No. 131039

IN THE
SUPREME COURT OF ILLINOIS

CHRISTOPHER BITNER and JOHN BROOKS, individually and behalf of all others similarly situation,	)	On Leave to Appeal From The Illinois Appellate Court, Fourth District, No. 4-23-0718
Plaintiffs-Appellants,	)	
v.	)	On Appeal From the Tenth Judicial Circuit, Tazewell County, No. 2018 CH 120
CITY OF PEKIN, ILLINOIS,	)	
Defendant-Appellee.	)	Honorable Paul E. Bauer Judge Presiding

AMICUS CURIAE BRIEF OF THE ILLINOIS MUNICIPAL LEAGUE

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POINTS AND AUTHORITIES

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INTEREST OF THE AMICUS

The Illinois Municipal League ("IML" or the "League") is a not-for-profit, non-political association that represents the interests of the 1,294 cities, villages and towns in Illinois. State statute recognizes and designates the League as the instrumentality of its members. See 65 ILCS 5/1-8-1. The League's mission is to articulate, defend, maintain, and promote the interests and concerns of Illinois's municipalities. It carries out this mission by advocating on behalf of municipalities in legislative matters before the Illinois General Assembly, as well as before the federal government and in courts. The League also provides training and education on issues affecting municipal governments. IML regularly files *amicus curiae* briefs in cases that present questions of interest and concern to IML's members.

It is well established that employers have a role in serving as the "tax collectors" or "collection agents" for the federal Internal Revenue Service and the Illinois Department of Revenue. In this context, both the federal Internal Revenue Code ("IRC") and the Illinois Income Tax Act contain provisions that insulate and protect employers from lawsuits by employees who allege the improper withholding of taxes. However, here, Plaintiffs have improperly brought this State court declaratory action under the guise of Public Employee Disability Act ("PEDA"), even though the IRC and the Illinois Income Tax Act **expressly preclude** an employee from bringing such actions directly against an employer for the alleged overcollection of taxes. See 26 U.S.C. § 7422(a); 35 ILCS 5/705.

IML members are extremely concerned that Plaintiffs are attempting to diminish these statutory protections. If the Supreme Court finds that Plaintiffs have standing to bring an action for improper tax treatment under PEDA, it will improperly open the doors of the

Circuit Courts for all employees across Illinois to commence State court litigation in every instance where they accuse a public or private employer of improperly withholding taxes.

Because employees clearly do not have the ability to directly sue their employers for the alleged overcollection of improper tax withholdings, there is absolutely no jurisdictional basis for this Court to consider Plaintiffs' arguments related to PEDA and/or tax law. Nevertheless, to the extent that Plaintiffs' claims are considered, it should be noted that Plaintiffs' arguments are completely without practical or legal support.

It is the experience of IML members that when a public safety officer suffers a duty-related injury, a municipal employer must navigate through a myriad of overlapping federal and State statutes and regulations. For instance, most injured police officers or firefighters who qualify for salary continuation benefits under PEDA are also usually entitled to concurrent Temporary Total Disability ("TTD") benefits under the Workers' Compensation Act. In such situations, an employee on PEDA, who is prohibited from "double-dipping" with respect to the collection of benefits, typically signs over his or her check for TTD from the municipality's insurer or risk management pool to the municipality. In turn, through its payroll process, the municipality pays the individual PEDA benefits "on the same basis as he [or she] was paid before the injury." 5 ILCS 345/1(b).

In many respects, aside from the question of tax treatment, an employee's pre-injury paycheck will look identical or similar to any subsequent PEDA compensation. First, depending on an applicable collective bargaining agreement, the police officer or firefighter may be entitled to continue the accrual of vacation, sick leave, compensatory time, and other types of contractual benefits. Likewise, under both the Police and Fire

Pension Codes, employees on PEDA leave continue to accrue service credits towards their pensions, which results in a municipality withholding statutory contributions from the employee's PEDA payments. Likewise, recipients of PEDA generally also continue to make health insurance premium payments through the payroll withholding process.

