



**Illinois
Government
Finance
Officers
Association**

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PAYROLL SEMINAR

OCTOBER 21, 2021

NIU NAPERVILLE

1120 E. Diehl Road - Room 101A/B
Naperville, Illinois 60563

IGFOA 2021
PAYROLL SEMINAR
THURSDAY, OCTOBER 21, 2021

AGENDA

8:30 – 8:55 AM	Networking, Check-in & Coffee	NIU Naperville 1120 E Diehl Rd, Naperville, IL60563
8:55 -9:00 AM	Welcome Overview of the Program	Jon Beckmann , Superintendent of Finance, Waukegan Park District
9:00 – 10:15 AM	Understanding the Financial Obligations and Requirements of the Public Employee Disability Act (PEDA) and the Illinois Public Safety Employee Benefits Act (PSEBA)	Robert Buhs , Executive Director, Illinois Public Risk Fund (IPRF) John E. Motylinski , Associate Attorney, Ottosen DiNolfo Hasenbalg & Castaldo, Ltd
10:15 – 10:30 AM	Morning Break	
10:30 - 11:20 AM	IRS Update	Kristine K. Willson , Senior Consultant, HR and Payroll Advisory, Sikich LLP
11:20 AM – 12:10 PM	Employee Leave Rights: FMLA & ADA	Lisa Simioni , Vice President & Senior Compliance Health Consultant, Segal
12:10 – 12:50 PM	Lunch	
12:50 – 1:40 PM	Deeper Dive Into Military Leave	Benjamin Gehrt , Clark Baird Smith LLP Bill Phillips , Attorney General's Office, Assistant Attorney General
1:40 – 1:55 PM	Afternoon Break	
1:55- 2:45 PM	Cybersecurity for Payroll	Marc Thorson , Executive Director Regional Technology Services, Northern Illinois University
2:45 – 3:00 PM	Afternoon Break	
3:00 – 3:50 PM	Successfully Navigating a Payroll System Implementation	Ryhan Carrier , Project Manager, BS&A Software
3:50 PM	Closing Remarks	Jon Beckmann , Superintendent of Finance, Waukegan Park District

*IGFOA reserves the right to modify the agendas and/or speakers,
cancel the training due to low enrollment, or to close registration if full.*

Understanding the Financial Obligations and Requirements of the Public Employee Disability Act (PEDA) and the Illinois Public Safety Employee Benefits Act (PSEBA)

October 21, 2021



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Presenters:

Robert M. Buhs, Executive
Director

Illinois Public Risk Fund

John Motylinski, Associate
Attorney

*Ottosen DiNolfo Hasenbalg & Castaldo,
Ltd.*

Understanding the Public Employee Disability Act (PEDA) and the Illinois Public Safety Employee Benefits Act (PSEBA)

Overview:

- Introduce the attendee to the Public Employee Disability Act (PEDA) and the Illinois Public Safety Employee Benefits Act (PSEBA).
- Explore the definition of both Acts, how they are interpreted, and the financial implications/burdens they have placed on local governments.
- Discuss the relationship they have to the financial aspects of the local governmental entity.

Learning Objectives:

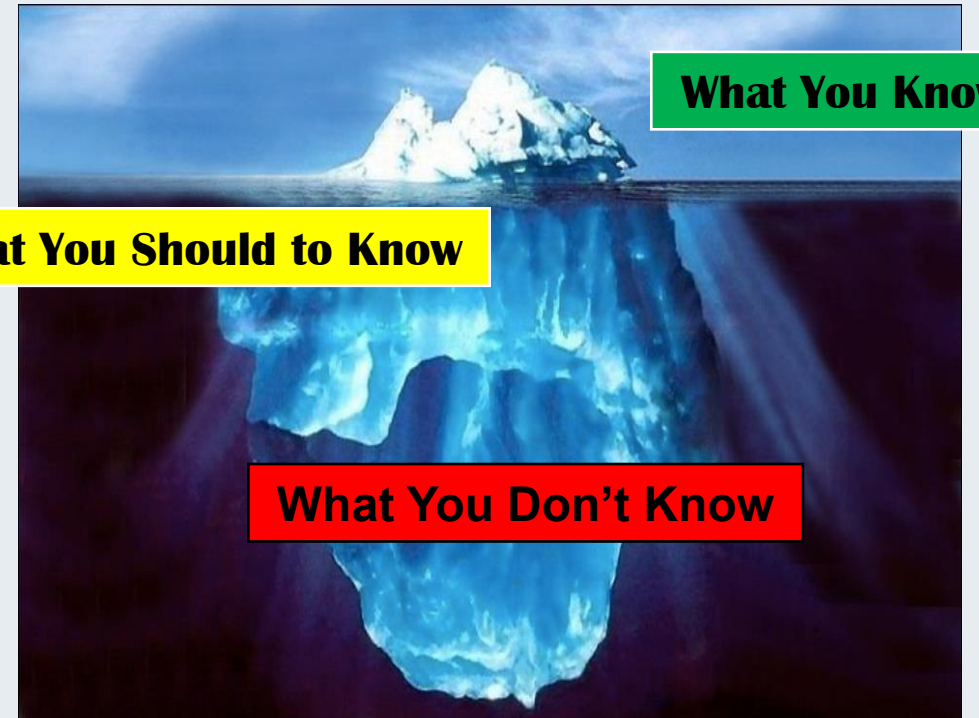
Attendee will:

- Learn the definition and intent of both the Public Employee Disability Act (PEDA) and the Illinois Public Safety Employee Benefits Act (PSEBA).
- Learn the financial obligations and rulings of both ACT's.
- Based upon given scenarios, will gain insight on how each PEDA and/or PSEBA award was granted or denied.

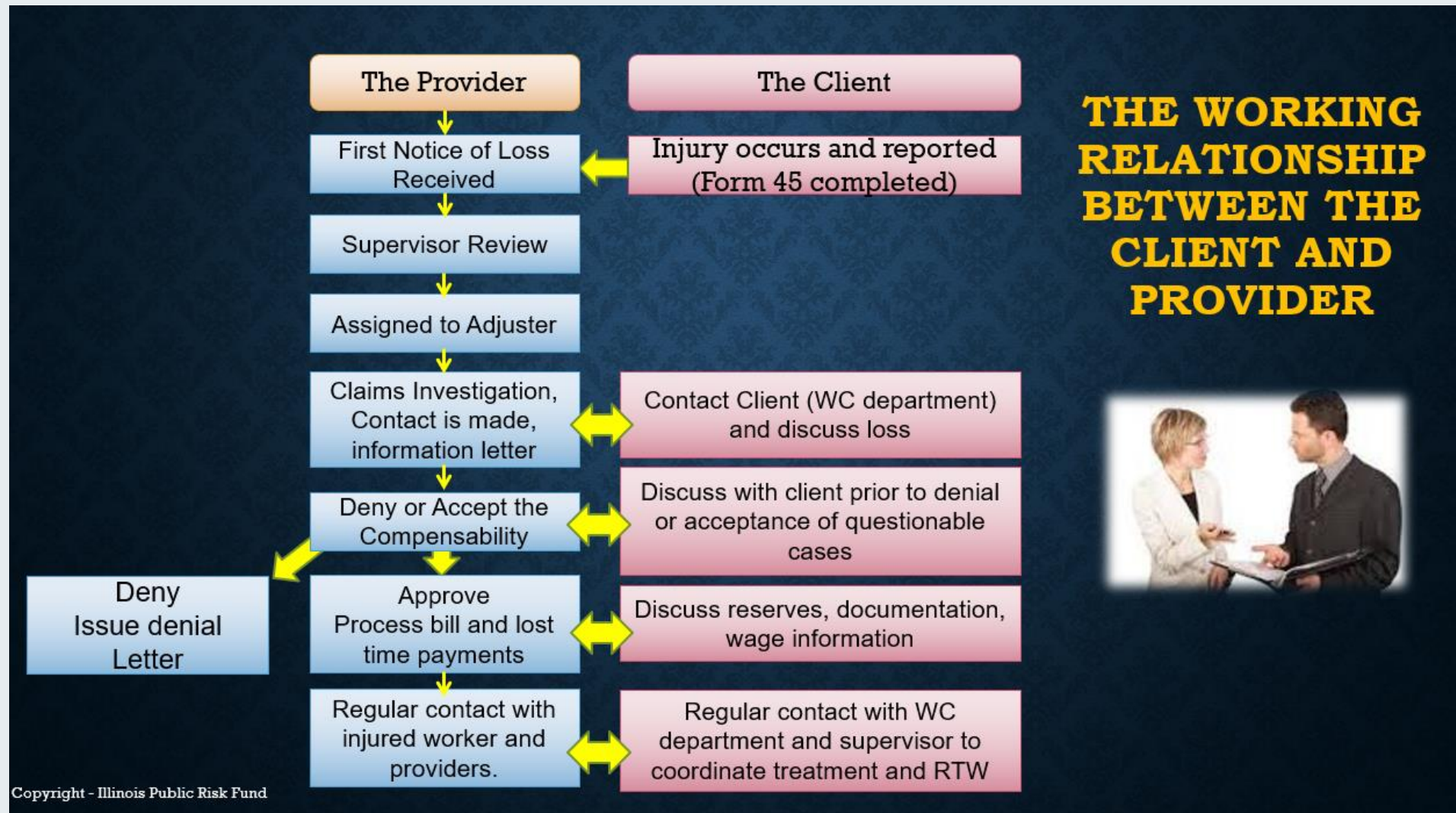
Understanding the Workers' Compensation Process?

- A system of compensating employees injured on the job regardless of fault.
- Workers' comp is good for your organization and your employees.
- It ensures prompt and proper care for work-related injuries and illness.
- It provides income while workers recover and eases their return to work.

The Iceberg Principle of Workers' Compensation



The Claims Process



Average Weekly Wage Survey

The compensation shall be computed on the basis of the “**Average weekly wage**” which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee’s last full pay period immediately preceding the date of injury, illness or disablement.

In other words, the average weekly wage calculation does not include actual earnings in the pay period in which the accident occurs. Rather, it is based on the last 52 weeks of full pay checks from before the accident.

Actual Earnings Before Taxes

Actual earnings refer to the injured worker’s gross earnings – that is, salary or hourly wages before any taxes are withheld. Because the calculation of average weekly wage is so important, the phrase “actual earnings” has been thoroughly considered by the courts.

Under the Workers' Compensation Act, injured workers are entitled to indemnity (wage-loss) benefits equal to two-thirds of their weekly wage for a work-related injury. However, there are **minimum and maximum adjustments provided in the Act**, and the benefit rate is set using the annual maximum in place at the time of injury. The maximum is based on the Department of Labor and Industry's calculation of the statewide average weekly wage.

Pursuant to the Workers’ Compensation Act, Section 105.1, the Department of Labor & Industry has determined the statewide average weekly wage for injuries occurring on and after Jan. 1, 2021, shall be **\$1,130.00 per week (maximum weekly compensation)**.

Average Weekly Wage Survey Items

Items Included in Average Weekly Wage

- (a) Vacation pay is included as part of the employee's average weekly wage. *General Tire & Rubber Co. v. Industrial Comm'n*, 221 Ill. App. 3d 641, 652 (5th Dist. 1991).
- (b) Overtime Section 10 of the WCA explicitly states that overtime is to be excluded in calculating an employee's average weekly wage. However, the statute fails to define "overtime." *Airborne Express, Inc. v. Illinois Workers' Comp. Comm'n*, 372 Ill. App. 3d 549, 553 (1st Dist. 2007). Overtime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which is not part of a set number of hours consistently worked each week. To include such time in the average weekly wage figure, a claimant must show: (1) he was required to work overtime as a condition of his employment; (2) he consistently worked a set number of overtime hours each week; or (3) the overtime hours he worked were part of his regular hours of employment. ***Freesen, Inc. v. Indus. Comm'n*, 348 Ill. App. 3d 1035, 1042 (4th Dist. 2004).**
- (c) Fringe benefits are not included in the average weekly wage calculation. *Pluto v. Industrial Comm'n*, 272 Ill. App. 3d 722, 729 (1st Dist. 1995). Fringe benefits can include an employer's B-10 contribution to a union health and welfare program. The Pluto court noted that fringe benefits are not included as earnings or income for state or federal income tax purposes. However, vacation pay is included as earnings or income where an employee is paid his regular earnings during the time he takes time off for vacation, a fact which distinguishes fringe benefits from vacation pay which is included in the calculation of an employee's average weekly wage.

Public Employee Disability Act

- Provides financial protection for firefighters and police officers who are injured in the line of duty.
- Provides:
 - *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 . . . (5 ILCS 345/1).*
 - These benefits last for one full year.
 - The injured employee is entitled to full salary,
 - Benefits pursuant to PEDDA are considered disability benefits and not salary (and thus not taxable income).

Public Employee Disability Act

Who is an “eligible employee?”

- Any full-time police officer or firefighter who is employed by the State of Illinois, any unit of local government, any State supported college or university, and any other public entity granted the power to employ persons for such purposes by law.
- PEDDA explicitly *excludes* any employees of home rule unit with a population of over 1,000,000. Thus, **PEDDA excludes any police officers and firefighters employed by the City of Chicago.**



Public Employee Disability Act

What benefits are provided by PEDDA?

*“The employee shall continue to be paid by the employing public entity **on the same basis** as he was paid before the injury”*

- 100% pay;
 - **Not just the 2/3rds available under workers’ compensation.**
 - **Local government on the hook for the extra 1/3rd.**
- Same benefits; and
 - (1) No deduction from sick leave credits;
 - (2) No deduction from compensatory time for overtime accumulations or vacation days;
- Same pension creditable service accrual.

Public Employee Disability Act

- **Is PEDDA Compensation Taxable?**

No!

Despite PEDDA's language that the employee must be paid on the "same basis" as before the injury, PEDDA compensation is not taxable income.

The IRS has issued opinions that mandate that no taxes be withheld from an employee's gross pay.

Withholdings should be adjusted accordingly



IRS Rule Regarding PEDDA

Under Rev. Rul. 68-10 C.B. 50, the IRS issued a revenue ruling evaluating a California statute analogous to Illinois' PEDDA statute. The language of Section 4850 Subsection (a) of the California Labor Code is as follows:

§ 4850. Leave of absence without loss of salary in lieu of disability payments or maintenance allowance payments

(a) Whenever any person listed in subdivision (b) [a police officer was one of the occupations listed in (b)], who is employed on a regular, full-time basis, and is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments, if any, that would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

Public Employee Disability Act (5 ILCS 345/1)



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PUBLICATION 15-A Employer's Supplemental Tax Guide (Jan 05, 2017)

Chapter 6: Payments that Aren't Sick Pay

3. Payments in the nature of workers' compensation – public employees

Specifically references police and firefighters

Payments under a statute in the nature of a workers' compensation law aren't sick pay and aren't subject to employment taxes.

See Regulations section 31.3121(a)(2)-1

Public Employee Disability Act

How long do PEDDA benefits last?

“Not longer than one year in relation to the same injury”

NOTE: This *does not* mean a calendar year. This means a total of **365 days** worth of PEDDA benefits for a discrete work-related injury, which **do not necessarily need to be concurrent**.

See *Albee v. City of Bloomington*, 365 Ill. App. 3d 526 (4th Dist. 2006).



Public Employee Disability Act (5 ILCS 345/1)



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PEDA's Interplay with Workers' Comp.

- PEDA and workers' compensation share the same causation standard.

"We see no meaningful difference between the 'line of duty' standard in PEDA and the causation test in workers' compensation claims – that the injury 'arose out of and in the course of employment.'"

Mabie v. Village of Schaumburg, 364 Ill. App. 3d 756 (1st Dist. 2006)
- If workers' compensation determines an injury was not caused by the employees' employment, then PEDA benefits are usually not available.

Public Employee Disability Act (5 ILCS 345/1)

PEDA's Interplay with Workers' Comp.

What happens when PEDA runs out and the petitioner remains disabled from work?



Or, the police officer or firefighter has now reached MMI and cannot return to full duty work.

It might be time to file an application for a Line-of-Duty Disability Pension

Public Employee Disability Act

Recap: The Financial Aspects of PEDAs

- Employee will receive 100% of their pre-injury benefits.
- Limitation on Performing Work: An employee receiving PEDAs “shall not be employed in any other manner, with or without monetary compensation.” Any person employed in violation of this provision “forfeits the continuing compensation provided by this Act from the time such employment begins,” with any monies improperly received to revert to the employer. (§1(d)).
- Wages paid under PEDAs are exempt from Federal and State tax withholding; be mindful of policies on additional deductions from wages, including health/dental insurance and union dues
- The employee also is ineligible for disability pension benefits under the pension code while receiving PEDAs. (§1(d)).
- A supplemental policy that will assist with covering the other 33% of the employee’s salary when on PEDAs.

Public Employee Disability Act: Takeaways

- Rule of thumb: Employees on PEDDA should be his or her gross salary throughout the time that they are off work pursuant to PEDDA with no taxes withheld and with all benefits continued as set forth in the statute.
- On the other hand, the eligible employee should be paid his normal salary with normal tax withholding or reporting for any hours that were worked during the same time frame.
- Benefits are not limited to *calendar* year following injury. *Albee v. City of Bloomington*, 365 Ill. App. 3d 526 (4th Dist. 2006)

A Brief Primer on Pensions

Line of Duty Disability Pensions

40 ILCS 5/3-114.1 for Police

- 65% of the salary attached to the rank on the police force held by the officer at the date of suspension of duty or retirement
- Considered "on duty" while on any assignment approved by the chief of the police department of the municipality he or she serves, whether the assignment is within or outside the municipality.
- "Special risk" requirement.

40 ILCS 5/4-110 for Firefighters

- 65% of the monthly salary attached to the rank held by him or her in the fire department at the date he or she is removed from the municipality's payroll.
- Considered "on duty" while on any assignment approved by the chief, even though away from the municipality he or she serves as a firefighter, if the assignment is related to the fire protection service of the municipality.

Line of Duty v. Not on Duty Pensions

NOT ON DUTY PENSION

- 50% of salary
- Taxable
- No PSEBA
- Need at least seven years creditable service for firefighters but no minimum for police.
- Permanent disability

LINE OF DUTY PENSION

- 65% of salary
- Tax free
- Potentially comes with PSEBA benefits
- No minimum creditable service requirement
- Permanent disability

Line of Duty v. Not on Duty Pensions

Pension Offset with Workers' Compensation

40 ILCS 5/3-114.5 for Police Officers & **40 ILCS 5/4-114.2** for Firefighters

- **Rule:** Whenever a person is entitled to a disability or survivor's pension and to benefits under the Workers' Compensation Act or the Workers' Occupational Diseases Act for the same injury or disease, the benefits payable under this Article shall be reduced by the benefits received from Work Comp.

HOWEVER there shall be no reduction for payments for:

- Any medical payments made for scheduled losses for the loss of or permanent and complete or permanent and partial loss of the use of any bodily member or the body taken as a whole.
- Payments made for statutorily prescribed losses.

Illinois Public Safety Employee Benefits Act (“PSEBA”)

PSEBA (820 ILCS 320/10)

- A employer who employs a full-time law enforcement, correctional or correctional probation officer, or firefighter who suffers a catastrophic injury or is killed in the line of duty . . . shall pay the **entire premium** of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee.
- If the injured employee subsequently dies, the employer shall continue to pay the entire health insurance premium for the surviving spouse until remarried and for the dependent children

Illinois Public Safety Employee Benefits Act (PSEBA)

Police and fire entitled to health insurance benefits under certain circumstances.

Two Steps in order to obtain Health Coverage Benefit.

- 1) **Section 10(a)** – full-time law enforcement officer or firefighter who suffers “a catastrophic injury or is killed in the line of duty . . .”
- 2) **Section 10(b)** – injury or death must have occurred as a result of one of the following:
 - a) Officer’s response to fresh pursuit;
 - b) Officer or firefighter’s response to what is reasonably believed to be an emergency;
 - c) An unlawful act perpetrated by another; or
 - d) During the investigation of a criminal act.

Illinois Public Safety Employee Benefits Act (PSEBA)



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How Much Could PSEBA Benefits Costs?

