.

#### Recommendation #3

*We recommend that the Administration review and update Fire Department job descriptions with more specific descriptions of the physical requirements of what employees actually do on a day-to-day basis, and make the job descriptions and physical requirements easily accessible to physicians.*

The Administration partially agrees with this recommendation. The Administration agrees that the job analyses that contain specific descriptions of the physical requirements of individual classifications should be thoroughly reviewed to assess the accuracy of each job analysis; however, upon the Administration's initial review, the job analyses appear to accurately reflect the physical nature of each position, despite the job analyses being several years old.

To ensure that the job analyses are readily accessible to treating physicians, the Workers' Compensation Adjusters will provide them to the treating physicians in the case of industrial injuries and the Fire Department's Return to Work Coordinator will provide them to employees to share with their treating physicians in the case of non-industrial injuries.

#### Recommendation #4

*To ensure compliance with its own policies, we recommend that the Fire Department (a) inform all employees about limiting physical therapy appointments to off-duty days when possible, and (b) develop a process to periodically verify physician's orders if employees routinely take work time off for physical therapy appointments.*

The Administration agrees with this recommendation.

#### Recommendation #5

*The Administration and Employee Health Services should streamline and refocus the annual physicals by a) removing duplication and focusing on job-specific and State-mandated requirements, and b) developing a process for handling those individuals who are unable to meet*

*pre-determined minimum fitness thresholds. This may be subject to meet and confer and could be applicable to other employees in physically demanding positions around the City.*

The Administration agrees with this recommendation. The Human Resources Department will review annual physicals to avoid duplication and focus on state required physicals. Regarding fitness thresholds, the City Manager's Office of Employee Relations will recommend to the City Council that direction be given to negotiate a process for handling those individuals who are unable to meet pre-determined minimum fitness thresholds.

Recommendation #6

*To ensure that Fire employees returning to the field from a long absence of any kind are physically able to perform their job functions, the City should develop a policy and process to require them to undergo a physical agility test. This may be subject to meet and confer, and could be applicable to employees in other physically demanding positions around the City.*

The Administration agrees with this recommendation. The City Manager's Office of Employee Relations will recommend to the City Council that direction be given to negotiate a process by which employees returning to the field from a long absence of any kind are required to undergo a physical agility test to determine whether such employees are physically able to perform their job functions.

Additionally, the Fire Department is developing a process whereby the Wellness Coordinator is involved in the return to work phase by working with post-injury employees. Specifically, the Wellness Coordinator will implement strengthening programs to mitigate the likelihood of re-injury.

Recommendation #7

*We recommend that the Administration clarify and reevaluate the role of Employee Health Services, including, potentially, its role in:*

- a. testing employees' physical abilities to return to work after long leaves of absence,*
- b. the Fire Department's return-to-work process, and*
- c. regularly contacting physicians to clarify employee restrictions and provide them with details about the City's ability to accommodate the various restrictions.*

The Administration agrees with this recommendation. The Human Resources Department will evaluate all options, including use of Employee Health Services, to test employees' physical abilities to return to work after long leaves of absence. This evaluation will also include review of the Fire Department's return to work process and working with treating physicians either through the Workers' Compensation process, or through the employee in the event of non-industrial injuries, to clarify employees' work restrictions and providing treating physicians with details about the City's ability to provide reasonable accommodations for various restrictions.

Recommendation #8

*To ensure proper attention is given to the cost of workplace injuries, the Fire Department should*

- a. work with the Workers' Compensation Division to develop and report on the total costs of disability leave (including the cost of backfilling employees on disability leave), and*
- b. develop goals to reduce these costs by getting employees back to work as soon as possible.*

The Administration agrees with this recommendation. However, due to the Minimum Staffing mandate in the MOA with the San Jose Fire Fighters, definitive tracking of overtime costs specifically related to Workers' Compensation lost time injuries is challenging.

