

FIRST READING
SECOND READING
OFFICE NO

7-10-10
7-13-10

ORDINANCE NO. 12413

AN ORDINANCE AMENDING CHATTANOOGA CITY CODE, PART II, CHAPTER 2, ARTICLE III, SECTIONS 2-151 THROUGH 2-153 BY DELETING THESE SECTIONS IN THEIR ENTIRETY AND INSERTING A NEW DIVISION 19 ENTITLED "INJURY ON DUTY PROGRAM."

WHEREAS, the City has elected not to participate in the Tennessee Workers' Compensation Program pursuant to T.C.A. § 50-6-106(1)(B)(6) and has implemented and Injury on Duty Program to provide certain benefits for employees who sustain a job-related injury, illness or occupational disease arising out of the course and within the scope of employment; and

WHEREAS, the City finds it necessary to revise its current Injury on Duty Program by deleting Chattanooga City Code Sections 2-151 through 2-153 of Part II, Chapter 2, Article III, and inserting a new Division 19 to Part II, Chapter 2, Article III, entitled "Injury on Duty Program" to modify the benefits provided and set forth procedures for the administration of the Injury on Duty Program;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

SECTION 1. That Chattanooga City Code, Part II, Chapter 2, Article III, Sections 2-151 through 2-153 be and are hereby deleted in their entirety.

SECTION 2. That Chattanooga City Code, Part II, Chapter 2, Article III, be and is hereby amended by the addition of a new Division 19 entitled "Injury on Duty Program" as follows:

DIVISION 19. INJURY ON DUTY PROGRAM

Sec. 2-430. Purpose.

It is the purpose of this Division to provide uniform procedures for the reporting, treatment and compensation to qualified individuals employed by the City who sustain a job-related injury, condition or occupational disease.

Sec. 2-431. Definitions.

For the purpose of this Division, the following terms, phrases and words and their derivatives, shall have the meaning given herein:

Employee or Employees: As defined in Part I, Chapter 2, Article III, Division 1.

First Report of Injury: A document created by the department supervisor from the Employee's report of a job-related injury or illness detailing how the illness or injury occurred.

Injury on Duty: An accidental injury or occupational disease sustained by an Employee that arises out of and in the course of employment with the City which causes injury, occupational disease, disablement or death of an Employee and shall include a mental injury arising out of and in the course of employment. May also be referred to as IOD.

Injury on Duty Compensation: Payment made by the City to an Employee who sustains an IOD if the Employee is unable to work light or restricted work based on medical documentation from a medical provider. May also be referred to as IOD Compensation.

Light or Restricted Duty: A less arduous duty position or an alternate position that may include job classifications and positions in other departments.

Maximum Medical Improvement: A designation given to an Employee by the Medical Provider when the Employee has reached the maximum level of improvement from each IOD. May also be referred to as MMI.

Medical Expenses: Any hospital, medical, pharmacy or other bills reasonably necessary in connection with an IOD.

Medical Provider: Any clinic or occupational medical specialist authorized by the City to provide a diagnosis and/or treatment for IOD claims.

Mental Injury: A loss of mental faculties or a mental or behavioral disorder where the proximate cause is a compensable, physical injury resulting in a permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus. A mental injury shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities.

Occupational Disease: All diseases arising out of and in the course of employment. A disease shall be deemed to arise out of the employment only if: (1) it can be determined to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment; (2) it can be fairly traced to the employment as a proximate cause; (3) it has not originated from a hazard to which workers would have been equally exposed outside of the employment; (4) it is incidental to the character of the employment and not independent of the relation of employer and employee; (5) it originated from a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected prior to its contraction; and (6) there is a direct causal connection between the conditions under which the work is performed and the occupational disease. Diseases of the heart, lung, and hypertension arising out of and in the course of any type of employment shall be deemed to be occupational diseases.