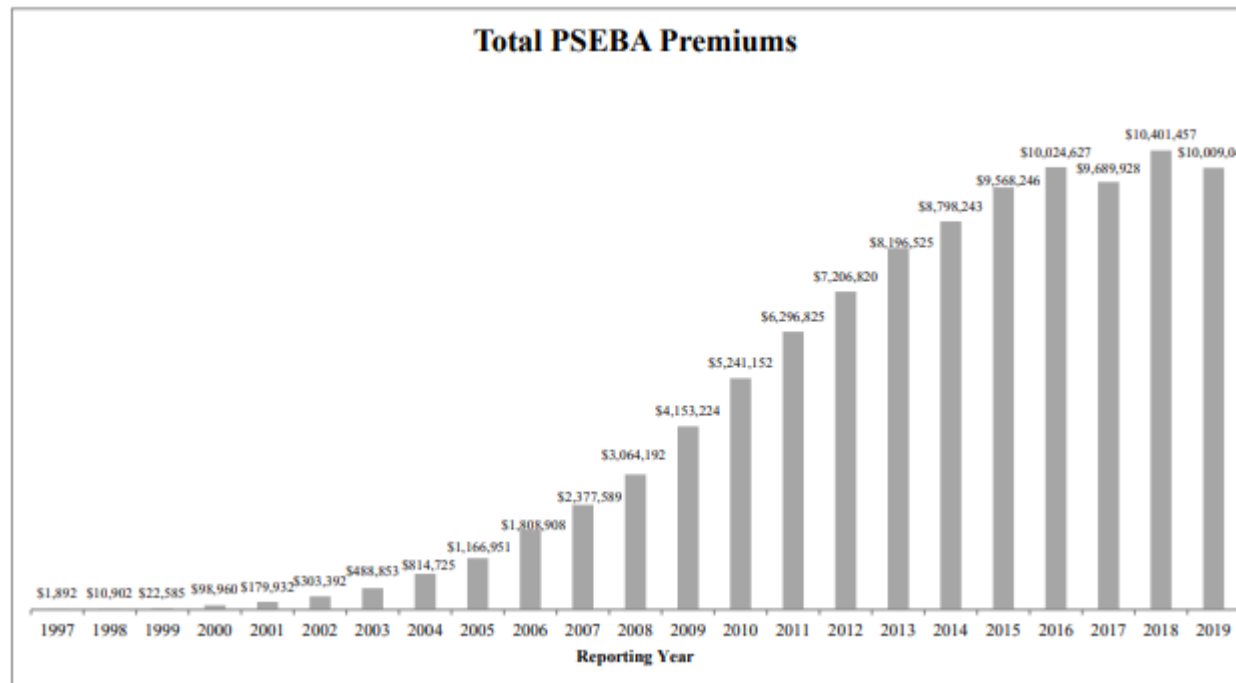
An example out of O'Fallon, Illinois: The PSEBA benefits of two young and disabled officers with large families were said to cost the city approximately \$40,000.00 annually in each case. The rough actuarial math for these officers and their families over six decades adds up to likely costing the city close to **\$5 million dollars** when all is said and done.

See, Jonathan Walters, The Disability Dilemma, Governing Magazine, (May 2007)

Illinois Public Safety Employee Benefits Act (PSEBA)

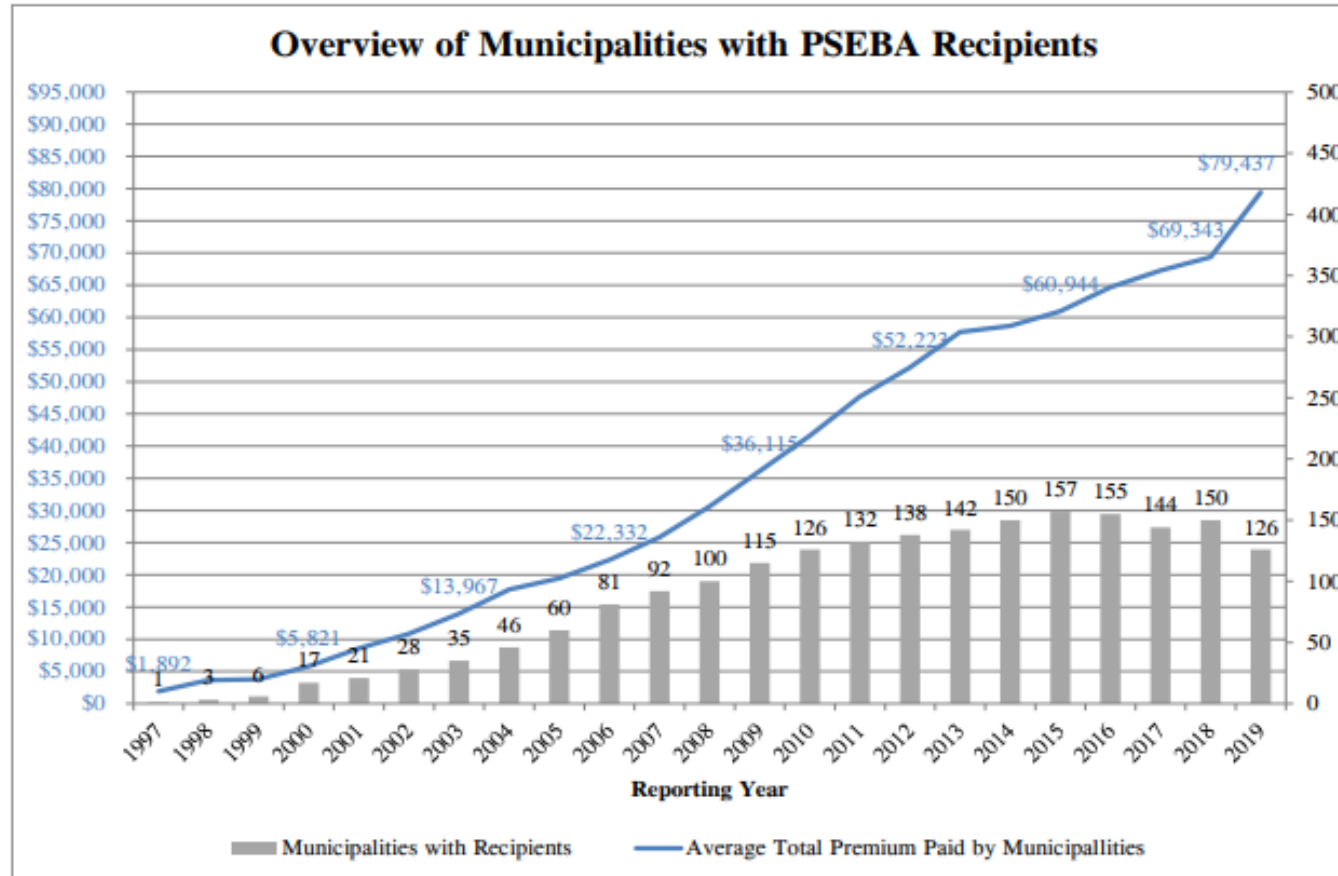
How Much Could PSEBA Benefits Costs?

December 2020 Report to the General Assembly:



Illinois Public Safety Employee Benefits Act (PSEBA)

How Much Could PSEBA Benefits Costs?



Illinois Public Safety Employee Benefits Act (PSEBA)

What qualifies as a “catastrophic injury”?

The **Supreme Court** ruled that the phrase “*catastrophic injury*” is synonymous with an injury resulting in a line-of-duty disability under the pension code.

Krohe v City of Bloomington, 204 Ill. 2d. 392 (2003)



YES! The Supreme Court reaffirmed this is the law in *Village of Vernon Hills v. Heelan*, 2015 IL 118170

PSEBA: Two Prongs

Prong #1: Catastrophic Injury

- Illinois Supreme Court: Definition of “catastrophic injury” is synonymous with an injury resulting in a line-of-duty disability pension.

(Krohe v. City of Bloomington, 204 Ill. 2d 392 (2003)).

- If the employee is granted a line-of-duty disability pension, they have satisfied the first prong of PSEBA.
- Often, employers will have to intervene in pension cases if they wish to dispute that the employee is, in fact, “catastrophically injured.”

If you don't intervene, you cannot subsequently dispute the first prong.

PSEBA: Two Prongs

Prong #2: Qualifying Event

- Officer's response to fresh pursuit;
- Officer or firefighter's response to what is reasonably believed to be an emergency;
- An unlawful act perpetrated by another; or
- During the investigation of a criminal act.



PSEBA: Two Prongs

“Response to what is reasonably believed to be an emergency”

– Doesn’t actually have to be an emergency for PSEBA benefits to attach.

- **Not covered:** A firefighter participated in a training exercise where the goal was to rescue a trapped firefighter in an abandoned building. The firefighter twisted his knee while pulling the downed firefighter and was awarded a non-duty disability pension. This was not covered under PSEBA because the training exercise was conducted under planned, controlled conditions.
- **Covered:** During a training exercise in a burning building, a firefighter’s hose line was unexpectedly entangled in an unseen object (a loveseat). The firefighter was required to follow the hose line back and free it, all while having no visibility. The firefighter moved the loveseat and suffered a disabling injury to his shoulder.

Gaffney v. Board of Trustees of the Orland Fire Protection District, 2012 IL 110012.

What Health Insurance Must Be Provided Under PSEBA?

- PSEBA only requires local governments to pay for the premium for the “basic group health insurance plan.” 820 ILCS 320/10.
 - Dental/vision do not have to be provided.
- Municipalities can determine what the “basic group health insurance plan” is ahead of time.
 - Recent amendments require local governments to confine this choice to a plan offered in a collective bargaining agreement (if there is one).

When Does PSEBA End?

- Usually, upon reaching Medicare eligibility (age 65).
Pyle v. City of Granite City, 2012 IL App (5th) 110472, ¶ 24.
- PSEBA benefits are reduced where there is a health insurance benefit paid by another source. 820 ILCS 320/10.
- What about dependents?
 - They lose PSEBA eligibility when they turn 65, too.

PSEBA's Educational Benefits

A child of an Illinois firefighter who is killed may be eligible for educational benefits under PSEBA (820 ILCS 320/15).

Qualifying survivors (children up to 25 years old) are entitled to waivers of educational expenses from Illinois state supported institution.

- Beneficiaries must remain in good academic standing to continue receiving benefits.
- Beneficiaries have to attain enrollment according to the customary rules and requirements of the institution attended.

Take a Long View of PSEBA Claims

- PSEBA awards can be expensive, so it is prudent to ensure they are taken seriously from the start.
- Consider whether intervention in the pension hearing is necessary.
- Consider whether to establish a PSEBA administrative hearing process, if possible.
- Consider affirmatively designating the “basic group health insurance plan” preemptively.





IRS UPDATE

Payroll Compliance

October 21, 2021



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MEET THE PRESENTER



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I've worked in the payroll profession for 30 years and was named 2019 Payroll Woman of the year by the American Payroll Association.

AGENDA

- IRS Updates
- Form 941/941-X
- Form W-2
- Form 1099-NEC
- Look ahead at 2022

KEY TAKEAWAYS

- ✓ Knowledge of IRS updates related to COVID-19
- ✓ Understand reporting requirements for form's
 - ✓ 941
 - ✓ 941-x
 - ✓ W-2
- ✓ What to report on 1099-NEC vs. 1099-Misc
- ✓ What's on the horizon for 2022

AMERICAN RESCUE PLAN ACT OF 2021

- Updated definition of Eligible Employers
 - Any business with fewer than 500 employees
 - Including tax-exempt and governmental employers
 - Excluding federal government employers
- A new COBRA premium assistance tax credit
- Expanded the time period for tax credits for wages paid for leave from 4/1/2021 – 9/30/2021
- An increase in the maximum amount of dependent care assistance that may be excluded from income in 2021

ARPA 2021 CONT.

- An extension of tax credits for emergency paid sick and family and medical leave to include time taken by employees who are not able to work or telework due to reasons related to COVID-19
 - leave taken to received COVID-19 vaccinations
 - to recover from any injury, disability, illness or condition related to the vaccinations
- An extension of the employee retention credit through 12/31/2021

For detailed information:
<https://www.irs.gov/newsroom/claiming-the-employee-retention-credit-in-the-first-and-second-calendar-quarters-2021>

CARES ACT

Employee social security tax deferral deadline extended

- Legislation extended the repayment of deferred SSI taxes to December 31, 2021 (original repayment due date 4/30/2021)
- The employee portion of Social Security tax deferred in 2020 and is withheld in 2021 should be reported in box 4 (Social security tax withheld) on Form W-2c, Corrected Wage and Tax Statement. On Form W-2c, employers should enter tax year 2020 in box c and adjust the amount previously reported in box 4 (Social security tax withheld) of the Form W-2 to include the deferred amounts that were withheld in 2021.
- Interest and penalties on unpaid amount will begin accruing on January 1, 2022

CARES ACT CONT.

- Deferred employer portion of the social security tax repayment schedule
 - 50% due 1/3/2022 r
 - remaining 50% due 1/3/2023 (December 31 for both years falls on a weekend)
- Federal Student Loan Relief
 - Extended until 1/31/2022

Provision	FFCRA	CARES	CAA	ARPA
Emergency paid sick leave (EPSL)	Requires payment by employers <500 employees & Government employers through 12/31/20	N/A	Made voluntary to 3/31/21	Extended to 9/30/21, definition expanded
Emergency paid family and medical leave (EPFL)	Requires payment by employers <500 employees & Government employers through 12/31/20	N/A	Made voluntary to 3/31/21	Extended to 9/30/21, definition expanded
Emergency paid sick leave tax credit (EPSL)	Available to employers < 500 employees through 12/31/20	N/A	Available through 3/31/21	Available through 9/30/21 & for government employers
Emergency paid family and medical leave tax credit (EPFL)	Available to employers < 500 employees through 12/31/20	N/A	Available through 3/31/21	Available through 9/30/21 & for government employers
Deferral - employer social security tax	N/A	Through 12/31/20, 50% repaid by 12/31/21 and 50% repaid by 1/3/23 (12/31/22 is a weekend day)	N/A	N/A
Employee Retention Credit (ERC)	N/A	50% of \$10,000 wages through 12/31/20	70% of quarterly wages \$10,000 through 6/30/21	70% of quarterly wages \$10,000 through 12/31/2021
Provision	Presidential Memorandum		CAA	
Deferral - employee Social Security tax	Defer 9/1/20 – 12/31/20 repay by 4/30/21		Repay by 12/31/2021	

Grid compiled by the
American Payroll
Association

FEDERAL UNEMPLOYMENT

Federal Unemployment Trust Fund

- If states have outstanding FUA loans on 1/1 of at least two consecutive years and on 11/10 of the second year, they are subject to a credit reduction on their FUTA tax rate until the loan has been paid off.
 - Virgin Island

FORM 941


The Form 941 instructions now include five worksheets:

1. Credit for Qualified Sick and Family Leave Wages
 - Taken before April 1, 2021
2. Employee Retention Credit for 2Q 2021 Only
 - Wages paid after 3/31/2021 and before 7/1/2021)
3. Credit for Qualified Sick and Family Leave Wages
 - Taken after March 31, 2021
4. Employee Retention Credit for 3Q and 4Q 2021 Only
 - Qualified wages paid after 6/30/2021
5. COBRA Premium Assistance Credit

Also released were revised **instructions** for Schedule B, *Report of Liability for Semiweekly Schedule Depositors* – the form itself did not change

FORM 941 – WORKSHEET 1

Worksheet 1. Credit for Qualified Sick and Family Leave Wages for Leave Taken Before April 1, 2021

Keep for Your Records 

Determine how you will complete this worksheet. (If you're a third-party payer, you must complete this worksheet for each client for which it is applicable, on a client-by-client basis.)
If you paid qualified sick leave wages and/or qualified family leave wages this quarter for leave taken before April 1, 2021, complete Step 1 and Step 2.
Caution: Use Worksheet 3 to figure the credit for qualified sick and family leave wages for leave taken after March 31, 2021.

Step 1.	Determine the employer share of social security tax this quarter after it is reduced by any credit claimed on Form 8974 and any credit to be claimed on Form 5884-C and/or Form 5884-D	
1a	Enter the amount of social security tax from Form 941, Part 1, <u>line 5a</u> , column 2	1a
1b	Enter the amount of social security tax from Form 941, Part 1, <u>line 5b</u> , column 2	1b
1c	Add lines 1a and 1b	1c
1d	Multiply line 1c by 50% (0.50)	1d
1e	If you're a third-party payer of sick pay that isn't an agent and you're claiming credits for amounts paid to your employees, enter the employer share of social security tax included on Form 941, Part 1, <u>line 8</u> (enter as a positive number)	1e
1f	Subtract line 1e from line 1d	1f
1g	If you received a Section 3121(g) Notice and Demand during the quarter, enter the amount of the employer share of social security tax from the notice	1g
1h	Employer share of social security tax. Add lines 1f and 1g	1h
1i	Enter the amount from Form 941, Part 1, <u>line 11a</u> (credit from Form 8974)	1i
1j	Enter the amount to be claimed on Form 5884-C, line 11, for this quarter	1j
1j(i)	Enter the amount to be claimed on Form 5884-D, line 12, for this quarter	1j(i)
1k	Total nonrefundable credits already used against the employer share of social security tax. Add lines 1i, 1j, and 1j(i)	1k
1l	Employer share of social security tax remaining. Subtract line 1k from line 1h	1l
Step 2.	Figure the sick and family leave credit	
2a	Qualified sick leave wages reported on Form 941, Part 1, <u>line 5a(i)</u> , column 1	2a
2a(i)	Qualified sick leave wages included on Form 941, Part 1, line 5c, but not included on Form 941, Part 1, line 5a(i), column 1, because the wages reported on that line were limited by the social security wage base	2a(i)
2a(ii)	Total qualified sick leave wages. Add lines 2a and 2a(i)	2a(ii)
2a(iii)	Qualified sick leave wages excluded from the definition of employment under sections 3121(b)(1)–(22)	2a(iii)
2b	Qualified health plan expenses allocable to qualified sick leave wages (Form 941, Part 3, <u>line 19</u>)	2b
2c	Employer share of Medicare tax on qualified sick leave wages. Multiply line 2a(ii) by 1.45% (0.0145)	2c
2d	Credit for qualified sick leave wages. Add lines 2a(i), 2a(iii), 2b, and 2c	2d
2e	Qualified family leave wages reported on Form 941, Part 1, <u>line 5a(ii)</u> , column 1	2e
2e(i)	Qualified family leave wages included on Form 941, Part 1, line 5c, but not included on Form 941, Part 1, line 5a(ii), column 1, because the wages reported on that line were limited by the social security wage base	2e(i)
2e(ii)	Total qualified family leave wages. Add lines 2e and 2e(i)	2e(ii)
2e(iii)	Qualified family leave wages excluded from the definition of employment under sections 3121(b)(1)–(22)	2e(iii)
2f	Qualified health plan expenses allocable to qualified family leave wages (Form 941, Part 3, <u>line 20</u>)	2f
2g	Employer share of Medicare tax on qualified family leave wages. Multiply line 2e(ii) by 1.45% (0.0145)	2g
2h	Credit for qualified family leave wages. Add lines 2e(ii), 2e(iii), 2f, and 2g	2h
2i	Credit for qualified sick and family leave wages. Add lines 2d and 2h	2i
2j	Nonrefundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021. Enter the smaller of line 1l or line 2i. Enter this amount on Form 941, Part 1, line 11b	2j
2k	Refundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021. Subtract line 2j from line 2i and enter this amount on Form 941, Part 1, line 13c	2k

FORM 941 – WORKSHEET 2

Worksheet 2. Employee Retention Credit for the Second Quarter of 2021 Only (Wages Paid After March 31, 2021, and Before July 1, 2021)

Keep for Your Records




Determine how you will complete this worksheet. (If you're a third-party payer, you must complete this worksheet for each client for which it is applicable, on a client-by-client basis.)

If you paid qualified wages after March 31, 2021, and before July 1, 2021, for purposes of the employee retention credit, complete Step 1 and Step 2. If you're claiming a credit for qualified sick and family leave wages in the second quarter of 2021 for leave taken before April 1, 2021, complete Worksheet 1 before starting this worksheet. **Caution:** Use Worksheet 4 to figure the employee retention credit for qualified wages paid in the third and fourth quarters of 2021.

