WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #2

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2001 JUN 25 P 1:59

OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Human Rights Commission TITLE NUMBER: 77

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code §5-11-8(h);29A-3-1 et .seq.

AMENDMENT TO AN EXISTING RULE: YES ____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 7

TITLE OF RULE BEING PROPOSED: The definition of Employee Under the West Virginia Human Rights Act.

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 26, 2001 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Ivin B. Lee

Executive Director

West Virginia Human Rights Commission
1321 Plaza East, Room 108A

Charleston WV 25301-1400

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Paul L. Nuzum

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rule Regarding the Definition of Employee Under the WV Human Rights Act

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: West Virginia Human Rights Commission

Address: 1321 Plaza East, Room 108A Attn: Ivin B. Lee

Charleston WV 25301-1400 Executive Director

(304) 558-2616

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$0	$0	$0	$0	$0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:
The rule will have no fiscal impact on the West Virginia Human Rights Commission.

3. Objectives of These Rules:
To interpret and implement the provisions of the West Virginia Human Rights Act, particularly W.Va. Code § 5-11-3(d) related to the definition of employee, and to assist all persons in understanding their rights, obligations and duties under the law.

Rule Title: Rule Regarding the Definition of Employer Under the West Virginia Human Rights Act

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:
   None

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
   None

   C. Economic Impact on Citizens/Public at Large.
   None

Date: 6/22/01

Signature of Agency Head or Authorized Representative:

Paul L. Nusbaum

Title 77
Legislative Rule
West Virginia Human Rights Commission
Series 7

Rule Regarding the Definition of Employee
Under the West Virginia Human Rights Act

Brief Summary of the Proposed Rule

This is a new rule which defines employee in light of the legislature's 1998 statutory amendment. The rule gives guidance on which employees are to be counted in order to satisfy the new statutory language as to what constitutes an employer under W.Va. Code §5-11-1 et seq. In accordance with the United States Supreme Court decision in Walters v. Metropolitan Education Enterprise, 117 S. Ct. 660 (1997), this rule interprets the Act to include part-time and temporary workers.

Title 77
Legislative Rule
West Virginia Human Rights Commission
Series 7

Rule Regarding the Definition of Employee Under the West Virginia Human Rights Act

Statement of Circumstances Which Require This Rule

The 1998 legislature amended the West Virginia Human Rights Act to make the definition of employee conform to the definition of employee in the federal act, Title VII of the Civil Rights Act of 1964. The language in the federal act has been further interpreted by the EEOC and the United States Supreme Court in Walters v. Metropolitan Education Enterprises, 117 S. Ct. 660 (1997). The language in this rule is taken from that case and from the EEOC Enforcement guidelines.

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Title 77
Legislative Rule
West Virginia Human Rights Commission
Series 7

Rule Regarding the Definition of Employee Under the West Virginia Human Rights Act

§77-7-1 General.

1.1 Scope -- This legislative rule interprets and implements the provisions of the West Virginia Human Rights Act, particularly W.Va. Code §5-11-3(e) related to the definition of employee, and is to assist all persons in understanding their rights, obligations and duties under the law.

1.2 Authority -- W.Va. Code §5-11-8(h).

1.3 Filing Date --

1.4 Effective date. --

§77-7-2 Definition.

2.1 "Employee" includes all persons with whom the employer has an employment relationship, whether or not the employee is receiving compensation from the employer on a particular day. A part-time employee is counted as an employee for each working day after arrival and before departure. Employee also includes individuals employed by and placed by temporary employment agencies, contract firms and other firms that hire workers and place them in job assignments with the firm's clients. Provided, the term employee shall not include or be construed to include any individual employed by his or her parent, spouse or child.