

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

Building 1, Room E-132
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4800
(304) 347-4819 FAX



Aaron Allred

Legislative Manager
Legislative Auditor

October 18, 2015

The Honorable William P. Cole III, President
West Virginia State Senate
Post Audits Subcommittee, Co-Chairs

The Honorable Timothy Armstead, Speaker
West Virginia House of Delegates

Dear Mr. President and Mr. Speaker:

The State of West Virginia contracted with CGI to create and implement a new integrated enterprise resource planning system, which is currently administered by wvOASIS. During the September 13, 2015 Legislative Interim Meetings I updated this committee on some of our concerns regarding the conversion of state employees from semi-monthly pay to a bi-weekly pay. There have been multiple conversations/letters between my office and the Governor's Office, State Treasurer's Office, State Auditor's Office, ERP Board, and Integrity Services Group (ISG) consultants since the September Interims. These letters have resulted in our determination of the following:

- Dividing by 26 is not the only "legal" way to convert salaried employees to a bi-weekly hourly rate;
- The State Auditor's Office, ERP Board, and ISG have not provided our office the cost to modify the software to divide by the appropriate decimal, except for saying it would be "significant";
- The State Auditor's Office, ERP Board, and ISG Consultants have not provided our office the cost to modify the software to allow salaried employees to stay on a semi-monthly basis, except for saying it would be "significant" and "extremely costly".

Calculation of Bi-weekly Pay

As a result of my letter, the Chief Counsels for the Senate and the House and I met with representatives from the Governor's Office, State Treasurer's Office, and State Auditor's Office regarding how pay is calculated for salaried employees in the wvOASIS system. Representatives from the State Auditor's Office repeatedly stated they had a letter from the Acting Commissioner of the Division of Labor saying the only "legal way" to pay employees on a bi-weekly pay system was to divide their salary by 26. The State Auditor's Office provided me with copies of the letters from the Division of Labor regarding the Mid-Year Bi-weekly Payroll Conversion. I subsequently sent a letter to the Acting Commissioner informing him I could not find anything in his letters indicating the only way to calculate employee wages, after the conversion from semi-monthly to bi-weekly payroll, is to divide their salary by 26. I also was unable to find in those letters any legal authority for that position.

We received a response on October 9, 2015 from Acting Commissioner of Division of Labor stating:

It is not – and has never been – my position that the only “legal” way to calculate an employee’s bi-weekly wages is to divide his or her annual salary by 26.

[My August 17] letter [to the State Auditor] was not intended to be an endorsement or a stamp of approval of the methodology used to convert to a bi-weekly payroll.

It is worth noting that, in contrast to an employee who is paid at an hourly rate, a true salaried exempt employee’s pay does not have to be based on the hours he or she works, but rather according to the terms of an employment contract, by statute, etc.

Cost to convert the system to calculate using appropriate decimal

I also met with Mr. Randy Meeks, who represents ISG, the consulting firm hired to help with the ERP Project. During this meeting, I asked him what the costs would be to change the system. He was unable to provide me with either a dollar amount or specific areas where the costs would be incurred. I also asked the State Auditor, via letter on October 9, what the cost would be to reconfigure the system to calculate using the appropriate decimal. Mr. Gainer has not yet responded.

Conclusion

In closing, W. Va. Code §6-7-1 governs the frequency of payroll for state employees and allows for the State to convert from a semi-monthly to a bi-weekly pay. It states:

*Nothing contained in this section is **intended to increase** or diminish the salary or wages of any official, officer, or employee. (Emphasis added)*

In addition, my attorneys are concerned that by simply dividing employees’ salaries by 26, in the conversion, the State Auditor will be violating §12-3-13, *Salaries not to be paid until services rendered*.

I stand by the statements made last month that the conversion of employees to bi-weekly pay be stopped until a reassessment of the impact on public employees and the state budget be conducted, along with all necessary statutory and Legislative Rule changes. In addition, we continue to have concerns regarding the legality of the decision to convert to a bi-weekly pay, as neither the State Treasurer nor the Governor attended the meeting in which the decision was made. It is also important to note if this conversion continues as planned, the implementation of bi-weekly pay results in pay raises for approximately 25,000 salaried employees and no pay raises for approximately 24,000 hourly employees.

Sincerely,



Aaron Allred



State of West Virginia

Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, Building 1, Room W-100
Charleston, West Virginia 25305

Glen B. Gainer III
State Auditor

Telephone: (304) 558-2251
FAX: (304) 558-3200
www.wvsao.gov

September 14, 2015

Aaron Allred
Legislative Manager/Auditor
Building 1, Room E-132
1900 Kanawha Blvd., E.
Charleston, WV 25305-0610

Dear Mr. Allred:

I am writing to request information concerning the legislative audits performed on state agencies and released to the Post Audits Sub-Committee during the period July 1, 2003 to June 30, 2013. Specifically, I would like information detailing the number of payroll related audit findings your office has issued over that time period. Please include in your response the agency names and the audit period for which the finding is applicable.