While these sorts of withholdings are consistent with PEDA's statutory language, Plaintiffs' statutory interpretation arguments are facially nonsensical. PEDA expressly requires employers to pay individuals "on the same basis as he [or she] was paid before the injury. . ." 5 ILCS 345/1(b). Notwithstanding, Plaintiffs urge this Court to declare the opposite with respect to tax withholdings: Plaintiffs somehow claim that PEDA's "**same basis**" statutory language actually requires a municipality to treat taxes **differently**.

As a friend of the Court, IML respectfully asks this Court to follow and enforce the laws that insulate municipalities from an employee's allegations that they over-withheld taxes. Even if Plaintiffs have cited U.S. Treasury regulations that support its tax-treatment arguments (which is separate and distinct from PEDA's statutory language), this is not the proper forum for raising such claims.

ARGUMENT

Although within its decision, the Appellate Court suggested that "other statutes or regulations [other than PEDA] may prohibit tax withholding from disability benefits," it properly determined that this alleged prohibition is not a requirement under PEDA's statutory language. *Bitner v. City of Pekin*, 2024 IL App (4th) 230718 ¶ 19. In this respect, the Court correctly found that Plaintiffs' declaratory judgment action seeking redress under PEDA is misplaced. *Id.*

Notwithstanding, while the Appellate Court arrived at the correct result, it failed to acknowledge that jurisdictionally, the question of PEDA's tax treatment is not a proper issue for an Illinois State court to analyze. Respectfully, IML members ask the Supreme Court to recognize important protections for employers that are built into federal and State tax and regulatory codes (both inside and outside the context of PEDA), which expressly prevent employees from directly initiating this type of litigation against public or private employers.

A. The Federal and Illinois Tax Codes Preempt Employee Claims for Over-Withholding or Improperly Collected Taxes.

Indeed, both the Federal Internal Revenue Code ("IRC") and the Illinois Income Tax Act contain provisions that insulate and protect employers from lawsuits by employees who allege the improper withholding of taxes.

First, the IRC states in relevant part:

> No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

26 U.S.C. § 7422(a). Similarly, the Illinois Income Tax Act states in relevant part:

> Every employer who deducts and withholds is required to deduct and withhold tax under this Act is liable for such tax. . . No employee shall have any right of action against his employer in respect of any money deducted and withheld from his wages and paid over to the Department in compliance or in intended compliance with this Act.

35 ILCS 5/705.

In the lead Seventh Circuit decision on the issue, the Court explained the rationale behind Section 7422's prohibition on lawsuits against employers, who serve as "tax collectors" or "collection agents" for the IRS:

> In a literal sense this is not a suit for the refund of taxes, because the plaintiff and the members of his class never paid the air transportation excise tax. . . But we do not think the literal sense is the right sense. If it were, then anytime a taxpayer thought he could prove that his employer had erroneously withheld a portion of his salary for federal income tax he would have an action in state court against the employer. The state court might side with the taxpayer and order the employer to refund him the money. The federal government, not having been sued in the state court—indeed not having consented to be sued in state courts and so not having waived its sovereign immunity from suit in those courts—would not be bound by the judgment. It might therefore refuse to credit the employer with the amount of tax that the state court had ordered refunded to the employee—and then the employer would be caught in the middle. We do not think that such a result was intended or would be consistent with the system of federal tax collection that Congress has created. . . . When Congress makes a private firm the Internal Revenue Service's "collection agent" . . . as it has done with the airline tax and other excise taxes, as well as with payroll taxes, the firm corresponds to an employee of the Service, and a suit for a refund of the taxes that the firm collected—a suit necessarily based on a claim that the taxes were collected in violation of the law—is as much a suit for the refund of federal taxes as if it had been brought against the Commissioner of Internal Revenue. . . . It makes no difference whether the firm is still holding the money it erroneously collected or has passed it on to the IRS. The principal is bound by the agent's acts.

Kaucky v. Southwest Airlines Co., 109 F.3d 349, 351-52 (7th Cir. 1997).

As further explained to by the federal Fifth Circuit Court of Appeals, if and when a taxpayer does take steps to exhaust his or her remedies with the IRS by filing a protest, and fails to recoup all of the improperly withheld taxes, the taxpayer's exclusive remedy is to challenge the IRS' decision in federal court:

> Although the collection may ultimately have been erroneous, the Internal Revenue Code provides the exclusive remedy for the erroneous or illegal collection of taxes: The taxpayer may file an administrative claim for a refund with the IRS. If the IRS does not return the erroneously or illegally collected tax, the taxpayer may then resort to the courts. But under Section

> 7422, the proper defendant in such a suit is the United States, not [the private defendant]. The exclusive remedy provided by the Internal Revenue Code thus preempts the appellants' state-law claims against a private entity.