Step 1.		Determine the employer share of social security tax for the second quarter of 2021 after it is reduced by any credit claimed on Form 8974 and any credit to be claimed on Form 5884-C and/or Form 5884-D	
1a	If you completed Worksheet 1 for the second quarter of 2021 to claim a credit for qualified sick and family leave wages for leave taken before April 1, 2021, enter the amount from Worksheet 1, Step 1, line 1i, and go to Step 2. If you're not claiming a credit for qualified sick and family leave wages for leave taken before April 1, 2021, continue by completing lines 1b-1n below and then go to Step 2	1a	_____
1b	Enter the amount of social security tax from Form 941, Part 1, <u>line 5a</u> , column 2	1b	_____
1c	Enter the amount of social security tax from Form 941, Part 1, <u>line 5b</u> , column 2	1c	_____
1d	Add lines 1b and 1c	1d	_____
1e	Multiply line 1d by 50% (0.50)	1e	_____
1f	If you're a third-party payer of sick pay that isn't an agent and you're claiming credits for amounts paid to your employees, enter the employer share of social security tax included on Form 941, Part 1, <u>line 8</u> (enter as a positive number)	1f	_____
1g	Subtract line 1f from line 1e	1g	_____
1h	If you received a Section 3121(q) Notice and Demand during the quarter, enter the amount of the employer share of social security tax from the notice	1h	_____
1i	Employer share of social security tax. Add lines 1g and 1h	1i	_____
1j	Enter the amount from Form 941, Part 1, <u>line 11a</u> (credit from Form 8974)	1j	_____
1k	Enter the amount to be claimed on Form 5884-C, line 11, for this quarter	1k	_____
1l	Enter the amount to be claimed on Form 5884-D, line 12, for this quarter	1l	_____
1m	Total nonrefundable credits already used against the employer share of social security tax. Add lines 1j, 1k, and 1l	1m	_____
1n	Employer share of social security tax remaining. Subtract line 1m from line 1i	1n	_____
Step 2.		Figure the employee retention credit for the second quarter of 2021	
Caution: The total amount included on lines 2a and 2b can't exceed \$10,000 per employee.			
2a	Qualified wages (excluding qualified health plan expenses) for the employee retention credit (Form 941, Part 3, <u>line 21</u>)	2a	_____
2b	Qualified health plan expenses allocable to qualified wages for the employee retention credit (Form 941, Part 3, <u>line 22</u>)	2b	_____
2c	Add lines 2a and 2b	2c	_____
2d	Retention credit. Multiply line 2c by 70% (0.70)	2d	_____
2e	Enter the amount of the employer share of social security tax from Step 1, line 1a, or, if applicable, Step 1, line 1n	2e	_____
2f	Enter any second quarter amount of the nonrefundable portion of the credit for qualified sick and family leave wages for leave taken before April 1, 2021, from Worksheet 1, Step 2, line 2j	2f	_____
2g	Subtract line 2f from line 2e	2g	_____
2h	Nonrefundable portion of employee retention credit. Enter the smaller of line 2d or line 2g. Enter this amount on Form 941, Part 1, line 11c	2h	_____
2i	Refundable portion of employee retention credit. Subtract line 2h from line 2d and enter this amount on Form 941, Part 1, line 13d	2i	_____

FORM 941 – WORKSHEET 3

Worksheet 3. Credit for Qualified Sick and Family Leave Wages for Leave Taken After March 31, 2021


Keep for Your Records 

Determine how you will complete this worksheet. (If you're a third-party payer, you must complete this worksheet for each client for which it is applicable, on a client-by-client basis.)
If you paid qualified sick leave wages and/or qualified family leave wages this quarter for leave taken after March 31, 2021, complete Step 1 and Step 2.
Caution: Use Worksheet 1 to figure the credit for qualified sick and family leave wages for leave taken before April 1, 2021.

Step 1. Determine the employer share of Medicare tax		
1a	Enter the amount of Medicare tax from Form 941, Part 1, line 5c, column 2	1a
1b	Multiply line 1a by 50% (0.50)	1b
1c	If you're a third-party payer of sick pay that isn't an agent and you're claiming credits for amounts paid to your employees, enter the employer share of Medicare tax included on Form 941, Part 1, line 8 (enter as a positive number)	1c
1d	Subtract line 1c from line 1b	1d
1e	If you received a Section 3121(g) Notice and Demand during the quarter, enter the amount of the employer share of Medicare tax from the notice	1e
1f	Employer share of Medicare tax. Add lines 1d and 1e	1f
Step 2. Figure the sick and family leave credit		
2a	Qualified sick leave wages for leave taken after March 31, 2021 (Form 941, Part 3, line 23)	2a
2a(i)	Qualified sick leave wages included on Form 941, Part 3, line 23, that were not included as wages reported on Form 941, Part 1, lines 5a and 5c, because the qualified sick leave wages were excluded from the definition of employment under sections 3121(b)(1)-(22)	2a(i)
2a(ii)	Subtract line 2a(i) from line 2a	2a(ii)
2a(iii)	Qualified sick leave wages included on Form 941, Part 3, line 23, that were not included as wages reported on Form 941, Part 1, line 5a, because the qualified sick leave wages were limited by the social security wage base	2a(iii)
2a(iv)	Subtract line 2a(iii) from line 2a(ii)	2a(iv)
2b	Qualified health plan expenses allocable to qualified sick leave wages for leave taken after March 31, 2021 (Form 941, Part 3, line 24)	2b
2c	Amounts under certain collectively bargained agreements allocable to qualified sick leave for leave taken after March 31, 2021 (Form 941, Part 3, line 25)	2c
2d	Employer share of social security tax on qualified sick leave wages. Multiply line 2a(iv) by 6.2% (0.062)	2d
2e	Employer share of Medicare tax on qualified sick leave wages. Multiply line 2a(ii) by 1.45% (0.0145)	2e
2f	Credit for qualified sick leave wages. Add lines 2a, 2b, 2c, 2d, and 2e	2f
2g	Qualified family leave wages for leave taken after March 31, 2021 (Form 941, Part 3, line 26)	2g
2g(i)	Qualified family leave wages included on Form 941, Part 3, line 26, that were not included as wages reported on Form 941, Part 1, lines 5a and 5c, because the qualified family leave wages were excluded from the definition of employment under sections 3121(b)(1)-(22)	2g(i)
2g(ii)	Subtract line 2g(i) from line 2g	2g(ii)
2g(iii)	Qualified family leave wages included on Form 941, Part 3, line 26, that were not included as wages reported on Form 941, Part 1, line 5a, because the qualified family leave wages were limited by the social security wage base	2g(iii)
2g(iv)	Subtract line 2g(iii) from line 2g(ii)	2g(iv)
2h	Qualified health plan expenses allocable to qualified family leave wages for leave taken after March 31, 2021 (Form 941, Part 3, line 27)	2h
2i	Amounts under certain collectively bargained agreements allocable to qualified family leave for leave taken after March 31, 2021 (Form 941, Part 3, line 28)	2i
2j	Employer share of social security tax on qualified family leave wages. Multiply line 2g(iv) by 6.2% (0.062)	2j
2k	Employer share of Medicare tax on qualified family leave wages. Multiply line 2g(ii) by 1.45% (0.0145)	2k
2l	Credit for qualified family leave wages. Add lines 2g, 2h, 2i, 2j, and 2k	2l
2m	Credit for qualified sick and family leave wages. Add lines 2f and 2l	2m
2n	For second quarter of 2021 only. enter any employee retention credit claimed under section 2301 of the CARES Act (from Worksheet 2, line 2d) with respect to any wages taken into account for the credit for qualified sick and family leave wages for the quarter	2n
2o	Enter any credit claimed under section 41 for increasing research activities with respect to any wages taken into account for the credit for qualified sick and family leave wages	2o
2p	Add lines 2n and 2o	2p
2q	Credit for qualified sick and family leave wages after adjusting for other credits. Subtract line 2p from line 2m	2q
2r	Nonrefundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021. Enter the smaller of line 1f or line 2q. Enter this amount on Form 941, Part 1, line 11d	2r
2s	Refundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021. Subtract line 2r from line 2q and enter this amount on Form 941, Part 1, line 13e	2s

FORM 941 – WORKSHEET 4

Worksheet 4. Employee Retention Credit for Third and Fourth Quarters of 2021 Only (Qualified Wages Paid After June 30, 2021)

Keep for Your Records 

Determine how you will complete this worksheet. (If you're a third-party payer, you must complete this worksheet for each client for which it is applicable, on a client-by-client basis.)

If you paid qualified wages after June 30, 2021, for purposes of the employee retention credit, complete Step 1 and Step 2. If you're claiming a credit for qualified sick and family leave wages in this quarter for leave taken after March 31, 2021, complete Worksheet 3 before starting this worksheet.

Caution: Use Worksheet 2 to figure the employee retention credit for qualified wages paid in the second quarter of 2021.

Step 1. Determine the employer share of Medicare tax	
1a	If you completed Worksheet 3 to claim a credit for qualified sick and family leave wages for leave taken after March 31, 2021, enter the amount from Worksheet 3, Step 1, line 1f, and go to Step 2. If you're not claiming a credit for qualified sick and family leave wages for leave taken after March 31, 2021, continue by completing lines 1b–1g below and then go to Step 2
1b	Enter the amount of Medicare tax from Form 941, Part 1, <u>line 5c</u> , column 2
1c	Multiply line 1b by 50% (0.50)
1d	If you're a third-party payer of sick pay that isn't an agent and you're claiming credits for amounts paid to your employees, enter the employer share of Medicare tax included on Form 941, Part 1, <u>line 8</u> (enter as a positive number)
1e	Subtract line 1d from line 1c
1f	If you received a Section 3121(q) Notice and Demand during the quarter, enter the amount of the employer share of Medicare tax from the notice
1g	Employer share of Medicare tax. Add lines 1e and 1f
Step 2. Figure the employee retention credit	
Caution: The total amount included on lines 2a and 2b can't exceed \$10,000 per employee each quarter.	
2a	Qualified wages (excluding qualified health plan expenses) for the employee retention credit (Form 941, Part 3, <u>line 21</u>)
2b	Qualified health plan expenses allocable to qualified wages for the employee retention credit (Form 941, Part 3, <u>line 22</u>)
2c	Add lines 2a and 2b
2d	Retention credit. Multiply line 2c by 70% (0.70). If you qualify for the employee retention credit solely because your business is a recovery startup business, don't enter more than \$50,000 per quarter
2e	Enter the amount of the employer share of Medicare tax from Step 1, line 1a, or, if applicable, Step 1, line 1g
2f	Enter any amount of the nonrefundable portion of the credit for qualified sick and family leave wages for leave taken after March 31, 2021, from Worksheet 3, Step 2, line 2r
2g	Subtract line 2f from line 2e
2h	Nonrefundable portion of employee retention credit. Enter the smaller of line 2d or line 2g. Enter this amount on Form 941, Part 1, line 11c
2i	Refundable portion of employee retention credit. Subtract line 2h from line 2d and enter this amount on Form 941, Part 1, line 13d

FORM 941 – WORKSHEET 5

Worksheet 5. COBRA Premium Assistance Credit

Keep for Your Records



Determine how you will complete this worksheet. (If you're a third-party payer, you must complete this worksheet for each client for which it is applicable, on a client-by-client basis. If you're a third-party payer that is treated as the person to whom premiums are payable, you must complete this worksheet for yourself as well.)

If you provided COBRA premium assistance in the quarter, complete Step 1 and Step 2. If you're claiming the credit for qualified sick and family leave wages this quarter for leave taken after March 31, 2021, complete Worksheet 3 before starting this worksheet. If you're claiming this credit for the third or fourth quarter of 2021 and you are also claiming an employee retention credit for wages paid in the same quarter of 2021, complete Worksheet 4 before starting this worksheet.

Step 1. Determine the employer share of Medicare tax

- | | | | |
|----|--|----|-------|
| 1a | If you completed Worksheet 3 or Worksheet 4, enter the amount listed on Worksheet 3, line 1f, or Worksheet 4, line 1a or 1g (as applicable). If you're not claiming either of these credits this quarter, continue by completing lines 1b–1g below and then go to Step 2 | 1a | _____ |
| 1b | Enter the amount of Medicare tax from Form 941, Part 1, line 5c , column 2 | 1b | _____ |
| 1c | Multiply line 1b by 50% (0.50) | 1c | _____ |
| 1d | If you're a third-party payer of sick pay that isn't an agent and you're claiming credits for amounts paid to your employees, enter the employer share of Medicare tax included on Form 941, Part 1, line 8 (enter as a positive number) | 1d | _____ |
| 1e | Subtract line 1d from line 1c | 1e | _____ |
| 1f | If you received a Section 3121(q) Notice and Demand during the quarter, enter the amount of the employer share of Medicare tax from the notice | 1f | _____ |
| 1g | Employer share of Medicare tax. Add lines 1e and 1f | 1g | _____ |

Step 2. Figure the COBRA premium assistance credit

- | | | | |
|----|---|----|-------|
| 2a | Enter the COBRA premium assistance that you provided this quarter | 2a | _____ |
| 2b | Enter the amount of the employer share of Medicare tax from Step 1, line 1a, or, if applicable, Step 1, line 1g | 2b | _____ |
| 2c | Enter any amount of the nonrefundable portion of the credit for qualified sick and family leave wages for leave taken after March 31, 2021, from Worksheet 3, Step 2, line 2r | 2c | _____ |
| 2d | Enter any amount of the nonrefundable portion of the employee retention credit from Worksheet 4, Step 2, line 2h | 2d | _____ |
| 2e | Other nonrefundable credits used against the employer share of Medicare tax. Add lines 2c and 2d | 2e | _____ |
| 2f | Subtract line 2e from line 2b | 2f | _____ |
| 2g | Nonrefundable portion of the COBRA premium assistance credit. Enter the smaller of line 2a or line 2f. Enter this amount on Form 941, Part 1, line 11e | 2g | _____ |
| 2h | Refundable portion of the COBRA premium assistance credit. Subtract line 2g from line 2a and enter this amount on Form 941, Part 1, line 13f | 2h | _____ |

FORM 941

IRS or Social Security Administration will contact you if the amounts reported on your four quarterly Forms 941 do not match the total amounts reported on your Forms W-2 and Form W-3.

Make sure you reconcile:

- Federal income tax withholding
- Social Security Wages
- Social Security Tips
- Medicare Wages and Tips

FORM 941-X

Changes to Form 941-x to accommodate ARPA – Rev 7/21

- Lines 18b, 26b, 35 – 40 used to correct lines 11d, 13e, 23 – 28 from Form 941, respectively
- Lines 18a, 26a, 30 & 31a are used to correct lines 11c, 13d, 21 & 22 from Form 941, respectively
- Lines 18c, 18d and 26c are used to correct lines 11e, 11f and 13f from Form 941, respectively – these are for the new COBRA premium assistance credit
- Lines 9, 10, 17, 25, 28 & 29 are now applicable only to qualified sick leave and qualified family leave taken prior to 4/1/21

FORM 941-X

9. Qualified sick leave wages* (Form 941 or 941-SS, line 5a(i), Column 1)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	×	0.062	=	<input type="text"/>
* Use line 9 only for qualified sick leave wages paid after March 31, 2020, for leave taken before April 1, 2021.									
10. Qualified family leave wages* (Form 941 or 941-SS, line 5a(ii), Column 1)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	×	0.062	=	<input type="text"/>
* Use line 10 only for qualified family leave wages paid after March 31, 2020, for leave taken before April 1, 2021.									
11. Taxable social security tips (Form 941 or 941-SS, line 5b, Column 1)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	×	0.124*	=	<input type="text"/>
* If you're correcting your employer share only, use 0.062. See instructions.									
12. Taxable Medicare wages & tips (Form 941 or 941-SS, line 5c, Column 1)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	×	0.029*	=	<input type="text"/>
* If you're correcting your employer share only, use 0.0145. See instructions.									
13. Taxable wages & tips subject to Additional Medicare Tax withholding (Form 941 or 941-SS, line 5d)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	×	0.009*	=	<input type="text"/>
* Certain wages and tips reported in Column 3 shouldn't be multiplied by 0.009. See instructions.									
14. Section 3121(q) Notice and Demand—Tax due on unreported tips (Form 941 or 941-SS, line 5f)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	Copy Column 3 here ▶		<input type="text"/>	<input type="text"/>
15. Tax adjustments (Form 941 or 941-SS, lines 7 through 9)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	Copy Column 3 here ▶		<input type="text"/>	<input type="text"/>
16. Qualified small business payroll tax credit for increasing research activities (Form 941 or 941-SS, line 11a; you must attach Form 8974)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions		<input type="text"/>	<input type="text"/>
17. Nonrefundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021 (Form 941 or 941-SS, line 11b)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions		<input type="text"/>	<input type="text"/>
18a. Nonrefundable portion of employee retention credit (Form 941 or 941-SS, line 11c)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions		<input type="text"/>	<input type="text"/>
18b. Nonrefundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021 (Form 941 or 941-SS, line 11d)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions		<input type="text"/>	<input type="text"/>
18c. Nonrefundable portion of COBRA premium assistance credit (Form 941 or 941-SS, line 11e)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions		<input type="text"/>	<input type="text"/>
18d. Number of individuals provided COBRA premium assistance (Form 941 or 941-SS, line 11f)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>				

FORM 941-X

24. Deferred amount of social security tax* (Form 941 or 941-SS, line 13b)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions	<input type="text"/>
<small>* Use this line to correct the employer deferral for the second quarter of 2020 and the employer and employee deferral for the third and fourth quarters of 2020.</small>							
25. Refundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021 (Form 941 or 941-SS, line 13c)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions	<input type="text"/>
26a. Refundable portion of employee retention credit (Form 941 or 941-SS, line 13d)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions	<input type="text"/>
26b. Refundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021 (Form 941 or 941-SS, line 13e)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions	<input type="text"/>
26c. Refundable portion of COBRA premium assistance credit (Form 941 or 941-SS, line 13f)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>	See instructions	<input type="text"/>
27. Total. Combine the amounts on lines 23 through 26c of Column 4							<input type="text"/>
<p>If line 27 is less than zero:</p> <ul style="list-style-type: none"> • If you checked line 1, this is the amount you want applied as a credit to your Form 941 or 941-SS for the tax period in which you're filing this form. (If you're currently filing a Form 944, Employer's ANNUAL Federal Tax Return, see the instructions.) • If you checked line 2, this is the amount you want refunded or abated. <p>If line 27 is more than zero, this is the amount you owe. Pay this amount by the time you file this return. For information on how to pay, see <i>Amount you owe</i> in the instructions.</p>							
28. Qualified health plan expenses allocable to qualified sick leave wages for leave taken before April 1, 2021 (Form 941 or 941-SS, line 19)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>		
29. Qualified health plan expenses allocable to qualified family leave wages for leave taken before April 1, 2021 (Form 941 or 941-SS, line 20)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>		
30. Qualified wages for the employee retention credit (Form 941 or 941-SS, line 21)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>		
31a. Qualified health plan expenses for the employee retention credit (Form 941 or 941-SS, line 22)	<input type="text"/>	–	<input type="text"/>	=	<input type="text"/>		
31b. Check here if you're eligible for the employee retention credit in the third or fourth quarter of 2021 solely because your business is a recovery startup business	<input type="checkbox"/>						

FORM 941-X

Part 3: Enter the corrections for this quarter. If any line doesn't apply, leave it blank. (continued)

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)
33a. Qualified wages paid March 13 through March 31, 2020, for the employee retention credit* (Form 941 or 941-SS, line 24)	<input type="text"/>	<input type="text"/>	<input type="text"/>
* Use line 33a to correct only the second quarter of 2020.			
33b. Deferred amount of the employee share of social security tax included on Form 941 or 941-SS, line 13b* (Form 941 or 941-SS, line 24)	<input type="text"/>	<input type="text"/>	<input type="text"/>
* Use line 33b to correct only the third and fourth quarters of 2020.			
34. Qualified health plan expenses allocable to wages reported on Form 941 or 941-SS, line 24* (Form 941 or 941-SS, line 25)	<input type="text"/>	<input type="text"/>	<input type="text"/>
* Use line 34 to correct only the second quarter of 2020.			
Caution: Lines 35–40 apply only to quarters beginning after March 31, 2021.			
35. Qualified sick leave wages for leave taken after March 31, 2021 (Form 941 or 941-SS, line 23)	<input type="text"/>	<input type="text"/>	<input type="text"/>
36. Qualified health plan expenses allocable to qualified sick leave wages for leave taken after March 31, 2021 (Form 941 or 941-SS, line 24)	<input type="text"/>	<input type="text"/>	<input type="text"/>
37. Amounts under certain collectively bargained agreements allocable to qualified sick leave wages for leave taken after March 31, 2021 (Form 941 or 941-SS, line 25)	<input type="text"/>	<input type="text"/>	<input type="text"/>
38. Qualified family leave wages for leave taken after March 31, 2021 (Form 941 or 941-SS, line 26)	<input type="text"/>	<input type="text"/>	<input type="text"/>
39. Qualified health plan expenses allocable to qualified family leave wages for leave taken after March 31, 2021 (Form 941 or 941-SS, line 27)	<input type="text"/>	<input type="text"/>	<input type="text"/>
40. Amounts under certain collectively bargained agreements allocable to qualified family leave wages for leave taken after March 31, 2021 (Form 941 or 941-SS, line 28)	<input type="text"/>	<input type="text"/>	<input type="text"/>

FORM W-2

- Employers must report the amount of qualified sick leave wages and qualified family leave wages paid to employees under the Families First Coronavirus Response Act. Include compensation in Box 1, 3 and 5 and include the FFCRA amount in Box 14 on 2020 Forms W-2. If not included in Box 14 a separate statement must be provided.
- Updated language for Box 14 per IRS Notice 2021-53, 9-7-21
- IRS notice also contains language to use if selecting the separate statement option.
 - Included in Box 14, if applicable, are amounts paid to you as qualified sick leave wages or qualified family leave wages under the Families First Coronavirus Response Act and/or sections 3131 and 3132 of the Internal Revenue Code.