I would appreciate a response by Friday, September 18, 2015. Thank you for your anticipated cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Glen B. Gainer III".

Glen B. Gainer III
State Auditor

GBGIII:blw

LEGISLATIVE MANAGER

SEP 17 2015

RECEIVED

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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Aaron Allred

Legislative Manager
Legislative Auditor

September 18, 2015

The Honorable Glenn Gainer, III
State Auditor
Building 1, Room W-100
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Gainer:

Thank you for providing the meeting minutes of the West Virginia Enterprise Resource Planning Board. However, many attachments, referred to in the minutes, were not provided. Therefore, please provide the following (in hard copy):

- Fit/Gap Analysis discussed on May 30, 2012
- Cultural Change Readiness Assessment discussed on May 30, 2012
- The Communication Plan discussed on May 30, 2012
- Board Resolution #7 discussed on May 30, 2012
- Government Policy Document discussed on December 14, 2012
- A copy of the Todd Childers letter to CGI discussed on March 26, 2013
- "Summary of the four (4) items of concern" discussed on May 29, 2013
- The Communication Plan discussed on May 29, 2013
- The Management Letter to CGI discussed on May 29, 2013
- Arrears Conversion Plan discussed on August 22, 2013
- Design Specifications for Achieving Statewide Pay Standardization discussed on November 7, 2013
- Potential Additional Costs discussed on November 7, 2013
- Tab 6 (Project Financials) discussed on April 14, 2014
- Project Operating Budget and Project Forecast discussed on August 28, 2014
- "Known Risks" discussed on April 7, 2015
- Cutover Execution Plan discussed on April 7, 2015
- Press and Political Communication Plan discussed on April 7, 2015
- Letter from the Agricultural Commissioner discussed May 22, 2015

Additionally, please provide an electronic copy of the wvOasis contract, including the RFP and all change orders. This request for information is made pursuant to §4-2-5. I would appreciate a response no later than Monday, September 28, 2015. If you have any questions, please don't hesitate to call me at (304)347-4800.

Sincerely,

A handwritten signature in cursive script that reads "Aaron Allred".

Aaron Allred



State of West Virginia

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Glen B. Gainer III
State Auditor

September 18, 2015

Aaron Allred
Legislative Manager/Auditor
Building 1, Room E-132
1900 Kanawha Blvd., E.
Charleston, WV 25305-0610

Dear Mr. Allred:

I am writing to request information concerning the legislative audits performed on state agencies and released to the Post Audits Sub-Committee during the period July 1, 2003 to June 30, 2013. Specifically, I would like information detailing the number of payroll related audit findings that concern improper payment of wages for employees with negative leave balances. Please include in your response the agency names and the audit period for which the finding is applicable.

I would appreciate a response by Wednesday, September 23, 2015. Thank you for your anticipated cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Glen B. Gainer III".

Glen B. Gainer III
State Auditor

GBGIII:blw

LEGISLATIVE MANAGER

SEP 21 2015

RECEIVED

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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Aaron Allred
Legislative Manager
Legislative Auditor

September 21, 2015

The Honorable Glenn Gainer, III
State Auditor
Building 1, Room W-100
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Gainer:

Per your September 14, 2015, and September 21, 2015, requests for information concerning payroll and negative leave balance related findings in Legislative Post Audits from July 1, 2003, to June 30, 2013, I am emailing Mr. Michael Sizemore an Excel spreadsheet this afternoon. The spreadsheet contains a list of reports during this time period containing findings related to payroll and leave balances, the http address for each report on the Legislature's website, and additional information.

Additionally, at the Post Audit Subcommittee meeting you indicated that bi-weekly payroll may address the problems noted in previous Post Audits regarding payroll and negative leave balances. Perhaps this may address some of the problems identified, but it is not related to the incorrect calculation of salaried employees' daily rate of pay. I would point out that if in the conversion to bi-weekly payroll, the inappropriate denominator of 260 is used to calculate salaried employees' daily pay, 100% of future Post Audit reports for which bi-weekly payroll is included will have a payroll finding that salaried employees are overpaid, and a payroll finding that salaried employees' termination pay is incorrect. In order to ensure this does not happen, I encourage you to adhere to W.Va. Code §6-7-1 to avoid increasing or diminishing salaries or wages through the conversion to bi-weekly payroll.

If you have any questions regarding this inquiry, please do not hesitate to call me at (304) 347-4800.

Sincerely,

A handwritten signature in cursive script that reads "Aaron Allred".

Aaron Allred

C: The Honorable John Perdue, State Treasurer
Charlie Lorensen, Chief of Staff, Governor's Office
Jason Pizatella, Secretary, Department of Administration



State of West Virginia

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1900 Kanawha Boulevard, East
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Glen B. Gainer III
State Auditor

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September 23, 2015

Aaron Allred
Legislative Manager/Auditor
Building 1, Room E-132
1900 Kanawha Blvd., E.
Charleston, WV 25305-0610

Dear Mr. Allred:

I am writing to request information concerning the legislative audits performed on state agencies and released to the Post Audits Sub-Committee during the period July 1, 2003 to June 30, 2013. Specifically, I would like information detailing the number of payroll related audit findings that concern miscalculation of separation pay. Please include in your response the agency names and the audit period for which the finding is applicable.

