

## **ISBA Workers' Compensation Law Ed Program Workers' Compensation Update – Fall 2017**

Four Points by Sheraton  
319 Fountains Parkway  
Fairview Heights, Illinois

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### **New Developments in Public Safety Officer Disability Law**

Presented by:

Thomas W. Duda  
Law Offices of Thomas W. Duda  
330 West Colfax Street  
Palatine, Illinois 60067  
Phone (847) 577-2470  
Facsimile (847) 577-2549

## **Public Safety Officer Injuries at Work Sources of Benefits**

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- Common law – Tort – Jury Trial – Negligence – Comparative Negligence.
- 1911 – Creation of workers' compensation no fault system.
- Benefits certain but capped. Summary procedure ????
- Illinois Workers' Compensation Act – 820 ILCS 305/1 *et seq.*
  - Specific Accident – unforeseen event that occurs on a given date, time and place.
  - Arising out of Employment – risk connected to employment BUT not negligent.
  - In the Course of Employment – place and activity foreseeable or specifically ordered.

## Workers' Compensation

- Illinois Workers' Occupational Diseases Act – 820 ILCS 310/1 *et seq.*
  - Disease or impairment aggravated by an exposure of the employment.
  - Benefits paid on “no fault” basis.
  - All Illinois workers paid temporary total disability benefits (“TTD”) including firefighters, police officers and correctional officers.

## PEDA – Public Employee Disability Act 5 ILCS 345/1

- Bonus paid to firefighters, police officers and correctional officers.
- Recognition of the dangers of the jobs.
- Amount greater than TTD.
  - 100% rather than 2/3ds.
  - IRS determined not income and thus no income tax; correspondence and Revenue Rulings attached.



- Not all employees covered by PEDA – Fire, Police and Correctional Officers.
- Paid 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.
- Unused PEDA from a previous injury can be used to extend the 12 month period from a subsequent injury. *Bahr v. Bartlett Fire Protection District*, 383 Ill. App. 3d 68, 889 N.E.2d 760 (1<sup>ST</sup> Dist. 2008), *appeal denied* 229 Ill. 2d 617 (2008).

- 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.
- The above language is not directly applicable to workers' compensation TTD benefits. Temporary partial disability benefits are computed at 2/3 times the pay differential pre and post injury while recuperating.
- Light duty extends the 12 month period indefinitely. *Albee v. City of Bloomington*, 365 Ill. App. 3d 526, 849 N.E.2d 1094 (4th Dist. 2006).
- Application of collateral estoppel could provide a course of study on its own, see *Mabie v. Village of Schaumburg*, 364 Ill. App. 3d 756, 758-759, 847 N.E.2d 796 (1st Dist. 2006).
- PEDA right is independent of the workers' compensation procedure and should be pursued independently.

## Line-of-Duty/Occupational Disease Disability Pension Benefits

- Police (municipalities 500,000 and under) line-of-duty disability benefits:
  - 40 ILCS 5/3-114.1(a) – if “... as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from police service, ... shall be entitled to 65% of the salary attached to the rank on the police force held ... at the date of suspension of duty ... .”
  - 40 ILCS 5/3-114.3 – police officer who suffers a heart attack or stroke as a result of the performance ... of police duty shall be considered as having been injured in the performance of an act of duty ... .”

- 40 ILCS 5/3-114.6 – Occupational disease disability pension – applies only to police officers who are employed by a municipality with a combined police and fire department. Very limited.
- Firefighter line-of-duty disability:
  - 40 ILCS 5/4-110 – If a firefighter, as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty or from the cumulative effects of acts of duty, is found, pursuant to Section 4-112, to be physically or mentally permanently disabled for service in the fire department, so as to render necessary his or her being placed on disability pension, ... entitled to a disability pension equal to ... 65% of the monthly salary attached to the rank ... at the date he or she is removed from the municipality’s fire department payroll ... .”
- What is the date that a police officer or firefighter is considered “removed from the municipality’s ... department payroll ... .”? Is the payment of temporary total disability being on the payroll?



## “Act of Duty” – Term of Art

- “Act of Duty” is different for police and fire.
  - The definition of “Act of Duty” for downstate police is borrowed from 40 ILCS 5/5-113. It is “Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, ... .” *Jensen v. East Dundee Fire Protection District*, 362 Ill. App. 3d 197, 839 N.E.2d 670 (2<sup>ND</sup> Dist. 2005). Compare *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595, 816 N.E.2d 389 (2<sup>ND</sup> Dist. 2004). Appellate Court reversed the decision of a local police Pension Board denying benefits to a police officer assigned to the department’s bicycle patrol unit. While pedaling his bicycle on June 17, 2000, Officer Scott Alm experienced significant pain in his right knee and noticed swelling; he did not fall or have any other sort of accident. Pension Board line-of-duty benefit denial reversed. Compare *White v. City of Aurora*, 323 Ill. App. 3d 733, 735, 753 N.E.2d 1244 (2<sup>ND</sup> Dist. 2001). Pension Board denial affirmed for police officer who fell in heavy snow condition writing multiple parking tickets.