Sigmon v. Southwest Airlines Co., 110 F.3d 1200, 1204 (5th Cir. 1997) (dismissing state common law claims for fraud and conversion); *see also Mejia v. Verizon Mgmt. Pension Plan*, No. 11 C 3949, 2012 WL 1565336, at *8 (N.D. Ill. May 2, 2012) (stating: "[i]n short, it appears that Congress wanted employers (and other tax-collection agents) to be more afraid of the IRS than lawsuits from employees, and it gave them broad protection in the form of § 7422 to effect seamless tax collection.").

In a variety of contexts, federal courts have also interpreted Section 7422 as superseding state law statutory or common law claims that attempt to recoup improperly withheld federal taxes. *See, e.g., Kaucky*, 109 F.3d 349 (7th Cir. 1997) (dismissing Illinois breach of contract and conversion claims involving the alleged illegal withholding of a federal excise tax from the price of airline tickets); *Brennan v. Southwest Airlines Co*., 134 F.3d 1405 (9th Cir. 1998) (dismissing state breach of contract and unlawful business practice claims involving the alleged illegal withholding of a federal excise tax from the price of airline tickets); *Johnson v. Southern Farm Bureau Life Ins*., 213 F.3d 635 (5th Cir. 2000) (*per curiam*) (dismissing state law claims involving the alleged illegal withholding of social security employment taxes).

Here, Plaintiffs have brought State declaratory action claims directly against a municipal employer in which Plaintiffs now argue that PEDA "prohibits" the employer from withholding employment taxes from the injured employee's PEDA benefits. (See App. Supp. Br. 1-2). However, as recognized by *Kaucky*, *Sigmon*, *Mejia*, *Brennan*, and *Johnson*, Plaintiffs' action is preempted by Section 7422 of the IRC.

In fact, Courts routinely dismiss state law claims filed by aggrieved employees, who claim their employers illegally withheld taxes from their paychecks. *See, e.g., Wiggins v. Jefferson Einstein Hosp.*, No. 24-2095, 2024 WL 5074894, at *2 (3d Cir. Dec. 11, 2024) (stating: "[r]ather than suing his employer [for the alleged overcollection of taxes], § 7422 required Wiggins to file a claim for refund or credit with the IRS and then, if necessary, to sue the United States."); *Fredrickson v. Starbucks Corp*., 2013 WL 5819104 (D. Or. 2013) (dismissing employee state wage and hour statutory claims that involved allegations of improper tax withholding from earned tips); *Umland v. Planco Financial Serv., Inc*., 542 F.3d 59 (3d Cir. 2008) (dismissing state breach of contract and unjust enrichment claims involving the alleged illegal withholding of FICA taxes from employee paychecks).

By the same token, the plain language of Section 705 of the Illinois Income Tax Act should insulate municipalities from any claims that they improperly or illegally withheld State income tax from PEDA checks. Although IML could find no reported Illinois decisions that have interpreted Section 705 of the Illinois Income Tax Act, express statutory language states that ". . . [n]o employee shall have any right of action against his employer in respect of any money deducted and withheld from his wages and paid over to the Department in compliance or in intended compliance with this Act." 35 ILCS 5/705.

These statutory protections are particularly important based on Plaintiffs' attempt to use this State Court litigation to obtain attorneys' fees pursuant to the Attorney Fee in Wage Action Act. 705 ILCS 225/1. (C. 689). As explained in greater detail below, there is no basis for Plaintiffs to initiate a declaratory judgment action under PEDA. Moreover,

Plaintiffs' attorneys' fee action is facially illogical and contradictory.[1] Nevertheless, from a larger policy standpoint, this Court should decline allowing plaintiffs from running up big attorneys' fee claims over tax disputes that are jurisdictionally improper under 26 U.S.C. § 7422(a) and 35 ILCS 5/705.

B. Municipal Employers Provide PEDA Benefits to Injured Firefighters and Police Officers, which Overlaps with Numerous Other Statutory and Contractual Obligations.

