

MEMORANDUM OF LAW

DATE: September 15, 1992

TO: Larry B. Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: San Diego Municipal Code Sections 24.0103(j), (k),
(l) and (t) concerning, respectively,
"compensation," "compensation earnable," "final
compensation" and "creditable service"

You have requested a legal opinion concerning the meaning of San Diego Municipal Code ("SDMC") sections 24.0103 (j), (k), (l) and (t) governing, respectively, "compensation," "compensation earnable," "final compensation" and "creditable service." Specifically, you have asked for clarification of the impact of the Long Term Disability ("LTD") Program sponsored by the City on these SDMC sections.

In support of your request, you have outlined your current procedures in this area. In addition, you have submitted a series of questions with respect to the particular SDMC section involved. Your procedure followed by your questions and our responses follow.

Final Compensation - Section 24.0103(l)

Final Compensation is currently figured on the highest one-year period.

QUESTION a) Must this high one-year period be a consecutive period of time or can several periods of less than one year be added together to obtain the year?

RESPONSE: The high one-year period is a consecutive period of time.

QUESTION b) Must the Final Compensation be based on a period of time when the employee was making contributions to the Retirement System and/or was not making contributions but later paid a buy back to purchase this period of service?

RESPONSE: Yes. Final Compensation must be based on a period of time when the employee was making contributions to the Retirement System. If the employee was not making contributions to the Retirement System, the employee may not use this compensation for the calculation of Final Compensation unless the employee pays a

buy back to purchase this period of service.

QUESTION c) What high one-year period would final compensation be calculated on when the employee is in the following circumstances on the timesheet:

1) On Long-Term Disability prior to the effective retirement date,

RESPONSE: If an employee were on LTD prior to the effective date of his or her retirement, you would use the high one-year prior to the LTD status. The period during which the employee was on LTD is not included in final compensation calculations for high one-year for several reasons. First LTD payments are disability generated payments reflecting only 70% of the employee's compensation. They are not "compensation" for services rendered. Second, there are no retirement contributions made on disability payments. Thus, even with a buy back of LTD time, the employee would still use the year preceding the LTD status. A buy back would only increase the employee's creditable service.

2) On Leave Without Pay prior to the effective retirement date,

RESPONSE: If an employee was on leave without pay prior to the effective date of retirement, you would use the high one-year prior to the leave without pay status. Again, this period of time is not used in the calculations for high one-year because no retirement contributions are made on these sums.

3) Actively working prior to the effective date of retirement,

RESPONSE: The highest one-year prior to the effective date of retirement. In the more common situation, the last year will most likely be the highest one-year. Note, however, that the high one-year need not be the year immediately preceding retirement. Note, also, that the employee's participation in Deferred Compensation or other employee benefits will not affect the calculations for high one-year because retirement contributions are calculated on the employee's gross salary.

4) On scattered and broken periods of Long-Term Disability and periods of Actively Working prior to the effective retirement date,

RESPONSE: The high one-year preceding the scattered and broken periods of LTD and active employment. Note, however, that the employee could buy back those periods of either LTD or leave without pay to avail himself or herself of a more advantageous high one-year.

5) On Annual Leave prior to the effective retirement date,

RESPONSE: Annual leave prior to the effective date of retirement

is includable in the high one-year period because retirement contributions are made on these sums.

6) On Sick Leave prior to the effective retirement date,

RESPONSE: Sick leave prior to the effective date of retirement is includable in the high one-year period because retirement contributions are made on these sums.

7) On Out-of-Class pay prior to the effective retirement date,

RESPONSE: Out-of-class pay prior to the effective retirement date is includable in the high one-year because retirement contributions are made on these sums.

8) On Long-Term Disability prior to the effective date of retirement and bought back this period of time after returning to work for one day,

RESPONSE: No retirement contributions are made when an employee is on LTD status. As such, the high one-year period would not include these time periods.

9) On Industrial Leave prior to the effective date of retirement.

RESPONSE: Industrial leave prior to the effective date of retirement is includable in the high one-year period because retirement contributions are made on these sums.

Compensation Earnable - Section 24.0103(k)

Section 24.0103(1) indicates that Final Compensation is calculated using Compensation Earnable. Section 24.0103(k) indicates that Compensation Earnable is calculated during periods of an employee's absence by using the compensation of the position held by the employee at the beginning of the absence.

QUESTION a) What is your definition of "absence" in this section of the Code?

RESPONSE: Absence is defined as any period of time during which the employee is not making contributions to the retirement system. In this regard, please note that "member" is defined in SDMC Section 24.0103(e) as "any person who actively participates in and contributes to the Retirement System, and who is thereafter entitled, when eligible, to receive benefits therefrom."

QUESTION b) Is "absence" considered periods of Long-Term Disability, Industrial Leave, Leave Without Pay, Annual Leave, and Sick Leave?

RESPONSE: LTD and Leave Without Pay would qualify as "absences" because no retirement contributions are made on these sums.

Industrial Leave, Annual Leave and Sick Leave, however, do not qualify as "absences" because retirement contributions are made

on these sums.

QUESTION c) If absence is considered as in 2(b) above, should the employee be given credit for "compensation earnable" during these periods of time toward their final compensation calculation, even though the employee may have not made retirement contributions to the Retirement System during this period of absence (i.e. During Long-Term Disability)?

RESPONSE: Neither LTD nor Leave Without Pay provide credit for compensation earnable. On the other hand, sick leave, annual leave and industrial leave do provide credit for compensation earnable.

Creditable Service - Section 24.0103 (t)

Staff currently includes the time during which a member made contributions into the Retirement System as "creditable service." Any periods of time when an employee did not make retirement contributions is subtracted from the total years of creditable service (i.e. On Leave Without Pay or Long-Term Disability)

QUESTION a) Is this calculation currently being done correctly according to this section of the Code?

RESPONSE: Yes.

QUESTION b) If an employee buys back a period of Long-Term Disability after returning to work for one day, the employee is given credit for this period toward "creditable service". Is this calculation currently being done correctly?

RESPONSE: Yes.

Compensation - Section 24.0103(j)

The definition of "Compensation" indicates that it means the remuneration paid in cash out of City funds, plus the monetary value of various other items furnished to an employee in payment for the employee's services.

QUESTION a) What is your definition of "employee's services"?

RESPONSE: Broadly speaking, "employee's services" would be synonymous with the employee's employment.

QUESTION b) Would employee's services include only the period of time when an employee was actively working?

RESPONSE: No. Annual leave, sick leave and industrial leave could be included as well.

QUESTION c) Could employee services include a period of time when an employee was on annual leave, sick leave, long-term disability, industrial leave, or leave without pay?

RESPONSE: Yes, with respect to annual leave, sick leave or industrial leave. No, with respect to LTD or Leave Without Pay.

QUESTION d) Long-Term Disability payments are paid from City

funds, however, retirement contributions are not taken from L.T.D. payments. Should L.T.D. be considered as "compensation"?

RESPONSE: No. The Salary Ordinance clearly sets forth Tables of Classes and Standard Rate Numbers which establish uniform compensation for like service. The calculations for fixing retirement allowances utilize these base salary rates. Since there are no retirement contributions made on LTD payments it follows that these sums would not be includable in "compensation earnable" for the purpose of establishing "final compensation."

I hope this Memorandum of Law has addressed your concerns with respect to the SDMC sections governing "compensation," "compensation earnable," "final compensation" and "creditable service." Please contact me if you have any questions or if I can provide any additional information.

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By

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