- The definition of “Act of Duty” for firefighters is found at 40 ILCS 5/6-110. For firefighters an act of duty is “Any act imposed on an active fireman by the ordinances of a city, or by the rules or regulations of its fire department, or any act performed by an active fireman while on duty, having for its direct purpose the saving of the life or property of another person.” One need only meet one of these three (3) standards to establish an act of duty. *O’Callaghan v. Retirement Board of Firemen’s Annuity and Benefit Fund of Chicago*, 302 Ill. App. 3d 579, 706 N.E.2d 979 (1<sup>ST</sup> Dist. 1998).
- For both police and fire the term “Act of Duty” is not the same as the term “arising out of and in the course of employment”.
  - Need to reconcile the holding in *Demski v. Mundelein Police Pension Board*, 358 Ill. App. 3d 499, 831 N.E.2d 704 (2<sup>ND</sup> Dist. 2005) where Appellate Court said the standards of proof were different and collateral estoppel did not apply. Compare *Village of Alsip v. Portincaso*, 2017 IL App (1st) 153167, ¶¶ 27-35, 78 N.E.3d 611 (1<sup>ST</sup> Dist. 2017) specifically rejecting, but not overruling, *Demski*.

## Rationalizing Police “Act of Duty” Cases and Status at Application

- For both police and fire in order to be eligible for line-of-duty disability benefits, application must be made **BEFORE** the employee is terminated. *Eschbach v. McHenry Police Pension Board*, 2012 IL App (2d) 111179, ¶¶ 12-13, 977 N.E.2d 308 (2<sup>ND</sup> Dist. 2012); *Stec v. Oak Park Police Pension Board*, 204 Ill. App. 3d 556, 561 N.E.2d 1234 (1<sup>ST</sup> Dist. 1990).
- Police – “Act of Duty” cases:
  - *Fedorski v. Board of Trustees, Aurora Police Pension Fund*, 375 Ill. App. 3d 371, 873 N.E.2d 15 (2<sup>ND</sup> Dist. 2007). Appellate Court affirmed denial of line-of-duty disability benefits to an Aurora Police Officer who was transporting photographs and other evidence from a crime scene with coworkers to station for processing with an intermediate stop. This was not an “act of duty” because the Appellate Court emphasized that the plaintiff was sitting in the back seat of a vehicle; the general public is exposed to the hazards of motor vehicle accident.

- *Jones v. Board of Trustees, Police Pension Fund of City of Bloomington*, 384 Ill. App. 3d 1064, 894 N.E.2d 962 (4<sup>TH</sup> Dist. 2008). Pension Board denied line-of-duty disability benefits to a Patrol Officer involved in an automobile accident while “patrolling”. Board held Officer Jones was engaged in an act routinely pursued by the general public. Appellate Court reversed because patrolling in an automobile is the essence of the act of duty he was hired to perform. Court cites *Johnson v. Retirement Board of the Policemen’s Annuity and Benefit Fund*, 114 Ill. 2d 518, 521, 502 N.E.2d 718 (1986). Police Officer engaged in an act of duty escorting a pedestrian across Michigan Avenue in Chicago, Illinois.
- *Summers v. Retirement Board, Policemen’s Annuity and Benefit Fund*, 2013 IL App (1st) 121345, ¶¶ 25-40, 989 N.E.2d 639 (1<sup>ST</sup> Dist. 2013). Chicago Police Officer promoted to position where his job responsibilities were loading and unloading a box truck and making deliveries of equipment to police facilities. Police Officer injured doing the specific duties of his assigned position. Appellate Court affirmed denial of line-of-duty disability benefits because they did not involve the special risk of police work.



## Public Safety Employee Benefits Act 820 ILCS 320/1 *et seq.*

A municipality employing Public Safety Officers must continue paying health insurance premiums on basic group insurance coverage for life of the injured employee, his/her spouse and minor children for certain injuries:

- Catastrophic injury – the term catastrophic injury is a term of art which is synonymous with an injury resulting in a line-of-duty disability. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 789 N.E.2d 1211 (2003).
- PSEBA benefits payable upon the determination of line-of-duty permanent disability by Pension Board. *Nowak v. City of County Club Hills*, 2011 IL 111838, 958 N.E.2d 1021 (2011). But see *Phalin v. McHenry County Sheriff's Department*, 381 Ill. App. 3d 185, 866 N.E.2d 448 (2<sup>ND</sup> Dist. 2008) *appeal denied* 229 Ill. 2d 657.

## A catastrophic injury has to occur under the following circumstances:

- As the result of the Officer's response to fresh pursuit.
- The Officer or Firefighters' response to what is reasonably believed to be an emergency.
- An unlawful act perpetrated by another.
- During the investigation of a criminal act.
- *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, 969 N.E.2d 359 (2012). Injury during a training exercise can be perceived as a response to an emergency.

