BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM:

Labor Code Section 4850, as amended by Statutes 1977, Chapter 981 (SB 989); Statutes 1989, Chapter 1464 (SB 1172); Statutes 1999, Chapter 270[1] (AB 224) and Chapter 970 (AB 1387); Statutes 2000, Chapter 920 (AB 1883) and Chapter 929 (SB 2081);

Filed on June 29, 2001 by the County of Los Angeles, Claimant; and

Amended on July 25, 2002 to add San Diego Unified School District, Co-claimant.

Case No.: 00-TC-20/02-TC-02
Workers' Compensation Disability Benefits for Government Employees

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(*Adopted on May 31, 2007*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 31, 2007. Leonard Kaye and Alex Rossi appeared on behalf of claimant, County of Los Angeles. Art Palkowitz appeared on behalf of co-claimant, San Diego Unified School District. Carla Castañeda and Susan Geanacou appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 5-1 to deny this test claim.

Summary of Findings

This test claim addresses modifications to Labor Code section 4850, statutes that expanded the applicability of an existing workers' compensation leave benefit to specified local safety officers. That benefit entitles employees to a leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment.

[1] Claimant incorrectly identified Statutes 1999, chapter *224* on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

The Commission finds that the test claim statutes do not mandate a new program or higher level of service in an existing program. The California Appellate and Supreme Court cases have consistently held that additional costs for increased employee benefits, in the absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not impose a new program or higher level of service on local governments within the meaning of article XIII B, section 6 of the California Constitution.

The workers' compensation program is a *state*-administered program rather than a locally-administered program, one that provides a statewide compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment. Labor Code section 4850 is part of that comprehensive statutory scheme. Moreover, although the claimants may be faced with a higher cost of compensating their employees as a result of extending the workers' compensation leave benefits to additional employees, this does not equate to a higher cost of providing services to the public. Therefore, the Commission concluded that Labor Code section 4850, as amended by Statutes 2000, chapters 920 and 929, Statutes 1999, chapters 270 and 970, Statutes 1989, chapter 1464, and Statutes 1977, chapter 981, does not constitute a reimbursable state-mandated program.

BACKGROUND

This test claim addresses statutes that expanded applicability of an existing workers' compensation leave benefit to specified local safety officers. That benefit entitles employees to a leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment.

Article XIV, section 4 of the California Constitution vests the Legislature with plenary power to create and enforce a complete system of workers' compensation. The Legislature initially addressed the issue of workers' compensation in 1911 in the Workmen's Compensation Act,[2] which was amended significantly in 1913[3] and 1917.[4] The current statutory scheme, enacted in 1937, consolidated workers' compensation and worker health and safety provisions into the Labor Code.[5] The workers' compensation system provides for a compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment, with remedies for temporary and permanent disability, medical care and employer discrimination.[6]

Section 4850 was added to the Labor Code in 1939 to provide city police officers and fire fighters that were members of the State Employees' Retirement System (now the Public Employees' Retirement System [PERS]) a benefit that entitled them to leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in

[2] Statutes 1911, chapter 399.

[3] Statutes 1913, chapter 176.

[4] Statutes 1917, chapter 586.

[5] Labor Code sections 3200 et seq. and 6300 et seq., Statutes 1937, chapter 90.

[6] 65 California Jurisprudence Third (1998), Work Injury Compensation, section 7, pages 29-30.

the course of employment.[7] Over the years, Labor Code section 4850 has been amended several times to expand the groups of employees covered and to address other provisions of the benefit. Section 4850, as amended in 1977 and thereafter, is the subject of this test claim.

Prior to 1977, section 4850 read:

> Whenever any city policeman, city fireman, county fireman, fireman of any fire district, sheriff or any officer or employee of a sheriff's office, or any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 … is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the city or county, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of such disability but not exceeding one year, or until such earlier date as he is retired on permanent disability pension … It shall also apply to deputy sheriffs subject to the County Employees Retirement law of 1937 ….

