



COUNTY OF SONOMA
General Services Department

#1878

Rec.
8/31/04
CNB

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August 23, 2004

Honorable Allan Hardcastle, Presiding Judge
Presiding Judge, Sonoma County Superior Court
600 Administration Drive
Santa Rosa, CA 65403

SEP 14 REC'D

GRAND JURY

SUBJECT: Response to 2003-2004 Grand Jury Report
Holes in the Employee Benefit Safety Net?

Dear Judge Hardcastle:

Enclosed is the consolidated response to the 2003-2004 Grand Jury Report entitled "Holes in the Employee Benefit Safety Net." This response incorporates the Responses to the Recommendations listed on page 64 of the Report from Human Resources, Risk Management, Health Services, Human Services, Probation, Sheriff and Transportation and Public Works. The signature of each department head indicated below, acknowledges and supports these responses.

If you have any questions or need further information regarding these responses, please feel free to contact Marcia Chadbourne, Risk Manager at 565-2473.

Sincerely,

Marcia Chadbourne
Risk Manager

Ray Myers
Director of Human Resources

Mark Kostielney
Director of Health Services

Dianne Edwards
Director of Human Services

Cora Guy
Chief Probation Officer

Bill Cogbill
Sheriff

David Knight
Director of Transportation and Public Works

Enclosure

RESPONSES TO THE 2003-2004 GRAND JURY REPORT
HOLES IN THE EMPLOYEE BENEFIT SAFETY NET?

Recommendations

R1, page 64 The Board of Supervisors should create a new position for an independent employee advocate who has medical and legal expertise to guide ill/injured employees who are unsure of their options through the various benefit systems to ensure they receive the appropriate outcomes.

Response: The recommendation will not be implemented. The County currently provides a number of employees/contractors who are available to assist injured and ill employees regarding the various benefits available to them. The Grand Jury report fails to substantiate the need for the taxpayers of the County of Sonoma to finance another County position in this area when there are so many available resources for employees.

The California Labor Code outlines workers compensation benefits and requires the County of Sonoma, through its third party claims administrator, to provide all statutory workers compensation benefits and benefits information. These statutes were specifically written to favor and support the injured worker and statutory language was negotiated through the State legislature and labor organizations statewide, so that injured workers have all the information they need to understand the benefits to which they are entitled. In addition, the State of California, Division of Industrial Relations provides extensive staffing and support through its Information and Assistance Offices throughout the State available to assist injured workers with the goal that injured workers should not have to hire an attorney to assist them through the workers compensation process.

Risk Management is responsible for the administration of the County's self-insured workers compensation program and oversees the long-term disability (LTD) program provided through Standard Insurance. There are eight full-time County and contracted staff responsible for oversight and administration of the County's workers compensation program and three full-time staff assigned to the County's LTD claims at Standard. While most injured workers are able to understand and receive workers compensation benefits timely and appropriately, and return back to work quickly, there are some cases where disputes arise regarding the nature and extent of the injury. In these situations, an employee can retain an attorney to promote and advocate their position. Employees can also obtain assistance from their labor representatives. The County has been and continues to be willing to make improvements to the various forms of benefit information and communication with employees to ensure that they fully understand the benefits provided by the County.

To put this matter into perspective, less than 17% of all workers compensation claims filed in 2003 with the County have resulted in litigation. And of these only a small portion involves situations where there is an actual dispute between the County and the employee. In these situations, the needs of the injured worker can best be met by being represented by an attorney with specific workers compensation experience. As to the

LTD program, feedback from both employees and labor organizations has been very positive, indicating that Standard is doing a good job and has been very responsive in addressing issues, which are few.

R2, page 64 The Disability Retirement Board and Risk Management must meet with union representatives as often as necessary, but at least monthly, to establish better communication and understanding.

The Disability Retirement Board is under the Sonoma County Employee Retirement Association, a separate legal entity, thus this response is limited to aspects of employee benefits and disability management under the responsibility of the County, administered through Risk Management.

Response: The recommendation has been partially implemented. Risk Management has, and will continue to facilitate regular meetings, but we do not support the need to meet monthly.

The County currently provides a number of forums for labor organizations to bring up and address employee benefits and disability issues. Risk Management meets with all union representatives bi-monthly through the Joint Labor Management Benefits Committee (JLMBC). Issues associated with the provision of employee benefits, including long-term disability, have been addressed in this forum. All employee organizations are members of the Committee and are able to agendaize any issue related to benefits for review and discussion. Agenda topics during the last year include a complete review and discussion of the Long Term Disability Program provided through Standard Insurance and a review and discussion on the proposed Transitional Duty Program.