Health insurance premium payments are payable for life,  
but do not include premiums for supplemental coverage.  
*Pyle v. City of Granite City*, 2012 IL App (5th) 110472 (5<sup>TH</sup> Dist. 2012)

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- Employer responsible for basic Medicare premium payments but not supplemental insurance.
- *Pyle, supra*, has been misinterpreted as terminating employer responsibility at Medicare age.

## Determination of Eligibility

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- Home rule units – municipality may adopt ordinance establishing an administrative procedure.
  - Subject to obligation for collective bargaining; establish hearing procedure under Collective Bargaining Agreement ending in arbitration by an impartial third-party.
- Non-home rule units declaratory judgment in Circuit Court. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, 969 N.E.2d 359 (2012) but see *Englum v. City of Charleston*, 2017 IL App (4th) 160747, \_\_\_ N.E.3d \_\_\_ (4<sup>TH</sup> Dist. 2017) – distinguishes *Gaffney* and holds that non-home rule municipality can establish an administrative procedure. Appellate Court does not answer the question, what is there to litigate?



- The Illinois Supreme Court held that the City's obligation to pay health insurance premiums attached on the date of the Pension Board's determination. *Nowak v. City of Country Club Hills*, 2011 IL 111838, 958 N.E.2d 1021 (2011).
- Following up *Nowak*, the Illinois Supreme Court has also stated that an award of line-of-duty disability pension benefits establishes that the firefighter suffered a catastrophic injury as a matter of law. *Village of Vernon Hills v. Heelan*, 2015 IL 118170, 39 N.E.3d 937 (2015).
- *Heelan* cited above stands for the proposition that once the Pension Board rules, there are no further issues to be litigated; the firefighter/police officer has established a catastrophic injury as a matter of law. The Court stated this:

“The Village alternatively contends that the instant facts are distinguishable from those in *Krobe* and its progeny. The Village observes that the above-discussed case law merely equated the definition of a catastrophic injury with the definition of a line-of-duty disability pension. The Village notes that this court in *Krobe* never discussed the nature, extent, or cause of *Krobe*'s injuries. Further, this court did not address whether the city was entitled to litigate those issues in that declaratory judgment action. According to the Village, *Krobe* and its progeny did not hold that the Village was barred from taking discovery or presenting evidence on the issue. We disagree.

The appellate court correctly viewed this court's precedent as controlling. 2014 IL App (2d) 130823, ¶ 26. Pursuant to *Krohe*, a pension board's award of a line-of-duty disability pension establishes that the public safety employee suffered a catastrophic injury as required by section 10(a) of the Act. Because the legislature intended an injured public safety employee to be eligible for benefits under section 10(a) of the Act whenever his or her injuries were sufficient to qualify for a line-of-duty disability pension, the pension board's award establishes as a matter of law that the public safety employee suffered a catastrophic injury. See *Richter v. Vill. of Oak Brook*, 2011 IL App (2d) 100114, ¶ 16, 958 N.E.2d 700, 354 Ill. Dec. 768. In the case at bar, the appellate court concluded: "Accordingly, HN9 where it is uncontroverted that a line-of-duty disability pension has been awarded, section 10(a) is satisfied, and there is no need to engage in discovery or present evidence regarding the claimant's injury." 2014 IL App (2d) 130823, ¶ 26. We agree and so hold."

Coverage includes a reasonable belief that an event is an emergency; it need not be an actual emergency.

- *Gaffney, supra*.
- *Springborn v. Village of Sugar Grove*, 2013 IL App (2d) 120861, 997 N.E.2d 643 (2<sup>ND</sup> Dist. 2013).
- *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, 8 N.E.3d 1083 (1<sup>ST</sup> Dist. 2014).
- *Vaughn v. City of Carbondale*, 2016 IL 119181, 50 N.E.3d 643 (2016) *reversing* 2015 IL App (5th) 140122, 29 N.E.3d 668 (5<sup>TH</sup> Dist. 2015).
  - Coverage does not include occupational diseases. *Bremer v. City of Rockford*, 2016 IL 119889, *reversing* 2015 IL App (2d) 130920, 49 N.E.3d 1 (2<sup>ND</sup> Dist. 2015).



## An emergency is not limited to dire circumstances.

- “Emergency” means an event in which there is an urgent need for assistance or relief; an unforeseen combination of circumstances that calls for immediate action. It can include a sudden condition or state of affairs calling for immediate action.
- See Webster’s Third New International Dictionary.

## *Village of Vernon Hills v. Heelan*, 2015 IL 118170, 30 N.E.3d 937 (2015)

- Police Officer slipped and fell on ice while responding to an emergency call. Career-ending injury. April, 2010, Heelan underwent a right hip replacement. Dr. Jay Levin opined that the fall aggravated a preexisting condition in the injured hip and the altered gait aggravated a preexisting condition in the opposite hip.
- Pension Board awarded a line-of-duty disability. Village of Vernon Hills attended hearings but did not seek to intervene.
- Officer Heelan demanded in writing that the Village of Vernon Hills continue paying health insurance premiums for himself and his dependents.
- On 9/22/2011 the Village filed a Complaint for Declaratory Judgment that would hold that it was not responsible for paying health insurance premiums for Heelan and his family.