I would appreciate a response by Monday, September 28, 2015. Thank you for your anticipated cooperation in this matter.

Very truly yours,

A handwritten signature in black ink that reads "Glen B. Gainer III". The signature is stylized and includes a small trademark symbol (TM) at the end.

Glen B. Gainer III
State Auditor

GBGIII:blw

LEGISLATIVE MANAGER

SEP 25 2015

RECEIVED

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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Aaron Allred
Legislative Manager
Legislative Auditor

September 25, 2015

The Honorable Glenn Gainer, III
State Auditor
Building 1, Room W-100
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Gainer:

I received your letter of September 23, 2015 this morning. All of the information you have requested was provided to you on Monday, September 21, 2015, in the spreadsheet I emailed to Mr. Michael Sizemore.

If you have any questions regarding this inquiry, please do not hesitate to call me at (304) 347-4800.

Sincerely,

A handwritten signature in cursive script that reads "Aaron Allred".

Aaron Allred

C: The Honorable John Perdue, State Treasurer
Charlie Lorensen, Chief of Staff, Governor's Office
Jason Pizatella, Secretary, Department of Administration



State of West Virginia

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Glen B. Gainer III
State Auditor

September 28, 2015

Aaron Allred
Legislative Manager/Auditor
Building 1, Room E-132
1900 Kanawha Blvd., E.
Charleston, WV 25305-0610

Dear Mr. Allred:

I am writing to request any documents or information reflecting analysis or studies performed by your office attempting to quantify the losses to the State of West Virginia related to improper pay calculations as extrapolated from the numerous audit findings detailed in legislative audits performed on state agencies and released to the Post Audits Sub-Committee during the period July 1, 2003 to June 30, 2013. If your office has not analyzed the effect of such widespread findings, please provide the rationale for the failure to do so.

I would appreciate a response by Monday, October 5, 2015. Thank you for your anticipated cooperation in this matter.

Very truly yours,

A handwritten signature in black ink that reads "Glen B. Gainer III".

Glen B. Gainer III
State Auditor

GBGIII:blw

LEGISLATIVE MANAGER

OCT 1 2015

RECEIVED

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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Aaron Allred

Legislative Manager
Legislative Auditor

October 5, 2015

Glen B. Gainer III, State Auditor
Office of the State Auditor
Building 1, Room W-100
State Capitol Complex
Charleston, WV 25305

Dear Auditor Gainer:

I received your letter dated September 28, 2015 requesting documents related to audit findings from July 1, 2003 – June 30, 2013, involving improper pay calculations. Please note that, pursuant to your prior request, my office provided Mr. Michael Sizemore with an Excel spreadsheet on September 21, 2015, listing all Post Audit reports with payroll related findings. I have again enclosed this spreadsheet, which contains a link to all documents responsive to your request.

While it is not possible to detail the analysis behind each of the requested reports within a single letter, the most common factor we have observed in conducting these audits is a persistent lack of appropriate internal controls on executive branch expenditures. Over the years, the State Auditor's office has resisted a number of my office's recommendations for improved internal controls. However, the Legislature has ultimately codified many of these recommendations into statutory requirements. Examples include: 2002 House Bill 3034, requiring that a state spending unit submit a receiving report to the state auditor when issuing a requisition on the Auditor in payment of a claim for commodities, and 2002 House Bill 4012, requiring that new state employees be paid one cycle in arrears.

In light of recent conversations with your senior staff, I can only presume that the motivation for your information request is an effort to justify the Auditor's decision to adopt the Enterprise Resource Planning System (ERP). I wish to emphasize that the rationale for converting to the ERP system is completely unrelated to the problems outlined at the most recent Post-Audit Subcommittee meeting, involving improper *implementation* of the new system and the bi-weekly pay period. Once again, our inquiry into the bi-weekly pay conversion process is not an inquiry into whether ERP is advantageous to the state. Rather, we are concerned with the new system's implementation, which we regard as both mathematically inaccurate and unlawful.

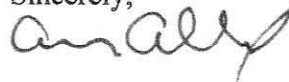
However, we are concerned that the aggregate cost of errors in implementing the bi-weekly pay period now significantly impacts any potential savings that the State Auditor has presented to

justify the conversion. For example, you have stated publicly that, according to a 2011 Report by Salvaggio, Teal & Associates,^[1] the conversion to the ERP system will save the state \$300 million over 10 years. According the Salvaggio Teal & Associates report, the ERP would result in only a \$181 million net benefit over 10 years,^[2] including \$4.2 million in annual savings from reduction in annual labor costs by reducing payroll errors.^[3] In addition, the report's projected \$4.2 million in annual savings, or \$42 million in savings over 10 years, from reduction in labor costs was dependent on the adoption of eight recommended "standardization of human resources/payroll policies and procedures."^[4] However, the state did not adopt all of the eight recommendations.^[5] Given these factors, in addition to the \$47 million increase in state payroll over a 10 year period and \$22.5 million increase in the unfunded liability of PERS resulting from miscalculations in the conversion to bi-weekly pay, the financial analysis that you continue to provide as justification for the ERP system is not accurate.

