

# CCSF WORKERS' COMPENSATION COUNCIL MINUTES

Monday, December 7, 2020 at 9:00 a.m.

Online Meeting Link: <https://bit.ly/3mFpJwD>

Phone Audio for Interested Parties: 1-415-655-0001

Meeting ID/Access Code: 146 200 6416

Password: 2G3Vfpr3aPP

## CALL TO ORDER

9:07 AM

## ROLL CALL

Carol Isen, Acting Human Resources Director	Present
Ashley Groffenberger, Budget Director	Absent
Naomi Kelly, City Administrator (Represented by Peter Goldstein)	Present
Caryn Bortnick, Deputy Executive Director, San Francisco Employee Retirement System	Present
Todd Rydstrom, Deputy Controller, Controller's Office	Present
Lorenzo Donati, Deputy City Attorney	Present

## **PUBLIC REQUESTS TO SPEAK ON ANY MATTER WITHIN THE JURISDICTION OF THE WORKERS' COMPENSATION COUNCIL APPEARING ON THE AGENDA (Item No. 1)**

Speaker: Carol Isen

Public Comment: None.

## **APPROVAL WITH POSSIBLE MODIFICATION OF MINUTES (Item No. 2)**

**Action:** Minutes approved for the meeting on September 14, 2020.

## **REPORT FROM THE WORKERS' COMPENSATION DIVISION**

Discussion Items: **(Item No. 3)**

**Speaker: Dr. Peggy Sugarman, Deputy Director, Workers' Compensation Division**

**Reported on Accomplishments, Initiatives and Challenges, Covid-19, Performance Quick Facts, Claim Analytics and Financials.**

Dr. Sugarman began by discussing the Accomplishments, Initiatives and Challenges for the Workers' Compensation Department.

In September, the Governor signed Senate Bill 1159 which is the rebuttable presumption for COVID-19 positive cases. This means certain classifications of employees exposed to COVID-19 are presumed to have been exposed in the workplace. To comply with this legislation, we developed new policies and procedures, trained our staff, and began use of the ServiceNow COVID-19 employee tracking and reporting tool.

Our technology accomplishments this quarter include deployment of an enhanced Medicare reporting module to meet federal government requirements. Another achievement was renewal of our Third-Party Administrator contract with San Francisco Municipal Transportation Agency and Intercare Insurance Services, through 2022. Hats off to SFMTA for this accomplishment.

As our current contract with EK Health expires in September, we need ample time to make any system integration changes should we go with a different vendor. Therefore, we have published a request for proposal (RFP) for managed care services, including bill review, medical utilization services, and independent physician review services for the department.

We completed all year-end activities with the Controller's office, including audit engagements with MGO and KPMG, and, with Towers Watson to complete our actuarial reports.

Further, thank you to Stanley Ellicott and the finance team who prepared and filed the newly-required public reports to the State Office of Self Insurance Plans.

Our expanded nurse triage line has been an essential resource during this COVID-19 crisis. We have addressed 386 calls between July and November 2020. Our Nurse Manager, Nonie Devens, ensures that shared advice is consistent with that of the Department of Public Health.

As part of a previous fraud investigation, Dr. Sugarman shared that on December 4<sup>th</sup>, 2020, a former employee from the Community College District pled guilty to felony Workers' Compensation fraud and as a result, reimbursed \$80,000 to the City. This represents most of the cost of the claim and will be applied to the Community College District account. Congratulations to the adjuster, claim supervisor, the district attorney's office, and the city attorney's office for this successful outcome.

Workers' Compensation initiatives going forward include actuarial studies by Towers Watson on potential cost savings from our first year of the Alternative Dispute Resolution Program. This Carve-Out program serves the San Francisco Police Officers' Association and the San Francisco Fire Fighters' Association. This will be our first look to see what we may have saved during the inaugural year of the program.

Our banking services contract is under development with the Treasurer and Tax Collector. Additionally, we are currently in Phase III of our banking and modernization plan which is an initiative focusing on paying recipients electronically instead of mailing checks. Phase III focuses on the payment to medical providers, whereas phase II activated automated deposit for Workers' Compensation injured employee benefits, and payments to non-medical vendors.

Currently, we are seeking request for qualifications (RFQ) for special investigation services, which will be published in the second quarter of FY21.

During the pandemic shut down, we launched a telemedicine project to make sure medical providers would continue to offer remote services, via telehealth, for all employees seeking care. We surveyed our medical network physicians so we can direct our injured workers to care. Additionally, the division continues to recruit and educate physicians in our Medical Provider Network (MPN) regarding the changes in the Telehealth guidelines.

