MEMORANDUM OF LAW

DATE: May 5, 1993

TO: D. Cruz Gonzalez, Risk Management Director

FROM: City Attorney

SUBJECT: Requirement to Provide COBRA Coverage to Retirees and their Dependents

As you are aware, Congress enacted the Consolidated Omnibus Budget Reconciliation Act ("COBRA") in 1986 to require group health plans to offer continuation coverage to employees and their dependents who have lost plan coverage for certain reasons. In a memorandum dated March 9, 1993, you asked this office to review Risk Management's position that federal law requires the City to offer COBRA coverage to employees and their covered dependents at the time of retirement.

Federal law requires the City to offer COBRA coverage to covered employees and qualified beneficiaries upon the occurrence of a qualifying event. A "qualified beneficiary" includes the spouse of the covered employee or a dependent child of the employee. 42 U.S.C. section 300bb-8 (1991). One of the "qualifying events" specified in the federal law is the termination of a covered employee's employment, other than by reason of such employee's gross misconduct, which results in a loss of coverage to the employee or a qualified beneficiary. 42 U.S.C. section 300bb-3 (1991). This definition includes retirement. See, 52 Fed. Reg. 22716-01, questions and answers ("Q&A") 16(a) and 18(e) (1987). "Loss of coverage" has been interpreted to mean that the employee or qualified beneficiary is no longer covered under the same terms and conditions as in effect immediately before the qualifying event. 52 Fed. Reg. 22716-01, Q&A 18(c) (1987). Upon the occurrence of a qualifying event, the employee and each qualified beneficiary is entitled to make a separate selection among coverages, to the extent that choices are available. 42 U.S.C. section 300bb-5 (1991).

In short, your interpretation of the federal law is correct. The "terms and conditions" of the City's retiree health coverage for both the employee and his or her dependents differs from the terms and conditions of health coverage while the

employee is still working, therefore the City is obligated to offer COBRA coverage to any employee who is retiring and his or her dependents. The retiree and his or her dependents are then entitled to make an independent election with respect to accepting the COBRA coverage offered.

If you have further questions concerning this issue, please contact me.

JOHN W. WITT, City Attorney
By
Sharon A. Marshall
Deputy City Attorney

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cc Valerie VanDeweghe
ML-93-51

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