As we conduct audits in the future, I sincerely hope to discover that the ERP system corrects the termination pay issues we have identified in previous audits and is a success. Obviously, we will not know the ERP system's effectiveness until we have audited spending units using the system. In the meantime, we simply wish to ensure that the program is implemented in an accurate and lawful manner.

I am proud of my office's continuing advocacy for measures to improve internal controls in executive spending and to protect the State Treasury. If you have any additional questions regarding our position on internal controls generally, or the implementation errors in the bi-weekly pay conversion, please do not hesitate to contact me.

Sincerely,



Aaron Allred

c: The Honorable John Perdue, State Treasurer
Mr. Charlie Lorensen, Governor's Chief of Staff
Mr. Jason Pizatella, Secretary, Department of Administration

^[1] Salvaggio, Teal & Associates, Statewide ERP System Business Case Analysis Report, February 4, 2011.

^[2] Page 102.

^[3] Page 101.

^[4] Pages 51-54.

^[5] Recommendation numbers 1-8 were not all adopted. Recommendations that were not adopted included: Recommendation number 3, moving employees hired prior to July 2002 to payment in arrears, for the obvious reason that moving such employees to payment on an arrears basis would cause these employees to initially go one month without payment. Senate Bill 322 of the 2014 amended West Virginia Code §6-7-1 to reference current pay employees moving to an arrears basis "for accounting purposes," but as you are aware, this is a legal and accounting fiction and no pay checks were withheld.

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Aaron Allred

Legislative Manager
Legislative Auditor

October 5, 2015

Acting Commissioner John R. Junkins
Division of Labor

Emailed & Hand Delivered

Dear Acting Commissioner Junkins:

I am writing to request information relating to the conversion of state employees from semi-monthly to bi-weekly payment of wages. At a meeting in the Governor's office last week, the State Auditor's staff repeatedly stated that the Division of Labor sent a letter to the Auditor's Office, explaining that the only "legal" way to calculate bi-weekly wages for employees was to divide employee salaries by 26.

I have reviewed a letter you sent to the State Auditor on August 17, 2015, providing information pertaining to the mid-year bi-weekly payroll conversion. I have not located any statement in your letter indicating that the only way to calculate employee wages, after the conversion from semi-monthly to bi-weekly payroll, is to divide their salary by 26.

If it is your position that the only legal way to calculate bi-weekly wages for employees converting to bi-weekly pay from semi-monthly pay is to divide their salary by 26, please provide the legal authority for your position. Please also provide the rationale for dividing by 26 and not 26.1, since there are on average 261 work days in a year. In addition, please explain how using 260 days complies with the requirement in W.V. Code §6-7-1, which states that: "Nothing contained in this section is intended to increase or diminish the salary or wages of any official, officer or employee."

I have enclosed, for your review, my office's letter to the Legislative Post Audit Subcommittee detailing our analysis of the present conversion of state employees to bi-weekly pay. This letter details how the present conversion will result in approximately 25,000 salaried state employees receiving a raise while 24,000 hourly state employees will not receive a raise.

Please provide a response by Friday, October 9, 2015.

Sincerely,

A handwritten signature in cursive script that reads "Aaron Allred".

Aaron Allred



State of West Virginia
Glen B. Gainer III
State Auditor

Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol, Building 1, Suite W-100
Charleston, West Virginia 25305

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October 5, 2015

Mr. Aaron Allred, Legislative Auditor
Building 1, Room E-132
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Mr. Allred:

As per your request of September 18, 2015 (*copy attached*), enclosed is a flash drive which contains virtually all of the information which you sought in your correspondence. In organizing this information, we have attempted to set up specific directories which correspond to the items set out in your letter. Please note, the "Government Policy Document discussed on December 14, 2012" is not included as our search did not reveal any specific written policy as having been drafted in reference to it. Also, the "Management Letter to CGI discussed on May 29, 2013" and "A copy of the Todd Childers letter to CGI discussed on March 26, 2013" are, in fact, the same document.

In addition, you will find a directory entitled "Contract & Assorted Related Items" which contains the CGI and KRONOS contractual arrangements. Due to the size of the printed materials being requested, I have elected to provide them to you in an electronic format to facilitate your review thereof.

As always, if you require any additional information, feel free to contact me at 304-558-2251.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen B. Gainer III".