FORM W-2

- Separate statement must be distributed at the same time as the Form W-2 whether paper form or electronic.
- Complete Form W-2c in 2021 when deferred SS taxes have been repaid. See IRS Notice 2020-65 for more information.
- In 2022* if you send 100 or more W-2s to SSA, you have to file them electronically
- In 2023* that limit is lowered to 10

**Pending IRS issuing final regulations*

FORM W-2

22222		VOID <input type="checkbox"/>		a Employee's social security number		For Official Use Only ▶ OMB No. 1545-0008					
b Employer identification number (EIN)				1 Wages, tips, other compensation		2 Federal income tax withheld					
c Employer's name, address, and ZIP code				3 Social security wages		4 Social security tax withheld					
				5 Medicare wages and tips		6 Medicare tax withheld					
				7 Social security tips		8 Allocated tips					
d Control number				9		10 Dependent care benefits					
e Employee's first name and initial		Last name		Suff.		11 Nonqualified plans		12a See instructions for box 12			
f Employee's address and ZIP code				13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b					
				14 Other		12c					
						12d					
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.		19 Local income tax		20 Locality name	

Form **W-2** Wage and Tax Statement

2021

Copy A—For Social Security Administration. Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 10134D

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FORM 1099-NEC

- Reimplemented Form 1099-NEC for reporting of compensation paid to independent contractors, attorney's (payments for legal services **only**, settlements are still reported in Box 10 of the 1099-MISC), gig workers or any other non-employee compensation in the amount of \$600 or more in a calendar year.
- Box 1 – not used for reporting under section 6050R (use box 11 on Form 1099-MISC)

FORM 1099-NEC

- Box 2 – Report any sales totaling \$5,000 or more of consumer products for resale (can also use box 7 on Form 1099-MISC)
- Filing deadline January 31, for **both** paper and electronic filers.

More information can be
found at:
[www.irs.gov/forms-
pubs/about-form-1099-nc](https://www.irs.gov/forms-pubs/about-form-1099-nc)

FORM 1099-NEC

7171 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		OMB No. 1545-0116		2021	Nonemployee Compensation
		Form 1099-NEC			
PAYER'S TIN	RECIPIENT'S TIN	1 Nonemployee compensation			Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2021 General Instructions for Certain Information Returns.
		\$			
RECIPIENT'S name		2 Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale <input type="checkbox"/>			
Street address (including apt. no.)		3			
City or town, state or province, country, and ZIP or foreign postal code		4 Federal income tax withheld			
Account number (see instructions)		2nd TIN not <input type="checkbox"/>	5 State tax withheld	6 State/Payer's state no.	7 State income
			\$	\$	\$

Form **1099-NEC** Cat. No. 72590N www.irs.gov/Form1099NEC Department of the Treasury - Internal Revenue Service

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FORM 1099 - MISC

- Renamed 1099-Miscellaneous Information (formerly Miscellaneous Income)
- Box 7 repurposed for use with direct sales of \$5,000 or more
- Box 11 includes any reporting under section 6050R (cash payments for purchase of fish for resale purposes)
- If paid to a corporation, no 1099-Misc reporting required, unless an exception applies such as:
 - Gross proceeds paid to an attorney
 - Deceased employee wages paid to estate or beneficiary
 - Paid for medical expenses
 - Includes items such as flu shots paid by employer

FORM 1099-MISC

- Many accounting firms are not incorporated so may require 1099-Misc reporting
- IRS expects employers to have some 1099 reporting and has a program to identify those that do not file any 1099 series forms
- Filing due by February 28, if filing paper
- Filing due by March 31, if filing electronically

FORM 1099-MISC

9595		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0115		Miscellaneous Information Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2021 General Instructions for Certain Information Returns.
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Rents	\$	2021 Form 1099-MISC		
		2 Royalties	\$			
		3 Other income	\$			
PAYER'S TIN	RECIPIENT'S TIN	5 Fishing boat proceeds	\$	4 Federal income tax withheld	\$	
RECIPIENT'S name		7 Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale <input type="checkbox"/>	\$	6 Medical and health care payments	\$	
Street address (including apt. no.)		9 Crop insurance proceeds	\$	8 Substitute payments in lieu of dividends or interest	\$	
City or town, state or province, country, and ZIP or foreign postal code		10 Gross proceeds paid to an attorney	\$	11 Fish purchased for resale	\$	
Account number (see instructions)	FATCA filing requirement <input type="checkbox"/>	12 Section 409A deferrals	\$	13 Excess golden parachute payments	\$	
2nd TIN not <input type="checkbox"/>		14 Nonqualified deferred compensation	\$	15 State tax withheld	\$	
		16 State/Payer's state no.	\$	17 State income	\$	

Form 1099-MISC Cat. No. 14425J www.irs.gov/Form1099MISC Department of the Treasury - Internal Revenue Service

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A LOOK AHEAD AT 2022

- Social Security Wage Base
 - \$146,700 (\$9,095.40)
- Federal Per Diem
 - Conus M&IE rate is \$59.00
 - Non-standard areas (NSA's) increase to \$59, \$69, \$74, and \$79
 - Additional information found in Per Diem Bulletin FTR 22-01 (effective for travel on or after 10/1/2021)
- HSA Limits
 - Individual - \$3,650
 - Family - \$7,300
 - HSA Catch-up (55 and older) - \$1,000
- HRA Limit
 - \$1,800 (unchanged from 2021)

A LOOK AHEAD AT 2022

- Federal Unemployment
 - US Virgin Islands – no credit reduction
 - Expect to see additional restrictions in 2023 as a result of COVID-19
- 401(k), 401(b) and most 457 Retirement Plan Limits
 - Up to age 50 –\$20,500
 - Age 50 and over – Catch-up – will remain at \$6,500
 - Overall Limit – \$61,000
- FSA Limits
 - Carry over Limit – \$550
 - Dependent Care Limit - \$5,000 per household
 - Medical Limit –\$2,750

A LOOK AHEAD AT 2022

- Minimum wage increase for federal contractors beginning 1/30/2022 = \$15.00 per hour
- 2022 Draft Form W-4
 - At this time the 2022 Form W-4 has not been released
- A provision of the Bill (section 138201) would increase the top marginal individual income tax rate in IRC Section 1(i)(2) to 39.6%. It applies to:
 - married individuals filing jointly who have taxable income exceeding \$450k
 - heads of households with taxable income exceeding \$425k
 - unmarried individuals with taxable income exceeding \$400k
 - married individuals filing separately with taxable income exceeding \$225k
 - and estates and trusts with taxable income exceeding \$12.5k

These changes would apply to tax years that begin after December 31, 2021.

AMERICAN PAYROLL ASSOCIATION LOBBIES FOR SIMPLIFIED FORM W-4

- The APA Government Relations Task Force Form W-4 Workgroup recommended that the IRS create a Form W-4SN, Employee's Withholding Certificate – Single Job, No Dependents. The simplified form would be for employees whose situation allows them just to complete Steps 1, 4(c), and 5. The recommendation included a six-month effective date to allow for payroll software adjustments, payroll training, and employee awareness.

APA – Recommendation for Form W-4SN Page 3 of 4

Form W-4SN

Department of the Treasury
Internal Revenue Service

Single Job, No Dependents
Employee's Withholding Certificate

► Complete Form W-4SN so your employer can withhold the correct federal income tax from your pay.
► Give Form W-4SN to your employer.
► Your withholding is subject to review by the IRS.

OMB No. 1545-0074

20

Step 1:	(a) First name and middle initial _____ Last name _____	(b) Social security number _____
Enter Personal Information	Address _____	
	City or town, state, and ZIP code _____	
	(c) <input type="checkbox"/> Single or Married filing separately <input type="checkbox"/> Married filing jointly or Qualifying widow(er) <input type="checkbox"/> Head of household (Check only if you're unmarried and pay more than half the costs of keeping up a home for yourself and a qualifying individual.)	
► Does your name match the name on your social security card? If not, to ensure you get credit for your earnings, contact SSA at 800-772-1213 or go to www.ssa.gov .		

Step 4 (optional): (c) Extra withholding. Enter any additional tax you want withheld each pay period . 4(c) \$ _____

Other Adjustments

Step 5: Under penalties of perjury, I declare that this certificate, to the best of my knowledge and belief, is true, correct, and complete.

Sign Here

Employee's signature (This form is not valid unless you sign it.) _____	Date _____
---	------------

Employers Only

Employer's name and address _____	First date of employment _____	Employer identification number (EIN) _____
-----------------------------------	--------------------------------	--

QUESTIONS?



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Employee Leave Rights: FMLA and ADA

The Basics and the Intersection Challenge

October 21, 2021

Lisa M. Simioni, JD, LLM

Vice President & Senior Compliance Consultant, Segal



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This presentation has been prepared by Segal for informational purposes and is not complete without remarks provided at the meeting.

Please remember that the presentation is for informational purposes only and should not be construed as legal advice. On all issues involving the interpretation or application of laws and regulations, all plan personnel should rely on counsel for legal advice.



AGENDA

- | FMLA/ADA Basics
- | Case Studies
- | COVID- 19 Challenges
- | FMLA Administration: Do you have the correct counting method?
- | Why it Matters

FMLA /ADA Basics



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FMLA: Employee Eligibility

Employees with **12 months of service** (need not be consecutive) who have worked at least **1,250 hours** in the 12 months immediately preceding the first day of leave.

Is an Employee Entitled to Leave?

- Employer must be subject to FMLA and
- Employee must be eligible



FMLA: Time Allowed

12 workweeks in any 12-month period

- For an employee's **own serious health condition**
- For an employee to care for a **family member** with a serious health condition
- For a **parent** to bond with or care for a **new child**

26 workweeks in a single 12-month period

- For an employee to care for an **injured service member**
- 12 workweeks, or less depending on reason, in any 12-month period
- For an employee to take time off to deal with a **military exigency**



FMLA: Protected Leave Reasons

FMLA provides unpaid, job-protected leave for eligible employees for the following reasons:

- to care for their **own serious health condition**,
- to care for a **covered family member** (spouse, son, daughter, or parent) with a serious health condition
- for a parent to spend time with a **newborn, newly adopted or foster child**
- to care for a **covered service member with a serious injury or illness** or
- to deal with a **military exigency**



FMLA: Serious Health Condition

Must be physical or mental illness/injury of a serious nature, involving inpatient care or continuing treatment by a health care provider

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility

Continuing treatment by a health care provider includes one or more of the following:

- Incapacity (inability to work) of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition
- Pregnancy or prenatal care
- Chronic conditions
- Permanent or long-term conditions
- Conditions requiring multiple treatments or
- Any of the above that don't necessarily result in 3 days of absence but may trigger episodic periods of incapacity (for example, asthma)



American Disabilities Act

Prohibits discrimination against job applicants and employees on the basis of a disability

Protects an individual who:

- has a physical or mental impairment that substantially limits one or more of the individual's major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment



American Disabilities Act Amendments Act

- The ADA Amendments Act of 2008 (ADAAA) substantially expanded the coverage afforded by the ADA by expanding the definition of disability, so that “major life activities” include a variety of activities of daily living
- Requires that the term “substantially limits” be construed broadly
- States that impairment that is episodic or in remission is a disability if, when it is active, substantially limits a major life activity
- Makes clear that the positive effects of mitigating measures, other than ordinary eyeglasses or contact lenses, should not be considered in assessing whether an individual suffers from a disability



American Disabilities Act Amendments Act

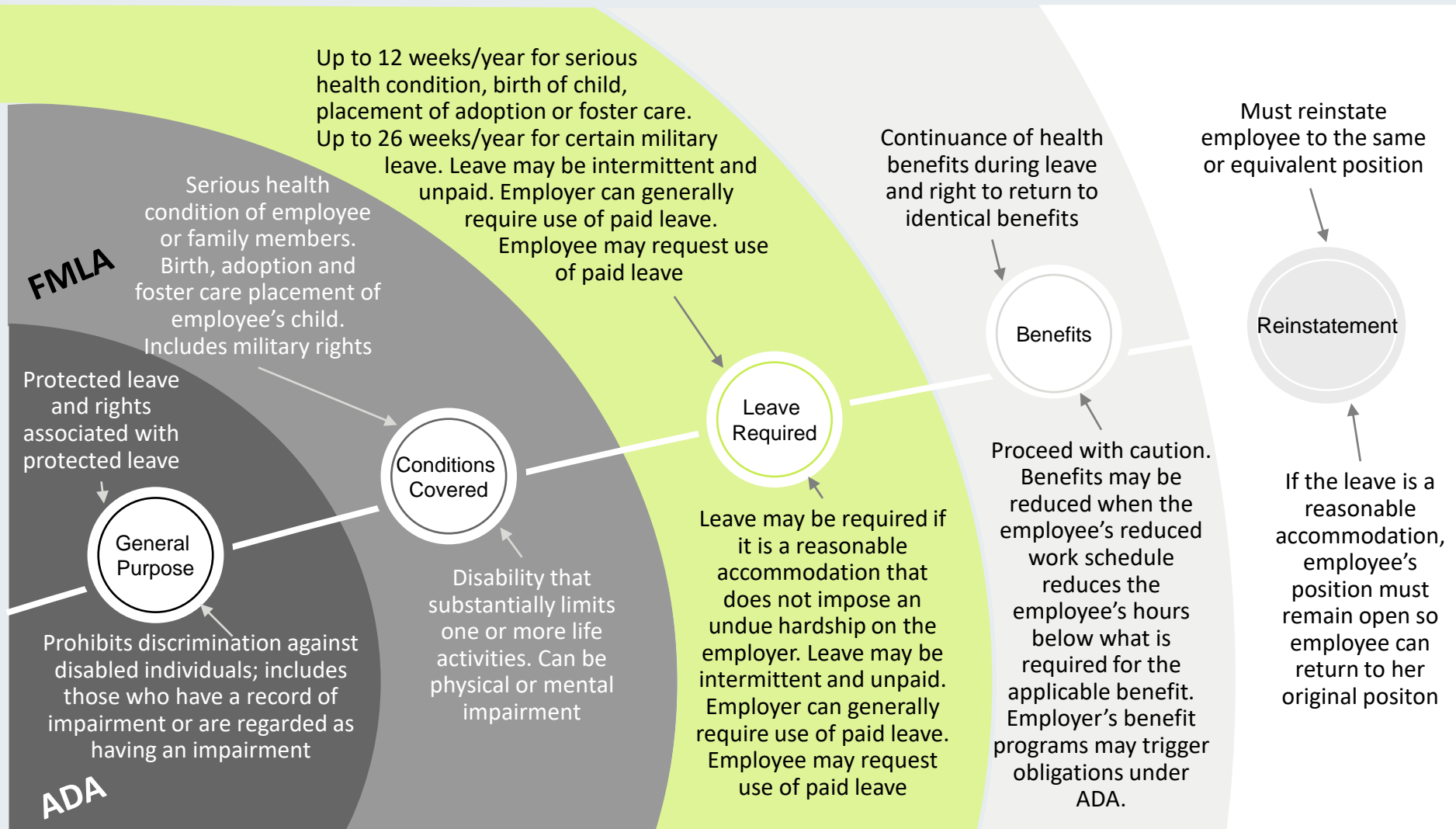
What are “major life activities”?

“[C]aring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working,” and

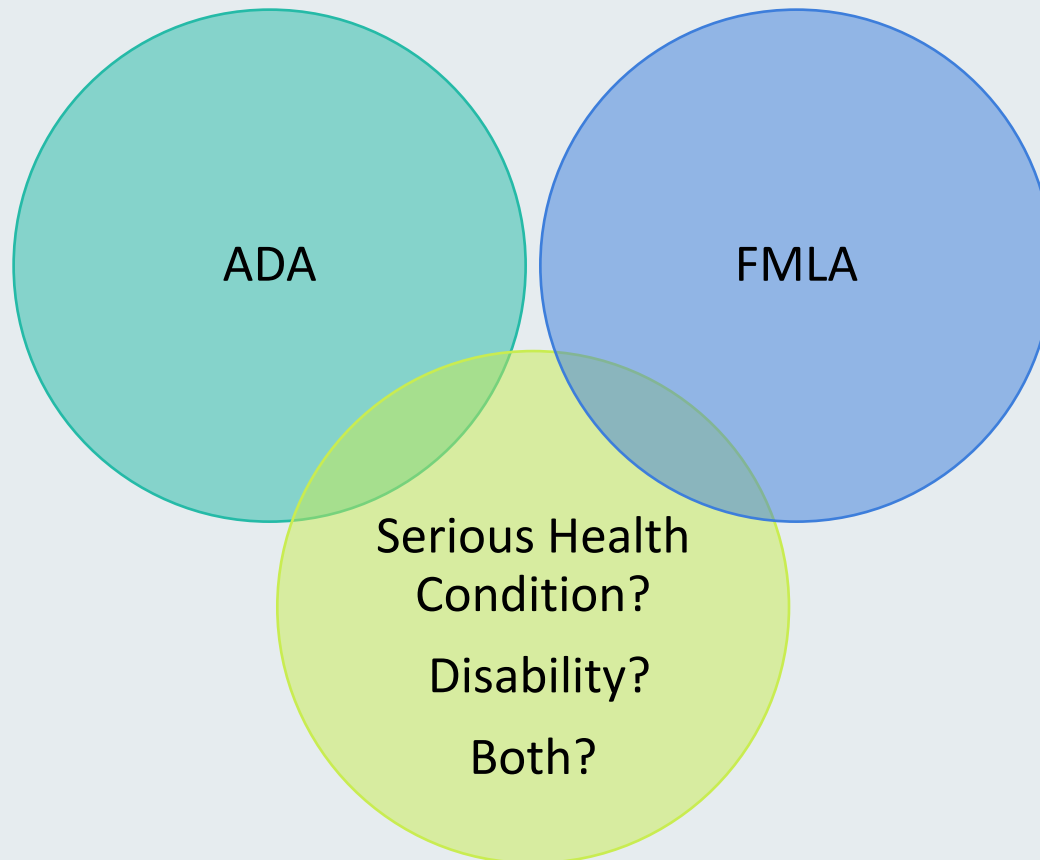
[M]ajor bodily functions, including, “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions”



FMLA / ADA



The Intersection



Case Studies



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Case Study 1: What Do You Think?

Jennifer has worked at least 40 hours per week for many years with her employer. She has never requested leave beyond her allocated PTO.

Jennifer contacts her manager in August 2021 and states that she will need to take some time off. Jennifer contacts HR and tells HR that she has a liver condition and will need surgery. She says she will be back to work after 8 weeks.

Is Jennifer covered by:

1. FMLA;
2. ADA;
3. Both



Case Study 1: What Do You Think?