Permanent Partial Impairment: An impairment rating assigned by the Medical Provider in accordance with current American Medical Association guidelines.

Program Director: The Director of Risk Management Insurance or his/her designee for the administration of the Injury on Duty Program.

Supervisor: A City employee who supervises the work performed by subordinate employees. Departmental supervisors shall have the responsibility of training their subordinate employees in their job-related responsibilities.

Sec. 2-432. Administration.

- a. The Injury on Duty Program shall be administered under the direction of the Program Director. The Program Director shall determine whether an Employee's injury or condition qualifies as an IOD arising out of and in the course of employment and whether an Employee is eligible for medical treatment at the City's expense. Decisions of the Program Director shall be final unless appealed in the manner outlined in Section 2-449 herein.
- b. The City shall, through a third party administrator, provide each covered IOD claim with a case manager. All accepted IOD claims will be case managed until the Employee has reached MMI and, if necessary, a PPI rating has been assigned.

Sec. 2-433. IOD Compensation.

(a) Except for the exclusions set forth in Section 2-437 and provided Employees comply with the requirements set forth in Section 2-436, IOD Compensation shall be made in the following manner for covered IODs to Employees for a period not to exceed one (1) year after the date on which the IOD occurred:

- (1) Initial IOD Compensation Period. All Employees shall receive as IOD Compensation at the rate of seventy-five percent (75%) of the Employee's salary earned at the time of the IOD, not to exceed six months (1560 hours for Fire Department personnel working shifts and 1040 hours for all other employees), provided, however, that the City receives medical documentation from a Medical Provider stating that it is medically necessary for the Employee to remain off work during the period of incapacity, including any follow-up treatments or therapy required by the Medical Provider.
- (2) IOD Extension Period. To receive IOD Compensation beyond the Initial IOD Compensation Period following an IOD, the City must receive medical documentation from a Medical Provider stating that it is still medically necessary for the Employee to remain off work. An additional six (6) months (1560 hours for Fire Department personnel working shifts and 1040 hours for all other employees) of IOD Compensation at the rate of sixty-five percent (65%) of the Employee's salary earned at the time of the IOD shall be paid by the City upon receipt of documentation from a Medical Provider stating that it is medically necessary for the Employee to remain off work during the period of incapacity, including any follow-up treatments or therapy required by the Medical Provider.

(b) Regular part-time, intermediate, temporary or seasonal Employees shall not be entitled to receive IOD Compensation.

(c) IOD Compensation shall be considered payment in the nature of a worker's compensation claim as set forth in the Internal Revenue Code and excluded from an Employee's gross income.

Sec. 2-434. Hospital, Medical, or Drug Expenses.

Except for the exclusions set forth in Section 2-437 and provided Employees comply with the requirements set forth in Section 2-436, the City shall pay Medical Expenses attributable to a covered IOD sustained by an Employee for a period not to exceed two (2) years from the date of the IOD.

Sec. 2-435. Death benefits.

If any Employee of the City dies as a result of a covered IOD, the City shall pay to the Employee's spouse, or dependents if there is no spouse, the sum of \$10,000.00. This Section shall not apply to the Fire and Police Pension Fund members who are otherwise covered as to a death benefit.

Sec. 2-436. Requirements.

Employees must comply with the following requirements to receive IOD Compensation and/or payment of Medical Expenses for covered IODs:

