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October 20, 2015

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Mr. Michael McCreery  
United Counties Council of Illinois  
217 East Monroe Street, Suite 101  
Springfield, IL 62701

Re: **Worker's Compensation**  
**Our File: UNITCC-0601**

Dear Mike:

**Issue**

May a county change a "past practice" of paying an employee his full salary while on leave for an injury entitling the employee to workers' compensation to paying what is required under the Illinois Workers Compensation guidelines?

**Analysis**

Counties are specifically covered by the requirements of the Illinois Workers Compensation Act (the "Act").<sup>1</sup> The Act requires Employers to provide certain benefits to employees who are injured in an accident which arises out of and in the course of their employment. In order to ensure that funds are available to pay workers' compensation benefits, Employers are required to purchase workers' compensation insurance or obtain permission to self-insure from the Illinois Workers' Compensation Commission.<sup>2</sup>

The Act provides for calculations for the amount of compensation to be paid to an employee. Such compensation calculations will vary depending on whether the injury is temporary or permanent and whether it causes a total or partial disability.<sup>3</sup> Typically, an injured employee will be entitled to

<sup>1</sup> 820 ILCS 305/3.

<sup>2</sup> 820 ILCS 305/4.

<sup>3</sup> 820 ILCS 305/8.

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66 2/3% of the employee's average weekly wage.<sup>4</sup> Workers compensation benefits are not taxable under state or federal law and should not be reported as income on an employee's tax returns.

**Conclusion**

A county should pay workers' compensation benefits according to the formulas specifically outlined in the Illinois Workers Compensation Act (the "Act") regardless of past practices. The Act has specially determined the amount of compensation due to an employee suffering a workers' compensation injury by law and a county's past practices will not act as a basis for an employee to be entitled to a different amount of compensation. Counties should follow the compensation directives of the Act and not compensate employees according to past practices.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.

  
Herman G. Bodewes

  
Steven A. Milburn

HGB:SAM/tem

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**Disclaimer:** This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.

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<sup>4</sup> *Id.*