

Form #3

~~OFFICE WEST VIRGINIA
SECRETARY OF STATE~~

Authorized Signature

Authorized Signature _____



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD
Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

MEMORANDUM

TO: Members of the State Personnel Board

FROM: Billie Jo Streyle-Anderson, Director *[Signature]*
Division of Personnel

RE: Amendments to the *Administrative Rule*

DATE: July 20, 2006

Your approval is requested for the filing of proposed amendments to the *Administrative Rule of the Division of Personnel* with the Legislative Rule-Making Review Committee and the Secretary of State's Office.

In accordance with the provisions of *W.V. Code §29A-3-1 et seq.*, a copy of the proposed amendments and a notice of public hearing were filed with the Secretary of State's Office and copies of the proposed amendments were sent to state agencies and other interested parties for comment. The draft responses to the oral and written comments are included with your materials along with a summary of changes made to the proposed amendments based on comments received.

Thank you for your consideration of this request.

APPROVED:

[Signature]
Robert W. Ferguson, Jr., Chairman
State Personnel Board
July 20, 2006

tmc/

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: 21 July 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Building 6, Room 420
Charleston, West Virginia 25305
(304)558-3950 x 202

LEGISLATIVE RULE TITLE: _____
Administrative Rule of the West Virginia Division of Personnel

1. Authorizing statute(s) citation _____
West Virginia Code § 29-6-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
11 May 2006

b. What other notice, including advertising, did you give of the hearing?
Posted on the West Virginia Division of Personnel web site; written notice to departments and agencies of state government; written notice to county health departments; written notice to employee organizations with WV state government employee members.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Hearing held June 15, 2006; Public Comment Period ended June 15, 2006

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

Attached X No comments received _____

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

21 July 2006

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

Tari McClintock Crouse

West Virginia Division of Personnel

1900 Kanawha Boulevard, East

Building 6, Room 420

Charleston, WV 25305

Phone: 558-3950, x 202

FAX: 558-1399

- g. **IF DIFFERENT 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)

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.

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

SUMMARY OF AMENDMENTS

The following is a summary of proposed amendments to the Administrative Rule of the West Virginia Division of Personnel. This summary does not include technical amendments which merely correct errors in spelling, grammar, punctuation, and/or other such corrections. Reference is made to the sections of the Rule which have been amended. The reference number reflects the current proposed number, unless otherwise specified.

REFERENCE

SUMMARY

- | | |
|-------------|--|
| 2. | Clarified the criteria which are excluded from consideration in the merit system. |
| 3. | Deleted eight definitions and added two, primarily to address changes regarding temporary employment, which is now defined under one term. This also required renumbering. The referenced changes are listed with their new numbers, unless otherwise specified. |
| 3.44. | Deleted incorrect word "step-siblings" and replaced with appropriate terms of "step-brother" and "step-sister;" added foster children and individuals in loco parentis relationships. |
| 3.57. | Added "Occupational Group" definition, which is referenced later in the Rule but not previously defined. |
| 3.65. | Amended the term "allowance" to reflect the more accurate "rate of pay." |
| 3.66. | Clarified the definition of "Permanent Employee" with regard to both classified and classified-exempt employees. |
| 3.85. | Added the definition for "Seasonal Employment." |
| 3.95. (old) | Deleted the term "Title Change" since it is not used. |
| 3.97. (old) | Deleted the term "Unassembled Examination." |
| 5.4. (d) | Amended language for consistency with current practices regarding Implementation Plan, Additional Pay. |
| 5.5. (b) 2. | Amended language to clarify provision and make consistent with current practices regarding Exceptions to Pay on Promotions. |

9. Changes in this section have required renumbering. The referenced changes are listed with the new proposed number, unless otherwise specified.
- 9.2. (b) Amended language to clarify the intent of the law regarding Original Appointments. Appointing authorities are required to provide written verification that the merit system provisions for making Original Appointments have been followed.
- 9.4. and 9.5. (old) Deleted these sections for consistency with new temporary employment provisions.
- 9.4. Amended language for consistency and to reflect changes regarding new temporary employment provisions. Replaced the term "Limited Term" with "Temporary." Specified that temporary employees are exempt from the classified service.
- 9.5. Amended language to allow for the posting of job vacancies using electronic or other media to satisfy the posting requirements.
- 9.5. (a) Added language to clarify that posting requirements also apply to positions being reallocated, and allowing for the limitation of these types of postings to the organizational unit in which the duties exist.
- 9.5. (e) Added language exempting appointing authorities from reposting vacancies, in specific circumstances, if an individual is selected to fill a position but the position becomes vacant again within ten working days.
- 9.5. (h) Added language to exclude the posting requirements for employees exercising bumping rights.
- 10.3. Added language requiring approval from the Director of Personnel (essentially, an additional review measure) for this type of exceptional situation.
- 11.4. Amended language to define the procedure to demote employees for consistency with current practices.
- 12.2. (d) Added section requiring that for employment verifications and references of dismissed employees, appointing authorities must disclose that the employee was dismissed and did not leave in good standing, and must also provide a copy of the document to the employee. This was added to prevent negligent referrals and to comply with West Virginia Code § 55-7-18a.

- 12.6. (b) and (c) Amended language for consistency and to clarify standards of the Uniformed Services Employment and Reemployment Rights Act (USERRA).
14. Several changes have occurred within this section which required renumbering. The referenced changes are listed with their new numbers, unless otherwise specified.
- 14.1. Amended language to comply with statutory changes regarding President's Day and to delete "Special Elections."
- 14.1. (d) Amended language to clarify eligibility for pay on holidays.
- 14.1. (e) Amended the term "Agencies" to "Appointing authorities" for accuracy.
- 14.1. (f) Added section to define provisions regarding employees who are required to work on election days.
- 14.2. Amended language to allow agencies to authorize and allow the use of flexible scheduling.
- 14.3. (a) and (b) Amended language to comply with recent Supreme Court decision (Canfield, et al v. WV Division of Corrections, No. 32287).
- 14.3. (d) 1., 2. 3., and 4. Amended language to clarify annual leave accrual and eligibility.
- 14.4. (a) Amended language to comply with recent Supreme Court decision (Canfield, et al v. WV Division of Corrections, No. 32287).
- 14.4. (b) 1., 2., and 3. Amended language to clarify sick leave accrual and eligibility.
- 14.4. (d) Added clarifying language of "with or without accommodation" with regarding to granting additional sick leave.
- 14.4. (e) Amended the term "recalled" to "re-employed" with regard to restoration of sick leave to employees who have been laid off, allowing them to regain their accrued sick leave whether they are recalled to work or re-employed by other qualifying appointment.
- 14.4. (g) 2. Amended language to clarify when a physician's statement is required and must be provided.

- 14.4. (g) 3. Added language to state that sick leave can be charged for the duration of an absence supported by a physician's statement, and that additional time off will be charged to annual leave if any is available.
- 14.4. (h) 1. (old) Deleted statement regarding denial of request requiring approval of the Director of Personnel.
- 14.4. (h) 1. Amended language to clarify the provisions for returning to work at less than full duty, and defines an initial time period of up to thirty days, with provisions to request extensions.
- 14.4. (h) 2. Amended language to allow appointing authorities to deny requests to return to less than full duty, but requiring the appointing authorities to receive approval for denial from the Director of Personnel.
- 14.4. (h) 2. (a), (b), (c), and (d) Amended language to clarify the conditions under which a request to return to less than full duty may be denied.
- 14.4. (h) 3. Amended language to allow appointing authorities to require additional information before making a determination on a request to return to less than full duty.
- 14.5. Amended language from "Leave Abuse" to "Misuse of Leave" and clarifies conditions under which restrictions may be imposed.
- 14.7. Amended language to clarify applicable legislation regarding overtime and holiday work.
- 14.10. (a) Amended language to clarify provisions of Court, Jury, and Hearing Leave.
- 14.12. Added section to address paid Disaster Service Leave for employees who are certified disaster service volunteers with the American Red Cross.
- 14.15. Amended language to clarify maintenance of and access to employee leave records, including, where practical, the use of electronic leave systems.
- 21.1. Amended language to reflect that the Director of Personnel must certify any settlement agreements to insure compliance with State code and/or any court order.

