No. 131039

IN THE
SUPREME COURT OF ILLINOIS

CHRISTOPHER BITNER and JOHN BROOKS, individually and on behalf of all others similarly situated, Plaintiffs-Appellants, vs. CITY OF PEKIN, ILLINOIS, Defendant-Appellee.	Appeal from the Appellate Court of Illinois, Fourth District, No. 4-23-0718 There heard on Appeal from the Circuit Court of Tazewell County, Illinois No. 18-L-120 Honorable Paul E. Bauer Judge Presiding

BRIEF AND SUPPLEMENTAL APPENDIX OF DEFENDANT-APPELLEE

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This appeal concerns the language of the Public Employee Disability Act ("PEDA"). Christopher Bitner and John Brooks sued their employer, the City of Pekin, Illinois, alleging it violated the plain language of PEDA by withholding employment taxes from benefits paid to both and by deducting sick, vacation, and compensatory time from benefits due to Bitner. Pekin admitted it withheld employment taxes but otherwise denied the allegations. The trial court entered summary judgment for Plaintiffs, but the appellate court reversed, holding PEDA is silent on taxes, has no cause of action for tax withholding, and Bitner's claims of improper deductions involved questions of fact.

Plaintiffs now allege the language of PEDA is ambiguous. They ask the Court to interpret PEDA's language that benefits "continue" to be paid "on the same basis" as before an injury to mean "full pay," which they argue is ambiguous. Plaintiffs contend this language requires no tax withholding and allows them to sue Pekin for the withholding. Pekin argues the statute is not ambiguous, there is no prohibition on, or cause of action for, the withholding of employment taxes, and Plaintiffs' interpretation would render PEDA federally preempted and their claims inactionable.

This is not an appeal based upon the verdict of a jury. No question is raised on the pleadings.

STATUTES INVOLVED

This case involves the Public Employee Disability Act, 5 ILCS 345/1 *et seq*. The pertinent text of the statute is set forth below:

> 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 not longer than one year in relation to the same injury, except as otherwise provided under subsection (b-5). 5 ILCS 345/1(b).

The full text of the statute is set forth in the attached Supplemental Appendix.[1]

[1] Plaintiffs elected to file an additional brief on December 5, 2024, but filed a "Supplemental Brief" as if they had elected to stand on their Petition. Ill. S. Ct. R. 341(k) (eff. Oct. 1, 2020). Plaintiffs' notice of election did not include the materials required to rely on the Petition as their main brief, such as the table of contents of the record on appeal. Ill. S. Ct. R. 315(h) (eff. Dec. 7, 2023). Plaintiffs' "Supplemental Brief" is missing several required parts, such as a statement of facts, the statutes involved, and an appendix. Ill. S. Ct. R. 341(h) (eff. Oct. 1, 2020). Most of the deficiencies would not be cured if Plaintiffs had properly stood on the Petition. For example, the appendix to the Petition is also missing the table of contents to the record. While Plaintiffs' intentions are unclear, their election states they would file an additional brief, so Pekin has included the missing sections in this brief and a Supplemental Appendix containing the documents Plaintiffs did not provide. Ill. S. Ct. R. 341(i) (eff. Oct. 1, 2020).

STATEMENT OF FACTS

I. Plaintiffs file a "Class Action Complaint" regarding PEDA benefits.

Bitner and Brooks were police officers employed by the City of Pekin ("The City" or "Pekin"). (C8)[2] On November 13, 2018, Plaintiffs filed a "Class Action Complaint"[3] against Pekin. (C6) Plaintiffs alleged Pekin violated the Public Employee Disability Act ("PEDA") by withholding employment taxes and deducting sick, vacation, and compensatory time from PEDA benefits paid to its employees. (C6-7) Count One alleged Pekin violated the Illinois Wage Payment and Collection Act ("IWPCA") by withholding employment taxes from PEDA benefits and sought damages, attorneys fees, prejudgment interest, and costs. (C11-12) Count Two alleged Pekin violated the IWPCA by deducting sick, compensatory, or vacation time from PEDA benefits and sought damages, attorneys fees, prejudgment interest, and costs. (C12-13)

II. The complaint and an amended complaint are dismissed.

Pekin moved to dismiss, arguing PEDA benefits are statutory disability benefits, not wages under the IWPCA (C18-21), and nothing in the IWPCA addresses sick, compensatory, or vacation time. (C21) Pekin also argued no facts were pled alleging Plaintiffs were eligible for PEDA benefits or the amounts allegedly deducted. (C22-23) Pekin asserted Bitner was a member of the Pekin Police Benevolent Labor Committee ("the Union") and subject to a collective bargaining agreement (the "CBA") that required he follow its grievance procedure. (C23-24)

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[2] References to "C" are to the Common Law Record. References to "R" are to the Report of Proceedings. References to "SA" are to the attached Supplemental Appendix.
[3] No class was ever certified or sought to be certified.

The trial court dismissed the "Class Action Complaint" without prejudice. (C112) The trial court found Plaintiffs could not make an IWPCA claim for PEDA benefits because they are imposed by statute and do not qualify as wages or compensation under the IWPCA. (C112-14) Plaintiffs were given leave to file an amended complaint. (C113-14)

Plaintiffs filed an "Amended Class Action Complaint." (C126) The amended complaint repled the same two dismissed IWPCA counts (C132-34) and a new declaratory judgment count requesting a declaration that Pekin unlawfully deducted sick, compensatory, or vacation time and withheld employment taxes from PEDA benefits. (C134-35)

Pekin again moved to dismiss, arguing Plaintiffs had simply refiled the same counts the trial court had already dismissed and were still missing required allegations. (C144-49) Pekin argued the new declaratory judgment count did not explain if it was seeking a declaration under the IWPCA, PEDA, or both. (C148)

The court dismissed the amended complaint to the extent it repled an IWPCA action, but not if it were brought under PEDA. (C244) The trial court denied Bitner's claims were subject to the CBA grievance procedure. (C244) Plaintiffs were given leave to file a second amended complaint. (C244)

III. Plaintiffs file a "Second Amended Class Action Complaint."

On September 4, 2020, Plaintiffs filed the operative "Second Amended Class Action Complaint." (C247; SA3) The second amended complaint removed all references to the IWPCA and instead alleged violations of PEDA. (C247-49; SA3-5) Plaintiffs requested a declaratory judgment that Pekin unlawfully deducted sick, compensatory, or

vacation time from PEDA benefits owed to Bitner and withheld employment taxes from PEDA benefits paid to both. (C251-52; SA7-8) Plaintiffs alleged PEDA benefits were untaxable under federal law. (C248; SA4) Plaintiffs requested an award of attorneys fees pursuant to the Attorneys Fees in Wage Actions Act (the "Wage Act"). (C252; SA8) No damages, costs, or interest were requested. (C252; SA8)

Pekin answered the Second Amended Complaint. (C254) Pekin admitted it withheld employment taxes from benefits paid but denied it deducted sick, vacation, or compensatory time. (C256-57) Pekin pled two affirmative defenses: Bitner failed to exhaust his contractual remedies under the CBA and the statute of limitations on his claims had expired. (C261-62)

IV. Cross motions for summary judgment are filed.

After discovery, the Plaintiffs (C287) and Pekin (C373; C385) both moved for summary judgment.

Plaintiffs claimed Brooks was unable to work due to a line of duty injury for 80 hours in 2016 while Bitner was unable to work various amounts in 2011, 2012, 2013, and 2017. (C288) Plaintiffs alleged PEDA prohibited withholding employment taxes and sick, vacation, or compensatory time from Plaintiffs' benefits. (C290-94) Bitner claimed he was not required to file a grievance under the CBA. (C294-95) Bitner alleged the ten-year statute of limitations for breach of contract actions was applicable because he was contending Pekin breached the CBA which says Pekin will follow PEDA. (C295-96) Plaintiffs requested an order finding the PEDA benefits were not subject to any deductions, no grievance was required to be filed, and the statute of limitations was not

breached. (C296) Plaintiffs requested $3,211.92 in damages for Bitner, $767.20 for Brooks, as well as prejudgment interest, costs, and attorney fees. (C296)

Pekin's response maintained nothing in PEDA mandated employment taxes not be withheld and it was following the plain language of the statute to "continue" pay "on the same basis" as before the injury. (C462-66) Pekin argued Bitner could not refuse to follow the CBA grievance procedures at the same time he claimed his claims were for breach of the CBA. (C466-68) Pekin alleged attorney fees were not recoverable under the Wage Act because Plaintiffs never made the required written demand before filing suit. (C474-75) Pekin also argued that the sole remedy available to the Plaintiffs for the recovery of withheld employment taxes was to seek a tax refund and their failure to do so barred their claims. (C464-66)

Regarding Bitner's claims of deducted sick, vacation, and compensatory time, Pekin alleged, if the CBA grievance procedure did not bar his claims, there were questions of material fact. (C468) Pekin contested Bitner's allegations that any improper deductions occurred. (C468-70) Pekin attached an affidavit from Pekin Chief of Police John Dossey (C479) explaining Bitner had logged no compensatory time on several of the days he claimed he was improperly required to use such time and Bitner had requested PEDA benefits for some days he worked. (C479-82; C471-72)

Pekin attached records showing Bitner was released by his doctors to light duty on May 17, 2012 (C509) and full duty on May 22, 2012. (C472; C510) Bitner's last recorded entry of time off for injury was May 28, 2012. (C472) While Bitner alleged he was forced to use vacation, compensatory, and sick time while disabled thereafter, he had already been found able to return to duty. (C471-72) On July 10, 2012, Pekin's workers'

compensation carrier denied any further benefits to Bitner because a physician found his present symptoms were unrelated to a prior on-duty injury. (C472-73) Bitner also submitted multiple requests for leave pursuant to the Family Medical Leave Act to care for himself and his spouse, taking leave from October 28, 2012 through January 19, 2013. (C472-73) Pekin argued there were genuine issues of material fact as to Bitner being eligible to receive PEDA benefits at all or on the dates he claimed. (C474)

Pekin also sought summary judgment. (C373; C385) Pekin argued the plain language of PEDA did not prohibit withholding of employment taxes and required Pekin to "continue" to pay benefits "on the same basis" as the employee was paid before the injury. (C389-91) As to Bitner, Pekin argued he failed to exhaust his contractual remedies under the CBA (C391-93) and his claims were barred by the five-year statute of limitations. (C393-94) Pekin argued the Wage Act was inapplicable because Plaintiffs never made any timely written demand as required. (C394-96)

Plaintiffs responded (C451) and generally denied Pekin's position. Plaintiffs claimed PEDA benefits were not wages and not subject to employment taxation, but PEDA benefits were wages under the Wage Act and attorney fees should be awarded. (C457-58) Plaintiffs claimed the pre-suit written demand required by the Wage Act "came in the form of the Complaint filed on November 13, 2018…." (C458)

V. The trial court signs Plaintiffs' proposed order on summary judgment.

The trial court held a hearing on the cross motions for summary judgment. (R78) Pekin explained that the withheld employment taxes were paid to the IRS and would have appeared on Bitner and Brooks' W-2 forms. (R89-90) The withholding of taxes was Pekin continuing "doing what they had always been doing while these officers were off

work." (R92) If those funds were not subject to taxes, the remedy was to state so in their tax filings or request a refund from the IRS. (R89-90) Plaintiffs alleged that they did not know what the tax law was to timely request a refund. (R90)

The trial court ended the hearing by asking each party to prepare an order on how they thought the trial court should rule on the summary judgment motions. (R93) The trial court instructed the parties not to file their proposed orders but instead email them to the clerk[4] and it would pick one. (R93) The trial court stated it would "enter the order which I think is most appropriate." (R93)

On July 20, 2023, the trial court signed and filed Plaintiffs' proposed order unchanged. (C688; SA10) The order states Pekin "concedes" it should not have withheld taxes, sick, vacation or compensatory time. (C689; SA11) The order finds Bitner was always off work due to a line of duty injury. (C688-89; SA10-11) The order holds that Bitner did not have to file a grievance. (C689; SA11) The order finds PEDA benefits are considered wages under the Wage Act (C689-91; SA11-13) but are not wages for tax purposes. (C692; SA14) The order finds Plaintiffs' claims are subject to a ten-year statute of limitations because the "union contract obligated Defendant to comply with the PEDA statute." (C691-92; SA13-14) The order entered judgment in favor of Bitner for $3,211.92 and Brooks for $767.20. (C692; SA14)