- Village asks Supreme Court to revisit *Krobe v. City of Bloomington*, 204 Ill. 2d 392, 400, 789 N.E.2d 1211 (2003). Catastrophic injury is synonymous with an injury resulting in a line-of-duty disability pension.
- Village challenged that Officer Heelan's back injury and total hip replacement ending his career was "a catastrophic injury".
- Village stipulated that the injury satisfied 820 ILCS 320/10(b); the injury by agreement was held to have resulted from Heelan's response to what he reasonably believed to be an emergency.
- **Receipt of a line-of-duty disability pension automatically entitles an injured party to PSEBA benefits!**
- **Pension Board's award establishes as a matter of law that the public safety employee suffered a catastrophic injury!**
- **Granting of benefits under PSEBA constitutes a legislative rather than adjudicative decision. The difference is critical! 2015 IL 118170, ¶ 34.**

## Intervention

- *Village of Stickney v. Board of Trustees of Police Pension Fund*, 347 Ill. App. 3d 845, 807 N.E. 2d 1078, (1<sup>ST</sup> Dist. 2004) – no statutory authority to permit a municipality to intervene in a line-of-duty disability case. However, Appellate Court finds inherent discretion.
- *Village of Vernon Hills v. Heelan*, 2015 IL 118170, 30 N.E.3d 937 (2015) – determination of Pension Board binding on the municipality because it did not seek to intervene. Intervention becomes a matter of course.
- *Village of Alsip v. Portincaso*, 2017 IL App (1st) 153167, 78 N.E.3d 611 (1<sup>ST</sup> Dist. 2017) – Appellate Court held that the Pension Board abused its discretion not allowing the Village of Alsip to intervene. However, primary focus of the case was on the doctrine of collateral estoppel.
- The issue that remains open is, if the Pension Board denies a formal Motion to Intervene, does that relieve the municipality of the legal consequence of *Heelan*?



*Bremer v. City of Rockford*, 2016 IL 119889 (2016)

- William Bremer was a Rockford Firefighter between 1976 and 2004. He was granted an occupational disease disability pension under 40 ILCS 5/4-110.1 as a result of heart disease – cardiomyopathy.
- Primary issue was whether plaintiff's award of an occupational disease disability pension under § 4-110.1 of the Pension Code establishes that he suffered a "catastrophic injury". The Court held that it **DID NOT**.

Thomas W. Duda, Esq.  
Joseph V. Prieto, Esq.  
  
**Of Counsel:**  
John B. Schwartz & Associates

**Paralegal:**  
Christina Kately

**Administrative Assistant:**  
Michael "Rick" Merrill

**LAW OFFICES**  
**of**  
**THOMAS W. DUDA**

**330 West Colfax Street**  
**Palatine, Illinois 60067**  
**(847) 577-2470**  
**Facsimile (847) 577-2549**  
**christina@zipduda.com**

**Southern Illinois Office:**  
929 South 2<sup>nd</sup> Street  
Springfield, Illinois 62704

**Available by appointment at:**  
55 West Monroe Street  
Suite 3600  
Chicago, Illinois 60603

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**Workers' Compensation Update – Fall 2017**

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October 9, 2017

**New Developments in Public Safety Officer Disability Law**

**I. Statutes Relating to Injuries of Public Safety Officers.**

**A. Illinois Workers' Compensation Act – 820 ILCS 305/1 *et seq.* / Illinois Workers' Occupational Diseases Act – 820 ILCS 310/1 *et seq.***

1. Workers' compensation is a no fault substitute for damages in a common law tort lawsuit. Coverage applies to injuries/diseases that arise out of and in the course of employment.
2. Accident v. Disease.
  - a. An accident is an unforeseen event that occurs at a specific date, time and place.
  - b. A disease refers to an illness that gradually develops due to an occupational exposure which causes or aggravates a preexisting condition.
3. Question has arisen relating to collateral estoppel relationship with other injury statutes.
  - a. *Demski v. Mundelein Police Pension Board*, 358 Ill. App. 3d 499, 831 N.E.2d 704 (2<sup>ND</sup> Dist. 2005).



- b. *City of Chicago v. IWCC*, 2013 IL App (1st) 121507WC, 4 N.E.3d 158 (1<sup>ST</sup> Dist. 2014).
- c. *Village of Alsip v. Portincaso*, 2017 IL App (1st) 153167, ¶¶ 26-35, 78 N.E.3d 611 (1<sup>ST</sup> Dist. 2017).