- (a) All IODs, whether requiring medical attention or not, must be reported to the Employee's Supervisor immediately or within twenty-four (24) hours after such occurrence. An Employee must also complete and submit a First Report of Injury to the Employee's Supervisor. An exception to the IOD reporting requirement shall be made if the circumstances of the IOD are such that the Employee does not have reason to know of the IOD at the time it occurs and if independent evidence exists regarding the IOD that supports making such an exception.
- (b) Employees must seek medical treatment for an IOD within five (5) working days from the date of occurrence. Non-compliance with this rule may result in denial of the IOD claim.
- (c) Employees shall receive treatment only at City-designated facilities. Any non-authorized treatment shall be paid by the Employee except for unavoidable emergency situations. Once an Employee is stabilized, the City has the right to direct or relocate the Employee to a City-designated Medical Provider or facility. Non-authorized treatment will result in denial of any future IOD benefits for this specific claim.
- (d) Employees shall follow all orders given by a Medical Provider, including but not limited to: using prescribed and non-prescribed medications properly; participating in physical exercise or therapy programs; adhering to prescribed dietary programs; keeping appointments; and complying with the Medical Provider's instructions. Failure to keep scheduled appointments without advanced notification to the Medical Provider or to comply with a Medical Provider's orders, may result in termination of benefits.
- (e) Any physical activity restrictions, prescriptions, and proscriptions rendered by a Medical Provider in the course of IOD treatment apply twenty-four (24) hours per day during the recovery period.

A Medical Provider's "no work" directive applies to the injured Employee's primary employment with the City, as well all secondary employment. It is the Employee's duty to follow medical directives.

Sec. 2-437. Exclusions.

No IOD Compensation or Medical Expenses shall be paid by the City for the following:

- (a) Activities neither related to nor in the course and scope of the Employee's job. The Program Director will make such determinations.
- (b) Injuries or illnesses resulting from the influence of alcohol or from unlawful use of drugs (as determined by a Medical Provider).
- (c) Injuries or illnesses resulting from misconduct, including horseplay.
- (d) Intentional or self-inflicted injury even as a result of a medical or mental condition.
- (e) Failure or refusal to use safety devices and/or personal protective equipment as outlined in the departmental safety policies, as amended; failure to perform duties as required by law; or failure to follow general safety precautions in performing job duties.
- (f) On-the-job injuries or illnesses aggravated by any activity while off-duty.
- (g) Injuries suffered while an Employee is traveling to and/or from work.
- (h) Pre-existing injuries or conditions, except as provided for in Section 2-444.

Sec. 2-438. Personal Leave.

Upon receiving notification from a Medical Provider that an Employee is unable to work because of an IOD, the Employee shall not accrue personal leave time until he/she is released by a Medical Provider to return to work.

Sec. 2-439. General Pension Plan; Fire and Police Pension Fund.

- (a) Credited Service. Upon receipt of notification from a Medical Provider that an Employee is unable to work because of an IOD, the Employee

shall not be entitled to receive credited service under either the General Pension Plan or the Fire and Police Pension Fund until released by a Medical Provider to return to work without restrictions.

(b) Contributions. Employees and the City shall not be required to make contributions to finance the General Pension Plan or the Fire and Police Pension Fund following an IOD until released by a Medical Provider to return to work without restrictions.

Sec. 2-440. Actions by Third Parties.

When the IOD for which benefits are payable under this Injury on Duty Program arises out of an accident caused by or contributed to by the negligence of a third party, no IOD Compensation, Medical Expenses or other related expenses shall be made by the City until the Employee executes a Subrogation and Assignment Agreement, approved in form by the City Attorney, assigning to the City any and all claims or causes of action to which the Employee may be entitled to recover against any third person to the extent of any or all such payments as are made by the City. The Subrogation and Assignment Agreement shall include an assignment by the Employee to the City of any claim or claims which the Employee may have against the Employee's uninsured motorist insurance carrier or the Employee's homeowner's insurance carrier.

Sec. 2-441. Cessation of IOD Benefits.

IOD benefits shall cease when any one (1) of the following occur:

- (a) non-compliance with a Medical Provider's instructions;
- (b) approval for long term disability benefits or Social Security Disability benefits;
- (c) when Maximum Medical Improvement has been reached or a directive to return to work without restrictions has been provided by a Medical Provider or a PPI has been assigned;
- (d) seeking treatment with a non-authorized medical provider, except for unavoidable emergencies;
- (e) expiration of the one-year period from date of IOD for IOD Compensation; expiration of the two-year period from date of IOD for Medical Expenses;
- ~~(f) non-compliance with the conditions contained in Section 2-442;~~
- (g) filing a fraudulent IOD claim; or

- (h) incarceration following a conviction of a felony or misdemeanor.

