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**DATE: JULY 16, 2019**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - AUTHORITY FOR SETTLEMENT OF CERTAIN WORKERS' COMPENSATION CASES IN ACCORDANCE WITH LOS ANGELES ADMINISTRATIVE CODE SECTION 5.177(c)**

**SUMMARY:**

The Office of the City Attorney recommends approval of a Resolution granting authority to the Los Angeles City Attorney for settlement of certain workers' compensation cases of Harbor Department employees, in accordance with the provisions of Los Angeles Administrative Code (LAAC) Section 5.177(c). The Resolution grants the Office of the City Attorney settlement authority to settle workers' compensation litigated and non-litigated claims for which the Harbor Department may ultimately be liable, for statutorily-mandated payments as to any one person without necessity of first receiving approval of the Board. This authority is consistent with the settlement authority granted to the City Attorney in LAAC Section 5.177(c) to settle workers' compensation cases. This resolution will formally incorporate existing State law by adoption of the LAAC Section 5.177(c). Currently, the Harbor Department is paying the statutorily-mandated payments through charge-back from the City Personnel Department.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines; and
2. Adopt Resolution No. \_\_\_\_\_; and
3. Authorize the Executive Director and Board Secretary to execute and attest to the transmitted Resolution.

DATE: JULY 16, 2019

PAGE 2 OF 6

**SUBJECT: AUTHORITY FOR SETTLEMENT OF CERTAIN WORKERS' COMPENSATION CASES IN ACCORDANCE WITH LOS ANGELES ADMINISTRATIVE CODE SECTION 5.177(c)**

**DISCUSSION:**

Background - Workers' Compensation Systems.

The Workers' Compensation system is an entitlement program in every critical aspect of its administration. The System was created to remove workplace injuries from civil litigation with protracted disputes over fault, negligence, and a multitude of legal principles, and provide a no-fault, fast-track procedure for resolving disputed claims. The rules were to be simple. If a City employee is injured on the job, he or she is to be "promptly" provided benefits designed to pay their mortgage, utilities, etc., to maintain them financially while they are disabled from working. It is to provide medical care to advance their recovery so they can return to work as soon as possible, and eventually compensate them for any permanent disability that results from the injury. In exchange for this "assured protection", the injured worker no longer has the option of bringing a suit for money damages against the employer, in which they could claim money damages usually far more costly than what they are entitled to under the workers' compensation system.

There are five (5) core benefits enumerated in the workers' compensation system that are statutorily defined under State law, with entitlement to them determined through the application of statutory procedures. These benefits are (1) payments for medical treatments made directly to qualified providers; (2) temporary disability benefits; (3) permanent disability benefits, including life pensions, for disability ratings up to 99%; (4) vocational rehabilitation services; and (5) statutory death benefits after dependency is legally established. (These shall be referred to as "Statutorily Mandated Payments".) California law mandates the provisions of these benefits upon the establishment of certain facts, circumstances, events, or medical findings that are undisputed or adjudicated by the Workers' Compensation Appeals Board through formal proceedings.

When all defenses available under the labor code have been considered and employment has been established, where all disputed issues have been resolved and there isn't a basis to deny the injury or illness, the injured employee is entitled to a timely resolution of his/her claim.

Harbor Department Management of Workers' Compensation Claims.

The workers' compensation claims of the Harbor Department's employees are managed by the Risk Management Division. Since 2002, the Office of the City Attorney has provided a dedicated Deputy City Attorney to provide legal advice to the Risk Management Division as well as all Harbor Divisions on all workers' compensation claims, including management of the litigated claims. Other Deputy City Attorneys provide similar services to other proprietary and general services departments of the

**DATE: JULY 16, 2019**

**PAGE 3 OF 6**

**SUBJECT: AUTHORITY FOR SETTLEMENT OF CERTAIN WORKERS' COMPENSATION CASES IN ACCORDANCE WITH LOS ANGELES ADMINISTRATIVE CODE SECTION 5.177(c)**

City, allowing the City to manage workers' compensation claims more cost-effectively "in-house" rather than paying more expensive outside counsel.

Los Angeles Administrative Code (LAAC) Section 5.177 (c) (Transmittal 1).

On August 17, 2011, the Los Angeles City Council granted the City Attorney legal settlement authority to settle certain workers' compensation cases of City employees, by adding subsection (c) to LAAC Section 5.177, through the adoption of Ordinance No. 181856 in Council File No. 11-1284. In essence, the LAAC Section 5.177(c) authorizes the City Attorney to approve individual employees' workers' compensation settlements of Statutorily Mandated Payments without further approval by City Council.

