

INTRADEPARTMENTAL CORRESPONDENCE

June 27, 2013
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BPC #13-0235

TO: The Honorable Board of Police Commissioners

FROM: Inspector General, Police Commission

SUBJECT: EMPLOYMENT LITIGATION AUDIT

RECOMMENDED ACTION

REVIEW and APPROVE the Office of the Inspector General's Employment Litigation Audit.

DISCUSSION

As part of its focus on issues of risk management, the Office of the Inspector General (OIG) conducted an audit of the Department's responsibilities with regard to employment-related litigation. This is an area of concern because from 2006 to 2012, Department employment-related litigation cost the City approximately \$31 million. To evaluate Department actions, the audit examined 27 lawsuits which were settled or adjudicated between 2007 and 2012.

As a result of the audit, the OIG developed seven recommendations intended to reduce the number of lawsuits, to better track those lawsuits that do arise, and to better learn from closed lawsuits. These actions collectively should improve the Department's ability to reduce employment litigation risks and costs.

I am available to provide any information the Board may require.

E-Copy – Original Signature on File with the Police Commission

ALEXANDER A. BUSTAMANTE
Inspector General
Police Commission

Attachment

c: Executive Director Richard M. Tefank
Chief of Police Charles L. Beck
Special Assistant for Constitutional Policing Gerald L. Chaleff
Department Risk Manager Beth D. Corriea
Captain Roseira C. Moreno, Commanding Officer of Legal Affairs Division

LOS ANGELES POLICE COMMISSION

EMPLOYMENT LITIGATION AUDIT



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

ALEXANDER A. BUSTAMANTE
Inspector General

June 27, 2013

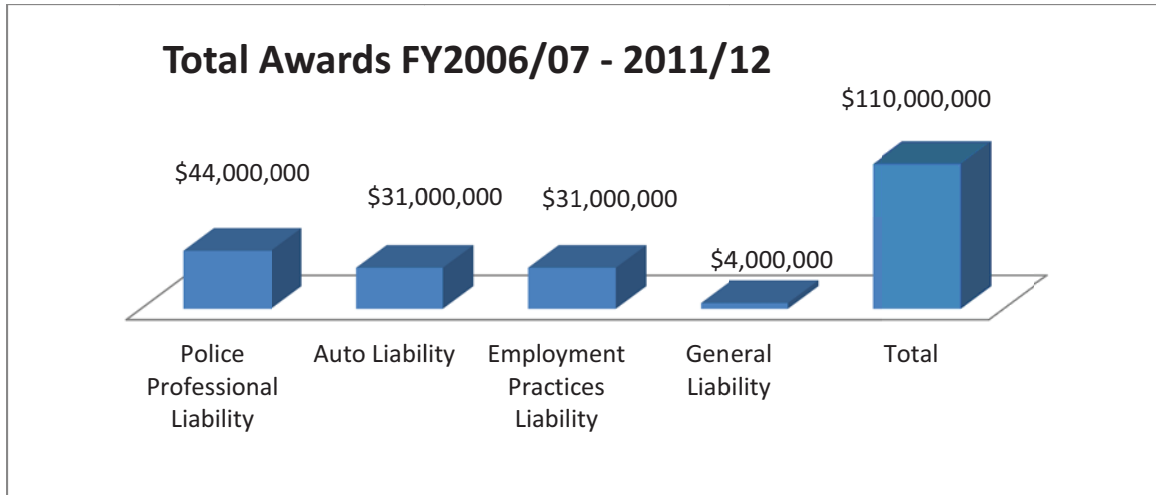
EMPLOYMENT LITIGATION AUDIT

PURPOSE

The Employment Litigation Audit (Audit) was conducted to review LAPD's responsibilities with regard to employment-related litigation and evaluate the Department's compliance with applicable policies, electronic database tracking systems, costs associated with defending lawsuits, post-lawsuit analysis, training, and prevention practices.

