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	<b>Policy Title:</b> On the Job Injury (OJI)	<b>Policy Number:</b> WS-06
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	<b>Issuing Department:</b> Human Resources	<b>Approved By:</b> Chief Human Resources Officer

## I. PURPOSE AND SCOPE

To coordinate and administer a citywide program providing for medical expenses and lost work time compensation for employees who suffer a compensable injury or exposure arising out of and in the course and scope of employment with the City of Memphis (“City”).

The On-the-Job Injury Program is administered by the City’s OJI Office. The City’s Human Resource Division promulgates the rules, procedures, and guidelines of the On-the-Job Injury Program.

## II. DEFINITIONS APPLICABLE TO POLICY AND RELATED GUIDES

**Accident:** a specific incident or set of incidents arising out of an occurring in the scope of employment with the City, including the aggravation of a preexisting disease, condition or ailment only if the aggravation can be shown to a reasonable degree of medical certainty to have arisen out of and in the course and scope of employment with the City.

**Administrative Hearing:** a hearing held on an OJI case where the outcome is being disputed. Administrative Hearings proceed pursuant to the Uniform Administrative Procedure Act, as amended. See T.C.A 4-5-301, et.seq.

**Accommodation:** a modification permitting an employee who has suffered an injury to continue working in a capacity outlined by his/her healthcare provider.

**Administrative Law Judge (“ALJ”):** a hearing officer appointed or retained by the City Attorney to preside over an Administrative Hearing, as outlined in the Uniform Administrative Procedure Act, as amended. See T.C.A 4-5-301, et.seq.

**Arising Out of and in the Course and Scope of Employment:** an employee’s injury or death occurred during the performance of any of the work activities that the employee would be expected to perform as part of his or her job, and the work activities caused the employee’s injury or death.

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**Catastrophic Event:** any multi-trauma (i.e., head injury, gunshot, internal injury, severe burn, heart attack) sustained while performing duties as a city employee that leads into immediate emergency medical attention and/or death.

**Choice of Medical Provider Form:** a form used by the City for injured employees to select a medical provider from the City's OJI panel.

**Compensable:** an employee's injury or death has been deemed as arising out of and in the course and scope of employment with the City of Memphis, making the employee eligible for the benefits outlined in this policy to the extent applicable.

**Exposure:** an employee has been exposed to infectious agents that may have a harmful effect on the body through circumstances arising out of and in the course and scope of an employee performing his/her job duties.

**Injury:** a physical injury by accident arising out of and in the course of employment that causes either disablement or death of the employee and shall include occupational diseases and related mental injuries as defined in this section. (See definitions of "Accident" "Mental Injury" and "Occupational Disease/Illness".)

**Injury on Duty Report ("IOD Report"):** a medical form that outlines medical treatment and return to work status for completion by the treating physician after each employee visit.

**Lost Time:** the time an employee who has suffered an injury is required to remain out of the workplace.

**Lost Time Payment:** Compensation for Lost Time at the employee's regular rate for periods as outlined herein.

**Lost Time Claim:** an injury that qualifies for the payment of medical treatment and expenses, and compensation for lost time from work.

**Maximum Medical Improvement ("MMI"):** the point at which an employee's injury or illness, as defined in this policy, can no longer medically improve.

**Medical Only Claim:** an injury that qualifies for the payment of medical treatment and expenses, but does not qualify for additional compensation.

**Medical Payments:** the actual bills or expenses incurred to treat the injured worker, which includes, but is not limited to, hospital care, prescriptions, physical therapy/rehabilitation, diagnostic test/lab work, medical case management or physician fees.

**Mental Injury:** a loss of mental faculties or a mental or behavioral disorder, caused by a compensable physical injury as defined herein.