**STATEMENT OF CIRCUMSTANCES REQUIRING
AMENDMENT TO THE ADMINISTRATIVE RULE
OF THE
WEST VIRGINIA DIVISION OF PERSONNEL**

The existing rule is being amended to clarify certain sections of the rule, to improve the internal consistency of the rule, to include new statutory references regarding employment references, to comply with a Supreme Court ruling, and, generally, to improve the rule.

6 May 2006

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Administrative Rule of the West Virginia Division of Personnel

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Division of Personnel

Address: 1900 Kanawha Boulevard, East
Building 6, Room 420
Charleston, WV 25305

Phone Number: 558-3950, x 202 Email: tcrouse@wvadmin.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed amendments to this rule which may have a fiscal impact are those which have been included to comply with legislation or a ruling of the West Virginia Supreme Court of Appeals. Specifically: 1) subdivision 12.2(d) requires compliance with West Virginia Code §55-7-18a which was amended to require disclosure to current or former employees of any reference information provided; and, subdivisions 14.3(a) and (b) have been amended to comply with a Supreme Court ruling requiring that public employees who are receiving workers' compensation temporary total disability benefits continue to accrue annual leave and service credit for annual leave which receiving such benefits.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	876,750.00	876,750.00	876,750.00
Personal Services	876,750.00	876,750.00	876,750.00
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: Administrative Rule of the West Virginia Division of Personnel

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The cost of the rule amendment implementing the provisions of West Virginia Code §55-7-18a is estimated to be de minimis. Employers are not required to provide references.

The estimated cost of the rule amendment implementing the provisions of the West Virginia Supreme Court ruling is based on the following: an estimate of 1500 workers' compensation claims per year (estimated from information regarding Division of Highways claims) at an average of 60 days per claim; an average tenure of 12 years for an annual leave accrual rate of 1.75 days per month; an average daily rate of pay including 20% benefits of \$167.

$2 \text{ months} \times 1.75 \text{ days/month} = 3.5 \text{ days} \times \$167/\text{day} = \$584.50/\text{claim} \times 1500 \text{ claims/year} =$

$\$876,750 \text{ per year}$

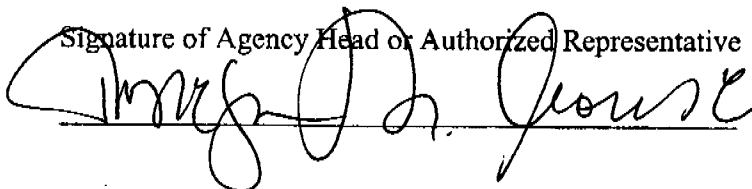
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

SPECIAL ISSUE: The estimated increased cost of the amendment implementing the ruling of the West Virginia Supreme Court of Appeals is ALSO shown on the fiscal note for amendments to the Workers' Compensation Temporary Total Disability Rule (143CSR3) which addresses the issue of annual leave accrual while receiving temporary total disability benefits.

Date: 21 July 2006

Signature of Agency Head or Authorized Representative



WEST VIRGINIA ADMINISTRATIVE RULE
DIVISION OF PERSONNEL

Chapter 29-6-10
Series I
2005 amended

FILED

2006 JUL 21 P 4: 11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Subject: Administrative Rule of the West Virginia Division of Personnel

Section.1. General

1.1. Scope - This rule implements the provisions set forth in W.Va. Code §29-6-1 et seq. regarding classification plans, pay plans, open competitive examinations, promotions, layoff and recall, appointments, dismissals, demotions and other matters consistent with W.Va. Code §29-6-1 et seq.

1.2. Authority - This rule is issued under the authority of W.Va. Code, §29-6-10.

1.3. Filing Date - ~~June 3, 2005.~~

1.4. Effective Date - ~~July 1, 2005.~~

Section 2. Preamble. The general purpose of the Division of Personnel is to attract to the service of this State personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, disability, ancestry or national origin, or for other reason(s) explicitly provided in Federal and/or State law. ~~All employment positions not in the classified service, with the exception of the State College System of West Virginia and the University System of West Virginia, are included in a classification plan known as classified-exempt service.~~

Section.3. Definitions

3.1. Accrue: To increase or accumulate periodically or by increment.

3.2. Accrual Rate: The grouping by the cumulative years of eligible employment which is used to determine the rate of accrual of annual leave benefits.

3.3. Administrator: Any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as the commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated.

3.4. Agency: Any administrative department of state government, including any authority, board, bureau, commission, committee, council, division, section, office, or any county health department.

3.5. Allocation: The assignment of a position to a class by the Director of Personnel on the basis of the duties performed and responsibilities assumed.

3.6. Annual Leave: An earned employee benefit of paid time off from work with prior approval of the appointing authority or designee.

3.7. Appeal: The complaint to the State Personnel Board to correct or reverse an alleged injustice done or error committed.

3.8. Appointing Authority: The executive or administrative head of an agency who is authorized by statute to appoint employees in the classified or classified-exempt service. By written notification to the Director of Personnel, the appointing authority may delegate specific powers authorized by this rule to persons who satisfy the definition of employee as established in this rule.

3.9. Appointment: The act of hiring an applicant for employment.

3.10. Assembled Examination: An examination which, due to the testing process used, necessitates that applicants come to a testing location.

3.11. ~~Availability~~ Available: The indication, by an eligible, of the employment location and conditions under which employment would be accepted including, but not limited to, salary and starting date of employment.

3.12. Board: The State Personnel Board as provided for in W.Va. Code §29-6-7 whose members are appointed by the Governor with the advice and consent of the Senate.

3.13. Carry Forward Days: The maximum number of annual leave days which can be accredited for use as of the first day of January based on an employee's length of service category.

3.14. Certification: The official list of eligibles applicants given to an appointing authority for filling vacancies in the classified service.

3.15. Class or Class of Positions: One or more positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same title, the same qualifications, and the same schedule of compensation and benefits may be equitably applied to each position in the class.

3.16. Classification Action: The actions of allocation, reallocation, classification, and reclassification.

3.17. Classification Plan: The plan by which positions in the classified service and classified-exempt service have been allocated by class.

3.18. Class Specification: The official description of a class of position which describes the nature of work, provides examples of work performed, and knowledges, skills, and abilities, and states the generally accepted minimum qualifications required for employment.

3.19. Classified Employee: An employee who occupies a position allocated to a class in the classified service.

3.20. Classified-Exempt Service: As established by statute, those positions which satisfy the definitions for "class" and "classify" but which are not covered under the Division of Personnel merit system standards or by the State College System of West Virginia or the University System of West Virginia.

3.21. Classified Service: Those positions which satisfy the definitions for "class" and "classify" and which are covered under the Division of Personnel merit system standards.

3.22. Classify: The process of ascertaining, analyzing, and evaluating the duties and responsibilities of positions to determine the number and kind of classes existing in the service and to group the positions in classes.

3.23. Compensation Plan: The official schedule of pay rates, the range assigned to each class of positions and the salary regulations used in pay administration in the classified service.

3.24. Daily Rate: The usual rate of pay for the pay period divided by the total number of workdays plus paid holidays in the pay period for an employee whose position is assigned to a monthly pay rate.

3.25. Date of Separation: Last day of work of employees separating due to dismissal, voluntary resignation, voluntary retirement, layoff, or sudden death; the date of death of employees who die while on paid or unpaid leave; or the date of notification by employees resigning or retiring due to disability as verified by a physician.

3.26. Day: Unless otherwise specified, the use of "day" means a calendar day.

3.27. Demotion: A change in the status of an employee from a position in one class to a position in another class of lower rank as measured by salary range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower rate in the pay range assigned to the class.

3.28. Director: The Director of Personnel, as provided in W.Va. Code §29-6-6 and §29-6-9, who serves as the executive head of the Division of Personnel, or his or her designee.

