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: 9

TITLE OF RULE BEING PROPOSED: The definition of Employer 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 Employer 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 employer, 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 2 McGee

Title 77
Legislative Rule
West Virginia Human Rights Commission
Series 9

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

Brief Summary of the Proposed Rule

The proposed rule more specifically defines the term "employer." The definition is consistent with the definition of "employer" in the statute.

Title 77
Legislative Rule
West Virginia Human Rights Commission
Series 9

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

Statement of Circumstances Which Require This Rule

The proposed new rule defines "employer" in light of the legislature's 1998 statutory amendment. The proposed definition gives clear guidance on which employees are to be counted in order to satisfy the statutory language. The proposed definition of employer is consistent with the language of the statute under W.Va. §5-11-1 et seq.

The definition of "employer" is consistent with the "payroll method" approach taken by the United States Supreme Court in Walters v. Metropolitan Education Enterprise, 117 S. Ct. 660 (1997).

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Title 77
Legislative Rule
West Virginia Human Rights Commission
Series 9

The Definition of Employer Under the West Virginia Human Rights Act

§77-9-1 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(d) related to the definition of employer, and is to assist all persons in understanding their rights, obligation and duties under the law.

1.2 Authority -- This rule is issued under authority of W.Va. Code §5-11-8(h).

1.3 Filing Date -- This rule is promulgated on the ___ day of _____, filed on the ____day of _____, in the Secretary of State's Office.

1.4 Effective Date -- This rule becomes effective on _____.

§77-9-2. Definition

2.1 "Employer" means the state, or any political subdivision of the state, and any person employing twelve or more persons within the state for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year, regardless of the work schedules of the employees: Provided, That such terms shall not be taken, understood or construed to include a private club.