The order awarded Plaintiffs prejudgment interest, costs, and reasonable attorneys fees. (C692; SA14) The order gave Plaintiffs 30 days to submit a petition for prejudgment interest, costs, and attorneys fees. (C693; SA15) As of August 21, 2023, no petition for prejudgment interest, costs, or attorneys fees had been filed. That same day, appellate

[4] Pekin's proposed Order is not part of the record as a result.

counsel for Pekin entered their appearance (C701) and filed a notice of appeal. (C703; SA17)

VI. The appellate court reverses.

On August 5, 2024, the Appellate Court, Fourth District, issued its Opinion, reversing the trial court. *Bitner and Brooks v. Pekin*, 2024 IL App (4th) 230718 (the "Opinion") (SA20). The Opinion holds PEDA is not ambiguous, says nothing about taxes, and the plain and ordinary meaning of the phrase "on the same basis as he was paid before the injury" is clear—"an eligible employee must be paid as if he was still working his normal hours, either part- or full-time, without having to use any sick leave credits, compensatory or vacation time, or service credits." (Opinion, ¶ 18-19; SA27-28) The Opinion found Plaintiff's interpretation of PEDA, which would require jumping back and forth between PEDA and various federal regulations while viewing the words in isolation, "borders absurdity" and contradicts statutory construction principles. (Opinion, ¶ 18-19; SA27-28) The Opinion recognized that other regulations might prohibit tax withholding from PEDA benefits, but no relief was sought under them, and this was a "narrow declaratory judgment case" about PEDA. (Opinion, ¶ 19; SA28) The Opinion holds PEDA does not prohibit an employer from withholding employment taxes. (Opinion, ¶ 20; SA29)

Plaintiffs' argument that their claims were subject to a ten-year statute of limitations was rejected, as the case turned entirely on PEDA, not the CBA, and Brooks was not a party to the CBA and could never bring a breach of contract claim. (Opinion, ¶ 22-25; SA29-30) As such, the claims were subject to the catchall five-year statute of

limitations. (Opinion, ¶ 25; SA30) Since the claims did not involve the CBA, the grievance procedure was held inapplicable. (Opinion, ¶ 25; SA30)

The Opinion also found a genuine issue of material fact existed to preclude summary judgment on Bitner's claims unrelated to tax withholding, (Opinion, ¶ 27-29; SA30-31) as Pekin produced evidence that Bitner had been cleared to return to work prior to the dates he was disabled. (Opinion, ¶ 7; SA22-23) The trial court was reversed and the matter ordered remanded for further proceedings. (Opinion, ¶ 31-32; SA31) The Opinion does not specifically mention other issues raised with the trial court's order, including the award of attorneys fees under the Wage Act. (C689; SA11)

Plaintiffs filed a petition for leave to appeal to this Court, which was granted on November 27, 2024. (SA33) Plaintiffs did not raise or argue any issues in their Petition or their brief other than alleging ambiguity of the statute.

ARGUMENT

I. Introduction.

Plaintiffs claim their employer Pekin wrongfully withheld employment taxes from PEDA benefits paid to them and would like to sue Pekin to recover the amounts withheld and turned over to the Internal Revenue Service ("IRS") and Illinois Department of Revenue. ("IDOR"). While Plaintiffs argue PEDA benefits are not wages for federal employment taxation, that is not an issue before this Court. Pekin admitted PEDA benefits were previously not considered wages or income.[5]

[5] This recently became an open question. The Internal Revenue Code states that "amounts received under workmen's compensation acts as compensation for personal injuries or sickness" do not constitute gross income. 26 U.S.C. § 104(a)(1). PEDA, however, is not a workmen's compensation act. Nevertheless, the IRS interprets this to apply to statutes "in the nature of" workers' compensation acts, see 26 C.F.R. § 31.3121(a)(2)-1(d), and

The issue for the Court is whether PEDA authorizes a cause of action for an employee to sue their employer over *withholding* employment taxes. Plaintiffs originally argued that PEDA's direction to employers to "continue" to pay injured employees "on the same basis as he was paid before the injury" was an unambiguous command to not withhold any taxes, while PEDA's list of prohibited deductions did not "clearly allow" tax withholding. Pekin, however, believed, and put into practice, that "continue" to pay "on the same basis" meant to keep making the same payments as before the injury, including making the same tax withholding. Given the absence of a prohibition on tax withholding in the list of prohibited deductions, combined with the directive to "continue" paying "on the same basis," Pekin continued the prior tax withholding.

The appellate court found PEDA unambiguous and without any reference to taxation in the statute, but in this Court, Plaintiffs have altered their theory. Plaintiffs now allege PEDA is ambiguous and ask the Court to employ statutory interpretation aids to render its plain language to mean something entirely different than what it says. Rather than "continue" to pay "on the same basis," Plaintiffs insist the legislature meant the opposite: discontinue the prior payments and begin paying on a different basis than before the injury by withholding no taxes.

Plaintiffs' interpretation of the statute is unjustified. Plaintiffs' argument for ambiguity relies on pulling the words "full pay" out of the ether, inserting them into the

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considers line of duty injury payments "in the nature of workers' compensation law." Employer's Supplemental Tax Guide for Use in 2017, I.R.S. Pub. No. 15-A, at 15-16 (Jan. 5, 2017). Previously, these regulatory interpretations would have received deference, but that is no longer the case. See *Loper Bright Enterprises v. Raimondo*, __ U.S. __, 144 S.Ct. 2244, 2270-73 (2024) (overruling *Chevron* deference doctrine, and holding courts "may not defer to an agency interpretation of the law simply because a statute is ambiguous"). The dates at issue in this case, however, predate *Loper Bright*.

statute where "on the same basis as before the injury" appears, ignoring the word "continue," and then arguing that "full pay" is ambiguous and the legislature's intent is unclear. But the legislature did not use the words "full pay." The plain language of PEDA contains a simple and easily understood instruction for a continuation of payments the same as before the injury, saying nothing about prohibiting tax withholding. The alleged ambiguity of words that do not appear in the statute cannot overcome its plain language. Nor can the lack of a prohibition on tax withholding be turned on its head to impose a prohibition merely because the legislature did not "clearly allow" tax withholding, an argument fully at odds with our due process requirements to avoid vagueness in legislative commands. Plaintiffs have simply misapplied their statutory textual analysis on a quest to sow ambiguity into an otherwise simple and direct statute.

But the faults in Plaintiffs' statutory interpretation hide an even larger problem. If Plaintiffs got their way, PEDA would immediately be destroyed under the weight of the IRS: Congress has created a comprehensive tax refund system that preempts all state law attempts to intrude on its ground. This system is so comprehensive that the mere failure to request a tax refund permanently (and jurisdictionally) dooms any request, in any court, in any manner, under any theory, to recover funds that are in any way related to taxes. And if Plaintiffs could somehow survive that, they run headfirst into statutory immunity provided by both federal and state law that flat out prevents employees from suing employers over tax withholding. When a simple tax refund request could have avoided all these pitfalls, there is no reason to reinterpret PEDA and subject disabled public employees to a Pandora's box of esoteric legal headaches when all they want is to see their pay continued.

The appellate court was correct. Taxes should be left to the tax statutes and taxing authorities, not a public disability benefit statute that (1) provides for an easy-to-understand continuation in pay after a line-of-duty injury, (2) is completely silent on taxes, and (3) even contains a list of prohibited deductions that does not forbid tax withholding. The appellate court should be affirmed so that PEDA benefits remain available to Illinois public employees without a looming threat of being struck down for interfering with federal and state taxation systems.

II. PEDA's language is unambiguous.

In the trial and appellate court, Plaintiffs argued PEDA unambiguously prohibited withholding employment taxes from benefits paid. They now reverse course, arguing for the first time that PEDA is ambiguous. Plaintiffs ask the Court to interpret PEDA to require benefits be paid as "gross pay less required deductions," which they posit as something that "federal law, state law … or some other binding obligation … entitles a third party to a portion of an employee's gross pay." (Plaintiffs' Supplemental Brief, p. 5) Plaintiffs then use their new interpretation of PEDA to argue that it prohibits the withholding of employment taxes so they can sue Pekin, despite both federal and state law preventing employees from suing employers over tax withholding. See Section IV, p. 24, *infra*.

Before trying to reinterpret the statute, however, Plaintiffs must establish its language is ambiguous. They cannot do so. PEDA plainly states that an injured employee "shall continue to be paid by the employing public entity on the same basis as he was paid before the injury…." 5 ILCS 345/1(b). Curiously, Plaintiffs do not argue this language is ambiguous. Instead, they first redefine this language to mean "full pay,"

argue the definition of "full pay" is ambiguous, and then embark on a specious reinterpretation of the statute that ends with it somehow prohibiting the withholding of taxes.

There is no need to go so far. Plaintiffs cannot get past the very first hurdle of showing the statute is ambiguous. PEDA is clear and unambiguous, and injecting an ambiguous phrase into the statute to create something to argue about does not alter its plain language.

A. Statutory interpretation principles.

When interpreting a statute, the main goal is to ascertain and give effect to the intent of the legislature. *Landis v. Marc Realty, L.L.C.*, 235 Ill.2d 1, 6 (2009). The most reliable indicator of the legislature's intent is the plain and ordinary meaning of the statutory language. *Id.* When the language is clear and unambiguous, the Court will apply the statute as written without resorting to extrinsic aids of statutory construction. *Id.*

A statute is not ambiguous simply because the parties disagree as to its meaning. *Lenz v. Advocate Health and Hospitals Corp.*, 2023 IL App (1st) 120740, ¶ 13. Rather, a statute is ambiguous "when it is capable of being understood by reasonably well-informed persons in two or more different senses." *Illinois State Treasurer v. Illinois Workers' Compensation Com'n*, 2015 IL 117418, ¶ 26. Statutory interpretation should not "inject ambiguity into [a] statute where none exists." See *id*.

When the statutory language is clear and unambiguous, the Court "is not at liberty to read into it exceptions, limitations, or conditions that the legislature did not express; nor should this court search for any subtle or not readily apparent intention of the legislature." *People v. Laubscher*, 183 Ill.2d 330, 337 (1998). Similarly, courts "may not

rewrite statutes to make them consistent with their own ideas of orderliness and public policy." *Lawrence v. Regent Realty Group, Inc.*, 197 Ill.2d 1, 11 (2001).

Statutes in derogation of the common law cannot be construed "beyond what the words of the statute expresses or beyond what is necessarily implied from what is expressed." *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 69 (2004). Such statutes must be strictly construed in favor of those who would be subject to their operation. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 19. PEDA is in derogation of the common law and must be strictly construed in favor of the employer. See *id.* at ¶ 19 (holding there "is no question" that public employee disability benefits are in derogation of common law).

B. The plain language of PEDA instructs municipalities to continue paying employees in the same manner as before their injury.

PEDA's language is plain, unambiguous, and the legislature's intent is clear: keep paying an eligible employee after their injury in the same manner as before the injury. This intent would have been clear had the statute said to pay on the basis as before the injury, but the legislature went further, adding the words "continue" and "same" to reinforce that the payments should be unchanged. Given this clear instruction, Pekin reasonably "continued" paying Brooks and Bitner "on the same basis" as they were paid before their injuries by continuing the same pay and tax withholding in their payroll checks just as it had "before the injury."

This straightforward reading of the statute stands in stark contrast to Plaintiffs' meandering road to ambiguity. Plaintiffs begin not with the plain meaning of the statute's terms, but with redefining those terms to mean "full pay." Plaintiffs have no textual or legislative history source for that phrase. The statute does not say "full pay" anywhere; it

says "continue" pay "on the same basis." Plaintiffs lifted the words "full pay" from an appellate court decision generally describing that PEDA provides "for a continuation of full pay," but the decision was not holding PEDA ambiguous or even interpreting the "on the same basis" language. See *Gibbs v. Madison County Sheriff's Dept.*, 326 Ill.App.3d 473, 477 (5th Dist. 2001). Plaintiffs also conveniently dropped the word "continuation" from the quote, choosing to only use the words "full pay," likely because "continuation" directly contradicts their argument.

After injecting the term "full pay" into the statute, Plaintiffs then argue that phrase—not the statutory language—is ambiguous. "Full pay," they say, could mean net pay, gross pay, or something they call "gross pay less required deductions," so the statute must be ambiguous if "full pay" could mean three different things. Plaintiffs offer no legal support for how the alleged ambiguity of a term that does not appear in the statute could render the statute ambiguous. Plaintiffs provide no explanation for how they can ignore the words "continue" and "same" while arguing for the opposite.