Jennifer is approved for FMLA leave. After 8 weeks of FMLA leave, Jennifer contacts her employer and says that her doctor wants her to undergo additional treatment related to her liver and that she will need another 7 weeks off from work.

Is Jennifer covered by:

1. FMLA;
2. ADA;
3. Both



EEOC's Position When FMLA Leave is Exhausted

“[If] an employee uses the full 12 weeks of FMLA leave for her disability but still needs five additional weeks of leave... the employer must provide the additional leave as a reasonable accommodation unless the employer can show that doing so will cause an undue hardship.”

The Commission takes the position that compliance with the FMLA does not necessarily meet an employer's obligation under the ADA, and the fact that any additional leave exceeds what is permitted under the FMLA, by itself, is not sufficient to show undue hardship.



Case Study 2: What Do You Think?

Todd is diagnosed with COVID-19. He is hospitalized and on a ventilator for 10 weeks. After 10 weeks, Todd returns to work.

Is Todd covered by:

1. FMLA;
2. ADA;
3. Both



Case Study 2: What Do You Think?

Todd returns to work. After a few weeks, Todd calls in sick. He tells HR that he has been going to the doctor at least once a week because he is having problems breathing. He says that if things don't get better he might need to work a reduced schedule.

Is Todd covered by:

1. FMLA;
2. ADA;
3. Both



Case Study 3: What Do You Think?

James contacts his employer and says that he cannot come into work. His wife has an autoimmune condition and she hasn't been feeling well. Her doctor has told James' wife that she can work from home on a limited basis but that she cannot perform other tasks around the house. Once a week, James' wife also receives check-ins at home from a nurse practitioner. James has been losing sleep over his wife's health.

Is James covered by:

1. FMLA;
2. ADA;
3. Both



COVID-19 Challenges



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Pandemic Challenges

- Federal protections continue to apply
- Accommodations are still required even if employee is working from home
- Presents novel and unprecedented challenges for employers

The COVID-19 Long-Hauler

The Department of Justice (DOJ) and Health and Human Services (HHS) issued guidance on July 26

“Substantially limits” should be interpreted broadly

Provides examples of when a COVID-19 long-hauler might be substantially limited in a major life activity

- Individual who has lung damage and experiences shortness of breath, fatigue and related effects (i.e., substantially limited respiratory function)
- Individual who has symptoms of intestinal pain, vomiting and nausea for an extended period (i.e., substantially limited in gastrointestinal function)
- Individual who experiences memory lapses and brain fog (i.e., substantially limited in brain function, concentrating and thinking)
- Source: <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html>.

FMLA Administration: Do you have the correct counting method?



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FMLA Administration

Determining the applicable 12-month period

- Calendar year
- Any fixed 12-month period
- A 12-month period measured from the first day of leave
- A 12-month period measured backward from the date the employees uses FMLA leave (referred to as the rolling method)



Calendar Year Method

- Employee has a serious health condition
- Employer uses calendar year method (January 1 to December 31)
- Employee takes FMLA leave beginning October 15, 2021 through December 31, 2021
- In January 2022, employee is entitled to another 12 weeks of FMLA leave
- Creates a potential for stacking



12-month measured from first date of leave

- Employee has a serious health condition
- Employee takes FMLA leave beginning June 6, 2021 (12-month clock begins)
- Employee takes 4 weeks of leave from June 6, 2021 through July 2, 2021
- Employee returns to work and in March 2022, employee experiences another serious health condition. Employee takes 8 more weeks of leave
- Employee is still entitled to protected leave through June 5, 2022



12-month measured from first date of leave

- Employee exhausts remaining leave from the 2021 period that ran from June 6, 2021 through June 5, 2022
- Employee returns to work and in July 2022, Employee requests leave to care for a family member with a serious health condition
- Assuming the Employee is entitled to FMLA leave, the clock starts over again as of June 6, 2022
- The Employee's new leave clock would start ticking again in July 2022 (the new date in 2022 when leave clock begins over)
- Still potential for employee to take leave in close succession



Rolling Method

- Measure backward from date the Employee takes FMLA leave
- Employer is required to “look-back” over the previous 12 months
- Offers more protection against stacking leave periods
- More difficult to administer

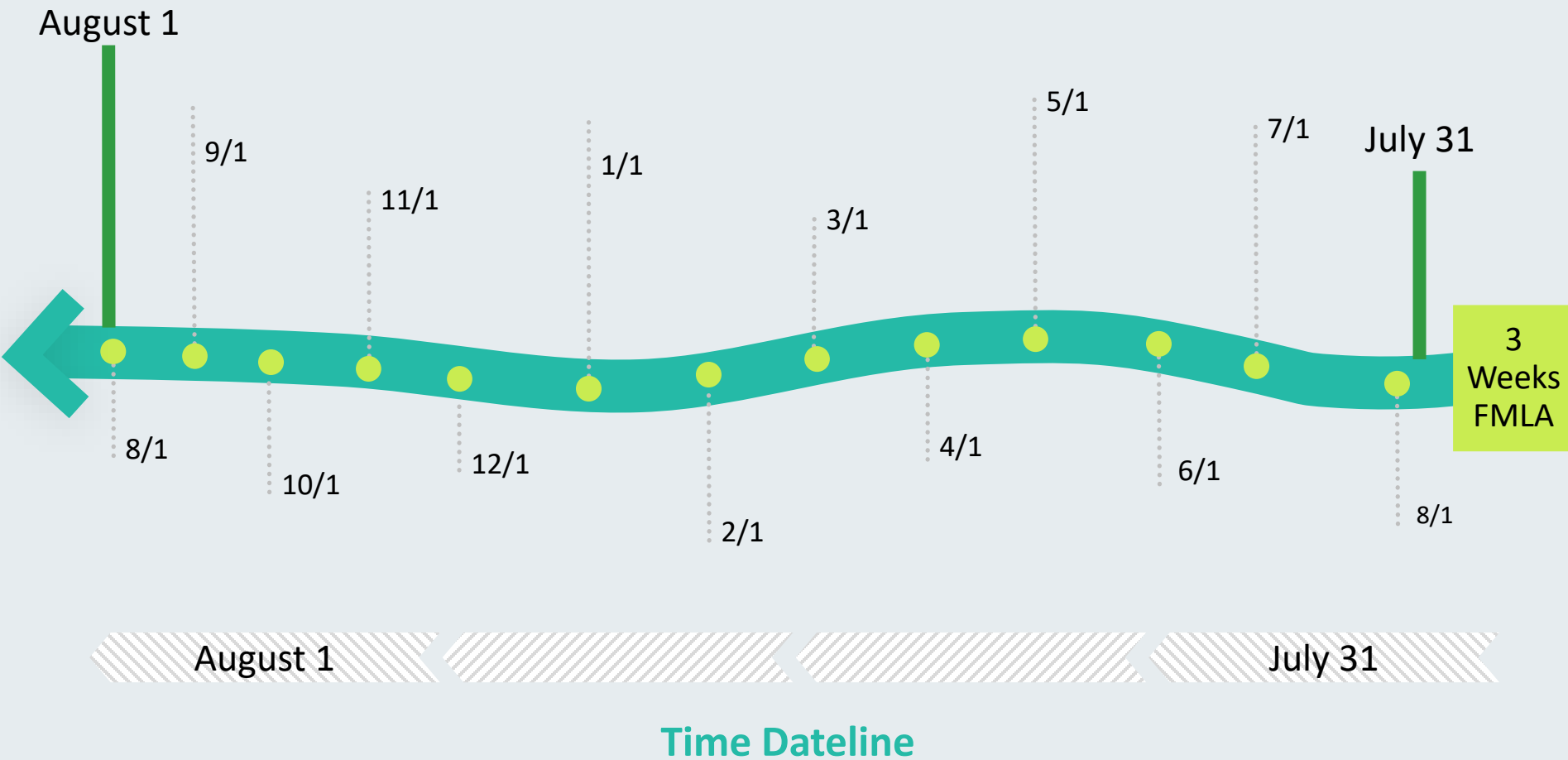


Rolling Method: Example 1

- Joe requests 3 weeks of FMLA to begin on July 31 due to a serious health condition
- Employer looks back 12 months (from July 31 to previous August 1) to see if FMLA has been used
- Joe has not taken leave and is entitled to 3 weeks and has 9 more weeks available



12 Month Look Back Period: Example 1

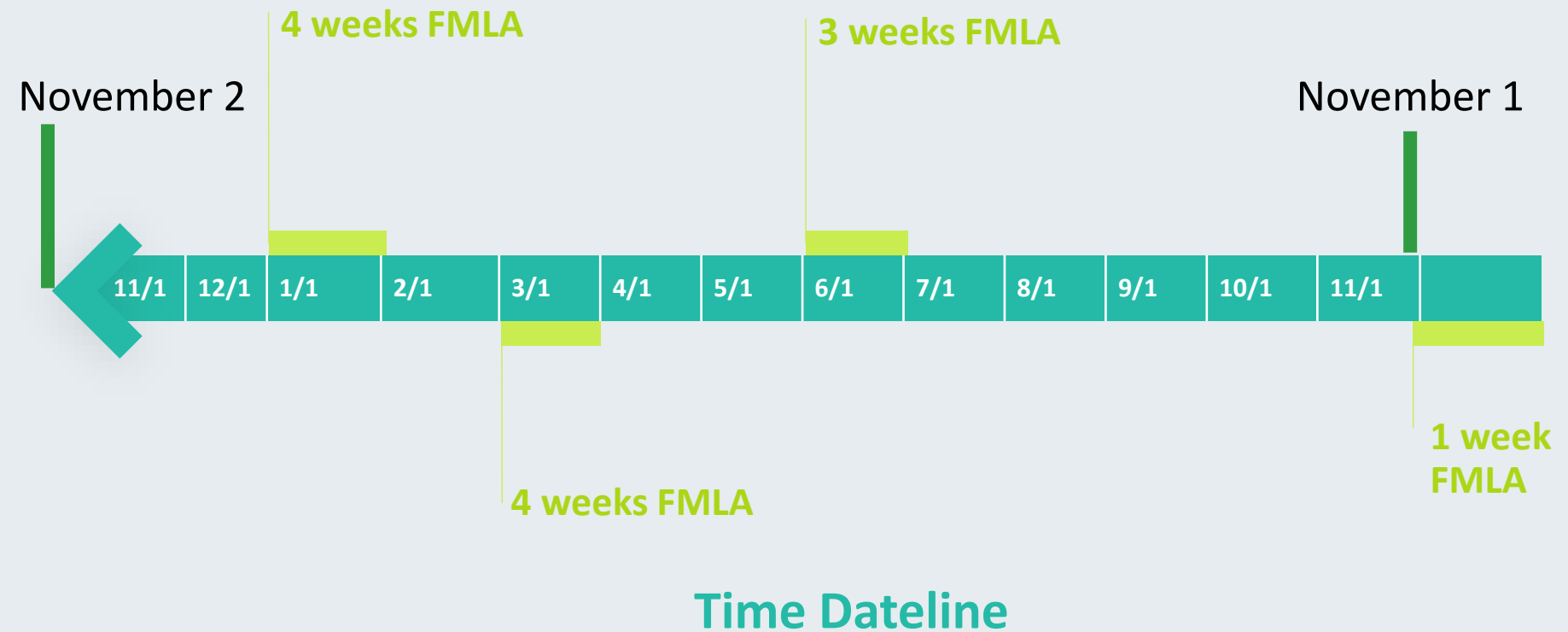


Rolling Method: Example 2

- Kate requests two weeks of FMLA leave to begin on November 1
- Employer looks back 12 months (from November 1 to previous November 2) to see if FMLA leave has been used
- Kate has taken 4 weeks of leave beginning January 1, 4 weeks beginning March 1, and 3 weeks beginning June 1 (11 weeks total)
- Kate has taken 11 weeks of FMLA leave and only has one week of protected FMLA leave available
- She can take one week in November and then again beginning in January when her previous leave rolls off the leave year



12 Month Look Back Period: Example 2



Why It Matters



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Why This Matters

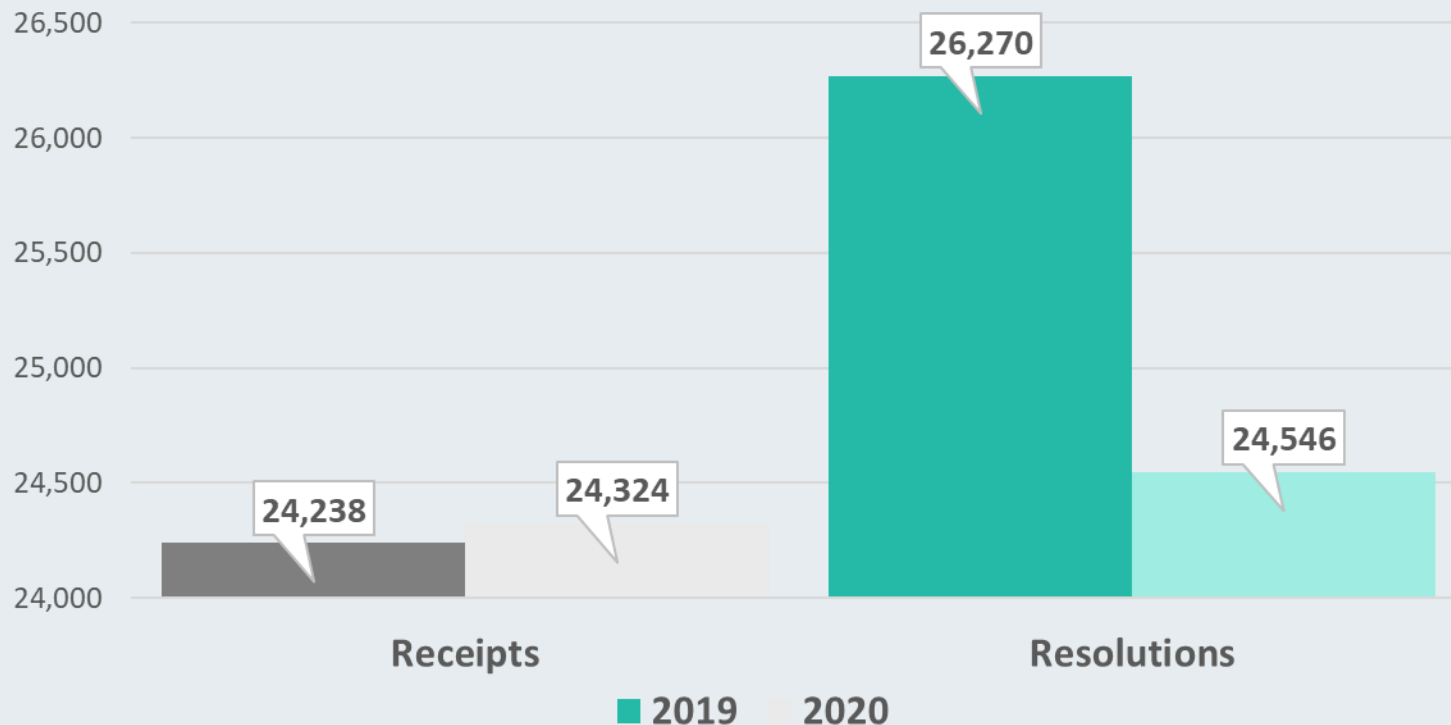
FMLA: Compliance Actions

	FY 2019	FY 2020
No Violation Cases	534	508
Employer Not Covered	12	18
Employee Not Eligible	67	63
Complaint Not Valid	402	364
Other	53	61
Cases with Violations	506	460
Number of Employees Affected	1,000	497
Amount of Back Wages	\$1,915,612	\$1,167,898

*<https://www.dol.gov/agencies/whd/data/charts/fmla>

EEOC Statistics

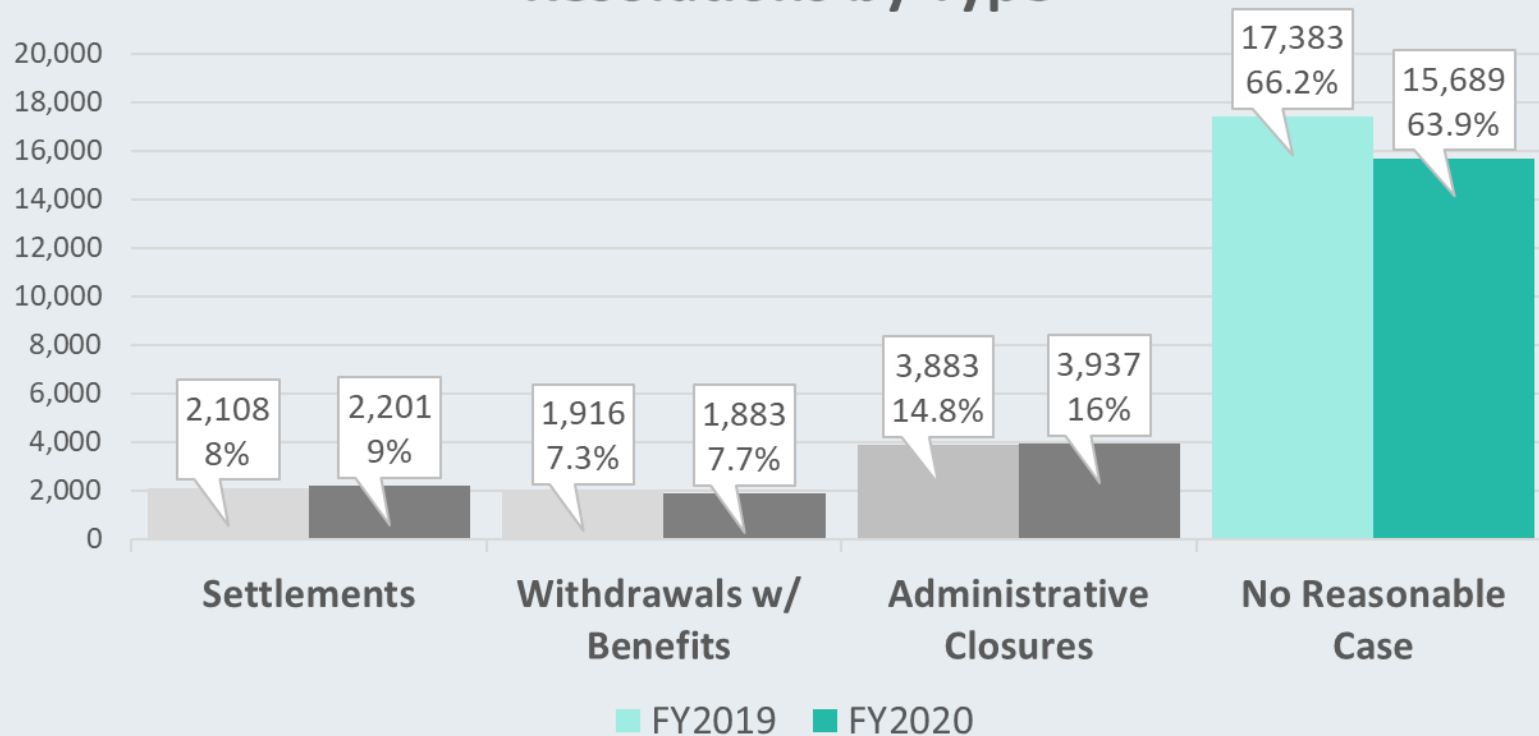
Resolutions by Type



1. <https://www.eeoc.gov/statistics/americans-disabilities-act-1990-ada-charges-charges-filed-eeoc-includes-concurrent>
2. The following charts represent the total number of charges filed and resolved under the ADA.
3. Receipts include all charges filed under the ADA and those filed concurrently under Title VII, EPA, ADEA and GINA. Therefore, the sum of receipts for all statutes will exceed total charges received.
4. Does not include monetary benefits obtained through litigation.

