

City of Miami

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INDEPENDENT AUDITOR GENERAL



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January 10, 2014

Honorable Members of the City Commission
City of Miami
3500 Pan American Drive
Coconut Grove, FL 33133-5504

Re: Audit of Workers Compensation Program
Audit No. 14-002

Executive Summary

Pursuant to Section 48 of the City of Miami's (City) Charter and the Office of the Independent Auditor General's Fiscal Year 2013/2014 Audit Plan, we have completed an audit of the City's Workers Compensation (WC) Program for the period October 1, 2009 through September 30, 2012. During the four year period ending September 30, 2013, the City's average WC expenditures (including indemnity payments, medical, settlements, legal expenses, medical bill review, case management, and other miscellaneous expenses) for new claims filed were \$3.9 million; there was an average of 776 new claims annually; and, the average expenditure per claim was \$5,024.

The audit was performed to determine whether the City's WC Program complied with the statutory provisions of Chapter 440 of the Florida Statutes, Chapter 38F-3 of the Florida Administrative Code, applicable City Code provisions, and the labor union agreements. Additionally, we examined the internal control policies and procedures of the City's Risk Management (RM) and Finance (FD) Departments to determine whether they were adequate and effective in administering and overseeing the WC Program.

Based on the results of our audit, we have concluded that adequate internal control policies and procedures were in place to ensure that wage statements used to calculate workers compensation benefits were accurate and that there was general compliance with applicable statutes and City ordinances which provide guidance to administer and process workers compensation benefits.

However, based upon various tests performed, we determined that adequate internal controls were not in place to ensure that:

- Temporary partially disabled (TPD) Solid Waste Department (SWD) employees are assigned light duty work to decrease the risk that such employees will file extraneous workers compensation claims.

- The Payroll section of the FD complies with stipulations of the labor agreements so that employees receiving workers compensation benefits do not receive excessive supplemental salary payments.

These and other findings are included on pages three through eight of the report.

We wish to express our appreciation for the cooperation and courtesies extended to us by the RM and FD staffs while conducting the audit.

Sincerely,



Theodore P. Guba, CPA, CIA, CFE
Independent Auditor General
Office of the Independent Auditor General

C: The Honorable Mayor Tomas Regalado
Johnny Martinez, City Manager
Daniel J. Alfonso, Chief Financial Officer/ Assistant City Manager
Victoria Méndez, City Attorney
Todd Hannon, City Clerk
Alice Bravo, Chief of Infrastructure/ Assistant City Manager
Luis Cabrera, Chief of Operations/Assistant City Manager
Manuel Orosa, Police Chief, Police Department
Maurice Kemp, Fire Chief, Fire-Rescue Department
Iliana Forte, Assistant City Attorney
Jose M. Fernandez, Director, Finance Department
Calvin Ellis, Director, Risk Management Department
Keith Carswell, Director, Solid Waste Department
Amy Klose, Director, Human Resources Department
Ricardo Falero, Director, General Services Administration
Juan Pascual, Interim Director, Parks and Recreation Department
Angela Breadwood, Claims Manager, Risk Management Department
Members of the Audit Advisory Committee
Audit Documentation File

Audit conducted by: Mala Khilnani, CPA, CISA, Senior Staff Auditor
Audit reviewed by: Lewis R. Blake, CPA, CIA, Audit Manager

**AUDIT OF WORKERS COMPENSATION PROGRAM
OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2012
Audit No. 14-002**

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SCOPE, OBJECTIVES, AND METHODOLOGY

This audit was performed pursuant to the authority set forth in Section 48 of the City's Charter entitled, "*Office of Independent Auditor General*" (OIAG), and was conducted in accordance with the OIAG's Fiscal Year 2013/2014 Audit Plan. The audit focused primarily on whether the City's Workers Compensation Program complied with the statutory provisions of Chapter 440 of the Florida Statutes, Chapter 38F-3 of the Florida Administrative Code, applicable City Code provisions, and the labor union agreements. The audit also included examinations of various financial transactions associated with certain City employees' WC benefits. Additionally, we examined the internal control policies and procedures of the City's Risk Management (RM) and Finance (FD) Departments to determine whether they were adequate and effective in administering and overseeing the WC program.