**Nurse Case Manager (“NCM”):** a nurse hired by the City, dedicated to providing ongoing case management services.

**Notice Only:** an injury that arose out of and in the course and scope of an employment with the City, but that does not involve payment for medical treatment and expenses, or compensation for lost work time

**Occupational Disease/Illness:** all diseases arising out of and in the course and scope of employment. A disease shall be deemed to arise out of the employment only if:

- a. It can be determined to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
- b. It can be fairly traced to the employment as a proximate cause;
- c. It has not originated from a hazard to which workers have been equally exposed outside of the employment;
- d. It is incidental to the character of the employment and not independent of the relation of employer and employee;
- e. It originated from a risk connected with the employment and flowed from the source as a natural consequence, though it need not have been foreseen or expected prior to its contraction;
- f. There is a direct casual connection between the conditions under which the work is performed and the occupational disease. Diseases of the heart, lungs and hypertension arising out of and in the course and scope of any type of employment shall be deemed to be occupational diseases.

**OJI Abuse:** any misrepresentation made by an employee to obtain benefits under this policy to which he/she is not entitled, which includes, but is not limited to, falsification of documents, and/ or giving false statements.

**Panel of Physicians:** a panel of doctors selected by the City to review employee history and render opinions, as well as process and treat qualified On-the-Job Injury claims.

**Treating Physician:** the doctor(s) assigned from the Panel of Physicians to treat, evaluate and opine regarding an injured employee's medical condition.

**Third Party Administrator ("TPA"):** the company or entity designated by the City to process qualified On-the-Job Injury claims.

### III. POLICY

#### A. Eligibility

Regular, full-time City employees are eligible for all benefits outlined in this policy upon hire; however, nothing in this policy has the effect of changing the terms of an employee's initial probationary period.

With the exception of the payment of medical expenses as outlined below, the following employees are ineligible for benefits under this policy:

1. Recruits within the Police and Fire Services Divisions.
2. Temporary employees

#### B. Exclusions

This policy does **not** cover injury or death stemming from the following:

1. Improper use of drugs and/or the use of alcohol.
2. Misconduct, including horseplay.
3. Intentional self-inflicted injury.
4. Mental injury not caused by a compensable physical injury.
5. Failure or refusal to use safety devices and/or personal protective equipment, or failure to perform or comply with a duty required by law.
6. Aggravation of an earlier on-the-job injury or illness while off duty.

7. Injuries suffered while commuting to and from work. This does not include injuries suffered by an employee while commuting, if that employee's position requires him/her to respond to potentially dangerous situations while off-duty, and the injuries occurred as a result of the employee satisfying that requirement.
8. Voluntary participation in physical fitness or recreational activities, unless the activity is part of an organized program approved by the appropriate Division Director and the employee's participation is made mandatory by the employee's Division Director. Voluntary participation in such activities is not covered either during working hours or during off-duty hours.
9. Non-compliance with treating physician's instructions and/or noncompliance with requirements under this policy, which includes, but is not limited to, withholding information that is needed to complete an investigation and refusing to follow the recognized treating physician's plan to treat the injury.
10. Activities not directly related to, "arising out of" or "in the course and scope of" the performance of job duties.
11. OJI Abuse as defined in this policy.

This list is not exhaustive. The City retains the right to evaluate all OJI claims to determine eligibility.

### C. General Provisions

1. **Condition and Convalescent Location:** An employee who is receiving OJI benefits is required to report his/her condition and convalescent location to his/her designated supervisor.
2. **Dental Coverage:** Dental care is only provided where the need arises directly from a compensable physical injury.
3. **Drug Testing:** An employee injured on the job may be required to submit to drug/alcohol testing in accordance with the City's Drug Testing Policy.
4. **OJI Abuse:** anyone suspecting that an employee is committing OJI abuse should report the suspicion, along with any supporting documentation or proof, to the OJI office for review.
  - a. Upon reviewing the report of suspected abuse and supporting documentation, the OJI office shall determine whether the report requires further investigation.