Recommendation #9

*We recommend the Fire Department on an on-going basis*

- a. track whether supervisors complete and return all Supervisor's Accident Investigation Reports (SAIRs) to the appropriate employee and up the chain of command in a timely manner, and*
- b. require a designated employee to cross-check and verify that each documented injury has a completed SAIR on file.*

The Administration agrees with this recommendation. Following the loss of the designated Safety Officer due to budgetary issues, the Fire Department has identified an administrative Battalion Chief to assume some of the functions previously performed by the Department Safety Officer. In particular, this Battalion Chief will be working closely with the Department's Workers' Compensation Liaison to ensure reporting compliance. This Battalion Chief is also responsible for the IIPP review and update process, which is currently underway.

Recommendation #10

*In compliance with California Code of Regulations guidelines, we recommend that the Fire Department's safety committee review the results of:*

- a. periodic, scheduled worksite inspections;*
- b. investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submit suggestions to management for the prevention of future incidents; and*
- c. investigations of alleged hazardous conditions brought to the attention of any committee member.*

The Administration agrees with this recommendation. The Senior Management members of the Safety Committee are working with the labor representatives to "re-focus" the deliverables for this committee to include all of the items contained in this recommendation. This will also include actionable data analyses.

Recommendation #11

*To ensure that safety is prioritized in the Fire Department, we recommend that the Department include a safety component as part of each employee's annual performance evaluation.*

The Administration agrees with this recommendation. The Fire Department has recently incorporated a safety-related component into the annual performance evaluation process, beginning with the Battalion Chiefs. The Reliability Section of the evaluation now includes language specifically related to the completion of required safety reports. As we move into the Captain rank (and below), compliance with safety training will also be included and, where possible, utilizing elements of the eight Point Guideline identified in the 2009 Workers' Compensation Audit.

Recommendation #12

*We recommend that the Fire Department review injury data and incorporate the review results into regular safety trainings.*

The Administration agrees with this recommendation. Additional resources may be required to accommodate the expanded workload associated with this recommendation.

Recommendation #13

*We recommend that the Fire Department provide workers' compensation and HIPAA privacy training to all relevant employees.*

The Administration agrees with this recommendation. This training will be coordinated with the Human Resources Department and City Attorney's Office.

Recommendation #14

*We recommend that the Fire Department prioritize improving its safety culture by dedicating the appropriate personnel with the right authority to enforce and coordinate changes and raise awareness about employee injuries.*

The Administration agrees with this recommendation. As mentioned in the response to recommendation #9, the Safety Officer position formerly dedicated to these tasks was eliminated due to budget reductions. The Fire Department recommends a dedicated resource be supported. Additionally, the Wellness Coordinator, as part of the Club One contract, is moving forward with specific training and awareness programs for all personnel, including: Functional Fitness (focus on safety and injury prevention); Nutrition; and Resiliency/Capacity Building (focus on stress reduction).

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Recommendation #15

*We recommend that subject to meet and confer with the bargaining units, the City should discontinue its practice of paying Fire and Police employees' premium pays when the employees are off of work due to a disability.*

The Administration agrees that this recommendation should be explored further. Currently, the City's Memorandum of Agreement, or MOA, with the San Jose Police Officers' Association provides that employees will continue to receive premium pays for being on the Bomb Squad, Motorcycle Duty, and being in the MERGE Unit while the employee is on disability leave. Once the employee is capable of returning to work, but in a job assignment not having premium pay status, the employee is no longer entitled to such premium pay. There is no similar language in the City's Memorandum of Agreement with the San Jose Fire Fighters.

If it is determined that the discontinuation of premium pays to employees on disability leave is subject to meet and confer, the City Manager's Office of Employee Relations will recommend to the City Council that direction be given to negotiate the discontinuance of the City's practice of paying premium pays to employees who are off work due to a disability.

CONCLUSION

The Administration would like to thank the Office of the City Auditor and staff for their efforts in assisting the City and the Fire Department in identifying methods for improving critical disability processes.



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