The audit covered the period primarily from October 1, 2009, through September 30, 2012, and selected transactions prior and subsequent to this period. In general, our audit of the WC Program focused on the following audit objectives:

- To determine whether the City complied with statutory provisions of Chapter 440 of the Florida Statutes, Chapter 38F-3 of the Florida Administrative Code, applicable City Code provisions, and the labor union agreements which provide guidance on how to administer and process WC benefits.
- To determine the propriety and accuracy of WC claims.
- To determine whether WC salary adjustments were properly calculated and accurately adjusted by the City's Payroll Department.
- To verify that controls exist and are effective and efficient relating to WC claims
- Other audit procedures as deemed necessary.

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence in order to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit methodology included the following:

- Reviewed applicable Florida Statutes, City resolutions and ordinances, labor union agreements, and City policies and procedures in order to gain an understanding of the internal controls, assess control risk, and plan audit procedures.
- Interviewed and made inquiries of appropriate City personnel and Gallagher Bassett, Third Party Administrator (TPA) personnel.
- Performed substantive testing consistent with the audit objectives, including but not limited to the examination (on a test basis) of applicable transactions and records.
- Drew conclusions based on the results of the testing, made corresponding recommendations, and obtained auditee responses and corrective action plans.
- Performed other audit procedures as deemed necessary.

BACKGROUND

Florida Statute § 440 [FS 440] and the Florida Administrative Code provide guidance on workers compensation benefits. The Workers Compensation (WC) Program is designed to compensate workers who are injured while performing their regular assigned duties and to facilitate the worker's return to gainful employment at a reasonable cost to the employer. The Florida Department of State, Division of Workers Compensation oversees the WC program. The City's Risk Management Department administers the program. In 2003, the City outsourced the claims handling to Gallagher Bassett, Third Party Administrator (TPA) for all WC claims.

The City administers a self-insurance WC program that is subject to certain stop-loss provisions (i.e., based on maximum amounts the City is obligated to pay). The City maintains excess coverage with independent carriers with a self-insured retention (maximum "deductible" payment) of \$750,000 per occurrence. As indicated in the table below, during fiscal years 2010 through 2013 (FY 2010-FY 2013), the City's average WC expenditures (including indemnity payments, medical, settlements, legal expenses, medical bill review, case management, and other miscellaneous expenses) for new claims filed were \$3.9 million; there was an average of 776 new claims annually; and, the average expenditure per claim was \$5,024.

REPORTED CLAIMS & CLAIMS EXPENDITURES DURING STATED FISCAL YEARS

Fiscal Year	Expenditures	New Claims	Average Expenditure Per Claim
2009-2010	\$5,681,315	757	\$7,505
2010-2011	\$4,323,844	820	\$5,273
2011-2012	\$3,602,316	748	\$4,815
2012-2013	\$1,952,996	780	\$2,504
Average (2009-2013)	\$3,890,118	776	\$5,024

FS 440.15(2)(a) requires that 66 2/3 percent of the employee's average weekly wages shall be paid to the employee as a WC benefit. Therefore, disability benefits may not exceed an amount equal to 66 2/3 percent of the employee's average weekly wage, or the State mandated maximum, whichever is less. Florida's maximum weekly wages compensation was \$765, \$772, \$782 and \$803 for calendar years 2009, 2010, 2011 and 2012, respectively.

On June 20, 1968, the City Commission passed and adopted Resolution 39802 which provides that full time officers or employees, who in the opinion of the City Manager are temporarily disabled as a result of an injury, shall also be entitled to supplemental salary as agreed upon in the labor agreements between the City and the individual labor unions. The Fraternal Order of Police and the International Association of Firefighters labor union agreements provide that the total WC benefit and supplemental salary earned by a police officer and a firefighter shall not exceed 100% of the member's weekly net base pay prior to the injury. The American Federation of State, County and Municipal Employees labor union agreements provide that the total WC benefit and supplemental salary earned by a member employee shall not exceed 80% of the member's weekly net base pay prior to the injury. Also, the agreements stipulate that the City will not make any non-mandatory and voluntary salary deductions (e.g. pension, health insurance, etc.) if the combined WC benefits and supplemental salary are insufficient to cover the amount of the deductions.