- b. In the event the OJI office determines that the report requires further investigation, it shall notify the employee of the report of suspected OJI abuse, and conduct an investigation.
  - c. If the OJI office determines that the report is insufficient to warrant further investigation, the matter shall be closed.
5. **Pre-Employment Injury:** This policy covers injuries arising from the aggravation of pre-employment injuries on the condition that the aggravation arises out of and occurs in the course and scope of an employee's employment with the City. This coverage does not include pre-employment medical or mental conditions, unless otherwise stated.
  6. **Second Opinions:** In the event an employee desires a second opinion regarding a surgery recommendation from the treating physician, the employee may seek a second opinion at the employee's expense.
  7. **Accrual of Leave Benefits during Leave:** Leave benefits will not accrue while employees are on leave of absence without pay. Leave benefits will continue to accrue during periods of leave with pay under this policy.

#### **D. Reporting an Injury or Exposure**

It is the employee's responsibility to notify his/her supervisor immediately after an injury or exposure has occurred. If immediate reporting is not possible, the employee must report the injury or exposure as soon as reasonably possible, but no more than five (5) days after the injury or exposure occurred.

#### **E. Reporting Occupational Disease/Illness**

If an Injury or Exposure results in an occupational disease/illness, the employee must notify the supervisor within thirty (30) calendar days of diagnosis.

#### **F. Initial Treatment**

For initial treatment, the injured employee may go to any emergency facility or any non-emergency facility on the Panel of Physicians for immediate treatment. Authorization and/or payment for an initial visit with a health care provider does not deem an injury, exposure or illness compensable. Compensability is determined by the TPA. In the event the employee's injury is not deemed compensable, the employee will be personally responsible for any and all treatment.

## **G. Follow-Up Care**

If follow-up care is necessary after an employee's initial visit, the employee must contact the TPA to seek authorization for follow-up care. The TPA must present appropriate options from the City's Panel of Physicians to enable the employee to select a physician.

The employee must complete a Choice of Physician Form upon receiving follow-up treatment.

## **H. Changing Physicians/Referrals**

Employees may only change treating physicians upon approval of the OJI Office or designee. Once approved, the new physician becomes the employee's recognized treating physician and further treatment by the original treating physician will not be approved.

## **I. Benefits**

### Medical Payments

1. The City will make medical payments as defined in this policy when a claim is accepted and deemed compensable. Medical payments will continue until either the employee reaches MMI, the employee is released from care, the employee is terminated or retires (with certain exceptions—see Employee guide), the employee begins receiving Long Term Disability benefits, the employee begins receiving Social Security Disability Benefits, or the employee fails to follow the treating physician's orders in such a way that negatively affects the employee's condition.
2. Medical payments will continue for up to three (3) years for employees who take a Line of Duty Disability Retirement, arising from the employee's injury, exposure or illness.

### Lost Time/Lost Time Payments (Wage Replacement)

1. To qualify an employee for lost time, the treating physician must certify that the employee is totally unable to perform his/her job duties during the leave period. It is the employee's responsibility to provide the City with such certification.
2. Employees may receive up to 180 days of lost time payments, based on medical need.
3. An employee who is a member of a Sick Leave Bank at the time of Injury, or who did not have sufficient service with the City to qualify for membership in a Sick Leave Bank at the time of injury, whose medically necessary leave exceeds available lost time payments, may apply for grants from his/her Sick Leave Bank.

See the applicable Sick Leave Bank guidelines for the procedure.

4. Lost time is counted from the first full day of the injury, illness or exposure, until the employee returns to full duty.
5. Lost time runs concurrently with any FMLA leave for which the employee is eligible.
6. If the employee is accommodated in the workplace, the employee is not eligible to receive lost time payments.
7. If an employee returns to work, and is subsequently required to take additional time off work for the same Injury/Illness/Exposure, Lost time does not reset, but accumulates for each instance of leave related to that Injury/Illness/Exposure.
8. An employee may not take lost time or receive lost time payments after the treating physician returns the employee to the workplace full-duty or with accommodations.
9. An employee may NOT, directly or indirectly, engage in other gainful employment activities of any kind while receiving lost time payments. The City will terminate OJI benefits for any employee found to be engaging in other gainful employment activities of any kind while receiving lost time payments.
10. An employee receiving benefits under this program will be denied benefits if the City learns that an employee engaged in OJI abuse.