No reasonably well-informed person would read PEDA this way. Plaintiffs are not even arguing that the statutory terms are vague, but that a phrase they assigned to define those terms is vague. This supposed ambiguity was manufactured from whole cloth. Plaintiffs placed an ambiguous phrase of their own creation into the statute solely to argue against when the statutory language itself is already clear.

The Opinion correctly found the statute provides a simple command to continue to pay an employee as if he were still working his normal hours. (Opinion, ¶ 18, SA27-28) Ignoring the plain language, Plaintiffs have improperly injected ambiguity into the

statute so they could offer their own solution to a problem they created. The statute needs no interpretation and should be applied as written.

C. The plain language of PEDA does not prohibit tax withholding.

Plaintiffs next take aim at PEDA's prohibited deductions. PEDA instructs that when paying benefits, employers shall pay the employee "with no deduction from his sick leave credits, compensatory time for overtime accumulations or vacation, or service credits in a public employee pension fund…." 5 ILCS 345/1(b). Plaintiffs do not even allege anything in this clause is ambiguous, admitting that it "clearly and expressly" prohibits those deductions. (Supporting Brief, p. 4) Nevertheless, Plaintiffs ask the Court to find this language prohibits the withholding of employment taxes because it does not "clearly allow" tax withholding. (Supplemental Brief, p. 6)

If the language is not ambiguous, as Plaintiffs seemingly admit, that is the end of the analysis. PEDA provides a list of very specific disallowed deductions and employment tax withholding is not one of them. The statute "says what it says—or perhaps better put here, does not say what it does not say." *People v. Jackson*, 2018 IL App (1st) 150487, ¶ 53 (quoting *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 583 U.S. 416, 426 (2018)). There is no need for any further statutory analysis of the plain language of the statute.

Undeterred, Plaintiffs insist that because the statute does not "clearly allow" tax withholding, it must be prohibited. The first problem with this argument is its blatant unconstitutionality. The constitutional guarantee of due process of law requires that legislation give "the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Russell v. Department of Natural*

Resources, 183 Ill.2d 434, 442 (1998) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). If a statute does not set forth terms "definite enough to serve as a guide to those who must comply with it," it is unconstitutionally vague. *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 291 (2003). A statute must clearly apply to a party's conduct to defeat a vagueness challenge. *Id.* at 292.

There is nothing "definite enough" to prohibit tax withholding in PEDA because there is nothing on that topic at all. Statutes must spell out all that is prohibited, not all that is allowed. Plaintiffs are asking to turn our entire legal system on its head and prohibit any conduct that is not "clearly allowed." Plaintiffs would subject citizens to completely arbitrary enforcement of laws without any legal standards if everything unstated might be prohibited on a whim, which our constitution will not abide. *Russell*, 183 Ill.2d at 442 (holding statute must provide explicit standards to prevent arbitrary and discriminatory enforcement).

The second problem Plaintiffs face is that PEDA is in derogation of the common law and must be strictly construed to what its words express, *Adams*, 211 Ill.2d at 69, and "in favor of the party subject to its operation." *Nowak*, 2011 IL 111838 at ¶ 19-20 (holding silence in Public Safety Employee Benefits Act on when employer's obligation to cover health insurance premiums begins would not be interpreted to "confer[] the maximum conceivable benefit that statutory silence will permit"). Plaintiffs must show that the language of PEDA prohibits withholding employment taxes, and it shows no such thing.

The legislature proscribed certain deductions from PEDA benefits but mentioned nothing about withholding employment taxes. This implies that unstated deductions are

not prohibited—the enumeration of exceptions in a statute is construed to be an exclusion of all other unstated exceptions. *Sherman*, 203 Ill.2d at 286. This principle is based on the logical and common sense understanding that "when people say one thing they do not mean something else." *Id.* (quoting *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill.2d 141, 152 (1997)). The legislature knew how to prohibit certain deductions from PEDA benefits, did so in the statutory language, but put no such prohibition regarding employment tax withholding. If the legislature wanted this list to be more expansive, it certainly knows how to codify non-exhaustive lists, see *People v. Perry*, 224 Ill.2d 312, 329-31 (2007), and did not do so here.

The statute is not ambiguous. PEDA does not prohibit withholding employment taxes from benefits.

III. Plaintiffs have misapplied statutory interpretation principles.

The unambiguous language in PEDA requires no statutory interpretation. Plaintiffs, however, employ statutory interpretation aids to support their argument that PEDA creates liability for withholding employment taxes. They have misapplied those principles.

A. The legislature's intent is not found in regulations on unrelated subjects drafted by others.

Plaintiffs first raise the doctrine of *in pari materia* to conclude the Court must interpret PEDA through the lens of various federal tax regulations and laws. Plaintiffs fail to recognize that this doctrine only applies when two statutes cover the same subject matter. *Illinois Automobile Dealers Association v. Office of Illinois Secretary of State*, 2024 IL App (1st) 230100, ¶ 31. "Statutes on different subjects with different purposes are not subject to the doctrine." *Id.* See also *People ex rel. Daley v. Datacom Systems*

Corp., 146 Ill.2d 1, 17-18 (1991) (holding Bankruptcy Code and Collection Agency Act are not *in pari materia* because they do not address same subject).

PEDA is not a statute about employment taxes. Federal income tax statutes are not about public employee disability benefits in Illinois. PEDA is not *in pari materia* with any of the tax statutes, regulations, or publications Plaintiffs cite.

Moreover, the purpose of utilizing *in pari materia* is to determine the intent of the legislature, which is the "foremost consideration…." *Abruzzo v. City of Park Ridge*, 231 Ill.2d 324, 332-33 (2008). The intent of the legislature cannot be gleaned from documents that were not written by the legislature. Most of what Plaintiffs cite were not even written by *a* legislature, let alone *the* legislature that wrote PEDA. Plaintiffs cannot find the intentions of the General Assembly from the Code of Federal Regulations, IRS publications, and non-binding general information tax letters.

B. Applying the statute as written is not absurd, unjust, or unreasonable.

Plaintiffs next invoke the absurdity doctrine. "When a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the reading leading to absurdity should be rejected." *Dawkins v. Fitness International, LLC*, 2022 IL 12761, ¶ 27. Plaintiffs allege that unless "continue to be paid on the same basis" means "gross pay less required deductions," and they can sue their employer for withholding employment taxes, then the statute is absurd, unjust, and unreasonable.

Plaintiffs' reliance on the absurdity doctrine is misplaced. The absurdity doctrine only applies where a literal reading of the statute produces an absurd result. *People v. Hanna*, 207 Ill.2d 486, 498 (2003). The consequences of an unambiguous statute, even

one "harsh, unjust, absurd or unwise," cannot be avoided by judicial construction. *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill.2d 546, 557 (1999). The absurdity doctrine does not "license a court to simply ignore or rewrite statutory language on the basis that, as written, it produces an undesirable policy result." *In re D.F.*, 208 Ill.2d 223, 249-250 (2003) (Freeman, J., specially concurring, joined by McMorrow, C.J.) (quoting *Taylor-Hurley v. Mingo County Board of Education*, 209 W.Va. 780, 551 S.E.2d 702, 710 (2001)).

There is no ambiguity here. PEDA plainly tells employers to continue payments as they were made before the injury. Plaintiffs' concerns about other "required deductions" like union dues are unwarranted because the statute already does not prohibit such deductions. The absurdity doctrine cannot apply to the unambiguous language of PEDA.

Even if the language were ambiguous, the Plaintiffs would need to point to the alleged absurd result of reading the language literally, and they cannot. Much like their use of the phrase "full pay," Plaintiffs again turn to pure invention to aid their argument. Plaintiffs insist the legislature "intended" PEDA benefits to be "full pay," which supposedly means "gross pay less required deductions," as that was the "purpose" of the statute.

Plaintiffs support this "intention" and "purpose" with nothing. Plaintiffs cite no legislative statements, committee hearings, or other sources of the legislature's intent that say or even imply PEDA was meant to provide something other than what its text says. Plaintiffs tell the Court that when the legislature commanded employers to "continue" paying "on the same basis as before the injury" what it really meant was to discontinue

the prior payments, ignore the basis the prior payments were made on, and start paying on a different basis than before the injury. Yet they offer no expressed legislative intent that PEDA was intended to operate that way, let alone a clearly expressed legislative intent that would allow the Court to circumvent the statutory language. See *In re D.F.*, 208 Ill.2d at 230.

Plaintiffs have no explanation for why, if the legislature intended the statute to work this way, it did not word the statute in that manner or use the "full pay" phrase they argue for. The Plaintiffs' version of PEDA and its actual language are not even remotely comparable. In fact, Plaintiffs' version is so diametrically opposed to the literal language of the statute that it would require employers to do the opposite of the text. An employer could never "continue" to pay something different. An employer could not pay "on the same basis" by using a different basis. If the first place to find the legislature's intent is the language it used, then the last place must be the doublespeak Plaintiffs have offered that reverses it. "Continue" now means "stop." "Same" means "different." "As before" means "not as before." Plaintiffs are not arguing that the legislature said one thing but meant another; they are arguing the legislature said one thing but meant the opposite.

Plaintiffs' argument for the supposed injustice and unreasonableness of the statute's plain language is even more dubious. Plaintiffs claim the legislature would not have expended "the time necessary to adopt PEDA" if it "merely" means benefits continue to be paid as before the injury. Bitner complains that he would only receive PEDA benefits amounting to 84.67 percent of what his yearly wage would be after taxes, which he says is a "marginal" 18 percent increase over what he could receive under the Workers' Compensation Act. Plaintiffs claim "[i]t is absurd to believe the legislature

would implement an entire statute to merely increase the benefit 18 percent." (Supplemental Brief, p. 15)

To begin with, Plaintiffs have not even done their math correctly. PEDA benefits pay 50% more than workers' compensation benefits. Temporary total disability payments pay 66 ⅔% of an injured employee's weekly wage.[6] 820 ILCS 305/8(b). PEDA pays 100% continuation of wages as prior to the injury. That is 50% more than workers' compensation benefits (66 ⅔% plus 33 ⅓%). That is neither "marginal" nor "mere." Regardless, the legislature's policy decision on how much benefit to provide cannot be absurd and subject to judicial construction simply because Plaintiffs think it should be more. Every legislative decision would be challenged in this Court if all it took to do so was someone claiming a statute did not go far enough to warrant its passing.

Plaintiffs have also forgotten their own argument. Plaintiffs complain that Bitner's PEDA benefits were taxed and therefore he received "merely" 18% more than what workers' compensation would pay, but neither PEDA nor workers' compensation benefits are taxable per Plaintiffs' own brief. Pekin has never argued that these benefits are taxable, and the Opinion never made that finding, either. The issues in this case are whether PEDA commands municipalities not to *withhold* employment taxes and creates a cause of action by an employee against an employer to recover the amounts withheld (even if that amount was already paid to the IRS or IDOR). Pekin believed it was complying with PEDA by withholding taxes, as it was continuing payments just as it had done before the injury. If that withholding was not taxable, Plaintiffs would have received 100% of the funds by requesting a tax refund. Plaintiffs never requested a refund despite

[6] They are also subject to a maximum weekly benefit cap. 820 ILCS 305/8(b)(4). PEDA continuation pay is not. 5 ILCS 345/1 *et seq*.

having time to do so and federal and Illinois law requiring them to, and then claimed ignorance of the law as their excuse. See Sec. V, p. 32, *infra*. Since Plaintiffs failed to follow the mandatory refund request requirements, they want the Court to create a brand-new cause of action to circumvent them. Whether they will be allowed to do so, not taxation, is the issue.

The plain language of PEDA is not absurd, unjust, or unreasonable. Plaintiffs did not "merely" receive a "marginal" benefit; they received a substantially larger benefit than what private employees receive. Even if they believe otherwise, the statute is not subject to judicial revision merely because Plaintiffs think the legislature should have treated them even better.

IV. Plaintiffs' version of PEDA is absurd because it would be federally preempted, inactionable against employers, and conflict with other state laws.

The plain language of PEDA creates no liability on public employers for withholding employment taxes and does not tell employers to pay benefits differently than before the injury. Plaintiffs' request to read such a clause into PEDA should be rejected simply because the statute says nothing of the sort.

