Comments

Carpal Tunnel Syndrome Is Not an Injury in the Line of Dangerous Duty: Workers’ Compensation for Peace Officers and the Need for Reform

By Cassie Coleman*

This comment discusses the workers’ compensation system in California and the special full salary rule for “peace officers”—a large category of public employees that includes a range of law enforcement and public safety personnel. Pursuant to state constitutional mandate,1 the California Legislature first enacted workers’ compensation legislation in 1911.2 This legislation, now entitled the California Workers’ Compensation Act, provides a “compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment.”3 This no-fault system was meant to replace costly and unpredictable tort lawsuits filed by employees4 with

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1. CAL. CONST. art. XIV, § 4, discussed infra note 147; 65 BARBARA SLOTNIK, CALIFORNIA JURISPRUDENCE, WORK INJURY COMPENSATION § 6, n.22 (3d ed. 2004).

2. “The original Workmen’s Compensation Act was enacted by Stats.1911, c. 399, p. 796.” CAL. LAB. CODE, div. 4, hist. & statutory nn. (West 2003); see also 65 SLOTNIK, supra note 1, § 6, n.23. The 1911 legislation was followed by “a much more comprehensive and detailed act” in 1913, with further reforms in 1917. CAL. LAB. CODE, div. 4, hist. & statutory nn. (West 2003). In 1937, the Legislature amended the Labor Code to consolidate and revise the laws relating to labor and employment. 65 SLOTNIK, supra note 1, § 6, n.23.

3. 65 SLOTNIK, supra note 1, § 6.

a single insurance-based system that created limited strict liability for employers.  

Most workers in California that are injured on the job and unable to work receive two-thirds of their salary in workers’ compensation, which is not taxable under the Internal Revenue Code. For many workers in California, standard workers’ compensation benefits of two-thirds untaxed salary would amount to less than their normal after-tax take-home pay. However, for designated peace officers injured


6. HERLICK, WC LAW, supra note 4, § 1.01[4]. The underlying principal is that employers should provide protection as a cost of doing business. See STANFORD D. HERLICK, CALIFORNIA WORKERS’ COMPENSATION HANDBOOK x–xi (24th ed. 2005) [hereinafter “HERLICK HANDBOOK”]. Nevertheless, the system has benefits for both employers and employees. Employer liability is generally limited to the actual costs of the injury, and negligence lawsuits are precluded. See HERLICK, WC LAW, supra note 4, § 1.01[4]–[5]; HERLICK HANDBOOK, supra, at x–xi. The preclusion of negligence suits saves the employer not only the attorneys’ fees to defend a lawsuit, but also the cost of a sizeable monetary award if an employee were to successfully allege emotional distress. See Schwartz, supra note 4, at 991. Employees, meanwhile, receive medical treatment and compensation payments for industrial injuries without having to prove employer negligence in court (a burden which had previously left many injured workers without protection). See HERLICK, WC LAW, supra note 4, § 1.01[4]–[5]; HERLICK HANDBOOK, supra, at x–xi.

7. CAL. LAB. CODE § 4653 (West 2003) (provides that for a “temporary total disability, the disability payment is two-thirds of the average weekly earnings”); CAL. LAB. CODE § 4658 (West 2003) (provides that for a “permanent disability” the disability payment is “[t]wo-thirds of average weekly earnings” allotted for a limited number of weeks as determined by an assessment of the level of the employee’s disability). See also HERLICK, WC LAW, supra note 4, § 5.09[1].

8. I.R.C. § 104(a)(1) (West 2005) (providing that a person’s taxable income shall not include “amounts received under workmens compensation acts as compensation for personal injuries or sickness”).

9. The median adjusted gross income in California for all tax filers in 2001 was $31,666. CAL. FRANCHISE TAX Bd., ANNUAL REPORT 2002, at 11 (2002), available at http://www.ftb.ca.gov/aboutFTB/index.html (last accessed Oct. 10, 2005) [hereinafter “FRANCHISE TAX Bd.”]. Adjusted gross income (hereinafter “AGI”) refers to “all income from whatever source derived” less exclusions. ECONOMICS & STATISTICS ADMIN., UNITED STATES DEP’T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 2004–2005, at 319 (124th ed. 2004) [hereinafter “STATISTICAL ABSTRACT”]; MARVIN A. CHIRELSTEIN, FEDERAL INCOME TAXATION 1 (9th ed. 2002). The effective tax rate is “the rate that is applicable to the taxpayer’s income as a whole.” Id. at 4–6. It is derived by dividing the taxpayer’s tax liability by stated income. STATISTICAL ABSTRACT, supra, at 319. Applying the nearest reported effective tax rate (for $35,000 AGI for a single person with no dependents) to the $31,666 California median AGI in 2001, the effective tax rate was 10.3%. Id. This hypothetical single person would keep 89.7% of AGI after taxes, which is well more than the 66.6% (two-thirds salary) she would earn from workers’ compensation. For married couples filing jointly, the median adjusted gross income in California in 2001 was $58,341. FRANCHISE TAX Bd., supra, at 11. Applying the nearest reported effective tax rate (for $50,000 AGI for joint filers with two dependents) to the $58,341 median AGI for joint filers, the effective tax rate was 5.6%. STATISTICAL ABSTRACT, supra, at 519. This hypothetical couple would
on the job, workers' compensation equals the peace officer's full salary,\textsuperscript{10} which again is not taxable under the Internal Revenue Code.\textsuperscript{11} Thus, peace officers receive more than their regular after-tax income while injured and unable to work, for up to a maximum period of one year.\textsuperscript{12} After the one-year period, a peace officer who is still unable to work receives two-thirds salary as with regular workers' compensation.\textsuperscript{13}

The full salary leave of absence benefit ("full salary benefit" or "full salary rule") for peace officers was first granted in 1937 to California Highway Patrol officers by California Labor Code ("Labor Code") section 4800, which specifically excluded employees not engaged in "active law enforcement service."\textsuperscript{14} Two years later, section 4850 granted the full salary benefit to city police officers and city firefight-

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\textsuperscript{10} CAL. LAB. CODE § 4850(a) (West 2003).
\textsuperscript{11} I.R.C. § 104(a) (1) (West 2003).
\textsuperscript{12} CAL. LAB. CODE § 4850(a) (West 2005).
\textsuperscript{13} CAL. LAB. CODE § 4853 (West 2003); see Boyd v. City of Santa Ana, 491 P.2d 830, 832 (Cal. 1971).
\textsuperscript{14} CAL. LAB. CODE § 4800 (Deering 1953) (amended 1967, 1969, 1971, 1972, 1980, 1994). The former version of § 4800, enacted in 1937, originally read as follows:

Whenever any member of the California Highway Patrol is disabled 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 patrol to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for the period of not exceeding one year. This section shall apply only to those members of the California Highway Patrol whose principal duties consist of active law enforcement and shall not apply to persons employed in the Department of Motor Vehicles whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active law enforcement service, even though such person is subject to occasional call or is occasionally called upon to perform his duties within the scope of active law enforcement service.

\textsuperscript{Id.}
ers injured in the line of duty.\textsuperscript{15} Section 4850 likewise excluded department employees not engaged in "active law enforcement" or "active firefighting and prevention."\textsuperscript{16}

The original purpose of the full salary benefit was to provide special remuneration to city policemen and city firemen injured in the course of dangerous duty while protecting the public from criminal acts or fires.\textsuperscript{17} In the years since enactment, the sections establishing the full salary rule have moved away from this original purpose in two ways. First, the statutes have been expanded to cover numerous groups of personnel under the category of "peace officer."\textsuperscript{18} Second, in practice, this benefit is being used to cover injuries that are not sustained in the line of dangerous duty while protecting the public.\textsuperscript{19} The full salary benefit is also problematic because the workers' compensation system is already ripe for fraud and abuse, and the generosity of this benefit provides greater incentive to commit fraud and abuse.