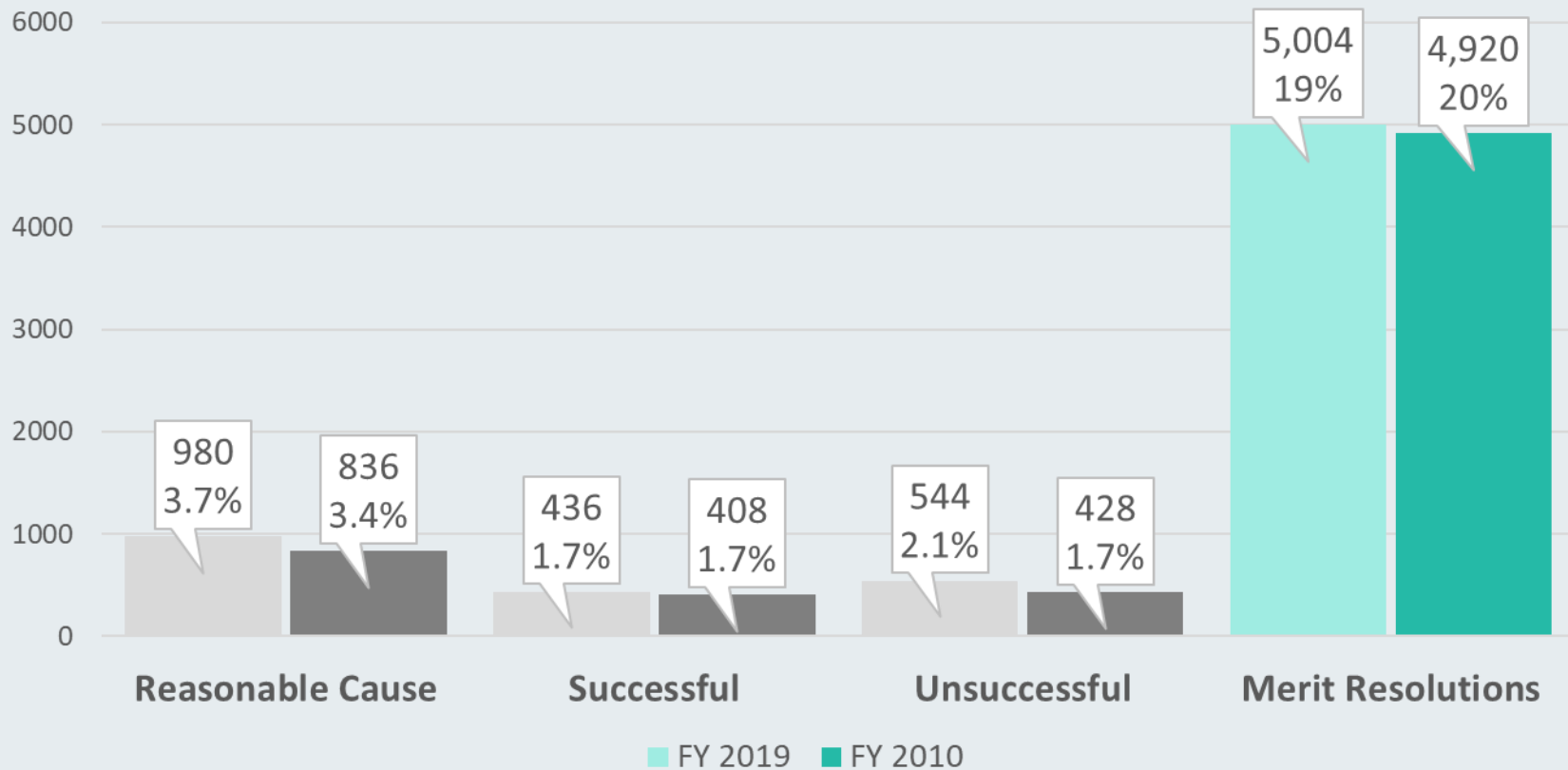
EEOC Statistics

Resolutions by Type



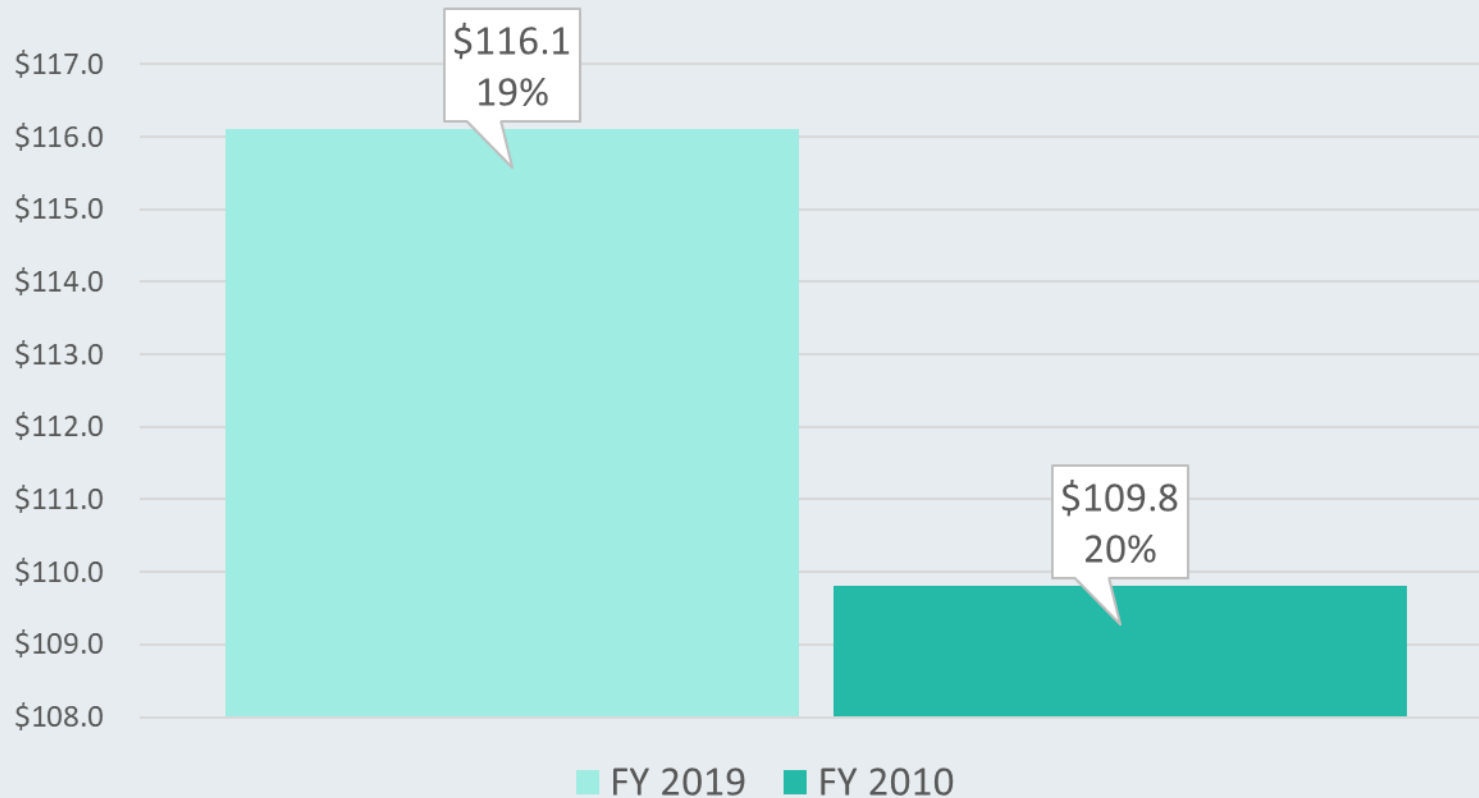
EEOC Statistics

Resolutions by Type



EEOC Statistics

Monetary Benefits (in Millions)



1. <https://www.eeoc.gov/statistics/americans-disabilities-act-1990-ada-charges-charges-filed-eeoc-includes-concurrent>
2. *Definition of Monetary Benefits:* Payment that the agency agreed to provide in a settlement agreement, a final agency decision finding discrimination, a final order agreeing to fully implement an EEOC Administrative Judge's decision containing a payment award, or in compliance with an Office of Federal Operations' appellate decision which ordered a payment award.

QUESTIONS?

Lisa M. Simioni, JD, LLM
Vice President & Senior Compliance Consultant, Segal

Deeper Dive Into Military Leave

October 21, 2021



Attorney General's Office

Protecting the public interest for all of Illinois



Illinois Service Members Employment & Reemployment Rights Act -ISERRA-

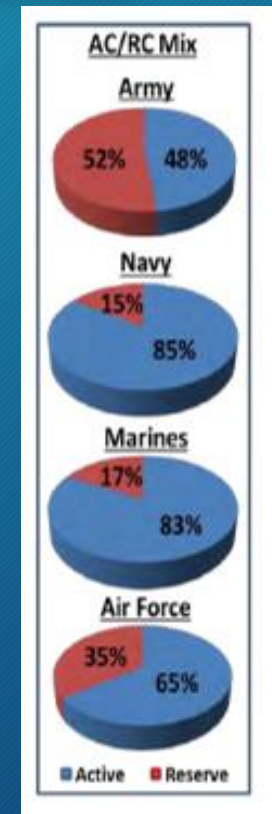
Tom Banning, Military and Veterans Rights Bureau, Chief
and ISERRA Advocate

330 ILCS 61

Introduction - Service Member Employment Complaints & Reserve Component OPTEMPO

Operational Reserve Force

- Strategic Reserve - Primary role is augmentation and reinforcement of Active forces during a major contingency event anticipated to occur at best once in a lifetime.
- Operational Reserve - Participate routinely and regularly in ongoing military missions.
- Reserves make up 39% of our military end strength but only 9% of the DoD budget.



What is ISERRA? - Service Member Employment Rights for the State

330 ILCS 61

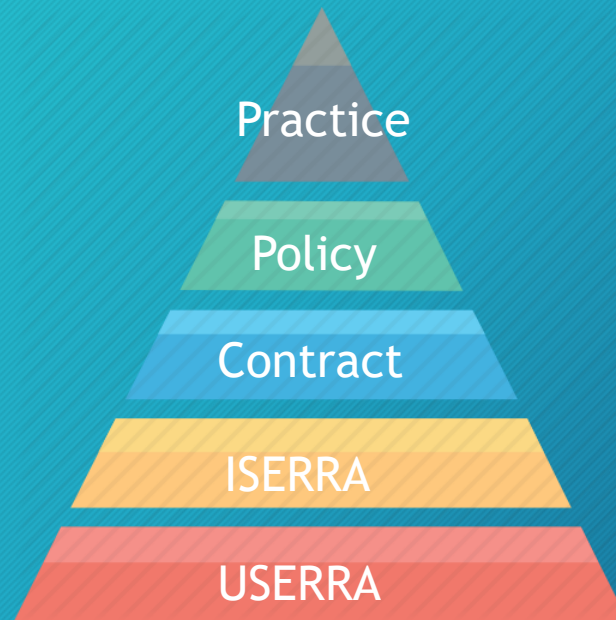
“ISERRA is...

Illinois’ version of USERRA.

Service Member Employment
Rights Law (USERRA plus State)

Effective January 1, 2019

State statutory floor



What's
ISERRA?

It's an old, old
wooden ship used
during the civil
war era.



Basic Protections - USERRA

/5-5

Reemployment
Health Insurance
Pension
Performance
Review

Careful! There are
exceptions

This Section incorporates Sections 4304, 4312, 4313, 4316, 4317, and 4318 of the Uniformed Services Employment and Reemployment Rights Act under Title 38 of the United States Code, as may be amended, including case law and regulations promulgated under that Act,...



Basic Protections - Reemployment

/5-5

The pre-service employer must reemploy service members returning from a period of service in the uniformed services if those service members meet five criteria



Basic Protections - Mandatory Reemployment Criteria

/5-5

1. Absent on account of military service.
2. Gave advanced notice.
3. Cumulative period of service with same employer is less than 5 years.
4. Not released from service under dishonorable or other punitive conditions.
5. Reported back to civilian employer in a timely manner or submitted a timely application for reemployment

Basic Protections - Health Insurance

/5-5

If the employee's employer-based health plan coverage would terminate because of absence due to military service, the person may elect to continue that coverage for up to 24 months after the absence begins, or for the period of military leave, whichever is shorter.



Basic Protections - Pension

/5-5

Employees are entitled to all accrued pension benefits they would have received had their civilian employment been continuous. This applies to defined benefit pensions, defined contribution plans and profit sharing plans, as well as to single-employer and multiemployer plans.



Basic Protections - Performance Review

/5-5

Additional protection
not incorporated from
USERRA



Basic Protections - Performance Review

/5-5

- Upon return from military duty, must receive a performance review for the period of military leave that is...
 - No less than the average performance review for the 3 years prior to military leave.
 - Cannot be less than the performance review for the rating period immediately prior to military leave.
 - Does not apply to probationary periods.

Basic Protections - Accommodation

/5-5

Timing, Frequency and Duration

A service member employee is not required to accommodate his or her employer's needs as to the timing, frequency, or duration of military leave; however, employers are permitted to bring concerns over the timing, frequency, or duration of military leave to the attention of the appropriate military authority. The accommodation of these requests are subject to military law and discretion.

Basic Protections - Accommodation

/5-5

Timing, Frequency and Duration

Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service. 20 CFR 1002.104

Basic Protections - Accommodation

/5-5

Department of Defense directives to military commands in assisting civilian employers.

Designate a representative who is a Commander or Officer in Charge with authority to...

- Consider written request from civilian employers of National Guard and Reserve members to adjust absences.
- May delay, defer, cancel, or reschedule military service.
- Unless prevented by military necessity or impossible or unreasonable under all circumstances.
- Accommodation cannot negatively affect military operations.
- Accommodation must be in the best interest of the military and be reasonable.
- Employer requests for accommodation must...
 - Be in writing
 - Explain how absence imposes on the civilian employer either...
 - adverse financial impact OR
 - severe operating impact
 - State when the hardship is anticipated to end.

Timing,
Frequency and
Duration

DoD Regulation 32 C.F.R. 104.6(b)(3) & DOD Instruction 1205.12

Additional Benefits - Model Employer

/5-10

Ensuring that public entities are model employers of reserve components by providing additional benefits.

1. Full-time public employee who is not an independent contractor.

AND....

2. Is a member of a reserve component of Illinois or the U.S. Armed Forces regardless of status.



Additional Benefits - Model Employer

/5-10

1. Paid military leave
 - Differential Compensation
 - Concurrent Compensation

AND....

2. Expanded employer-based health plan benefits

Additional Benefits - Differential Compensation

/5-10

- Rationale: Remove financial disincentive to service
- Common
- When daily rate of civilian pay exceeds military pay
- Includes drills (IDT) but calculated differently
- Limited to active service with pay
- Accrued benefit time in lieu of pay
- Limits on duration; Voluntary vs. Involuntary
- Applies only to “work days”: the actual number of days the employee would have worked during the period of military leave but for the service member’s military obligation
- Not intuitive - see educational materials

Additional Benefits - Voluntary vs. Involuntary

/5-10

"Active service" means all forms of active and inactive duty regardless of voluntariness including, but not limited to, annual training, active duty for training, initial active duty training, overseas training duty, full-time National Guard duty, active duty other than training, State active duty, mobilizations, and muster duty. "Active service", unless provided otherwise, includes active service without pay. "Active service" includes: (/1-10)

(1) Reserve component voluntary active service means service under one of the following authorities:

(A) any duty under 32 U.S.C. 502(f)(1)(B);

(B) active guard reserve duty, operational support, or additional duty under 10 U.S.C. 12301(d) or 32 U.S.C. 502(f)(1)(B);

(C) - (H)

(2) Reserve component involuntary active service includes, but is not limited to, service under one of the following authorities:

(A) annual training or drill requirements under 10 U.S.C. 10147, 10 U.S.C. 12301(b) or 32 U.S.C. 502(a).

(B) additional training duty or other duty under 32 U.S.C. 502(f)(1)(A);

(C) - (J);

(K) pending line of duty determination for response to sexual assault under 10 U.S.C. 12323; and

(L).

Reserve component active service not listed in paragraph (1) or (2) shall be considered involuntary active service under paragraph (2).

Additional Benefits - Voluntary vs Involuntary

/5-10

Applying rules of statutory construction (plain language & contextual reading)

1. Is the authority listed under the definition of “active service”? “voluntariness” language in the order is not relevant for purposes of determining intent of Act.
2. If the authority is not “listed” then the so-called “catch-all” clause applies. “voluntariness” language in the order is not relevant for purposes of determining intent of Act.
3. If the authority is in fact “listed” but incomplete. “voluntariness” language in the order is relevant for purposes of determining the intent of the issuing military authority.
4. Two authorities - one involuntary and one voluntary. Make an objective determination based on language in the order and the authorities listed.

Additional Benefits - Concurrent Compensation

/5-10

- Rationale: incentive to service
- Full pay
- Annual Training Only - Not active duty in lieu of AT
- Up to 30 days per calendar year
- Does not need to be concurrent
- Common

"Annual training" means any active duty performed under Section 10147 or 12301(b) of Title 10 of the United States Code or under Section 502(a) of Title 32 of the United States Code.

Additional Benefits - Health Plan

/5-10

Expanded employer-based health plan benefits

- Employer pays their share of premiums
- Employee pays their share of the premiums
- Cannot charge employee administration fees
- Regardless of length of orders
- Everything else is the same as in Sec 5-5

Prohibition on Discrimination - Military Service

/5-15

- Employers may not fire, fail to hire, or deny any workplace benefit to workers based on...
 - membership in or duties to a uniformed service.
- OR
- the exercise of any right under ISERRA including the right to file a complaint.



Notice of Rights & Duties – Post it!


/5-20

- Post where you customarily post employee notices.
- How do I get it?
 - Attorney General website
 - Call helpline

...may not be a sole basis for a civil action under this Act. (/15-5)

Don't forget to post USERRA notice!

YOUR RIGHTS UNDER THE ILLINOIS SERVICEMEMBER EMPLOYMENT & REEMPLOYMENT RIGHTS ACT (330 ILCS 61)



ISERRA (state version of USERRA) protects the employment and benefits of Servicemembers who leave their civilian employment to serve our Nation or State.

In order to protect the common public interest in military service, it is the role of the Illinois Attorney General to promote awareness and ensure compliance of ISERRA by providing information, training, advocacy, and enforcement.

WHO IS PROTECTED?

1. All members of the Armed Forces of the United States whether active duty or reserve including the National Guard when performing state duty.
2. All members of Military Auxiliary Radio System, United States Coast Guard Reserve, Civil Air Patrol, and the Merchant Marines when performing official duties in support of an emergency.
3. Members who are released from military duty with follow-on care by the Department of Defense.

WHAT ARE THE RIGHTS, BENEFITS AND OBLIGATIONS UNDER ISERRA?

ISERRA provides the same protections as USERRA (i.e., reemployment, benefits and discrimination) but expands protections to persons identified above and incorporates existing benefits to servicemembers who are public employees. Because ISERRA represents the minimum employer requirements, employers maintain the discretion to provide greater benefits. Entitlement to benefits will depend on many factors.

WHO ENFORCES ISERRA?

The ISERRA Advocate is an Assistant Attorney General appointed by the Illinois Attorney General to provide both advocacy and enforcement under ISERRA.

WHERE TO FIND MORE INFORMATION?

Both servicemembers and employers can find more information on the Attorney General's ISERRA Advocate webpage at <http://www.illinoisattorneygeneral.gov/rights/veterans.html> or call the Military & Veterans Rights Hotline at 1-800-382-3000 to ask questions or request training.

This notice is available for download on the Attorney General's website by going to <http://www.illinoisattorneygeneral.gov/rights/veterans.html>. Employers are required to provide employees entitled to rights and benefits under ISERRA a notice of the rights, benefits, and obligations of servicemember employees. This requirement may be met by the posting of this notice where employers customarily place notices for employees. ISERRA is codified as Public Act 100-1101 and can be found at <http://www.liga.gov/legislation/publicacts/100/PDF/100-1101.pdf>.

ISERRA

YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT



USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- you ensure that your employer receives advance written or verbal notice of your service;
- you have five years or less of cumulative service in the uniformed services while with that particular employer;
- you return to work or apply for reemployment in a timely manner after conclusion of service; and
- you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have earned if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- are a past or present member of the uniformed service;
- have applied for membership in the uniformed service; or
- are obligated to serve in the uniformed service;

then an employer may not deny you:

- initial employment;
- reemployment;
- promotion or
- any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone existing in the enforcement of USERRA rights, including falsifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dhs.gov/web/programs/employment>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.

HEALTH INSURANCE PROTECTION

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., preexisting condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-888-4-USA-VETS or visit to website at: <http://www.dhs.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dhs.gov/vets/userra.htm>.
- If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dhs.gov/web/programs/employment>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.

