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WEST VIRGINIA LEGISLATURE 2002 OCT 24 A 9:32
Legislative Rule-Making Review Committee

OFFICE WEST VIRGINIA
SECRETARY OF STATE

*Building 1, Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX*

email: tanders@mail.wvnet.edu

*Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel*

October 23, 2002

*Joseph A. Altizer, Associate Counsel
Connie A. Bowling, Associate Counsel
Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Tari McClintock Crouse
Personnel, Division of
Building 6, Room 416
Capitol Complex

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Administrative Rule of the West Virginia Division of Personnel, 143CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Personnel

Subject: Administrative Rule of the West Virginia Division of Personnel, 143CSR1

PERTINENT DATES

Filed for public comment: May 28, 2002

Public comment period ended: June 27, 2002

Filed following public comment period: July 23, 2002

Filed LRMRC: July 23, 2002

Filed as emergency:

Fiscal Impact: None

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2002 OCT 15 A 10:50
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WEST VIRGINIA

ABSTRACTBrief Summary

The existing rule is being amended to clarify certain sections of the rule, and to improve the internal consistency of the rule. The authority of the Division is derived from W. Va. Code §29A-3-1 et seq. The proposed changes are in compliance with the Division's authority.

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 3 defines terms.

- 3.4.;3.24;3.34;3.67 These sections modify the following terms: agency; daily rate; effective date; and, pay rate, in order to clarify.
- 3.93. This section inserts the word "annual" in the designation for terminal leave.

Section 4 relates to classifications plans.

- 4.6 This section provides a description of the statutory provisions for reconsideration of classification.

Section 5 relates to compensation plan and salary administration.

- 5.4(b) This section provides that the term mid-point be replaced by market rate.
- 5.4(f) 5. This section is amended to reflect proposed change in term for terminal leave.
- 5.8 This section is added to formalize current practice for pay on reinstatement.

Section 8 relates to certification of eligibles.

- 8.2.(a) 3. This section is added to standardize duration of certifications.

Section 9 relates to appointments.

- 9.4(b) This section is amended to clarify that paid time off counts toward 945 hour maximum of intermittent employment.

Section 10 relates to the probationary period.

- 10.2(b) This section is amended to reflect continuous nature of employment upon completion of probationary period.

Section 11 relates to promotions, demotions and transfers.

- 11.2(a) This section clarified that promotional requirements must be met at the time a promotion is effective.

Section 12 relates to separations, tenure and reinstatement.

- 12.4.(h) This section is amended to clarify that only permanent employees are eligible for recall.

- 12.6. Inaccurate language removed from sub-section title.

Section 13 relates to reconsideration and appeal.

13. The Section title was amended to include reconsideration.
- 13.1 This section is amended to clarify statutory provisions for reconsideration.

Section 14 relates to official holidays.

- 14.1(d) This section was modified to refer to definition of term for date of separation.

- 14.3(a), (d)2., (d)3., 14.

- 4.(a), (b)2. These sections were modified to clarify that annual and sick leave are earned on paid time off for annual and/or sick leave.

- 14.3(f)1. and 2. These sections were amended to clarify that either method of payment results in the same amount of payment; to reflect the current practices of substituting terminal annual leave for paid holidays in calculating the duration of terminal annual leave; and to conform to 14.1.(d) prohibiting payment for holidays to separating employees.

- 14.4(g). This section was amended to allow alternate approved forms for physician's statements.

- 14.9(a). This section was amended to clarify that the active duty provision include "for the State" per statutory provisions.

- 14.10.(a)1. This section was amended to clarify State or classified employment.

Section 16 relates to Political Activities.

- 16.1.(g). This section was amended to include provisions for return to or separation from work for employees who are candidates for paid public office.

Section 17 relates to employment conflicts.

- 17.1 This section was amended to allow the Board to delegate specific authority for determining employment conflicts to agencies.

AUTHORITY

Statutory authority: W.Va. Code, §29-6-10, which provides, in part, as follows:

...The board shall have the authority to promulgate, amend or repeal rules, according to chapter twenty-nine-a of this code, to implement the provisions of this article...

ANALYSIS

- I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No

- II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes

- III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes

VIII. OTHER

Technical changes are recommended.