As a result of these phenomena, the full salary benefit has a significant financial impact on state and local government. This financial impact in turn skews decision making regarding public employees, adversely affecting those workers. For example, as lawmakers face diminishing tax revenues and increasing workers' compensation costs, they often balance their budgets by laying-off workers, leaving employee vacancies unfilled, or passing along to workers the cost of health or


\textsuperscript{16} \textit{Id.}

\textsuperscript{17} Biggers v. Workers' Comp. Appeals Bd., 81 Cal. Rptr. 2d 628, 633 (Ct. App. 1999) (considering the purpose of section 4850); United Pub. Employees v. City of Oakland, 31 Cal. Rptr. 2d 610, 611 (Ct. App. 1994) (considering the purpose of \textit{CAL. LAB. CODE} § 4850). (Given that the provisions of Labor Code sections 4800 and 4850 "are parallel" with "identically worded language," as noted by the \textit{United Public Employees} court, this author assumes for the purposes of this Comment that the original intent of section 4800 matches that of section 4850. \textit{See United Pub. Employees}, 31 Cal. Rptr. 2d at 611. This original intent is assumed to apply to the various sections that establish full salary leave of absence for the various peace officers and public safety personnel discussed in this Comment.)

\textsuperscript{18} \textit{See discussion infra} Part I.A.1, noting that originally, Labor Code section 4850 granted the full salary benefit only to city policemen and firemen, while current section 4850 applies to many more personnel; \textit{see discussion infra} Part I.A.2, noting that former Labor Code section 4800 applied only to California Highway Patrolmen, while current sections 4800-4820 apply to more personnel.

\textsuperscript{19} \textit{See infra} Part I.B, noting that the original purpose of providing superior benefits to peace officers was to compensate for injuries sustained in the line of dangerous duty while protecting the public; \textit{see also infra} Part II.A.2, noting that the full salary benefit has been interpreted to apply to routine workplace injuries.
retirement plans. Indeed, reforming the workers' compensation system to better control unnecessary costs would benefit workers by reducing the strain on these state and local government budgets, which are often balanced to the detriment of public employees.

In light of these factors, this Comment calls for the reformation of the Labor Code's full salary rule to expressly limit the types of injuries that qualify for this benefit to those sustained during the hazards of "active law enforcement service" or "active firefighting and prevention service," per the language of the statutes, while expressly excluding routine injuries not incurred while engaged in dangerous duty for the protection of the public.

Part I of this Comment introduces the full salary rule for peace officers and describes which workers are included in the peace officer category. It examines the original purpose behind setting peace officers apart from other public workers. Part I also demonstrates the fiscal impact of this benefit, using the City and County of San Francisco as an illustration. Part II examines how the full salary rule has strayed from its original purpose; first, with the addition of so many groups of public employees into the peace officer category, and second, by the use of this benefit to cover everyday, garden-variety workplace injuries that do not stem from "active law enforcement" or "active firefighting and prevention," per the language of the enacting state statutes. Part II also addresses the financial incentives created by this rule, including the incentive for fraud and abuse. The experiences of the City and County of San Francisco and the County of Los Angeles illustrate this effect. Finally, Part II discusses how costs and the potential for fraud and abuse associated with the full salary benefit skew management-level decision making regarding workers at the local level.

Part III offers potential solutions to bring the state statutes back in line with their original purpose. It considers eliminating the full salary benefit entirely; scaling back the groups of employees who qual-


21. See infra Part II.A.2; see also CAL. LAB. CODE § 4850(c) (West 2003); see infra notes 27-34 and accompanying text (explaining the provisions and interpretation of section 4850(c)); CAL. LAB. CODE §§ 4800, 4800.5, 4804.1, 4806, 4816 (West 2003); see infra notes 53-55 and accompanying text (explaining the provisions and interpretation of sections 4800-4820).
ify as peace officers; limiting the types of injuries that qualify for the benefit; and restricting the benefit to equal an officer's net take home pay. Part III concludes that the best option is to both limit the injuries that qualify for full salary leave of absence and modify the benefit to equal an officer's net take home pay.

I. Peace Officers and Workers' Compensation Defined

A. Current Law

1. Section 4850: City, County, and Local District Peace Officers

Currently, Labor Code section 4850(a) provides peace officers injured on the job with a leave of absence at full salary for a period not to exceed one year. A peace officer disabled for more than one year receives the standard disability indemnity of two-thirds salary.

When section 4850 was originally passed in 1939, it applied only to city police officers and city firefighters. Today, section 4850(b) defines peace officers to include the following: city police officers; city, county, or district firefighters; sheriffs; officers or employees of

22. CAL. LAB. CODE § 4850(a) (West 2003). The current section 4850 reads in full: 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 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), 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.

23. CAL. LAB. CODE § 139.5(d) (West 2003) (maintenance payments provide two-thirds salary); id. § 4653 (temporary disability provides two-thirds salary); id. § 4850(a) ("provisions of this division" refers to "temporary disability payments" and "maintenance allowance payments under Section 139.5."); id. § 4853. Section 4853 provides:

Whenever such disability of any such officer or employee continues for a period beyond one year, such member shall thereafter be subject as to disability indemnity to the provisions of this division other than section 4850 during the remainder of the period of said disability or until the effective date of his retirement under the Public Employees' Retirement Act, and the leave of absence shall continue.

any sheriff’s office; inspectors, investigators, detectives, or personnel with comparable titles in any district attorney’s office; county probation officers, group counselors, or juvenile services officers; officers or employees of a probation office; peace officers under section 830.31 of the Penal Code (including police officers of the County of Los Angeles; persons designated by a local agency as a park ranger; peace officers of the Department of General Services of the City of Los Angeles; other peace officers designated pursuant to this subdivision and authorized to carry firearms; and housing authority patrol officers); lifeguards; airport law enforcement officers; harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department; and police officers of the Los Angeles Unified School District.\(^\text{25}\)

Section 4850(c) contains a specific provision to exclude coverage from employees “whose functions do not clearly fall within the scope of active law enforcement service,” such as clerical staff, maintenance workers, or mechanics.\(^\text{26}\) Nevertheless, section 4850(c) allows the full salary benefit for those “other” employees whose functions do “clearly fall within the scope of active law enforcement” or “active firefighting and prevention service.”\(^\text{27}\) Labor Code section 3202 requires that the courts give a liberal construction with the purpose of extending benefits for the protection of persons injured in the course of their employment.\(^\text{28}\) Hence, courts have held that a courtroom bailiff employed by a sheriff’s department was engaged in “active law enforcement” and thus qualified for the full salary benefit.\(^\text{29}\) Similarly, a civilian paramedic qualified as providing “active firefighting or pre-


\(^{26}\) Cal. Lab. Code § 4850(b) (West 2003).

\(^{27}\) Id. § 4850(c).

\(^{28}\) Id. § 4850(c)(2); see, e.g., Biggers v. Workers’ Comp. Appeals Bd., 81 Cal. Rptr. 2d 628, 633–34 (Ct. App. 1999) (construing the language of section 4850 to mean that employees who are not specifically excluded from coverage, and whose duties fall under the “active law enforcement” service clause of the statute, are eligible for the section 4850 benefit); Charles v. Workers’ Comp. Appeals Bd., 248 Cal. Rptr. 805 (Ct. App. 1988) (similarly interpreted section 4850 to apply to an employee not explicitly excluded from coverage and whose duties fell under the “active firefighting and prevention” service clause of the statute).

\(^{29}\) Id. § 3202 (providing that “[t]his division . . . shall be liberally construed by the courts with the purpose of extending [its] benefits for the protection of persons injured in the course of their employment”); Myricks, 64 Cal. Comp. Cases 1285, 1286–87 (Ct. App. 1999).