BACKGROUND

Between July 1, 2006, and June 30, 2012, the City of Los Angeles paid approximately \$110,000,000 for lawsuits involving Department employees. As the chart below demonstrates, the Department's actions that resulted in that liability fall into one of four categories: 1) police professional liability (e.g., claims of excessive use of force, such as in an officer involved shooting), 2) automobile liability (e.g., traffic collisions), 3) employment practices liability (e.g., discrimination, harassment, and retaliation), and 4) general liability.¹



A successful risk management system should address each of these four categories in an effort to reduce the Department's overall liability. For the purposes of auditing, however, the OIG focused on a single category, employment-related litigation, and explored the Department's practices in evaluating existing employment lawsuits as well as developing protocols in preventing future ones.

On January 10, 2007, the Mayor published Executive Directive No. 9, titled "Litigation Risk Management," which set forth his requirements for managing all City-related litigation. In the executive directive, the Mayor expects each City department to implement specific steps to minimize litigation costs. "Every Department Head has a responsibility to provide leadership in litigation risk management to continue to reduce City payouts and to reduce the number of claims filed. This responsibility includes assigning, training, and supervising high-level

¹ For the purposes of the Audit, the OIG did not consider workers' compensation as a liability. Workers' compensation law is regulated under the California Labor Code and is a form of insurance.

managers to engage directly on these tasks. Department Heads will be held accountable for the performance of these tasks and for progress in reducing the City's litigation risk and expense.”

The OIG consulted Executive Directive No. 9 for guidance in structuring this audit. The OIG first examined the Department’s compliance with the tasks identified in the Mayor’s directive. To perform this analysis, the OIG reviewed, among other things, the costs associated with employment-related litigation, the manner of tracking specific lawsuits, and the training or other actions that the Department implemented as a result of employee-related litigation.

METHODOLOGY

The Audit selected lawsuits that were completed and closed from January 1, 2007, to June 30, 2012, as its population. The five and one-half year period was chosen to provide a broad spectrum of lawsuits. During that period, 99 employment-related lawsuits were closed.² The Audit judgmentally selected 27 of these lawsuits to review.³ Each case was selected based on either a high initial demand amount by the plaintiff or a large payout by the City. Due to the selection methodology, the audit results are not meant to be representative of the entire population of closed employment-related lawsuits and focus instead on those cases that pose the highest risk of exposure for the City.

The OIG conducted the Audit in accordance with generally accepted government auditing standards. These standards require that the Audit is adequately planned, performed, and supervised, and that sufficient, competent, relevant evidence is examined to provide a reasonable basis for the results and conclusion.

OBJECTIVES

Objective 1: Determine if the Department has complied with Mayor’s Executive Directive No. 9.

The OIG evaluated the Department’s practices in reviewing employment litigation and other claims for compliance with the Mayor’s Executive Directive No. 9 (“Executive Directive”). The Executive Directive sets forth a series of protocols that the Department must develop to evaluate and review litigation and claims. The OIG designed the following tests to measure the Department’s compliance with this Directive:

² The Audit relied on the City Attorney-maintained database to identify those lawsuits closed in the scope period.

³ The Audit did not reinvestigate cases, but rather, reviewed those documents supplied by the Department and/or City Attorney’s Office.

- 1) Determine if the Department received notice, and a copy, of any claim or lawsuit, within 10 days of the City's receipt or acceptance of the claim/lawsuit service;
- 2) Determine if the Department discussed and determined with the City Attorney whether early mediation or other settlement would be appropriate within 90 days of the City's receipt of claim or lawsuit;
- 3) Determine if the Department discussed and determined with the City Attorney whether a statutory offer of settlement should be recommended to the charter-designated decision-making body at least six months before any scheduled trial date;
- 4) Determine if the Department discussed with the City Attorney whether an appeal should be filed within two weeks before any deadline to file an appeal;
- 5) Determine if the Department thoroughly investigated the facts underlying any claim or lawsuit within 90 days of the notice of the claim or lawsuit; and,
- 6) Determine if the Department evaluated whether the allegations in the claim/lawsuit and the facts suggest a policy or practice change, the need for new or renewed training, discipline, or reassignment within 105 days of the Department's notice of the claim or lawsuit and within 30 days following the conclusion of the lawsuit through settlement or judgment.