The section excluded persons such as telephone operator, clerk, stenographer, machinist, mechanic or otherwise, whose functions did not clearly fall within active law enforcement service or active firefighting and prevention service. It also provided that if the employer was insured through the workers' compensation system, then any payments the workers' compensation system would be obligated to make as disability indemnity could be paid to the employer. A later statute, not pled in this test claim, established a program for advanced disability pension payments.[8] Under that program, the local government agency may make advance pension payments to a local safety officer who has qualified for the continued salary benefit under section 4850; for PERS members, the local government is entitled to reimbursement from PERS for any such advance pension payments.

Test Claim Statutes

The test claim statutes consist of several amendments to section 4850. Following is a summary of the changes relevant for this analysis.

Statutes 1977, Chapter 981

- Added lifeguards employed year round on a regular, full-time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

[7] Statutes 1939, chapter 926.

[8] Statutes 1985, Chapter 1254; Labor Code section 4850.3.

Statutes 1989, Chapter 1464

- Reenacted section 4850, which would have sunset on January 1, 1990, without any changes that are relevant for this analysis.

Statutes 1999, Chapter 270[9]

- Added certain peace officers defined in Penal Code section 830.31[10] that are employed on a regular full time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

Statutes 1999, Chapter 970

- Added county probation officers, group counselors, juvenile services officers, or officers or employees of a probation office, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.
- Provided that safety employees employed by the County of San Luis Obispo could be entitled to the one-year paid leave benefit upon the adoption of a resolution of the board of supervisors of the County of San Luis Obispo, even though the employee is not a member of PERS or subject to the County Employees Retirement Law of 1937.

Statutes 2000, Chapters 920 & 927 (double-joined)

- Added the Los Angeles City Retirement System as another retirement program to which the specified employees may belong in order to receive the one-year paid leave benefit.
- Added the one-year paid leave benefit for the following employees:
  - airport law enforcement officers under subdivision (d) of section 830.33 of the Penal Code;
  - harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of section 830.1 or subdivision (b) of section 830.33 of the Penal Code; and
  - police officers of the Los Angeles Unified School District.

Claimant's Position

Claimant, the County of Los Angeles, contends that the test claim statutes constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

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[9] Claimant incorrectly identified Statutes 1999, chapter *224* on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

[10] Penal Code section 830.31 designates the following persons as peace officers: (a) a police officer of the County of Los Angeles; (b) a person designated by a local agency as a park ranger; (c) a peace officer of the Department of General Services of the City of Los Angeles; and (d) a housing authority patrol officer.

Claimant asserts that the County has incurred "new duties" and increased costs in complying with the new requirement that leave of absence with full salary must now be provided to specified employees instead of less costly temporary disability or maintenance payments required under prior law. The asserted increased costs in providing these benefits are the difference between the 70% temporary disability salary that was previously required and the 100% salary required for newly specified employees under the test claim statutes.

Claimant disagrees with the conclusion in the draft staff analysis that the test claim statutes do not create a reimbursable state-mandated program because they do not result in an increase in the actual level or quality of governmental service provided to the public. The County provided additional comments, citing a California Attorney General opinion that exceptional treatment of police officers and firefighters by Labor Code section 4850 is intended to ensure that these employees would not be deterred from "zealous performance of their mission of protecting the public by fear of loss of livelihood" and therefore the test claim statutes impose a new program or higher level of service under article XIII B, section 6. This argument is addressed in the analysis.

Co-Claimant's Position

Co-claimant, San Diego Unified School District, contends that the test claim statutes constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for the District's police officers, since the Fourth District Court of Appeal case of *San Diego Unified School District v. Workers' Compensation Appeals Board*[11] upheld a Workers' Compensation Appeals Board determination that a San Diego Unified School District peace officer was entitled to the paid leave benefit provided in Labor Code section 4850.

Department of Finance Position

Department of Finance submitted comments recommending that "the test claim be denied since the chaptered legislation cited in the test claim does not appear to mandate a new program or higher level of service of an existing program pursuant to Article XIII B, Section 6 of the California Constitution." The Department filed additional comments agreeing with the conclusions in the staff analysis.

[11] *San Diego Unified School District v. Workers' Compensation Appeals Board*, July 19, 2001, D038032 (nonpub. opn., cert. denied).

