

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

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PEOPLE OF THE STATE OF ILLINOIS,	)
	)
Plaintiff,	)
	)
v.	)
	)
LESLIE GEISSLER MUNGER, in her capacity	)
as Comptroller of the State of Illinois,	)
	)
Defendant.	)

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**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois, brings this complaint seeking declaratory, injunctive, and other relief and alleges as follows:

**Nature of Action**

1. The People bring this complaint so that the Court may provide a declaration to Defendant as to what payments can and should legally be made in the absence of enacted annual appropriations statutes.

**Parties**

2. Lisa Madigan is the Attorney General of the State of Illinois. Pursuant to the Illinois Constitution, she is the legal officer for the State and has standing to bring this action on behalf of the People of the State of Illinois.

3. Defendant Leslie Geissler Munger is the Comptroller of the State of Illinois. Pursuant to the Illinois Constitution, she shall maintain the State's central fiscal

accounts and order payments out of the funds held by the Treasurer.

### **Venue**

4. Venue is proper in the Circuit Court of Cook County because it is a county in which the transaction or some part thereof occurred out of which this cause of action arose.

### **Factual Allegations**

5. The State of Illinois's 2015 Fiscal Year ended on June 30, 2015.

6. The 2016 Fiscal Year started on July 1, 2015.

7. The General Assembly passed appropriations legislation for the 2016 Fiscal Year and the Governor vetoed most of that legislation. Once a veto message is returned to the originating house of the General Assembly, that house has 15 calendar days to override the veto. If it does so, the other house of the legislature then has 15 calendar days to override the veto.

8. As a result of the Governor's vetoes, and as of the writing of this complaint, the State has not enacted appropriations statutes for the 2016 Fiscal Year, other than statutes providing education funding.

9. Payments for state obligations for the 2016 Fiscal Year are coming due imminently and before completion of the veto override timeframe.

10. The Comptroller must process vouchers for payments to be made from state funds.

11. Without enacted appropriations statutes or other lawful expenditure

authority, the Comptroller is not permitted to process vouchers for payment of state funds.

12. An actual controversy has arisen in light of substantial uncertainty regarding which, if any, payments may be authorized by the Comptroller in the absence of annual appropriations statutes.

### **Count One – Declaratory and Injunctive Relief**

13. Plaintiff repeats and realleges the foregoing allegations as though they were contained herein.

14. The Appropriations Clause of the Illinois Constitution provides that “The General Assembly by law shall make appropriations for all expenditures of public funds by the State.” ILL. CONST. art. VIII, § 2(b).

15. The State Comptroller Act provides that no payment may be made from public funds held by the State Treasurer except by warrant from the Comptroller. 15 ILCS 405/9(a).

16. That statute further provides that no warrant for the payment of money may be drawn by the Comptroller without presentation of a voucher indicating that the expenditure is “pursuant to law and authorized.” 15 ILCS 405/9(b).

17. Additionally, the Comptroller shall examine each voucher and determine whether appropriations or expenditure authority other than appropriations are available to make the expenditure of funds. 15 ILCS 405/9(c).

18. There are, however, instances in which an annual appropriation is not

required.

19. Payments made pursuant to continuing appropriations, including without limitation payments for debt service, judicial salaries, salaries of legislators, and legislative operations (*see, e.g.*, 15 ILCS 20/50-22), do not require an annual appropriation and may be authorized by the Comptroller in the absence of an annual appropriation. *See Graham v. Ill. State Toll Highway Auth.*, 182 Ill. 2d 287 (1998).

20. Payments from non-appropriated funds do not require an annual appropriation and may be authorized by the Comptroller in the absence of an annual appropriation.

21. Payments for operations of the judicial branch may be authorized by the Comptroller in the absence of an appropriation. *See Jorgensen v. Blagojevich*, 211 Ill. 2d 286 (2004).

22. The Supremacy Clause of the United States Constitution provides that federal law is the supreme law of the land. U.S. CONST. art. VI, cl. 2. Payments mandated by federal law thus are not limited by state law restrictions concerning legislative appropriations.

23. Federal consent decrees enforcing federal rights are federal law for the purposes of the Supremacy Clause.

24. By virtue of the Supremacy Clause, the Comptroller must authorize payments necessary to comply with federal consent decrees in the absence of an annual appropriation.