AUDIT FINDINGS AND RECOMMENDATIONS

CONCLUSION:

Based on the results of our audit, we have concluded that adequate internal control policies and procedures were in place to ensure that wage statements used to calculate workers compensation benefits were accurate and there was general compliance with applicable statutes and City Code provisions.

However, based upon various tests performed we determined that adequate internal controls were not in place to ensure that:

- Temporary partially disabled (TPD) Solid Waste Department (SWD) employees are assigned light duty work to decrease the risk that such employees will file extraneous workers compensation claims.
- The Payroll section (Payroll) of the FD complies with the stipulations of the labor agreements so that employees receiving workers compensation benefits do not receive excessive supplemental salary payments.

Details of our findings and recommendations follow:

FINDING 1: TEMPORARY PARTIALLY DISABLED EMPLOYEES ARE NOT ASSIGNED LIGHT DUTY WORK

Section 69L-3.01915 of Florida Regulations requires the provision of temporary partial disability benefits to employees that have been released for return to work by their attending physicians. Accordingly, the State of Florida Employee Assistance and Ombudsman Office (EAO) encourages employers to create a "Return to Work Program" for TPD employees, since such a program decreases the amount of temporary total benefit payments and also reduces the risk of a worker becoming a liability to the employer. As such, the City's TPD employees should be assigned light duty work by their respective departments while they fully recover from a work related injury. In addition, as we observed in a return-to-work program created by the Miami Fire-Rescue Department (MFR), employees' progress should be monitored throughout their recuperation and rehabilitation.

Our review of 25 judgmentally selected TPD employees (10 employees from the Police Department and 15 employees from the Solid Waste Department) disclosed that contrary to State of Florida EAO guidelines, all 25 employees (100%) were not assigned to light duty work as directed by their physicians. Instead, the employees were allowed to stay home and receive full workers compensation and supplemental salary benefits. As a result, during the two-year period from October 1, 2009 through September 30, 2011, the City paid a total of \$125,726 of workers compensation and supplemental benefits to the 25 employees. Had they been assigned to light duty work the City would have received some benefit for the paid compensation. In addition, we noted that on average, the 25 employees filed workers compensation claims 3.5 times in the last five (5) years and 6.4 times in the last ten (10) years. Two of the SWD employees each filed 16 claims in the last ten (10) years.

Except for the Fire-Rescue Department, the City does not have “return to work” policies/procedures and a pool of jobs in place that would facilitate assignment of TPD employees to light duty work. In addition, the Claims Manager in the Risk Management Department asserted that it is difficult to place affected SWD workers in light duty positions since most of the employees lack requisite office skills. However, upon subsequent audit inquiry, we were informed by the Risk Management Director that a “return to work” program is currently under development.

As indicated in our findings described above, not assigning TPD employees to light duty work increases the risk that such employees will file extraneous workers compensation claims. As a result, the City will incur workers compensation and supplemental salary costs without deriving any light duty services from affected employees.

RECOMMENDATION 1: RISK MANAGEMENT & HUMAN RESOURCES DEPARTMENTS

We recommend that the City’s Risk Management (RM) and Human Resources (HR) Departments develop a “return to work” program which includes the establishment of a job bank of light duty positions. For instance, in lieu of staying home and collecting temporary total disability benefits, eligible Solid Waste Department (SWD) employees could be assigned to the City’s Neighborhood Enhancement Teams (NET) offices and the City’s Parks and Recreation Department to perform light duty work.

- **Risk Management Department Response:** It has been recognized that the City as a whole could greatly benefit from implementing a City-wide return-to-work program. We strongly concur with the findings in this regard and have always strongly advocated returning injured employees back to work as soon as medically feasible. We made great strides in this regard last year when we were successful in allocating the indemnity portion of Workers Compensation benefits back to each department. However, while some efforts have been initiated by Risk Management to implement a City-wide return-to-work program, our main hurdle has been the collective bargaining agreements. For instance, Police has a limited number of light duty positions available and once the allotment is filled, no additional personnel are permitted to be placed on light duty. To compound this matter, the light duty positions are for any personnel requiring some form of accommodation regardless of whether it is the result of a job related accident or non-work related health condition. As a result, some of the available light duty positions remain filled by some employees with non-work related health conditions for years. In addition, while there is a wider acceptance among the departments in returning employees with medical restrictions back to work, the physical nature of the work duties are such that some injured employees cannot be accommodated without the risk of exacerbating the injuries. Every effort is made to work with the departments to evaluate and identify opportunities to return employees with medical restrictions back to work safely. We typically employ the use of an outside nurse case manager to complete a job analysis of the injured employee’s position to determine what accommodations are necessary to comply with the physician’s restriction. Based on the guidance provided by the City Attorney’s Office, the implementation of a City-wide return-to-work program will involve collective bargaining during the labor negotiation process. Most likely, it will be October 1, 2014 before a City-wide return-to-work program can be implemented. In the interim, Risk Management will continue to work with each injured