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[12] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[13] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[14] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[15] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[16]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[17] To determine if the program is new or imposes a higher level of service, the test claim statutes must be compared with the legal requirements in effect immediately before the enactment of

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[12] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[13] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 735.

[14] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[15] *Long Beach Unified School Dist. v. State of California (Long Beach Unified School Dist.)* (1990) 225 Cal.App.3d 155, 174; *Kern High School Dist., supra,* 30 Cal.4th 727, 732.

[16] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[17] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874 [reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835].

the test claim statutes.[18] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[19]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[20]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[21] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[22]

This test claim presents the following issue:

- Do the test claim statutes mandate a "new program or higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution?

Issue 1: Do the test claim statutes mandate a "new program or higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 requires the state to reimburse local governments for the costs of a new program or higher level of service mandated by the Legislature or any state agency. Although the stated purpose of section 6 is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies which have limited resources, imposing increased costs alone does not require reimbursement under article XII B, section 6.[23]

Rather, a test claim statute may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task,[24] and the required activity or task is new, constituting a "new program," or it creates a "higher level of service"

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[18] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[19] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[20] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[21] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[22] *County of Sonoma v. Commission on State Mandates,* 84 Cal.App.4th 1264, 1280 (*County of Sonoma*), citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[23] *Kern High School Dist., supra,* 30 Cal.4th 727, 735.

[24] *Long Beach Unified School Dist., supra,* 225 Cal.App.3d 155, 174; *Kern High School Dist., supra,* 30 Cal.4th 727, 732.

over the previously required level of service.[25] As noted above, the term "program" in the context of section 6 has been defined by the courts as a program that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[26]

The test claim statutes modified Labor Code section 4850 to specify new categories of public safety employees that are eligible for a workers' compensation leave benefit. When the specified employee is disabled by injury or illness arising out of his or her duties, he or she "shall become entitled … to a leave of absence while so disabled without loss of salary…"[27] Section 4850 thus requires the employees to receive the benefit.

Claimant argues that it has incurred "new duties" and "costs" as a result of the test claim statutes. However, the plain language of the test claim statutes does not impose any state-mandated *activities.* Moreover, even if the test claim statutes were to impose additional *costs* on local agency employers for the newly eligible employees, the Commission finds that the test claim statutes do not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6, because case law uniformly holds that statutes that increase the cost of employee benefits do not mandate a new program or higher level of service in an existing program.

The Supreme Court, in the landmark decision *County of Los Angeles*, held that a general cost of living increase in workers' compensation benefits did not impose on local agencies either a new program or a higher level of service in an existing program. The court made it clear that workers' compensation is not a program administered by local agencies to provide a service to the public. The court stated:

> Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (Citations omitted.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement

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[25] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835-836.

[26] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874 (reaffirming the test set out in *County of Los Angeles, supra,* 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835).

[27] Labor Code section 4850, subdivision (a).

> as state-mandated programs or higher levels of service within the meaning of section 6.[28]

The court provided additional explanation regarding the effect of article XIII B, section 6 on general employee costs:

> Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage – costs which all employers must bear – neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.[29]

In the years since the Supreme Court's *County of Los Angeles* decision, California courts have consistently denied reimbursement for increased costs for employee benefits where the benefit programs are not administered by a local government agency.

Thus, reimbursement was denied in *City of Anaheim v. State of California (City of Anaheim)* (1987) 189 Cal.App.3d 1478, where the City was seeking reimbursement for costs incurred as a result of a test claim statute that temporarily increased retirement benefits to public employees. The City argued that since the test claim statutes specifically dealt with pensions for public employees, the statutes imposed unique requirements on local governments that did not apply to all state residents or entities.[30] The court held that reimbursement was not required because the program involved, i.e., the Public Employees' Retirement System, was not a *locally*-administered program but a *state*-administered program.[31] Moreover, the court stated, "…[the] City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public."[32]

In *City of Sacramento v. State of California (City of Sacramento)* (1990) 50 Cal.3d 51, the Supreme Court likewise denied reimbursement for a state law extending mandatory coverage under the state's unemployment insurance law to include state and local governments. The court held that the requirement for local agencies to provide unemployment insurance benefits to their own employees "has not compelled provision of new or increased "service to the public" at the local level.[33] Nor did the requirement impose "a state policy 'unique[ly]' on local governments" since most private employers in the state were already required to provide unemployment insurance to their employees.[34]

Where a workers' compensation death benefit was extended to local safety officers, the subject of *City of Richmond,* reimbursement was also denied. In that case, the City argued that the test claim statutes applied only to local safety members and therefore imposed a unique requirement on local governments that was not applicable to all residents and entities in the

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[28] *County of Los Angeles, supra,* 43 Cal.3d 46, 58.