U.S. Department of Labor 1-888-4US-VETS
U.S. Department of Justice Office of Special Counsel 1-800-330-4590
Publication Date – April 2017

USERRA

Enforcement - Protecting the Common Public Interest

/15-10

Follows the USERRA enforcement model.

- Complaint process
- Graduated enforcement
 - Education
 - Informal Mediation (RFA)
 - Formal Investigation
 - Litigation

Prior to initiating a civil action, the Attorney General shall conduct a preliminary investigation to determine whether there is reasonable cause to believe that any employer is engaged in a violation of this Act and whether the dispute can be resolved without litigation (/15-10(b)).



Enforcement - Illinois Attorney General

/15-10



Attorney General Kwame Raoul

ISERRA tasks the Illinois Attorney General with enforcement!

- Objective 3rd party
- Who's our client?
- Clear vs ambiguous issues
- How does the complaint process work?
- Delegates duties to the ISERRA Advocate



Questions?

Helpline: 1-800-382-3000

Deeper Dive Into Military Leave

Benjamin E. Gehrt
Clark Baird Smith LLP



**Illinois
Government
Finance
Officers
Association**

Learning • Connecting • Progressing

How to Calculate Differential Pay Obligations: a 4-step guide

- Step 1: Review The Employee's Orders and Leave and Earnings Statement
- Step 2: Calculate the daily rate of pay with the public employer (X)
- Step 3: Calculate/look up the daily rate of pay for military service (Y)
- Step 4: $(X - Y) * (\text{Number of Workdays Missed}) = \text{Differential Pay}$

Step1: These Are Not “Orders:”

NGIL-SFB-CO

1 OCTOBER 2018

MEMORANDUM FOR RECORD

SUBJECT: Inactive Duty Training (IDT) and Annual Training (AT) for TY 2019.

1. SFAB dates for Training Year 2019 are as follows. You will notify your employer and/or educational institution of the minimum required duty dates. Required schools will be performed in Annual Training status. Dates/events are subject to change.

Dates	MUTA	Event	Location
20 October 18	2	Records Review, Sharp, Resiliency Training	RIA
03-04 November 18	4	Info Security, Sharp MU, Resiliency Training	RIA
08-09 December 18	4	Team Building, Resiliency, Symbol/Graphics Training	RIA

2. POC is the undersigned at (309) 567-6900 or keri.m.wolf.mil@mail.mil.


KERI M. WOLF
CPT, LG, IL ARNG
Commanding

Step 1: What Orders Usually Look Like

FOR OFFICIAL USE ONLY - PRIVACY ACT

STATE MILITARY DEPARTMENT
JOINT FORCE HEADQUARTERS ALABAMA NATIONAL GUARD
1720 CONGRESSMAN WILLIAM L. DICKINSON DRIVE
MONTGOMERY, ALABAMA 36109-0711

ORDERS 024-077 24 January 2021

Redacted

You are ordered to annual training (AT) for the period shown. Upon completion of the period of annual training you will return to place where entered on annual training and are released from such duty.

Period (TDY) : 29 January 2021 - 31 January 2021
Report to: ASD Bldg #8208 Range 5 Rd, Pelham Range, Alexandria, AL. 36205
Reporting time/date: NLT 0800 29 JAN 2021
Purpose: Combat Trauma Management Course
Additional instructions:

- (a) Soldiers with orders authorizing travel entitlements beyond mileage reimbursement will file their voucher utilizing DTS. Mileage only entitlements can be reimbursed via Military Pay.
- (b) Subject to availability of funds in FY 21.
- (c) Payroll will be submitted by the member's unit of assignment. M-day soldiers on active duty (AT, ADT, FTNGD-OS, ADOS-RC) more than 30 days will be coded C, Constructive Attendance, on the unit 1379 and are not authorized to make up any drills that occur during the period of active duty.
- (d) No travel and per diem authorized on this order. Individual must utilize DTS for travel authorization and voucher.
- (e) POC: COL Godbee 225-921-6136

FOR ARMY USE
Auth: 32 USC 502(f)(1)
HOR: 707 LANCASTER LN GENEVA IL60134
AFC DIMS-RC: A1E12L TDC 12L Additional A. T. days for Special Forces
C STANFINS Travel: E12L
1 P1A31.0200-1198/1199/1210/1250 S01079 1A0
/CCC: E12L44/44E12L Cost Estimate: \$665

Federal WE: S00
State tax code: IL
Marital status / Number of dependents: M03

FOR ARMY USE

Auth: 32 USC 502(f)(1)

HOR: 707 LANCASTER LN

GENEVA

IL60134

APC DJMS-RC: A1E12L TDC 12L Additional A. T. days for Special Forces
Duty

APC STANFINS Pay: E12L APC STANFINS Travel: E12L

Acct clas:

Step 1: What a Leave and Earnings Statement (LES) Looks Like

Army National Guard

DEFENSE FINANCE AND ACCOUNTING SERVICE MILITARY LEAVE AND EARNINGS STATEMENT																											
ID	NAME (Last, First, MI)			SOC. SEC. NO.	GRADE	PAY DATE	YRS SVC	ETS	BRANCH	ADSN/DSSN	PERIOD COVERED																
	Redacted			Redacted	EDT	030627	16	220926	ARNG	5570	CHK DT 190724																
ENTITLEMENTS					DEDUCTIONS					ALLOTMENTS					SUMMARY												
Type	Amount			Type	Amount			Type	Amount																		
A	BASIC PAY	460.98			FED INC TAX	47.82																					
B	SUBSISTENCE ALWS	35.84			FICA TAX	35.26																					
C	BAH TYPE II	116.88																									
D																											
E																											
F																											
G																											
H																											
I																											
J																											
K																											
L																											
M																											
N																											
O																											
TOTAL					614.80					63.08																	
															DIEMS RET PLAN												
LEAVE																											
BF Bal	2.5	Ernd	.0	Used	0	Cr Bal	2.5	ETS Bal		Lv Lost		Lv Paid	0	Use/Lose	2.5	FED TAXES	460.98	Wage Period	4047.06	Wage YTD	4047.06	M/S	Ex	Add'l Tax	.00	Tax YTD	418.19
FICA TAXES																											
Wage Period	460.98	Soc Wage YTD	4047.06	Soc Tax YTD	250.92	Med Wage YTD	4047.06	Med Tax YTD	58.85	STATE TAXES	IL	460.98	Wage Period	4047.06	Wage YTD	4047.06	M/S	Ex	Tax YTD	.00							
PAY DATA																											
BAQ Type	W DEP	BAQ Depn	SPOUSE	VHA Zip	00000	Rent Amt		Share		Stat	JFTR	Depns	2D JFTR	BAS Type	Charity YTD	TPC	PACIDN										
TRADITIONAL PLAN (TSP)																											
Base Pay Rate	0	Base Pay Current	.00	Spec Pay Rate	0	Spec Pay Current	.00	Inc Pay Rate	0	Inc Pay Current	.00	Bonus Pay Rate	0	Bonus Pay Current	.00												
ROTH PLAN																											
Base Pay Rate	0	Base Pay Current	.00	Spec Pay Rate	0	Spec Pay Current	.00	Inc Pay Rate	0	Inc Pay Current	.00	Bonus Pay Rate	0	Bonus Pay Current	.00												
CM AGCY CONTR																											
AGCY-AUTO	.00	AGC-MATCH	.00																								
CONTRIBUTIONS TOTALS																											
YTD Deductions	.00	YTD TSP Deferred	.00	YTD TSP Exempt	.00	YTD ROTH	.00	YTD TSP AGCY-AUTO	.00	YTD TSP AGCY-MATCH	.00																
REMARKS:																											
YTD ENTITLE 4204.88										YTD DEDUCT 975.09																	
<p>YOUR CHECK WAS SENT TO: JPMORGAN CHASE BANK, NA</p> <p>DIRECT DEPOSIT DATE: 07/24/19 AMOUNT: \$531.72</p> <p>* AS OF 18 SEP 03, 000 HIGH TEMPO DEPLOYMENT DAYS ACCRUED SINCE 1 OCT 00 (OR SINCE ENTERING MILITARY SERVICE)</p> <p>TOTAL PERFORMANCE FY 19: UTA 41 AFTP 00 ET 00 ATA 00</p> <p>JPT 00 AAUTA 00 AANT 00 RMA 00 SUP IDT TNG 00</p> <p>MCOPT 00 RMAM 00 ATADT 003 FHDA 000</p> <p>ACTIVE DUTY (AD) FOR TRAINING: 10 JUL 19 TO 12 JUL 19</p> <p>YOUR CURRENT STATE CLAIMED IS: ILLINOIS</p> <p>SERVICEMEMBER GROUP LIFE INSURANCE COVERAGE: \$400,000</p> <p>YOUR SGLI DEDUCTION INCLUDES TRAUMATIC INJURY PROTECTION (TSGLI)</p>																											
<p>SPOUSE SGLI COVERAGE: \$100,000</p> <p>PLEASE VERIFY YOUR STATE OF LEGAL RESIDENCE FOR STATE INCOME TAX PURPOSE. CONTACT YOUR PAYROLL OFFICE TO FILE A NEW DD FORM 2059 TO CHANGE/ESTABLISH THE CORRECT STATE IMMEDIATELY.</p> <p>-THE SERVICE MEMBERS GROUP LIFE INSURANCE AND FAMILY SGLI PREMIUM RATES WILL BE REDUCED EFFECTIVE 7/01/19. FOR RATES VISIT: HTTPS://WWW.BENEFITS.VA.GOV/INSURANCE/SGLI.ASP</p> <p>-BURN PIT EXPOSURE MAY CAUSE HEALTH EFFECTS. AIRBORNE HAZARDS AND OPEN BURNPIT REGISTRY IS OPEN. VISIT: HTTPS://WWW.PUBLICHEALTH.VA.GOV/EXPOSURES/BURNPITS/REGISTRY.ASP</p>																											

DFAS Form 702, Jan 02

WWW.DFAS.MIL

Step 2 – Daily Rate of Pay with the Public Employer

Divide the employee's regular compensation during the pay period (as if he or she were not deployed) by the number of "work days" in the pay period.

Example: An employee normally earns \$4,000 every two weeks. The employee works Monday-Friday, 9 a.m. to 5 p.m., which would be 10 "days" during the two week period.

Daily rate of pay as a public employee: $\$4,000 / 10 \text{ days} = \$400/\text{day}$

Step 2 – Daily Rate of Pay with the Public Employer: Alternate Work Schedule

- Employee earns \$4,000 every two weeks
- Employee works the midnight shift, 10 p.m. on Sunday night to 6 a.m. on Friday morning.
- Employee works part of 6 calendar days per week:
 - 10 p.m. to midnight on Sunday
 - All day Monday, Tuesday, Wednesday, and Thursday
 - Midnight to 6 a.m. on Friday
- Daily rate of pay = $\$4,000 / 12 = \333.33 per day
 - Compared with \$400/day for the employee who works 9 a.m. to 5 p.m.

Step 3 – Daily Rate of Pay for Military Service

Different rules apply, depending on the type of service:

- Inactive duty: use the military drill pay chart. See www.militaryrates.com/military-pay-drillpay.
- Active duty:
 - Need to get the employee's Leave and Earnings Statement (LES)
 - Divide the employee's base pay (excluding housing allowances, hazard pay, etc.) for the period of military service by the number of calendar days in the month.
 - Note, this means the daily rate of pay with the military is a fiction, especially if employee receives pay enhancements
 - This also means the daily rate of military pay varies based on 28/30/31 days per month

Step 3 – Daily Rate of Pay for Military Service: Active Duty

- Employee is deployed all of May and all of June.
- According to her LES, the employee is paid \$5,540.10 per month by the military
 - May military daily rate: $\$5,540.10 / 31 \text{ days} = \$178.71 / \text{day}$
 - June military daily rate: $\$5,540.10 / 30 \text{ days} = \$184.67 / \text{day}$

ENTITLEMENTS			DEDUCTIONS		ALLOTMENTS		SUMMARY	
	Type	Amount	Type	Amount	Type	Amount	+Amt Fwd	
A B C D E F G H I J K L M N O	BASIC PAY	2770.05	FED INC TAX	193.95			+TOT ENT	4048.40
	SUBSISTENCE ALWS	186.35	FICA TAX	211.91				
	BAH	1092.00	SGLI	25.00			-TOT DED	707.87
			TSP CONTRIBUTION	277.01				
							-TOT ALMT	
							=NET AMT	3340.53
							-CR FWR	
							=EOM PAY	
							DIEMS	RET PLAN
		TOTAL	4048.40		707.87			

Step 3 – Daily Rate of Pay for Military Service: Inactive Duty

	E-6	E-7	E-8	E-9
<i>2 years or less</i>	\$371.04	\$427.71		
<i>Over 2 years</i>	\$407.07	\$466.83		
<i>Over 3 years</i>	\$425.03	\$484.69		
<i>Over 4 years</i>	\$442.51	\$508.40		
<i>Over 6 years</i>	\$460.70	\$526.88		
<i>Over 8 years</i>	\$501.69	\$558.63	\$615.28	
<i>Over 10 years</i>	\$517.57	\$576.49	\$642.48	\$751.61
<i>Over 12 years</i>	\$548.57	\$608.29	\$659.33	\$768.65
<i>Over 14 years</i>	\$558.06	\$634.67	\$679.54	\$790.11
<i>Over 16 years</i>	\$573.00	\$652.68	\$701.42	\$815.34
<i>Over 18 years</i>	\$573.00	\$671.88	\$740.88	\$840.82
<i>Over 20 years</i>	\$573.00	\$679.35	\$760.85	\$881.66

Source: www.militaryrates.com/military-pay-drillpay for 4 drills.

Step 4 – Differential Calculation: Active Duty

$((\text{Daily Rate as Public Employee}) - (\text{Daily Military Rate})) * \text{Number of Workdays Missed}$

Example 1A: “Annual Training”

You are ordered to annual training (AT) for the period shown. Upon completion of the period of annual training you will return to place where entered on annual training and are released from such duty.

FOR ARMY USE
Auth: SUBSEC 502 (A) TITLE 32 USC
Annual Training/Drill Requirement - Involuntary

How Should This Be Paid?

Example 2: “Training”

You are ordered to active duty for training (ADT) for the period shown plus allowable travel time. Upon completion of the period of ADT unless sooner released or extended by proper authority, you will return to the place where you entered ADT and be released from such duty.

FOR ARMY USE

Auth: 32 USC 502 (f) (1)

HOR: 707 LANCASTER LN

GENEVA

IL60134

APC DJMS-RC: A1E12L TDC 12L Additional A. T. days for Special Forces Duty

APC STANFINS Pay: E12L APC STANFINS Travel: E12L

Acct clas:

How Should This Be Paid?

Example 2: Differential Pay, Active Duty

YOU ARE ORDERED TO ACTIVE DUTY FOR OPERATIONAL SUPPORT FOR RESERVE COMPONENT (ADOS-RC) FOR THE PERIOD SHOWN. UPON COMPLETION OF THE PERIOD OF ADOS-RC, UNLESS SOONER RELEASED OR EXTENDED BY PROPER AUTHORITY, YOU WILL RETURN TO THE PLACE WHERE YOU ENTERED ADOS-RC.

PERIOD: 296 DAYS PLUS ALLOWABLE TRAVEL TIME

REPORT TO: INSCOM, DET 51; BLACK HALL

FT GORDON GA 30905

01 May 2020

REPORTING DATE: RPT BETWEEN 0730&0800HRS.

ATTACHED TO: 3 HQ CO FWD DET 2 1001 761 TANK AVE PORT HOOD TX 76544 5019

PURPOSE: 21I

FOR ARMY USE: AUTH: 10 USC 12301 (D) ADOS-RC

ACCT CLAS: 2112070 92-9292 P1G11.K1000 WAL5296018649C/(R8NAGG) S23185

How Should This Be Paid?

Example 2: Differential Pay, Active Duty

- Daily Rate as Public Employee: $\$8,000 / 20 \text{ days} = \$400/\text{day}$
- Daily Rate in Military:
 - May military daily rate: $\$5,540.10 / 31 \text{ days} = \$178.71 / \text{day}$
 - June military daily rate: $\$5,540.10 / 30 \text{ days} = \$184.67 / \text{day}$
 - July military daily rate: $\$5,540.10 / 31 \text{ days} = \$178.71/\text{day}$
- Differential Pay:
 - May: $(\$400 / \text{day} - \$178.71/\text{day}) * 20 \text{ workdays} = \$221.29 / \text{day} * 20 \text{ days} = \$4,425.80 \text{ differential pay owed}$
 - June: $(\$400/\text{day} - \$184.67/\text{day}) * 22 \text{ workdays} = \$215.33 / \text{day} * 22 \text{ days} = \$4,737.26 \text{ differential pay owed}$
 - July: $\$221.29/\text{day} * \underline{18 \text{ workdays}} = \$3,981.42 \text{ differential pay owed}$

Example 3: Differential Pay, Inactive Duty

DEFENSE FINANCE AND ACCOUNTING SERVICE MILITARY LEAVE AND EARNINGS STATEMENT									
ID	NAME (Last, First, MI)	SOC. SEC. NO.	GRADE	PAY DATE	YRS SVC	ETS	BRANCH	ADSN/DSSN	PERIOD COVERED
	Redacted	Re	E07	050728	15	000000	NAVY	8522	CHK DT 201204
ENTITLEMENTS		DEDUCTIONS		ALLOTMENTS		SUMMARY			
<p>REMARKS: YTD ENTITLE 10615.11 YTD DEDUCT 4566.47</p> <p>YOUR CHECK WAS SENT TO: USAA FEDERAL SAVINGS BANK DIRECT DEPOSIT DATE: 12/04/20 AMOUNT: \$2.17 \$ 215.56 PAID ON LOAN 0303003U. \$ 1,724.48 PAID YTD. * AS OF 16 AUG 14, 000 HIGH ITEMPO DEPLOYMENT DAYS ACCRUED SINCE 1 OCT 00 (OR SINCE ENTERING MILITARY SERVICE) TOTAL PERFORMANCE FY 21: UTA 08 AFTP 00 ET 00 ATA 00 JPT 00 AAUTA 00 AANT 00 RMA 00 SUP IDT TNG 00 MCOFT 00 RMAM 00 AT/ADT 000 FHDA 000 INACTIVE DUTY TRAINING 21 NOV 20 1 22 NOV 20 1 YOUR CURRENT STATE CLAIMED IS: ILLINOIS</p> <p>SERVICEMEMBER GROUP LIFE INSURANCE COVERAGE: \$400,000 YOUR SGLI DEDUCTION INCLUDES TRAUMATIC INJURY PROTECTION (TSGLI) SPOUSE SGLI COVERAGE: \$100,000 SERVICE MEMBERS WITH DEPENDENTS ARE REMINDED OF THEIR RIGHTS REGARDING CHILD CUSTODY AND OTHER PROTECTIONS GUARANTEED BY THE SERVICE MEMBERS CIVIL RELIEF ACT (SCRA). FOR INFORMATION VISIT HTTPS://SCRA.DMDC.OSD.MIL/ ADOPTING A CHILD? YOU COULD BE REIMBURSED FOR UP TO \$2000 IN EXPENSES. SEE YOUR COMMANDER/PERSONNEL OFFICE FOR DETAILS.</p> <p style="text-align: right;">WWW.DFAS.MIL</p>									

How Should This Be Paid?

Example 3: Differential Pay, Inactive Duty

	E-6	E-7	E-8	E-9
<i>Over 14 years</i>	\$558.06	\$634.67	\$679.54	\$790.11

4 drills = \$634.67.

1 drill = $\$634.67 / 4 = \158.67

Example 3: Differential Pay, Inactive Duty

- Daily Rate as Public Employee: $\$3,523.55 / 10$ workdays
= \$352.36 per day
- Daily Rate in Military:
 - Drill Pay Chart = \$158.67 for 1 drill per day
- Differential Pay:
 - $(\$352.36 - \$158.67)$ per day * 2 workdays missed = $\$193.69/\text{day} * 2$
= \$387.38

A Useful Worksheet



SIMPLIFIED DIFFERENTIAL COMPENSATION CALCULATION WORK SHEET

This document is not legal advice. It is a guide to assist with differential calculations under ISERRA (330 ILCS 61 et al). Users should not assume all relevant criteria are factored into its computations. The accurate remuneration of differential remains the responsibility of the employer.

