



OFFICES OF THE COUNTY EXECUTIVE

MEMORANDUM

Douglas M. Duncan
County Executive

Bruce Romer
Chief Administrative Officer

July 21, 2006

TO: Thomas J. Dagley
Inspector General

FROM: Bruce Romer
Chief Administrative Officer

SUBJECT: Draft Audit Report - Workers' Compensation Program

I have reviewed your draft audit report dated July 2006. I have provided responses to your findings and recommendations in the same order as presented in your draft report.

Finding 1 – Full Reporting of Compensation to Injured Workers

We recommend the Directors, Department of Finance and Office of Management and Budget, in consultation with the Chief Administrative Officer, quantify the amount of compensation above the State-mandated level provided to County government employees for work-related accidents and illnesses, and include this compensation in reports used to analyze costs, present budget recommendations, and report program performance results. In this regard, supplemental payments could be reported as a separate line item rather than combining them with State-mandated workers' compensation costs.

In addition, we recommend the Division of Risk Management request similar compensation data from the other County-funded SIP members and include that data in the annual Risk Management report to the County Council

Response

Disability pay is a benefit negotiated between the County and the bargaining units. Many public and private sector employers pay the supplemental salary amount directly or allow employees to utilize available sick leave or annual leave to make up the difference between workers' compensation and full salary.

The supplemental portion of salary is not a true workers' compensation cost, and therefore should not be included in the Risk Management budget. As recommended, the information will be requested from SIF participating agencies and will be included in the annual Risk Management report to County Council.



Thomas J. Dagley
July 21, 2006
Page Two

Finding 2 – Accuracy of Injured Workers' Payments

We recommend that the Division of Risk Management Division utilize a 13-week period for calculation of the average weekly wage to comply with WCC requirements and accurate payments to injured workers. Alternatively, we recommend the Division of Risk Management Pursue with the WCC the authority to use a 14-week average for payment calculations.

In addition, we recommend the Division of Risk Management implement appropriate quality control processes, including periodic sampling of TPA calculations, in order to assure injured workers receive proper compensation.

Response

It has been the County's experience (and a Commission rule) that the Commission will award compensation based on the wage information that the County files – whether 13 weeks or 14. In all of the years that the County has been self-insured for workers' compensation coverage (over 27 years) we cannot recall a single instance of a dispute arising because of an inaccurate determination of average weekly wages as indicated on the wage statement filed with the Commission by the County's claims service.

However, as recommended, the County has changed its procedures with respect to the calculation of average weekly wages to the 13 week criteria. Doing so has resulted in a significant administrative burden on payroll staff, since they now have to hand cull payroll records for each injured worker, and calculate the hours worked in the 13th week of the mandatory period used in the wage statement.

We have notified all of the participating agencies with regard to the 13 week requirement. However, as we discussed in a recent meeting, it is our intention to petition the Maryland Workers' Compensation Commission to allow the Self-Insurance Fund agencies to provide a 14 week wage statement for our employees who are disabled from work as a result of a workers' compensation claim. On June 6, 2006, Associate County Attorney Wendy Karpel wrote to Chairman Aumann (copy attached) asking to meet to discuss this issue. We are also considering the possibility of legislative changes to address this issue.

Finding 3 – Individual Budget Accountability for Costs

We recommend that the Director, Office of Management and Budget, in consultation with the Director, Department of Finance and the Chief Administrative Officer, eliminate the Non-Departmental Account for Risk Management costs and assign these expenses to the budgets of County department/office directors to enhance management accountability for accident and illness preventive initiatives.

Response

Consideration will be given to include risk management charges in the operating budgets of General Fund departments during the FY08 budget process.

Finding 4 – Measurable Safety Objectives for Supervisors

We recommend the Division of Risk Management, in consultation with the Director, Department of Finance and the Chief Administrative Officer, reinforce Executive Order 35-95 by assuring all supervisory employees in County government have, as required, a measurable performance objective related to occupational safety and health as part of the Annual Performance Evaluation. One method of assuring the presence of measurable performance objectives is to add this item to the Self-Inspection Checklist submitted annually by departments to the Division.

Response

As recommended, Division of Risk Management, Safety Section will incorporate this requirement into its Self-Inspection Checklist and will work with departments to ensure that specific performance measures are included in supervisory performance plans.

Finding 5 – Employee Return-to-Work Programs

We recommend the Chief Administrative Officer, in consultation with the County Council, formally request MCPS to implement a return-to-work or light duty program to help accommodate employees with medical restrictions and reduce County-funded SIF expenditures for workers' compensation and supplemental leave payments.

Response

Risk Management has reported to County Council on several occasions concerning the lack of a formal return-to-work program in MCPS. Council has asked MCPS to provide information on this topic. A copy of your discussion note was sent to the Risk Management contact at MCPS with a request for a response.

Finding 6 – Fraud Prevention and Detection

We recommend that the Division of Risk Management, in consultation with the Director, Department of Finance and the Chief Administrative Officer, work with the Third Party Administrator to ensure that a discussion with the immediate supervisor of the injured workers is completed and documented in the claim file to ensure claims are properly evaluated for potential fraud. We also recommend that the Division consult with the Inspector General to place additional specific indicators on the checklist to strengthen the County's anti-fraud procedures.

Thomas J. Dagley
July 21, 2006
Page Four

Response

Risk Management will implement audit procedures to ensure that the Third Party Administrator is complying with the requirement for supervisor contact to ascertain information relative to potential fraud on workers' compensation claims. Risk Management will collaborate with the Office of the Inspector General on methods to strengthen anti-fraud procedures.

cc/enc: Timothy L. Firestine, Finance Director
Beverly Swaim-Staley, Director, Office of Management and Budget
Terry Fleming, Risk Management



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

June 6, 2006

Chairman R. Karl Aumann
Workers' Compensation Commission
10 East Baltimore Street
Baltimore, Maryland 21202-1641

RE: Calculation of Average Weekly Wage

Dear Chairman Aumann:

According to COMAR Regulation 14.09.01.07, the average weekly wage (AWW) of any claimant is calculated by utilizing the wages earned in the thirteen weeks before the accidental injury/disablement. As municipal employees are paid on a bi-weekly basis, using a fourteen week time period rather than a thirteen week time period for calculating the AWW is not only more accurate but also much more pragmatic from the standpoint of my client.

My client is the Montgomery County Self-Insurance Fund. The Fund includes but is not limited to Montgomery County Maryland, the Board of Education of Montgomery County, the Maryland National Park and Planning Commission, the Montgomery County Revenue Authority, the Montgomery County Community College and various cities (e.g. City of Rockville, Takoma Park, Gaithersburg, etc.) Based on how standard payroll records are kept in the ordinary course of business for these entities, the fourteen week wage calculation would enhance the ease of management of our workers' compensation system.

The Risk Manager of the Montgomery County Self-Insurance Fund, Terry Fleming, and I would greatly appreciate the opportunity to meet with you on this topic either in person or by telephone conference. Please contact me at your earliest convenience to advise as to whether this is a topic you would like to pursue.

Very truly yours,

Wendy B. Karpel
Associate County Attorney

Cc: D. Terry, Fleming, Director, Division of Risk Management