[29] *Id.* at 61.

[30] *City of Anaheim, supra,* 189 Cal.App. 3d 1478, 1483-1484.

[31] *Id.* at 1484.

[32] *Ibid.*

[33] *City of Sacramento, supra,* 50 Cal.3d 51, 67.

[34] *Ibid.*

state.[35] The court held that the statutes merely eliminated a previous exemption from workers' compensation death benefits to local safety members, and thus made the workers' compensation death benefits "as applicable to local governments as they are to private employers … [and] impose[] no 'unique requirement' on local governments."[36]

The City of Richmond further argued that "increased death benefits are provided to generate a higher quality of local safety officers and thus provide the public with a higher level of service" as did providing protective clothing and equipment for fire fighters in *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521.[37] The court rejected that argument since the program at issue addressed death benefits rather than equipment use by local safety members.[38] The court then reiterated the *City of Anaheim* conclusion that "[a] higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public."[39]

The Supreme Court reaffirmed and clarified what constitutes an "enhanced service to the public" in the *San Diego Unified School Dist.* case.[40] The court, in reviewing several cases on point including *City of Richmond*, stated that the cases "illustrate the circumstance that simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting 'service to the public' under article XIII B, section 6, and Government Code section 17514." (Emphasis in original.)[41]

The Supreme Court went on to describe what *would* constitute a higher level of service:

> By contrast, Courts of Appeal have found a reimbursable "higher level of service" concerning an existing program when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. In *Carmel Valley Fire Protection Dist. v. State of California* [citations omitted], for example, an executive order required that county firefighters be provided with protective clothing and safety equipment. Because this increased safety equipment apparently was designed to result in more effective fire protection, the mandate evidently was intended to produce a higher level of service to the public … ."[42]

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[35] *Ibid.*

[36] *Id.* at 1199.

[37] *Ibid.*

[38] *Id.* at 1196.

[39] *Ibid.*

[40] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 876-877.

[41] *Id.* at 877.

[42] *Ibid.*

The Supreme Court also cited circumstances in *Long Beach Unified School Dist.*, where an executive order required school districts to take specific steps to measure and address racial segregation in local public schools.[43] There, the appellate court held that the executive order constituted a "higher level of service" to the extent that it exceeded federal constitutional and case law requirements by mandating local school districts to "undertake defined remedial actions and measures that were merely advisory under prior governing law."[44]

The reasoning in the aforementioned cases is applicable in the instant case. The workers' compensation program is a *state*-administered program rather than a locally-administered program, one that provides a statewide compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment.[45] Labor Code section 4850 is part of that comprehensive statutory scheme. Moreover, although the claimants may be faced with a higher cost of compensating their employees as a result of extending the workers' compensation leave benefits to additional employees, this does not equate to a higher cost of providing services to the public.

Claimant County of Los Angeles commented that the California Attorney General, in a 1968 opinion, finds that "Labor Code section 4850 results in an enhanced service to the public."[46] Claimant also relies on a past decision of the Commission, *Threats Against Peace Officers* (CSM 96-365-02), which found a reimbursable state mandated program was imposed by statutes that required local agencies employing peace officers to reimburse such employees, or any member of their immediate family residing with the officer, for moving and relocation expenses incurred when a peace officer has received a credible threat of life threatening action against the peace officer or the officer's immediate family.

