

**ILLINOIS APPELLATE COURT AFFIRMS 48-CENT PER HOUR RAISE TO STATE OF ILLINOIS
HOME HEALTH WORKERS AND PERSONAL ASSISTANTS**

The Appellate Court of Illinois, First Judicial District, recently affirmed the lower circuit court ruling requiring the State of Illinois to increase the per hour wages of Department of Human Services (“DHS”) home health workers and personal assistants by 48 cents per hour in *Grant and SEIU v. Dimas and DHS*, 2019 IL App (1st) 180799 (February 22, 2019).

In 2017, the Illinois Legislature passed Public Act 100-0023 that required the State to pay DHS home health workers and personal assistants an increase of 48 cents per hour. On the same day, the Legislature passed an ordinance appropriating over \$12.5 million to pay for the wage increase. The State refused to implement the increase, resulting in the union filing an order of *mandamus* in the circuit court to compel DHS public officials to perform their nondiscretionary, ministerial duty. The circuit court granted summary judgment in favor of the union and the workers and the State appealed.

On appeal, the State argued that the Illinois Labor Relations Board (“ILRB”), not the Court, had jurisdiction over the dispute, and that an order of *mandamus* was inappropriate. Citing the clear language of the statute granting the raise, the Court first held that there was no requirement to defer jurisdiction to the ILRB, since the union cited to the statute as the basis of the court complaint. The Court next considered the three requirements for a successful writ of *mandamus*: (1) the plaintiff has a clear and affirmative right to relief, (2) the public official has a clear duty to act, and (3) the public official has clear authority to comply with the writ. The Court determined that the plaintiff workers had a right to the wage increase under the statute and, since the legislature also passed legislation to pay for it, DHS had the authority to comply.

Regarding the requirement that the public official must have a clear duty to act, the Court noted that some statutes commands are procedural and therefore merely “direct” a public official to act, while others mandate compliance. Where a statute contains consequences for noncompliance or when the public official’s failure to comply with the law will injure the right the law’s procedure was designed to protect, the law is interpreted as mandatory. Here, the Court analyzed the statute and found no negative consequences for noncompliance, but notably held that DHS’s failure to implement the wage increase did injure the rights of the home health workers and personal assistants that the law was designed to assist. As a result, the Court held that DHA had no discretion to delay implementation of the raises and instead had a mandatory duty to act.

Clients are advised to consider a writ of *mandamus* if an employer refuses to follow a clear statute requiring them to act under the Court’s *mandamus* analysis above. Please contact an attorney at Asher, Gittler & D’Alba, Ltd. to discuss your specific situation and see how we can be of service to you.

ASHER, GITTLER & D'ALBA, LTD.
200 West Jackson Boulevard, Suite 720
Chicago, IL 60606 – 312.263.1500

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