In addition to the JLMBC, the County agreed to facilitate a Disability Committee with SEIU in 2003 and recently representatives from ESC have joined this Committee. While this Committee was initially established to discuss Essential Functions Worksheets, other disability issues have been reviewed and discussed within this Committee that have been very productive.

R3, page 64 All mid-level management, division directors, supervisors and employees must be instructed on a regularly scheduled basis and at least twice during the year beginning in September 2004, in the revised Illness and Injury Prevention Program with greater emphasis on departmental responsibility.

Response: The recommendation has been partially implemented. County departments are responsible for the development of their Injury and Illness Prevention Programs (IIPP) and to provide training to their employees as required under Title 8, Section 3208 of the California Code of Regulations. While there is no set requirement that establishes the frequency of training, the regulation outlines a number of provisions that require continuous training, depending upon the work assignments. All County

departments have fully updated and implemented their IIPP's and provide training in compliance with State law.

The regulation outlines that a written IIPP must include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, **training programs**, postings, written communications, a system of anonymous notification by employees about hazards, safety and health committees, or any other means that ensures communication with employees.

Training and instruction on the IIPP is required to be provided:

- (A) When the program is first established;*
- (B) To all new employees;*
- (C) To all employees given new job assignments for which training has not previously been received;*
- (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;*
- (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,*
- (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.*

Thus, training might be provided annually, semi-annually, monthly or as frequent as weekly, depending upon the nature of the work being performed, as outlined by State law.

R4, page 64 Evaluation of the results of the pilot Safety and Loss Prevention and the Transitional Duty/Return to Work Program in the five major departments (Sheriff, Probation, Health Services, Public Works and Human Services) should be analyzed and if cost effective, implemented countywide.

Response: The recommendation will be implemented. As outlined in the "Report on the Board of Supervisors of the County of Sonoma's Self-Insured Workers Compensation Program" presented in May 2003, it has been the intention of the County to analyze the effectiveness of the Transitional Duty/Return to Work Program and if cost effective, to implement this program countywide. This report was provided to the Grand Jury during the course of their investigation.

An updated report on Workers Compensation with further recommendations will be presented to the Board of Supervisors in October 2004. Due to delays in negotiating agreements with the various labor organizations on the Transitional Duty Policy, full implementation of this pilot program in the five major departments has not been achieved. Therefore, the County will be unable to fully analyze the effectiveness of the

program until such time as the labor organizations can come to agreement on the policy and it can be disseminated to all employees and training on the new policy can be provided to all supervisors and management. It is uncertain at this time when full agreement will be reached.

R5, page 64 For employees who develop an illness during their employment, the evaluation and recommendations of the employee's medical specialist should be given priority regarding their accommodation and disability retirement if the county appointed Qualified Medical Examiner (QME) does not possess equal expertise.

The Disability Retirement Board is under the Sonoma County Employee Retirement Association, a separate legal entity, thus this response is limited to aspects of those benefits and disability management under the responsibility of the County, administered through Risk Management.

Response: This recommendation will not be implemented. The County does not appoint Qualified Medical Examiners (QME). QME's are independent physicians designated by the State of California to provide medical evaluations of injured workers for the purpose of determining the level of disability due to an industrial injury or illness. Sometimes an injured worker will select the QME, sometimes the injured worker and the County will mutually agree upon a QME, and sometimes there is a dispute between the injured worker and the County on who will be the QME and both parties obtain separate evaluations. QME evaluations are only relevant to a workers compensation case and are only admissible before the Workers Compensation Appeals Board.

For accommodations required under the Americans with Disabilities Act (ADA), the County usually relies upon the information provided by an employees' own physician, unless it is unable to obtain enough pertinent information from the physician, or if there is contradictory information. There are also times when the County has relied upon a QME evaluation, too. And there are times when it is not in the County's best interest to rely upon an employees' own physician, as there may be a potential conflict of interest for that physician.

cc: Lainey Gerber, Board of Supervisors
Denise Gordon, Court Executive Officer
Mike Chrystal, County Administrator
Eeve Lewis, County Clerk
Bill Cogbill, Sheriff
Dianne Edwards, Human Services
Cora Guy, Probation
Mark Kostielney, Health Services
David Knight, Transportation and Public Works
David Kronberg, General Services
Ray Myers, Human Resources