#### **J. OJI Conclusion**

At the conclusion of an employee's physician-determined recovery period for an injury, exposure or illness, employees who have been determined to be medically unable to perform the full scope of their job duties and unable to return to full duty, must consider and exercise one or more of the following options within thirty (30) days of being advised by the treating physician that return to full duty will be impossible:

1. Apply for job reassignment under the Americans with Disabilities Act Amendments Act (ADAAA).
2. Apply for Long Term Disability Income Plan Benefits and/or Social Security Disability Benefits, if eligible. (The employee must meet the requirements of the benefits as set forth in the Plan document.)
3. Apply for a Line-of-Duty Disability Retirement, subject to the rules and regulations of the City of Memphis Retirement System. The employee must meet the requirements of the benefits sought as set forth in the plan document. Employees may apply for this benefit by contacting the Human Resources Division's Benefits Department.



**K. Subrogation**

1. When benefits have been partially or fully paid under this policy and the injury, exposure, illness or death was due to the actions of a third party, the City has the right of subrogation against the third party to the extent of the benefits paid. The City shall have a subrogation lien against any recovery by the employee or those to whom such employee's right of action survives; and, the City may initiate or intervene in any action to protect and enforce such lien.
2. The injured employee, or those to whom such employee's right of action survives, is required to sign a subrogation agreement before receiving any OJI payments and is required to notify the City's OJI Office, Third Party Administrator or the City Attorney's Office that a claim or lawsuit has been filed against the third party and/or the third party's insurance company within thirty days of the filing of said action. Should either the employee or those to whom such employee's right of action survives, refuse to sign a subrogation agreement, benefits shall be withheld or the claim will be denied until such agreement has been signed and received by the City's Third Party Administrator or OJI Office.
3. The City, within its discretion, may exercise its right of subrogation and file an action against the third party on behalf of the employee.
4. Notwithstanding any provision herein to the contrary, for actions against a third party that have a one-year statute of limitation, the employee, or those to whom such employee's right of action survives, must notify the City Attorney's Office immediately if he/she has filed a lawsuit upon filing, but in no event shall the employee notify the City Attorney's Office more than thirty (30) days following the filing of said lawsuit. The City, within its discretion, may exercise its right of subrogation at any time, and may file an action against the third party on the employee's behalf.
5. In the event the employee's net recovery from the third party, either by judgment, settlement, or otherwise, exceeds the amount paid by the City, the City shall have the right of full recovery of amounts paid on the employee's behalf. If at the time of judgment, settlement or otherwise, the City has not paid and discharged the City's full maximum liability for OJI benefits and the employee yet requires OJI medical treatment, the City shall be entitled to a credit or setoff on the City's future liability, as it accrues, to the extent of the employee's net recovery. In the event the employee, or those to whom such employee's right of action survives, obtains a recovery by judgment, settlement, or otherwise, without intervention by the City, the City shall, nevertheless, be entitled to a credit on the City's future liability under OJI, as it accrues, to the extent of the net recovery.

**L. Set-Off for Benefits Paid under this Policy**

1. In the event any person, including, but not limited to, the employee, his or her personal representative, dependents, spouse or next of kin, is awarded damages against the City in any legal proceeding through settlement or judgment arising out of any claim or lawsuit for damages stemming from or arising out of, or on account of death, occupational disease or personal injury suffered by an employee, including a minor, whether lawfully or unlawfully employed, during the performance of the employee's job duties, that amount shall be set-off by the amount of benefits paid under this policy to the employee, his or her personal representative, dependents, spouse or next of kin on account of death, occupational disease or personal injury suffered by the employee.
2. The City of Memphis shall receive full credit for the total amount of benefits paid under OJI, including, but not limited to, payments for medical expenses, lost wages, and death benefits. In no event shall the aggregate amount paid to the employee, his or her personal representative, dependents, spouse or next of kin, by the City of Memphis on account of death, occupational disease or personal injury suffered by an employee for an action or claim sounding in tort exceed the maximum limits of liability applicable to municipalities under Tennessee law.

