



Legal & Claims Committee

Amendments to the Administrative Code

Item 7-8

September 13, 2022

State Audit
Recommendations:
Additional Reporting

Personnel-Related Settlements

- Invoke confidentiality
- Have a financial impact

Each report shall state:

- Whether EEO issues were implicated
- Whether the employee is still employed
- Financial or confidentiality terms
- Whether corrective action has been taken

Proposed Administrative Code Amendments

Modify Sections 2720 & 2721

- Existing: Current Code language does not address the reporting of personnel-related settlements under the **General Manager's and General Counsel's** authority
- Proposal: Add language requiring additional reporting and level of detail specified in the State Audit Recommendations

Applicable Laws

The Stand Together Against No-Disclosures Act (SB 820)

The Silenced No More Act (SB 331)

These laws prohibit nondisclosure agreements (NDAs) preventing the disclosure of facts related to claims of harassment, discrimination, and related allegations based on protected EEO characteristics, including race, sex, and sexual orientation

Susan Woolley

Metropolitan retained the services of Consultant in connection with a confidential employment matter.

Van Dermynen Makus Law Corporation – Agreement 201891

This agreement was amended this quarter to modify the scope of work and key personnel sections.

Van Dermynen Makus Law Corporation – Agreement 203458

This agreement was amended this quarter to reflect a change in the scope of work and to reflect an increase in the maximum amount payable. This agreement was also amended this quarter to reflect a change in the agreement administrator and a modification to the billings and payments, insurance, and notices sections.

Claims and Other Matters

1. Between April 1, 2022 – June 30, 2022, Metropolitan initiated, compromised, settled, or otherwise disposed of the following claims and entered into the following separation agreements:

- a. Litigated, Compromised and Settled Claims By and Against Third Parties

Metropolitan entered into the following settlement agreement within this past quarter.

1. AFSCME Local 1902 v. Metropolitan (MOU Hearing Officer Appeal):

On March 21, 2021, Operator who all grievance claims overtime. Metro officer. The parties agreed to resolve the grievance prior to a scheduled June 1, 2022 hearing. EEO issues were not implicated, the agreement has no confidentiality provisions, the operator is still employed by Metropolitan, and the operator received \$2,638.96 in backpay and reinstatement of 72.5 hours in leave time. The grievance has been withdrawn pursuant to this settlement.

2. AFSCME Local 1902 v. Metropolitan (MOU Hearing Officer Appeal):

On March 27, 2021, Metropolitan denied the grievance and AFSCME appealed the denial to a hearing officer. The parties agreed to resolve the grievance prior to a scheduled June 1, 2022 hearing. EEO issues were not implicated, the agreement has no confidentiality provisions, the operator is still employed by Metropolitan, and the operator received \$2,638.96 in backpay and reinstatement of 72.5 hours in leave time. The grievance has been withdrawn pursuant to this settlement.

3. Cal-OSHA Citation

As a result of an OSHA issued a Citation for two alleged "General" violations. The total proposed penalty amount for the "General" violations is \$1,120. Metropolitan filed appeal for the two "General" violations on the grounds that: (1) the safety order was not violated, that (2) the classification of "general" is incorrect, and (3) the proposed penalty is unreasonable. Metropolitan asserted the following affirmative defenses for both items that: (1) the division failed to consider relevant information

Excerpt from the Legal Department's June 30, 2022 Quarterly Report

1. AFSCME Local 1902 v. Metropolitan (MOU Hearing Officer Appeal):

On March 21, 2021, AFSCME Local 1902 filed a grievance on behalf of a Water Treatment Plant Operator who alleged the denial of authorized leave in violation of the AFSCME MOU. The grievance claimed a loss of sick and vacation hour accrual, holiday pay, and missed overtime. Metropolitan denied the grievance and AFSCME appealed the denial to a hearing officer. The parties agreed to resolve the grievance prior to a scheduled June 1, 2022 hearing. EEO issues were not implicated, the agreement has no confidentiality provisions, the operator is still employed by Metropolitan, and the operator received \$2,638.96 in backpay and reinstatement of 72.5 hours in leave time. The grievance has been withdrawn pursuant to this settlement.

Board Options

- Option #1
Approve recommended amendments to the
Administrative Code
- Option #2
Do not approve recommended amendments to the
Administrative Code

Staff Recommendation

- Option #1
 - Approve recommended amendments to the Administrative Code
 - ✓ Complies with the State Audit's recommendations
 - ✓ Complies with the State Audit's deadline of October 2022
 - ✓ Enhances MWD's processes and procedures, and promotes greater transparency



Questions