## **II. Public Employee Disability Act (“PEDA”) – 5 ILCS 345/1 *et seq.***

- A. Public Safety Officers by statute receive a “bonus”; they receive 100% of gross average weekly wage for 12 months.
  - 1. Special benefit for firefighters, police officers and correctional officers.
  - 2. Recognition of the special dangers faced by Public Safety Officers.
  - 3. PEDA covers any injury in the line-of-duty “... which causes him to be unable to perform his duties, ...”
  - 4. PEDA determination is **NOT** contingent on approval by workers’ compensation carrier.
  - 5. PEDA is enforceable by any judicial or quasi-judicial proceeding including a Collective Bargaining Agreement grievance.
- B. All employees are covered by workers’ compensation; only firefighters, police officers and correctional officers are covered by PEDA.
- C. Limited to twelve (12) months – not calendar months. Lost time can be intermittent. *Albee v. City of Bloomington*, 365 Ill. App. 3d 526, 849 N.E.2d 1094 (4<sup>TH</sup> Dist. 2006).
- D. PEDA benefits cannot be paid to an eligible employee if he/she is employed in “any other manner, with or without monetary compensation.” 5 ILCS 345/1(d).
- E. The Public Safety Officer receives all benefits as if he/she were fully employed, including health insurance. 5 ILCS 345/1(b).

## **III. Illinois Pension Code – Line of Duty/Occupational Disease Disability Pensions.**

- A. Line-of-duty disability benefit is 65% of the salary attached to rank when the firefighter/police officer left the payroll.
  - 1. Paid for physical or mental illness, accident, or the cumulative effects of acts of duty performed. 40 ILCS 5/3-114.1; 40 ILCS 5/4-110.

2. “Act of duty” is a term of art – it is not identical to “arising out of and in the course of employment”.
  - a. Police – act of duty must be an act that involves a special risk of the occupation of police officer.
  - b. “Act of duty” for firefighters is a different definition. Any act imposed on an active firefighter by the ordinances of a City, or by the rules or regulations of its fire department, or any act performed by an active firefighter while on duty having for its direct purpose the saving of the life or property of another person. *Jensen v. Dundee Fire Protection District Firefighters’ Pension Fund*, 362 Ill. App. 3d 197, 202-205, 839 N.E.2d 670 (2<sup>ND</sup> Dist. 2005).
  
- B. The term “act of duty” is not equal to the term of art “arising out of and in the course of employment”. The standards are different under workers’ compensation, for firefighters, and for police officers.
  
- C. Application for any kind of disability benefit must be made while the firefighter/police officer is still employed by the municipality. *Eschbach v. McHenry Police Pension Board*, 2012 IL App (2d) 111179, ¶¶ 12-13, 977 N.E.2d 308 (2<sup>ND</sup> Dist. 2012); *Di Falco v. Board of Trustees of Firemen’s Pension Fund of Wood Dale FPD*, 122 Ill. 2d 22, 521 N.E.2d 923 (1988); *Stec v. Oak Park Police Pension Board*, 204 Ill. App. 3d 556, 561 N.E.2d 1234 (1<sup>ST</sup> Dist. 1990); *Village of Alsip v. Portincaso*, 2017 IL App (1st) 153167, 78 N.E.3d 611 (1<sup>ST</sup> Dist. 2017).
  
- D. Intervention – employer seeks to become a party in line-of-duty disability claim.
  1. *Village of Vernon Hills v. Heelan*, 2015 IL 118170, 39 N.E.3d 937 (2015) – findings and conclusions of Pension Board are legislatively conclusive absent a municipality’s attempt to intervene.
  2. *Village of Alsip v. Portincaso*, 2017 IL App (1st) 153167, 78 N.E.3d 611 (1<sup>ST</sup> Dist. 2017).
  3. *Village of Stickney v. Board of Trustees of Police Pension Fund*, 347 Ill. App. 3d 845, 807 N.E. 2d 1078, (1<sup>ST</sup> Dist. 2004).
  4. *Karfs v. City of Belleville*, 329 Ill. App. 3d 1198, 1204, 770 N.E.2d 256 (5<sup>TH</sup> Dist. 2002).
  5. *Williams v. Board of Trustees of the Morton Grove Firefighters’ Pension Fund*, 398 Ill. App. 3d 680, 924 N.E.2d 38 (1<sup>ST</sup> Dist. 2010).

**VI. Public Safety Employee Benefits Act (“PSEBA”) – 820 ILCS 320/1 *et seq.***

- A. A municipality employing Public Safety Officers must continue paying health insurance premiums on basic group insurance coverage for life of the injured employee, his/her spouse and minor children for certain injuries:
1. Catastrophic injury – an injury that causes permanent disability. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 789 N.E.2d 1211 (2003).
  2. PSEBA benefits payable upon a decision of permanent disability. *Nowak v. City of County Club Hills*, 2011 IL 111838 (2011). But see *Phalin v. McHenry County Sheriff’s Department*, 381 Ill. App. 3d 185, 866 N.E.2d 448 (1<sup>ST</sup> Dist. 2008) *appeal denied* 229 Ill. 2d 657.
  3. A catastrophic injury has to occur under the following circumstances:
    - a. As the result of the Officer’s response to fresh pursuit;
    - b. The Officer or Firefighters’ response to what is reasonably believed to be an emergency;
    - c. An unlawful act perpetrated by another; and
    - d. During the investigation of a criminal act.
  4. Health insurance premium payments are payable for life but do not include premiums for supplemental coverage. *Pyle v. City of Granite City*, 2012 IL App (5th) 110472 (5<sup>TH</sup> Dist. 2012).
    - a. Employer responsible for basic Medicare premium payments but not supplemental insurance.
    - b. *Pyle, supra*, has been misinterpreted as terminating employer responsibility at Medicare age.
- B. Determination of eligibility.
1. Home rule units – municipality may adopt ordinance establishing an administrative procedure.
    - a. Subject to obligation for collective bargaining; establish hearing procedure under Collective Bargaining Agreement ending in arbitration by an impartial third-party.