Beside the statute being unambiguous, there are other major reasons to reject Plaintiffs' interpretation of PEDA. By construing PEDA to allow a state cause of action against an employer for withholding taxes, the statute would instantly run afoul of federal and state law, opening a Pandora's box of legal issues—federal preemption, absolute immunity, lack of jurisdiction, and conflicts with other Illinois laws would render Plaintiffs' version of the statute a nullity.

A. Section 7422 of the Internal Revenue Code establishes a comprehensive and mandatory tax refund procedure that preempts state law.

Clause 2 of Article VI of the United Stated Constitution is commonly known as the "Supremacy Clause." This clause states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. U.S. Const., art. VI, cl. 2.

This fundamental principle gives Congress the power to preempt state law. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372 (2000). State law may be preempted for a variety of reasons: when Congress intends to "occupy the field" in that area, when state law conflicts with a federal statute, when it is impossible to comply with both state and federal law, and where state law stands as an obstacle to the purposes and objectives of Congress. *Id.* at 372-73.

When a state law is preempted, its application is unconstitutional. See *Crosby*, 530 U.S. at 388. A state statute is void to the extent it conflicts with or stands as an obstacle to federal law. *Maryland v. Louisiana*, 451 U.S. 725, 747 (1981).

Congress has setup a comprehensive system for seeking a refund of "taxes erroneously or unlawfully assessed or collected…." *U.S. v. Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 4 (2008). A taxpayer may file suit against the United States in a United States district court or the United States Court of Federal Claims to recover such taxes, but must first file a claim for refund with the Internal Revenue Service ("IRS"). *Id.* The relevant statutory language appears in 26 U.S.C. § 7422(a) of the Internal Revenue Code, which states:

> **No suit prior to filing claim for refund.**--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…. 26 U.S.C. § 7422(a) (emphasis in original).

The only proper defendant to a legal case seeking what amounts to a federal tax refund is the United States. 26 U.S.C. § 7422(f)(1). The Internal Revenue Code requires any refund request be filed no later than three years from the time the tax return at issue was filed or two years from the time the tax was paid, whichever is later. 26 U.S.C. § 6511(a). Failure to timely file a refund claim will result in no credit or refund being issued. 26 U.S.C. § 6511(b)(1).

The tax refund scheme is part of Congress's authority to "ensure that allegations of taxes unlawfully assessed … are processed in an orderly and timely manner, and that costly litigation is avoided when possible." *Clintwood*, 553 U.S. at 12. The system is designed to advise the appropriate officials of demands and claims, to ensure orderly administration of revenue, "to provide that refund claims are promptly made, and to allow the IRS to avoid unnecessary litigation by correcting conceded errors." *Id.* at 11. Congress has an "exceedingly strong interest" in regulating its revenue through the tax refund provisions. *Id.* at 12.

Section 7422 applies broadly. If a party fails to make the refund request, that party "may bring '[n]o suit' in 'any court' to recover 'any internal revenue tax' or 'any sum' alleged to have been wrongfully collected 'in any manner.' Five 'any's' in one sentence and it begins to seem that Congress meant the statute to have expansive reach." *Id.* at 7. In addition, the time limits for seeking a refund are set out in "unusually emphatic form."

Id. As such, Section 7422 provides a clear and mandatory directive: "[W]e cannot imagine what language could more clearly state that taxpayers seeking refunds of unlawfully assessed taxes must comply with the Code's refund scheme before bringing suit, including the requirement to file a timely administrative claim." *Id.* at 8. The prohibitions in Section 7422 do not apply only to amounts that were inappropriately taxed, but to "any sum" that is alleged to be "in any manner wrongfully collected." *Id.* at 13.

Section 7422 applies "whatever the source of the cause of action" the taxpayer attempts to use to circumvent the statute's "broad sweep." *Id.* at 9. If Section 7422 could be circumvented by proceeding under other statutes or causes of action, the Internal Revenue Code would have "no meaning whatever." *Id.* at 9 (barring taxpayers' attempt to use longer statute of limitations in Tucker Act to circumvent refund filing requirement of Section 7422).

The requirements of Section 7422 are applicable to claims against employers and private parties, preempting actions against them to recover taxes. See *Wiggins v. Jefferson Einstein Hospital*, __ Fed. Rptr. __, 2024 WL 5074894 at *1-3 (3rd Cir. 2024) (holding employee's breach of contract and fraudulent misrepresentation claims against employer for withholding employment taxes were preempted, because Section 7422 "preempts claims that employers withheld too much for federal taxes")[7]; *Umland v. PLANCO Financial Services, Inc.*, 542 F.3d 59, 67-69 (3rd Cir. 2008) (holding employee's unjust enrichment action against employer for wrongfully collected FICA tax preempted by Section 7422); *Brennan v. Southwest Airlines Co.*, 134 F.3d 1405, 1409-11 (9th Cir. 1998)

[7] This Opinion is persuasive authority only. See *Wiggins*, 2024 WL 5074894 at n. 1.

(holding it "well established" that Section 7422 is the "exclusive remedy in tax refund suits and thus preempts state-law claims that seek tax refunds"); *Kaucky v. Southwest Airlines Co.*, 109 F.3d 349, 353 (7th Cir. 1997) (affirming dismissal of suit against airline over excise taxes as a "tax refund suit brought against the wrong party"); *Burda v. M. Ecker Co.*, 954 F.2d 434, 439-41 (7th Cir. 1992) (affirming dismissal of claim over tax withholding from Illinois Workers Compensation Act settlement as claim was barred by Section 7422). Section 7422 provides both express and field preemption of state law, as its plain language creates the sole remedy for tax refund litigation and "Congress intended the IRS to occupy the field of tax refunds…." *Umland*, 542 F.3d at 69.

Section 7422 applies even if the funds are held by or sought from the employer. Rejecting the argument that Section 7422 was inapplicable because the plaintiff was not asking for money to be refunded from the federal government and was therefore not "literally" a tax refund suit, the Seventh Circuit addressed the effect this reasoning would have on employers:

> 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. *Kaucky*, 109 F.3d at 351.

Congress has made employers essentially "collection agents" for the IRS, and it "makes no difference whether the firm is still holding the money it erroneously collected or has

passed it on to the IRS." *Id.* In either case, such a suit is still a tax refund suit, and Section 7422 applies. *Id.* at 352.

B. Requesting a federal refund is a jurisdictional prerequisite to suit.

In addition to its preemptive effect, Section 7422 also establishes a jurisdictional, mandatory exhaustion of remedies requirement. Section 7422 "imposes, as a jurisdictional prerequisite to a refund suit, filing a refund claim with the IRS that complies with IRS regulations." *Chicago Milwaukee Corp. v. U.S.*, 40 F.3d 373, 374 (Fed. Cir. 1994). While Section 7422 "expressly and completely" preempts an employee's claims for wrongfully collected taxes, it also mandates a refund claim be filed before suit, and the failure to do so requires dismissal. *Berera v. Mesa Medical Group, PLLC*, 779 F.3d 352, 359-60 (6th Cir. 2015) (affirming dismissal of FICA refund claim for failure to first file a refund request with the IRS as required by Section 7422).

C. Federal and Illinois law immunize employers from liability for tax withholding.

In addition to Section 7422, federal law also explicitly prevents suits by employees against employers over tax withholding. After the Internal Revenue Code sets forth the requirements for employers to deduct, withhold, and pay employment taxes over to the IRS, it establishes the following: "The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment." 26 U.S.C. § 3403. Per this section, employers cannot be sued by employees over amounts withheld as employment taxes. See *Edgar v. Inland Steel Co.*, 744 F.2d 1276, 1278 (7th Cir. 1984) ("Employees have no cause of action against employers to recover wages withheld and paid over to the government in satisfaction of federal income tax liability.")

Illinois law has an identical protection for employers in the Illinois Income Tax Act. The Act 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.

D. Illinois has its own comprehensive tax refund system.

Much like the federal system, Illinois has its own requirements for seeking a refund of taxes paid to the state. Every claim for a tax refund must be filed in writing with IDOR. 35 ILCS 5/909(d). A claim for refund may not be filed later than three years after the tax return was filed. 35 ILCS 5/911. If a claim is not filed within that period, no refund will be allowed. *Id.*

If a claim for a refund is not allowed, the only options available are to file a protest with IDOR or a petition with the Illinois Independent Tax Tribunal. 35 ILCS 5/910. The Illinois Administrative Review Law applies to all proceedings for judicial review of decisions by IDOR, though those proceedings have since become subject to the Illinois Independent Tax Tribunal Act of 2012. 35 ILCS 5/1201. The Illinois Independent Tax Tribunal is a creation of the General Assembly to provide administrative hearings for tax matters. 35 ILCS 1010/1-5. Judicial review of any final decisions of the Tax Tribunal may be had directly in the Illinois Appellate Court subject to the Administrative Review Law. 35 ILCS 1010/1-75. See also 735 ILCS 5/3-113.

E. Plaintiffs cannot interpret PEDA to violate federal law or absurdly conflict with other laws.

Plaintiffs insist the Court must read PEDA to comply with federal law, yet they conveniently forgot to bring up any of the foregoing. Plaintiffs never filed a request for a

tax refund for the amounts at issue. (C377, 382; R89-91) The United States Supreme Court's decisions interpreting Section 7422 are binding on this Court, and lower federal court decisions interpreting Section 7422, if they are uniform in their interpretation, are given considerable weight and highly persuasive. *Walton v. Roosevelt University*, 2023 IL 128338,¶ 23-24.

The United States Supreme Court has spoken on this very issue and the lower federal courts have spoken in uniformity. Can a taxpayer use an alternative statute to circumvent the requirements of Section 7422? No. *Clintwood*, 553 U.S. at 9. Can a taxpayer claim he is not seeking a tax refund because the funds were not taxable, thereby evading the requirements of Section 7422? No. *Id.* at 13; *Brennan*, 134 F.3d at 1409-10; *Kaucky*, 109 F.3d at 351. Can a taxpayer seek relief under any theory, in any court, if a refund is not requested prior to suit, as required by Section 7422? No. *Clintwood*, 553 U.S. at 7-8; *Berera*, 779 F.3d at 359-60; *Chicago Milwaukee Corp*., 40 F.3d at 374. Can a state law cause of action be used to dodge Section 7422? No. *Umland*, 542 F.3d at 67-68; *Brennan*, 134 F.3d at 1409-10; *Kaucky*, 109 F.3d at 350-53. Can an employer be sued for tax withholding? No. *Edgar*, 744 F.2d at 1278.

And those are just the federal laws. Can an Illinois employer be sued by an Illinois employee over tax withholding? No. 35 ILCS 5/705. Can a tax refund claim be sought in court without first filing a refund claim with IDOR and seeking review with the Illinois Independent Tax Tribunal? No. 35 ILCS 5/910.

Why would the General Assembly have intended PEDA to instantaneously run afoul of well-settled federal tax refund law that preempts all state law, rendering PEDA unconstitutional? Why would the legislature have intended PEDA to allow an employee

to sue its employer over tax withholding when other, more specific Illinois statutes explicitly prevent that? While Plaintiffs falsely complain that the amount of benefits they receive are so low as to render PEDA absurd, they have no explanation for the absurdity of the General Assembly intending to pass Plaintiffs' version of PEDA that would instantly render the statute meaningless, invalid, and unconstitutional. This Court presumes the General Assembly would not engage in such a useless act, *Lopez v. Fitzgerald*, 76 Ill.2d 107, 117 (1979), nor will the Court construe a statute to render it invalid. *People v. Gray*, 2017 IL 120958, ¶ 57 ("A court must construe a statute so as to uphold its constitutionality if reasonably possible."); *Harshman v. DePhillips*, 218 Ill.3d 482, 494 (2006) (holding statute should not be construed in a way that renders any term meaningless); *Harris v. Manor Healthcare Corp.*, 111 Ill.2d 350, 363 (1986) (holding "a statute will be interpreted so as to avoid a construction which would raise doubts as to its validity").

Plaintiffs' construction of PEDA is absurd. The legislature could not have intended to craft a statute that would inarguably be preempted by federal law and violate immunity provisions under federal and state law. Plaintiffs have advocated for a version of the statute that would only result in PEDA cases being immediately dismissed on any of several grounds.