3.29. Disability: A physical or mental impairment which substantially limits one or more of a person's major life activities, a record of a physical or mental impairment which substantially limits one or more of a person's major life activities, or regarded as a physical or mental impairment which substantially limits one or more of a person's major life activities.

3.30. Discretionary: Open to individual choice or judgement.

3.31. Dismissal: The separation from employment for good cause of an employee by an appointing authority.

3.32. Division: The Division of Personnel.

3.33. Division of Personnel: The division of the Department of Administration responsible for the system of personnel administration for the classified and classified-exempt service.

3.34. Effective Date: The established date an action takes place .

3.35. Eligible Applicant: An applicant accepted for a Division of Personnel examination who receives a final passing score and whose name is listed on the register established for the class of position.

~~3.36. Emergency Appointment: An appointment, for not more than thirty (30) calendar days in any twelve (12) month period, necessitated by a state of emergency.~~

~~3.37~~ 3.36. Employee: Any person who lawfully occupies a position in an agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

~~3.38~~ 3.37. Exempt Service: All positions specifically exempted from the classified service by statute or statutory authority.

~~3.39~~ 3.38. Existing Employee: Any person employed by an agency for permanent employment in a classified or classified-exempt position.

~~3.40~~ 3.39. Fitness: suitability to perform all essential duties of a position by virtue of meeting the established minimum qualifications and being otherwise qualified.

~~3.41~~ 3.40. Full-time Employee: Any employee who works the full work schedule established for the agency.

~~3.42~~ 3.41. Grievance: Any claim by one or more affected classified or state classified-exempt employees alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which the employees work, filed in accordance with the provisions of W.Va. Code §29-6A-1 et seq.

~~3-43~~ 3.42. Hourly Rate: The total annual salary (excluding annual increment) divided by 2,080 hours for full-time permanent and temporary salaried employees or divided by the actual number of hours worked annually for part-time permanent and temporary salaried employees. For hourly employees, the hourly rate is the actual rate established by the State Personnel Board.

~~3-44~~ 3.43. Immediate Family: Consists of the parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, ~~step-siblings, step-brothers, step-sisters,~~ stepchildren, foster children, individuals in an *in loco parentis* relationship, and individuals in a legal guardianship relationship.

~~3-45~~ 3.44. Incapacity: An illness of or injury to an employee which temporarily prevents him or her from performing the essential duties of his or her position.

~~3-46~~ 3.45. Incumbent: Any employee occupying a position.

~~3-47~~ 3.46. Intra-Agency Transfer: Any transfer within a single agency.

~~3-48~~ 3.47. Inter-Agency Transfer: Any transfer from one agency to another.

~~3-49. Intermittent Appointment: Any appointment from a register to a position which requires performance on an irregular or "as needed" basis for no more than 945 hours in a twelve month period.~~

~~3-50~~ 3.48. Irregular Part-time Employment: Any appointment from a register for employment in a position for which work hours vary from pay period to pay period and are less than the full-time work schedule established by the agency.

~~3-51~~ 3.49. Job Abandonment: The absence from work under such conditions as to be synonymous with resignation.

~~3-52~~ 3.50. Last Day of Pay: The calendar date and hour an employee's pay ceases.

~~3-53~~ 3.51. Last Day of Work: The last calendar date and hour an employee is physically on the job.

~~3-54~~ 3.52. Lateral Class Change: The movement of any employee from one class to another class in the same pay grade.

~~3-55~~ 3.53. Layoff: A reduction in the number of employees caused by a reduced work load, curtailment of funds or reorganization.

~~3-56. Limited Term Employment: Employment of a limited duration including, but not limited to, 90-day exempt, 30-day emergency, temporary, intermittent and student appointments and seasonal employment with a state forest, park or recreational area.~~

~~3-57~~ 3.54. Local Office: Any unit of an agency which provides services to a specified section of the State and has employees reporting to locations other than the state office headquarters.

~~3-58~~ 3.55. Minimum Qualifications: The least experience and/or training required by the State Personnel Board for employment in a class of position and admission to an examination for that class of position.

~~3-59~~ 3.56. Month: Any of the twelve parts into which the calendar year is divided.

~~3-60. Ninety-Day Exempt Appointment: Employment for no more than ninety (90) working days in a year.~~

3.57 . Occupational Group: A category of job classes grouped by similarity of occupation or profession.

~~3-61~~ 3.58. Open Competitive Examination: An examination which permits the competition of all persons who meet the publicly announced minimum requirements for a class of position.

~~3-62~~ 3.59. Original Appointment: Initial employment of an individual into the classified service as a result of selection from a certification of names from a register established by open competitive examination or from a preference register.

~~3-63~~ 3.60. Part-time Employee: Any person who works less than the full-time work schedule established for an agency.

~~3-64~~ 3.61. Part-time Professional: Any classified-exempt employee engaged in professional services without administrative duties and who works no more than half the agency's full-time work schedule.

~~3-65~~ 3.62 Pay Differential: A type of salary adjustment specifically approved by the Board to address circumstances such as class-wide recruitment and/or retention problems, regionally specific geographic pay disparities, apprenticeship program requirements, shift differentials for specified work periods, and temporary upgrade programs.

~~3-66~~ 3.63. Pay Increment: The percentage increase amounts established by the State Personnel Board to implement pay practices including hiring rates, salary advancements, and pay on promotion..

~~3-67~~ 3.64. Pay Rate: One of the monthly or hourly rates within the pay range established by the State Personnel Board for each class included in the approved pay plan; the usual rate of pay.

~~3-68~~ 3.65. Per Diem: A daily ~~allowance~~ rate of pay.

~~3-69~~ 3.66. Permanent Employee: Any classified employee who was hired from a register and who has completed the probationary period prescribed by the State Personnel Board for the job class, or any classified-exempt employee who was hired to fill a position for an unlimited period of time, notwithstanding the appointing authority's right to terminate the employee for cause or at his or her will.

~~3-70~~ 3.67. Physician/practitioner: A person licensed under the laws of a state to practice medicine or a medical practitioner approved by the Public Employees Insurance Agency.

~~3-71~~ 3.68. Policymaking Positions: A position in which the person occupying it: a) acts as an advisor to or formulates plans for the implementation of broad goals for the executive or administrative head of the agency; b) is in charge of a major administrative component of the agency; and c) reports directly and is directly accountable to the administrative or executive head of the agency.

~~3-72~~ 3.69. Position: An authorized and identified group of duties and responsibilities assigned by the proper authority requiring the full-time or part-time employment of at least one person.

~~3-73~~ 3.70. Position Description: The document prepared by the position supervisor or the employing agency and approved by the appointing authority, which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information in position allocation. Position description forms shall be prescribed by the Director.

~~3-74~~ 3.71. Postmarked: An official United States postal marking showing the mailing date.

~~3-75~~ 3.72. Probationary Period: A specified trial work period prescribed by the State Personnel Board designed to test the fitness of an employee selected from a competitive list of eligibles for the position for which an original appointment has been received.

~~3-76~~ 3.73. Promotion: A change in the status of an employee from a position in one class to a vacant position in another class of higher rank as measured by salary range and increased level of duties and/or responsibilities.

~~3-77~~ 3.74. Provisional Appointment: The hiring of an employee to fill a position pending the

administration of an open competitive examination and the establishment of a register.

~~3-78~~ 3.75. Reallocation: Reassignment by the Director of Personnel of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position.

~~3-79~~ 3.76. Reclassification: The revision by the State Personnel Board of the specifications of a class or class series which results in a redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, pay grade, or minimum qualifications for the classes involved.

~~3-80~~ 3.77. Register: An official list of currently available eligibles ~~applicants~~ for a job class ranked in the order of the final score as a result of the Division of Personnel examination for the class of position for competitive appointment or in seniority order for preference hiring of laid-off permanent classified employees.

~~3-81~~ 3.78. Regular Part-time Employment: Employment in a position for which work hours are the same from pay period to pay period but are less than the full-time work schedule established for the agency.

~~3-82~~ 3.79. Reinstatement: A type of re-employment of a former permanent classified employee.