In the Council file for the Ordinance, the City Budget and Finance Committee recommended its adoption with the following explanation in its Summary sent to Council:

"...The City Attorney reports that the Ordinance would allow the amounts of authorized settlements to be determined without including the amounts of Statutorily Mandated Payments. Statutorily Mandated Payments, once determined to be due, are essentially non-discretionary, and should therefore not be included as part of the discretionary determination in arriving at the amount of an authorized settlement. The City Attorney report and Ordinance attached to the Council file describe Statutorily Mandated Payments in more detail. Aside from amounts required to be paid as Statutorily Mandated Payments, the authority of the City Attorney to settle cases without approval by the Claims Board or the City Council would continue to be limited to \$50,000."

"The City Attorney further reports that because of recent changes in State law, Workers' Compensation Board Judges have demanded that those appearing for the parties have the authority to approve settlements of cases that include Statutorily Mandated Payments. In several recent instances, when Deputy City Attorneys have requested the time necessary to process settlements through the Claims Board or Council under current requirements, the judges have threatened to impose sanctions against the City for failure to comply with the requirement that those appearing have the necessary authority to approve settlements. This Ordinance recognizes the non-discretionary nature of Statutorily Mandated Payments and would provide the necessary authority to avoid the imposition of those sanctions."

DATE: JULY 16, 2019

PAGE 4 OF 6

SUBJECT: AUTHORITY FOR SETTLEMENT OF CERTAIN WORKERS'  
COMPENSATION CASES IN ACCORDANCE WITH LOS ANGELES  
ADMINISTRATIVE CODE SECTION 5.177(c)

Settlement Authority Required for Workers' Compensation Appeals Board Proceedings.

The Workers' Compensation Appeals Board ("WCAB") Rules of Court Administrator Section 10240 includes a general mandate that all parties shall be present and the defendant shall have a person available with settlement authority, but no longer allows governmental entities the escape clause of pre-2008 rules that "Government entities shall have a person available with settlement authority to the fullest extent allowed by law."

Assessment Of Penalties.

Section 10211 of the Rules of the Court Administrator declares that:

"the failure to comply with the rules of the court administrator shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay unless that failure results from mistake, inadvertence, surprise, or excusable neglect."

Labor Code §5813 allows a WCAB referee or judge to order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of the bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay". They may further order additional sanctions not to exceed Two Thousand Five Hundred Dollars (\$2,500) to be transmitted to the General Fund. Adoption of the Resolution will help the Harbor Department avoid delays and potential penalties.

Proposed Resolution (Transmittal 2).

In view of the nature of Statutorily Mandated Payments required under applicable law and the statutory rules, procedures, and practices for determining the extent of the benefits included in the settlement of the matters, and in consideration of the current rules regarding the requirements for settlement authority under state law, it is in the best interest of the Harbor Department that the Office of the City Attorney be authorized to approve these Statutorily Mandated Payments and non-discretionary settlements. As the Harbor Department controls its own funds and settlement payments made from the Harbor Revenue Fund, it is necessary that the Board expressly authorize the application of LAAC Section 5.177(c) to the Harbor Department's workers' compensation settlements.

The Office of the City Attorney recommends that the Board authorize settlement authority by means of (1) Stipulation and Award to authorize Statutorily Mandated Payments, and (2) LAAC Section 5.177(c) to adhere to the statutory scheme established in the California Labor Code. The Resolution also confirms the continuing

**DATE: JULY 16, 2019**

**PAGE 5 OF 6**

**SUBJECT: AUTHORITY FOR SETTLEMENT OF CERTAIN WORKERS' COMPENSATION CASES IN ACCORDANCE WITH LOS ANGELES ADMINISTRATIVE CODE SECTION 5.177(c)**

authority of the City Attorney, without the necessity of first receiving the approval of the Board, to pay, settle or compromise any monetary claim or legal action not to exceed \$50,000, pursuant to the terms and conditions of Board Resolution No. 5400, as adopted on June 15, 1994.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the approval of a resolution adhering to City of Los Angeles Ordinance No. 181856, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

The Harbor Department is financially responsible for payment of workers' compensation claims of its employees. The proposed resolution provides authorization for City Attorney settlement of certain workers' compensation claims in accordance with State law, but does not have additional financial impact on the Harbor Department. The adoption of LAAC Section 5.177(c) formalizes current practices and does not increase the financial impact.

**CITY ATTORNEY:**

The proposed Resolution has been prepared and approved as to form and legality by the Office of the City Attorney.

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DATE: JULY 16, 2019

PAGE 6 OF 6

SUBJECT: AUTHORITY FOR SETTLEMENT OF CERTAIN WORKERS'  
COMPENSATION CASES IN ACCORDANCE WITH LOS ANGELES  
ADMINISTRATIVE CODE SECTION 5.177(c)

TRANSMITTALS:

1. Ordinance No. 181856, adopting LAAC Section 5.177(c)
2. Proposed Resolution No. \_\_\_\_\_



ESTHER S. OLSEN  
Deputy City Attorney

FIS Approval: MB  
CA Approval: JMS

CONCURRED:

BY



JANNA B. SIDLEY  
General Counsel

APPROVED:



EUGENE D. SEROKA  
Executive Director

Author: ESO/lip  
Board Meeting: 07/25/2019