Glen B. Gainer III
State Auditor

GBGIII/nlp

Enclosures

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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Aaron Allred

Legislative Manager
Legislative Auditor

September 18, 2015

The Honorable Glenn Gainer, III
State Auditor
Building 1, Room W-100
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Gainer:

Thank you for providing the meeting minutes of the West Virginia Enterprise Resource Planning Board. However, many attachments, referred to in the minutes, were not provided. Therefore, please provide the following (in hard copy):

- Fit/Gap Analysis discussed on May 30, 2012
- Cultural Change Readiness Assessment discussed on May 30, 2012
- The Communication Plan discussed on May 30, 2012
- Board Resolution #7 discussed on May 30, 2012
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- Press and Political Communication Plan discussed on April 7, 2015
- Letter from the Agricultural Commissioner discussed May 22, 2015

Additionally, please provide an electronic copy of the wvOasis contract, including the RFP and all change orders. This request for information is made pursuant to §4-2-5. I would appreciate a response no later than Monday, September 28, 2015. If you have any questions, please don't hesitate to call me at (304)347-4800.

Sincerely,

A handwritten signature in black ink that reads "Aaron Allred".

Aaron Allred

WEST VIRGINIA LEGISLATURE
Legislative Post Audit Division

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(304) 347-4889 FAX



Denny Rhodes
Director

October 6, 2015

The Honorable Glen Gainer, III, State Auditor
Office of the State Auditor
Building 1, Room W-100
1900 Kanawha Blvd. E
Charleston, WV 25305

Dear Auditor Gainer:

As you are aware, under a bi-weekly pay system, approximately every 11 years, there will be 27 pay periods rather than 26. Based on our analysis, the first fiscal year to be affected by the 27 pay periods would be FY 2023. For those state employees that are enrolled in Mountaineer Flex Benefits, the benefit premiums are based on the number of pay periods during the fiscal year, currently at 26. Please respond, to the following questions related to flexible benefit premiums in regards to years with 27 pays.

1. Has there been any consideration on how flexible benefit premiums will be determined during FY 2023 (and any other years which have 27 pay periods)? If so, please explain how the premiums will be processed/calculated during those years.
2. A review of the Mountaineer Flexible Benefits Plan premium rate tables show the plan has different rates based on the number of pays in the year, however all of the rate tables stop with 26 pay. Will the State need to negotiate with the vendors a special premium for years with more than 26 pay periods?
3. If the Flexible Benefit Premiums are based on 26 pays rather than the 27 actual pay periods during FY 2023, has there been any analysis conducted on the effect it would have on an employee's net pay?

Your response by October 13, 2015 will be appreciated. If you have any additional questions, please feel free to contact Londa Sabatino, CPA, Audit Manager at 304-347-4880.

Sincerely,

Handwritten signature of Denny Rhodes in black ink.
Denny Rhodes

WEST VIRGINIA LEGISLATURE
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Denny Rhodes
Director

October 6, 2015

Jason Pizatella, Acting Cabinet Secretary
Department of Administration
Building 1, Room E119
1900 Kanawha Blvd East
Charleston, WV 25305

Dear Secretary Pizatella:

As you are aware, under a bi-weekly pay system, approximately every 11 years, there will be 27 pay periods rather than 26. Based on our analysis, the first fiscal year to be affected by the 27 pay periods would be FY 2023. For those state employees that are enrolled in Mountaineer Flex Benefits, the benefit premiums are based on the number of pay periods during the fiscal year, currently at 26. Please respond, to the following questions related to flexible benefit premiums in regards to years with 27 pays.

1. Has there been any consideration on how flexible benefit premiums will be determined during FY 2023 (and any other years which have 27 pay periods)? If so, please explain how the premiums will be processed/calculated during those years.
2. A review of the Mountaineer Flexible Benefits Plan premium rate tables show the plan has different rates based on the number of pays in the year, however all of the rate tables stop with 26 pay. Will the State need to negotiate with the vendors a special premium for years with more than 26 pay periods?
3. If the Flexible Benefit Premiums are based on 26 pays rather than the 27 actual pay periods during FY 2023, has there been any analysis conducted on the effect it would have on an employee's net pay?

Your response by October 13, 2015 will be appreciated. If you have any additional questions, please feel free to contact Londa Sabatino, CPA, Audit Manager at 304-347-4880.

Sincerely,

Handwritten signature of Denny Rhodes in black ink.
Denny Rhodes

WEST VIRGINIA DIVISION OF LABOR

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www.wvlabor.org

EARL RAY TOMBLIN
Governor



JOHN R. JUNKINS
Acting Commissioner

August 17, 2015

The Honorable Glen B. Gainer III
State Auditor
1900 Kanawha Boulevard, East
Building 1, Room W-100
Charleston, WV 25305

Re: Mid-Year Biweekly Payroll Conversion

Dear Auditor Gainer:

Thank you for meeting with us recently to discuss compliance of the mid-year biweekly payroll conversion with the West Virginia Wage Payment and Collection Act ("WPCA"), W. Va. Code § 21-5-1, *et seq.*

The points we discussed and clarified are as follows:

- An employee's salary is the amount budgeted for his or her position.
- In either the semi-monthly or biweekly payroll system, an employee is paid based on the hourly rate associated with his or her salary.
- An employee's hourly rate calculated by dividing the employee's budgeted salary amount by the total number of hours he or she works in a year. Example: if an employee's regular work week is 40 hours, multiply 40 hours x 52 weeks/year = 2080 work hours/year. The employee's salary is divided by 2080 hours to come up with the employee's hourly rate.
- An employee's hourly rate remains exactly the same regardless of whether the employee is paid in the biweekly payroll system or the semi-monthly payroll system.
- An employee is fully compensated and paid his or her budgeted salary in either the semi-monthly or biweekly payroll system.