~~3-83~~ 3.80. Resignation: Voluntary separation from employment, including job abandonment, by an employee.

~~3-84~~ 3.81. Salary Adjustment: A salary change resulting from a revision of the pay plan, the reassignment of a class to a different pay grade, a Board approved pay differential, a temporary classification upgrade, a general wage increase mandated by the Legislature or the Governor, or the correction of payroll errors.

~~3-85~~ 3.82. Salary Advancement: A discretionary advancement in salary granted in recognition of the quality of job performance.

~~3-86~~ 3.83. Salary Range: The approved monthly and annual salary for a class which includes the minimum, maximum, and intervening steps.

~~3-87~~ 3.84. Salary Schedule: The official schedule of salaries approved by the Governor consisting of multiple pay grades with minimum and maximum rates of pay for each grade.

3.85. Seasonal Employment: Employment exempt from the classified service in state forests, parks, and recreational areas for less than 1,733 hours per calendar year.

~~3-88. Service: Total eligible employment time which may be used for determining the rate of accrual of annual leave.~~

~~3-89~~ 3.86. Sick Leave: An earned employee benefit of paid time off as specified by this rule for illnesses, injuries and other circumstances.

~~3-90. Student Employee: An employee working for a limited period of time under the current Student Exempt Policy approved by the Board.~~

~~3-91~~ 3.87. Suspension: Disciplinary action taken by an agency to temporarily relieve an employee of his or her duties and place the employee on leave without pay.

~~3-92. Temporary Appointment: The hiring of an employee from a register for a period not to exceed 6 months.~~

3.88. Temporary Employment: Employment exempt from the classified service for a period not to exceed 1,000 work hours per twelve month period.

~~3-93~~ 3.89. Terminal Annual Leave: The balance of an employee's accrued and unused annual leave as of that employee's last day of work.

~~3-94~~ 3.90. Termination: Separation from employment by the appointing authority as a result of the expiration of a limited term appointment or at the end of the period of need during limited term employment.

~~3-95~~. Title Change: ~~The revision in the title of a class.~~

~~3-96~~ 3.91. Transfer: The movement of an employee to a different subdivision or geographic location of the same or a different agency.

~~3-97~~. Unassembled Examination: ~~An examination procedure which does not require persons being examined to gather at a test site and which does not include a written examination.~~

~~3-98~~ 3.92. Vacancy: An unfilled budgetary position in the classified service to be filled by original appointment, promotion, demotion, lateral class change, transfer, or reinstatement.

~~3-99~~ 3.93. Veteran: Any person who fulfills the requirements of one of the following conditions:

- a. Served on active duty anytime between December 7, 1941, and July 1, 1955. However, any person who was a Reservist called to active duty between February 1, 1955 and October 14, 1976, must meet subdivision b, of this subsection;
- b. Served on active duty anytime between July 2, 1955 and October 14, 1976 or a Reservist called to active duty between February 1, 1955 and October 14, 1976 and who served for more than 180 days;
- c. Entered on active duty between October 15, 1976 and September 7, 1980 or a Reservist who entered on active duty between October 15, 1976 and October 13, 1982 and received a Campaign Badge or Expeditionary Medal or is a disabled veteran; or
- d. Enlisted in the Armed Forces after September 7, 1980 or entered active duty other than by enlistment on or after October 14, 1982 and
 1. completed 24 months of continuous active duty or the full period called or ordered to active duty, or was discharged under 10 U.S.C. 1171, or for hardship under 10 U.S.C. 1173 and received or was entitled to receive a campaign badge or expeditionary medal; or
 2. is a disabled veteran.

~~3-100~~ 3.94. Veterans' Preference Points: An additional 5 points added to the final passing score on an open competitive examination of any veteran as defined by this rule. An additional 5 points are available to those veterans who also have a current and compensable service connected disability or who have received a Purple Heart award. To receive veterans' preference points, separation from active duty must have been under honorable conditions. This includes honorable and general discharges. A clemency discharge does not meet the requirement of this subsection. Active duty for training in the military reserve and national guard programs is not considered active duty for purposes of veteran preference. Veterans' preference points are not added to final passing scores on promotional examinations.

~~3-101~~ 3.95. Work Schedule: Designation of the periods of time during which work is performed.

~~3-102~~ 3.96. Workweek: The time period of seven consecutive days, beginning and ending at specified days and times, during which work is performed and work hours reported for compliance with applicable federal and state labor laws.

~~3-103~~ 3.97. Year: Twelve (12) consecutive month period, unless otherwise specified.

Section 4. Classification Plans

4.1. Preparation of Plans - The Board, after conferring with the appointing authorities concerned, shall formally adopt and make effective a comprehensive classification plan for all positions in the classified and the classified-exempt service. The plan shall be based on an investigation and analysis of the duties and responsibilities of each position, and each position shall be allocated by the Director of Personnel, after consultation with the appointing authority concerned, to its proper class in the classification plan. When complete, the classification plan shall include for each class of positions an appropriate title, a description of the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications.

4.2. Revision of Plans - The Board may abolish or change existing classes of positions, or may add new classes in the same manner as the classification plans were originally adopted.

4.3. Incumbents of Reallocated Positions - When a position is reallocated to a different class, the Board shall not consider the incumbent eligible to continue in the position unless he or she would have been eligible for original appointment, promotion, transfer, or demotion, to a position of the new class while serving in the position as previously allocated. If ineligible to continue in the position, he or she may be transferred, promoted, or demoted by appropriate action in accordance with the provision of this rule as the Director may determine to be applicable. In any case in which the incumbent is ineligible to continue in the position, and he or she is not transferred, promoted or demoted, the provisions of this rule regarding separations applies.

4.4. Class Specifications - The Director shall consider the class specification in allocating positions and shall interpret it as follows:

(a) Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.

(b) In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. The Director shall give consideration to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.

(c) A class specification is a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.

(d) The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

(e) The statement of minimum qualifications expresses the minimum background in terms of education, experience, and/or licensure generally necessary for a new employee to successfully perform the required duties of positions in the job class.

(f) The Director shall consider class specifications as a primary source of authority for the content of examinations for the class and for the evaluation of qualifications of applicants for examinations. Supplemental job information, obtained through job analysis, may be used as a further basis for examinations and minimum qualification standards. Provisions for the substitution of related experience, education, or other qualifications for specific education and/or experience requirements may be made in specific examination announcements for particular positions, even though these provisions are not part of the class specification. In cases of recruitment difficulties or unique positions requirements, the Director, in cooperation with the appointing authority, may use his or her discretion in interpreting minimum experience, training and/or licensure requirements and in accepting equivalent experience, training and/or licensure.

4.5. Position Descriptions

(a) Position description forms shall be prescribed by the Director.

(b) The position description is an official record of the duties and responsibilities assigned to a position and shall be used by the Division of Personnel to allocate the position to its proper class.

(c) The position description shall include a current description of assigned duties and responsibilities and other pertinent information concerning a position. In contrast to general definitions of the level of work and responsibilities, the position description shall include specific duties and responsibilities assigned to a position by the appointing authority.

(d) The position description shall not be construed in any way to limit the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.

(e) Position descriptions shall be kept current by the appointing authority for each position under his or her jurisdiction. When the appointing authority significantly alters the duties and responsibilities of a position, the appointing authority shall prepare and forward a revised position description to the Director.

(f) If an appointing authority fails to notify the Director of significant alterations in the duties and responsibilities of a position, the incumbent in the position may file with the Director a written request for a review of his or her position.

4.6. Reclassification

(a) Upon its own initiative, or at the request of an appointing authority, the Board may reclassify positions by the creation or abolishment of classes, or the revision of the definition of the work of the classes brought about by changing work methods, new technology or reorganization.

(b) For each position affected the appointing authority shall provide a current description of the duties and responsibilities assigned.

(c) The employee in the position at the time of a reclassification is entitled to continue to serve in that position, provided that the employee meets any licensure or certification requirements.

(d) Any incumbent in a position reclassified under this subdivision has the right to a reconsideration of the action by the Director. After filing with the Director a written request for reconsideration in a manner and form prescribed by the Director, the employee shall be given a reasonable opportunity to be heard by the Director. The interested appointing authority shall be given the same opportunity to be heard.