The City Attorney's Office is responsible for all employment-related litigation and currently has approximately 20 attorneys and staff assigned to litigating these issues. The Department has approximately 19 employees from its Legal Affairs Division assigned to the City Attorney's Office to assist with this litigation. These two sets of employees regularly interact on employment litigation issues. The OIG therefore attempted to audit the Department's case files to determine, among other things, whether notations of these communications and any resulting work were captured in the case file.

The OIG selected 27 of the 99 closed lawsuits for its Audit sample. The Department informed the OIG that these files were not available for review.⁴ According to the Legal Affairs Division, the investigating officer is responsible for maintaining and updating these files until the case is closed, when these files are dismantled and/or destroyed.⁵ Because these historical files were unavailable, the OIG requested two active lawsuit files to perform the testing. These two active files, however, did not contain any of the information necessary for the OIG to perform the required tests. Legal Affairs Division confirmed that the review of additional open cases would yield similar results. Based on the lack of available evidence, the Audit was unable to determine the Department's compliance with the requirements tested.

Objective 2: Determine if Department's Claim/Lawsuit Information System is accurate.

The Department's Legal Affairs Division has an electronic database, the Claim/Lawsuit Information System (CLIS), that is used for tracking claims and lawsuits. This database was specifically designed to collect necessary information related to claims and lawsuit so that the

⁴ Legal Affairs Division files are referred to as Case Book Files. The Division provides written guidelines on the structure and content of the files.

⁵ Conclusion of a lawsuit occurs at dismissal, settlement, or verdict without regard to appeal.

Department's management would have the necessary information to make informed litigation and risk management decisions.

The Audit's second objective was to determine whether CLIS included complete and accurate information. CLIS contains 49 separate data fields that capture a variety of information, including general descriptions of a specific case, the involved parties in a claim/lawsuit, trial status, status of related complaint investigations, and the financial outcome of a claim/lawsuit. The OIG attempted to audit 30 of these data fields for accuracy and completeness against source documents found in Legal Affairs Division's case files. Because these historical files do not exist, the OIG was unable to evaluate the accuracy and completeness of these data fields.

Although the Audit could not test the Department's database for accuracy, the Audit did test the 30 data fields for completeness. The OIG attempted to gauge the completeness of the Department's data fields by comparing them to the City Attorney's Office's litigation database. The City Attorney's Office maintains a litigation database similar to that of Legal Affairs Division and both systems share similar data fields. The OIG reviewed the database entries for specific cases and learned that the two databases often contained inconsistent information. For example, in several cases, the databases for Department and the City Attorney's Office had different entries for the claim/litigation status, key dates, and payout amounts for the same cases. In other cases, the Department's data fields were empty, while the City Attorney's database had an entry.

The results revealed that the 30 CLIS data fields tested had a completion rate ranging from 0% to 100%. Approximately half of the fields yielded completion rates of 90-100%, while about a third had completion rates of less than 50%. Included in the latter group were fields designed to collect substantive data such as area of occurrence, verdict status, and which party the verdict was for.⁶

Objective 3: Determine costs for employment-related lawsuits, regardless of their outcome.

The Audit set out to determine the cost for each lawsuit in its sample. These costs are generally broken into two distinct categories. The first category of costs involves cases where the City settles a particular lawsuit or a jury awards the plaintiff damages. This is generally a concrete figure. The second category involves the costs to the City that are inherent in defending a case, regardless of outcome. The most recognizable costs to the City are the salaries of those individuals involved in defending the lawsuits. The City Controller's Office has determined that the internal costs to the City can be calculated by determining the salaries for the individuals involved in defending the lawsuits and then adding the employee benefits (e.g., medical insurance and life insurance) and overhead costs (e.g., building and utility expense, shared City Administration & Support, and Central expenses).