V. The appellate court should be affirmed.

The Court should affirm the Opinion. The literal reading of PEDA is the correct one: employers should continue to pay injured employees just as they were before the injury. PEDA is simple, straightforward, and complete, and the Court should not go out of its way to insert words into legislative enactments that otherwise provide a cogent and

justifiable legislative scheme. *Hayes v. Mercy Hosp. and Medical Center*, 136 Ill.2d 450, 456 (1990). The complexities of employment taxation should be left to the tax laws and taxing authorities, not jammed into a statute that is silent on taxes. If the IRS or IDOR believes Pekin incorrectly withheld employment taxes, then it is up to those taxing authorities to address that with Pekin. Neither Congress nor the General Assembly wanted employees suing their employers over tax issues.

While Plaintiffs will undoubtedly claim this leaves them without a remedy, the reality is they either slept on their refund rights or purposefully refused to seek them. Plaintiffs had several years to file refund claims but never did. Suit was filed on November 13, 2018. (C6) Brooks alleged employment taxes were withheld from his PEDA benefits in 2016, which were payable in his 2017 taxes (C301), leaving him multiple years in the three-year window to amend his tax returns to seek a refund even after suit was filed. Bitner's claims, which the Opinion reversed and remanded because of fact questions, are more complex. Several years of his claims were barred by the statute of limitations (Opinion, ¶ 21-25; SA29-30), he refused to say what specific days he was supposedly required to use sick, vacation, or compensatory time (C377, 380),[8] and he was off on Family Medical Leave Act leave in 2019. (C480-82, 511-15) If the only time off Bitner can legally dispute was from 2017, he too had multiple years to amend his returns to seek the refund after suit was filed.

The reason Plaintiffs never sought the refunds, according to their attorney, was they "didn't even know what the tax law was" and were "beyond the three years to

[8] Neither Brooks nor Bitner produced the actual tax returns at issue during discovery in the trial court. Without the returns, there is no way to prove the Plaintiffs suffered the damage they claim. If they received a tax refund, then the amounts they claimed are overstated and would represent an impermissible windfall.

amend a tax return" when they found out. (R90-91) Imagining Plaintiffs saying this with a straight face is difficult—Plaintiffs did not know what the tax laws were *after filing a lawsuit based on those very tax laws?* Brooks still had two years to file a refund for his entire claim in this case when suit was filed. Bitner still had two years to do so for the only year that was not outside the statute of limitations. The timing does not suggest that Plaintiffs did not know they could (and had to) file for a refund, but that they chose not to do so.

The Court generally will not come to the aid of parties who sleep on their rights. See *Noland v. Mendoza*, 2022 IL 127239, ¶ 42. In a property tax context, this Court specifically refused to aid taxpayers who paid taxes that were not owed because of the voluntary payment doctrine and their failure to timely apply for a refund. See *Alvarez v. Pappas*, 229 Ill.2d 217, 234 (2008) (holding "the legislature has established a mechanism for obtaining a refund of overpaid taxes and taxpayers must comply with its terms to receive a refund.") The record suggests Plaintiffs did not just sleep on their rights but purposefully ignored them to pursue this litigation instead of the comprehensive and mandatory refund schemes established by Congress and the General Assembly. Disrupting PEDA for the benefit of the Plaintiffs is unwarranted when they could have avoided this litigation altogether by requesting a tax refund, which they had both the time and knowledge to do.

VI. Plaintiffs have waived any challenge to the Appellate Court's other rulings.

Plaintiffs' petition for leave to appeal argued only that PEDA was ambiguous. Their "Supplemental Brief" argues only that as well. Despite raising that solitary issue, Plaintiffs conclude their brief by requesting the Court "issue an Order affirming the

Circuit Court's grant of Plaintiffs' Motion for Summary Judgment, affirming the Circuit Court's denial of Defendant's Motion for Summary Judgment, and overturning the Appellate Court." (Supplemental Brief, p. 15-16)

The appellate court's Opinion, however, reversed the trial court on several other rulings the Plaintiffs have never mentioned in this Court. Plaintiffs made no argument to dispute the Opinion's findings that:

- A five-year statute of limitations, not ten, applies (Opinion, ¶ 22-25; SA29-30);
- These are PEDA claims, not breach of contract ones (Opinion, ¶ 25; SA30); and
- Questions of material fact preclude summary judgment on Bitner's non-tax claims. (Opinion, ¶ 27-29; SA30-31)

These are all critical issues that were briefed, argued, and specifically ruled on by the Opinion. Plaintiffs, with no argument about any of them, simply request they be undone and the trial court's order reinstated.

Nor do Plaintiffs make any arguments to address the trial court's other dubious findings which the appellate court did not need to reach because of the reversal. When the trial court told the parties to draft their own summary judgment order and it would simply pick one (Opinion, ¶ 8; SA23), Plaintiffs took that opportunity to draft a wish list of findings with little to no basis in law or fact, and their order was entered, unchanged, by the trial court. For example, their proposed order grants Plaintiffs attorney fees pursuant to the Attorney Fee in Wage Action Act, 705 ILCS 225/1. (C689) But an award of attorneys fees under that statute requires "a demand was made in writing at least 3 days

before the action was brought, for a sum not exceeding the amount so found due and owing…." *Id.* Plaintiffs made no such demand, instead bizarrely claiming the complaint itself was a pre-suit demand (C458), despite it obviously not being pre-suit nor containing a demand for a sum of money. (C6) Pekin challenged this ruling in the appellate court, but the reversal eliminated the need to rule on it as there was now no finding that any amount was due or owing.

That was not the only liberty Plaintiffs took when drafting the order. The order makes several findings this Court has not been called upon to address because of the reversal, such as:

- Falsely claiming Pekin made concessions it never did (Opinion, ¶ 9, SA11, 23; C689);
- Holding PEDA benefits are wages for purposes of the fee claim (C689, SA11) but not wages for taxation purposes (C692, SA14);
- Finding Pekin breached the CBA (C690-91, SA13-14); and
- Discharging Plaintiffs from Section 7422's refund requirements. (C692, SA14)

By asking for the trial court's order to be reinstated, Plaintiffs want the Court to make these rulings without any argument to support doing so. These are not insignificant findings, either. Affirming rulings that Plaintiffs do not have to comply with Section 7422 or that PEDA benefits are not wages will only cause future havoc given the previously cited authorities on federal tax law.

An issue not raised in a petition for leave to appeal may be deemed forfeited. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 62. Raising

the issue in the initial brief does not cure the forfeiture, *id.*, and issues raised for the first time in a reply brief are waived. *In re Liquidations of Reserve Ins. Co.*, 122 Ill.2d 555, 567-68 (1988). Plaintiffs never raised these issues in either their Petition or their Supplemental Brief, yet they ask the Court to find them in their favor by reinstating the trial court's order. Plaintiffs have forfeited or waived these issues. The trial court's order cannot simply be reinstated as a result.

VII. Conclusion.

PEDA unambiguously makes a simple and direct command to continue pay for injured employees just as they were paid before their injury and the statute says nothing about taxation. PEDA should be read as its plain language states and tax issues should be left to the comprehensive schemes established by the tax statutes and tax authorities.

For the reasons stated herein, the Court should affirm the appellate court's Opinion.

Respectfully submitted,

The City of Pekin, Defendant-Appellee.

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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 containing the Rule 341(d) cover, the Rule 341(h)(1) 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 37 pages.

Signed: /s/ Christopher H. Sokn
Christopher H. Sokn
Counsel for Defendant-Appellee

DEFENDANT-APPELLEE'S SUPPLEMENTAL APPENDIX

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TAZEWELL COUNTY CIRCUIT CLERK
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IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS, COUNTY OF TAZEWELL

CHRISTOPHER BITNER and JOHN BROOKS, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No. 18-L-120
CITY OF PEKIN, ILLINOIS,	)	
Defendant.	)	

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Christopher Bitner and John Brooks, individually and on behalf of all others similarly situated, and on behalf of the members of the proposed class (collectively referred to as the "Class Representatives"), by and through their attorneys, Julie L. Galassi, and Hasselberg, Rock, Bell & Kuppler LLP, for their Second Amended Class Action Complaint against the City of Pekin, Illinois ("Defendant"), state as follows:

NATURE OF PLAINTIFFS' CLAIMS

1. Class Representatives bring this class action lawsuit to remedy damages caused by Defendant's unlawful policies of (1) withholding employment taxes from disability benefits paid to its law enforcement officers and fire fighters pursuant to the Illinois' Public Employee Disability Act, 5 ILCS 345/1, *et seq* (the "Benefits"); and (2) deducting sick, vacation, and compensatory time from Benefits paid to Defendant's law enforcement officers and fire fighters.

2. The Illinois' Public Employee Disability Act ("PEDA") provides that:

> [w]henever 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 not longer than one year in relation to the same injury. 5 ILCS 345/1(b).

3. Pursuant to the Internal Revenue Code, the regulations interpreting said Code, and the Illinois Attorney General, the Benefits are not subject to "Employment Taxes" (defined for purposes of this complaint as income tax, social security tax and Medicare tax), because they are paid to the law enforcement officers and fire fighters pursuant to PEDA, which is a statute in the nature of a workers' compensation act. See 26 U.S.C. 104(a)(1); 26 C.F.R. 1.104-1(a) and (b); and 26 C.F.R. 31.3121(a)(2)-1(a) and (d).

PARTIES

4. Plaintiff and Class Representative, Christopher Bitner ("Bitner"), is a resident of Peoria County, Illinois.

5. Plaintiff and Class Representative, John Brooks ("Brooks"), is a resident of Tazewell County, Illinois.

6. During all relevant times, the Class Representatives worked as law enforcement officers for Defendant.

7. Defendant is a resident of Tazewell County, Illinois.

FACTS COMMON TO ALL CLAIMS

8. Bitner, Brooks and the members of the Class (defined below) work(ed) for Defendant as law enforcement officers and fire fighters during the statutory period.

9. Bitner, Brooks and the members of the Class suffered one or more injuries in the line of duty which rendered them unable to perform their job duties and were "eligible employees" as the term is defined by 5 ILCS 345/1(a).

10. For up to one year, Brooks and the members of the Class were paid the same amount of money they earned prior to their injuries in the line of duty.

11. Defendant made deductions of Employment Taxes from Benefits paid to Brooks and the Class.

12. Defendant deducted accrued sick, vacation and compensatory time from the Benefits paid to Bitner and the Class while they were off work due to injuries in the line of duty.

13. The above-described deductions are prohibited by PEDA.

CLASS ACTION ALLEGATIONS

14. With respect to the PEDA claims, the Class Representatives seek to represent a class that is composed of and defined as follows:

> **All law enforcement officers and fire fighters who suffered an injury in the line of duty which caused him/her to be unable to perform his/her duties during the applicable ten-year statute of limitations (herein the "Class").**

15. This action is brought pursuant to 735 ILCS 5/2-801 because the Class is so numerous that joinder of all members of the Class is impracticable. While the

precise number of Class members has not been determined at this time, Defendant generally employs more than one hundred (100) law enforcement officers and fire fighters, a significant percentage of which have been injured in the line of duty over the course of the last ten years.

16. The Class Representatives and the Class have been equally affected by Defendant's violations of law.

17. The issues involved in this lawsuit present common questions of law and fact, and these common questions of law and fact predominate over the variations which may exist between members of the Class, if any. These common questions of law and fact include, without limitation:

a) Whether Defendant unlawfully deducted Employment Taxes from Benefits paid to Brooks and the Class.

b) Whether Defendant unlawfully deducted accrued sick, compensatory or vacation time after Bitner and members of the Class suffered injuries in the line of duty; and

c) The proper measure of damages sustained by the Class Representatives and the Class.

18. The Class Representatives' claims are typical of those of the Class. The Class Representatives', like the other members of the Class, were subject to Defendant's policies and practices that resulted in the improper deduction of Employment Taxes from their Benefits and mandatory deduction of sick, vacation

and compensatory time from their Benefits following an injury sustained in the line of duty.

19. The Class Representatives' and the Class have sustained similar injuries because of Defendant's actions—they all had sums improperly deducted from their Benefits and suffered deductions of sick, vacation and compensatory time in violation of Illinois law.

20. The Class Representatives will fairly and adequately protect the interests of the Class and have retained counsel experienced in wage and hour litigation.

21. This action is properly maintainable as a class action under 735 ILCS 5/2-801 because questions of law and fact predominate over any questions affecting individual class members, and a class action is superior to other methods in order to ensure a fair and efficient adjudication of this controversy because, in the context of wage and hour litigation, individual Plaintiffs lack the financial resources to vigorously prosecute separate lawsuits against their current or former employer. Class litigation is also superior because it will preclude the need for unduly duplicative litigation. There do not appear to be any difficulties in managing this class action.