4.7. Position Reallocation - Whenever substantial changes occur in the duties and responsibilities permanently assigned to a position, the Director shall reallocate the position to its proper class. The incumbent or the appointing authority may seek a reconsideration of the allocation action by submitting a written request to the Director within ten (10) calendar days of the effective date of the action. The Director shall not reallocate a position based on temporary changes in the duties and responsibilities assigned to the position.

4.8. Temporary Classification Upgrade. With the approval of the Director, an appointing authority may temporarily upgrade the classification of an employee temporarily performing the duties of a position in a higher pay grade due to a separation or an extended leave of absence, for a short-term project, or in an emergency situation. A temporary classification upgrade shall be within the same service, classified or classified-exempt, and, except for classes allocated to the approved hourly pay schedule, shall be for a continuous period of no less than 30 days and no more than six months. The Director, at his or her discretion, may extend the period of a temporary classification upgrade period by increments of three months or less. The Board shall establish salary, qualification, and administrative standards for implementation of this subsection.

4.9. Classification Plan for the Classified-Exempt Service. All employment positions not in the classified service, with the exception of the State College System of West Virginia and the University System of West Virginia, are included in a classification plan known as classified-exempt service.

(a) Upon the recommendation of the Director, the Board shall adopt and make effective a classification plan for the classified-exempt service. This plan shall be developed and maintained so that all positions sufficiently similar with respect to type, difficulty, and responsibility of work are included in the same class. The plan shall be based on an analysis of the duties and responsibilities of each position, and each position shall be allocated by the Director of Personnel to its proper class in the plan.

(b) Each appointing authority shall report to the Director the establishment of new positions or any material changes in the duties and responsibilities of existing positions in the classified-exempt service. The Director may at any time require the appointing authority to submit a statement of the duties and responsibilities of incumbents of any position in the classified-exempt service.

(c) The appointing authority shall, on the appropriate specified forms, report to the Director any changes in class title, pay, and status of any employee in the classified-exempt service.

(d) If an appointing authority wishes to request names of applicants for consideration for employment in the classified-exempt service, he or she shall make the request on appropriate forms specified by the Director. In no event shall a classified service vacancy be filled from a certification prepared for a classified-exempt service vacancy.

(e) The employee affected by the allocation of a position to a class may file with the Director a written request for reconsideration and shall be given a reasonable opportunity to be heard by the Director. The appointing authority shall be given like opportunity to be heard. The employee shall submit the request for reconsideration of a classification action in writing within ten (10) calendar days of the effective date of the classification action.

Section 5. Compensation Plan and Salary Administration

Pursuant to the provisions of the W.Va. Code §29-6-10(2), the following salary regulations in this section apply to classified employees .

5.1. Purpose and Intent - To attract qualified employees and retain them in the classified service, the Board shall endeavor to provide through the pay plan adequate compensation based on the principles of equal pay for equal work among the various agencies and on comparability to pay rates established in other public and private agencies and businesses.

5.2. Preparation of the Plan - After consultation with the appointing authorities and State fiscal officers and after a public hearing, the Director and the Board shall prepare and submit to the Governor for his or her approval any revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with minimum and maximum rates of pay for each grade and a plan of implementation. The pay plan shall also include a market rate for each grade which shall be established by the Director to approximate the market midpoint pay level among southeastern state governments selected by the Director. The Board may make periodic amendments to the pay plan in the same manner.

5.3. Adoption of the Plan - The plan becomes effective only after it has been approved by the Governor. The approved pay plan constitutes the official schedule of salaries for the classified service.

5.4. Implementation of Plan

(a) Assignment of Classes - The Board shall assign each class of positions to an appropriate pay grade consistent with the duties outlined in the class specification. No salary shall be approved by the Director of Personnel unless it conforms to one of the pay rates in the pay grade assigned to the employee's class of position.

(b) Entry Salary - The entry salary for any employee shall be at the minimum salary for the class including any applicable Board approved pay differential. However, an individual possessing pertinent training or experience above the minimum required for the class, as determined by the Director, may be appointed at a pay rate above the minimum, up to the market rate of the salary range, unless otherwise prescribed by the Board. For each pay

increment above the minimum, the individual must have in excess of the minimum requirements at least six months of pertinent experience or equivalent pertinent training. The Director may authorize appointment at a rate above the market rate where the appointing authority can substantiate severe or unusual recruiting difficulties for the job class.

(c) Standard Rates of Pay - The compensation plan applies to all classes of positions in the classified service unless specifically excepted by statute or statutory authority. It provides standard pay rates for full-time employees for regularly established working hours in all offices and departments. The salary or wage paid is determined by the pay grade to which the class of the position has been allocated. All employees, including those serving in positions on a part-time basis, shall be paid in proportion to the actual time worked.

(d) Additional Pay - Except for authorized overtime, Board approved pay differentials and monetary incentives, or other statutorily required and/or authorized payments, appointing authorities shall make no pay additional in addition to the regular salary to any employee. ~~The rates as provided do not include reimbursements for actual and necessary expenses incurred incident to employment such as travel expense.~~ Additional duties imposed or volunteered are not an exception to this rule.

(e) Availability of Funds - Before an agency makes salary adjustments and advancements in accordance with this rule, its fiscal officer shall certify that funds for this purpose are available.

(f) Salary Adjustments

1. New Plan

a. Upon adoption of a new pay plan the Board shall require and may approve or modify a plan of application which assures as nearly as possible that all incumbents in the classified service receive equal treatment in terms of pay.

b. An incumbent whose salary falls below the minimum rate of the new range shall have his or her salary adjusted to the new minimum.

c. An incumbent whose salary falls above the maximum rate of the new range shall maintain his or her current salary and is ineligible for salary advancements.

2. Pay on Reclassification

a. Higher minimum

1. When a class is reassigned by the Board to a salary range having a higher minimum, the salaries of those incumbents below the new minimum shall be adjusted to the new minimum.

2. Where the salary of the incumbent coincides with a pay rate in the new range, the salary shall remain unchanged.

b. Lower Minimum

1. When a class is reassigned by the Board to a salary range having a lower minimum, the salaries of those incumbents which are within the new range shall remain unchanged.

2. Where the salary of the incumbent is above the maximum rate of the new range, the salary shall remain unchanged and the incumbent is ineligible for salary advancements.

c. The Board, by formal action, may approve or modify a plan of application on reclassification other than those described in subparagraphs 5.4.(f)2.a. and 5.4.(f)2.b. of this rule based on documented recruitment and/or retention difficulties or consideration of equal treatment in terms of pay for reclassified employees.

3. Pay on Position Reallocation - When a position is reallocated to a different class, the salary of the incumbent shall be adjusted in accordance with salary regulations for promotion, demotion and lateral class change.

4. Pay Differentials - The Board, by formal action, may approve the establishment of pay differentials to address circumstances such as class-wide recruitment and retention problems, regionally specific geographic pay disparities, shift differentials for specified work periods, and temporary upgrade programs. In all cases, pay differentials shall address circumstances which apply to reasonably defined groups of employees (i.e. by job class, by participation in a specific program, by regional work location, etc.), not individual employees.

5. Separation from Employment - Salary adjustments are not given to employees separating from State employment whose last day of work occurs prior to the effective date of a new pay plan and who are continued on the payroll beyond that date for payment of terminal annual leave.

5.5 Pay on Promotion - When an employee is promoted, the employee's pay shall be adjusted as follows:

(a) Minimum Increase - An employee whose salary is at the minimum rate for the pay grade of the current class shall receive an increase to the minimum rate of the pay grade for the job class to which the employee is being promoted. An employee whose salary is within the range of the pay grade for the current class shall receive an increase of one pay increment, as established by the State Personnel Board, per pay grade advanced to a maximum of 3 pay grades, or an increase to the minimum rate of the pay grade for the job class to which the employee is being promoted, whichever is greater. In no case shall an employee receive an increase which causes the employee's pay to exceed the maximum for the pay grade to which he or she is being promoted.