PEDA applies to any full-time firefighter (including a full-time paramedic or a firefighter who performs paramedic duties) or law enforcement officer employed by any unit of local government. 5 ILCS 345/1(a). As set forth in the statute:

> Whenever an eligible employee suffers any injury in the line of duty which causes him to be unable to perform his duties, he shall continue to be paid by the employing public entity **on the same basis** as he was paid before the injury, with no deduction from his sick leave credits, compensatory time for overtime accumulations or vacation, or service credits in a public employee pension fund during the time he is unable to perform his duties due to the result of the injury, but no longer than one year in relation to the same injury . . .

5 ILCS 345/1(b).

Accordingly, if a full-time police officer or firefighter: 1) suffers any injury; 2) in the line of duty; 3) which causes the individual to be unable to perform his duties, then that employee is entitled to 12 months of salary continuation benefits.

Illinois courts have held that this 12-month entitlement does not necessarily need to be taken in a concurrent manner. For instance, in *Albee v City of Bloomington*, a group of law enforcement officers took PEDA time off following a workplace injury. At that

[1] Of course, it is nonsensical for Plaintiff's to argue that PEDA remuneration should not be considered "wages" for tax purposes while simultaneously arguing that the municipality did not pay "wages" that would entitle their attorneys to fees under the Attorney Fee in Wage Action Act. 705 ILCS 225/1.

point, the officers "returned to work prior to the one-year anniversary of their duty-related injuries," but then subsequently missed work because the same duty-related injuries. 365 Ill. App. 3d 526, 527 (4th Dist. 2006). The Fourth District Court of Appeals held that an individual's one-year PEDA entitlement can extend beyond one year because "[a]n officer who was able to return to work for several months should not have his year of full compensation shortened for that reason." *Id.* at 1097. It should also be noted that PEDA provides 12 months of paid leave per injury. Accordingly, in situations where an employee can show that the aggravation of a pre-existing condition constitutes a "new" or "different" injury, the employer may be required to provide PEDA benefits in excess of 12 months. *See Bahr v. Bartlett Fire Protection District*, 889 N.E.2d 760 (1st Dist. 2008) (plaintiff argued he was entitled to a total of 24 months of PEDA benefits where he aggravated a prior back injury, asserting that the aggravation constituted a separate injury for PEDA purposes).

Again, as outlined above, because the IRC and the Illinois Income Tax Act expressly preclude employees from bringing actions against an employer for the alleged overcollection of taxes, 26 U.S.C. § 7422(a); 35 ILCS 5/705, the question of the proper tax treatment of PEDA is not properly before this Court. Any question about alleged improper tax treatment should be directed to municipalities from the IRS—not individual employees. *See Mejia v. Verizon Mgmt. Pension Plan*, No. 11 C 3949, 2012 WL 1565336, at *8 (N.D. Ill. May 2, 2012) (stating: "[i]n short, it appears that Congress wanted employers (and other tax-collection agents) to be more afraid of the IRS than lawsuits from employees. . .").

Nevertheless, to the extent that the Court opts to consider such tax issues, as background, the Court should also consider the logistical complexities of administrating

PEDA benefits. As explained below, it is the experience of IML members that the provision of PEDA salary continuation benefits also usually requires an employer to navigate through various standards and requirements set forth in overlapping federal and State employment, labor, disability, pension, and tax statutes.

1. PEDA Often Overlaps with Worker's Compensation Benefits.

Under the Workers' Compensation Act, if an injured worker is temporarily incapacitated, he or she is entitled to Temporary Total Disability ("TTD") benefits of 66 and 2/3% of pre-injury wages. 820 ILCS 305/8(b). There are some notable differences between PEDA benefits and TTD payments under worker's compensation law. First, TTD benefits do not apply where the incapacity does not last more than 3 work-days. *Id.* Accordingly, while an employee is not eligible for TTD benefits for very short-term injuries, the employee is still entitled to receive PEDA benefits for the first three days.[2] Additionally, unlike PEDA benefits, TTD payments can last for the entire length of temporary incapacity and are not limited to a statutory one-year duration. On the other hand, there are occasions where a worker's compensation claim might settle with a lump sum payout before an employee is able to return to work and before the employee has used all 12 months of PEDA leave. Although the worker's compensation settlement might

