

REPORT
FROM



THE PERSONNEL
DEPARTMENT

TO: Personnel Committee	DATE February 25, 2014
REFERENCE:	COUNCIL FILE

SUBJECT: Dependent Eligibility Verification (DEV) - Waiver for Employees with Ineligible Dependents

RECOMMENDATION:

That the City Council:

1. Authorize the Personnel Department to grant a waiver to employees who have ineligible dependent(s) removed from the Civilian Flex Benefits Program during the Dependent Eligibility Verification (DEV) program with the exception of cases involving fraud or intentional misrepresentation;
2. Request the City Attorney, with the assistance of the City Administrative Officer and Personnel Department draft the necessary ordinance language to codify the proposed Dependent Eligibility Verification (DEV) program employee waiver and any other necessary ordinance changes.

SUMMARY:

The Personnel Department administers the City's Civilian Modified Flexible Benefits (Flex) Program for active City civilian employees and their qualified dependents in conjunction with the Joint Labor-Management Benefits Committee (JLMBC). The JLMBC reviews and develops recommendations regarding the Flex Plan Program in order to ensure that the Flex Program provides a competitive benefits program for its employees that are at a reasonable cost to employees and to the City. In October 2012, the City Council approved (CF #10-1627) a series of JLMBC recommended modifications to the Flex Program including a Dependent Audit that would require employees to review all dependents listed on their plan and provide supporting documentation to establish their continued eligibility on the Flex Plan. This transmittal is requesting Council to approve the proposed employee waiver component of the Dependent Audit (Dependent Eligibility Verification) process.


MARGARET WHELAN, General Manager

BACKGROUND

The Personnel Department's Employee Benefits Division administers the City's Civilian Modified Flexible Benefits (Flex) Program for active City civilian employees and their qualified dependents in conjunction with the Joint Labor-Management Benefits Committee (JLMBC). The JLMBC is composed of five management and five labor representatives. Over the last four years the Personnel Department has implemented a series of cost savings measures to mitigate the rising costs of civilian employee benefits. The cost savings measures were a product of JLMBC and Personnel Department recommendations and are expected to generate approximately \$47 million in savings from 2011 to 2014.

One of the cost cutting measures recommended by the JLMBC and approved by the City Council (CF#10-1627) is a Dependent Audit, commonly referred to as a "Dependent Eligibility Verification" (DEV) program. The DEV program is a documentation review process that ensures an employee benefit plan only covers qualified eligible dependents and reduces unnecessary benefit expenditures by removing ineligible dependents. DEV is a best practice cost savings measure for employee benefit plans and ensures the Plan meets its fiduciary obligations by eliminating unwarranted plan costs. In 2012 the JLMBC recommended that the City implement a full Dependent Eligibility Verification (DEV) program for the Flex Benefit Plan and the JLMBC also proposed absorbing the cost of conducting a DEV by using the Employee Benefits Trust Fund.

The DEV process will likely reveal situations where employees have ineligible dependents on their Flex medical and/or dental plan, the City is providing a premium subsidy for the ineligible dependent(s) and the Flex Plan is absorbing the ineligible dependent(s) claim costs. Providing an employee with benefit coverage (premium subsidy) for ineligible dependents is considered an overpayment of employee compensation. The Personnel Department is required to collect overpayments from employees; however staff is proposing a waiver period for employees that have ineligible dependents removed from the Flex Benefits Plan during the DEV program. The following report is an overview of the proposed DEV program employee waiver component.

DISCUSSION

The Flex Benefit Plan currently covers approximately 24,500 employees and 60% (14,695) of these employees have enrolled their dependents (spouse, domestic partner, child, and/or grandchild) on the plan. There are approximately 34,293 dependents enrolled in the Flex Plan. The City subsidizes dependent coverage and therefore having ineligible dependents on the benefit plan unnecessarily increases the City premium subsidy costs and also likely increases plan utilization which also drives up cost.