(b) Exceptions

1. If the salary of an employee being promoted is at or above the maximum rate of the pay grade to which the employee is being promoted, or, if his or her salary is within one pay increment, as established by the State Personnel Board, of the maximum rate of the pay grade to which he or she is being promoted, the employee shall receive an increase of one pay increment with the promotion.

2. If an employee has been demoted or reallocated to a class at a lower pay grade ~~with no reduction in pay~~ and is promoted or reallocated within the next twenty-four months within the same agency, ~~no consideration shall be given to the pay grade(s) reduced in the demotion or reallocation~~ the following procedure shall be used when calculating pay on promotion as provided in subdivisions 5.5(a) and (b) of this rule. The promotional increase shall be calculated based on the pay grade of the employee's position prior to the demotion, using the employee's current rate of pay plus any amount by which the employee's pay was reduced at the time of the demotion. If, based on this procedure, no promotional increase is due, the employee's pay shall be increased by the amount his or her pay was reduced, if any, at the time of the demotion.

(c) Additional Increase - The appointing authority may grant additional incremental increases, as established by the State Personnel Board, to an employee being promoted if the employee has sufficient qualifications in excess of the minimum required for the new class. The employee must possess at least six months of pertinent experience or an equivalent amount of pertinent training for each additional incremental increase granted. In no case shall the additional incremental increase cause the employee's pay to exceed the maximum for the pay grade to which he or she is being promoted.

5.6 Pay on Demotion

(a) The appointing authority has the discretion to reduce or not reduce the pay rate of any employee who is demoted if the employee's pay rate is within the pay range of the job class to which the employee is demoted.

(b) The appointing authority shall reduce the pay rate of an employee who is demoted if the employee's current pay rate is above the maximum pay rate for the job class to which the employee is demoted. The reduction may be to any pay rate within the pay range of the job class to which the employee is demoted as long as the pay rate does not exceed the maximum pay rate of the pay range. If the demotion is to a formerly held job class and the employee's current pay rate is above the maximum pay rate for the job class, the reduction may be to any pay rate within the pay range of the job class to which the employee is demoted or to his or her last pay rate in the formerly held job class, even if the last pay rate is above the maximum pay rate for the job class.

5.7. Pay on Lateral Class Change - Any employee who receives a lateral class change shall be paid the same salary received prior to the change except in cases where the change is to an agency or job class for which the Board has approved, or the Legislature has authorized, a higher pay range for the pay grade.

5.8. Pay on Reinstatement - The salary for an employee who is reinstated shall be at the minimum salary for the class including any applicable Board approved pay differential. However, an individual possessing pertinent training or experience above the minimum required for the class, as determined by the Director, may be appointed at

a pay rate above the minimum, up to the market rate of the salary range, unless otherwise prescribed by the Board. For each pay increment above the minimum, the individual must have in excess of the minimum requirements at least six months of pertinent experience or equivalent pertinent training. The Director may authorize reinstatement at a rate above the market rate where the appointing authority can substantiate severe or unusual recruiting difficulties for the job class, or where the reinstated employee's last salary as a classified employee was above the market rate.

5.9. Salary Advancements

(a) Basis - All salary advancements shall be based on merit as evidenced by performance evaluations and other recorded indicators of performance.

(b) Eligibility - Salary advancements are limited to permanent employees.

(c) Amount - Salary advancements are limited to a maximum established and subject to change by the State Personnel Board, and shall not cause the new salary to exceed the maximum of the pay grade to which the employee's class is allocated. The State Personnel Board shall establish the maximum for salary advancements by policy on implementation of the pay plan [i.e. as of 5/1/94, no more than 10% in any 12-month period] as specified in subsection 5.2. of this rule.

(d) Exceptions - An employee with seven years of total state service who has attained the maximum or above in the range, or for whom a salary advancement would result in his or her salary exceeding the maximum in the range for the class is eligible for a salary advancement. The salary advancement is limited to the difference between two pay increments [i.e. as of 5/1/94, two pay increments equal 10%] and the total percentage of all other increases in pay in the immediately preceding twelve month period except general wage increases mandated by the Legislature.

(e) Effective Dates - Salary advancements for permanent employees are effective on or after the date on which the employees become eligible for the salary advancements.

5.10. Annual Increment Increase - The Board, by formal action, may establish uniform procedures which shall be followed by all State agencies and spending units for compensating eligible employees of the State and its spending units for the annual increment increase provided for in W.Va. Code §5-5-2.

Section 6. Applications and Examinations

6.1. Character of Examinations

(a) Examinations for appointment to a position in the classified service shall be conducted on an open competitive basis. Examinations shall be practical in nature, shall be constructed to reveal the capacity of the applicant for the particular position for which he or she is competing, and shall be rated objectively.

(b) Examinations shall, to the extent possible, be developed on the basis of objective analysis of the job and with the participation of appropriate job experts in the affected agencies and may include: written tests, performance tests, ratings of training and experience, oral examinations, job simulations, or other assessment procedures shown to be related to the content of the job and/or to be predictive of successful job performance.

(c) All examination scoring procedures shall be objective. Test weights shall be established to reflect the relative importance of duties performed in the job class. Test weighting and scoring procedures shall be applied consistently to the examinations of all applicants.

6.2. Notice of Examinations

(a) The Director shall give public announcement of all open competitive examinations at least 15 days in advance of the closing date for receipt of applications. He or she shall make every reasonable effort to attract qualified persons to compete in these examinations. Notices of examinations and other publicity may be restricted to the places where additional eligibles are needed. Public announcement of examinations shall specify the title and salary range of the class of position, the duties to be performed, the minimum qualifications required, the final date

on which applications will be accepted, and all other conditions of competition.

The announcement shall also include any special minimum or substitute position qualification standards which will be used in evaluating applicants. The Director shall develop all announced qualifications for examination on the basis of information contained in class specifications as well as job analysis information obtained with the participation of appropriate job experts in affected agencies.

6.3. Filing Applications

(a) All applications shall be made on forms prescribed by the Director and must be filed with the Division on or prior to the closing date specified in the announcement or postmarked before midnight of that date. The applications shall be completed in full and may require the inclusion of documents verifying pertinent education, training, licensure, eligibility for veterans' preference points, or any other information which the Director may consider necessary. All applications shall be signed and sworn to or affirmed by the applicant. The Director may verify any information provided on or with an application.

(b) The Director may provide for continuous receipt of applications and for holding examinations as needed.

6.4. Disqualification of Applicants

(a) The Director may refuse to examine an applicant, or after examination, may disqualify the applicant or remove his or her name from a register or certification, or refuse to certify any eligible on a register if:

1. he or she is found to lack any of the preliminary requirements established for the examination or by statute for the class of position;
2. he or she has a disability and is incapable of performing the essential functions of positions in the class with or without reasonable accommodation;
3. he or she has been convicted of an infamous crime or other crime involving moral turpitude which has a reasonable connection to the position/class for which he or she is applying;
4. he or she has made a false statement of material fact or has misrepresented his or her qualifications in his or her application;
5. he or she has previously been dismissed from any public service for delinquency, misconduct, or other similar cause;
6. he or she has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;
7. he or she has directly or indirectly obtained information regarding examinations to which he or she was not entitled;
8. he or she has failed to submit his or her application correctly or within the prescribed time limits;
9. he or she has taken part in the compilation, administration, or correction of the examination;
10. he or she has taken the same examination less than 60 days prior to the date of the current examination;
11. at least three former employers state that they would not re-employ him or her, or otherwise indicate that his or her services as an employee were unsatisfactory or that he or she is lacking in character and fitness for the position he or she applied for;
12. the register from which he or she is certified is for a class for which oral skills are essential and an oral examination was not a part of the examination process, and at least two agencies have interviewed him or her and report that he or she is not considered to be suitable for a position in the class he or she was interviewed for;
13. he or she is not eligible to work in the United States;
14. he or she fails to comply with any other reasonable requirements established by the Director for the position; or
15. he or she has otherwise violated provisions of this rule.

