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

Form #3

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JUL 27 5 02 PM '01

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Human Rights Commission TITLE NUMBER: 77

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: Series 7

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Paul L. Nusbaum

Authorized Signature

$3.80

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) West Virginia Human Rights Commission
1321 Plaza East, Room 108A
Charleston WV 25301-1400

LEGISLATIVE RULE TITLE: West Virginia Human Rights Commission Rule Regarding the Definition of Employee Under the West Virginia Human Rights Act.

1. Authorizing statute(s) citation W.Va. Code §5-11-8(h) and 29A-3-1 et. seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 25, 2001

b. What other notice, including advertising, did you give of the hearing?

The Commission did not conduct a public hearing.

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

July 26, 2001

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received xx

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2001

f. **Name, title, address and <u>phone/fax/e-mail numbers</u>** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Ivin B. Lee, Executive Director, West Virginia Human Rights Commission

1321 Plaza East, Room 108A, Charleston WV 25301

304-558-2616; fax 304-558-0085

g. **<u>IF DIFFERENT</u> FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Mary Kay Buchmelter

Deputy Attorney General

1321 Plaza East, Room 108A, Charleston WV 25301

304-558-2616; fax 304-558-0085

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

<u>The Commission did not conduct a public hearing.</u>

b. Date of hearing or comment period:

The comment period was June 25, 2001 through July 26, 2001.

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

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.

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: 7/27/01

Signature of Agency Head or Authorized Representative:

Paul L. Nyden

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Jul 27 5 02 PM '01

OFFICE OF 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.