#### **M. Appeals Process (Uniform Administrative Procedures Act)**

An employee dissatisfied with a decision denying, in whole or in part, OJI benefits for medical expenses, pay for lost-time, or HHL Program eligibility may elect to appeal the matter via procedures outlined in the employee guide. However, if any of the provisions of this policy are deemed to be in conflict with any of the contested case provisions of the Tennessee Uniform Administrative Procedures Act (T.C.A. 4-5-301 et. seq.), the provisions of the TUAPA shall control.

1. Any request for appeal of the denial of OJI or HHL benefits shall be made in writing to the Appeals Coordinator within twenty (20) calendar days of the employee's receipt of written notice of denial regarding the matter being appealed.
2. Upon receipt of the request for appeal, the Appeals Coordinator will forward written notice to the Administrative Law Judge. The Administrative Law Judge will notify the employee and the City of the date that a status conference will be held with the Administrative Law Judge. The City Attorney or designee will designate the Administrative Law Judge. The employee may have his/her attorney and union representative present at all proceedings before the Administrative Law Judge. The Administrative Law Judge will set the matter for hearing on the merits and notify the parties of the date for the administrative hearing.

3. After the administrative hearing, a decision regarding the employee's appeal will be made within ninety (90) calendar days pursuant to T.C.A. 4-5-314. The employee will be notified in writing of the Administrative Law Judge's decision.
4. Time limitations for the filing of an action for review of the Administrative Law Judge's decision shall run from the date of the decision of the Administrative Law Judge and must comply with the dictates of the Tennessee Uniform Administrative Procedures Act. The appeal process must be exhausted prior to filing an action in any court of law.

#### **N. Appeals Process (Uniform Administrative Procedures Act)**

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#### **O. Treatment of OJI Records**

In accordance with the Tennessee Public Records Act, the City treats medical records as confidential and not open to inspection by the public.

### **PROVISIONS ONLY APPLICABLE TO THE POLICE AND FIRE SERVICES DIVISIONS**

\*GOVERNED BY STATE LAW

#### **Heart, Hypertension, and Lung Presumption ("HHL")**

The OJI Program covers Police Officers and Fire Fighters as required by the most recent version of state statute T.C.A. 7-51-201 (as amended). Police Officers diagnosed with diseases of the heart and hypertension, and Fire Fighters diagnosed with diseases of the heart, lungs, and hypertension are presumed (unless the contrary is shown by competent medical evidence) to have contracted such diseases or conditions in the course of their employment by the City of Memphis government.

**PROVISIONS ONLY APPLICABLE TO**  
**THE FIRE SERVICES DIVISION**

\*GOVERNED BY STATE LAW

**Cancer Presumption**

The OJI Program covers firefighters who have completed five (5) or more consecutive years in service with the City's Fire Division, and who have been exposed to heat, smoke, and fumes, or carcinogenic, poisonous, toxic, or chemical substances, while performing the duties of a firefighter in the firefighter's capacity as an employee. T.C.A. 7-51-201(d).

For firefighters meeting this criteria, the cancer presumption applies to any condition or impairment of health of firefighters caused by all forms of the following cancers: Non-Hodgkin's lymphoma, colon, skin, or multiple myeloma is presumed (unless the contrary is shown by competent medical evidence) to have arisen out of a Fire Fighter's employment with the City of Memphis government. In addition to the cancers listed in the statute, the City has expanded the presumption to cover six (6) additional cancers: rectal, prostate, thyroid, lung, mesothelioma and stomach.

A firefighter wishing to utilize the cancer presumption must 1) obtain a physical medical examination (dated after July 1, 2019) that includes a cancer screening showing no evidence of the cancers covered by the presumption, except that **a diagnosis of one of the cancers adopted by the City, but not listed in the statute will not prevent a firefighter from using the presumption for one of the cancers listed in the statute.**; and 2) obtain an annual physical medical examination that includes clear cancer screenings. Required screenings are at no cost to the employee.