The DEV program is a documentation review process that requires all employees that currently have enrolled dependents to verify and provide documentation that supports the dependents continued eligibility for the Flex Benefit Plan. If employees fail to submit the necessary documentation by the specified deadline, the employees' dependents will be removed from Flex Plan medical and dental coverage. The DEV full document verification process will be conducted by Flex Plan Third Party Administrator (TPA), Mercer.

According to Mercer Third Party Administrator and other public agencies that conducted a DEV process (Orange County and CalPERS), the best practice is to provide employees with a waiver during the DEV process. DEV waiver allows employees to remove ineligible dependents and avoid liability for employer overpayments of premium contributions (subsidies) and/or claim costs associated with covering the ineligible dependents. The waiver approach is recommended because it encourages employees to voluntarily terminate coverage for ineligible dependents, correct mistakes, cooperate with the DEV process and reduce administrative costs associated with recovering overpayments and appeals process. The waiver period would not apply to cases involving suspected fraud or intentional misrepresentation.

According to the City Attorney Office granting a waiver to employees who receive an overpayment of compensation would require Council approval based on a finding that waiving the debt serves a public purpose. As such, forgiveness of the debt would not constitute a gift of public funds in violation of the California Constitution. The public purpose for providing DEV waiver would be the successful reduction of unnecessary Flex plan expenditures through the removal of ineligible dependents without lowered employee morale, additional administrative and legal expenses, and the possibility of spending more on additional administrative resources than would be realized through the attempt to recover back premiums. Moreover, implementing a waiver provision to the DEV program would bring the City in line with recognized public agency best practices.

Absent a waiver component to the DEV program, the Personnel Department would be required to collect overpayments from employees regardless of the amount owed and follow an administrative collection process. Employee salary overpayment recovery is limited to a three year statute of limitation and cannot be unilaterally deducted from an employee's paycheck in the absence of a court ordered judgment or the employee's written consent, making cost recovery administratively challenging. Additional administrative staff would be needed to investigate each instance of overpayment including a determination of the date each dependent became ineligible for benefits, calculate the amount of salary overpayment owed based on the duration and type of medical and/or dental coverage, obtain the employee's written consent to deduct the amount from the employee's paycheck, refer unpaid overpayments to a collections process and/or pursue disciplinary action. In addition, employers cannot retroactively cancel or discontinue health coverage from the date of the ineligible condition except in instances of fraud, intentional misrepresentation, or failure to pay premiums¹.

1 Affordable Care Act, Section 2712, "Prohibition on Rescissions."

Staff estimates that the additional effort and costs to recover retrospective overpayments for ineligible dependents would potentially offset the savings the DEV process is expected to generate.

Staff estimates that one to two percent (338 to 676) of the Flex Benefit Plan dependents will be found to be ineligible dependents during the DEV process either because the dependent no longer meets the Flex dependent eligibility definition and/or the employees fail to submit the required documentation to substantiate the dependents eligibility. Therefore the Personnel Department is proposing that the City Council approve a waiver period for employees that have ineligible dependents removed from the Flex Benefits Plan during the DEV program. The following are examples of common ineligible dependents that we will find during the DEV process:

- Children that exceed the maximum age limits permitted under the Flex Plan
- Dependent (grandchild, disabled child, legal ward, or step child) that no longer meets the Flex Plan eligibility criteria
- Former spouses following a divorce
- Former domestic partners following a termination of domestic partnership and/or that no longer meet the Flex Plan eligibility criteria
- Clerical or administrative error that allowed ineligible dependent or employee Flex coverage

The main goal of the DEV program is to ensure that the Flex Benefits plan covers eligible dependents and reduce unnecessary plan expenditures. In order to achieve this goal, staff finds that providing employees with waiver during the DEV process will encourage employees to fully cooperate and reduce administrative costs associated with collecting overpayments and appeals process. DEV waiver would not be applicable in cases where an employee is suspected of committing fraud or intentional misrepresentation.