

AGENDA ITEM NO. 1 J

COUNCIL MEETING 10/28/10

APPROVED BY


DEPARTMENT DIRECTOR

CITY MANAGER

October 28, 2010

FROM: TERRY BOND, Director
Personnel Services Department

BY: DAN TURNER, Risk Manager
Risk Management, Personnel

SUBJECT: INTRODUCTION OF ORDINANCE AMENDING SECTION 3-118 OF THE FRESNO MUNICIPAL CODE, RELATING TO PAID LEAVES OF ABSENCE WHILE DISABLED DUE TO AN INDUSTRIAL INJURY - PUBLIC SAFETY

RECOMMENDATION

It is recommended that Council accept the attached Ordinance for Introduction, and subsequent adoption at the Council's next regularly-scheduled meeting.

EXECUTIVE SUMMARY

Effective January 1, 2010, A.B. 1227 which removed the City of Fresno's previous exemption to the provisions of Labor Code Section 4850, went into effect. The impact of this legislation is that the City will now have to pay sworn police and fire personnel their full salary while disabled due to an industrial injury for a period of up to one year unless the individual is returned to duty or retired for service or disability. Previous to the passage of this legislation, this benefit was negotiated between the City and the various bargaining units with the prior compensation level of 85% of full salary for up to one year for both the Police and Fire units.

BACKGROUND

For many years, State Labor Code Section 4850 provided that certain public safety members (namely, sworn police and fire employees) who were members of CalPERS, the Los Angeles City Employees' Retirement System, or '37 Act County Retirement Systems were entitled to receive, in lieu of temporary disability benefits, a leave of absence without loss of salary for up to one year following a job-related injury. Since the City of Fresno was not a member of any of these systems, it did not fall under these requirements.

This new legislation removes this exemption. The one year of full salary will continue for these employees unless the individual returns to work or is retired on a disability or service pension. Employees in these classifications who are unable to work due to an injury prior to January 1, 2010, will continue to receive 85% of their full salary as previously negotiated through their respective Memorandum of Understanding.

To implement this change in the statute, a modification to Fresno Municipal Code Section 3-118 is required in order to recognize the City's obligation to pay compensation based upon Labor Code Section 4850 for these groups.

Staff has met with the affected bargaining units and advised them of this modification.

The Finance Department has also been consulted and has implemented the necessary payroll changes in order to put this new legislation into effect.

FISCAL IMPACT

Fire, Police and Airports Departments will be financially impacted by the additional cost of salaries to industrially-injured employees. The following table prepared by the Finance Department outlines the difference between each of the effected bargaining units for the last three calendar years and the current expenditures.

Actual and Projected Injury Pay (2007-2009)

Group	2007 Actual paid injury pay per MOU	2007 Projected paid under LC 4850	Additional cost if 4850 applied to these years
Police	1,029,703.30	1,201,683.14	
Fire	400,338.79	466,195.04	
Police Management	34,761.03	40,895.33	
Fire Management	8,583.30	10,098.00	
	1,473,386.42	1,718,871.51	245,485.09
Group	2008 Actual paid injury pay per MOU	2008 Projected paid under LC 4850	
Police	882,901.94	1,032,811.38	
Fire	512,860.21	598,877.38	
	1,395,762.15	1,631,688.76	235,926.61
Group	2009 Actual paid injury pay per MOU	2009 Projected paid under LC 4850	
Police	1,121,867.78	1,311,278.71	
Fire	433,161.21	504,146.67	
Police Management	3,208.41	3,774.60	
Fire Management	45,900.76	53,854.20	
	1,604,138.16	1,873,054.18	268,916.02

The City was mandated to pay benefits under LC 4850 to those eligible groups for injuries occurring on or after January 1, 2010. For injuries occurring prior to this date, the earlier rate of 85% compensation is applicable as provided by their respective Memorandum of Understanding. Since there is an overlap of these two different benefit amounts being paid in 2010, depending on the date of injury, the following amounts represent actual costs this year through approximately the middle of October.