\(^{30}\) Biggers, 81 Cal. Rptr. 2d at 634 (holding that “a bailiff’s functions in maintaining order in the courtroom and taking responsibility for the security and custody of inmates are ‘within the scope of active law enforcement service’”).
vention service” under the full salary rule, as he supplied emergency medical care in the field, working alongside fire department staff. In addition, the Workers’ Compensation Appeals Board (“WCAB” or “Appeals Board”) has held that the following positions meet the “active law enforcement” criterion under the full salary rule, even though they were not specifically enumerated in section 4850: a chief of police for the Los Angeles Housing Authority; a sheriff’s department employee who provided hospital security; and a city jailer.

In order for an injury or illness to be covered under the full salary rule, it must “arise out of” and “in the course of” the employee’s job duties. This requirement is the same as the industrial injury standard applied in regular workers’ compensation cases. If the injury has arisen out of and in the course of duty, peace officers receive the full salary benefit, regardless of their period of service. As the law has been interpreted, no further showing need be made that the injury was sustained in the course of dangerous duty rather than in the course of mundane, everyday office-based tasks.

Section 4851 of the Labor Code provides a review mechanism for claims for the full salary benefit provided by section 4850 by directing that disputed claims be determined by the WCAB. The seven-member WCAB “adjudicates contested decisions of the Division and resolves questions of interpretation and enforcement of the law” in regard to workers’ compensation. Under section 4851, a local agency may request the WCAB “to determine in any case . . . whether

31. HANNA, CALIFORNIA LAW OF EMPLOYEE INJURIES & WORKERS’ COMPENSATION § 3.114[1] (2005) (citing Charles v. Workers’ Comp. Appeals Bd., 248 Cal. Rptr. 805, 806 (Ct. App. 1988) (“[T]hose who perform some of the duties of firemen and who assume some of the physical and emotional risks firemen encounter come within the Legislature’s ‘firefighter’ rubric and are entitled to the benefits of the statute.”)).
34. Id. § 3.114[1] (citing Bashford, 56 Cal. Comp. Cases 509, 510 (Ct. App. 1991)). (Nevertheless, the WCAB held in another case that a correctional officer working inside a city jail did not qualify for section 4850 pay, stating that such duty was not “active law enforcement service.” Pulido, 61 Cal. Comp. Cases 130, 131–32 (Ct. App., 1996)).
35. CAL. LAB. CODE § 4850(a) (West 2003).
36. Id. § 3600(a) (West 2005) (providing that “[I]nability for the compensation provided by this division . . . shall . . . exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment”); HERLICK, WC LAW, supra note 4, § 10.01[1].
37. CAL. LAB. CODE § 4850(a) (West 2003).
38. Id. § 4851.
or not the disability referred to in section 4850 arose out of and in the
course of duty.” 40 In other words, the WCAB has the authority to
determine whether a disability was industrially caused. 41 The Appeals
Board “shall also, in any disputed case, determine when the disability
commenced and ceased” and the amount of benefits provided to the
injured employee. 42 In addition, the WCAB may determine whether
an employee’s position qualifies as active law enforcement or active
firefighting and prevention service for the purposes of the full salary
rule. 43

2. Sections 4800 Through 4820: State Peace Officers and San
Francisco Port Police

When section 4800 was originally passed in 1937, it applied only
to California Highway Patrol officers. 44 Today, sections 4800 through
4820 45 grant the full salary benefit to state level employees—with the
exception of local San Francisco Port harbor police 46—including:
“state peace officers/firefighters” who are members of the State De-
partment of Justice; 47 sworn members of the California Highway Pa-
trol; 48 members of a University of California Fire Department whose

40. CAL. LAB. CODE § 4851. Section 4851 reads in full:

The governing body of any city, county, or city and county, in addition to anyone
else properly entitled, including the Public Employees’ Retirement System, may
request the appeals board to determine in any case, and the appeals board shall
determine, whether or not the disability referred to in Section 4850 arose out of
and in the course of duty. The appeals board shall also, in any disputed case,
determine when the disability commenced and ceased, and the amount of bene-
fits provided by this division to which the employee is entitled during the period
of the disability. The appeals board shall have jurisdiction to award and enforce
payment of these benefits pursuant to Part 4 (commencing with Section 5300).

Id.

41. See id. § 4851; Reynolds v. City of San Carlos, 178 Cal. Rptr. 636, 639 (Ct. App.

42. CAL. LAB. CODE § 4851; see Reynolds, 178 Cal. Rptr. at 639.

43. See Hous. Auth. of Los Angeles v. Workers’ Comp. Appeals Bd., 70 Cal. Rptr. 2d
738, 742 (Ct. App. 1998) (holding that the WCAB has the authority to determine whether
a chief of police for a county housing authority is eligible for section 4850 benefits, after
the WCAB found the employee to be eligible under the “active law enforcement” clause of
the statute). The author of this Comment, by logical extension, concludes that the WCAB
has the authority to determine whether an employee qualifies for section 4850 benefits
under all clauses of the statute, including the “active firefighting” clause.

44. CAL. LAB. CODE ANN. § 4800 (Deering 1953) (amended 1967, 1969, 1971, 1972,
1980, 1994).


46. Id. § 4800.

47. Id.

48. Id. § 4800.5.
principal duties consist of active fire fighting and prevention service; 49 members of a University of California Police Department whose principal duties consist of active law enforcement; 50 and members of a California State University Police Department whose principal duties consist of active law enforcement. 51 As with section 4850, under sections 4800 through 4820, if the disability continues for a period beyond one year, the employee will receive regular workers' compensation of two-thirds salary. 52

Like section 4850, sections 4800 through 4820 contain specific provisions that exclude from coverage employees such as a "telephone operator, clerk, stenographer, machinist, mechanic, or otherwise," 53 whose duties clearly do not fall within the scope of either "active law enforcement service" 54 or "active fire fighting and prevention service." 55

Also, like section 4850, the majority of sections 4800 through 4820 require no further showing that the injury was actually sustained in the course of dangerous duty in protecting the public, rather than in the course of mundane, everyday office-based tasks. 56 Two sections however, provide important yet limited restrictions on the types of injuries for which the full salary benefit may be received. 57 First, section 4800.5, which applies to the California Highway Patrol, requires the injury to be "a single injury, excluding disabilities that are the result of cumulative trauma or cumulative injuries." 58 Second, section 4816, which applies to California State University police officers, provides that "[n]o benefits shall be paid under this section for any psychiatric

49. Id. § 4804.1.
50. Id. § 4806.
51. Id. § 4816.
52. Id. § 4803 (applies to California Highway Patrol, Department of Justice, San Francisco Port Commission); id. § 4804.4 (applies to University of California Fire Department); id. § 4809 (applies to University of California Police Department); id. § 4819 (applies to California State University Police Department); id. § 4653 (provides that for a "temporary total disability, the disability payment is two-thirds of average weekly earnings"); id. § 4658 (provides that for a "permanent disability" the disability payment is "two-thirds of average weekly earnings" allotted for a limited number of weeks as determined by an assessment of the level of the employee's disability).
53. CAL. LAB. CODE. §§ 4800, 4800.5, 4804.1, 4806, 4816.
54. Id. §§ 4800, 4800.5, 4806, 4816.
55. Id. § 4804.1.
56. Id. §§ 4800, 4804.1, 4806.
57. Id. §§ 4800.5, 4816.
58. Id. § 4800.5(a). Under section 4800.5(b) workers with industrial disabilities resulting from cumulative trauma or cumulative injuries are entitled to regular disability benefits (two-thirds salary) through either temporary disability or maintenance payments for the period of the disability or for one year, whichever is less. Id. § 4800.5(b).
disability or any physical disability arising from a psychiatric injury.”