We have enhanced the iVOS claims system to comply with 2020 injury laws required by Cal/OSHA for COVID-19 and are working on a major upgrade to the system, which will provide greater functionality.

Lastly, we have contributed to the development of HR policy guidance including workflows for clinical and safety support regarding COVID-19.

Current challenges in the Workers' Compensation Division include AB685 Cal/OSHA COVID legislation, effective 1/1/2021, which requires reporting of COVID-19 positive individuals and notification to their close contacts within one business day of knowledge. Cal/OSHA also announced emergency regulations effective 11/30/2020 which moved required reporting to within one business day. Included in the Cal/OSHA emergency regulations for all California employers are requirements to have COVID-19 prevention programs in writing. This requires that every department who is not subject to the aerosol transmissible disease standard have either incorporate COVID-19 safety into their Injury & Illness Prevention Plan or maintain a standalone plan. We plan to distribute the guidelines to each department within two weeks. The city is prepared and positioned to comply with these regulations, including masking, health screening policies, workplace close contact prevention, and providing follow up tools for all departments.

Our main cost related challenge this year is the expected rate increase for the State Medical Legal Fee Schedule. Dr. Sugarman resides on a subcommittee with other employers to discuss these regulations which include an overdue price adjustment this year. She believes that these new regulations will significantly raise medical legal costs once they are adopted in April 2021. She also believes there will be public inquiry and concern over these anticipated cost increases once implemented.

Dr. Sugarman then introduced Dr. Fiona Wilson to review COVID-19 issues. Dr. Wilson continues to serve as the supervising physician responding to departments who have clinical issues, return to work questions, and quarantine inquiries. She also provides individual outreach to COVID-19 positive individuals, and reviews city department reopening plans. She further serves as liaison to the Department of Public Health for the pandemic.

Dr. Wilson began by presenting the data which has been accumulated through the ServiceNow Reporting Tool. This tool allows us to both study and reduce exposure and close contact in the workplace. The ServiceNow Reporting Tool shows 538 employee positive reports, of which 166 or 28.9% were delivered from CityTestSF.

As of December 1<sup>st</sup>, 2020, Workers' Compensation received 257 claims for COVID-19. About half, or 128 claims, were denied due to negative test results, or because the exposure was found not to be occupational in nature. These employees contracted COVID-19 away from work, and usually from a family member. These negative COVID-19 claims, on average, cost \$470.00 each.

The most common employee job classifications with COVID-19 positive reports were registered nurses, transit operators, police officers, patient care assistants, and firefighters. The average claim cost for the 128 positive COVID-19 claims was \$6,473.00. This was primarily attributed to 4850 Salary Continuation benefits, which equate to 70% of total incurred cost. Of the positive claims, there were only a few medically complex claims. Only nine positive claims have incurred medical expenses over \$2,000.00. In general, the average cost for all claim types combined is \$386.00. There have been no COVID-19 related deaths among active employees.

Dr. Wilson continued her presentation with Slide 13. This slide shows the COVID-19 positive reports with close contact, versus the average close contacts per positive case. Close contact is defined as closer than six feet for more than fifteen minutes. Approximately 30% employees have been in close contact with a positive employee. Dr. Wilson prefers we reduce this number by practicing good prevention strategies such as hand washing, mask wearing, and social distancing. She advised the current recommendation to quarantine is 14 days which may get reduced soon.

Dr. Wilson discussed on Slide 15 the distribution of employee cases by employer department. Over the course of the pandemic, the areas that have the most claims are those with employees who are public-facing. This includes the Department of Public Health, SFMTA, Police, and Fire. Dr. Wilson noted that CCSF has a lower number of positive cases in comparison to sister cities.

The Department of Human Resources is beginning to explore cases by race and ethnicity to understand if there is predilection to communities or job class. The graph indicates that African American and Latinx have more self-reported cases than in the general community. We are trying to keep a lens on this graphic to understand and explore if there is a workplace or home-generated issue presented here.

Dr. Sugarman continued with discussion of Slide 18 which presents a snapshot of basic performance metrics based on a benchmark of the last four years compared to the first quarter of this year. The ratio of actual spending to the budget, was 96.2%. Normally this time of year we are at about 95% so we are slightly higher. Our claim volume, which is the number of new claims in each period, counted 534 indemnity claims versus our benchmark of 405. The indemnity claims reflect our claims which are higher level, that is, more complex claims because they often include lost time or paid time lost from work and time used to determine compensability. Those who received treatment, but did not miss out on time from work, are classified as medical claims. Our current count for medical claims is 184, which is down from a benchmark of 266. In summary, simpler medical claims are down, and more time-consuming indemnity claims are up.

