



**TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE REPORT**

MEETING DATE: 10/26/2021

ITEM NO: 4

DATE: October 22, 2021
TO: Council Policy Committee
FROM: Robert Schultz, Town Attorney
SUBJECT: Review and Discuss Policy Regarding the Authority of the Town Manager to Resolve Workers' Compensation Claims on Behalf of the Town of Los Gatos.

RECOMMENDATION:

Request that the Policy Committee discuss and provide direction regarding the authority of the Town Manager to allow, disallow, compromise, or settle Workers' Compensation Claims on behalf of the Town of Los Gatos.

BACKGROUND:

Workers' compensation claims are delicate matters that involve investigation and verification by our Third-Party Administrator (TPA). For all intents and purposes, a workers' compensation claim is a last resort after all other remedies have been explored. It is rare, and not recommended, that the Town Council would take any action that differs from the findings of the TPA in relation to workers compensation claims. While staff will always inform members of the Town Council about the appropriate elements of a workers' compensation claim, many of the details are confidential and protected information. For that purpose, staff is recommending that the Town Council adopt a Policy delegating authority to the Town Manager to settle disputed workers compensation claims by "Compromise & Release" (C&R) up to \$50,000 and to settle undisputed workers' Compensation Claims by "Stipulation with Request for Award" up to the Town's current self-insured retention (SIR).

DISCUSSION:

Workers' compensation claims can be resolved in three ways, all of which are legally binding. Two of the three forms of resolution leave the employer with little discretion regarding the

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Reviewed by: Town Manager, Assistant Town Manager, and Finance Director

DISCUSSION (continued):

payment amounts. A brief description of each of the three methods and the settlement process is included below.

Stipulation with Request for Award

A "Stipulation with Request for Award" (Stip) means that both parties agree there is no dispute as to the level of permanent disability (PD), which is determined by State law and is not negotiable. The Stipulations must be approved by a Workers' Compensation Appeals Board (WCAB) judge and payment by the employer is mandatory. Bi-weekly payments are made to the employee until the award has been completely paid out. The employer continues to pay for all future medical treatment related to the injury, even after the total amount of the PD award has been paid out so the claim can't be deemed closed. The employee can reopen the claim for "new and further" disability and receive additional temporary and permanent disability, as well as medical treatment and other benefits. Should the employee later die of the injuries, there is exposure to the employer for payment of death benefits. Although there is some discretion when resolving claims by Stipulations with Request for Award, it is generally limited to agreeing to a mid-point between two medical reports that have been rated differently.

Compromise and Release

A "Compromise and Release" (C&R) is often used to settle disputed claims and to buy out future medical and indemnity exposure when advantageous to the Town. Disputes can exist on issues of compensability, the level of permanent disability, apportionment to prior injury or other employment, periods of temporary disability as well as medical treatment. Although a C&R is the only form of settlement in the workers' compensation venue in which the employer has some discretion regarding payment amounts, the amount of PD due to the worker is always determined by State law and is not a negotiable item. A C&R buys out all future liability, including medical and indemnity exposure. Such a settlement closes out any "new and further" claims related to the injury. Unlike a resolution by Stipulations with Request for Award, in a C&R settlement the payment to the employee is made in one lump sum, rather than bi-weekly payments. The employer can close out its file and reserves, save on the cost of administering the claim, avoid additional medical payments, death benefits, and "new and further" claims.

Findings and Award

A "Findings and Award" (F&A) is a judgment issued by the Workers' Compensation Appeals Board (WCAB) Judge if the parties can't settle. Payment by the employer is mandatory and occurs until the award has been paid out. Discretion is limited to filing an appeal called a "Petition for Reconsideration" when one party disagrees with the F&A. The employee can reopen the claim for "new and further" disability, making him/her eligible for additional

temporary and permanent disability payments, as well as other statutorily required benefits. The employer continues to pay for all future medical treatment related to the injury, even after the total amount of the permanent disability award has been paid out so these claims can't be closed until the employee dies or the parties enter into a Compromise and Release. Should the employee later die of his/her injuries, the employee's dependents may also be eligible for death benefits.

Settlement Process

Claims can only be settled after an impacted employee has reached maximum medical improvement. At that time, the employee's level of permanent disability (PD) is established by a doctor within the workers' compensation system. The level of PD, which is the amount of money due to the impacted employee for the permanent disability, is determined by a process known as rating. Rating is done by the State's Disability Evaluation Unit (DEU). The rates for permanent disability are determined by State law. Unlike a settlement in a personal injury claim or other lawsuit, PD amounts are not negotiable.

Unlike liability claims, the Labor Code and the State Division of Workers' Compensation have established the requirements for acceptance of claims as well as the provision of required benefits so that employers (e.g., the Town) cannot deny claims or fail to provide benefits for claims that meet the established criteria. Should the Town refuse to settle demands that are reasonable, sanctions could be assessed against the Town by the WCAB. In addition, timelines for the issuance of payments are strictly enforced and failure to meet the timelines results in financial penalties.

Under the Workers' Compensation Act, the standard in the industry is to attempt settlement, rather than trying claims before the WCAB. Section 3202 of the Labor Code states that the Act's provisions "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." This means that courts are required to interpret workers' compensation laws with the objective of securing the maximum benefit for the injured worker which he or she can lawfully be awarded. As a result, WCAB judges rarely make findings that favor employers over employees. Expeditious settling of claims reduces the expense of litigation, investigation and medical reporting; and it eliminates the risk of sanction (monetary penalties) by a WCAB judge.

The Town contracts with LWP Claims Solution to administer (Third Party Administrators) all the Workers' Compensation Claims on behalf of the Town. Workers' Compensation Claim handling can get very complex, which is why the Town relies on subject matter experts to manage the claims process on behalf of the Town. The TPA's adjuster promotes efficiency and streamlines costs.

As a matter of practice, the Town Manager resolves workers' compensation claims by "Stipulation with Request for Award" (Stipulation), up to the Town's current self-insured retention (SIR), when the Stipulation is for mandatory permanent disability amounts that are undisputed, determined by State law and are not negotiable.

In contrast, as a matter of practice, the Town Manager resolves workers' compensation claims up to \$50,000 by compromise and release that are not mandated by the WCAB.

CONCLUSION:

Staff proposes formalizing this established practice by authorizing the Town Manager to enter into compromise and release settlement agreements up to \$50,000, in addition to that awarded by the WCAB for workers' compensation claims by "Stipulation with Request for Award" (Stipulation), up to the Town's current self-insured retention amount. If the Committee agrees, staff will prepare a Council Policy to document this authority and return to the Committee for recommendation to the Town Council.

COORDINATION:

This report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

There is not a fiscal impact associated with the policy.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.