employee and their respective departments individually to identify and implement a return-to-work opportunity. Risk Management has one claims adjustor specifically assigned to assist with the return-to-work process and with monitoring the injured employee's work restrictions and work status. In addition, the Assistant Director of Risk Management has been assigned to work with the City Attorney's Office in drafting language for the upcoming labor negotiation process with regard to formalizing a City-wide return-to-work program that is mutually agreed upon by all of the labor unions.

- **Implementation Date:** October 1, 2014
- **Human Resources Department Response:** Human Resources will work with any and all affected departments to assist with any aspect of a return to work program that falls within HR's purview, e.g. locating vacancies; processing Personnel Action Forms ("PAFS"). In addition, the Labor Relations Division of Human Resources will advise the City's Chief Negotiator of this recommendation in anticipation of collective bargaining.
- **Implementation Date:** Ongoing

FINDING 2: WORKERS COMPENSATION BENEFIT RECIPIENTS RECEIVED EXCESSIVE SUPPLEMENTAL SALARIES

Labor union agreements provide that the total WC benefit and supplemental salary earned by a police officer and a fire fighter shall not exceed 100% of the member's weekly net base pay prior to the injury. The AFSCME labor union agreements provide that the total WC benefit and supplemental salary earned by a member employee shall not exceed 80% of the member's weekly net base pay prior to the injury. Also, the agreements stipulate that the City will not make any non-mandatory and voluntary salary deductions (e.g., pension, health insurance, etc.) if the combined WC benefits and supplemental salary are insufficient to cover the amount of the deductions.

Based on the labor union agreements, employees have two options regarding the payment of their WC and supplemental salary benefits. With "**Option 1**", an employee authorizes the City to make all regular salary deductions by electing to endorse and return their WC benefit check to the City. The City must then issue another check to the employee in an amount equal to the WC benefit and supplemental salary, less the employee's regular salary deductions. According to the agreements, "If there are not sufficient funds available, the bargaining unit member (employee) will be responsible for making payments for the non-mandatory deductions directly to those providers and creditors who would have otherwise been paid through the City's payroll deduction process."

With "**Option 2**", an employee elects to receive the WC benefit directly from the Third Party Administrator (TPA). According to the agreement, the City is only responsible for paying "the supplemental wage minus federally mandated deductions (i.e., withholding and social security and Medicare taxes [FICA]). All other non-mandatory deductions, including pension, medical, life and other insurance contributions and all other non-mandatory and voluntary deductions, will not be made and the bargaining unit member (the "Option 2" employee) will be responsible for making all payments directly to those providers and creditors who would have otherwise been paid through the City's payroll deduction process."

For example, given a supplemental salary benefit of \$2,000, WC benefits of \$1,000, mandatory deductions of \$300 and non-mandatory deductions of \$200, the net pay under Option 1 would be \$2,500 (\$2,000 less \$500 [\$300+\$200]+\$1000) since the “Option 1” employee elects to receive the WC benefit check from the City. For the “Option 2” employee the net pay would be \$1,700 (\$2,000 less \$300) since the employee elects to receive the WC benefit check of \$1,000 directly from the TPA, and non-mandatory deductions are paid directly by the employee.

We examined Statements of Earnings and WC benefit payments for 25 judgmentally selected City employees and noted that the actual net payment amounts for 14 employees (56%) exceeded the amounts the employees should have received. The overages in net pay, which totaled \$9,628 and ranged from \$121 to \$2,958 per employee, were attributed to:

- Non-mandatory deductions (including pension and health insurance deductions) that were made, contrary to the labor union agreement, for four (4) Option 1 employees with insufficient funds available.
- Non-mandatory deductions (including pension and health insurance deductions) that were made, contrary to the labor union agreement, for ten (10) Option 2 employees.

