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Padding for pensions?

Workers' comp patterns for retiring county firefighters raise a red flag

By Troy Anderson, Staff Writer

Most Los Angeles County firefighters planning to retire have filed workers' compensation claims a year before their retirement dates – a ploy often used to boost pensions artificially, experts say.

The pension-spiking scheme, derisively called "chief's disease," has become more common and the annual cost to county taxpayers has more than doubled in six years, from \$23 million to \$50 million this year.

By filing a claim under the state labor code, fire and sheriff's employees are allowed to take a one-year leave of absence while collecting 100 percent of their salary tax-free. This gives them an extra year of service credit and the tax-free benefit results in a spike in take-home pay, boosting their pensionable income.

It also paves the way for a job-related disability retirement, with half the income tax-free.

From 2001 to 2003, an average of 85 percent of county firefighters who got disability retirements claimed a disabling injury a year earlier.

"It would seem to me that it's very unlikely that 85 percent of our retirees became disabled in the last year of their service with us," Supervisor Gloria Molina said. "These numbers are horrendous. This is costing us an awful lot of money."

Those higher costs are in addition to a doubling in the county's regular workers' compensation costs, which swelled from \$157 million in 1999 to \$324 million in the last fiscal year. The system's rapidly escalating expense both alarms and infuriates policy watchdogs.

"This is an extraordinary outrage," said Jon Coupal, president of the Howard Jarvis Taxpayers Association. "The notion that 85 percent of firefighters have workers' compensation claims doesn't even pass the 'hah hah' test. This is clearly a situation where our elected leaders have been asleep at the switch."

Last week, the Los Angeles County Board of Supervisors ordered an investigation and state lawmakers plan to hold a hearing next month to find out how widespread the practice is.

Last month, California Highway Patrol Commissioner Mike Brown ordered an investigation into whether criminal charges are warranted against 15 high-ranking CHP officers who filed claims before retiring in the last four years. Among CHP employees, the rank and file commonly refer to the practice as "chief's disease."

"I think these figures are disturbing," said Richard Doyle, director of Los Angeles County District Attorney Steve Cooley's Bureau of Fraud and Corruption Prosecutions, which is part of a task force investigating workers' compensation fraud involving Los Angeles Police Department officers and sheriff's deputies.

"But we have to remember the nature of the job that firemen and police officers do. Does this mean 85 percent are committing fraud? No. But an incidence that high does demand review and investigation."

Dave Gillotte, president of the 3,000-member Los Angeles County Fire Fighters Local

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1014, insisted that all the claims county firefighters made were legitimate. He noted that firefighters often suffer burns, respiratory and cardiac diseases, rare cancers and traumatic injuries when ceilings and walls fall on them.

"Firefighters and sheriff's deputies are out there performing physically demanding jobs, laying their lives on the line to protect others and the injuries are very real," Gillotte said. "We ought to give credit to the individuals doing that job."

On average from 2001 to 2003, 63 percent of all county firefighters about to retire filed workers' compensation claims under state Labor Code 4850, Chief Administrative Officer David Janssen said. In 2001, the percentage reached a high of 70 percent.

By getting the final year's salary tax-free, an employee's final-year income is higher, which, in turn, boosts the amount of the pension.

And, critics say, in many cases it leads to a disability retirement claim.

A county audit in 2000 found up to 97 percent of county firefighters and up to 86 percent of sworn sheriff's employees taking a disability retirement had filed workers' compensation claims in the prior three years.

Some officials see no problem.

"Sheriff Lee Baca certainly does not believe there is any kind of 'chief's disease' in his department and he would not allow that to occur," sheriff's spokesman Steve Whitmore said.

But, in a related report in 2000, Janssen wrote that the labor code, under which the benefit is claimed, is routinely used by injured sheriff's deputies and firefighters over the course of their careers and extensively at the "twilight of the careers" by those who seek disability pensions.

The state 1937 Retirement Act also gives the employee the right to set a retirement date to coincide with the exhaustion of the workers' compensation benefits and, after that, the exhaustion of any sick leave benefits. Janssen noted that "this makes for a very attractive way to transition into retirement (arguably too attractive)."

A recent report by the county's Citizens' Economy and Efficiency Commission found the law has created a "culture of entitlement" in the county.

"A large number of firefighters are availing themselves of this, and an even larger number are later retiring on disability pensions," Janssen said. "This is a red flag. The board wants us to find out what is going on, find out if there is a problem and if it's being abused and to resolve that.

"It's clearly going to involve a good deal of work in reviewing the actual disability cases themselves. These are decisions made by (the Los Angeles County Employees Retirement Association) and that is probably a process worthy of review."

From 1994 to 2004, an average of 74 percent of county firefighters obtained lucrative service-connected disability pensions. Half of the benefits are tax-free and surviving spouses are entitled to 100 percent of their spouses' final compensation. In the same period, an average of 54 percent of sworn sheriff's employees obtained service-connected disability retirements.

In addition to their pensions, these disabled retirees are also entitled to fully paid medical care for the rest of their lives.

The state Senate Government Oversight and Public Employment and Retirement committees plan to hold a joint hearing on Jan. 24 to address the issue.

"We'll get a report on the gravity of this situation and what remedies there might be," said Richard Steffen, staff director for state Sen. Jackie Speier, D-San Mateo, chairwoman of the Government Oversight Committee. "This is coming at a time when state and county (retirement systems) are having a difficult time meeting their pension obligations for retired workers."

In addition to reviewing the law that public-safety workers filed their claims under, the CHP has also recommended state lawmakers review laws pertaining to 10 medical disability conditions that are presumed to be job-related for public-safety workers.

The conditions, such as heart disease, cancer, lower back problems and tuberculosis, are often claimed by police and firefighters to obtain disability pensions.

Larry McCarthy, president of the California Taxpayers' Association, said the public wants

to make sure employees who are genuinely hurt in the line of duty are taken care of.

"But the record clearly shows that there is a festering problem of officers, including chiefs and commanders, who are gaming the system, taking advantage of loosely written laws and regulations that make it too easy to rip off tax dollars," McCarthy said.

"Staggering amounts of tax dollars are being diverted to cover huge growth in disability retirements. These are tax dollars that are not available for other critical public-safety needs. The state Legislature must act to tighten eligibility for workers' comp claims that lead to disability retirements. There must be careful management of the system and penalties for those caught cheating."

Troy Anderson, (213) 974-8985 troy.anderson@dailynews.com

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