The Commission disagrees that Labor Code section 4850, for purposes of article XIII B, section 6 analysis, results in an enhanced service to the public. Neither of the documents cited by the County provides any authority that can be relied upon for this analysis, since there are numerous California cases directly on point for workers' compensation and other employee benefits in the context of state mandates. Moreover, the argument made by claimant that workers' compensation or other employee benefits provided to local safety officers results in an enhanced service to the public has been repeatedly raised by local agencies *and denied by the courts* in those cases.

The Supreme Court in *San Diego Unified School Dist.* reaffirmed the finding in *City of Richmond* that providing a workers' compensation death benefit *does not* equate to a higher level of service to the public.[47] The Supreme Court's statements of law must be applied in any inferior court of the state where the facts of a case are not fairly distinguishable from the facts

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[43] *Ibid.*

[44] *Ibid.*

[45] 65 California Jurisprudence Third (1998), Work Injury Compensation, section 7, pages 29-30.

[46] Letter from J. Tyler McCauley, Auditor-Controller, County of Los Angeles, received April 20, 2007, page 2.

[47] *San Diego Unified School Dist , supra,* 33 Cal.4th 859, 877.

of the case in which the principle of law has been declared.[48] Here, the workers' compensation paid leave benefit for newly specified local safety officers cannot be distinguished from the benefits at issue in *City of Richmond* or *City of Anaheim* for purposes of subvention. As the issue was further interpreted in *San Diego Unified School Dist.*, examples of an enhanced service to the public in this context were the provision of protective clothing and safety equipment for firefighters, or undertaking defined remedial actions to address racial segregation, rather than increased benefits to employees.

The claimant, County of Los Angeles, further asserts that that "[t]he governmental protections are special."[49] Citing *City of Oakland Integrated Resources v. Workers' Compensation Appeals Board* (2007) 72 Cal.Comp.Cases 249 to support the principle that these salary continuation benefits are "clearly different than workers' compensation short term disability benefits,"[50] claimant concludes that the salary continuation benefits are separately administered and paid for by the County and not administered and paid for as part of temporary disability workers' compensation benefits.

The Commission does not dispute that the salary continuation benefits are different from temporary disability benefits. However, the fact remains that the plain language of the statutes providing these salary continuation benefits *does not* impose any state-mandated activities on the local agency. Labor Code section 4850 states:

> (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937, is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, *he or she shall become entitled*, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments or advanced disability pension payments pursuant to Section 4850.3. (Emphasis added.)

Furthermore, the salary continuation benefit is a *workers' compensation* benefit. It is part of Division 4 of the Labor Code, entitled "Workers' Compensation and Insurance," which sets forth the workers' compensation statutory scheme in California. Thus, the California cases addressing workers' compensation and other employee benefits in the context of state mandates are unquestionably applicable to Labor Code section 4850.

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[48] *People v. Triggs* (1973) 8 Cal.3d 884 (disapproved on other grounds by *People v. Lilienthal* (1978) 22 Cal.3d 891).

[49] Comments from J. Tyler McCauley, Auditor-Controller, County of Los Angeles, submitted May 29, 2007, page 2.

[50] *Ibid.*

Thus, the California Appellate and Supreme Court cases have consistently held that additional costs for increased employee benefits, in the absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not mandate a "new program or higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution.

Claimant County of Los Angeles asserted that a recent Los Angeles *Superior* Court case, *CSAC Excess Insurance Authority v. Commission on State Mandates*[51] was inconsistent with the conclusions in the staff analysis. However, that case was recently appealed to and overturned by the Second District Court of Appeal in an unpublished decision.[52] The unpublished decision was subsequently appealed to the California Supreme Court, which denied the petition for review on March 21, 2007.[53]

CONCLUSION

The Commission finds that because the test claim statutes do not mandate a new program or higher level of service in an existing program, the statutes do not create a reimbursable state-mandated program on local governments within the meaning of article XIII B, section 6 of the California Constitution.

[51] *CSAC Excess Insurance Authority v. Commission on State Mandates (CSAC)*, Superior Court, Los Angeles County, 2005, No. BS095456.

[52] *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Second District Court of Appeal, 2006, Case Number B188169 (nonpub. opn., cert. denied).

[53] *CSAC Excess Insurance Authority v. Commission on State Mandates, et. al.*, California Supreme Court, 2007, Case Number S149772.