DECLARATORY JUDGMENT
(Class Action)

22. Brooks and Bitner re-allege and incorporate by reference the above paragraphs 1-21 as if fully set forth herein.

23. Under the terms of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, this Court is vested with the power to declare that Defendant unlawfully deducted accrued sick, compensatory or vacation time from the Benefits of Bitner and members of the Class after they suffered injuries in the line of duty.

24. Under the terms of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, this Court is vested with the power to declare that while Brooks and members of the Class were eligible for Benefits, Defendant improperly withheld Employment taxes from their benefits.

WHEREFORE, Plaintiffs, Christopher Bitner, John Brooks and the class pray for a declaratory judgment finding that Defendant unlawfully deducted Employment taxes from its first responder's Benefits and unlawfully deducted its first responder's accrued sick, compensatory or vacation time, the sums are to be reimbursed to the class, and for such other and further relief this Court deems just and appropriate including an award of attorney's fees pursuant to the Attorneys Fees in Wage Actions Act.

JULIE L. GALASSI (ARDC #06198035)
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4600 N. Brandywine Drive
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Christopher Bitner and John Brooks,
Plaintiffs,

By: /s/ Julie L. Galassi
one of his attorneys

CERTIFICATE OF SERVICE

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 the undersigned verily believes the same to be true. The undersigned certifies that on September 4, 2020, this certificate of service, along with a copy of a ***Second Amended Class Action Complaint***, were served upon the following attorneys or parties of record listed below via electronic mail:

Katherine L. Swise
Miller, Hall & Triggs
416 Main St., Suite 1125
Peoria Illinois 61602
Email: Katherine.swise@mhtlaw.com

/s/ Ashley Swearingen
Ashley Swearingen

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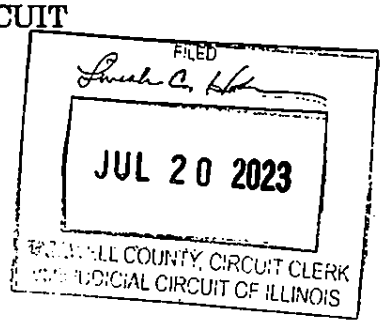
IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS, COUNTY OF TAZEWELL



CHRISTOPHER BITNER and JOHN BROOKS, individually and on behalf of all others similarly situated, Plaintiffs,	)	
v.	)	Case No. 18-L-120
CITY OF PEKIN, ILLINOIS, Defendant.	)	

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Cause coming for hearing on Plaintiffs', CHRISTOPHER BITNER AND JOHN BROOKS, Motion for Summary Judgment and Defendant's Motion for Summary Judgment, the Court having reviewed the parties' responses and replies and having heard the arguments of counsel, FINDS AND ORDERS AS FOLLOWS:

1. Each of the named Plaintiffs were formerly employed by Defendant as law enforcement officers during the course of their employment.

2. Plaintiff Bitner was a member of the Pekin Police Benevolent Labor Committee (the "Union").

3. Plaintiff Brooks was a salaried employee.

4. Plaintiffs each suffered injuries while employed by Defendant in the line of duty.

5. Plaintiffs were unable to work due to their line of duty injuries as follows:

a. John Brooks was off work for 80 hours in 2016.

b. Christopher Bitner was off work:

i. 112 hours in 2011;
ii. 40 hours in 2012;
iii. 40 hours in 2013; and
iv. 20.67 hours in 2017.

6. During the above listed dates when the Plaintiffs were unable to perform their duties, Defendant paid each Plaintiff their wages as required by PEDA after withholding employment taxes.

7. Defendant also deducted sick, vacation and compensatory time from Plaintiff Bitner's PEDA benefits.

8. Defendant deducted $2,106.38 for Plaintiff Bitner's compensatory and vacation time and $1,105.54 for employment taxes.

9. Defendant deducted $767.20 for Plaintiff Brooks' employment taxes.

10. Plaintiff Bitner did not file a grievance with the city of Pekin prior to filing his complaint in this cause.

11. Defendant concedes it should not have withheld employment taxes, sick, vacation or compensatory time from Plaintiffs' PEDA benefits.

12. Because Defendant should not have withheld employment taxes, Defendant is liable to Plaintiffs pursuant to the Attorney Fee in Wage Action Act. (the "Fee Act") The Fee Act provides that, when an employee brings an action for wages that are due and owing, the court shall allow reasonable attorney's fees in addition to the amount due and owing. 705 ILCS 225/1. PEDA benefits are considered wages due and owing as defined by the Fee Act. *Selmani v. Village of Bartlett*, 515 F.Supp.3d 882, 891.

14. The Illinois Public Employee Disability Act, 5 ILCS 345/1, *et seq*, states in pertinent part that:

> [w]henever 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 not longer than one year in relation to the same injury. 5 ILCS 345/1(b).

15. State courts have an obligation to enforce federal law. *Italia Foods,* 2011 IL. 110350, 369 Il. Dec. 106, 986 N.E. 2d 55. "Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum, ... but because the Constitution and laws passed pursuant to it are as much laws in the states as laws passed by the state legislature. *Italia Foods,* 2011 Il. 110350, ¶ 22. "Thus, absent a valid excuse, a state court may not deny a federal right when the parties and the controversy are properly before it. *Italia Foods,* supra at ¶ 23. Federal law is clear that PEDA benefits are not income subject to withholding. In other words, PEDA requires an injured employee "to be paid on the same basis" as he was paid before the injury. The "basis" is his gross pay. Common sense so dictates.

16. Defendant contends that the Plaintiff Bitner was required to file a grievance with the City of Pekin pursuant to the collective bargaining agreement ("CBA") between the City and the Union before filing its Complaint. Article 25 of

that Agreement states:

> "The City of Pekin will comply with applicable Illinois state laws in providing workman's compensation benefits to its employees under this Agreement who are injured while acting in the line of duty. *The Employer shall comply with the Public Employee Disability Act regarding on-duty claims. All claims shall be pursued in accordance with applicable law.* (emphasis added)
> (See Exhibit E)

17. The grievance procedure is set out in Article 12 of the CBA. It states that "a grievance is any dispute or difference of opinion raised by any Employee or the Union against the Employer involving the meaning, interpretation, or application of the provisions of this Agreement." The issue at hand is not a dispute involving the meaning, interpretation, or application of the CBA. It is a dispute as to the meaning, interpretation and application of PEDA- a state statute. As such, Plaintiff Bitner was not required to file a grievance.

18. Defendants contend that because PEDA does not specify a statute of limitations period, all claims brought pursuant to PEDA must be filed within 5 years as set forth in section 13-205 of the Illinois Code of Civil Procedure. 735 ILCS 13/205. This is not a civil claim covered by section 13-205 but a breach of contract. Plaintiffs' claims are not barred by the statute of limitations.

19. The CBA is a contract between the City of Pekin and the Union binding both the city and the police officers to its terms. The Defendant breached Article 25 of the CBA when it did not comply with PEDA as explained above. Therefore, the statute of limitations for filing a claim is governed by section 13-206 of the Illinois Code of Civil Procedure. 735 ILCS 13/206. The statute of limitation

on written contracts is ten years. The first PEDA violation alleged in the Complaint occurred in 2011. The Complaint was filed in 2018 which is before the statute of limitations expired.

20. Plaintiffs' claims are not barred by the statute of limitations. The union contract obligated Defendant to comply with the PEDA statute. Defendant breached the contract when it wrongfully withheld sums from Plaintiffs' benefits and forced Plaintiff Bitner to use compensation time. The appropriate statue of limitations is 10 years.

21. The amounts from Plaintiffs' PEDA benefits Defendant presumably sent to the U.S. Treasury and the Illinois Department of Revenue were not taxes regardless of how Defendant classified them on Plaintiffs' pay checks. As such, Plaintiffs are not required to seek the recovery of their benefits from the U.S. Government or the State of Illinois. Defendant's position is contradicted by IRS Circular 15 which instructs employers "[i]f you withheld more than the correct amount of income, social security, or Medicare taxes from wages paid, repay or reimburse the employee the excess. Any excess income tax withholding must be repaid or reimbursed to the employee...".

22. Plaintiffs' motion is granted. Defendant's motion is denied.

23. Judgment is entered for Plaintiff Bitner in the amount of $3,211.92 and for Plaintiff Brooks in the amount of $767.20.

24. Plaintiffs are awarded prejudgment interest, costs and their reasonable attorney's fees.

25. In the event the parties cannot agree on the amount of interest, costs and attorney's fees owed to Plaintiffs, Plaintiffs shall submit a petition for same within 30 days of the entry of this Order.

ENTERED this 20th day of July, 2023

Judge

PREPARED BY:
JULIE L. GALASSI, ESQ. (ARDC #06198035)
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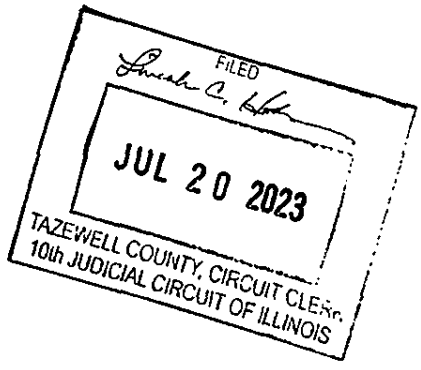
Case No. 2018-L-000120

The undersigned Deputy Circuit Clerk certifies that a copy of the Order on Motions for Summary Judgment was mailed to the following persons:

Julie Galassi -- JGalassi@hrbklaw.com

Katherine Swise -- katherine.swise@mhtlaw.com



Per order of the Court

Date: 07/20/2023

Circuit Clerk: _____

Deputy Circuit Clerk: LR

FILED
8/21/2023 3:34 PM
TAZEWELL COUNTY CIRCUIT CLERK
TENTH JUDICIAL CIRCUIT OF ILLINOIS
REVIEWED BY: LR

APPEAL TO THE APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT
FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
TAZEWELL COUNTY, ILLINOIS

CHRISTOPHER BITNER and JOHN BROOKS, individually and on behalf of all others similarly situated, Plaintiffs-Appellees, vs. CITY OF PEKIN, ILLINOIS, Defendant-Appellant.	Appeal from the Circuit Court of the Tenth Judicial Circuit Tazewell County Case No. 18-L-120 Honorable Paul E. Bauer Judge Presiding

NOTICE OF APPEAL

Defendant-Appellant, CITY OF PEKIN, ILLINOIS, pursuant to Illinois Supreme Court Rule 303, hereby appeals the Order entered in the above-captioned Tazewell County Circuit Court Case No. 18-L-120 on July 20, 2023.

The Circuit Court's Order granted Plaintiffs-Appellees' Motion for Summary Judgment, denied Defendant-Appellant's Motion for Summary Judgment, and entered judgment in favor of the Plaintiffs-Appellees. Defendant-Appellant prays the Court reverse the July 20, 2023 Order and remand this cause with instruction to deny the Plaintiffs-Appellees' Motion for Summary Judgment, grant the Defendant-Appellant's Motion for Summary Judgment, and enter judgment in favor of the Defendant-Appellant. Defendant-Appellant also seeks such other and further relief as the Court deems just and proper under the circumstances.

CITY OF PEKIN, ILLINOIS, Defendant-Appellant,

By: /s/Christopher H. Sokn
One of its Attorneys

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Philip M. O'Donnell (ARDC #6225759)
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CERTIFICATE OF FILING AND PROOF OF SERVICE

I, Christopher H. Sokn, an attorney, certify that on August 21, 2023, I caused to be filed the foregoing **NOTICE OF APPEAL** with the clerk of the court for the Tenth Judicial Circuit through the Odyssey eFileIL system.

I, Christopher H. Sokn, an attorney, further certify that on August 21, 2023, I caused the foregoing **NOTICE OF APPEAL** to be served on the parties through the Odyssey eFileIL system and/or to the primary email addresses to the persons named below:

Attorneys for Plaintiffs:
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Attorneys for Defendant:
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Peoria, IL 61602-1161

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.

