

**COMMISSION ON STATE MANDATES**

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July 21, 2006

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

*And Interested Parties and Affected State Agencies (See Enclosed Mailing List)*

**RE: Request for Postponement of Hearing**

*Workers' Compensation Disability Benefits for Government Employees*  
(00-TC-20, 02-TC-02)  
County of Los Angeles, Claimant  
San Diego Unified School District, Co-Claimant  
Labor Code Section 4850  
Statutes 2000, Chapter 920 & 929; Statutes 1999, Chapters 270 & 970;  
Statutes 1989, Chapter 1464; Statutes 1977, Chapter 981

Dear Mr. Kaye:

Your request for a postponement of the hearing on the *Workers' Compensation Disability Benefits for Government Employees* test claim, received July 20, 2006, is approved for good cause. (Cal. Code Regs., tit. 2, § 1183.01, subd. (c)(2)(A).)

A new hearing date will be scheduled upon final adjudication of the *CSAC Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates and the State Department of Finance* case. The new hearing date will allow for a 30 day comment period.

If you have questions on the above, please contact Deborah Borzelleri at (916) 323-3562.

Sincerely,

Handwritten signature of Paula Higashi in cursive script.  
PAULA HIGASHI  
Executive Director

cc: Mailing list (enclosed)

MAILED: Mail List  
FAXED: \_\_\_\_\_  
DATE: 7/16/04  
INITIAL: LP  
FILE: \_\_\_\_\_  
WORKING BINDER: \_\_\_\_\_



COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY  
AUDITOR-CONTROLLER

July 20, 2006

RECEIVED  
JUL 20 2006  
COMMISSION ON  
STATE MANDATES

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Ms. Higashi:

Los Angeles County's Requests  
Extension of Time to Comment and Postponement of Hearing  
Workers' Compensation Disability for Government Employees

This is to request postponement of the subject test claim hearing scheduled for July 28, 2006 until at least 60 days following final adjudication of a relevant case, *CSAC Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates and the State Department of Finance*, currently under appeal. In addition, an extension of time, permitting comments in this matter to be filed with the Commission 30 days prior to the new hearing date, is requested. Justification for these requests is attached.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

*John Naimo* FOR  
J. Tyler McCauley  
Auditor-Controller

JTM:CY:LK

Justification  
Los Angeles County's Requests  
Extension of Time to Comment and Postponement of Hearing  
Workers' Compensation Disability for Government Employees

Postponement of the subject test claim hearing scheduled for July 28, 2006 until at least 60 days following final adjudication of a relevant case, *CSAC Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates and the State Department of Finance*, currently under appeal, and, an extension of time, permitting comments in this matter to be filed with the Commission 30 days prior to the new hearing date, is requested for the following reasons.

Final adjudication of the [above] appeal is important to resolving this matter as the appeal includes an issue of relevance here. Specifically, the holding in the *CSAC Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates* provides that a reimbursable State mandated program which imposes unique requirements on local government need not result in a demonstrable increase in the actual level or quality of governmental service provided to the public.

Commission staff disagree with the holding in *CSAC Excess Insurance Authority* and contend, on page 6 of their analysis, that the subject test claim, which imposes unique requirements on local government, is not reimbursable because the State mandated program claimed here "...does not result in an increase in the actual level or quality of governmental service provided to the public." But, as explained by Judge David P. Yaffe, in *CSAC Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates*, a reimbursable State mandated program which imposes unique requirements on local government need not result in an increase in the actual level or quality of governmental service provided to the public:

"Section 6 of Article XIII B of the California Constitution, added by the electorate in 1979, states in pertinent part:

"Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service ...."

The constitutional language could have been interpreted restrictively to apply only to programs and services provided to benefit the public, and to not apply to increases in benefits that local public agencies are required

by the legislature to give to their employees. It is a fact however that the Supreme Court has NEVER adopted that restrictive meaning. In 1987, and repeatedly since then, the Supreme Court has interpreted the constitutional language quoted above to apply to, "programs that carry out the governmental function of providing services to the public, OR LAWS WHICH, TO IMPLEMENT A STATE POLICY, IMPOSE UNIQUE REQUIREMENTS ON LOCAL GOVERNMENTS AND DO NOT APPLY GENERALLY TO ALL RESIDENTS AND ENTITIES IN THE STATE." COUNTY OF LOS ANGELES v. STATE OF CALIFORNIA, 43 Cal.3d 46, 56 (1987) (Emphasis added). "

As stated by Judge Yaffe [above], a subvention of funds is required under two scenarios:

- (1) 'Programs' are found that carry out the governmental function of providing services to the public or
- (2) Laws which, to implement a State policy, impose unique requirements on local governments and do not apply generally to all resident and entities in the State.