The Honorable Glen B. Gainer III
August 17, 2015
Page Two

* An employee may see slight differences in his or her 2015 (or the conversion year) W-2 compared with W-2s from previous years. The differences are because, in the conversion year, the employee may not be paid for work during the final week in December (i.e., the final week of the tax year) until the first pay cycle in January.

After reviewing the discussion points and the information you supplied during our recent meeting, the biweekly payroll conversion complies with the WPCA, which (1) requires an employer to pay employees all wages due at least twice per month with no more than nineteen days between paydays, and (2) requires an employer to notify employees in writing of any changes to paydays at least one pay period prior to the change (W. Va. Code §§21-5-3 and 21-5-9).

Please do not hesitate to contact me if you have any questions.

Sincerely,



John R. Junkins
Commissioner

WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

EARL RAY TOMBLIN
Governor




JOHN R. JUNKINS
Acting Commissioner

West Virginia Oasis transition from semi Monthly payroll to biweekly (every 2 weeks)

1. The explanation needs to be a simplified explanation using terms that all of us can understand. Whether those are explained verbally or numerically.
2. The first thing in the process of explanation needs to be the fact that everyone is now on delayed payroll. All state employees are now on delayed payroll. Any one that was paid current received a hardship pay in September 2014. Any employee hired after 2004 was already on delayed payroll. Those employees hired after 2004 will be receiving a check two weeks after their employment ends. The employees that were paid current will receive their last check upon termination or the next regular scheduled payday.
3. With the transition to bi-weekly (2 weeks) payroll the dates for those transitions were chosen specifically because they coincided with the semi-monthly payroll schedule.
4. In looking at a person's annual salary it can be looked at a number of ways, fiscal year, budget year, calendar year, tax year, anniversary year or annualized from the date of transition to bi-weekly.
5. First let us try to explain fiscal / budget year, the fiscal/budget year is used to establish the budget for each agency in state government. It sets aside a specific amount for a specific position, not a person. Even though a person may be placed in that position. (This cannot be used to determine your annual salary.)
6. The tax year is an IRS requirement that is based upon a time frame of January 1 through December 31 of each year. It is the amount of money that you were paid in that calendar year. If you were given a promotion in that year, let us say April 1st and received an increase in pay all of it will not show in the first tax year, some of it will, but the full amount of your increase will not show until you have worked one full year in your position. Calendar year and tax year are the same time frames. (This cannot be used to calculate your annual salary.)
7. The date that you are hired will be your anniversary date, regardless of what month you are hired. You must work one (1) entire year before you get the total agreed to salary.

8. If you are given a pay raise in any of the types of years listed above it will be one year from the effective date before you realize your complete pay.
9. There is no state law or policy that we are aware of that specifically states what a work year consists of, as long as it is 365 consecutive days.
10. West Virginia Wage payment and Collection does permit an employer to make changes to an employee's paydays along with numerous other items as long as the employer gives the employees at least one pay periods notice in advance of the changes that are taking place.
11. The only way to calculate the annual salary of an employee would have to be based upon the transition date to the bi-weekly payroll and count one (1) year from that date to determine an individual's salary. It will match to the penny.
12. In all cases a person works a specific number of hours each year, this is generally 2080 hours, but it varies depending upon whether your lunch is paid or unpaid and whether you get ½ hour or 1 hour for that lunch period.
13. In all calculations every employee will be paid for all the hours they actually work whether it is based upon a 8 hour day, a 7 & ½ hour day or a 7 hour day.
14. The number of work days in a work year are 260, Whether you work , 7.5, or 8 a day you will receive the same salary you received before the transition.

John R Junkins


Acting Commissioner
West Virginia Division of Labor
August 28, 2015

WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

EARL RAY TOMBLIN
Governor



JOHN R. JUNKINS
Acting Commissioner

LEGISLATIVE MANAGER

OCT - 9 2015

October 9, 2015

RECEIVED

Aaron Allred
Legislative Manager
Legislative Auditor
West Virginia Legislature, Joint Committee on Government and Finance
State Capitol Building 1, Room E-132
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

BY EMAIL AND HAND-DELIVERY

Dear Mr. Allred:

As requested, I am providing this response to your letter dated October 5, 2015. Thank you for the opportunity to clarify the Division of Labor's position with regard to the state employee payroll conversion from a semi-monthly to a bi-weekly system.

I agree that my August 17, 2015 letter addressed to State Auditor Gainer did not include any statement indicating that the only way to calculate state employee wages in a bi-weekly payroll system is to divide an employee's salary by 26 weeks.

As you indicated in your September 13, 2015 letter to Senate President Cole and House Speaker Armstead, the decision to convert the state employee payroll system from a semi-monthly to a bi-weekly basis was made by the Enterprise Readiness Planning Board¹.

