

MEMORANDUM OF LAW

DATE: March 15, 1993

TO: Jerry Fort, Deputy Director, Personnel Department

FROM: City Attorney

SUBJECT: Preemployment Medical Examinations

Currently, the Personnel Department is evaluating a number of proposals in an effort to offset some of the City's expected budget shortfall. One of the proposals under consideration is to charge a fee for the cost of preemployment medical examinations. In this regard, you have asked the following two questions concerning the legality of the proposal.

1. Can the Personnel Department charge individuals who have been made contingent job offers for the City's actual cost of providing preemployment medical examinations to these individuals?
2. Can the City charge only those individuals who have passed their medical examination and subsequently gain city employment for the cost of their medical examinations? In this case the cost would be recovered by payroll deduction from the first several paychecks received by the employee. Under this plan those individuals who are not medically qualified for employment would not be required to pay the cost of their medical.

The courts have noted that "the right to be considered for public employment without unreasonable or invidious distinctions is as fundamental as a right to subsistence benefits or medical care." *Cooperrider v. Civil Service Com.*, 97 Cal. App. 3d 495, 504 (1979). Putting into operation a fee for preemployment medical examinations may have an invidious discriminatory affect on certain ethnic or racial groups, or socio-economic classes.

To ensure that no economic discrimination occurs in the application and employment process, the state legislature enacted California Labor Code section 222.5 which provides:

No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment

to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.

An additional prohibition barring employers from charging for medical examinations is found in Labor Code section 230 which provides:

Any employer who requires, as a condition of employment, that an employee have a driver's license shall pay the cost of any physical examination of the employee which may be required for issuance of such license, except where the physical examination was taken prior to the time the employee applied for such employment with the employer.

Finally, Labor Code section 225 indicates that a violation of section 222.5 is a misdemeanor.

In view of the clear dictates of the Labor Code provisions, the City is precluded from charging applicants or employees for medical examinations.

If you have additional questions, please contact me.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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