⁶ See Exhibit A.

With the City Controller’s information related to internal costs, the OIG was able to calculate the annual internal costs for the City Attorney and Department’s litigation staff for all employment-related litigation from 2006 to 2012.⁷ Based on the available information, the City’s internal costs to defend employment-related lawsuits for Fiscal Year 2011/12 were \$7.8 million. The cost breakdown revealed expenses of \$4.2 million for the Department and \$3.6 million for the City Attorney’s Office. The total internal costs for the following six-year period were about \$42 million.

Employment Litigation Liability

Fiscal Year	Lawsuits Closed⁸	Awards or Settlement Paid by City	Litigation Costs
FY2006/07	12	\$ 2,611,127	\$ 6,803,374
FY2007/08	17	\$ 1,318,463	\$ 7,179,249
FY2008/09	18	\$ 3,652,622	\$ 7,331,331
FY2009/10	15	\$ 4,992,655	\$ 7,164,643
FY2010/11	19	\$ 8,358,144	\$ 6,442,758
FY2011/12	18	\$10,445,146	\$7,764,903
Total	99	<u>\$ 31,378,157</u>	<u>\$ 42,686,258</u>

When the OIG attempted to determine the litigation costs for each lawsuit, it learned that neither the Department nor the City Attorney’s Office track the number of hours an individual worked on a particular case. Although the OIG can calculate the amount the City paid in a particular case to satisfy a jury award or settlement, without knowing the number of individuals working on a particular case or the hours devoted to that case, the OIG is unable to calculate the litigation costs for any of the cases within its sample and therefore is unable to determine the total costs to the City related to a specific case.⁹

Overall, the 27 cases included in the OIG’s Audit sample resulted in a total of nearly \$25.5 million in payouts, 81 percent of the total employment-related litigation payouts during that period. The OIG first analyzed lawsuits that the City Attorney’s Office settled. Of the 27 cases in the Audit sample, 11 (41%) were settled in lieu of trial. The length of time it took to reach a settlement for these cases varied widely but averaged 2.2 years. Settlement agreement awards averaged \$500,000, but ranged from \$75,000 to \$2,250,000. The following table details the nature of the lawsuits and costs associated with the settlement of the cases.

⁷ Salaries and staffing were adjusted annually to reflect accurate expenses for each fiscal year in the Audit sample.

⁸ The closed case data was furnished by Legal Affairs Division.

⁹ The amount of annual expense to defend employment lawsuits is not an estimate. Regardless of how costs are allocated for individual cases, the City’s defense costs for fiscal year 2011/12 were close to 8 million dollars. For the 6 years encompassed by the Audit, those costs totaled over 42 million dollars.

Lawsuits Settled in Lieu of Trial

Case No.	Days	Litigation Category	Settlement Costs
BC34646	1,246	Sexual Harassment	\$2,250,000
CV11-0039	262	Retaliation	\$750,000
BC433073	646	Employment	\$650,000
BC340767	487	Gender Discrimination	\$600,000
BC326467	1,374	Medical Discrimination	\$290,000
BC457299	1,680	Retaliation	\$285,000
BC426816	810	Race Discrimination	\$275,000
BC435392	347	Sexual Harassment	\$175,000
BC392939	1,293	Retaliation	\$90,000
BC346672	313	Medical Discrimination	\$75,000
BC383678	294	Medical Discrimination	\$75,000
Totals	<u>8,752</u>		<u>\$5,515,000</u>
Averages	796		\$501,364

The OIG then analyzed lawsuits where there were verdicts. In the Audit sample, 13 lawsuits received a trial verdict. In this group, the plaintiffs received verdicts in their favor in 10 of these 13 lawsuits. The length of time it took to conclude these cases averaged three years. Plaintiff awards ranged from \$85,000 to \$4.3 million and averaged about \$2 million dollars. The chart below details the nature of the lawsuits and costs associated with trial of each case.