[2] Arguably, the tax treatment that Plaintiffs advocate is easier to manage during longer leaves of absence. However, requiring a municipality to switch back and forth between taxable income for short PEDA leaves creates a significant administrative burden. Moreover, since Plaintiffs' tax arguments are centered around the claim that PEDA is "in the nature of a workmen's compensation act," it is unclear whether a shorter PEDA leave (that does not last more than 3 work days) can satisfy this definition since such time off from work is not compensable under the Illinois Workers' Compensation Act. 820 ILCS 305/8(b).

terminate TTD benefits, the employee is still allowed to use all 12 months of PEDA benefits (if he or she remains unable to return to work).

Despite these caveats, in practice, PEDA benefits are usually closely tied to TTD payments. Indeed, in situations where the parties disagree as to whether a claimed injury was or was not work-related, the Illinois Appellate Court has held that the outcome of worker's compensation proceedings over the issue of causation will often determine whether an employee is also entitled to receive PEDA benefits. *See Mabie v. Village of Schaumburg*, 364 Ill. App. 3d 756, 761 (1st Dist. 2006) (ruling that worker's compensation decision that a firefighter's injury arose out of his course of employment collaterally estopped Village from re-litigating the issue of causation for PEDA benefits). This includes worker's compensation settlements that are approved by the Worker's Compensation Commission. *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶ 37 (finding Commission's approval of settlement agreement gave rise to collateral estoppel that prevented village from arguing employee was not entitled to PEDA benefits.).

As a result, in most instances, a police officer or firefighter who can establish a claim to PEDA salary continuation benefits generally can also receive TTD benefits as part of a worker's compensation claim.

2. Typically, the Process for Paying TTD Benefits is Different than a Municipality's Process for Paying Salary Continuation under PEDA.

Illinois courts have long established that an individual "not receive double compensation" by pocketing worker's compensation benefits at the same time he or she receives salary continuation under PEDA. *City of Jacksonville v. Coop*, 176 Ill. App. 3d 527, 529 (4th Dist. 1988). In the experiences of IML members, this creates an

administrative complication because the entity responsible for paying a police officer or firefighter "on the same basis as he was paid before the injury" (i.e. the municipality) is typically not the same entity responsible for paying an individual 66 and 2/3% percent of average wages under worker's compensation (i.e. the insurer or risk management pool that oversees such payments).

To address this administrative burden, it is not uncommon during periods that PEDA payments and TTD payments overlap, an injured firefighter or police officer will sign over his or her worker's compensation check to the insurer or risk management pool to the municipality. In return, the municipality complies with PEDA by continuing to pay the injured police officer and firefighter salary, typically through the municipality's payroll function. While Plaintiffs argue that the tax treatment of PEDA payments should be different than the tax treatment of normal pay before the injury, as outlined in greater detail below, many of a municipality's normal payroll functions **do not** change while an individual is on PEDA leave.

3. An Individual May Continue to Accrue CBA Benefits while on PEDA.

Under the express terms of PEDA, employers clearly cannot "deduct[] from [a PEDA recipient's] sick leave credits, compensatory time for overtime accumulations or vacation . . . during the time he [or she] is unable to perform his duties due to the result of the injury. . ." 5 ILCS 345/1(b). However, the statutory language is silent as to whether public safety employees are allowed to continue to **accrue** new sick leave, vacation, comp time, etc. during periods that the individuals are incapacitated under PEDA.

In general, the Illinois Public Labor Relations Act requires a municipality to bargain with a union over "wages, hours, and other conditions of employment." 5 ILCS 315/7.

Whether an employee continues to accrue benefits while on PEDA leave is usually directly related to whether parties have negotiated (or left silent) such topics within a collective bargaining agreement.

For instance, in *Village of Bolingbrook v. Metro. All. of Police, Bolingbrook Police Officers Chapter #3*, the Court of Appeals upheld an arbitration award finding that employees on PEDA continued to accrue of sick leave, vacation leave, and holiday pay. 2023 IL App (3d) 220193-U, ¶ 24. In that case, the arbitrator based his interpretation of the parties applicable contract terms.