(b) In order to be admitted to an open competitive examination, an applicant shall have satisfied all publicly announced minimum qualifications of the position for which he or she has requested an examination, except that he or she may be admitted if he or she is qualified in all respects except for: (1) a deficiency of no more than six months

of qualifying training and, at the time of application, he or she is engaged in educational pursuits that will qualify him or her; or (2) a deficiency of no more than one month of qualifying experience and, at the time of application, he or she is employed in work that will qualify him or her. An applicant admitted to an examination with deficiencies in minimum qualifications who passes the examination, is not eligible for employment until the minimum qualifications have been satisfied. The applicant is responsible for furnishing evidence of subsequently satisfying the minimum qualifications.

(c) The Director shall notify a disqualified applicant of his or her disqualification, and shall notify an applicant who is not admitted to an examination because of failure to meet the preliminary requirements by letter to his or her last-known address. The Director may permanently disqualify from examination any applicant disqualified under the provisions of paragraphs 6.4 (a) 3, 4, 5, 6, 7, and 14 of this rule.

(d) Any applicant whose application for examination has been rejected may request that the Director reconsider his or her qualifications. The Director shall consider the request if it is submitted in writing and received not later than fifteen (15) calendar days following the date the rejection notice was postmarked. The Director may admit an applicant to an examination pending the outcome of the written request for reconsideration. Admission to an examination under these circumstances shall not constitute assurance of a passing grade with respect to any portion of the examination process.

(e) Within thirty (30) calendar days after a properly submitted request for reconsideration is received, the Director shall report his or her decision in writing to the applicant. The Director shall determine that uniform rating or review procedures have been applied. A rating in any part of an examination shall not be changed unless the Director finds that an error has been made. Any correction resulting from the reconsideration shall not affect a certification or appointment that has already been made from a register.

6.5. Conduct of Examinations

(a) Written tests shall be conducted in as many places as are necessary for the convenience of the applicants, as are practicable for proper administration, and when found necessary by the Director to administer more effectively a continuous recruitment program as provided for in subdivision 6.3(b) of this rule. The Director may designate such monitors as may be necessary to conduct examinations under instructions prescribed by him or her, and may also arrange for the use of public buildings in which to conduct the examinations. The Director shall provide for the compensation of monitors and assistants in accordance with the approved budget for that purpose.

(b) Applicants taking competitive assembled examinations shall present personal identification which includes a signature or photograph prior to admission to an examination. Applicants without proper identification shall not be admitted to examinations.

6.6. Scoring Examinations

(a) The Director shall determine a final score for each applicant's examination, computed in accordance with the weights for the several parts established by the Director. Failure in any part of an examination may disqualify the applicant in the entire examination and may disqualify him or her from participation in subsequent parts of the examination. All applicants for the same position shall be accorded uniform and equal treatment in all phases of the examination procedures.

(b) Any veteran (as defined in Section 3 of this Rule) who claims veteran's preference and who has made a passing grade in an open competitive examination shall have five points added to his or her final earned score. An additional five points shall be added to the augmented earned score of any veteran with a compensable service-connected disability or who has been awarded the purple heart. Any person claiming veteran's preference or disability preference shall submit satisfactory proof of his or her service or disability to the Director of Personnel. Veterans' preference points are not added to final passing scores on promotional examinations.

(c) The Director shall utilize appropriate scientific techniques and procedures in rating the results of examinations and in determining the final scores of competitors.

6.7. Rating Training and Experience - If training and experience form a part of the total examination, the Director shall determine a procedure for the evaluation of the training and experience qualifications of the various applicants. The formula used in the evaluation may include an appraisal of the recency and quality as well as quantity of experience and the pertinency of the training.

6.8. Oral Examinations - When an oral examination forms part of a total examination for a position, the Director shall appoint one or more oral examination boards as needed. Any person actively engaged in the work of any political organization, or any person holding political office, shall not serve as a member of any of the boards.

6.9. Notice of Examination Results - Each applicant passing all parts of the examination shall be notified by mail by the Director of his or her final score as soon as practical after the scoring of the examination has been completed and the register established. An eligible, upon request and presentation of proper identification, is entitled to information concerning his or her relative position on a register. The Director shall notify an applicant who fails any part of the examination or the total examination.

6.10. Special Examination - The Director may modify examination procedures to afford reasonable accommodation to otherwise qualified disabled applicants. The modifications may include changes in the existing testing procedures or the use of specific evaluations of the applicants' observable job skills and/or the applicants' record of past performance, experience and training.

6.11. Correction of Errors - If, within thirty days after receipt of his or her score notice, an applicant notifies the Director of a manifest error in the scoring of an examination or other evaluation of the applicant's qualifications, the Director shall, after verification of the error, promptly correct that error. The Director shall send formal written notice of the correction to the applicant. These corrections of errors shall not invalidate any certifications or appointments made prior to corrections of the errors.

6.12. Examination Records - The Director is responsible for the maintenance of all records pertinent to the examination program in accordance with official retention schedules and shall hold the records in confidence as specified in W.Va. Code §29B-1-1 et seq. and §5A-8-21 and §5A-8-22.

Section 7. Registers

7.1. Establishment of Registers -

(a) Competitive registers: After each examination, the Director shall prepare a register of persons with passing grades. The names of these persons shall be placed on the register in the order of their final ratings starting with the highest.

(b) Preference registers: After the layoff of permanent classified employees, the Director shall prepare registers of qualified permanent classified employees who have been laid off. The names of these employees shall be arranged on the register in order of seniority.

7.2. Duration of Registers

(a) Competitive Registers: The life of scores on a register shall be one year from the date of establishment, but this period may be reduced by the Director. If the Director reduces the life of a register, he or she shall notify each eligible remaining on the register to this effect by mail to his or her last-known address.

(b) Preference Registers: A laid off permanent classified employee is eligible for employment from a preference register for no longer than one year and the eligibility ceases immediately upon employment in a classified position.

(c) Notice of Vacancies: It is the duty of the appointing authority to notify the Director as far in advance as possible of vacancies which may occur in the agency. The Director is responsible for determining the adequacy of existing registers and for the establishment and maintenance of appropriate registers for all positions exclusive of exempt positions.

(d) The Director shall nullify a register for any of the following reasons:

1. Changes in the minimum qualifications or classification standards of a class of positions;
2. Abolishment of the class for which the register was established; or
3. Substantial revision of the examination used to establish the register.

(e) When a register is declared null and void by the Director, he or she shall notify the affected persons of the action in writing at their last known address.

7.3. Removal of Names from Registers

(a) Competitive Registers: The Director may remove the name of an eligible from a register:

1. for any of the causes stipulated in subdivision 6.4(a) of this rule;
2. on evidence that the eligible cannot be located by letter to his or her last known address;
3. on receipt of a statement from the eligible declining an appointment and stating that he or she no longer desires consideration for an appointment; or,
4. if he or she declines an offer of a probationary appointment for the class for which the register was established in a location for which he or she has declared himself or herself available.

(b) Preference Registers: The Director may remove the name of an eligible from a preference register:

1. for any of the causes stipulated in subdivision 7.3(a) of this rule;
2. upon appointment of the eligible to a classified position; or
3. on evidence that the eligible does not meet the applicable standards of qualifications and fitness for a position.

(c) The Director shall notify the eligible by mail to his or her last-known address that his or her name has been removed from the register and the reasons for the removal. All notices of changes of address shall be filed in writing by eligibles with the Director.

(d) Any person whose name has been removed from a register allegedly for reasons specified in this rule may appeal to the Board for reconsideration. The appeal must be filed in writing with the Director within fifteen (15) calendar days after the date on which notification to the applicant was postmarked. The appeal shall state the reasons why the applicant should not be removed from the register.

(e) The Board shall review all relevant information to determine if the action appealed was taken in accordance with this rule. Within thirty (30) calendar days after a properly submitted appeal is received, the Director shall report the Board's decision in writing to the applicant.