It is not - and has never been - my position that the only "legal" way to calculate an employee's bi-weekly wages is to divide his or her annual salary by 26.

¹ While I was not involved in the ERP Board's decision, it is possible that W. Va. Code §21-5-3 was a consideration to switch to a bi-weekly payroll. Prior to June 12, 2015, W. Va. Code §21-5-3 (1979) required employers other than railroad companies to pay employees all wages due at least once in every two weeks. However, effective June 12, 2015, W. Va. Code §21-5-3(a) was amended to require employers other than railroad companies to pay employees all wages due at least twice every month with no more than nineteen days between settlements.

Aaron Allred
October 9, 2015
Page Two

The bullet points in my August 17 letter to the State Auditor letter summarized what I understood as the Auditor's explanation of the methodology used to convert employees' pay from a semi-monthly to a bi-weekly payroll system. I provided that letter at the State Auditor's request as a follow-up to a meeting with Mr. Gainer and some of his staff in July 2015, in which I wanted to ensure that the payroll conversion complied with the West Virginia Wage Payment and Collection Act ("WPCA"), W. Va. Code § 21-5-1, *et seq.* My letter was not intended as an endorsement or a stamp of approval of the methodology used to convert to a bi-weekly payroll.

The Division of Labor's concern with the conversion from a semi-monthly to a bi-weekly payroll for state employees is limited to ensuring that the bi-weekly payroll complies with the requirements of the WPCA. The relevant statutory requirements are (1) that employees must be paid all wages due at least twice per month with no more than nineteen days between paydays, and (2) that employees must be notified in writing of any changes to their paydays at least one pay period prior to the change (W. Va. Code §§21-5-3 and 21-5-9). As I stated in my August 17 letter, I believe that the payroll conversion does comply².

Based on the July meeting with the State Auditor, it was my understanding that all state employees, whether in the semi-monthly or biweekly payroll system, are paid according to an hourly rate associated with their salary, which is calculated by dividing the employee's budgeted salary amount by the total number of hours he or she works in a year. The commonly accepted standard or guideline used by the United States Department of Labor, the West Virginia Division of Labor, and the West Virginia Division of Personnel for an employee who is paid at an hourly rate is 40 hours per week multiplied by 52 weeks per year, which equals 2,080 work hours per year or 260 work days per year. Admittedly, this standard or guideline is a straight-forward mathematical formula, not an actual or real time formula.

I believe that this "standard" number of work week hours and annual work days is rooted in both federal and state overtime requirements. Under both state and federal law, an employer must establish a non-exempt employee's hourly rate of pay as the basis for compliance with statutory overtime requirements (W. Va. Code §21-5C-1, *et seq.* and 29 U.S.C. §201, *et seq.*). As I'm sure you know, an employer must pay overtime to a non-exempt employee at one and a half times his or her regular hourly rate for all time he or she works in excess of 40 hours in any given work week.

² Although outside the scope of the payroll conversion discussion, I am concerned about a possible conflict between W. Va. Code §§6-7-1(as amended and effective July 1, 2014) and 21-5-1(i) (as amended and effective June 11, 2015). Beginning July 1, 2014, all state employees must be paid their wages due one pay period in arrears. Beginning June 11, 2015, the term "wages due" is defined in the WPCA as "all wages earned up to and including the twelfth day immediately preceding the regular payday."

Aaron Allred
October 9, 2015
Page Three

If an employee is exempt from statutory overtime requirements, the employer can establish an employee's pay by using an hourly rate of pay, a salary, a contract, etc., or, in the case of some state officials, by statute. It is worth noting that, in contrast to an employee who is paid at an hourly rate, a true salaried exempt employee's pay does not have to be based on the hours he or she works, but rather according to the terms of an employment contract, by statute, etc.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "John R. Jenkins". The signature is written in dark ink and is positioned above the printed name.

John R. Jenkins

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

Building 1, Room E-132
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4800
(304) 347-4819 FAX



Aaron Allred

Legislative Manager
Legislative Auditor

October 9, 2015

Glen B. Gainer III, State Auditor
Office of the State Auditor
Building 1, Room W-100
State Capitol Complex
Charleston, WV 25305

Hand Delivered

Dear Auditor Gainer:

During conversations with representatives from your office, Integrity Service Group, and wvOASIS regarding the bi-weekly pay conversion, we have repeatedly been informed that returning to semi-monthly pay would incur large costs to the state. When asked for specific information, none of these representatives have been able to provide specific information regarding the source or the dollar amounts of these alleged costs. We are writing to inquire as to whether KRONOS and wvOASIS can be reconverted back to semi-monthly pay, and if so, the specific nature of any associated costs.

During a recent conversation, Todd Childers informed Denny Rhodes, the Director of our Post Audit Division, that there would be increased costs if the state were to return to semi-monthly pay for state employees. However, he could not provide specifics as to what those costs would be and suggested that Mr. Rhodes inquire with the vendor for more information. He did indicate that there would be increased programming costs.

