

1ST READING 3-6-12

2ND READING 3-13-12

ORDINANCE NO. 12573

AN ORDINANCE TO AMEND SECTIONS 2-438, 2-445, AND 2-449 OF ORDINANCE NO. 12413 ENTITLED "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.'"

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 2, Article III, Division 19, Section 2-438 is hereby amended by deleting same in its entirety and substituting in lieu thereof the following:

**Sec. 2-438. Personal Leave; Leave of Absence**

- (a) **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.
- (b) **Leave of Absence.** If an Employee who suffers an Injury on Duty reaches Maximum Medical Improvement but is unable to perform his/her pre-injury job due to permanent restrictions, the Employee may apply for a leave of absence; however, in no event shall any combination of leave time authorized by this Chapter 2 exceed six (6) months.

SECTION 2. BE IT FURTHER ORDAINED, That Chattanooga City Code, Part II, Chapter 2, Article III, Division 19, Section 2-445 is hereby amended by deleting same in its entirety and substituting in lieu thereof the following:

**Sec. 2-445. Maximum Benefits; Settlements; Appeal.**

- (a) **Maximum Benefits.** IOD Compensation shall not extend beyond one (1) year from the date of the IOD. Medical Expenses shall not extend beyond two (2) years from the date of the IOD except as may be otherwise provided for in this section.

- (b) **Settlements.** The Employee and the City shall have the right to settle all matters of compensation between themselves. The Program Director may approve settlements of less than \$10,000.00. In the event that a settlement calculation exceeds \$10,000.00, the Program Director shall make a recommendation to City Council for a lump sum settlement award to the Employee, which may include or exclude future medical expenses. City Council may establish such administrative procedures for the review and approval of settlements as it may deem appropriate. If City Council or any designated hearing body or judge approves an award for settlement of an IOD and the Employee accepts the award, all amounts paid by the City and received by the Employee shall be a final compromise and settlement of all matters of compensation and future medical expenses. A settlement agreement shall be signed by the City and Employee.
- (c) **Permanent Partial Disability.** If an Employee reaches Maximum Medical Improvement but is unable to return to his or her pre-injury position or a comparable position, the City shall offer the Employee a lump sum settlement in accordance with the procedures set forth below:
- (1) Upon receipt of a Maximum Medical Improvement statement for each approved IOD claim, the Program Director will request that the Medical Provider determine the degree of permanent or partial impairment. The PPI rating will be determined in accordance with the American Medical Association Guidelines.
  - (2) After receipt of the PPI rating, the Program Director will calculate a lump sum settlement using the then-existing schedule of compensation provided in the Tennessee Worker's Compensation Act, T.C.A. § 50-6-207, for same or similar injuries or impairment as guidance. However, the schedule of compensation may not be binding. The City retains discretion as to the method used to calculate any lump sum settlement, but in no event shall the schedule of compensation be less than the amounts provided in the Tennessee Worker's Compensation Act.
  - (3) IOD benefits payable under this Injury on Duty Program may be offset by any City-sponsored disability benefits received by Employees.

- (d) **Permanent Total Disability.** A permanent total disability is an injury that totally incapacitates an Employee from working at an occupation that brings the Employee any income.
- (1) 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. However, an Employee who is determined to be permanently totally disabled by a Medical Provider shall be offered a lump sum settlement calculated in accordance with the provisions set forth in subsection (c) of this section.
- (2) Employees who suffer a permanent total disability shall be required to apply for any City-sponsored disability benefits. IOD benefits payable under this Injury on Duty Program may be offset by any such benefits received by Employees.
- (e) **Release and Waiver.** Any lump sum settlement that is awarded and accepted by an Employee resulting in payment after the expiration of the payment periods provided for in Sections 2-433 and 2-434 shall be conditioned upon the Employee's execution of a release and waiver.
- (f) **Appeal.** If an Employee disagrees with the amount of the lump sum settlement offered by the City, the Employee may appeal by requesting a hearing before an administrative law judge within thirty (30) days following the City's written notification of the settlement offer.

Notice of the appeal shall be filed with the Clerk of the City Council ("Clerk"). The Clerk shall notify the Tennessee Secretary of State's Administrative Procedures Division ("APD") that an appeal has been filed. The APD is authorized to assign an administrative law judge ("ALJ") to conduct a fair and impartial hearing and adjudicate the Employee's appeal.

If the APD's office is not available to conduct a hearing, the Chairperson of the City Council ("Chairperson") shall appoint an ALJ to conduct a fair and impartial hearing and

adjudicate the Employee's appeal. The ALJ appointed by the Chairperson shall be an attorney licensed to practice law in the State of Tennessee. The Chairperson may remove an ALJ if the ALJ fails to adjudicate an Employees, appeal, for cause, or as allowed by law.

The ALJ to whom a case is assigned may convene the parties for a scheduling conference within fifteen (15) days or as soon as practical and shall set a hearing date within ninety (90) days of the date the Employee's written request for a hearing is filed with the Clerk unless the Employee and the City agree otherwise or for good cause shown. The hearing date may be reset by agreement of the parties or for cause.

The ALJ to whom a case is assigned shall provide the Clerk with the hearing date. The Clerk shall issue notice of the hearing date to the Employee, Program Director, ALJ and all other interested parties. The Clerk shall make arrangements for a suitable hearing location.

The ALJ appointed to conduct the hearing shall disclose any possible conflicts of interests and shall not engage in *ex parte* communications except pursuant to law or rules of the City Council. The ALJ shall determine if there is a reasonable basis for the settlement offer. The ALJ shall affirm the settlement offer is there is a reasonable basis for the calculation of the offer or modify the offer on the basis of the evidence. The ALJ shall prepare a record, including a transcript, list of exhibits admitted into evidence during the hearing and all matters of record for a fair and just adjudication of the Employee's appeal.

The ALJ shall file written findings of facts and conclusions in the Clerk's Office within twenty (20) days after the hearing is concluded and issue the written findings to the Employee and the Program Director. The written decision shall include a statement of available procedures and time limits for seeking reconsideration.

The Program Director or Employee, within ten (10) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The other party may respond to the request within ten (10) days. The ALJ shall issue a written decision on the request for reconsideration within thirty (30) days of the request.

Any decision of the ALJ appointed under this Section shall be the final decision, except as otherwise may be provided for by law.

SECTION 3. BE IT FURTHER ORDAINED, That Chattanooga City Code, Part II, Chapter 2, Article III, Division 19, Section 2-449 is hereby amended by deleting same in its entirety and substituting in lieu thereof the following:

**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 in accordance with the procedures set forth in Section 2-445(f).

SECTION 4. BE IT FURTHER ORDAINED, That this Ordinance shall take effect immediately upon passage.

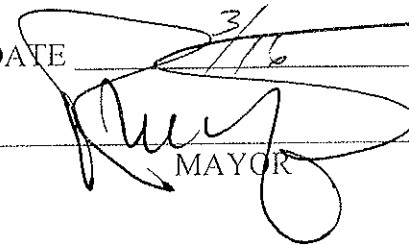
PASSED on Second and Final Reading

March 13, 2012.

  
CHAIRPERSON

APPROVED:  DISAPPROVED:

DATE 3/16, 2012

  
MAYOR

VLM/ccw/mms