In line with *Village of Bolingbrook*, after transitioning an employee from regular pay to PEDA compensation, depending on an applicable collective bargaining relationship, many municipalities continue to allow individuals to accrue benefits as part of the payroll function.

4. Typically, Individuals on PEDA Continue to Earn Service Credits Towards their Pension.

PEDA also prevents employers from "deducting" a PEDA recipient's "service credits in a public employee pension fund," but the statute is also silent as to whether individuals continue to accrue service credits while on PEDA. 5 ILCS 345/1(b). Notwithstanding, both the Police Pension Code and Fire Pension Code expressly "count" service credits during "leaves of absence for illness or accident, regardless of length, and all periods of disability retirement for which a [police officer or firefighter] has received no disability pension payments." 40 ILCS 5/3-110 (a); 40 ILCS 5/4-108 (a).

In that respect, under the Pension Code, participants must pay a certain percentage of their pensionable salary to the pension fund. Specifically, police officers have to pay 9.91% of their salary to a pension fund on an ongoing basis, and firefighters have to

contribute 9.445% of their salary attached to rank. 40 ILCS 5/3-125.1; 40 ILCS 5/4-118.1(a), (b). As a result, when an individual goes on PEDA, as part of the salary continuation, a municipality typically continues to withhold and remit applicable contributions to a respective pension fund.

5. Typically, PEDA Recipients Also Pay Health Insurance Premiums.

For police officers and firefighters in Illinois, the administration of health insurance is almost always a creature of collective bargaining negotiations. The Illinois Insurance Code allows police officers and firefighters to continue to receive a municipality's health insurance (at full premium) upon a "retirement or disability period." 215 ILCS 5/367g; 215 ILCS 5/367f.

However, for earlier periods during the employment relationship, including periods under PEDA, an employee's premium contributions to receive health insurance are commonly governed under a collective bargaining agreement. In this respect, as a matter of payroll administration, municipalities typically withhold applicable insurance contributions from employees, even after an individual begins to receive PEDA benefits.

6. PEDA Often Runs Concurrently with the Family Medical Leave Act.

PEDA does not just overlap with TTD benefits. Generally, the federal Family Medical Leave Act ("FMLA") provides 12 weeks of job protected leave for workers who are suffering from a serious health condition. 29 U.S.C. § 2612 (a)(1)(D). According to the U.S. Department of Labor, worker's compensation and short-term or long-term disability benefits may run concurrently with FMLA leave. *See* Fact Sheet #28P: Taking Leave From Work When You or Your Family Member Has a Serious Health Condition under the

FMLA. https://www.dol.gov/agencies/whd/fact-sheets/28p-taking-leave-when-you-or-family-has-health-condition.

Accordingly, it is not uncommon for municipal employers to also designate employee's time off for PEDA leave as FMLA leave.

7. PEDA Overlaps with Disability-Related Questions.

Both federal and State law also protect qualified individuals with disabilities. In that respect, ADA regulations provide that in order to determine an appropriate reasonable accommodation, it may be necessary for the employer "to initiate an informal, interactive process with the individual with a disability in need of the accommodation." 29 C.F.R. § 1630.2(o)(3).

Although the issue of tax treatment is not necessary directly related to these sorts of accommodation issues, while an employee is on PEDA leave, a municipal employer is usually contemplating whether to offer the employee job accommodations or light duty work. These sorts of decisions are usually made in the context of fostering an environment that enables the employee to return to work in a healthy and productive manner.

C. The Village of Pekin's Tax Treatment Towards Plaintiffs was Consistent with PEDA's Statutory Language.

As outlined above, prior to a work-related injury, as part of the normal payroll process, a police officer or firefighter's paycheck usually contains (1) pay for hours worked; (2) benefit time accruals; (3) withholdings for an individual's statutory contributions to a pension fund; and/or (4) withholdings related to the individual's premium contributions for health insurance. Moreover, if an employee ever needs time off to deal with serious health condition, the municipal employer generally provides (5) FMLA

leave and/or (6) helps manage an employee's return to work through offering accommodations consistent with federal and State disability law.

Subsequently, after an individual begins to obtain PEDA benefits, unless there is express language to the contrary within a collective bargaining agreement, most municipalities generally do not treat any of these benefits or withholdings any differently. Quite simply, in all of these areas, PEDA recipients clearly are paid "**on the same basis** as he [or she] was paid before the injury."