Signed: /s/ Christopher H. Sokn
Christopher H. Sokn
Counsel for Appellant

2024 IL App (4th) 230718

NO. 4-23-0718

FILED
August 5, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CHRISTOPHER BITNER and JOHN BROOKS, Individually and on Behalf of All Others Similarly Situated,	)	Appeal from the Circuit Court of Tazewell County
Plaintiffs-Appellees,	)	No. 18L120
v.	)	
THE CITY OF PEKIN,	)	
Defendant-Appellant.	)	
	)	Honorable
	)	Paul E. Bauer,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Justices Harris and Zenoff concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiffs, Christopher Bitner and John Brooks, sued their former employer, defendant, the City of Pekin, seeking a declaratory judgment that defendant unlawfully withheld employment taxes and deducted sick and compensatory time from benefits they received pursuant to the Public Employee Disability Act (Disability Act) (5 ILCS 345/0.01 *et seq.* (West 2018)). The litigation culminated in cross-motions for summary judgment, and the circuit court entered summary judgment for plaintiffs.

¶ 2 On appeal, defendant provides four reasons why summary judgment for plaintiffs was improper: (1) the Disability Act does not prohibit employers from withholding employment taxes from employee benefits, (2) the five-year statute of limitations barred any claims predating November 2013, (3) as a union employee, Bitner was required to comply with the grievance

procedure included in the collective bargaining agreement (CBA), and (4) there was a genuine issue of material fact as to whether defendant made deductions from Bitner's sick and compensatory time. We reverse the circuit court's judgment and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On November 13, 2018, plaintiffs initiated the underlying action by filing a two-count complaint against defendant, alleging defendant violated the Illinois Wage Payment and Collection Act (Wage Act) (820 ILCS 115/1 *et seq.* (West 2018)) when it withheld employment taxes from Disability Act benefits and deducted accrued sick, compensatory, and vacation time from Bitner's benefits. Defendant moved to dismiss the complaint, arguing it failed to state a cause of action under the Wage Act. The circuit court granted the motion without prejudice and allowed plaintiffs to file an amended complaint. In July 2019, plaintiffs filed their first amended complaint. Defendant again filed a motion to dismiss, which the court granted.

¶ 5 On September 4, 2020, plaintiffs filed a second amended complaint, seeking a declaratory judgment. This is the subject of the instant appeal. Like the prior complaints, plaintiffs labeled their second amended complaint a class action. However, they never sought to certify the class. Plaintiffs again alleged defendants withheld employment taxes from Disability Act benefits and deducted sick, vacation, and compensatory time from Disability Act benefits. They requested the following relief:

> "Under the terms of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701 [(West 2018)], this Court is vested with the power to declare that Defendant unlawfully deducted accrued sick, compensatory or vacation time from the Benefits of Bitner and members of the Class after they suffered injuries in the line of duty.

> Under the terms of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, this Court is vested with the power to declare that while Brooks and members of the Class were eligible for Benefits, Defendant improperly withheld Employment taxes from their benefits."

Defendant admitted it withheld employment taxes from Disability Act benefits but denied it deducted sick, vacation, or compensatory time from plaintiffs' benefits. Defendant raised two affirmative defenses—failure to exhaust contractual remedies and the statute of limitations. Defendant requested judgment in its favor.

¶ 6 In April 2023, the litigation culminated in dueling motions for summary judgment. Plaintiffs' motion outlined the undisputed facts in the case, namely, both Bitner and Brooks suffered injuries in the line of duty while employed by defendant. Both plaintiffs were unable to work due to their line-of-duty injuries. Brooks missed 80 hours of work in 2016. Due to his injury in 2011, Bitner missed 112 hours of work in 2011, 40 hours in 2012, 40 hours in 2013, and 20.67 hours in 2017. Plaintiffs' motion stated it was an undisputed fact that defendant withheld employment taxes from Brooks's and Bitner's Disability Act benefits. It likewise claimed it was an undisputed fact that defendant deducted sick, vacation, and compensatory time from Bitner's Disability Act benefits. Plaintiffs attached several exhibits to their summary judgment motion, including affidavits from Bitner and Brooks recounting when they were injured, the time they were off work due to the injuries, and the amount of money owed to each plaintiff.

¶ 7 Defendant's motion for summary judgment did not outline any facts, but defendant attached to it plaintiffs' answers to interrogatories, which outlined the time each plaintiff missed work due to line-of-duty injuries. Defendant also attached a worksheet categorizing Bitner's time

off work. Defendant also filed a response to plaintiffs' motion for summary judgment, to which defendant attached an affidavit from John V. Dossey, Pekin's chief of police. Dossey recounted Bitner's time off work in 2011 and when he was cleared to return to work on light duty in May 2012. Dossey averred, "The City has no record that any employee or officer of the city notified or instructed Bitner that his time off for his duty related injury would be deducted from his accrued vacation, sick, or compensatory time." Defendant also submitted a spreadsheet showing how Brooks and Bitner's time off was entered into defendant's time reporting software, Workforce. Defendant submitted notes clearing Bitner to return to work in May 2012 and a July 2012 notification that Bitner's workers' compensation benefit would be ending.

¶ 8 The circuit court held a hearing on the parties' cross-motions for summary judgment on July 13, 2023. After hearing brief arguments, the court said to the attorneys, "So what I'd like each of you to do is, since this could possibly end up in the Appellate Court and you're more versed in it than I am, each of you prepare an order as to how you think I should rule." The court said it would "look into some more stuff and I'm going to read your orders and then I'll enter the order which I think is most appropriate."

¶ 9 The circuit court adopted wholesale plaintiffs' proposed order, granting them summary judgment on July 20, 2023. The order's factual findings quoted plaintiffs' summary judgment motion and plaintiffs' affidavits verbatim, except the order included this new fact: "Defendant concedes it should not have withheld employment taxes, sick, vacation or compensatory time from Plaintiffs' [Disability Act] benefits." The order found, "Federal law is clear that [Disability Act] benefits are not income subject to withholding." The order found, "[The Disability Act] requires an injured employee 'to be paid on the same basis' as he was paid before the injury." The order concluded, "The 'basis' is his gross pay" because "[c]ommon sense so

dictates." The order concluded Bitner was not required to file a grievance pursuant to the CBA because "[t]he issue at hand is not a dispute involving the meaning, interpretation, or application of the CBA," but "[i]t is a dispute as to the meaning, interpretation and application of [the Disability Act]—a state statute." The order deemed the underlying action a breach of contract claim subject to a 10-year statute of limitations and, therefore, concluded "[p]laintiffs' claims are not barred by the statute of limitations." The order granted plaintiffs' motion and denied defendant's motion. It entered judgment for Bitner in the amount of $3211.92 and for Brooks in the amount of $767.20. It awarded plaintiffs prejudgment interest, costs, and attorney fees.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Defendant challenges the circuit court's order as contrary to law, raising several reasons for reversing the judgment. We rephrase and restate the dispositive issues as follows: (1) whether the Disability Act prohibits employers from withholding employment taxes, (2) whether plaintiffs' claims are governed by a 5-year or 10-year statute of limitations, and (3) whether there exists a genuine issue of material fact to prohibit summary judgment. We address each issue in turn.

¶ 13 Section 2-1005(c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005(c) (West 2022)), governs summary judgments, providing the circuit court must enter judgment where "the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the nonmovant, reveal that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Busch v. Graphic Color Corp.*, 169 Ill. 2d 325, 333, 662 N.E.2d 397, 402 (1996) (citing Ill. Rev. Stat. 1989, ch. 110, ¶ 2-1005(c)). Our supreme court observed, "The purpose of summary judgment is to determine whether a question

of fact exists." *Busch*, 169 Ill. 2d at 333. Typically, "[w]hen parties file cross-motions for summary judgment," as is the case here, "they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28, 978 N.E.2d 1000. The parties' view of the facts, however, is not binding on the courts, meaning "the mere filing of cross-motions for summary judgment does not establish that there is no issue of material fact, nor does it obligate a court to render summary judgment." *Pielet*, 2012 IL 112064, ¶ 28. So, even when considering cross-motions for summary judgment, our *de novo* review still requires us to examine the record to determine if there exists a genuine issue of material fact. *Herman v. Power Maintenance & Constructors, LLC*, 388 Ill. App. 3d 352, 360, 903 N.E.2d 852, 859 (2009). "An issue is 'genuine' if the record contains evidence to support the position of the nonmoving party." *Herman*, 388 Ill. App. 3d at 360 (citing *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 670, 601 N.E.2d 1347, 1354 (1992)).

¶ 14 A. The Disability Act

¶ 15 Here, the parties primarily frame their dispute as a legal question of interpreting the Disability Act's language. In particular:

> "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 not longer than one year in relation to the same injury." (Emphasis added.) 5 ILCS 345/1(b) (West 2018).

The parties place the phrase "on the same basis as he was paid before the injury" at the center of this dispute. Specifically, does it prohibit an employer from withholding employment taxes? Plaintiffs answer yes, while defendant answers no.

¶ 16 Resolving this dispute requires statutory construction, which means "[t]he act or process of interpreting" or explaining the meaning of a statute. Black's Law Dictionary (11th ed. 2019). Because "[t]he interpretation of a statute is a matter of law, *** we review the trial court's decision *de novo*" (*Village of Chatham v. County of Sangamon*, 351 Ill. App. 3d 889, 894, 814 N.E.2d 216, 222 (2004)), meaning we owe no deference to the trial court's interpretation or decision—or in this case, the plaintiffs' proposed decision, which the trial judge signed.

¶ 17 "It is well established that [our] primary objective *** when construing the meaning of a statute is to ascertain and give effect to the legislature's intent." *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503-04, 732 N.E.2d 528, 535 (2000). We look first to the statute's language because it is "the most reliable indicator of the legislature's objectives in enacting a particular law." *Michigan Avenue National Bank*, 191 Ill. 2d at 504. Put differently, the specific words the legislature chose to use are the best evidence of legislative intent. See *Laborer's International Union of North America, Local 1280 v. Illinois State Labor Relations Board*, 154 Ill. App. 3d 1045, 1058, 507 N.E.2d 1200, 1209 (1987) ("[T]he specific words of the statute are the best indicators of the legislative intent behind the enactment."). When interpreting a statute, we "view all provisions of an enactment as a whole," taking care not to isolate words and phrases but reading them "in light of other relevant provisions of the statute." *Michigan Avenue National Bank*, 191 Ill. 2d at 504. We give the statute's words their plain, ordinary meanings, and

if the "language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction." *Michigan Avenue National Bank*, 191 Ill. 2d at 504.

¶ 18 The Disability Act "was enacted in 1973 and was intended to provide for a continuation of full pay for law enforcement officers, corrections officers, firefighters, and state employees who suffer disabling injuries in the line of duty." *Gibbs v. Madison County Sherriff's Department*, 326 Ill. App. 3d 473, 477, 760 N.E.2d 1049, 1052 (2001). It provides that when an eligible employee suffers a line-of-duty injury and cannot work,

> "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." (Emphasis added.) 5 ILCS 345/1(b) (West 2018).

Based on the statute's plain language and the context, we do not understand "on the same basis as he was paid before the injury" as a prohibition on withholding employment taxes from an eligible employee's pay. Such an understanding would introduce a concept otherwise absent from the Disability Act—taxes. To be sure, looking at the Disability Act's plain language and the statute as a whole, we see no express mention of employment taxes or tax withholdings. See *Michigan Avenue National Bank*, 191 Ill. 2d at 504. In section 1(b) particularly, after the Disability Act states an eligible employee must be paid "on the same basis as he was paid before the injury," it immediately lists improper deductions—sick leave credits, accrued vacation and compensatory time, or service credits. 5 ILCS 345/1(b) (West 2018). These categories are not taxes, nor are they comparable to employment taxes. They relate to categories under which an employee's work could be classified and compensated. Considering the Disability Act as a whole, as well as the specific

words used, we understand section 1(b)'s plain language to mean an eligible employee must be paid as if he was still working his normal hours, either part- or full-time, without having to use any sick leave credits, compensatory or vacation time, or service credits. See *Laborer's International Union of North America, Local 1280*, 154 Ill. App. 3d at 1058 (stating the statute's specific words best indicate legislative intent); *Michigan Avenue National Bank*, 191 Ill. 2d at 504 (explaining we look at a statute as a whole).