This language precludes stress claims by California State University police officers.

A third limitation, this time addressing the monetary amount of the benefit, is found in section 4816, which applies to California State University police officers. Section 4816 restricts payments to the equivalent of the officer’s “net take home salary,” rather than the usual full salary, untaxed. Thus, an injured California State University police officer receives a modified full salary benefit, reduced to match his or her usual after-tax take-home pay. This modified full salary benefit is still more than most workers receive on regular workers’ compensation.

Regarding the role of the WCAB in relation to sections 4800 through 4820, the Appeals Board reviews disputed claims made under these sections as it does with section 4850 and other workers’ compensation claims. Nevertheless, for section 4800 itself (regarding members of the “state peace officer/firefighter” class of the Department of Justice and harbor police of the San Francisco Port Commission), the WCAB does not have jurisdiction to determine whether an employee is qualified for the full salary benefit. The employer must make this determination, but the Board may determine if the disability arose

59. Id. § 4816.

60. Id. Section 4816 reads in pertinent part, a member “disabled by injury or illness arising out of and in the course of” duty shall become entitled to:

enhanced industrial disability leave equivalent to the injured employee’s net take home salary on the date of occurrence of the injury. For the purposes of this section, “net take home salary” means the amount of salary received after federal income tax, state income tax, and the employee’s retirement contribution has been deducted from the employee’s gross salary.

Id.

61. Id.

62. See supra notes 7–9 and accompanying text.

63. See CAL. LAB. CODE §§ 4800, 4801; id. § 4801 (Department of Justice and San Francisco Port Commission); id. § 4804.2 (University of California Fire Department); id. § 4807 (University of California Police Department); id. § 4817 (California State University Police Department); see also Kilgour, supra note 5, at 88.

64. CAL. LAB. CODE §§ 4800, 4801; see also HANNA, supra note 31 § 3.114[3]; Dept. of Justice v. Workers’ Comp. Appeals Bd. (Jones), 261 Cal. Rptr. 130, 135 (Ct. App. 1989) (holding that the language regarding the powers of the WCAB for section 4801 is more restrictive than that of section 4851, and therefore the WCAB does not have the power under 4801 to determine the eligibility of employees of the Department of Justice and San Francisco Port Commission).

65. HANNA, supra note 31 § 3.114[3]; Workers’ Comp. Appeals Bd. (Jones), 261 Cal. Rptr. at 134–35 (Cal. Ct. App. 1989). The eligibility determination for section 4800 is to be made by the employer. Id. at 134. Once the employee “has exhausted his administrative remedies
out of and in the course of employment.\textsuperscript{66} The WCAB is not so limited in regard to section 4800.5 (regarding members of the California Highway Patrol), for which it may determine, as with section 4850, whether an employee qualifies as providing "active law enforcement" service for the leave of absence benefit.\textsuperscript{67}

3. **Local Government Codes**

Finally, in addition to state statutes, local government codes may also provide a full salary benefit to designated staff. For example, the Charter of the City and County of San Francisco grants the full salary benefit to uniformed members of the fire or police departments.\textsuperscript{68} Under the charter, an industrially injured police officer or firefighter receives disability benefits equal to and in lieu of salary for up to twelve months in the aggregate for a given injury or illness.\textsuperscript{69} This benefit is essentially identical to that provided under Labor Code section 4850.\textsuperscript{70}

B. **Original Intent: Dangerous Duty in the Field Is What Sets Peace Officers Apart from Other Public Employees**

California Labor Code section 4800 was enacted in 1937, granting full salary leave of absence to sworn members of the California

\textsuperscript{66} Workers' Comp. Appeals Bd. (Jones), 261 Cal. Rptr. at 133.
\textsuperscript{67} CAL. LAB. CODE § 4800.5(d); HANNA, supra note 31 § 3.114[3].
\textsuperscript{68} CITY & COUNTY OF S.F. MUNICIPAL CODE 1996 CHARTER, app. A § 8.515 (2005), available at http://www.amlegal.com/sfcharter_nxt/gateway.dll?f= templates&fn=default.htm&iviv=alp:sfcharter (last visited May 1, 2005). The Charter reads in pertinent part: Whenever any member of the fire or police department, as defined in Sections 8.545, 8.565, and 8.569, respectively, is incapacitated for the performance of his duties by reason of any bodily injury received in or illness caused by the performance of his duty as determined by the retirement board, he shall become entitled, regardless of his period of service with the city and county, to disability benefits equal to and in lieu of his salary as fixed by the charter, while so disabled, for a period or periods not exceeding 12 months in the aggregate, with respect to any one injury or illness.
\textsuperscript{69} Id.
\textsuperscript{70} Johnson v. Bradley, 841 P.2d 990, 996 (Cal. 1992) (noting that "a court asked to resolve a putative conflict between a state statute and a city charter measure initially must satisfy itself that the case presents as an actual conflict between the two. If it does not, a choice between the conclusions 'municipal affair' and 'statewide concern' is not required"). Given that there is no conflict between state statute and city charter in this instance, the question of preemption is not at issue.
State Highway Patrol. Section 4800 specifically excluded employees not engaged in "active law enforcement service." Section 4850 was enacted two years later in 1939. Worded similarly to section 4800, section 4850 granted the full salary benefit to two categories of local employees: city police officers and city firefighters. Like section 4800, section 4850 also excluded employees not engaged in "active law enforcement" or, as it applied to firefighters, "active fire fighting and prevention."

Discussing the purpose of section 4850, the California Court of Appeal for the First District concluded that,


 Whenever any member of the California Highway Patrol is disabled 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 patrol to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for the period of not exceeding one year. This section shall apply only to members of the California Highway Patrol whose principal duties consist of active law enforcement and shall not apply to persons employed in the Department of Motor Vehicles whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic or otherwise clearly falling within the scope of active law enforcement service, even though such person is subject to occasional call or is occasionally called upon to perform his duties within the scope of active law enforcement service.

72. Id.

73. Id.


 Whenever any city policeman or city fireman who is a member of the State Employees' Retirement System is disabled 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, to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for the period of not exceeding one year. This section shall apply only to city policemen who are members of the State Employees' Retirement System and excludes such employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, or otherwise and whose functions do not clearly fall within the scope of active law enforcement service. It shall also apply to city firemen who are employees of the State Employees' Retirement System and excludes such employees of the city fire department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active fire fighting and prevention service.

The statute was designed and has been interpreted so as to grant ... special benefits only to police officers and law enforcement personnel who actively pursue investigations and make arrests in the field; these benefits are generally not available to personnel employed in less hazardous and more routine duties at a centralized location, who do not pursue active service in the field, such as clerks, typists, machinists, mechanics. 76

The Second District Court of Appeal viewed it similarly, stating that,

The purpose of section 4850 is to provide special benefits to police, sheriffs, and firemen. The reason for such exceptional treatment ... is obvious: not only are their occupations particularly hazardous, but they undertake these hazards on behalf of the public. The Legislature undoubtedly sought to ensure that policemen and firemen would not be deterred from zealous performance of their mission of protecting the public by fear of loss of livelihood. 77

Simply put, the intent of section 4850, and by extension section 4800, 78 is to provide designated peace officers with special benefits when injured in the line of dangerous duty for the protection of the public—such as capturing a potentially violent suspect or entering a burning building to rescue inhabitants and battle a fire.

II. The Full Salary Leave of Absence Rule Needs to Be Changed to Better Adhere to Its Original Purpose, Reduce Fraud, and Control Costs

A. The Rule No Longer Serves Its Intended Purpose

Sections 4850 and 4800 through 4820 no longer serve their intended purpose of providing peace officers with special benefits when injured in the line of dangerous duty for the protection of the public. While there are valid and appropriate reasons for society to provide superior benefits for peace officers so injured, in many cases the rule is not being used in this way.

