

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MICHAEL L. SHAKMAN, PAUL M. LURIE, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. ) Case No. 69 C 2145  
 )  
DEMOCRATIC ORGANIZATION OF ) Hon. Sidney I. Schenkier  
COOK COUNTY, et al., ) Magistrate Judge  
 )  
Defendants. )

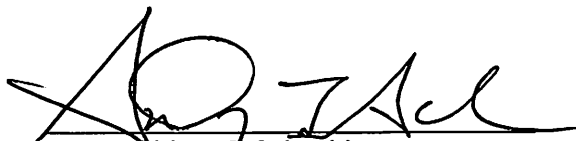
**AGREED ORDER APPROVING  
THE GOVERNOR'S EMPLOYMENT PLAN FOR EXEMPT POSITIONS AND  
THE GENERAL PRINCIPLES AND COMMITMENTS APPLICABLE TO HIRING**

This matter comes before the Court on the Agreed Motion for Approval of the the Governor's Employment Plan for Exempt Positions and the General Principles and Commitments Applicable To Hiring, the Court being fully advised:

**IT IS HEREBY ORDERED:**

The Governor's Employment Plan for Exempt Positions and the General Principles and the Commitments Applicable To Hiring attached as Exhibit 1 and Exhibit 2 are approved.

Dated: January 7, 2019 ENTERED:

  
Sidney J. Schenkier  
Magistrate Judge

**EXHIBIT 1**

**STATE OF ILLINOIS**  
**EMPLOYMENT PLAN FOR EXEMPT POSITIONS**  
**AT AGENCIES UNDER THE JURISDICTION OF THE GOVERNOR**

## **I. EXEMPT POSITIONS**

**A. Definitions.** For the purpose of this document, the following definitions apply:

Agency Personnel Officer – the highest ranking human resources employee at an agency regardless of title (*e.g.*, HR Director, Deputy Director for Personnel, or the head of the relevant shared services center).

Candidate – person identified by the Governor or designee to fill an Exempt Position.

Exempt List – the list of all Exempt Positions, as such list may be amended from time to time.

Exempt Position – a completely at-will position that (1) is not covered by a collective bargaining agreement or by Personnel Code protections and (2) is also on the Exempt List because the position involves policymaking to an extent that or is confidential in such a way that political affiliation is an appropriate consideration for the effective performance of the job.

Hiring and Employment Monitor – the Director of the Hiring & Employment Monitoring Division within the Office of Executive Inspector General for the Agencies of the Illinois Governor.

Position Description - A written document that describes the Position's typical duties and current responsibilities, Minimum Qualifications, Preferred Qualifications (if applicable), the knowledge, skills, and abilities needed to perform those responsibilities, and any testing protocols (if applicable).

**B. Hiring Process.** CMS will maintain current and accurate position descriptions for all Exempt Positions. Position descriptions will include the minimum qualifications for the position, duties to be performed, and reporting structure. Agencies are responsible for ensuring that position descriptions are updated to reflect changes to minimum qualifications, duties or reporting structure, with the Agency Personnel Officer bearing primary responsibility for this process. The agency into which an Exempt Position is assigned shall follow the procedures in the General Procedures for Filling Non-Exempt Positions<sup>1</sup> to ensure that position descriptions are current and accurate.

**C. Monitoring.** All employees under the jurisdiction of the Governor are required to cooperate fully with the Hiring and Employment Monitor within the Office of Executive Inspector General, as already required by 5 ILCS 430/20-70. Any employee who fails to report or cooperate as required by Court order(s), Executive Order, or otherwise as required by law will be subject to disciplinary action, up to and including termination. The Hiring and Employment Monitor within the Office of Executive Inspector General shall have access to all records, information, and employees to fulfill their responsibilities and to monitor compliance with the Court order(s) and applicable law.

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<sup>1</sup> Until such General Procedures for Filling Non-Exempt Positions is finalized, the agency shall follow the principles set out in the General Principles and Commitments Applicable to Hiring and current State personnel policy.