The average number days open of claims closed in the period was 181, down from the benchmark average of 235. This may be related to the number of COVID-19 claims which were not found to be positive; and could therefore be closed more quickly.

Julian Robinson was introduced to discuss claim data in more detail. The claim filing frequency is measured as a rolling average comparing the past four years against the current quarter. The pandemic has affected filing frequency as we are overall up slightly, primarily in the higher cost category of indemnity. Most positive COVID-19 claims are higher cost indemnity claims because they include paid time lost from work and time used

to determine compensability. These total citywide indemnity claims increased by 32%. This increase was supplemented by a decrease in medical only claims by 31% overall.

The rate of all claims incurred citywide has fluctuated between 11 or 12 per 100 full time employees (FTE) for any recent given fiscal year. We had dropped to a long-term goal of 10 claims incurred per 100 at the end of fiscal year 2020, however, now due to COVID-19, filing for Q1 returned to 12 claims per 100 full time employees.

Next we see the same data on a line graph of claims incurred per 100 FTE. The data shows the top ten departments and a general citywide number of Workers' Compensation claims filed. Police and Fire, Office of the Sheriff, Recreation and Parks, and Public Health are all departments above city-wide average. Those rounding out the top ten but who fall under the citywide average of claims incurred are Public Works, Human Services, Airport, PUC-Water, and Water Pollution Control.

Julian Robinson continued with Slide 23 which reports Top Ten Claim Cause Distribution by Frequency. This graph shows the claim causes for the city with the top five departments separated to show where there are more filed claims. The top cause group is Exposure, such as hazardous materials, wildfire smoke, cancer causing chemicals, exposure of blood borne pathogens, and now includes exposure to COVID-19. Therefore, you will see Police, Fire, and Public Health with the higher number of claim causes due to their nature as more public facing, and/or their proximity to hazardous particles. The second highest cause group is bodily motion in terms of moving, twisting, stepping in or out of vehicles, or lifting patients. The third highest category is cumulative trauma, such as claims due to repetitive motion for an extended period. Another common claim cause is physical assault which means attack by a suspect or a member of the public. Falls, slips or trips is the category which rounds out the top five reasons which garner the most Workers' Compensation claims. Appendix 1 shows further detail regarding how these large groupings of claims causes were achieved.

The next slide shows open claim stratification for claims which are projected to incur costs of \$100,000 or more. The graph is color coded to show the top five departments, and then all other departments. The following slide provided the same open claim stratification information in a pie chart format. Data demonstrates that 33% of Workers' Compensation claims are from those within the police department and 18% are those claims from within the fire department. These first responders, such as police and fire, receive presumptions that result in typically higher claim costs and are due to cancer, heart trouble, and now, COVID-19.

Julian Robinson then continued with Litigation Statistics. Currently, about 40% of open claims are represented by counsel, whereas 30% of claims are litigated. Represented claims are those who are managed by an attorney but may or may not have filed an application with the Workers' Compensation Appeals Board (WCAB.) Our litigated claim percentage is down this quarter over the same period in prior fiscal years, which is great news.

Slide 27 shows average cost when comparing closed litigated claims to those claims that were closed but non-litigated. The average cost of a non-litigated claim is \$5600.00. Yet, the average cost of a litigated claim is \$107,000.00. Multiple reasons for increased cost on litigated claims involve claims which tend to be open longer, may have multiple body parts included, utilize more discovery time, may contain hearings, and may consist of possible permanent disability and need for future treatments and/or medication.

Julian Robinson continued Alternative Dispute Resolution (ADR) litigation statistics. The ADR program strives to reduce the litigation rate and consequently, save on claim costs. Looking at statistics, the police department has had about 45% in represented claims and 31% volume of litigated claims. Whereas, the ADR program has only

31% represented police department claims, including a noticeable drop to 16% litigated claims. This includes those with prior claims who opt into the program.

Julian Robinson next introduced Stanley Ellicott, the Finance and Technology Manager to present information on the division's financial status for the first quarter of Fiscal Year 2021.

Stanley Ellicott observed that the three years of department financial trends allow early observations for year-end projections. For Q1, there was a surplus of \$5,472,558, or, \$5.4 million dollars, in a budget of \$77,303,395. This surplus is partially due to expenditure declines from the police department, while the fire department is showing a deficit this quarter.