78. The provisions of section 4800 parallel most of the provisions section 4850. Thus, the author assumes for the purposes of this Comment that the original intent of CAL. CODE section 4800 is like that of section 4850; i.e., to provide special workers' compensation benefits to California Highway Patrol officers (and the employees who were subsequently added to section 4800) who are injured in the line of the dangerous duty of protecting the public. Similarly, the author assumes that the problems related to section 4850 also relate to section 4800.
1. Too Many People

Over the decades since its passage, section 4850 has been incrementally expanded beyond city police officers and city firefighters to include numerous categories of public employees currently eligible for full salary leave of absence. Section 4800, too, has been expanded beyond California Highway Patrol officers, through the addition of more sections in this area of the Labor Code, to include the various classes of state and local employees currently enumerated in sections 4800 through 4820. Such additions seem to indicate that over time, the Legislature found that other public protection personnel deserved special remuneration when injured in the line of dangerous duty to protect the public—for example, a lifeguard who is hurt while rescuing a drowning person; a park ranger who is injured while arresting a criminal suspect in the park or even saving a park visitor from being mauled by a bear; or a juvenile probation officer who is injured while restraining a violent juvenile offender.

This legislative addition of numerous classes of workers eligible for the full salary benefit, such as lifeguards, park rangers, housing authority police, airport security personnel, adult probation officers, juvenile probation officers and juvenile hall counselors, university police and firefighters, harbor police, and more, denotes a significant expansion in the use of sections 4850 and 4800 beyond the original application to only city police and fire personnel and California Highway Patrol officers.

The judicial application of the full salary benefit to employees not enumerated in the statutes, via the “active law enforcement” and “active firefighting and prevention” clauses of the statutes, is another avenue of expansion of this benefit to employees whom the original drafters may not have intended.

Such statutory and judicial expansions of who may receive the full salary benefit for peace officers represents one way in which the current Labor Code has moved away from the original, more limited purpose of this legislation.

79. Cal. Lab. Code Ann. § 4850(c)(3) (West 2003); Biggers v. Workers’ Comp. Appeals Bd., 81 Cal. Rptr. 2d 628, 633–34 (Ct. App. 1999) (construing the language of section 4850 to mean that employees who are not specifically excluded from coverage, and whose duties fall under the “active law enforcement” service clause of the statute, are eligible for the section 4850 benefit); Charles v. Workers’ Comp. Appeals Bd., 248 Cal. Rptr. 805 (Ct. App. 1988) (similarly interpret section 4850 to apply to an employee not explicitly excluded from coverage and whose duties fell under the “active firefighting and prevention” service clause of the statute).
2. Too Many Injuries

Despite the purpose of the enabling statutes, the statutes fail to explicitly restrict eligible injuries to those sustained in the course of dangerous duty for the protection of the public. Due to this oversight, too many injuries, including routine workplace injuries that are not particular to dangerous duty or public protection, receive the full salary benefit. Case law demonstrates this phenomenon. Examples of injuries that do not appear to comport with the purpose of the statutes include: slipping and falling while getting out of a van; back injury while lifting a book at work; and the disability of the chief of police of a county housing authority "for a period of one year as a result of bruxism (a grinding of the teeth in situations of stress)."

On the other hand, case law also provides examples of injuries that seem consistent with the purpose of the relevant statutes including: injuring a knee while fighting a fire; injuring one's back while opening a fire hydrant; injury sustained while chasing a suspect; and injuries sustained in a helicopter crash by the deputy sheriff pilot.

Data from the City and County of San Francisco offers further examples of the application of the full salary benefit being granted regardless of whether the injury was actually sustained in the course of dangerous duty for the protection of the public. Examples of injuries that appear to fit with the purposes of the full salary benefit include: an injury to the shoulder "while restraining a combative prisoner";
injury to the face and head “while assisting nurse with patient in custody . . . [and] the claimant was hit in her head”; injury to the foot “while running to assist other deputies”; injury to multiple parts of the body “while attempting to capture a fleeing suspect”; injury to multiple parts of the body while “trying to arrest a juvenile” who pushed the employee into a door; and injury to the ankle while the employee was “helping supervisor arrest a minor . . . [who] became aggressive[,] assaulting [the supervisor].”

Examples of compensable injuries that do not appear to comport with the purpose of the full salary benefit include: “repeated motion” injury to the finger “while doing paperwork”; “repeated motion” injury to forearm from “writing on paperwork”; injury to the back and multiple parts of the body while “getting up from chair, [and] the chair suddenly and very quickly rolled away”; injury to the buttocks “while attempting to sit on a chair that rolled away causing [claimant] to fall on the cement floor”; injury to multiple parts of the body “while attempting to sit down in [an] office chair that reclined backwards and caused the claimant to almost fall”; lifting injury to the back and multiple parts of the body “while moving boxes”; injury to the knee “while lifting a box at work”; injury to multiple parts of the body from “use of stairs, uncomfortable chairs, standing while supervising showers”; injury to multiple parts of the body when claimant “slipped on some stairs”; and injury to the finger “while opening [a] gun locker, [and] a chip of paint got stuck between [claimant’s] finger and fingernail."

The application of the full salary rule to injuries such as these, which were not sustained in the course of dangerous duty to protect the public, represents the second way in which the current system has moved away from the original purpose of the enacting state statutes.

91. Id. at 11 (claim no. 053844).
92. Id. (claim no. 053442).
93. Id. at 2 (claim no. 053442).
94. Id. (claim no. 050310).
95. Id. (claim no. 050312).
96. Id. at 8 (claim no. 052208).
97. Id. at 9 (claim no. 052658).
98. Id. at 7 (claim no. 051940).
99. Id. (claim no. 052131).
100. Id. at 12 (claim no. 054166).
101. Id. at 10 (claim no. 053176).
102. Id. at 8 (claim no. 052185).
103. Id. at 2 (claim no. 051511).
104. Id. at 10 (claim no. 053172).
105. Id. at 5 (claim no. 051163).
B. The Full Salary Rule Encourages Waste, Fraud, and Abuse

In addition to departing from its original purpose, the generosity of the full salary rule encourages waste, fraud, and abuse of the workers' compensation system—a system that was supposed to decrease the incidence of fraudulent workplace injury claims.\(^{106}\)

Prior to the creation of the workers' compensation system, when work injury claims were handled as tort lawsuits, an employee-plaintiff stood to recover not only out-of-pocket losses, such as medical bills and lost wages, but also a large monetary award reflecting the emotional pain the plaintiff reported to the jury.\(^{107}\) This monetary award for emotional distress was thought to motivate fraudulent workplace injury lawsuits.\(^{108}\) The workers' compensation system was expected to make fraud less likely because it eliminated such payments.\(^{109}\)

Despite the elimination of the apparent economic incentive of emotional distress awards, fraud remains a significant problem under the workers' compensation system in California.\(^{110}\) A 1993 analysis stated that "common estimates are that ten percent of all workers' compensation claims are fraudulent and that twenty-five percent of all employer payments are a result of either fraudulent claims or the deliberate padding of otherwise valid claims."\(^{111}\) One explanation for the persistence of fraudulent claims despite the absence of emotional distress awards is that filing a fraudulent claim allows a worker who "regards his job as an unpleasant experience...[to] receive wage payments through workers' compensation [while avoiding the] unpleasant or negative experience" of actually going to work.\(^{112}\)

This incentive to collect pay while not working is likely as present for peace officers as for any other employee. However, in addition to this, and unlike other workers, peace officers do have a monetary incentive to file fraudulent, padded, or otherwise questionable claims. While regular workers' compensation creates a financial incentive to

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106. See Schwartz, supra note 4, at 991.
107. Id.
108. Id.
109. Id.
110. Id. at 988.
111. Id.
112. Id. at 991; see also S.F. DEPT OF HUMAN RES., SFSTAT REPORT ON CITYWIDE HUMAN RESOURCES 22 (2004) (Workers' Compensation Cost Drivers). The report notes that "low workforce morale and high workforce disciplinary activity result in more claims" and "claims increase in recessionary and layoff climates." Id. Arguably, these "cost drivers" are fueled by fraudulent claims, as morale-related factors, rather than actual workforce injuries, are behind the filing of these claims.
return to work as soon as possible by generally paying less than a worker’s regular take-home pay, the full salary benefit arguably presents the opposite incentive. By paying injured peace officers not only full salary, but full salary without taxation, the full salary rule provides a monetary inducement to delay the return to work as long as possible.