25. Also by virtue of the Supremacy Clause, in the absence of an annual appropriation, the Comptroller must authorize payments necessary to comply with the State's obligations pursuant to federal law, including the State's participation in federal programs requiring the expenditure of state funds.

26. In the absence of an annual appropriation, the Comptroller lacks authority under state law to authorize payment of wages due to state employees. *AFSCME v. Netsch*, 216 Ill. App. 3d 566 (4th Dist. 1999).

27. Pursuant to the Supremacy Clause, the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, requires the payment of federal minimum wage and overtime to covered state employees in the absence of an annual appropriation.

28. The Department of Central Management Services has issued a statement maintaining that it would take 9 to 12 months to prepare a payroll that complies with the FLSA. *See Exhibit A attached to this Complaint.*

29. The first state employee paychecks of Fiscal Year 2016 are due to be issued on July 15, 2015.

30. The Comptroller must receive the payroll information for that payroll on or about July 10, 2015.

31. The People have a clearly ascertainable right in need of protection.

32. The People have a likelihood of success on the merits of their claim.

33. The People have no adequate remedy at law in the absence of an emergency injunction.

34. The People will suffer irreparable harm in the absence of an emergency injunction.

35. The balance of the equities weighs in favor of granting injunctive relief.

WHEREFORE, Plaintiff People of the State of Illinois respectfully prays for the following relief:

a. A declaration that the Comptroller, in the absence of an annual appropriation, is authorized to process payment vouchers for continuing appropriations;

b. A declaration that the Comptroller, in the absence of an annual appropriation, is authorized to process payment vouchers for non-appropriated funds;

c. A declaration that the Comptroller, in the absence of an annual appropriation, is authorized to process payment vouchers for operations of the judicial branch;

d. A declaration that the Comptroller, in the absence of an annual appropriation, is authorized to process payment vouchers to meet obligations required by consent decrees;

e. A declaration that the Comptroller, in the absence of an annual appropriation, is authorized to process payment vouchers to meet obligations required by the State's participation in federal programs;

f. A declaration that the Comptroller, in the absence of an annual appropriation, is authorized to process payment vouchers for the payment of the

federal minimum wage and overtime requirements of the FLSA, *or* in the alternative, a declaration that the Comptroller, in the absence of an annual appropriation and payroll vouchers that comply only with the minimum requirements of the FLSA, is not authorized to process payment vouchers for the state employee payroll;

g. A temporary and permanent injunction requiring the Comptroller to process payment vouchers for continuing appropriations, non-appropriated funds, judicial branch operations, consent decrees, and federal statutory mandates, in the absence of an annual appropriation;

h. A temporary and permanent injunction requiring the Comptroller to process payment vouchers for payrolls that meet only the minimum requirements of the FLSA *or* in the alternative an injunction enjoining the Comptroller from processing payroll vouchers until the enactment of appropriations statutes; and

i. Any and all other relief that this Court deems just.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY: /s/ Khara Coleman Washington  
KHARA COLEMAN WASHINGTON  
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**VERIFICATION**

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

  
\_\_\_\_\_  
Ann M. Spillane





**VIA ELECTRONIC DELIVERY**

June 30, 2015

Mr. Joseph Hartzler  
Special Counsel  
Office of Governor Bruce Rauner  
205 Statehouse  
401 S. Second Street  
Springfield, Illinois 62706

Re: FLSA designations for State employees and minimum wage implications

Dear Mr. Hartzler:

I am writing in response to your request for information regarding the near-term possibility of determining Fair Labor Standards Act (FLSA) exemption designations for all State employees. You have also asked for an outline of the implications raised by placing State employees on a minimum wage payment basis during a budget impasse.

**FLSA determinations**

As you may be aware, the FLSA, 29 U.S.C. 201, *et seq.*, sets a uniform minimum standard for employee compensation in the United States. Pursuant to the Supremacy Clause of the United States Constitution, the Fair Labor Standards Act is binding upon all employment relationships in the State of Illinois. Moreover, the State of Illinois, as an employer, has waived sovereign immunity and is required to comply with the FLSA. 745 ILCS 5/1.5. Accordingly, failure to comply with the FLSA would subject the State of Illinois to significant financial liability, including the potential risk of treble damages and interest.