2. Non-home rule units declaratory judgment in Circuit Court. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 1100112 (2012) but see *Englum v. City of Charleston*, 2017 IL App (4th) 160747, \_\_\_ N.E.3d \_\_\_ (4<sup>TH</sup> Dist. 2017).
  3. *Englum v. Board of Trustees of the Charleston Police Pension Fund*, 2017 IL App (4th) 160747, \_\_\_ N.E.3d \_\_\_ (4<sup>TH</sup> Dist. 2017).
  4. *Village of Vernon Hills v. Heelan*, 2015 IL 118170, 39 N.E.3d 937 (2015) – what is there to litigate under *Englum* if the decision of the Pension Fund Board of Trustees is conclusively binding?
- C. An emergency is not limited to dire circumstances.
- D. “Emergency” means an event in which there is an urgent need for assistance or relief; an unforeseen combination of circumstances that calls for immediate action. It can include a sudden condition or state of affairs calling for immediate action. See Webster’s Third New International Dictionary.

**V. Catastrophic Injury – *Bremer v. City of Rockford*, 2016 IL 119889 (2016).**

- A. PSEBA benefits payable for disabilities under 40 ILCS 5/4-110 – line-of-duty disability.
- B. PSEBA benefits are **NOT PAYABLE** for disabilities found under the occupational diseases section of the Pension Code. 40 ILCS 5/4-110.1.
  1. But see, *Phalin v. McHenry County Sheriff’s Department*, 381 Ill. App. 3d 185, 886 N.E.2d 448 (2<sup>ND</sup> Dist. 2008).

**VI. Coordination of Benefits Under the Illinois Pension Code and the Public Safety Employee Benefits Act.**

- A. *Village of Vernon Hills v. Heelan*, 2015 IL 118170, 39 N.E.3d 937 (2015).
- B. Qualifications for payment of health insurance benefits under PSEBA.
  1. Catastrophic injury.
  2. In addition to a catastrophic injury, must establish one of the four (4) conditions listed in this outline at III, A, 3.
  3. Must be an injury causing a permanent disability as defined in 40 ILCS 5/4-110. *Bremer, supra*.

4. Findings of the Board of Trustees of local Pension Fund are binding on municipality if no Petition to Intervene is filed.

**Copies of the Power Point presentation can be obtained by emailing Thomas W. Duda at the following email address: [thomasduda@zipduda.com](mailto:thomasduda@zipduda.com). The document will be attached to our reply.**

# **Revenue Rulings**



**MEMORANDUM**

Legal Division Memo No. 94-ACA-043

TO: President IAFF  
FROM: Assistant City Attorney  
DATE: August 5, 1994  
RE: Workers' Compensation - Lost Time Compensation

As you requested, the following is a summary of Illinois Workers' Compensation law as it relates to lost time from work due to a work or duty related injury. The following information concerns public safety officers only (i.e., police officers and firefighters) and does not apply to any other municipal employee. The basis of this information is Illinois law and Federal Internal Revenue rulings.

Workers' Compensation law in Illinois provides for an employee who is off of work for more than three (3) days for a duty or work related injury to be paid 66 2/3% of their weekly average wage without any federal, state or local taxes taken out of the wages. In the past, the City has been making up the other 1/3 of the employee's pay from City funds with the appropriate taxes being deducted. The additional compensation that the City has paid out is not required by law for most municipal employees except public safety officers. Illinois law requires all public safety officers to be fully compensated for any time lost from work due to a duty related injury up to one year from the date of injury, which the City has been doing.

However, we have recently been informed that federal revenue ruling put out by the IRS have stated that public safety officers (i.e., firefighters and police officers) are not to have any taxes deducted from their wages. I will be coordinating with \_\_\_\_\_ and our finance department in order to ensure that future wages paid to public safety employees who have lost time from work due to duty related injuries do not have taxes deducted.

Please let me know if there is anything else that I can assist with relative to this topic. Also, if you have any questions concerning amended tax returns for 1993 or any taxes deducted for lost time paid this year, please let me know as soon as possible and I will be glad to answer them for you.

C: City Manager  
Assistant City Manager  
Fire Chief  
City Attorney  
Finance Director  
Assistant Fire Chief

Internal Revenue Service

Department of the Treasury

Index Number: 0104-02-00

Washington, DC 20224

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[REDACTED] do not be  
[REDACTED] press-  
cent, Section 5110(1)(3)  
of the Internal Revenue  
Code.

Person to Contact:

[REDACTED]

Telephone Number:

[REDACTED]

Rate Reply to:

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Date:

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Dear Sir or Madam:

This is in reply to your letter of September 26, 1978, and subsequent correspondence, in which you request rulings concerning the federal income tax consequences of certain payments which are made to city employees suffering from job-incurred disability.