Given this context, the generosity of full salary benefit can only supply a greater incentive to game the system. The first example of the way in which the full salary benefit encourages the filing of questionable claims comes from the City and County of San Francisco. In 1999, the State Legislature added “[c]ounty probation officers, group counselors, or juvenile services officers” and “[o]fficers or employees of a probation office” whose functions “clearly come within the scope of active law enforcement” to the eligible classes of employees under section 4850. Where previously juvenile probation officers and juvenile hall counselors were entitled to the regular two-thirds salary workers’ compensation benefits, they are now eligible for full salary benefit, amounting to more than their regular after-tax take-home pay.

Once this generous benefit became available, workers’ compensation claims from this agency went from 1.5 claims per $1,000,000 of payroll in fiscal year 1999–2000, to roughly 2.2 claims per $1,000,000

113. See supra note 9 and accompanying text.

114. The only exception is the modified full salary benefit for California State University Police, which equals “net take home salary.” Cal. Lab. Code § 4816 (West 2003); see supra notes 60–62 and accompanying text.


116. Id. § 4850(a)(7) (West 2003).

117. Id. § 4850(c)(3) (West 2003); Biggers v. Workers’ Comp. Appeals Bd., 81 Cal. Rptr. 2d 628, 633–34 (Ct. App. 1999) (construing the language of section 4850 to mean that employees who are not specifically excluded from coverage, and whose duties fall under the “active law enforcement” service clause of the statute, are eligible for the section 4850 benefit); Charles v. Workers’ Comp. Appeals Bd., 248 Cal. Rptr. 805 (Ct. App. 1988) (similarly interpret section 4850 to apply to an employee not explicitly excluded from coverage and whose duties fell under the “active firefighting and prevention” service clause of the statute).

118. Prior to 1999, these employees were not included in any of the enacting statutes of the full salary leave of absence benefit. Cal. Lab. Code § 4850(a)–(c) (West 2003) (local police, fire, sheriff and other personnel); id. § 4800 (Department of Justice and San Francisco Port Commission); id. § 4800.5(a) (California Highway Patrol); id. § 4804.1 (University of California Fire Department); id. § 4806 (University of California Police Department); id. § 4816 (California State University Police Department). Nor are Juvenile Probation Officers and Juvenile Hall Counselors included in the San Francisco City and County charter, which provides full salary leave of absence to police officers and fire fighters. City & County of S.F. Municipal Code 1996 Charter, app. A § 8.515 (2005).
of payroll in fiscal year 2000–2001.\textsuperscript{119} By fiscal year 2003–2004, claims equaled roughly 2.7 claims per $1,000,000 of payroll.\textsuperscript{120} This 44\% increase in claims over a period of four years may represent a coincidental spike in injuries. However, it is more likely that the jump in claims was due to borderline, padded, or patently false claims that were filed by employees drawn to the generosity of the untaxed full salary benefit—especially given the lack of statutory restrictions on its application to routine workplace injuries.

The second example of fraud and misuse in relation to the full salary rule comes from the Los Angeles County Sheriff’s Department. The Department terminated a deputy for alleged false statements made in a deposition regarding his injured status while on full salary leave of absence under section 4850.\textsuperscript{121} After undergoing surgery for a foot injury sustained from “hopping off a bunk,” a deputy sheriff repeatedly stated to his supervisor that he was unable to return to duty “because of the condition of his foot and the medication he was taking.”\textsuperscript{122} The Department received a tip from a confidential informant who relayed that the deputy had “played golf several times” and had “made statements about the tax-free money that he was earning and how he was spending it and that he was going to stay off work as long as he could and try to earn his way onto the [Professional Golf Association] tour.”\textsuperscript{123} The Department’s subsequent investigation resulted in videotaped footage of the deputy “mowing the lawn and walking without any visible evidence of pain”\textsuperscript{124} and the filing of four disciplinary charges against the deputy, which led to his termination.\textsuperscript{125}

Workers’ compensation fraud is also an issue of concern for the California State Highway Patrol (“CHP”) under section 4800. A cursory examination of the CHP internet website\textsuperscript{126} reveals a prominently featured link through which site visitors may complete an online

\textsuperscript{120} Id.
\textsuperscript{121} Shafer v. L.A. County Sheriff’s Dep’t, 131 Cal. Rptr. 2d 670, 671 (Ct. App. 2003).
\textsuperscript{122} Id. at 672.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Id. at 674. The Sheriff’s Deputy challenged the legality of the investigation against him under the procedural guarantees of the Peace Officers’ Bill of Rights. Id. at 675. The Appeals Court upheld the trial court’s decisions in suppressing one interrogation while allowing into evidence other statements made by the Deputy and therefore affirmed the trial court’s ruling that the Department had properly investigated and terminated the Deputy. Id. at 675–79.
“Workers’ Compensation Fraud Reporting Form.” On this form, the CHP states that “it is crucial that we have policies and procedures in place to minimize the opportunity to take unfair advantage of the system or to commit outright fraud.” In addition, the CHP strategic plan for 2005–2009 highlights the CHP’s plan to “[i]mplement internal recommendations from [the] Workers’ Compensation Report during 2005” as one of its two strategies to “improve departmental efficiency.” The plan explains that this strategy was chosen “because of the recent political and public attention paid to a workers’ compensation system in need of modification and the need to find ways to more efficiently and effectively manage financial resources in times of fiscal austerity.” The report’s focus on workers’ compensation, in addition to the departmental website’s prominent display of the fraud reporting mechanism and the accompanying anti-fraud statement, indicates that workers’ compensation fraud is clearly a matter of concern to the CHP.

The examples from these different agencies and jurisdictions demonstrate that the fiscal challenge of the full salary rule is not simply that it pays out more than regular workers’ compensation. The challenge is also that the generosity of this benefit appears to attract an increased rate of utilization of workers’ compensation—e.g. through fraudulent claims, padded claims, or unnecessary delays in returning to work—which push the cost of this special compensation still higher.

C. Budgetary Impact: The Full Salary Benefit Places Added Financial Stress on State and Local Budgets

Workers’ compensation in general, and the full salary benefit in particular, place a significant financial burden on state, local, and municipal governments, especially during times of economic slowdown and shrunken tax revenues. For example, at the local level across California, the cost of workers’ compensation claims to cities and counties increased significantly between fiscal year 1998–1999 and fiscal year...
2002–2003.\textsuperscript{131} For counties, the cost increase averaged 56%; for cities, the cost increase averaged 48%; and for the City and County of San Francisco, the cost increase was 42%.\textsuperscript{132}

In fiscal year 2003–2004 alone, the City and County of San Francisco spent roughly $54 million on workers compensation overall.\textsuperscript{133} Of this amount nearly one-third, or $17 million, was spent on full salary leave of absence for peace officers.\textsuperscript{134} Seven agencies in San Francisco employ staff within the “peace officer” designation for the purposes of the full salary benefit.\textsuperscript{135} These agencies include the Police, Fire, Sheriff, Juvenile Probation, and Adult Probation Departments, as well as the District Attorney’s Office and the airport.\textsuperscript{136}

Given the budgetary impact of the current expansive application of the full salary benefit for peace officers, re-assessment of this special benefit is in order.