Actual Paid in 2010

Group	Actual paid on Claims Incurred Prior to January 1, 2010, but paid after January 1, 2010.	Actual paid on Claims Incurred after January 1, 2010 and paid at LC 4850 level	
Police	558,435.48	245,545.08	
Fire	276,847.31	141,928.66	
Police Management	19,682.08	17,482.85	
Fire Management	42,012.60	0	
	896,977.47	404,956.59	1,301,934.06

Amounts paid at the "older" MOU rate of 85% will decrease with time as these claims are settled and closed while amounts paid at the LC 4850 rate will increase as newer claims are incurred.

The Ordinance before Council was never intended to represent Council's approval or endorsement of the actions taken by the State legislature which does create a significant financial impact on many municipalities. Rather, this Ordinance was intended to bring the City into compliance with this legal change and to recognize that those individuals who are covered by LC 4850 do not have any additional benefits provided by the Fresno Municipal Code 3-118.

DGT/lmh
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Attachment: Amendment Proposal of Fresno Municipal Code, Section 3-118

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
AMENDING SUBSECTION/SECTION (c) 3-118; OF THE
FRESNO MUNICIPAL CODE, RELATING TO SALARIES WHILE
ABSENT DUE TO INJURY IN THE LINE OF DUTY.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3-118 of the Fresno Municipal Code is amended to read as follows:

SEC.3-118 SALARIES WHILE ABSENT DUE TO INJURY IN LINE OF
DUTY.

(a) Every employee having permanent or probationary status in the classified service, and every employee serving in a permanent position in the unclassified service, who suffers an injury in the course and scope of city employment, shall receive a percentage of full wages or salary from the city, during the period of absence from duty on account of such injury and until employment with the city is terminated or the individual is retired for disability or service under Articles 3 or 5 of this chapter; provided, that such employee shall pay over to the city an amount equal to such payments as shall be received from the city or its agent for temporary disability for the period of absence from duty; and provided further, that the wage and salary payments authorized by this section shall not be paid for absences on account of any one injury which exceed in the aggregate a period of one year. The term "full wages or salary" as used in this subsection, means wages or salary calculated:

(1) at the rate of pay, exclusive of any addition for overtime or holiday work, at which the employee was being compensated

immediately prior to the commencement of any absence from duty on account of the injury for which payments are authorized by this subsection or,

(2) if immediately prior to the commencement of any such absence the employee was serving under provisional appointment pursuant to Section 3-258 or under temporary assignment pursuant to Section 3-260, at the rate of pay the employee had been receiving immediately prior to such appointment or assignment; provided , that the employee shall receive normal step increases and salary adjustments during any absence pursuant to this section.

(b) When an employee's injury is incurred as a result of his failure to properly utilize safety equipment supplied by the city, such employee shall not be entitled to the benefits of this section during the first thirty days of absence from duty on account of such injury; provided, however, that this section shall not apply if the Chief Administrative Officer finds that the employee was performing, at the time of the accident, an emergency duty of such urgency that he could not reasonably have been expected to properly utilize the safety equipment in the proper performance of such duty.

(c) The percentage of full wages or salary from the city set forth in subsection (a) for designated positions, classes of positions, or employee groups shall be established by the Council, in a salary resolution, approved memorandum of understanding, or other action establishing rates of pay for city employees. Employees whose salary compensation while industrially disabled is determined by Labor Code Section 4850 are excluded and not eligible to receive

SECTION 2. This ordinance shall become effective and in full force and effect upon its final passage.

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the _____ day of _____, 2010.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2010

Mayor Approval/No Return: _____, 2010

Mayor Veto: _____, 2010

Council Override Vote: _____, 2010

REBECCA E. KLISCH
City Clerk

By _____
Deputy

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

By *Domènec A. Aguilera*
Deputy City Attorney