**D. Consideration of Potential Candidates for Exempt Positions and Sharing of Information Regarding Potential Candidates with Agencies.** The Governor's Office may send to agencies the resumes of individuals or candidate information for those who appear qualified for Exempt Positions. The Governor's Office and agency leaders may consider candidates for Exempt Positions that are either currently vacant or potentially will be vacated. If the Governor's Office sends resumes or candidate information to an agency for consideration for an Exempt Position, the Governor's Office shall transmit the resumes or candidate information under a cover letter or form that indicates the candidate is being sent for consideration for an Exempt Position and states either (1) the specific Exempt Position for which the individual(s) should be considered; or (2) that the individual(s) has a particular expertise, experience, or skill set that aligns to a particular type of Exempt Position (*e.g.*, the individual possesses health insurance industry experience, has criminal justice system expertise, or has accounting skills that would be appropriate for a budget or CFO type of role). The Governor's Office may send candidates to agencies individually, may bundle and send multiple candidates for consideration for a particular role, or may bundle and send candidates with like experience or skills who may be considered for the same type of job function or substantive area. Regardless of whether transmitted individually or bundled, the Governor's Office shall track what resumes/candidate information are sent to which agencies, and shall maintain copies of the resumes, candidate information, and transmittal cover letters between the Governor's Office and agencies regarding the candidate(s). Because it has the authority to both identify candidates and approve final selection for all Exempt Positions, the Governor's Office will be responsible for conducting employment history checks for these individuals.

**E. Initiating the Hiring Process.** Once the Governor or his or her designee has identified a Candidate to fill a specific Exempt Position, the Governor or his or her designee shall initiate the hiring process for that position by sending a notice of intent to fill the position to the relevant Agency Personnel Officer. The form of the notice of intent to fill positions may be established by the Governor through a written policy and procedures memorandum to Personnel Officers, and such notice may be given electronically.

**F. Application.** The selected Candidate being considered for appointment to an Exempt Position must complete an employment application (CMS100 or equivalent, such as a resume or CV) for the State to assess whether the individual meets the minimum qualifications for the position, and, if applicable, holds any required licenses or certifications. The employment application must contain sufficient information to allow the Agency Personnel Officer to make the determination described below in the Certification. If the individual does not possess the minimum qualifications or hold any applicable required licenses or certifications, he or she must not be appointed to the Exempt Position.

**G. Certification.** Before the individual's first day of work in the Exempt Position, the Agency Personnel Officer must certify in writing (1) that the individual meets the minimum qualifications of the position, including any required licenses or certifications; (2) that the position to which the individual is appointed is an Exempt Position in that it is on the Exempt List and is exempt from job protections under the Personnel Code or a collective bargaining

agreement; and (3) that the individual will be performing the duties of the Exempt Position as described in the position description. The Agency Personnel Officer shall provide a copy of the certification, before the individual's first day of work in the Exempt Position, to the Hiring and Employment Monitor and the Special Master, while acting. This certification must be maintained in the individual's personnel file and forwarded to the Governor's Office designee for exempt hiring.

**H. No Other Specific Selection Process Required.** Except as specifically provided in this Section, the Governor, the applicable agency, and CMS are not required to follow any other selection process in filling an Exempt Position and may consider any lawful factor in making the hiring decision.

**I. Changes to Exempt List.** The Governor's Office or the Hiring and Employment Monitor may from time to time change the Exempt List by adding Exempt Positions, deleting Exempt Positions, or amending the titles of Exempt Positions contained on the Exempt List. Such changes can only be made as follows:

**1. Request to Change by Governor.** The Governor or the Governor's designee must send the Hiring and Employment Monitor, the CMS Deputy Director of Personnel,<sup>2</sup> and the Special Master, while acting, a written notice of any proposed change to the Exempt List, along with supporting documentation, including but not limited to: (a) the position number, position classification, working title, and current Position Description of the Exempt Position or proposed-to-be-exempt position; and (b) a description of the basis on which the change is proposed. The Executive Inspector General shall provide a written approval or objection to the proposed change within 10 business days of receipt to the CMS Deputy Director of Personnel,<sup>3</sup> Governor or the Governor's designee, and the Special Master, while acting. If the Executive Inspector General provides an objection to the change, the Governor or his or her designee and the Executive Inspector General or his or her designee will then meet to discuss the matter. If the Executive Inspector General does not rescind the objection following such discussion, the Governor or the Governor's designee will provide the Executive Inspector General a final response in writing explaining why the Governor believes the position qualifies as exempt under applicable law. The Executive Inspector General's objection and the Governor's final response shall be publicly posted on the CMS website.