We were informed by City Payroll staff that employee union officials stated that pension deductions for Option 1 and Option 2 employees were mandatory. However, Risk Management (RM) management disagreed with this assertion since WC benefits are not earnable income and should not be used to augment supplemental salary amounts which are insufficient to pay for the pension deductions and the other non-mandatory/voluntary deductions. This assertion is also contrary to labor union agreements which stipulate that Option 2 employees are solely responsible for making such payments; and, if funds are insufficient, Option 1 employees are also solely responsible for making the payments.

We also noted that if Payroll made the adjustments requested by RM, certain employees would have been unable to make their respective non-mandatory salary deductions; consequently, as of fiscal year end 2011(September 30, 2011), 11 of the 14 employees (79%) owed the City \$19,737. Subsequent to the affected employees’ return to work, however, the City recovered the overpayments by making installment deductions from the employees’ regular bi-weekly gross earnings. Additionally, we discovered that as of the payroll period ending August 24, 2013, 39 current City employees owe the City \$51,745; and, 50 terminated City employees owe the City \$281,091 dating back to December 2000. We were informed that since the salaries of many of the terminated employees were in the lower pay scales, the City does not intend to pursue the collection of the overpayments due to the low probability of collection. However, subsequent to our field work we were informed by RM that \$30,470 of the \$281,091 (10.8%) is owed by one former employee, and that the amount relates to on-going litigation with the employee which is in the process of being recovered.

RECOMMENDATION 2.1: HUMAN RESOURCES, RISK MANAGEMENT, AND FINANCE (PAYROLL) DEPARTMENTS

We recommend that the Labor Relations Division of the HR Department take steps to ensure that Payroll complies with the labor union agreements which stipulate that supplemental salaries should not be augmented in order to pay for pension and other non-mandatory benefits. This may include obtaining a legal opinion from the Office of the City Attorney. Also, since affected

employees accrue vacation and sick-leave while on WC leave, RM, HR and Payroll should explore the possibility of using vacation and sick-leave hours to augment shortages in supplemental salaries.

- **Human Resources Department Response:** Labor Relations always advises all of the necessary parties, including Enterprise Resource Planning and Payroll, immediately after negotiations to make certain that contract language is implemented and the required duties and responsibilities are established.
- **Implementation Date:** After the finalization of every collective bargaining agreement.
- **Risk Management Department Response:** Statutorily, the City cannot take any deductions from the Workers Compensation payments regardless of whether the collective bargaining agreement or the employee voluntarily allows the City to do so. We have been trying to strike this language from the collective bargaining agreement for the past two labor negotiations without any success. Based on advisement from the City Attorney's Office, this is a collective bargaining issue and must be addressed during labor negotiations. It is Risk Management's intent to have this matter resolved in the upcoming labor negotiation sessions for FY 2015.

With regard to the calculation of pensionable benefits excluding Workers Compensation benefits, it may become a collective bargaining issue according to the City's external labor attorney as the City has continued to provide this as a pensionable benefit for decades.

- **Implementation Date:** October 1, 2014
- **Finance (Payroll) Department Response:** The Finance Department will request clarification from the Law Department to properly account for employees receiving workers compensation and ensure that the employees make the necessary payments and/or the City does not make any non-mandatory and voluntary salary deductions if the combined workers compensation benefits and supplemental salary are not sufficient to cover the amount of deductions.
- **Implementation Date:** The Finance Department expects to implement the revised procedure during the second quarter of Fiscal Year 2013-14.

RECOMMENDATION 2.2: FINANCE DEPARTMENT

We recommend that the Finance Department record the overpayments owed by current City employees as employee receivables (i.e. salary advances with a reserve for uncollectible debts) on the City's financial statements. By recording the total outstanding balance owed by current City employees on the financial statements, the individual balances and repayments can be independently monitored and verified.

- **Finance Department Response:** The Finance Department concurs with the recommendation. The Finance Department will begin to record receivables for employee overpayments and will work closely with the Human Resources Department and Risk Management Departments to mitigate overpayments.
- **Implementation Date:** The Finance Department expects to implement the revised procedure during the second quarter of Fiscal Year 2013-14.