In their appeal, Plaintiffs erroneously suggest that PEDA somehow requires tax withholdings to be treated differently. Of course, it is completely nonsensical to suggest that a **different** tax treatment is consistent with "on the same basis" language under PEDA.[3] While Plaintiffs also suggest that U.S. Department of Treasury regulations might support a tax treatment that is different from pre-injury tax withholdings, this "non-PEDA" argument is clearly not supported by the express statutory language under PEDA.

D. Plaintiffs Do Not Have Standing to Enforce IRS Regulations.

In their supplemental brief, Plaintiffs urge this Court to enforce a series of IRS regulations against the City. (See App. Supp. Br. 9-10). While these regulations seem to suggest that the City should have treated PEDA payments differently for tax purposes,

[3] In their supplemental brief, Plaintiffs argue that "the only reasonable interpretation of PEDA's phrase on 'the same basis' is that it refers to gross pay less required deductions." (App. Supp. Br. 13). Of course, there is nothing in PEDA's statutory language that would allow any court to adopt this "gross pay less required deductions" definition. Plaintiffs seem to be conceding that employers still may have to withhold items from a PEDA recipient's check (e.g. pension contributions, health insurance premium payments), but cannot explain how treating taxes differently can somehow satisfy this "on the same basis" statutory language.

notably, Plaintiffs have not cited any case-law to suggest that PEDA benefits fall under these federal tax regulations.

Presumably, any applicable precedent would originate from litigation that does not run afoul of the federal and State laws that expressly forbid this type of action. 26 U.S.C. § 7422(a); 35 ILCS 5/705. Again, as outlined above, a declaratory judgment action under PEDA is not the right mechanism for Plaintiffs to argue that State and federal taxes are being handled incorrectly, and importantly, Plaintiff did not follow the proper administrative procedures for pursuing such claims under federal and State law. *Id.*; *Sigmon v. Southwest Airlines Co.*, 110 F.3d 1200, 1204 (5th Cir. 1997) (dismissing state common law claims where plaintiff did not file an administrative claim for a refund with the IRS).

While, perhaps, IML needs to use this opportunity to educate its members about these IRS guidelines, both federal and State law unambiguously protect employers from facing these sorts of lawsuits, and the law is clear that employees cannot make challenges to alleged incorrect withholdings in this manner.

Quite simply, this dispute does not belong in the Illinois Supreme Court.

CONCLUSION

In light of the foregoing arguments and authority, IML respectfully requests that this Court sustain the decisions of the Appellate Court in rejecting Plaintiffs' misplaced arguments under PEDA.

Respectfully Submitted,

ILLINOIS MUNICIPAL LEAGUE

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One of Its Attorneys

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Dated: February 19, 2025

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 18 pages.

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v.	)	On Appeal From the Tenth Judicial Circuit, Tazewell
CITY OF PEKIN, ILLINOIS,	)	County, No. 2018 CH 120
Defendant-Appellee.	)	Honorable Paul E. Bauer Judge Presiding

NOTICE OF FILING

TO: **See Attached Certificate of Service**

PLEASE TAKE NOTICE that on February 19, 2025, the **Illinois Municipal League** served and filed by electronically means using File & Serve Illinois on the Clerk of the Illinois Supreme Court of Illinois, the **MOTION OF THE ILLINOIS MUNICIPAL LEAGUE TO FILE BRIEF, INSTANTER, AS AMICUS CURIAE IN SUPPORT OF THE DEFENDANT-APPELLEE**, a true and correct copy of which is hereby served upon you.

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Respectfully Submitted,

ILLINOIS MUNICIPAL LEAGUE

/s/ Paul Denham
One of Its Attorneys

Date: February 19, 2025

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing**, MOTION OF THE ILLINOIS MUNICIPAL LEAGUE TO FILE BRIEF, INSTANTER, AS AMICUS CURIAE IN SUPPORT OF THE DEFENDANT-APPELLEE** to be served upon the following counsel of record File & Serve Illinois and via electronic mail on February 19, 2025.

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By: **/s/ Paul A. Denham**
Paul A. Denham

[X] Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.