Section 253 of X provides:

"Except as hereinafter provided, any city employee who is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, shall be entitled to such medical, surgical, and hospital treatment, including nursing, medicines and medical and surgical supplies and apparatus as may be required on account of such injury or illness, the same to be provided by the city. Such employee shall become entitled during the period of such temporary disability, regardless of his period of service with the city, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under Division 4 of the Labor Code of the State of NY for the period of such disability, but not exceeding one year, or until such earlier date as he is retired upon a retirement allowance. Compensation and benefits payable to or on behalf of the employee under this section shall be reduced in the manner fixed by the city council, by the amount of any compensation

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and benefits payable to or on behalf of said employee under Division 4 of the Labor Code of the State of NY. Compensation and benefits paid under this section shall be considered as in lieu of compensation and benefits payable to or on account of said employee under said state law and shall be in satisfaction and discharge of the obligation of the city to pay such compensation and benefits under such state law. The benefits provided in this section shall be limited to full-time officers and employees of the city and, except as provided herein, shall not be extended to persons employed by the city on a seasonal, limited-term, part-time or substitute basis, or elective officers or appointive members of city boards and commissions. The city council, by ordinance enacted by two-thirds of all members thereof, may permit employees of the city, other than full-time officers and employees of the city, to receive all or a portion of the compensation and benefits provided to full-time officers and employees by the provisions of this section."

Certain other City employees receive comparable benefits under section 157 of X (repealed 12-31-76) which provided:

"Any city employee who is a member of the NY City Employees Retirement System and who shall become physically disabled by reason of any bodily injury received in the performance of his duty shall be entitled to such medical, surgical, and hospital treatment, including nursing, medicines and medical and surgical supplies and apparatus as may be required on account of such injury, the same to be provided by the city. Such injured employee shall receive full pay from the city during the continuance of his disability or until retired upon a retirement allowance, but not to exceed one year. Compensation and benefits payable to or on behalf of the employee under this section shall be reduced, in the manner fixed by the city council, by the amount of any compensation and benefits payable to or



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on behalf of said employee under Division 4 of the Labor Code of the State of Y. Compensation and benefits paid under this section shall be considered as in lieu of compensation and benefits payable to or on account of said employee under said state law and shall be in satisfaction and discharge of the obligation of the city to pay such compensation and benefits under such state law.

The city council, by ordinance enacted by two-thirds of all members thereof, may permit employees of the city, other than those who are members of the retirement system, to receive all or a portion of the compensation and benefits provided to members of the retirement system by the provisions of this section."

You state that the chief difference between section 253 and former section 167 is that former section 167 provides for full pay while temporarily or permanently disabled whereas section 253 provides for such pay while temporarily disabled. Under both sections, full salary continues until the employee (1) is no longer disabled, (2) is retired, or (3) one year lapses.

You further state that Division 4 of the Y Labor Code, to which reference is made in sections 167 and 253, is contained in Labor Code sections 3200-6002. Division 4 provides worker's compensation benefits for employees who are industrially injured. The benefits provided are less than full salary which is provided under Charter sections 253 and 167. Labor Code section 4652 excludes payment for the first three days of disability, whereas under Charter section 253 and 167 the employee receives full pay from the first day of disability. Labor Code sections 4653 and 4654 provide, respectively, for two-thirds pay for temporary total disability and temporary partial disability whereas Charter sections 253 and 167 provide full pay.

You request rulings whether, (1) the payments to an employee under section 253 or former section 167 of X are excludable under section 104(a)(1) of the Code and (2) if the payments are excludable, whether the portion of the payment which is in excess of the amount of workmen's compensation benefits provided by sections 4532-4554 of the Y Labor Code are includible in gross income.

Section 104(a)(1) of the Code provides, in pertinent part and with certain exceptions not here pertinent, that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) of the Code also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a non-occupational injury or sickness nor to amounts received as compensation for a nonoccupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts.

You are of the opinion that since the Tax Court in Blackburn v. Commissioner, 15 T.C. 336 (1950), held that payments made under section 4800 of the Y Labor Code were not payments under a workmen's compensation act of a nature intended by Congress in section 22(b)(5) of the 1939 Code (now section 104(a)(1) of the 1954 Code) to be

excluded from gross income, payments made under sections 253 and 167 of X which are similar to payments made under section 4800 of the Y Labor Code would also not be excluded from gross income. Further, you believe that if the Internal Revenue Service concludes that the payments made under sections 253 and 167 of X are excludable under section 104(a) of the Code, then section 1.104-1(b) of the regulations requires that any amount that is in excess of the amount provided in sections 4652-4654 of the Y Labor Code is not excludable from gross income.

The Internal Revenue Service in Rev. Rul. 68-10, 1968-1 C.B. 50, held that total payments made by a Y county to an employee under section 4850 and pursuant to section 4853 of the Y Labor Code, because of an occupational injury or illness arising out of and in the course of the employee's duties are in the nature of and in lieu of workmen's compensation, and such payments are excludable from the employee's gross income under section 104(a)(1) of the Code. Rev. Rul. 68-10 further held that the payments are excludable even if they are in excess of the normal disability benefits payable under a workmen's compensation act.

