CONTRA COSTA COUNTY GRAND JURY REPORT NO. 0408

Contra Costa County's History of Paying High Workers' Compensation Benefits

TO: Contra Costa County Board of Supervisors (BOS)

BACKGROUND

Workers' Compensation is a no fault benefit delivery system. State of California mandates that every employer provide workers' compensation benefits through insurance or by self-insurance. The State of California further mandates that an employee who sustains a job-related injury or illness is entitled to, among other benefits:

1. Reasonable medical treatment, to cure or relieve from the effects of the injury.

2. Tax-free disability benefits (known as temporary disability) on a temporary basis when the employee is unable to work due to the injury. These benefits are paid based on an employee's earnings at time of injury. It is generally calculated to be two-thirds of an employee's average weekly earnings. There are statutory minimum and maximum rates.

3. Permanent disability compensation if the injury/condition results in decreasing the employee's ability to compete in the open labor market.

4. Death benefits in the event the cause of death resulted from the employment.

FINDINGS

1. Contra Costa County (the County) is self-insured and self-administered.

2. In addition to state-mandated benefits, the County enhances its workers' compensation benefit package, in accordance with various Memorandums of Understanding (MOUs) and Management Regulations covered under workers' compensation. A MOU is a negotiated labor contract. These enhanced benefits have been negotiated by the County and the Unions. To date, unions have refused to renegotiate these issues until the time of new contract negotiations.

3. The County program provides in lieu of temporary disability benefits, a "salary continuation" program whereby permanent employees receive 86% of their regular monthly salary, tax free, during any period of temporary disability up to 365 days for each injury. No charge is made against sick leave or vacation accruals for this program. Because benefits

are tax free, this program provides some employees who are out of work with higher take home earnings than when they are working.

4. The County program provides up to three (3) hours per day without loss of pay of benefits if an employee has returned to work and is required to leave work to attend medical appointments. No charge is made against the employee's sick leave or vacation accruals. This benefit can go on for the life of the employee as long as he remains a County employee.

5. The County has a "limited duty" program which allows an employee returning to work to work as little as two (2) hours per day.

6. The County's Risk Management Division in 2003, surveyed five similar (employee population, geography, and annual claim frequency) Northern California Counties. The survey showed that the County's benefits are the highest of any county surveyed. Key policy differences between the counties are listed below:

   Alameda County - provides 80% salary continuation for up to 365 aggregate days. Taxes are withheld from the salary continuation benefit portion.

   San Mateo County – provides 100% salary continuation for 90 days. Thereafter, the state-mandated benefits are paid.

   Sacramento County – does not provide a salary continuation program. An employee may use sick leave or vacation accruals to make up the difference between the state mandated weekly benefit and regular salary. Otherwise, only the state-mandated benefits are paid.

   Santa Clara County – provides no salary continuation program. It only pays the state mandated weekly benefits. An employee is allowed to use available sick leave and vacation accruals to make up the difference between the state mandated weekly benefits and regular salary.

   City and County of San Francisco- provides no salary continuation program, only paying the state mandated benefits.

7. For Findings 8, 9, 11, 12, 13, 18, 19, and 2l refer to Contra Costa County's Workers' Compensation Program – Program Status and Trends, March 2004 as presented to the BOS on April 20, 2004.

8. Annual Workers' Compensation costs for Contra Costa County are on the rise as shown below:

<u>Fiscal Year (FY)</u>

FY 0l-02	$l8,200,000
FY 02-03	$20,900,000
FY 03-04 Projected	$22,600,000

9. In the last 12 months, estimated liabilities for future claims increased from $57 million to $69 million, an increase of over 21%. In order to address this outstanding liability, as a self-insured employer, it is necessary for the County to continue assessing the adequacy of the Workers' Compensation Trust Fund, which requires ongoing review. In the last four years, actuarial confidence level has dropped from 90% to 35%. A "confidence level" is a measure that estimates the probability that the fund will have enough money to cover open claims and future benefits.

10. In March 2004, the County Administrator advised the Board of Supervisors (BOS) that for FY 04-05 a $10 million increase over the $20 million contribution would be required. This would elevate the reserve to a 50% confidence level, which is below actuarial recommendations. Furthermore, the County estimates that contributions will need to be increased again next year by a similar amount.

11. Projected future Workers' Compensation liabilities by benefit type are as follows:

Medical	57%
Permanent Disability	21%
Temporary Disability	11%
Rehabilitation	6%
Expenses: defense legal fees, investigations, and copywork	5%

12. One of the measurements of Workers' Compensation costs is **Claim Frequency**—the number of workers' compensation claims reported annually. For FY l999 and 2000, the County's claim frequency was relatively stable. The claim frequency increased in FY 2001-2002 and peaked in FY2002-2003. For the FY 2003-2004, claim frequency declined 12.6%. If this decrease in claim frequency can be sustained, it will help to reduce future costs.

