

MEMORANDUM



JOINT BUDGET COMMITTEE

TO JBC Members
FROM Craig Harper, JBC Staff (303-866-3481)
DATE March 17, 2017
SUBJECT Department of Law: Attorney Salary Survey and Merit Pay

The Committee conducted figure setting for the Department of Law on February 9, 2017. However, because the Committee had not set common policies for classified employee compensation (specifically salary survey and merit pay), the Committee has not taken action on the Department's request for salary increases associated with the Department's at-will staff (attorneys).

Background Information – Salaries for Classified and Exempt Employees: The Department of Law employs both classified and non-classified or “exempt” employees. Classified employees are governed by state personnel rules and procedures; exempt employees are not. The Department employs about 283 attorney FTE, who collectively make up about 60 percent of the Department's staff. These attorneys are all exempt employees, and the remaining 40 percent of the Department's staff are classified employees.

Salary survey and merit pay for classified employees, when provided, are set by common policy. Thus, staff will calculate any appropriations for salary survey and merit pay increases for classified employees in the same manner as all other classified employees.

The Department of Personnel's “Annual Compensation Survey Report” does not include compensation data related to attorneys. In order to evaluate the compensation for its attorneys, the Department annually contracts with an independent compensation research and consulting firm to assess market compensation practices for attorneys in comparable positions in Colorado public sector attorney organizations.

The latest survey, prepared by the Fox Lawson Group (FLG), was published in August 2016. This study utilized data reported as of July 1, 2016, for a “primary market” that included a variety of front range city and county attorney offices, as well as the United States Office of the Attorney General. This study also utilized data for a “supplementary market” that included several judicial districts, the Denver Public Defenders' Offices, and the Office of the State Public Defender.

The study compared the Department's actual attorney salaries and salary ranges as of July 2016 to the primary market data (which reflects survey participants' salary data as of July 1, 2016). Thus, to the extent that the study's primary market data is used to determine Department salaries as of July 2017, such salaries will lag the market by 12 months.

After four years without funding attorney salary survey and merit pay during the recent economic downturn (FY 2009-10 through FY 2012-13), the 2012 FLG survey indicated that the Department's salaries were well below the market. For FY 2013-14, the General Assembly appropriated \$4.1 million for salary survey increases for the Department's attorneys in an effort to improve parity with the market. As a result, the 2013 survey found that the Department's *average attorney* salaries were competitive with the market for the first time since 2009. In FY 2014-15 and FY 2015-16, the General Assembly appropriated smaller amounts to maintain parity with the market based on each

year’s survey results. Consistent with the lack of salary survey and merit pay for classified employees in FY 2016-17, the Department did not request (and the General Assembly did not provide) any salary survey or merit pay funding for the Department’s attorneys in FY 2016-17.

FY 2017-18 Request: Based on the 2016 report, the Department is requesting a 3.0 percent salary survey increase for attorneys to maintain parity with the primary market, 0.5 percent higher than the common policy request of 2.5 percent for classified employees. For comparison purposes, the Office of the State Public Defender is requesting a 2.5 percent increase for attorneys, equivalent to the common policy request for classified employees and below the Department of Law’s request for attorneys. Consistent with the Governor’s common policy request for classified employees, the Department is not requesting funding for merit pay for attorneys or classified employees for FY 2017-18.

Staff Recommendation: Given anticipated budgetary constraints and uncertainty about the availability of funding to support salary increases for state employees, staff recommends that the Committee apply the same common policy (once a decision is made) to the Department’s classified and exempt staff. For example, if the Committee approves the Governor’s request for a 2.5 percent across the board salary survey increase, staff would recommend applying the same increase to the Department’s attorneys – rather than the three percent requested by the Department. Similarly, if the Committee provides a combination of salary survey and merit pay, as recommended during common policy figure setting for classified employees, staff recommends applying the same policy to the Department’s attorneys.

As shown in the following table, applying the Governor’s common policy for classified staff to the Department’s attorneys would reduce the Department’s salary survey request by \$168,131 total funds (including \$39,112 General Fund).

FY 2017-18 ATTORNEY SALARY SURVEY OPTIONS					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
Department Request	\$1,008,795	\$234,674	\$61,413	\$704,317	\$8,391
Governor’s Common Policy	840,664	195,562	51,178	586,931	6,993
Difference	(\$168,131)	(\$39,112)	(\$10,235)	(\$117,386)	(\$1,398)

Staff notes that if the common policy provides less than a 3.0 percent increase, the recommendation may increase the gap between the Department’s attorneys and the market and require additional increases in subsequent years. As noted during figure setting, staff also recommends that the Committee apply any decision regarding attorney compensation to both the Department of Law and the Office of the State Public Defender.