Sec. 2-442. Notice of Injury and claim for IOD Compensation and Medical Expenses.

(a) Employees shall, immediately upon occurrence of an IOD or within 24 hours, report the IOD to the Employee's Supervisor and complete a First Report of Injury. The Supervisor will then follow the City's IOD reporting procedures. Failure to report the IOD and complete the First Report of Injury within the twenty-four hour period may result in forfeiture of any IOD benefits, unless the Employee is involved in a serious injury and is unable to complete the form within the twenty-four hour period. In the event the Employee sustains a serious injury prohibiting completion of the First Report of Injury, the Employee shall not be entitled to receive any benefits under the Injury on Duty Program unless the City receives medical documentation from a Medical Provider giving reasonable excuse for the Employee's failure to complete the First Report of Injury.

(b) It is the Employee's responsibility to keep his/her Supervisor and department informed of all directives, including possible accommodations, issued by the Medical Provider. These medical directives include, but are not limited to, attending diagnostic and therapy appointments, taking medications as prescribed, and complying with all restrictions relating to the objective of attaining Maximum Medical Improvement.

(c) Any violation of this Section shall result in cessation of payment of IOD Medical Expenses and IOD Compensation for the IOD, and can result in disciplinary action by the City for failure to follow medical directives.

Sec. 2-443. Light or Restricted Duty Assignments.

When a Medical Provider allows an Employee to return to work on an unspecified Light or Restricted Duty assignment, the City's medical facility will contact the Medical Provider prior to making an assignment. Approved Light or Restricted Duty assignments are temporary in nature and will not be permanent job modifications. Discretionary judgment decisions as to whether temporary Light or Restricted Duty assignments are available will be made by each department on a case-by-case basis.

Sec. 2-444. Pre-existing conditions.

Claims of work-related aggravation or exacerbation of a pre-existing condition must be documented by a Medical Provider to be causally related to a ~~specified work task or essential job function pursuant to the Employee's job description.~~ To receive IOD benefits, employees must sign an authorization of release of health information pursuant to the Health Insurance Portability and Accountability Act and all available records must be obtained by the Employee from the previous treating physician regarding the pre-existing medical condition.

Sec. 2-445. Maximum Benefits; Inability to Return to Work; Permanent Partial Impairment.

- a. IOD Compensation shall not extend beyond one (1) year from the date of the IOD and Medical Expenses shall not extend beyond two (2) years from the date of the IOD. Additionally, if at the end of the IOD Extension Period, as provided for in Section 2-433(a)(2), an Employee is unable to return to work and is totally and permanently disabled and no job is available for which the Employee is qualified, then the Employee will be separated from employment with the City.

- b. Once an Employee has reached Maximum Medical Improvement, the Medical Provider shall provide the City a statement of MMI. The City shall receive a MMI statement for each approved IOD claim. Maximum Medical Improvement occurs when an Employee, who sustains an IOD, reaches a point where his or her medical condition cannot be further improved by treatment or when an Employee reaches a treatment plateau in the healing process. When an Employee reaches MMI but is unable to return to his or her previous position and rate of pay, the City will request that the treating Medical Provider determine the degree of permanent or partial impairment. The PPI rating will be determined in accordance with the American Medical Association Guidelines. If appropriate, a lump sum settlement for the PPI shall be calculated using the tables as provided in the Tennessee Worker's Compensation Act. If a lump sum settlement is agreed upon by the City and the Employee, the payment shall, in the aggregate, amount to a sum of all future installments of IOD compensation. The Program Director may approve lump sum settlements of less than \$10,000.00. The Chattanooga City Council must approve settlements in excess of \$10,000.00. All amounts paid by the City and received by the Employee for lump sum payment shall be a final settlement for IOD Compensation that the Employee may be entitled to under the Injury on Duty Program.