**2. Request to Change by the Executive Inspector General.** The Executive Inspector General may propose changes to positions on the Exempt List that the Executive Inspector General believes are necessary to ensure compliance with applicable law. The Hiring and Employment Monitor shall send to the Governor or the Governor's designee, the CMS

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<sup>2</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel, at which time notice should instead be directed to the Chief Compliance Officer.

<sup>3</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel, at which time notice should instead be directed to the Chief Compliance Officer.

Deputy Director of Personnel<sup>4</sup> and the Special Master, while acting, written notice of any proposed change to the Exempt List that is due to (1) the position description not meeting proper Exempt designation or (2) the person in the position not consistently performing the duties of the Exempt Position in a meaningful manner as provided in the Exempt Position's approved Position Description. The Hiring and Employment Monitor shall include in the request supporting documentation, which shall include but not be limited to: (a) the position number, position classification, working title, and current Position Description of the Exempt Position; and (b) a description of the basis on which the change is proposed. The CMS Deputy Director of Personnel<sup>5</sup> and Governor or the Governor's designee shall review the request and shall provide a written approval or objection to the proposed change within 10 business days of receipt to the Hiring and Employment Monitor and the Special Master, while acting. If the Governor or the designee objects to the change, the parties shall meet to discuss the objection and the Governor or the designee shall be permitted to seek modifications to the Exempt Position Description and/or ensure that the person in the Exempt Position is performing the duties as provided in the Exempt Position Description. The Governor's Office bears the burden of demonstrating that the position is one for which an employer may take into account political considerations when deciding whom to hire, promote, or transfer to fill these positions. Both the Hiring and Employment Monitor's proposal and the Governor's objection shall be publicly posted on the CMS website.

3. Notice to Plaintiffs' Counsel. Until the effective date of a court order finding the State in substantial compliance in the *Shakman* Case, after the procedures above have been completed, the CMS Deputy Director of Personnel<sup>6</sup> shall send a copy of the proposed change to the Exempt List, and any written objection or response made by either the Executive Inspector General or Governor, to the Plaintiffs' Counsel. Proposed changes to the Exempt List will not be deemed approved and begin to be implemented until after ten business days of providing confirmation of the Executive Inspector General's approval to the Plaintiffs' Counsel. If Plaintiffs' Counsel sends a written objection of the proposed change to the Exempt List to the CMS Deputy Director of Personnel,<sup>7</sup> the Governor or the Governor's designee and the Executive Inspector General within ten business days of the CMS Deputy Director of Personnel<sup>8</sup> providing written notice of the Exempt List change, the Position will not be placed on the Exempt List and the matter shall be referred to the Special Master, while acting, for a recommendation and then to the court having jurisdiction in the *Shakman* Case for final resolution. Upon objection by the Plaintiffs' Counsel, the Exempt List will not be changed until final resolution by the court.

4. Civil Service Commission Review of Proposed Changes to the Exempt List. If the parties agree to the proposed change pursuant to Sections 1 through 3 or if a party elects to proceed with the proposed change over any objection, the CMS Deputy Director of

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<sup>4</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel, at which time the notice shall be directed to the Chief Compliance Officer.

<sup>5</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel.

<sup>6</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel.

<sup>7</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel.

<sup>8</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel.

Personnel will submit to the Civil Service Commission positions that are within the jurisdiction of the Civil Service Commission and that are proposed for addition to or removal from the Exempt List through a Request to Change. The CMS Deputy Director of Personnel will provide to the Civil Service Commission any documentation or information necessary for a request for rescission or creation of a 4d(3) position.

The Civil Service Commission will then review the proposed change. If the Civil Service Commission determines that the position is appropriately classified as a position that has job protection under the Personnel Code or a collective bargaining agreement, then the position will not appear on the Exempt List and neither the Governor nor the Executive Inspector General may appeal that decision. If the Civil Service Commission determines that the position is appropriately exempt from any job protection under Section 4d(3) of the Personnel Code, then the position can be added to the Exempt List. Class Plaintiffs may challenge the Civil Service Commission's determination by filing a motion with the court overseeing the *Shakman Case*.