☐ I acknowledge that I have read and understood the Disclaimer on the purpose of use of this form.

This worksheet is provided to assist employers and servicemembers in calculating differential compensation according to the Illinois Service Member Employment and Reemployment Rights Act (ISERRA) 330 ILCS 61. To complete this worksheet, you will need the service member's civilian and military pay information for the relevant pay period, civilian work schedule and military orders.

Pay Period in question (used for reference only, to insure comparison of public and military pay over the same relevant dates). (MM/DD/YEAR) to

Variables:

Total number of **Work Days** in the pay period (/1-15(a)). (days)

Calendar Days in the pay period during which the employee was on military orders (/1-15(b)(3)). (days)

Regular Compensation as a public employee during the pay period (/1-15(b)(2)). \$ (\$X.XX)

Base Pay for the applicable military service during the pay period (/1-15(b)(3)). \$ (\$X.XX)

Number of Compensable Work Days: The number of work days missed, days that the SM would have otherwise worked except for military service, and for which the SM is owed differential compensation. (days)

Calculations:

Daily Rate of Compensation as a Public Employee: Regular compensation as a public employee divided by work days (/1-15(b)(2)). \$ (\$X.XX/day)

Daily Rate of Compensation for Military Service: Base pay for the applicable military service divided by the number of calendar days (/1-15(b)(3)). \$ (\$X.XX/day)

Differential Compensation Daily Rate: Daily rate of compensation as a public employee minus the daily rate of compensation for military service (/1-15(b)(1)). This amount is owed for each day the SM would have otherwise worked for the public employer (/1-15(b)). If the amount is 0 or a negative number, then no differential is owed. \$ (\$X.XX/day)

Compensation Amount:

Total owed to SM for the pay period: Compensable Work Days multiplied by Differential Compensation Daily Rate. \$ (\$X.XX)

Reset Fields

Questions?

Benjamin E. Gehrt
Clark Baird Smith LLP



**Illinois Government
Finance Officers Association**

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Payroll Cybersecurity

October 21, 2021

Marc Thorson



Executive Director – Regional Technology Services
Adjunct Instructor – MPA Program
Northern Illinois University

+20 years in local government IT
Worked for 3 different municipalities
Local Government/Nonprofit IT Consultant
Husband and Father
Co-worker to Layne the Technopup

Research Interests

- Security in Local Governments/Nonprofits
 - Open Access Broadband Networks



Disclaimer



- This session is the work of Marc Thorson
 - The views expressed here do not necessarily reflect those of my employer
- No IT Professionals were injured in the preparation of this presentation
- This message is transmitted on 100% recycled electrons

Recognition



Some of the information presented here is based on the work of:

Lesley Carhart (GCIH, GREM, GCFA)

Principal Incident Responder, Dragos Inc.

Digital Forensics specialist (Industrial Systems)

20+ years in IT, 12 years in information security

"White Hat" Hacker

Speaker, Mentor, & Blogger

Reservist

When a power plant gets hacked, I go find out how.

Agenda



- Expectations
- Hacking and Defense
- Exercise on attacking and defending
- Helpful Tips
- Discussion and Questions

Expectations



- What expectations do you have for this course?

Why Are We Doing This?



- Payroll is a frequent attack target
- Avoid FUD
 - FUD is Fear, Uncertainty, and Doubt
- We Are ALL Responsible for Security

Who are Hackers?



Know Your Enemy



- Hackers are less likely to be:
 - Lonely kids in parent's basement
 - Loners in dark apartments

Know Your Enemy



- Hackers are more likely:
 - Employees at well-organized criminal organizations functioning like large corporations
 - Nation-State actors or contractors
- To a lesser extent
 - Terrorist Organizations
 - Activists

What Do They Want?



• **MONEY**

- Political or Military Objectives
- Corporate Espionage
- Fun/Curiosity

How Do Hackers Attack?

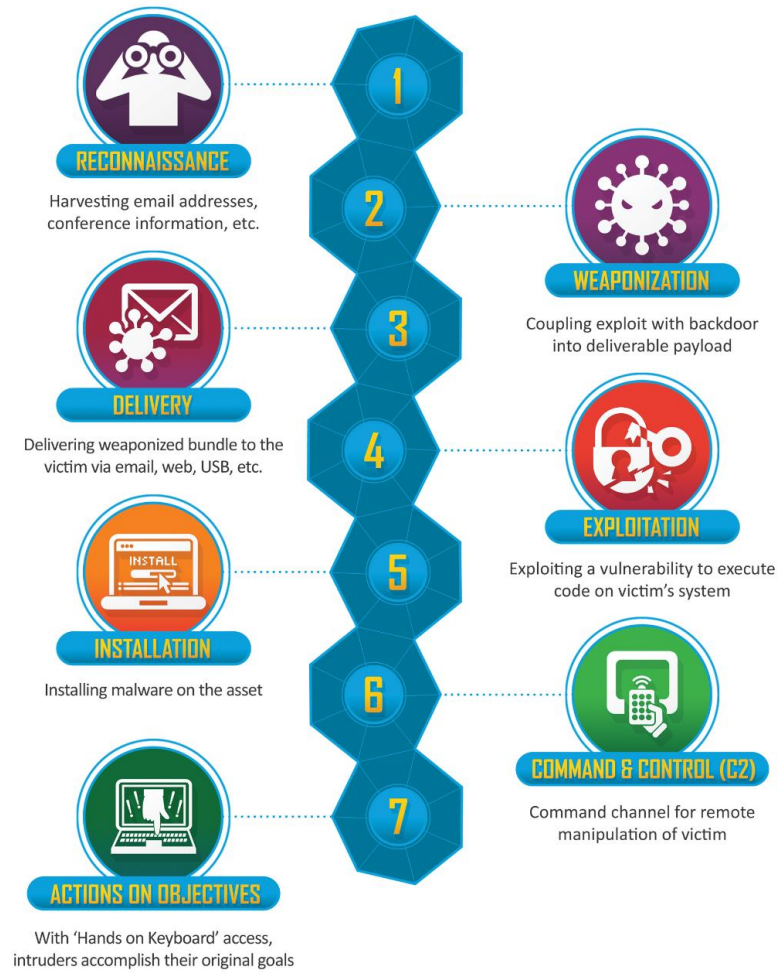


- Attackers want to be quiet
- Attackers typically choose the easiest way
- Attackers will "Live off the Land"
- Social Engineering

Cyber Kill Chain



Source: Lockheed Martin



- Researching Websites and Other Publicly Available Info
- Harvesting Emails, Passwords, and Other Information
- Identifying Watering Holes



Weaponization



- Creating an Exploitation and Backdoor
- Couple with Delivery Method (Payload)
- Examples:
 - Malicious Site Designed to Look Legitimate
 - Malicious Code



Delivery



- Determining the Exploit and Coupling with Delivery
- Examples:
 - Spoofed Email with Malicious Link
 - Malicious USB Memory Stick in the Parking Lot
 - Malicious Ad on Website



Exploitation



- Exploiting the Vulnerability
- Software, Hardware, or Human Vulnerability
- Victim Triggers Exploit



Installation



- Installing Malicious Software on Victim's Device
- Create a point of persistence



Command And Control



- Establishing a Foothold on Victim's Systems
- Move Laterally to Maintain Control and Avoid Detection



Actions On Objectives



- Perform Actions to Achieve Objectives
- May Include Waiting With Periodic Check-ins





Let's Be Good

Think like a Defender

Recap



- Don't Think Secure, Think Defendable
 - Build "Defense in Depth"
- We Are ALL Responsible for Security
- Attackers want to work silently, look for the easiest ways, and "live off the land"
- Use the Risk Management Process to plan, assess, respond, and monitor risk
- No "Silver Bullet" to cybersecurity, build Defense in Depth

Helpful Tips



- Password Managers – Use Them
 - 1Password, LastPass, and others
- Use Different Passwords for Different Sites
- Multi-Factor Authentication (MFA, 2FA, etc)
 - Something you have and something you know

Helpful Tips



- Update Your Systems
 - PCs, Laptops, iPhones, Android Devices, etc
- Be Suspicious and Verify (In-person or Call Person) Before:
 - Money Transfers
 - Direct Deposit Changes
 - Giving Out PII, CC Info, and/or HIPAA

Helpful Tips



- Have a Plan and **Practice It**
 - Incident Response Plan
 - Notification Plan

Discussion



- Transition to Cloud-based subscriptions
- Getting access to systems in a short time
 - VPN
 - BYOD
 - Device Shortages

Questions



Marc Thorson

Executive Director – Regional Technology Services

Adjunct Instructor – MPA Program

Northern Illinois University

Successfully Navigating a Payroll System Implementation

October 21, 2021

Ryhan Carrier
BSA Software



**Illinois
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Payroll Implementation Goals

- Increase Efficiency
- Automate Calculations
 - Peda Pay
 - Families First Coronavirus Response Act
 - Garnishments, Child Support, etc
- Compliance
 - IRS, IMRF, IDES, ACA
- Save Time and Reduce the Administrative Burden
 - Eliminate Duplicate Data Entry



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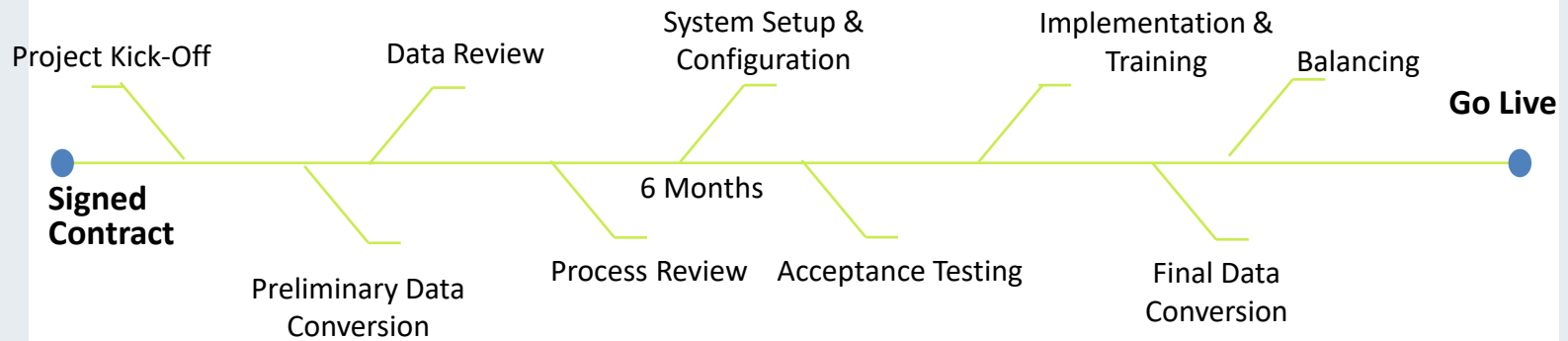
Understanding the Process

- Experience With Prior Conversions/Implementations
- References and Site Visits
- Communication
 - Ask Questions about the process
 - Share Current Pain Points & Goals
- Know the Timeline
 - Data Conversions
 - Business Process Review/Redesign
 - On Site Training
 - Go-Live

Payroll System Implementation

- Timing
- Data Conversion
- Resources
- Business Process Review/Redesign
- Reporting
- 3rd Party Integration
- Customer Support
- References

Sample Timeline



Data Conversion

- Review and understand the scope
 - What data is being converted
 - How much data is being converted
- Timing
 - Contingent upon scope of data conversion
- Statement of Work
 - Know Each party's roles and responsibilities
 - Who is responsible to extract and map the data

Business Process Review

- Thorough Review of Current Processes
 - Ask Why
 - Red Flags “we have always done it this way”
- Begin with the end in mind
 - Share your desired results with your vendor and together you can design the system to deliver the output you need.

Reporting

- State and Federal Required Reports
 - 941, w2, 1009R, ACA
 - IMRF, IDES
- Review your current reports with your vendor
 - Identify if custom reports/exports are needed

3rd Party Integration

- Identify if third party integration is needed
 - Time and Attendance
 - Scheduling
 - HR
 - On-Boarding
- References
- Make sure vendors are in communication
 - Schedule progress calls with all vendors

Validation

- Review your data, user security, and reporting
- Core User training
- User Acceptance testing
 - Workflows
 - New hires
 - Time and attendance
 - Third Party Integrations
- Processes Parallel Payrolls
 - Confirm Results
 - Balance reports

Go-Live

- Track Any changes after final data extraction
- First payroll processing support on site
- Follow up Training 3-6 months after Go-Live
- Know you process for contacting Customer Support

References

- Seek references of similar size, scope and region
- Request references with staff that was in place during the implementation
- Take the time to do a site visit and see the staff working in the software

Recap

- Understand the overall process of a payroll implementation
- Learn what is expected in a payroll implementation and how to best prepare
- Recognize and avoid common pitfalls that can delay or derail an implementation

Questions

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Bsasoftware.com



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IGFOA 2021 Payroll Seminar | October 21, 2021

Speaker & Moderator Bios

Jon Beckmann, Superintendent of Finance, *Waukegan Park District*

Jon Beckmann oversees the Park District's \$33 million dollar annual operating and capital improvement budget. He holds a Master's degree in Business Administration from North Park University with a concentration in Organizational Development and Strategic Leadership. He also holds two undergraduate degrees from Illinois State University in Finance and Insurance/Risk Management. He is working on his Master's of Data Analytics at the University of Wisconsin Whitewater. He is accountable for all finance related areas as well as human resources, IT, risk management, and golf operations. Jon is a member of Professional Education Committee and IGFOA Executive Board Member.

Robert M. Buhs, Executive Director, *Illinois Public Risk Fund*

Robert M. Buhs is the Executive Director of the Illinois Public Risk Fund since 2014 providing oversight to the Funds day-to-day operations. The Illinois Public Risk Fund is the largest self-insured risk pool in Illinois serving over 700 members. Bob retired as the Chief/Administrator of the Orland Fire Protection District (OFPD) after 27 years of full-time service and 13 of those years as a Chief Officer. After retiring from the OFPD, Chief Buhs was appointed as the Executive Director of the Illinois Fire Chiefs Association serving until 2014. Bob has been actively involved in the fire service for over 45 years. Bob has served as an adjunct instructor for Lewis University, Northwestern University, and at workshops and seminars dealing with fire department management, accreditation, incident management, and strategic planning. Bob has obtained numerous State of Illinois certifications including Chief Fire Officer Designee, a bachelor's Degree from Southern Illinois University in Fire Service Management and a master's Degree in Public Administration from Governors State University.

Ryhan Carrier, Project Manager, *BS&A Software*

Ryhan has been a member of the BS&A Software team for over eight years. He has held the role of implementation and training specialist as well as project manager. Ryhan has been involved in over 50 payroll implementations, many in the State of Illinois including Elmhurst Park District, Village of Skokie, Village of Willowbrook, and Oakbrook Park District.

Benjamin E. Gehrt, *Clark Baird Smith LLP*

Ben Gehrt focuses his practice on traditional labor law and employment litigation. He has experience in grievance and interest arbitration cases, contract negotiations, and unfair labor practice charges. Ben also represents clients in EEO and wage-hour litigation. Prior to practicing law, Ben worked as a Plant Manager for a food manufacturing company in suburban Chicago. His experience as a supervisor and a manager gives him a unique perspective that helps him relate to the day-to-day challenges our clients face while managing people.

Ben has represented public and private sector clients in contract negotiations and interest arbitration. In those settings, he has helped clients obtain significant cost savings through changes in staffing levels,

wage schedules, retiree insurance benefits, sick leave buyback benefits, and work rule changes, among other things.

Ben is also an experienced litigator. In addition to representing clients in grievance arbitration proceedings, Ben has also litigated cases in the state and federal trial courts. His litigation experience includes cases involving allegations of discrimination, employment cases alleging deprivation of constitutional rights, wage-hour disputes, and disputes over employee benefits under both ERISA and Illinois state law. In addition to his trial court experience, Ben has successfully represented clients in the state and federal courts of appeal.

Additionally, Ben has developed a niche practice at Clark Baird Smith LLP, counseling the firm's clients on a wide variety of wage and hour issues under both state and federal law. In addition to handling the traditional wage payment questions that arise with private sector businesses, Ben is skilled at answering questions that are unique to the public sector, such as questions about compensatory time, 7(k) work periods, pay for canine handlers, and duty shift trades, to name a few.

Ben has been selected as a Leading Lawyer and he was named to the Illinois Rising Stars list. Ben has also authored and contributed to numerous books and articles regarding labor and employment law. He is a co-editor and chapter author for Much Smarter Bargaining. He has also authored contributions to the NPELRA Legal Corner, The Developing Labor Law (BNA), How To Take A Case Before The NLRB (8th Ed. BNA), and a chapter in the Municipal Law Deskbook (ABA 2015) published by the American Bar Association's Section on State and Local Government Law.

In addition to his practice, Ben volunteers as a judge and advisory board member for the NICASA Teen Court program in Northern Illinois.

John E. Motylinski, Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.

John E. Motylinski is an associate attorney with Ottosen DiNolfo Hasenbalg & Castaldo, Ltd. He graduated *summa cum laude* from the University of Illinois College of Law and holds an undergraduate degree in political science from the University of Illinois at Urbana-Champaign. He focuses his practice in the areas of local government, municipal, public pension, litigation, labor, and employment law.

Bill Phillips, Assistant Attorney General, Illinois Attorney General's Office

Bill Phillips is an attorney licensed in Illinois and Missouri who is currently serving as an Assistant Attorney General in the Military and Veterans Rights Bureau. Mr. Phillips has worked for the Illinois Attorney General's Office for the past nine years, specializing in workers compensation and military issues. Prior to joining the Office of the Illinois Attorney General, Mr. Phillips worked for a law firm which specialized in government representation and litigation. Mr. Phillips holds a J.D and a Bachelor's Degree in Political Science from Southern Illinois University of Carbondale.

Mr. Phillips also serves as a Reservist in the United States Air Force JAG Corps. Mr. Phillips' military legal practice includes military justice, ethics, civil law, and legal assistance to service members and retirees.

Mr. Phillips lives in Swansea Illinois with his wife and daughter.

Lisa Simioni, Vice President & Senior Compliance Health Consultant, Segal

Lisa Simioni is a Vice President and Senior Compliance-Health Consultant with Segal in our Chicago office. She has more than 17 years of experience working with Public sector, corporate and multiemployer clients on a wide range of health and welfare compliance matters. Lisa helps clients navigate and ensure compliance with federal and state laws, ranging from day-to-day compliance issues to complex plan design matters for both ERISA and non-ERISA clients. She received a J.D. and LL.M. in

Employee Benefits from the John Marshall Law School and a BA International Business from Dominican University.

Marc Thorson, Executive Director of Regional Technology Services, *Northern Illinois University*

Marc Thorson is the Executive Director of Regional Technology Services in the NIU Division of Information Technology (DoIT). He oversees all aspects of NIU's broadband, Internet service, health informatics, and technology service offerings to communities, school districts, and other government and nonprofits organizations. Prior to joining NIU, Marc has worked in the local government Information Technology field for over 20 years. He is passionate about Information Security and data-driven decision making in environments with resource challenges.

Marc is also an adjunct instructor for the nationally ranked NIU Master of Public Administration program. Marc earned a Bachelor of Science in Management from National-Louis University, and a Master of Business Administration from Northern Illinois University with a focus on Management of Information Services and Marketing.

Kristine K. Willson, Senior Consultant, Human Capital Management and Payroll Consulting, *Sikich LLP*

Kristine K. Willson, CPP, is a senior consultant with over 30 years of professional experience in payroll services. Kristine provides payroll administration, taxation and implementation services to her clients. She also serves organizations with their benefit administration, garnishments and process documentation/improvement needs. Her experience includes international payroll and payroll SOX compliance work, too. Kristine works with clients in a range of industries, including manufacturing, biotech, retail, travel, medical services, property management, construction, insurance and not-for-profit.

Kristine is a member of the Society for Human Resource Management (SHRM), Global Payroll Management Institute (GPMI), American Payroll Association (APA) and American Payroll Association Women in Leadership Program. She is a Certified Payroll Professional (CPP), has completed the Global Payroll Management Certificate Program – American Payroll Association and the Leadership Certification Program – American Payroll Association. In 2019, she was APA Payroll Woman of the Year. In 2010, she received the APA Special Recognition Award and in 2007, she received the APA Meritorious Service Award.

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