Sec. 2-446. Post-Accident/Post-Incident Employee Drug and Alcohol Testing.

Post-Accident/Post-Incident drug and alcohol testing shall be conducted in accordance with the City's Drug and Alcohol Testing Policy.

Sec. 2-447. Misrepresentation; Fraudulent Activities.

Any Employee who willfully makes any false or misleading statement of misrepresentation for the purpose of obtaining any benefits or payments under the

Injury on Duty Program or who presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to this Division, knowing that such statement contains any fact or thing material to such IOD claim, can be criminally prosecuted. Filing a fraudulent IOD claim or engaging in misrepresentation shall be grounds for immediate termination of employment as well as termination of any benefits provided for herein.

Sec. 2-448. IOD Case Investigation.

An Employee may be contacted by the City's IOD case investigator for follow-up regarding their IOD claim. IOD claims may be investigated at random.

Sec. 2-449. IOD Review Committee; Appeals.

- a. If an Employee disagrees with, disputes or does not understand the Program Director's determination regarding IOD decisions under the Injury on Duty Program, the Employee may request a meeting with the Program Director. The meeting must be requested **in writing** by the Employee within ten (10) calendar days following the Program Director's written notification of the final decision. At this meeting, the Employee and the Program Director will discuss the facts and review all available information related to the claim in an attempt to explain the Program Director's decision and to resolve any disputes. The Program Director will explain the Employee's rights under the Injury on Duty Program and will attempt to reach a mutual agreement resolving any dispute.
- b. If the matter is not resolved during the meeting with the Program Director or if the Employee does not request such a meeting, the Employee may appeal the Program Director's decision by requesting a hearing before an Administrative Law Judge within thirty (30) days following the Program Director's written notification of the final decision.
 - (i) A request for a hearing under this subpart must state specifically those issues in the Program Director's final decision upon which review is requested. Those provisions of the Program Director's final decision not specified for review or the entire final decision when no hearing has been requested within the thirty (30) day period are considered resolved and not subject to further review.
 - (ii) A request for a hearing must be delivered in writing to the Program Director to the following address:

City of Chattanooga
Employee Benefits Division
101 E. 11th Street, Suite 201
Chattanooga, Tennessee 37402

(iii) Failure to request a hearing within thirty (30) days of receipt of the Program Director's final decision shall constitute a waiver of the right to appeal.

c. The Program Director's final decision shall not be subject to the grievance procedures set forth in Chattanooga City Code, Part 1, Chapter 2, Section 2-177.

SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. That should any word, sentence, clause, paragraph or provision of this Ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this Ordinance shall not be affected and shall remain in full force and effect.

SECTION 5. That IODs occurring prior to the passage of this Ordinance shall be governed by the policy existing at the time of the original IOD and not subject to the provisions contained in this Ordinance.

SECTION 6. That the provisions of this Ordinance are not intended to create any contractual rights between the City and its employees.

SECTION 7. That this Ordinance shall take effect immediately upon passage.

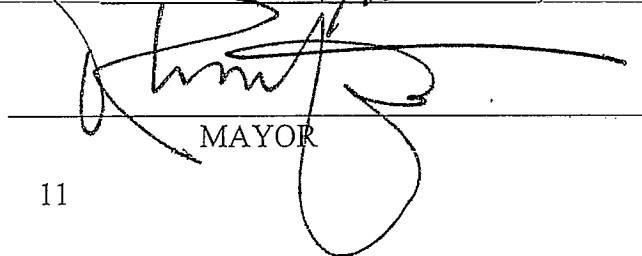
PASSED on Second and Final Reading

July 13, 2010.


CHAIRPERSON

APPROVED: DISAPPROVED:

DATE 7/15, 2010


MAYOR