D. Financial Strain on Local Budgets Is Often Relieved to the Detriment of Workers: Lessening This Strain May Lessen the Negative Impact on Workers

The economic impact of the full salary rule skews decision making regarding public employees at the local level, adversely affecting those workers. When faced with shrinking tax revenues and rapidly rising workers’ compensation costs, lawmakers are frequently forced to sacrifice worker interests to balance local budgets.\textsuperscript{137} A statewide analysis concluded that the cost of workers’ compensation “is largely passed backwards to workers by way of marginally lower wages” and that increases in workers’ compensation costs tend to be “offset in the medium run by adjustments to the wage package.”\textsuperscript{138}

\begin{footnotes}
\footnote{131. S.F. DEP’T OF HUMAN RES., SFStat Report, Workers Compensation: Historical Data 9, exhibit 5 (2004) (citing a California State Association of Counties (“CSAC”) Survey of 120 cities and counties, compared with the Department’s own data).}
\footnote{132. Id.}
\footnote{133. Id.}
\footnote{134. Id.}
\footnote{136. Id.}
\footnote{138. Schwartz, supra note 4, at 993.}
\end{footnotes}
The following examples from the local level reveal budget balancing measures that are detrimental to employees, such as worker layoffs, unfilled employee vacancies, and passing along to workers the cost of health or retirement plans. In fiscal year 2003–2004, the City and County of San Francisco faced an estimated $347 million budget shortfall, prompting city officials to ask employees’ unions to pay for their own retirement benefits for the fiscal year. Union members agreed to pay the pretax 7.5% employees’ contribution to the retirement system that the City had been paying, in return for an extra five days off a year. In addition, 466 positions were eliminated, resulting in nearly 100 workers being laid off. In the subsequent 2004–2005 fiscal year, the belt tightening continued: workers were again asked to cover their retirement costs. Further, the Mayor eliminated another 200 positions on top of the previous year’s cuts and proposed taking another 750 positions off the books. Anticipating that these cuts would translate into some 500 workers actually losing their jobs through layoffs or early retirement, the Mayor stated that “the size of our workforce is really too big for us to afford.”

The pressure to make these employee-focused budget cuts could be offset by the savings generated by reforming the full salary rule. As one analyst put it, “given the interests of deserving workers, one might expect that organized labor would not oppose efforts to crack down on [workers’ compensation] fraud.” Nor would organized labor, arguably, want to oppose reasonable money-saving reforms that provide workers with an appropriate level of coverage. Reforming the relevant sections of the Labor Code to better control unnecessary costs benefits workers by reducing the strain on local government budgets that are so often balanced to the detriment of employees. As a part of the reform process, a deal could be negotiated with peace officers’ unions and other unions, earmarking some or all of the savings to offset any

140. Id.
141. Rachel Gordon, Mayor Signs $4.9 Billion S.F. Budget, S.F. CHRON., Aug. 1, 2003, at A25; Rachel Gordon, Mayor Cuts 50 Jobs, 165 Go into Battle to Trim $260 Million, S.F. CHRON., Feb. 28, 2004, at A15. While cutting empty positions does not cause any workers to lose their jobs, it is likely to cause the remaining workers to take on more work.
144. Id.
145. Schwartz, supra note 4, at 993–94.
retirement benefit rollback or layoff schemes otherwise being considered. If no such schemes are being considered, then some portion of the monies saved could be earmarked for another union priority.

Restructuring the full salary rule will not only return the state statutes to their original purpose, it will help balance the budgets of state and local government, benefit public workers, and result in a more rational expenditure of taxpayer dollars.

III. Potential Solutions

A. Eliminate the Full Salary Benefit for Peace Officers

One potential solution is eliminating the full salary benefit altogether by repealing Labor Code sections 4850 and 4800 through 4820, as well as relevant local codes, such as section A8.515 of the Charter of the City and County of San Francisco. In the place of enhanced workers’ compensation benefits, peace officers would receive the same two-thirds salary, non-taxable, as other workers injured on the job. This would bring about an immediate one-third cost savings for each claim. In addition, the elimination of this special benefit would remove the added incentive for some workers in the peace officer category to commit waste, fraud, and abuse. This, in turn, would further reduce workers’ compensation costs at the state, county, and city levels by decreasing not just the cost of each claim, but also the overall number of claims, as the number of fraudulent claims declines.

One key drawback to this option, however, is that it runs counter to the original intent of the statute: to specially compensate public safety personnel who are injured in the line of dangerous duty on behalf of the public. Further, there is a political impediment to this solution: law enforcement groups tend to have a great deal of lobbying power with elected officials.146 Given the political strength of law enforcement, it may be unlikely that state legislators would vote to wholly repeal this substantial benefit for public protection employees in the face of what would likely be fierce opposition.

B. More Narrowly Define “Peace Officer”

A second potential solution is more narrowly defining peace officer. Like the original Labor Code section 4850 and the Charter of the City and County of San Francisco, the statute could be amended

to provide this benefit for police and firefighters only. Similarly, section 4800 could be amended to return to its original language covering only California Highway Patrol officers. Scaling back the peace officer category to police, fire, and highway patrol officers would better adhere to the original purpose of sections 4850 and 4800. Such a reform would also reduce the economic strain on local and state governments as it minimizes the number of workers eligible for the full salary benefit. While a narrower definition of who can get this benefit would also likely face political opposition from law enforcement lobbying groups, it may be more politically palatable than the elimination of the benefit in its entirety.

This solution, however, excludes from special coverage many public protection employees who become injured in the course of "active law enforcement" and "active firefighting" duties that protect the public, consistent with the purpose of the statutes. At the same time, it fails to address the problem of eligible peace officers getting superior compensation for non-hazardous, ordinary workplace injuries. This option still allows the more limited number of peace officers to access the full salary benefit for injuries that are not consistent with the original purpose of the statutes. Additionally, limiting who can get the benefit does not curtail the incentive for fraud and abuse by those employees who would remain eligible for this benefit.

C. More Narrowly Define Qualifying Injuries

A third possible solution better aligning the use of the full salary benefit with its intended purpose is more narrowly confining its application to only those injuries that occur during the course of dangerous duty to protect the public. Eligible injuries would be those sustained in the performance of "active law enforcement" or "active firefighting and prevention" duties, which would include, for example, injuries obtained while in pursuit of a suspect; while fighting a fire or rescuing people from a burning building; while physically restraining a violent and out-of-control individual; and while rescuing a public beach-goer in danger of drowning. In addition to expressly stating which types of injuries would qualify, this reform would expressly specify the types of injuries that would not qualify under the full salary rule. Non-qualifying injuries would be those sustained as a result of routine, workplace tasks, such as carpal tunnel syndrome; falling out of one's chair; ordinary slip-and-fall injuries; or straining one's back while lifting a box.
This eligible-injury reform is consistent with the language of the enabling state statutes, which expressly excludes staff not engaged in "active law enforcement" or "active firefighting" duties. The difference is that while the state statutes determine eligibility by the type of worker, this reform would also use the type of injury to determine eligibility for the full salary benefit. Under such reform, peace officers who are injured while engaged in non-hazardous duties (rather than inherently dangerous "active law enforcement" and "active firefighting") would receive the regular workers' compensation of two-thirds salary instead of the full salary benefit.

The infrastructure to implement the eligible-injury reform is already in place. The law currently provides for the determination of industrial injuries and other issues by the WCAB, which could also be tasked with the application and enforcement of eligible-injury guidelines. Therefore, as an integral component of the eligible-injury reform, the relevant sections of the Labor Code must be amended to empower the WCAB to determine in disputed cases whether an injury is eligible for the purposes of the full salary rule.