Commission staff concur that the second scenario applies here. Specifically, they note that the subject legislation "... do[es] not apply to all residents and entities in the state". [Draft Staff Analysis, page 8]

Accordingly, the test claim legislation implements a State policy which imposes unique requirements on local governments. This is sufficient to warrant reimbursement<sup>1</sup>. No additional proof that "... some increase in the actual level or quality of providing services provided to the public" is required.

Finally, where the purpose of the legislature is to increase the benefits of specific government workers, such legislation qualifies for reimbursement under Section 6 of

<sup>1</sup> Commission staff argue to the contrary. But the cases presented by staff apply only to programs which do not impose unique requirements on local governments and so are not relevant to the subject test claim. For example, in *City of Richmond v. Commission on State Mandates* (1998) 64 Cal App. 4<sup>th</sup> 1190, 1197, it was noted that the test claim legislation "imposes no "unique requirement" on local government". In *City of Anaheim v. State of California* (1987) 189 Cal.App.3<sup>rd</sup> 1478, 1484, Anaheim's argument that their test claim legislation imposed 'unique requirements on local governments' was rejected by the court. In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 61 the Court stated that the test claim legislation, in that case, has not "... imposed a state policy "unique[ly]" on local governments".

Article X III B of the California Constitution. As noted by Judge Yaffe, in his opinion, previously cited, on page 4:

“The purpose of the legislature in enacting the Labor Code provisions involved here was to increase the benefits available to certain workers who are required to put themselves in harm’s way to protect the public. The cost of those benefits is mandated by the legislature to the local public agencies that employ such workers. The only question is how much those costs amount to.”

And so here, the only remaining question is how much these costs amount to.

Nevertheless, the Second Appellate District Court, now reviewing Judge Yaffe’s decision, may or may not uphold the findings in *CSAC Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates*. In either case, the Commission would benefit by receiving relevant and authoritative guidance in adjudicating this matter.

Accordingly, postponement of the subject test claim hearing scheduled for July 28, 2006 until at least 60 days following final adjudication of *CSAC Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates* and, an extension of time, permitting comments in this matter to be filed with the Commission 30 days prior to the new hearing date, is requested.



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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**Los Angeles County's Requests  
Extension of Time to Comment and Postponement of Hearing  
Workers' Compensation Disability for Government Employees**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, requests for extension of time, postponement of hearings and for proposing, or commenting on, parameters and guidelines (Ps&Gs) and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject requests, captioned above.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the attached filing, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" 'Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

7/20/06; Los Angeles, CA  
Date and Place

*Leonard Kaye*  
Signature

*"To Enrich Lives Through Effective and Caring Service"*



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J. TYLER McCAULEY  
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Olga Murga-Rodriguez states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 20th day of July 2006, I served the attached:

Documents: Los Angeles County's Requests, Extension of Time to Comment and Postponement of Hearing, Worker's Compensation Disability for Government Employees Test Claim [00-TC-20 and 02-TC-02], including a 1 page letter of J. Tyler McCauley dated 7/20/06, a 3 page narrative, and a declaration of Leonard Kaye dated 7/20/06, now pending before the Commission on State Mandates.

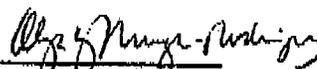
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates FAX as well as mail of originals.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

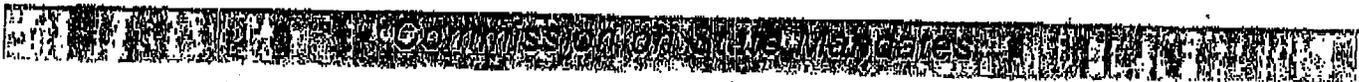
**PLEASE SEE ATTACHED MAILING LIST**

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of July 2006, at Los Angeles, California.

  
 Olga Murga-Rodriguez



Original List Date:	7/6/2001	Mailing Information:	Other
Last Updated:	7/19/2006		
List Print Date:	07/20/2006		<b>Mailing List</b>
Claim Number:	00-TC-20		
Issue:	Workers' Compensation Disability Benefits for Government Employees		

**Related**

02-TC-02      Workers' Compensation Disability Benefits for Government Employees  
(Amendment)

**TO ALL PARTIES AND INTERESTED PARTIES:**

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1161.2.)

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# Commission on State Mandates

Original List Date: 7/6/2001 Mailing Information: Other  
Last Updated: 7/19/2006  
List Print Date: 07/21/2006 **Mailing List**  
Claim Number: 00-TC-20  
Issue: Workers' Compensation Disability Benefits for Government Employees

## Related Matter(s)

02-TC-02 Workers' Compensation Disability Benefits for Government Employees  
(Amendment)

## TO ALL PARTIES AND INTERESTED PARTIES:

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