I recently spoke with Randy Meeks of Integrity Service Group and asked him to describe what it would cost for the state to return to semi-monthly pay for employees. Mr. Meeks stated that a return to semi-monthly pay would incur costs, but was also unable to provide me with either a dollar amount or specific source of the alleged costs. Mr. Meeks simply expressed concern that any delays in implementing bi-weekly pay would be "disheartening."

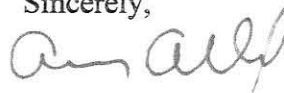
Please review each of the following scenarios, listed below, and provide me with the cost to the state should each scenario occur. In providing this information, please also provide a breakdown of the source of estimated costs (e.g. whether costs are incurred from programing, testing, training, etc.).

1. Implementation of the bi-weekly pay system is delayed for Wave 2 employees until the system can be configured to calculate employee pay using the appropriate decimal.

2. The Legislature continues to pay its employees on a semi-monthly basis and does not convert to a bi-weekly pay.
3. Hourly employees are paid on a bi-weekly basis, while salary employees are paid on a semi-monthly basis.

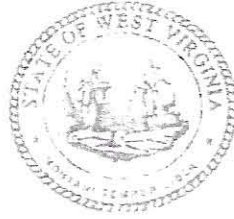
Please respond by October 16, 2015. In addition, please note that you may be requested to attend either the October or November Post Audit Subcommittee Meeting to respond to questions and explain the costs associated with different scenarios involving the bi-weekly pay conversion.

Sincerely,



Aaron Allred

c: The Honorable John Perdue, State Treasurer
Mr. Charlie Lorenson, Governor's Chief of Staff
Mr. Jason Pizatella, Secretary of Administration



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

EARL RAY TOMBLIN
GOVERNOR

JASON PIZATELLA
ACTING CABINET SECRETARY

October 13, 2015

Denny Rhodes
Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

Dear Mr. Rhodes

Thank you for your letter dated October 6, 2015 concerning the impact that the ongoing conversion to biweekly pay will have on the Mountaineer Flexible Benefits program. The professional staff at the Public Employees Insurance Agency has discussed your questions with our current vendor, FBMC Benefits Management. We have determined that this conversion will have no impact on premium calculation because, in years where there are 27 pay periods, the agency will treat the extra pay period as a "premium deduction holiday." This action will ensure that the calculation for employees who take advantage of this program will always be based on 26 pay periods and thus remain the same from year to year.

If you have any further questions, or need additional information, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jason Pizatella", written over a horizontal line.

Jason Pizatella

cc: Ted Cheatham, Public Employees Insurance Agency

JP:jkj

Fwd Letter on HRM and Semi-Monthly Payroll

From: Aaron Allred
Sent: Friday, October 16, 2015 12:24 AM
To: Denny Rhodes; Shannon Riley; Londa Sabatino
Subject: Fwd: Letter on HRM and Semi-Monthly Payroll

Sent from my iPhone
Aaron Allred

Begin forwarded message:
From: Todd Childers <Todd.Childers@wvoasis.gov>
Date: October 15, 2015 at 10:37:56 PM EDT
To: Aaron Allred <aaron.allred@wvlegislature.gov>
Subject: RE: Letter on HRM and Semi-Monthly Payroll
Aaron,

With little to no time to formally communicate with the ERP Board regarding your questions, I provide the following information / responses in efforts to meet you requested time frame for response.

Response to question #1

The wvoASIS HR/Payroll system, as currently configured, tested and operating for approximately 9000 employees cannot support multiple pay frequencies. The option to utilize direct input of hours to the Human Resource Management (HRM) for the Legislative and Judicial branch (or any others) would still require the processing of payroll on a biweekly basis. This approach was based upon formal recommendations by the ERP Executive Steering Committee, recommendations made by our implementation vendor and our independent consultant to the West Virginia ERP Board (the Board). The Board authorized the project team to move forward with the OASIS payroll implementation for the entire state on a bi-weekly pay frequency.

Response to question #2

Without a thorough evaluation of the necessary re-configuration, re-testing of functional capabilities, re-programing of multiple interfaces and reports, re-training of end users, potential hardware requirements and other considerations that I'm probably not thinking of right now, a detailed accounting (or cost estimate) to cannot be made. The necessary team members to perform this evaluation are inundated with our current go-live activities and will not be called upon for this exercise without clear and concise direction from our Board.

Sincerely,

Todd

Todd Childers, CPA, MPA
WV ERP Board
Project Director

From: Aaron Allred [mailto:aaron.allred@wvlegislature.gov]
Sent: Tuesday, October 13, 2015 1:59 PM

Fwd Letter on HRM and Semi-Monthly Payroll
To: Todd Childers <Todd.Childers@wvoasis.gov>
Subject: Letter on HRM and Semi-Monthly Payroll

Dear Mr. Childers:

Please find attached a letter concerning the HRM component of wvoASIS and semi-monthly payroll.

Sincerely,
Aaron Allred
Legislative Manager & Legislative Auditor
West Virginia Legislature
304-347-4800
304-347-4815 fax