One advantage of the eligible-injury approach is that it would lower the costs of workers' compensation to state and local governments by reducing the number of injuries that qualify for the full salary benefit. Greater scrutiny of injuries would also likely reduce the incidence of fraud and misuse of the system. Further, it would arguably better achieve the original intent of the enacting statutes by compensating public protection personnel for injuries incurred in the line of dangerous duty on behalf of the public, and not for injuries sustained in non-dangerous, routine tasks.

147. Although state workers' compensation law would likely preempt municipal workers' compensation law, in order to avoid litigation, ideally the revision of state statutes would correspond with the revision of applicable local laws, such as the Charter of the City and County of San Francisco. A conflict would likely stem from the fact that municipalities are given certain "home rule" rights under the California Constitution, including regulation of "the city police force," and "plenary authority" over city employment. CAL. CONST., art. XI, § 5(a)–(b); see also Johnson v. Bradley, 841 P.2d 990, 995 (Cal. 1992). However, the State Constitution also grants the State Legislature "plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workmen's compensation." CAL. CONST., art. XIV, § 4. City of Sacramento v. Indust. Accident Comm'n, 240 P. 792, 795 (Cal. Ct. App. 1925). Thus, workers' compensation was ruled to be the proper subject of state law in preemption of municipal law. Id. at 795.

148. CAL. LAB. CODE §§ 4800.5(d), 4801, 4804.2, 4807, 4817, 4851 (West 2003) (addressing the role of the Workers' Compensation Appeals Board within the relevant areas of the statute).
Limiting the eligible injuries in full salary leave of absence cases also has precedent in two sections of the Labor Code. First, section 4800.5 excludes disabilities that are not the result of a single injury; it excludes disabilities that are the result of cumulative trauma or cumulative injury. 149 Second, section 4816 excludes claims for psychiatric injury. 150 In addition to providing precedent for an eligible-injury solution, these sections suggest additional restrictions that could be added to the eligible-injury reform. While a proper examination of cumulative and psychiatric injuries is beyond the scope of this Comment, adding such limitations to the eligible-injury reform would further reduce the economic impact of the full salary rule and, arguably, reduce the incidence of fraud and abuse.

Finally, the eligible-injury option may be the most politically viable reform, as it leaves in place the enhanced compensation for all currently designated peace officers injured in the line of dangerous duty on behalf of the public. Further, restricting the full salary benefit to exclude routine workplace injuries is a simple, reasonable proposition.

One argument against the proposed eligible-injury reform is that the line between eligible and non-eligible injuries would be difficult to establish and thus would be arbitrary. Some may argue that a situation could quickly cross the line from non-hazardous duty into hazardous duty. For example, if a designated park ranger is dealing with an irate park visitor, it is a situation that may or may not escalate into a physical confrontation. If the ranger is injured, by tripping and falling during the interaction, where does the line for enhanced compensation get drawn? Does it cross the line if the irate park visitor had begun to yell? Must this visitor have tried to strike the ranger before any resulting injury is compensable under the full salary rule? Broken down in this way, the eligibly-injury distinction may seem arbitrary. Nevertheless, this is not the type of eligible-injury distinction being proposed. Where a ranger is injured during a confrontation that occurred in the course of duty, this injury should be eligible under the eligible-injury reform.

What should not be eligible—but would instead qualify for regular workers’ compensation—would be a back strain that a park ranger sustained while loading supplies into a park service pickup truck, a twisted ankle from slipping on the park station steps, or a repetitive

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149. Id. § 4800.5 (regarding California Highway Patrol).
150. Id. § 4816 (regarding California State University Police Department).
motion injury to the wrist from filling out paperwork. These latter types of injuries would be excluded from the full salary benefit under the eligible-injury reform. Such injuries are not sustained in the line of dangerous duty for the protection of the public, and they should not be compensable as such.

D. Reduce the Full Salary Benefit to Equal “Net Take Home Salary”

A fourth and final option, which may be combined with other options, is reducing the full salary benefit to equal a peace officer's net take home salary, as Labor Code section 4816 provides for California State University Police.151 This reform would arguably conform to the legislative intent of providing superior benefits to peace officers, as even a reduced full salary benefit is still more than most workers receive with the regular two-thirds workers' compensation.152 The fact that the Legislature enacted section 4816 for one group of peace officers establishes a precedent for this reform and bolsters the argument that this reform is compatible with the legislative intent behind the full salary rule. Reducing the full salary benefit to equal net take home salary would reduce costs and the incentive for fraud. Ideally, a net take home salary reform would be passed in combination with the eligible injury reform to harness the cost savings and fraud prevention benefits of each, while continuing to provide superior benefits to peace officers injured in the course of dangerous duty for the protection of the public.

Conclusion

The full salary rule began as a way to provide an enhanced workers' compensation benefit to injured members of the California State Highway Patrol, city police officers, and city firefighters, because these public employees undertake dangerous duties on behalf of the public. Over the decades since sections 4800 and 4850 were enacted, the statutes have moved away from this original purpose in two ways. First, the classes of eligible employees have been incrementally expanded to encompass many more personnel. Second, in practice, the injuries for which this benefit has been awarded are not injuries sustained in the course of dangerous duty on behalf of the public. Further, the gener-

152. See supra notes 7–9 and accompanying text.
ous benefits provided by sections 4800 and 4850 represent an added inducement to misuse the workers' compensation system.

The fiscal impact of these phenomena has strained city, county, and state budgets. In San Francisco, the full salary benefit accounted for as much as one-third of the workers' compensation costs for fiscal year 2003–2004.\textsuperscript{153} Amongst other measures, city officials balanced the budget to the detriment of public employees by laying off workers and passing along to workers the cost of their retirement benefits. Reforming the full salary rule to eliminate unnecessary expenditures will benefit public employees by reducing the pressure on budget decision makers that often results in decisions that are unfavorable to public workers.

Of the four reform options, the eligible-injury limitation holds the most promise. It proposes to amend sections 4850 and 4800 through 4820 of the Labor Code to limit the application of the full salary benefit to eligible types of injuries. It would explicitly apply only to injuries sustained in the course of dangerous duty for the protection of the public, or, in the language of the enabling statutes, to injuries sustained in the course of active law enforcement service or active firefighting and prevention service. The amendment would also expressly exclude injuries sustained during routine, everyday workplace tasks. Thus, a limit on the injuries eligible for the full salary benefit would be consistent with the language of the enabling statutes. In addition, precedent exists within the Labor Code for restricting the eligible injuries, as sections 4800.5 and 4816 have precluded cumulative and psychiatric injuries, respectively.\textsuperscript{154}

The eligible-injury approach will lower the costs of workers' compensation to state and local governments, and, given the greater scrutiny of injuries, it will also likely reduce the incidence of fraud and misuse of the system. Such reform will arguably better achieve the original intent of the enacting statutes by specially compensating public protection personnel for injuries incurred in the line of dangerous duty on behalf of the public, but not for injuries sustained in non-dangerous, routine tasks, for which regular workers' compensation is available.

\textsuperscript{153} S.F. DEP'T OF HUMAN RES., \textit{supra} note 119, at 9, exhibit 5 (2004) (Increase in Workers' Compensation Costs FY 98–99 to FY 02–03) (citing a California State Association of Counties Survey of 120 cities and counties, compared with the Department's own data).

\textsuperscript{154} CAL. LAB. CODE §§ 4800.5, 4816. The eligible-injury reform could also preclude cumulative and psychiatric injuries, but a full discussion of such injuries is outside the scope of this Comment.
Finally, the State Legislature could enact the eligible injury approach in combination with the net take home salary approach to maximize the reform potential of each, while still providing special benefits to peace officers injured in the line of dangerous duty for the protection of the public.