The facts presented in the instant case indicate that the provisions of sections 253 and 167 of X are very similar to the provisions of sections 4850 and 4853 of the Labor Code. Further, the Service is not following the position set forth in the Blackburn case but rather is following the position set forth in the case of Hawthorne v. City of Beverly Hills et al., 245 P. 2d 352 (1952), which held that salary in lieu of temporary disability payments, to a fireman (under section 4850 of the Labor Code) who is a member of the State Employees' Retirement System, is not salary as such, but is compensation within the meaning of the workmen's compensation act.



Concerning your second ruling request, it should be noted that the Service does not give a narrow interpretation to the provisions in section 1.104-1(b) of the regulations that restricts the section 104(a)(1) exclusion to amounts that are not in excess of the applicable workmen's compensation act or acts. The Service has incorporated "statutes in the nature of a workmen's compensation act", such as sections 252 and 167 of X, within the meaning of the phrase "applicable workmen's compensation act or acts". As long as benefits are received under a statute in the nature of a workmen's compensation act, they qualify for the exclusion of section 104(a)(1) of the Code regardless of the existence and applicability of formal workmen's compensation acts.

Accordingly, based on the information submitted, the entire payment made to an employee under sections 252 and 167 of X are excludable under section 104(a)(1) of the Code.

Sincerely yours,

*Rudolf M. Planer*

Acting Chief,  
Individual Income Tax Branch

Enclosure  
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ent. Section 6110(j)(3)  
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Internal Revenue Service  
Revenue Ruling

*TaxLinks.com* sm

Rev. Rul. 68-10

1968-1 C.B. 50

Sec. 104

**Caution: Distinguished by Rev. Rul. 69-254**

IRS Headnote

Total payments made by a California county to an employee under section 4850 and pursuant to section 4853 of the California Labor Code, because of an occupational injury or illness arising out of and in the course of the employee's duties are in the nature of and in lieu of workmen's compensation, and such payments are excludable from the employee's gross income under section 104(a)(1) of the Internal Revenue Code of 1954. The payments are excludable even if they are in excess of the normal disability benefits payable under a workmen's compensation act.

Full Text

Rev. Rul. 68-10

Advice has been requested whether payments made by a California county to an employee under section 4850 of the California Labor Code, because of occupational injury or illness arising out of and in the course of performance of the employee's duties are excludable from gross income under section 104(a)(1) of the Internal Revenue Code of 1954.

Section 4850 of the California Labor Code provides that whenever any city policeman, city fireman, sheriff or any officer or employee of a sheriff's office, or any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who is a member of the State Employees' Retirement System is disabled by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the city or county, to leave of absence while so disabled without loss of salary, in lieu of normal temporary disability payments under this Code, for the period of not exceeding one year. This section excludes employees (other than city firemen) whose functions do not clearly come within the scope of active law enforcement service. It also excludes city firemen whose functions do not clearly fall within the scope of active fire fighting and prevention service.

Section 4853 of the California Labor Code provides that whenever such disability of any such officer or employee continues for a period beyond one year, such member shall thereafter be subject to disability indemnity under provisions of the California Labor Code other than section 4850 during the remainder of the period of said disability or until the effective date of his retirement under the State Employees' Retirement Act, and the leave of absence shall continue.

Section 104(a)(1) of the Code provides for the exclusion from gross income of amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts which are received by an individual under a workmen's compensation act or under a statute in the nature of a workmen's compensation act which provides compensation to the employees for personal injuries or sickness incurred in the course of employment.

In determining whether the payments made under section 4850 of the California Labor Code are actually workmen's compensation benefits, the California District Court of Appeals, Second District, in the case of *Hawthorne v. City of Beverly Hills et al.*, 245 P.2d 352 (1952), held that salary in lieu of temporary disability payments, to a fireman (under section 4850 of the California Labor Code) who is a member of the State Employees' Retirement System, is not salary as such, but is compensation within the meaning of the workmen's compensation act. This determination also covered that amount which exceeded normal disability benefits under the usual schedules for determining workmen's compensation.

The payments made under section 4850 of the California Labor Code are made because of injuries or illness arising out of and in the course of the employee's duties. The fact that the amount received is equal to the employee's salary does not prevent such payments from being compensation within the meaning of workmen's compensation.

Since these payments are compensation within the meaning of the workmen's compensation act, they cannot be considered payments provided by a wage continuation plan. Therefore, section 105(d) of the Code is not applicable.

Accordingly, the total payments made by a California County to an employee under section 4850 and pursuant to section 4853 of the California Labor Code because of an occupational injury or illness arising out of and in the course of the employee's duties are in the nature of and in lieu of workmen's compensation, and such payments are excludable from the employee's gross income under section 104(a)(1) of the Code. The payments are excludable even if they are in excess of the normal disability benefits payable under a workmen's compensation act.