13. Another measurement of Workers' Compensation costs is **Claim Severity**. Claim severity is essentially the amount of money that is ultimately paid on a claim. The County has experienced a sharp increase in claim severity (average liability per claim).

Year	Average Liability per Claim
2001-02	$17,466
2002-03	$22,998
2003-04 Projected	$25,834

14. Factors contributing to claim severity are escalating medical costs, including the increased use of pharmaceuticals, medical over-utilization (frequency of medical treatment), and protracted treatment. Protracted treatment typically results in longer periods of time off work, and has been tied to increased permanent disability compensation payments or settlement.

15. Another major factor affecting claim severity is the rising cost of disability. Assembly Bill (AB) 749 passed and signed into law in 2003 by Governor Gray Davis, established increases in new minimum and maximum temporary disability benefit rates for every year until 2006, at which time, the rates will be indexed according to state wage data.

16. Since January 1, 2003, the maximum weekly temporary disability rate (based on earnings of $735 and above) has increased from $490 to $602 per week. To date, with the enactment of AB 749, State weekly disability benefits have increased more than 22%.

17. County departments are impacted by these increases in claims. Permanent employees, both full time and part time, receive the salary continuation package, and departments are charged for the difference between the Workers' Compensation payments and the salary continuation amount. Non-permanent employees do not get the salary continuation package.

18. AB 749 also increased State permanent disability (PD) benefits. An example of the change is illustrated below:

In 2003	In 2004
Rating at 35% PD	Rating at 35% PD
+124.25 weeks of benefits	+144 weeks of benefits
X $180 per week	X $200 per week
= $23,3l0	= $29,850

This is an increase of $6,540 or 28% for the identically rated disability. AB749 also increased death benefits.

19. Open claim inventory cases have increased substantially in the last 12 months. This includes a significant increase in open Lost-Time claims. A lost time claim refers to an employee who is medically unable to work as a result of the injury or illness, either temporarily or permanently.

20. Repetitive Motion Injuries (RMIs) are the County's fastest growing type of injuries and are among the most expensive injuries. The County has implemented a comprehensive ergonomic program aimed at:

- Reducing the incidence of employee work-site injuries through early identification of potential repetitive motion injury risk factors.

- Reducing the severity of occupational injuries when they do occur to minimize disability.

- Enabling early return-to-work for temporarily disabled employees.

- "Time efficient" ergonomic evaluations done at the actual workplace. These evaluations can be either requested by a worker via his supervisor, (a preventive measure) or by a Workers' Compensation claim through Risk Management (a responding mechanism).

- Tracking evaluations for timeliness and costs.

- Negotiating discounts on ergonomic equipment from selected vendors, track equipment orders, costs, timeliness of equipment deliveries, and salvage and re-use of equipment.

21. To date, 343 new ergonomic evaluation requests have been completed since September 2003 by the County. The result: evaluations are out faster and implementation is better managed.

22. Risk Management has set up an ergonomic training web-based program for all departments. It is a program that workers can access for ergonomic training both at home and at work.

23. Beginning July 1, 2003, the County assumed responsibility for directing medical care for injured employees during the first 30 days following a claimed industrial injury. They have established two providers: Kaiser Occupational Health and Muir/Diablo Occupational Medical Clinic. Thus, the employee is directed to an occupational medical program staffed by occupational medical professionals dedicated to the treatment of industrially injured employees.

Surveys conducted by Kaiser and Muir/Diablo indicate this program is getting positive feedback as this program met with initial reluctance by the Unions. This system is providing a speedier delivery of care and provides proper documents to process claims.

24. In April 2004, in compliance with new State Laws AB227 and SB228, the County developed a plan to implement American College of Occupational & Environmental Medicine guidelines to provide proper treatment and to control medical costs.

CONCLUSION

The cost of workers'compensation continues to grow at a rate with which the County's general purpose revenues cannot keep pace without impacting other programs. It is imperative that the County continue to take steps to reduce the frequency and severity of workers' compensation cases to slow the growth in workers' compensation costs. Several of the current benefits create an environment of disincentives to return to work.

RECOMMENDATIONS

The 2003-2004 Contra Costa County Grand Jury recommends that the Board of Supervisors:

1. Direct the County Administrator to try to negotiate in the new labor contracts and MOUs the following:

(a) Reduce the duration of the salary continuation program from 365 days to 60 days. (Sixty days is the average length of a disability.)

(b) Change the three -hour rule, which allows an employee time off work without loss of pay or sick leave to see a doctor. Eliminate this benefit for future workers' compensation programs.

(c) Implement a more restrictive "limited duty" policy so that an employee would have to work for a minimum of four hours per day.

2. Direct the County Administrator to try to reopen current labor contracts and MOUs to implement the recommendations set forth in No. l (a), (b) and (c) above.

3. Make the web-based ergonomic training program mandatory for all County employees.