Lawsuits with Favorable Outcome for Plaintiff

Case No.	Days	Litigation Category	Jury Awards
11-44137	918	Retaliation	\$4,314,765
BC3650	1,246	Retaliation	\$4,014,846
BC361139	896	Retaliation	\$3,602,000
BC383784	1,302	Medical Discrimination	\$3,159,596
BC406133	370	Sexual Harassment	\$2,701,327
BC365114	1,625	Retaliation	\$825,000
BC341480	1,341	Race Discrimination	\$635,798
S167682	1,370	Sexual Harassment	\$344,489
BC398970	610	Gender Discrimination	\$281,850
BC394475	1,346	Gender Discrimination	\$85,000
Totals	<u>11,024</u>		<u>\$19,964,670</u>
Averages	1,102		\$1,996,467

The OIG lastly analyzed lawsuits where the City Attorney’s Office was successful. Six lawsuits in the Audit sample had favorable outcomes for the City. As previously discussed, the Audit sample was not selected at random and is not intended to reflect an accurate proportion of the 99 lawsuits with favorable outcomes for plaintiffs verses favorable outcomes for the City.¹⁰ As noted above, three cases resulted in a verdict for the City. Although one of these was lost at first appeal, the City prevailed in an appeal of its own that accounted for the final favorable outcome. The remaining three favorable outcomes for the City were as a result of dismissal by the trial judge.

The length of time it took to conclude these cases averaged 2.3 years. Although the City did not pay any awards for these lawsuits, it did incur external and internal defense costs. As previously indicated, the OIG was unable to calculate these costs without additional information from the Department and the City Attorney’s Office. The chart below details the nature of the lawsuits and costs associated with each case.

Lawsuit with Favorable Outcome for City

Case No.	Days	Litigation Category	Award
B226685	1,806	Sexual Orientation	\$0
CV09-5536	1,127	Sexual Harassment	\$0
B218932	889	Race Discrimination	\$0
BC460149	377	Sexual Harassment	\$0
BC413590	356	Race Discrimination	\$0
BC385444	456	Retaliation	\$0
Totals	<u>5,011</u>		<u>\$0</u>
Averages	835		\$0

Objective 4: Determine if the Department initiated a complaint, as required, for each employee-related lawsuit.

The Department requires that a personnel complaint is filed any time misconduct is alleged against an employee. This policy extends to the workplace when one employee alleges misconduct against another. Therefore, every employment lawsuit requires that a personnel complaint be filed and, as a matter of course, thoroughly investigated. To help ensure that this requirement is met, a copy of each employment lawsuit is forwarded to Internal Affairs Group (IAG). In turn, IAG is responsible for initiating a complaint, if a complaint is not already on file. The Audit tested to determine if this requirement was met. The results of the test revealed that all but one lawsuit had a corresponding complaint, for a compliance rate of 96 percent.

¹⁰ The Audit sample was selected judgmentally based on the highest amount of award and the highest initial demand.

In the OIG's sample of employment-related lawsuits, the most common allegation of misconduct was retaliation. Retaliation is defined by the Department as an adverse employment action¹¹ taken against an employee for engaging in protected activity.¹²

Objective 5: Compare the results of each lawsuit to the results of the related complaint investigation(s).

The OIG examined both employment-related complaints and lawsuits to determine whether the Department examines the specific facts and circumstances surrounding each case to determine what specific training it can provide its management on employment-related matters to improve its operations and minimize the likelihood that similar complaints or lawsuits would occur in the future.