The next slide shows where the average workers' compensation dollar is being spent by category. Included are Fiscal Year 2019 actuals and Fiscal Year 2020 actuals. This year, we are seeing an initial increase in indemnity expenditures. Principally, with temporary disability we recorded \$2.9 million in expenditures for Q1. This positions us to have a year over year increase of about 18%. The increase is due to a larger number of claims which include lost time. Temporary disability increased about 6.7% and increased in cost about \$1000.00 per claim.

With regards to permanent disability, we recorded some large settlements in Q1. These settlements derived mainly from the fire and police departments. Mr. Ellicott anticipates that through the course of the fiscal year, a year-over-year change will decline significantly and be on par with previous years.

Overall, indemnity is projected at about an 11.9% increase for the year. We will keep track of this closely. Mr. Ellicott believes there is an interactive relationship with this number and COVID-19 driving the increase in temporary disability Workers' Compensation claims.

We have a projected 6.7% decline of medical care expenditures through the course of quarter one. This is primarily due to fewer claimants receiving treatment during the pandemic. The average per claim medical cost is consistent with previous periods at just over \$2,000.00 for the quarter. Overall, we have projected 2.4% benefits expenditure for the fiscal year.

Dr. Sugarman thanked Stanley Ellicott, Julian Robinson, and Dr. Fiona Wilson for their great presentations. She shared to the committee that this was a longer report due to the addition of COVID-19 data and invited the council to ask questions regarding this any information.

Carol Isen complimented the Workers' Compensation team for the thorough presentation as this is her first Workers' Compensation Council meeting. She added that Dr. Sugarman and team have set a high bar for excellence.

Ms. Isen then congratulated Dr. Sugarman and the Workers' Compensation team for their role in the fraud investigation mentioned at the beginning of the presentation. Ms. Isen shared that her general philosophy is that the role of the Workers' Compensation Division is to offer a robust system which prevents injury to and compensation for injured workers. She continued that fraud has no place here, and these fraud efforts send a message that the City does not tolerate fraud.

Ms. Isen remarked she is a firm believer in injury prevention and requests more information in future meetings regarding the initiatives of the Health and Safety group led by Dr. Sugarman. Further, Ms. Isen

strongly believes in resolving incidents at the lowest possible cost per claim. The presentation shows significantly reduced cost per claim regarding both police and fire using the ADR program. However, the sheriffs' department does not currently use the ADR program. She would like to further discuss this as an opportunity for savings.

Ms. Isen next requested comments from the committee regarding the report from the Workers' Compensation Division.

**Council Comment:**

Todd Rydstrom with the Controller's office complimented Dr. Sugarman and the division for doing great work, particularly in the area of COVID-19 response. He then asked if Workers' Compensation is tracking the hours which remote workers isolate due to exposure while continuing to work? Are we also then tracking hours where an isolated employee cannot work?

Peggy responded that employees take paid administrative leave for various reasons, so we are unable to track which employees are working remotely while quarantined versus those who are not quarantined. Stanley Ellicott confirmed that the slide numbers generically represent 14 days of quarantine per CDC guidelines.

Mr. Rydstrom next commented on the good news regarding the savings from the ADR program. He asked Stanley Ellicott if these savings are accruing to the general fund, or being set aside and will they be presented as cost sharing in future council meetings?

Mr. Ellicott responded that the reported Alternative Dispute Resolution results are listed for this quarter only. While we currently do not know in full what the actuarial report will tell us, we anticipate preliminary actuarial drafts from Towers Watson in mid-January. We were fortunate to have the ability to carry forward substantial balances of 2020 for police and fire, enough to cover any cost saving distribution payments that are determined by those actuary reports. We expect to have actuary numbers to share for the next Workers' Compensation Council Meeting.

Todd thanked Dr. Sugarman and Mr. Ellicott and offered assistance from his office should the need arise for the contingency accounting related to the ADR program. He continued that regarding COVID-19 tracking, should there be upcoming unanswered questions on how insurance may treat COVID-19 as a preexisting conditions, let his office know how they can help.

Next, Peter Goldstein commented the city is doing a good job educating city workers regarding PPE. He asked how we compare against other Bay Area counties.

Dr. Sugarman responded that she has not checked against other counties yet. However, anecdotally, we have looked at other employers and found that our employee population (with COVID-19) has been less than 1%. As we can tell, we rock at this, due early adoption of health screening and a high degree of masking compliance, which are now required by Cal/OSHA. We are doing quite well against the measures. In the next few weeks, we will have a data feed from the California Workers' Compensation Institute (CWCI) for a clearer picture for the next presentation.

Regarding Cal/OSHA emergency requirements, Carol Isen asked for clarification of the phrase ‘reporting of COVID-19 positive and close contacts,’ if this means reporting to the close contacts or reporting to Cal/OSHA?

