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# GIFFIN WINNING COHEN & BODEWES, P.C.

A T T O R N E Y S A T L A W

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November 13, 2015

ESTABLISHED 1911.

*D. LOGAN GIFFIN*  
(1890-1980)

*MONTGOMERY S. WINNING*  
(1892-1966)

*C. TERRY LINDNER*  
(1903-1987)

*ALFRED F. NEWKIRK*  
(1904-1980)

*JAMES M. WINNING*  
(1921-2013)

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:

This correspondence supplements our Opinion dated October 20, 2015 regarding Worker's Compensation (copy enclosed).

### Issue

May a county avoid paying employees who are covered by the Public Employee Disability Act their full salary as provided by statute and instead pay in line with the Illinois Workers Compensation Act? How is "in the line of duty" construed under Public Employee Disability Act?

### Analysis

The Illinois Public Employee Disability Act ("PEDA") provides for special rules for the compensation for certain eligible employees in safety-related positions who are injured in the course of their employment.<sup>1</sup> PEDA defines "eligible employee" to include any full-time law enforcement officer or full-time firefighter who is employed by any unit of local government, including home rule units.<sup>2</sup> If an eligible employee suffers an injury in the line of duty, such employee will continue to be paid on the same basis as he was before the injury with no deductions from sick, compensatory, or vacation time during the time in which he is unable to perform the duties of his position as a result of the injury.<sup>3</sup> The employee will only be entitled to this benefit for an injury occurring in the line of duty

<sup>1</sup> 5 ILCS 345/1.

<sup>2</sup> 5 ILCS 345/1(a).

<sup>3</sup> 5 ILCS 345/1(b).

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United Counties Council of Illinois  
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for a period totaling one year.<sup>4</sup> Any benefit due to the injured employee from workers' compensation or by any insurance policy will revert to the employing entity during the time when such benefit is being paid.<sup>5</sup>

PEDA does not define "in the line of duty", but Illinois courts have defined the standard broadly. Generally, "in the line of duty" will be defined in the same manner as other workers' compensation claims, requiring only that the injury arise out of and in the course of employment.<sup>6</sup> This means that the injury must simply occur while the law enforcement officer or firefighter is on the job.

### Conclusion

A county must pay the benefits guaranteed under PEDA to eligible employees injured in the line of duty. The county may not simply pay these eligible employees what they would be due under a standard workers compensation benefit analysis; however, the county will be entitled to any benefit the employee would receive under a workers' compensation insurance policy. An eligible employee will be entitled to benefits under PEDA whenever he is injured while on the job.

Sincerely,

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

  
Herrnan G. Bodewes

  
Steven A. Milburn

HGB:SAM/tem  
Enclosure

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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.*

<sup>5</sup> 5 ILCS 345/1(d).

<sup>6</sup> *Mabie v. Vill. of Schaumburg*, 364 Ill. App. 3d 756 (1st Dist. 2006).

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COHEN & BODEWES, P.C.**  
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October 20, 2015

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.

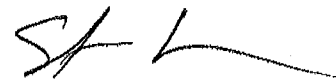
**Conclusion**

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