The OIG reviewed 26 personnel complaint investigations and their related employment lawsuits. During this review, the OIG determined that 20 of the 26 the lawsuits resulted in settlements for the plaintiff or verdicts against the City. The OIG evaluated each of these complaints and lawsuits to determine what actions the Department undertook to minimize the reoccurrence of similar lawsuits in the future.

Although the Department regularly provides managers with training on broad employment-related issues, the OIG did not find evidence that the Department provides training to its managers on lessons learned from these cases or specific guidance on how to handle particular employment-related issues. Furthermore, the Department does not have a system to identify and analyze the at-risk behavior responsible for the adverse outcomes of these cases and then compare these findings with current Department policies and practices.

¹¹ An adverse employment action includes an action that would cause a reasonable employee to be deterred from engaging in a protected activity or an action in direct response to an employee engaging in a protected activity.

¹² Protected activities include opposing, reporting, or participating in any claim, lawsuit, or investigation concerning unlawful discrimination or sexual harassment, filing a grievance or participation in any unfair labor complaint, taking advantage of any labor right or benefit, reporting misconduct of another Department employee and supporting, assisting, or cooperating in a misconduct investigation.

RECOMMENDATIONS

Below is a summary of the OIG's recommendations. The Department generally agrees with each recommendation.

1. The OIG recommends that the Department review Executive Directive No. 9 for all sections applicable to LAPD and implement policies and procedures designed to bring the Department into compliance with the Mayor's directive.
2. The OIG recommends that the Department implement the Employee Mediation Program to reduce the number of employee-related lawsuits proceeding to settlement or trial. The program, developed by the OIG in consultation with the Department, the City Attorney's Office and the Los Angeles Police Protective League, will provide a mechanism for the development of internal remedies for employee grievances, where appropriate.
3. The OIG recommends that the Department and the City Attorney's Office conduct formal case reviews whenever a case has a scheduled settlement conference or trial approaching. In order to quickly identify those cases suitable for settlement, the formal review should require the parties to discuss the facts of the case, all claims and defenses, the City's potential financial exposure and the attorney's valuation of the case for settlement.
4. The OIG recommends that the Department create a document retention plan specifically for the litigation files and related notes for each employment-related case.
5. The OIG recommends that the Department implement a system to ensure that the significant information for each lawsuit is timely and accurately entered into the appropriate fields within the Claim/Lawsuit Information System or a comparable database.
6. The OIG recommends that the Department evaluate all employment-related complaints, regardless of outcome, to identify possible areas for improvement and then provide managers the targeted training necessary to implement those improvements.
7. The OIG recommends that the Department review with the City Attorney's Office the facts and circumstances for each lawsuit where there is a settlement or verdict adverse to the City to determine the specific issues that created the liability or litigation risk. Furthermore, the OIG recommends that training is developed to address the "lessons learned" in each case and that such training is disseminated to Department staff members in a relevant manner with a goal of preventing similar future behavior.

EXHIBIT A
Data Completion Rates of 30 CLIS Data Fields Tested
(sorted from lowest to highest completion rate)

	Data Field	% Complete
1	Incident Time	0
2	Date Claim Concluded	7
3	Final Cause of Action	15
4	Incident Date	19
5	Claim No.	26
6	Date Claim Filed	30
7	Location of Occurrence	33
8	Area of Occurrence	37
9	Verdict Status	37
10	Verdict for:	41
11	Trial Date	44
12	Appeal	60
13	Supervisor Review	63
14	Complaint No.	70
15	Date Lawsuit Concluded	74
16	Payouts Completed	85
17	LAD Investigator	93
18	City Attorney	93
19	Case Status	96
20	Date IAG Response	96
21	Date of Report	100
22	Claim/Case Name	100
23	Type of Case	100
24	Jurisdiction Court	100
25	Case No.	100
26	Date Lawsuit Filed	100
27	Plaintiff Attorney	100
28	Initial Cause of Action	100
29	Involved Persons Listed	100
30	Complaint to IAG	100