The process for changing a position from Exempt to Non-Exempt is outlined below.

5. Court Approval. Until the effective date of a court order finding the State in substantial compliance in the *Shakman Case*, no amendment to the Exempt List will be implemented until the change has been approved by the court overseeing the *Shakman Case*. If either the Governor or the Class Plaintiffs object to a proposed change to the Exempt List, and the objection is not resolved after referral to the Special Master, while acting, the Governor's Office or Class Plaintiffs may file a motion asking the court to amend the Exempt List. The Governor's Office bears the burden of demonstrating that the position is one for which an employer may take into account political considerations when deciding whom to hire, promote, or transfer to fill the position.

J. Steps When a Filled Position Changes from Exempt to Non-Exempt. Any State employee who is appointed to or the incumbent in an Exempt Position shall continue to be considered exempt and not subject to Personnel Code or other job protection.

If a position is determined to be non-exempt through a Request to Change as described above, the position shall change from exempt to non-exempt on the 90<sup>th</sup> day after notice of termination is provided to the incumbent employee, as described below in Section 2. During those 90 days, the State shall undertake the following steps:

1. Any position that is within the jurisdiction of the Civil Service Commission will be forwarded by CMS to the Civil Service Commission for review. The Civil Service Commission's review will occur concurrently with the steps described below.

2. Upon agreement between the Governor's Office, the Executive Inspector General and the Special Master, while acting, CMS shall provide notice to the agency and the incumbent that the employee will be terminated effective on the 90<sup>th</sup> day unless he or she is selected for the position through a compliant competitive hiring process. However, because the



incumbent is in the position on an at-will basis, in the discretion of the Governor or his or her designee, the incumbent's employment may be terminated earlier than the 90<sup>th</sup> day.

3. If the agency desires to have this position filled beyond the 90<sup>th</sup> day, the agency must initiate a competitive hiring process that is compliant with the process for Non-Exempt Positions, as described in the General Procedures for Filling Non-Exempt Positions.<sup>9</sup>

The incumbent may choose to apply for the position through the competitive hiring process. If the incumbent is the selected candidate following the competitive selection process, written notice will be provided to CMS Deputy Director of Personnel,<sup>10</sup> the Hiring & Employment Monitor, and the Special Master, while serving.

If the State does not complete the hiring sequence by the 90<sup>th</sup> day, the incumbent employee shall be terminated, and the position thereafter converts to non-exempt. In the event that it is operationally necessary to fill the position on a temporary basis while the hiring sequence is completed, an individual may be hired through a temporary appointment not to exceed 90 days. Such temporary appointment may not be renewed. Written notice of a temporary appointment will be provided to the CMS Deputy Director of Personnel,<sup>11</sup> Hiring and Employment Monitor, and the Special Master, while acting, at least 14 days before the effective date of the temporary appointment.

4. On the 90<sup>th</sup> day, if the position has not yet been filled by an individual competitively hired as non-exempt and has not yet converted to non-exempt, then the position automatically converts to a non-exempt Position. The position must be removed from the Exempt List by the 90<sup>th</sup> day.

**K. Posting of Exempt List.** CMS will post the then-current Exempt List on the CMS website. The posted Exempt List will include: (a) the name of the Agency to which the Exempt Position is assigned; (b) the job title, including the working title, and Position Identification Number; and (c) the name of the incumbent. CMS will update and repost the Exempt List on a monthly basis.

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<sup>9</sup> Until such General Procedures for Filling Non-Exempt Positions is finalized, the agency shall follow the principles set out in the General Principles and Commitments Applicable to Hiring and current State personnel policy.

<sup>10</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel.

<sup>11</sup> Pending the hiring of a non-exempt Chief Compliance Officer in CMS's Office of Compliance in Personnel.

**EXHIBIT 2**

**STATE OF ILLINOIS**  
**GENERAL PRINCIPLES AND COMMITMENTS**  
**APPLICABLE TO HIRING**  
**AT AGENCIES UNDER THE JURISDICTION OF THE GOVERNOR**

## **I. GENERAL PRINCIPLES AND COMMITMENTS APPLICABLE TO HIRING**

**A. Commitment.** The State will implement proactive and transparent employment-related policies, practices and procedures that will prevent and remedy the negative effects of Unlawful Political Contacts and Unlawful Political Discrimination as required by Executive Order, Administrative Order, and applicable law. No CBA or other agreement between the State and any other individual or entity shall provide otherwise.