Determination of FLSA exemption status is a fact-intensive process that includes several steps, including verifying that the actual duties being performed by an employee are reflected by the position description's assigned duties, and then applying the FLSA and its implementing regulations to the identified duties. Nearly all of the FLSA determinations presently in place were made under a prior process that calls into question their accuracy. Since discovering the questionable accuracy of these determinations, staff of the CMS Bureau of Personnel have been working with CMS lawyers for several years to review and revise FLSA determinations when issues arise regarding an individual employee's pay is presented to CMS. Only a very small number of updated FLSA determinations have been corrected and updated through this approach.

Based on that framework and history and making this a priority task, my office reasonably estimates that it would take approximately nine to twelve months at current staffing levels to determine with the required degree of accuracy the FLSA status of the approximately 45,000 employees who perform work for the State of Illinois under the jurisdiction of the Governor's Office.

## **Minimum wage implications**

You have also asked for the implications of putting State employees into a minimum wage payment regime during the pending budget impasse in an effort to avoid the possibility of treble damages and interest penalties imposed by the FLSA. The effects and processes outlined here would apply regardless of (and in addition to) the FLSA determination work that is described above, and these are only the most obvious effects. There are certainly going to be additional implications beyond what is identified below.

First, to implement an adjustment of State employees' pay down to the minimum wage, consider the following:

- There are tens-of-thousands of State employees whose payroll calculations are managed on several different payroll systems. Because of the variety of systems used to manage this data, there will be tens-of-thousands of employees whose payment settings will need to be manually adjusted, one-by-one, from their standard salary or wage down to the minimum wage, and this process will be different from system-to-system within the State. A large portion of State employees cannot have their salary/wage edited downward via simple global programming changes.
- There is a new minimum wage for jobs in the City of Chicago (effective 1 July 2015), which will add complexity to this task, as those State employees working within the City limits would have a minimum wage different than State employees outside of Chicago proper.
- The State Employee Retirement System (SERS) will have significant problems handling a temporary reduction in earnings by State employees during the minimum wage period, as income history and earnings credits will be substantially distorted. There will be employees who are retiring during such a minimum wage period, and these employees will have permanent problems with their retirement benefit calculations.
- State employee health insurance benefits can be substantially distorted, as the State employee cost of this benefit is indexed to employee earnings.
- State employee life insurance benefits can be substantially distorted, as the State employee cost of this benefit is indexed to employee earnings.
- Nearly every State employee with bankruptcy, child support and tax levy garnishments will be unable to make the minimum payments because federal guidelines will not allow them to occur in a minimum wage setting. Similarly, employees with bank loans (*e.g.*, mortgages, car loans, student loan payments) may be unable to fund their automatic deductions and go into default.

Next, to reverse or undo the downward adjustment once a budget deal is reached, the tens-of-thousands of employees whose payroll records were adjusted downward will need to be manually adjusted, one-by-one, back up to their standard salary or wage from the minimum wage. Again, a large portion of State employees cannot have their salary/wage edited upward via simple global programming changes.

Finally, to reconcile (or “catch up”) employees’ pay after a budget resolution is reached, the State will have to overpay the employees to make up for the period where they were only paid minimum wage. Consider the following:

- Wage withholding tables (Social Security, Medicare, Federal Income Tax) will require higher withholding than usual, as it will appear employees will be on a higher earning trajectory. We know from past experience that State employees are particularly sensitive to withholding changes.
- The SERS system will have an additional round of very substantial problems from an upward adjustment, as income history and earnings credits will again be distorted. As with the downward adjustment, employees who retire during the catch up period will have incorrect earning calculations that would permanently affect their retirement benefits. In effect, it would be a form of pension spiking available to those who retire during the correction period.
- Health and life insurance benefits will again both be distorted, as the State employee cost of these benefits is indexed to employee earnings.

In the absence of certainty regarding the FLSA exemption status of nearly all State employees, and given the many negative implications of attempting to pay State employees the minimum wage, it is advisable to continue to pay employees their ordinary wages and salaries as set forth by the Pay Plan in accordance with the Personnel Code during a budget impasse. We will continue to make progress on correcting and updating the FLSA determinations for all State employees over time, and we will look further into processes that can facilitate that review.

Thank you for your attention to these matters. Please do not hesitate to contact me if you have any questions.

Sincerely,



Michael Basil  
General Counsel  
Illinois Department of Central Management Services