¶ 19 Drawing on various sections in Title 26 of the Code of Federal Regulations (26 C.F.R. § 1.0-1 *et seq.* (2022)) and published guidance from the Internal Revenue Service, plaintiffs argue "on the same basis" means an "employee's gross pay or 100% of the normal salary." We disagree. This interpretation requires us to isolate one phrase from the Disability Act, "on the same basis," then go outside the Disability Act's text to interpret the phrase's meaning, then return to the Disability Act to understand the statute on the whole, and finally harmonize it with federal regulations. This approach borders absurdity. Plus, it contradicts well-established statutory construction principles. See *Michigan Avenue National Bank*, 191 Ill. 2d at 504 (stating we will not isolate words and phrases but will consider the whole statute). The Disability Act's plain language is unambiguous. The meaning is clear. Accordingly, we need not look elsewhere to understand the legislature's intent. The Disability Act contains no mention of taxes or anything comparable to taxes. The Disability Act does not prohibit an employer from withholding employment taxes from an employee's benefits. Other statutes or regulations may prohibit tax withholding from disability benefits. Indeed, plaintiffs' briefing makes a good argument for that conclusion. But they did not seek relief nor judgment under those statutes or regulations. This narrow declaratory judgment case is about interpreting the Disability Act, so plaintiffs' ambitious argument is misplaced.

¶ 20 Because we conclude the Disability Act does not prohibit an employer from withholding employment taxes from an eligible employee's benefits, the circuit court erred in granting plaintiffs summary judgment on their claims relating solely to taxes. Bitner's claims involving his sick, vacation, and compensatory time deductions merit further analysis because the Disability Act undoubtedly prohibits deductions from such benefits.

¶ 21 B. The Statute of Limitations

¶ 22 The parties next spar over the applicable statute of limitations. Defendant argues the five-year statute of limitations applies and bars Bitner's claims dated before November 2013. Plaintiffs maintain a 10-year statute of limitations applies and does not bar any claims. We agree with defendant.

¶ 23 The Disability Act does not contain a statute-of-limitations provision. Section 13-205 of the Code provides "all civil actions not otherwise provided for[ ] shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (West 2018). By contrast, section 13-206 of the Code provides for a 10-year statute of limitations cause of actions on written contracts, like CBAs. See 735 ILCS 5/13-206 (West 2018).

¶ 24 Plaintiffs maintain they brought a breach of contract claim against defendant. They reason that because the CBA required defendant to "comply with the [Disability Act] regarding on-duty claims," their declaratory judgment action involving the Disability Act's meaning amounts to a breach of contract action. Yet plaintiffs also argue they need not adhere to the contract by filing a grievance under the CBA before seeking relief in the circuit court. This dissonance is deafening. On one hand plaintiffs emphasize the importance of the CBA, and on the other they minimize the CBA. Plaintiffs cannot prevail on both claims.

¶ 25 The second amended complaint does not reference the CBA. This case centers on the Disability Act's meaning, not the CBA. The relief plaintiffs sought—declaratory judgment on whether the Disability Act prohibits tax withholding—depends entirely on the Disability Act. We need not interpret the CBA. This is why we agree with plaintiffs that Bitner was not required to file a grievance pursuant to the CBA. See *Kostecki v. Dominick's Finer Foods, Inc., of Illinois*, 361 Ill. App. 3d 362, 369-70, 836 N.E.2d 837, 843 (2005) (finding a court must determine whether the claim is governed by the contract to ascertain whether a dispute is subject to an applicable CBA). But, more importantly, plaintiff Brooks was not a union employee and not subject to the CBA. He could not bring a breach of contract claim via the CBA. We cannot construe plaintiffs' pleading as a breach of contract claim. The only claim universal to both plaintiffs and the hopeful future class is the declaratory judgment claim relating to the Disability Act. For these reasons, we conclude plaintiffs' second amended complaint seeking a declaratory judgment on whether the Disability Act prohibited defendant from withholding employment taxes from benefits and whether defendant unlawfully deducted from Bitner's accrued sick, compensatory, or vacation time falls under section 13-205 of the Code's catchall five-year statute of limitations for civil actions that do not have an otherwise applicable limitations period. See 735 ILCS 5/13-205 (West 2018).

¶ 26 C. Genuine Issue of Material Fact

¶ 27 Finally, defendant contends genuine issues of material fact precluded summary judgment on the remaining claim. Specifically, defendant contests plaintiffs' assertion it unlawfully deducted Bitner's sick, compensatory, or vacation time from his Disability Act benefits. Again, we agree.

¶ 28 Summary judgment cannot be entered if there remains a genuine issue of material fact in the case. 735 ILCS 5/2-1005(c) (West 2022); *Busch*, 169 Ill. 2d at 333. Recall, "[a]n issue is 'genuine' if the record contains evidence to support the position of the nonmoving party." *Herman*, 388 Ill. App. 3d at 360. Bitner's affidavit claimed "[d]efendant also required [him] to use [his] sick, vacation and compensatory time" for work hours he missed due to his 2011 injury. Bitner averred, "Defendant's mandated use of vacation and compensatory time totaled $2,160.38." Defendant disputed these claims and used Dossey's affidavit to refute them. Dossey noted Bitner was released to return to work on light duty in May 2012. He further noted, "Officers are not required to use [on-the-job injury] or any accrued leave time for days they report to work for light duty. Light duty days are entered in Workforce and paid as regular Hourly time." Finally, Dossey's averred defendant had "no record that any employee or officer of the City notified or instructed Bitner that his time off for his duty related injury would be deducted from his accrued vacation, sick or compensatory time." Perhaps there is no better example of a contested fact issue than dueling affidavits.

¶ 29 Because the record contains evidence to support defendant's position, there is a genuine issue of material fact. See *Herman*, 388 Ill. App. 3d at 360. Consequently, we conclude the circuit court wrongly entered summary judgment for plaintiffs. See *Busch*, 169 Ill. 2d at 333.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we reverse and remand this matter to the circuit court for further proceedings.

¶ 32 Reversed; cause remanded.

Bitner v. City of Pekin, 2024 IL App (4th) 230718

Decision Under Review:	Appeal from the Circuit Court of Tazewell County, No. 18-L-120; the Hon. Paul E. Bauer, Judge, presiding.
Attorneys for Appellant:	Christopher H. Sokn, of Kingery Durree Wakeman & O'Donnell, Associates, of Peoria, for appellant.
Attorneys for Appellee:	Julie L. Galassi and Siobhan L. Smith, of Hasselberg, Rock, Bell & Kuppler, LLP, of Peoria, for appellees.

SUPREME COURT OF ILLINOIS
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(312) 793-1332
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November 27, 2024

In re: Christopher Bitner et al., etc., Appellants, v. The City of Pekin, Appellee. Appeal, Appellate Court, Fourth District.
131039

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause. We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed with the Clerk's office.

With respect to oral argument, a case is made ready upon the filing of the appellant's reply brief or, if cross-relief is requested, upon the filing of the appellee's cross-reply brief. Any motion to reschedule oral argument shall be filed within five days after the case has been set for oral argument. Motions to reschedule oral argument are not favored and will be allowed only in compelling circumstances. The Supreme Court hears arguments beginning the second Monday in September, November, January, March, and May. Please see Supreme Court Rule 352 regarding oral argument.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

(5 ILCS 345/1) (from Ch. 70, par. 91)

Sec. 1. Disability benefit.

(a) For the purposes of this Section, "eligible employee" means any part-time or full-time State correctional officer or any other full or part-time employee of the Department of Corrections, any full or part-time employee of the Prisoner Review Board, any full or part-time employee of the Department of Human Services working within a penal institution or a State mental health or developmental disabilities facility operated by the Department of Human Services, and any full-time law enforcement officer or full-time firefighter, including a full-time paramedic or a firefighter who performs paramedic duties, who is employed by the State of Illinois, any unit of local government (including any home rule unit), any State supported college or university, or any other public entity granted the power to employ persons for such purposes by law.

(b) 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 not longer than one year in relation to the same injury, except as otherwise provided under subsection (b-5). However, no injury to an employee of the Department of Corrections or the Prisoner Review Board working within a penal institution or an employee of the Department of Human Services working within a departmental mental health or developmental disabilities facility shall qualify the employee for benefits under this Section unless the injury is the direct or indirect result of violence by inmates of the penal institution or residents of the mental health or developmental disabilities facility.

(b-5) Upon the occurrence of circumstances, directly or indirectly attributable to COVID-19, occurring on or after March 9, 2020 and on or before June 30, 2021 (including the period between December 31, 2020 and the effective date of this amendatory Act of the 101st General Assembly) which would hinder the physical recovery from an injury of an eligible employee within the one-year period as required under subsection (b), the eligible employee shall be entitled to an extension of no longer than 60 days by which he or she shall continue to be paid by the employing public entity on the same basis as he or she was paid before the injury. The employing public entity may require proof of the circumstances hindering an eligible employee's physical recovery before granting the extension provided under this subsection (b-5).

(c) At any time during the period for which continuing compensation is required by this Act, the employing public entity may order at the expense of that entity physical or medical examinations of the injured person to determine the degree of disability.

(d) During this period of disability, the injured person shall not be employed in any other manner, with or without monetary compensation. Any person who is employed in violation of this paragraph forfeits the continuing compensation provided by this Act from the time such employment begins. Any salary compensation due the injured person from workers' compensation or any salary due him from any type of insurance which may be carried by the employing public entity shall revert to that entity during the time for which continuing compensation is paid to him under this Act. Any person with a disability receiving compensation

under the provisions of this Act shall not be entitled to any benefits for which he would qualify because of his disability under the provisions of the Illinois Pension Code.

(e) Any employee of the State of Illinois, as defined in Section 14-103.05 of the Illinois Pension Code, who becomes permanently unable to perform the duties of such employment due to an injury received in the active performance of his duties as a State employee as a result of a willful act of violence by another employee of the State of Illinois, as so defined, committed during such other employee's course of employment and after January 1, 1988, shall be eligible for benefits pursuant to the provisions of this Section. For purposes of this Section, permanent disability is defined as a diagnosis or prognosis of an inability to return to current job duties by a physician licensed to practice medicine in all of its branches.

(f) The compensation and other benefits provided to part-time employees covered by this Section shall be calculated based on the percentage of time the part-time employee was scheduled to work pursuant to his or her status as a part-time employee.

(g) Pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution, this Act specifically denies and limits the exercise by home rule units of any power which is inconsistent herewith, and all existing laws and ordinances which are inconsistent herewith are hereby superseded. This Act does not preempt the concurrent exercise by home rule units of powers consistent herewith.

This Act does not apply to any home rule unit with a population of over 1,000,000.

(h) In those cases where the injury to a State employee for which a benefit is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some person other than the State employer, all of the rights and privileges, including the right to notice of suit brought against such other person and the right to commence or join in such suit, as given the employer, together with the conditions or obligations imposed under paragraph (b) of Section 5 of the Workers' Compensation Act, are also given and granted to the State, to the end that, with respect to State employees only, the State may be paid or reimbursed for the amount of benefit paid or to be paid by the State to the injured employee or his or her personal representative out of any judgment, settlement, or payment for such injury obtained by such injured employee or his or her personal representative from such other person by virtue of the injury.

(Source: P.A. 100-1143, eff. 1-1-19; 101-651, eff. 8-7-20; 101-653, eff. 2-28-21.)

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
TAZEWELL COUNTY, ILLINOIS

Christopher Bitner
Plaintiff/Petitioner

Reviewing Court No: 4-23-0718
Circuit Court No: 2018-L-000120
Trial Judge: Paul Bauer

v.

City of Pekin, Illinois
Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
TAZEWELL COUNTY, ILLINOIS

Christopher Bitner
Plaintiff/Petitioner

v.

City of Pekin, Illinois
Defendant/Respondent

Reviewing Court No:	4-23-0718
Circuit Court No:	2018-L-000120
Trial Judge:	Paul Bauer

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CERTIFICATE OF FILING AND PROOF OF SERVICE

I, Christopher H. Sokn, an attorney, certify that on February 14, 2025, I caused to be filed the foregoing **BRIEF AND SUPPLEMENTAL APPENDIX OF DEFENDANT-APPELLEE** with the clerk of the court for the Supreme Court through the Odyssey eFileIL system.

I, Christopher H. Sokn, an attorney, further certify that on February 14, 2025, I caused the foregoing **BRIEF AND SUPPLEMENTAL APPENDIX OF DEFENDANT-APPELLEE** to be served on the following parties through the Odyssey eFileIL system and/or to the primary email addresses to the persons named below:

Julie L. Galassi
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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.

Signed: /s/ Christopher H. Sokn
Christopher H. Sokn
Counsel for Defendant-Appellee