**B. No Employment Actions Influenced By Political Reasons or Factors.** No Employment Action affecting Non-Exempt Positions shall be influenced by any Political Reasons or Factors.

**C. Unlawful Political Discrimination Reporting.** Any State employee who learns of or has a reasonable belief that Unlawful Political Discrimination has occurred or is occurring, is required to report such matter to OEIG directly and without delay, on an anonymous or credited basis, in person, by phone or in writing. All State employees are required to cooperate fully in any investigation of such matter conducted by OEIG. Any employee who fails to report and/or cooperate as required will be subject to disciplinary action, up to and including termination, provided that such reporting and cooperation are not required if either would violate the employee's constitutional rights.

**D. Political Contact Reporting.** Any employee who receives or has reason to believe a Political Contact has occurred or is occurring is required to report the contact to the OEIG immediately. All employees are required to cooperate fully in any investigation of such contact conducted by the OEIG. Any employee who fails to report a Political Contact or cooperate as required will be subject to disciplinary action, up to and including termination, provided that such submission and cooperation are not required if either would violate the employee's constitutional rights.

**E. Equal Employment Opportunity.** The State is committed to diversity and to providing equal employment opportunity regardless of race, sex, age, religion, national origin, disability or any other legally protected status.

**F. No Retaliation.** The State shall continue to prohibit retaliation, punishment or penalty for reporting a Political Contact, initiating a complaint related to any alleged Unlawful Political Contact or Unlawful Political Discrimination, or cooperating with or assisting, the OEIG, the *Shakman* Special Master, or any other person or authority in connection with any such report or complaint.

**G. Minimum Qualifications for All Positions.** The State shall establish verifiable, objective minimum qualifications ("Minimum Qualifications") for every position at agencies under the Governor's jurisdiction. Minimum Qualifications must be included in each positions' official Position Description and must directly relate to the duties and responsibilities of the positions.

**H. Accurate Position Descriptions.** Agencies must work to ensure that position descriptions accurately reflect the duties of the position, the supervisory and subordinate structure, and the requirements and preferences for satisfactory performance of the job. Position descriptions should concisely and effectively communicate the duties expected to be performed, the Minimum Qualifications, and the necessary knowledge, skills and abilities needed to perform the work. Before filing any position, an agency must review the position description to ensure that the position description is accurate and up-to-date.

**I. Job Postings.** All non-exempt positions shall be posted for no less than ten (10) business days, unless a different posting period has specifically been negotiated between the employer and the exclusive bargaining representative representing the position being filled. All non-exempt positions must be posted on the [www.work4illinois.gov](http://www.work4illinois.gov) website or an equivalent Statewide vacancy site but may be posted on additional job posting sites.

**J. Electronic Application Process.** CMS shall establish and implement an electronic application process that requires applicants to apply online for specific listed vacancies. The electronic application process that CMS creates shall include an automated screening mechanism to narrow the pool of applicants for interviews. The screening mechanism shall evaluate candidates based on the Minimum Qualifications of the positions and may also incorporate pre-established preferred qualifications.

**K. Uniform Processes Throughout State.** The State of Illinois shall create and communicate to all Agencies a uniform documentation process for hiring and promotions to allow for adequate monitoring and review.

**L. No Political Consideration Certification.** All State employees will be required to sign, in hard copy or electronically, as applicable, a No Political Consideration Certification (NPCC) whenever they initiate or are involved in any Employment Action. Such NPCC shall be incorporated into all applicable forms and electronic application system.

**M. No Hire is Official Until CMS Approves.** Prior to the Agency making a formal offer of employment to a selected candidate, the Agency must submit the hiring paperwork to CMS Division of Transactions and obtain approval to proceed with the hire. CMS will work diligently to implement this approval process as promptly as possible.

**N. No Exempt Position Has or Will Be Afforded Job Protection(s).** The State is committed to ensuring that no Exempt position has or will be afforded job protection(s) against at-will discharge under the Personnel Code, a collective bargaining agreement, or applicable regulation.