MEMORANDUM

TO: Soo Choi  
Commissioner 
Department of Human Resources

FROM: Reshma Soni  
City Comptroller 
Department of Finance

DATE: May 21, 2020

RE: Director of Workers’ Compensation, Department of Finance

Per Chapter VIII ("Exempt Position Hiring Process"), Section B ("Modifications to the Exempt List"), of the 2011 City of Chicago Hiring Plan (the "Hiring Plan"), I am writing to request that the newly created position of Director of Workers’ Compensation for the Department of Finance be deemed an "Exempt Position," as defined in the Hiring Plan, and that the Position be included on the "Exempt List," as that term is used in the Hiring Plan.

In support of this request, and in compliance with Chapter VIII, Section B, of the Hiring Plan, I have enclosed a copy of the Position Description for the Director of Workers’ Compensation position. In the Position Description, the functions and responsibilities of the Position are described in significant part as follows:

"The role of the Director of Workers’ Compensation is to direct and manage the implementation and administration of the City’s self-insured Workers’ Compensation Program. The City’s Workers’ Compensation program, which is administered by a third party administrator, is expected to reduce absenteeism, enhance productivity, improve return to work results, reduce Workers’ Compensation costs, increase employee morale and satisfaction, prevent on the job injury, decrease labor costs and decrease Workers’ Compensation/disability related litigation.

The Director of Workers’ Compensation, under the supervision of the Managing Deputy Comptroller, manages, designs, organizes and leads a team of workers’ compensation and operations
professionals and is responsible for the City’s self-insured, third party administered claims management program and developing and implementing cost reduction strategies and initiatives, that align with and support those of the enterprise. The Director is also responsible for assuring that staffing, culture, philosophies and processes are aligned with City of Chicago’s standards and Department of Finance’s key strategies and objectives.

In support of this request, I have also enclosed a proposed job description for the Director of Workers’ Compensation. As set forth in the Job Description, essential duties of the Director of Workers’ Compensation position will include the following:

“Oversees the efficiency and effectiveness of the City’s Workers’ Compensation program in keeping with the City’s goals and objectives and pursuant to Illinois Workers’ Compensation Act and applicable laws”

“Manages and participates in the development and implementation of specific priorities, policies, and procedures for the City’s Workers’ Compensation Program.”

“Manages the relationship with the contracted third-party administrator (TPA) to support the program”

“Assesses and continuously monitors the cost effectiveness of the program and identifies inefficiencies and recommends/implements process improvements”

“In consultation with the third-party administrator and legal counsel, participates in the development and execution of strategies to manage specific cases and resolve issues/concerns”

“Develops goals, objectives, and work standards”

“Coordinates with other departments/entities (e.g., Police, Fire, Law, pension boards) to ensure compliance in the administration of claims”

“Recommends, implements and monitors City-wide cost containment strategies to prevent and minimize losses”

“Stays abreast of workers’ compensation industry best practices, trends, innovations and legislation pertaining to workers’ compensation administration”

“Represents the department at conferences, meetings, planning groups, hearings and settlements”

“Establishes working relationships with sister agencies and other workers’ compensation administration organizations to share resources and develop partnerships”

The Supreme Court has held in the name of freedom of speech that a public official cannot be fired on the basis of his political affiliation unless the nature of his job makes political loyalty a valid qualification; this could be either because the job involves the making of policy and thus the exercise of political judgment or the provision of political advice to the elected superior, or because it is a job (such as speechwriting) that gives the holder access to his political superiors’ confidential, politically sensitive thoughts.

*Riley*, 425 F.3d at 359. Thus, a position can be considered exempt if the requisite level of policymaking or confidentiality can be demonstrated. See *Hagan v. Quinn*, 867 F.3d 816, 824-27 (7th Cir. 2017)(affirming defendants’ motion to dismiss lawsuit on grounds that plaintiffs, who were arbitrators employed by the Illinois Workers’ Compensation Commission, were policymakers and thus, exempt); *Benedix v. Village of Hanover Park, Illinois*, 677 F.3d 317, 320 (7th Cir. 2012); *Thompson v. Illinois Dept. of Professional Regulation*, 300 F.3d 750, 756 (7th Cir. 2002); *Soderbeck v. Burnett County, Wisconsin*, 752 F.2d 285, 288 (7th Cir.), cert. denied, 471 U.S. 1117 (1985); *Foster v. DeLuca*, 2006 WL 1980197 at *4 (N.D. Ill. July 7, 2006)(Norgle, J.). A position involves policymaking if it includes “either directly or indirectly, meaningful input into government decisionmaking on issues where there is room for principled disagreement on goals or their implementation.” *Embry*, 701 F.3d at 235-36 (citation omitted); *McReynolds v. Martin*, 2007 WL 2669565, *2 (C.D. Ill. August 14, 2007)(Baker, J.)(citation omitted). “Confidential” is a catchall designation for “government employees who, while not decision makers, are in close contact with policymakers” and their records, and for whom “political antipathy can serve as a decent proxy for a lack of trust and loyalty.” *McReynolds*, 2007 WL 2669565 at *2 (citation omitted); see also *Meeks v. Grimes*, 779 F.2d 417, 420 (7th Cir. 1985)(“[Confidential] is a catchall phrase that encompasses those government employees who, while not decision makers, are in close contact with policymakers and the highly confidential communications or records affecting decisions. [citation omitted] The basis for exempting this type of employee is that political antipathy can serve as a decent proxy for a lack of trust and loyalty where the employee’s responsibilities include a duty to shield the decisionmaking process from the outside world. The possibility of ‘leaks’ from employees with access to sensitive information is a constant threat to any unit of government.”).
I believe that the Director of Workers’ Compensation position, as described in the Position Description and the Job Description, qualifies for Exempt status under both the policymaking standard and the confidentiality standard. The Position will involve policymaking because the Director of Workers’ Compensation will be expected to provide meaningful input into decisionmaking on issues where there is room for principled disagreement on goals or their implementation. For example, the Director of Workers’ Compensation will be expected to interpret applicable laws in order to make recommendations to department heads, the third-party administrator, and sister agencies regarding policy directives, strategies, and courses of action. I believe that the position will also require a high level of confidentiality because the Director of Workers’ Compensation will be in close contact with policymakers in the Department of Finance, the Department of Law, and, from time to time, virtually every other City department; this contact will include highly confidential records and communications. For example, the Director of Workers’ Compensation will work with Department of Law attorneys and outside counsel to defend the City in hearings, litigation, and settlements, which inherently require confidential communications.

For the foregoing reasons, I respectfully request that the position of Director of Workers’ Compensation in the Department of Finance be deemed an “Exempt Position,” as defined in the Hiring Plan, and that the position be included on the “Exempt List,” as that term is used in the Hiring Plan.

Please let me know if you have any questions or require additional information. Thank you for your consideration of this request.