Dr. Sugarman responded that Workers’ Compensation does not actually report to Cal/OSHA. Instead, we notify the employer and send notification to close contacts within one business day of the point in which we know when the employee is COVID-19 positive. This is a notification more than it is a report. Senate Bill 1159 requires reporting of positive claims to the Workers’ Compensation Claims Administrator. There are dueling pieces of legislation, which is challenging, but the ServiceNow Reporting Tool allows us to comply.

Carol Isen asked when getting positive COVID reports from the city, are you relying on the adjusters for this information?

Dr. Sugarman clarified no, we only get direct notification from CityTestSF, of which the volume is about 30% of all positive cases coming into the city. Any information from non-occupational medical service provider will go directly from the employee to their supervisor. The supervisor would then perform the close contact workplace investigation and input the information into the ServiceNow Database.

**Public Comment:** None.

## **REPORT FROM THE San Francisco Municipal Transportation Agency WORKERS’ COMPENSATION DIVISION**

Discussion Item: **(Item No. 4)**

**Speaker: Dan Roach, San Francisco Municipal Transportation Agency**

Dan Roach greeted the council, welcomed Carol Isen, and introduced his group The San Francisco Municipal Transportation Agency as an agency with approximately 6,000 employees. SFMTA has permissibly been self-insured for about 20 years. While SFMTA has a separate workers’ compensation program, the MTA collaborates closely City and County of San Francisco Workers’ Compensation Division (WCD) and there are many overlaps including the statistical results of fewer claimants receiving treatment during the pandemic.

Mr. Roach began his presentation by reporting on claim volumes based on rolling 12-month reports. Slide 34 represents claim volumes by frequency. A majority of claims are indemnity only claims. Viewing the 12-month trend, we saw a significant decrease in claims soon after the initiation of the pandemic response. Though the frequency rebound began in June, claim volume has not returned to pre-pandemic levels.

Mr. Roach continued by reporting on Financials. Slide 35 breaks out the overall expenditures of the program. In terms of indemnity, we have seen an increase in temporary disability. We feel this reflects the effects of the pandemic. It is more difficult to obtain face-to-face medical treatment and proactive care for our injured workers. A lot of care is now provided by telemedicine, resulting in prolonged periods of temporary disability. We are working on ways to have more active medical treatment to get people released. We do have quite a few front-line workers. However, most of our administrative staff work remotely. We have seen a reduction in permanent disability so far. Vocational rehabilitation has seen a decrease. We have seen a significant decrease in medical expenditures which is also indicative of less medical treatment. Overall, we have seen a decrease of expenditures this quarter, over the previous fiscal year, of a little over two percent.



The Cause Analysis slide graphically demonstrates where our injuries are occurring in the agency. The pandemic came out of nowhere and took over as highest claim cause for the 4<sup>th</sup> quarter of the 2020 fiscal year and the 1<sup>st</sup> quarter of the 2021 fiscal year. Assault claims are also a frequent driver of claims and severity. Our front-facing staff, primarily transit operators, work in very close contact with the public. Due to environmental conditions assault claims remain a frequent driver of not only claim cost but claim severity. We have been focused, with some success, mitigating these effects for quite some time by training operators to manage confrontational situations without leaving their seats; but assault claims continue to be an issue for the program. Further claim causes include continuous trauma as a significant contributor, and repeated motion as well.

Next, Mr. Roach presented the data of Agency Injury Rate per 100 Employees. This has trended down over the past year or so. The injury rate per 100 employees is down to 8.91%. This is a slight employee reduction compared to September. This is a good rate for the agency.

We have calculated that our litigated ratio, that is the rate of injured workers who are represented by attorneys compared to unrepresented injured workers, is flat at 38%. As WCD mentioned in detail, litigated claims are certainly a cost driver for the program, and we try to minimize litigation.

Mr. Roach concluded his presentation and invited the council to ask any questions or provide comments.

**Council Comment:** None.

**Public Comment:** None.

#### **OPPORTUNITY TO PLACE ITEMS ON FUTURE AGENDAS**

Discussion Item: **(Item No. 5)**

Council Comment: None

#### **OPPORTUNITY FOR THE PUBLIC TO COMMENT ON ANY MATTERS WITHIN THE COUNCIL'S JURISDICTION**

Discussion Item: **(Item No. 6)**

Council Comment: None.

#### **ADJOURNMENT:**

10:32 a.m.

**NEXT REGULAR MEETING:** Meeting date is March 1, 2021 at 9:00 a.m.