7.4.. Reinstatement to Register

(a) A person who has had his or her name withdrawn from a register at his or her request may have his or her name reinstated on the currently effective register for the same position class provided that the original register is still in effect and that his or her examination score is still valid. His or her rank on the register shall be determined by his or her final earned examination score.

(b) Reinstatement to a register as provided for in the previous subdivision is subject to the following conditions:

1. The person petitioning the reinstatement shall make his or her request to the Director in writing and shall furnish whatever information the Director may require.
2. No person may be reinstated to a register who does not satisfy the current minimum qualifications for the position class for which the register is maintained. The Director may require that he or she pass an appropriate examination in the case of position classes requiring special skills.
3. No person may be reinstated to a register from which he or she has been or may be disqualified under subsections 6.4, 7.3, or 8.2 of this rule.

Section 8. Certification of Eligibles

8.1. Request for Certification - If a vacancy occurs in any position in an agency or if new positions are established and new employees are needed, requisitions shall be submitted by the appointing authority to the Director upon a prescribed form. This requisition shall state the number of positions to be filled in each class, identifying each class title and all other pertinent information.

8.2. Certification Methods

(a) Upon receipt of a requisition, the Director shall first certify and submit to the appointing authority the names of available persons from the appropriate preference register. If no appropriate preference register exists, the Director shall then certify and submit to the appointing authority the names of available persons from the appropriate competitive register established as a result of open competitive examination for the class of position. The number to be certified and submitted will be governed by this subdivision. Nothing in this subdivision shall be construed as altering the exhaustion point of a register as described in subdivision 7.2(a) of this rule.

1. The Director shall first certify and submit the names of all available eligibles from the appropriate preference register. If there are no available qualified eligibles on the appropriate preference register, then the Director shall certify the top ten names or the names of any persons scoring at or above the ninetieth percentile on the open competitive examination. The Director may certify additional names at his or her discretion.

2. If the competitive register established as a result of a Division of Personnel examination for a specific class of position is exhausted, the Director may certify names from the register, or registers, most appropriate. If there is no register which the Director considers appropriate, then the Director may certify and submit names from a register established as described in subsection 7.1 of this rule.

3. Appointments may be made from a certification anytime within six months of the date of the certification. Six months after the date of the certification, the certification shall be null and void.

(b) If an eligible receives a probationary or permanent appointment, the appointment constitutes for its duration, a waiver of his or her right to certification from any other register on which his or her name appears for a class of position, the salary of which is either equal to or lower than that salary covered by his or her appointment, unless at the time of the appointment he or she requests in writing that his or her name be retained for certification from the register or registers. If a laid-off permanent classified state employee receives a probationary or permanent appointment to a classified position, that employee is no longer eligible for appointment from any preference register.

(c) The name of each employee whose name appears on a register for a class of position with a higher salary range than the salary range of his or her present class of position shall be certified and submitted by the Director and given consideration by the agency for the higher class of position if his or her name is reached.

(d) If in the exercise of his or her choice provided under subsection 9.2 the appointing authority passes over the name of an eligible on a competitive register in connection with three separate appointments he or she has made from the register, written request may be made of the Director that the name of the eligible be omitted from any subsequent certification of the same appointing authority from the same competitive register. The name of the eligible shall thereafter not be certified to the appointing authority from that register for future vacancies in that class of position, or from subsequent registers established for that class of position. However, upon change of the person occupying the position of appointing authority, the Director shall reinstate the name of that person for certifying purposes and shall inform the agency of the reinstatement. If, subsequently, the eligible is interviewed by the agency and rejected once for the same position, his or her name shall not again be certified for that position to that agency during the tenure of the then incumbent appointing authority.

(e) An eligible may be considered not available by the Director if he or she fails to reply to a written inquiry after five days or to telecommunication within 48 hours in addition to the time required for the transmission of the inquiry to his or her last-known address and the reply to the inquiry.

8.3. Selective Certification - Any certification may limit consideration to only those individuals who possess specific qualifications determined to be essential for performance of the duties of a specific position. Selective certification must be approved by the Director.

(a) If a specific position requires special qualifications that are not common to all positions in that class, the appointing authority may request that certification be limited to candidates possessing those qualifications. Eligibles shall have adequate opportunity for special qualification consideration. The specific criteria for the restriction of certification shall be based on the duties of the position as verified by job analysis or by an official position description and written justification.

(b) The Director of Personnel may approve a request for selective certification by gender if the appointing authority provides written justification which clearly shows that only persons of the required gender can perform the duties of the position and the Director has conferred with the Human Rights Commission.

(c) The Director of Personnel may limit certification to candidates available to work at the location of the job. The Director of Personnel may further limit certification geographically when the duties of the position require rapid response to unscheduled emergencies during off duty hours. The appointing authority shall provide written justification of any request for geographic selective certification based on essential duties of the position. The Director shall establish the boundaries of the acceptable geographic areas based on the specific location and demands of the job. The appointing authority shall consider candidates living outside the boundary if they are willing to relocate to the area.

(d) Except for preference certifications, the Director may determine, for certain unskilled or semiskilled job classes for which no previous education, training, or experience is required, that eligibles may be selected for certification by lot. In those cases, all eligibles shall have equal opportunity for certification. No rank order shall be established for the register. Selection for certification by lot will be determined as vacancy requests are received. Once the certification has been made for a particular vacancy, a new certification shall not be issued for the same class and location for sixty days. The employing agency shall offer opportunities for interviews to candidates in the order in which they appear on the certification. It is the responsibility of the employing agency to insure, to the extent practicable, that appointments from the certifications are made based on job-related merit and fitness.

8.4. Corrections of Errors

(a) In the event that a name is certified in error and the error is discovered before one of the named applicants is notified that he or she is appointed, the Director shall withdraw the erroneous certification and make a correct certification. If a certification is to fill more than one position, the Director shall withdraw only that portion of it pertaining to positions for which applicants have not been notified that they are appointed.

(b) In the event a name is certified in error and the error is discovered after one of the named applicants is notified that he or she is appointed but prior to the effective date of the appointment, the Director shall withdraw the certification and appointment as in subdivision (a) of this subsection unless:

1. Acceptance of the appointment caused the named applicant to change his or her place of residence; or,
2. Acceptance of the appointment caused the named applicant to resign from a position that cannot be regained.

(c) In the event a name is certified in error and the error is discovered after the effective date of the appointment of one of the named applicants, the appointment shall continue.

Section 9. Appointments

9.1. Appointees in Positions Added to the Classified Service

(a) When additional state agencies or parts of state agencies are added to the classified service by executive order of the Governor with the consent of the Board and the appointing authority concerned, and when additional county or municipal agencies are added to the classified service by agreement between the local government and the Director with the approval of the Board, a date for the addition shall be fixed by agreement.

(b) All appointments made on and after that date to the positions added to the classified service shall be made in accordance with this rule.

(c) The Director shall administer qualifying examinations to any person employed in a position added to the classified service who has been employed in that position continuously for six months immediately prior to the addition. If recommended by the appointing authority, the Director may admit the employee to a qualifying examination regardless of the minimum qualifications for the class to which his or her position is allocated. The appointing authority shall appoint each person passing the qualifying examination for probationary or permanent employment. The qualifying examinations shall be held within six months after the date of addition of the position to the classified service. The examinations shall include appropriate written and performance tests where these tests are included in open competitive examinations for the class. The appointing authority shall, within thirty days after the examination, separate from employment any employee who fails to pass the qualifying examination unless there are no available eligibles on the register for the class, in which case his or her employment may be continued but he or she must be separated from employment within thirty days after certification of available eligibles.

(d) The appointing authority shall, within thirty days of the date of affiliation, separate from employment any person employed in a position added to the classified service for less than six months preceding that date of affiliation unless there are no available eligibles on the register for the class. If there are no available eligibles, his or her employment may be continued but he or she must be separated from employment within thirty days after certification of available eligibles. He or she may be given a probationary appointment if he or she has passed an open competitive examination for the class and is eligible for appointment within the provisions of subsection 9.2 of this rule.

(e) In making the appointments provided for in subdivisions 9.1(c) and (d) of this rule the appointing authority may count employment in the agency immediately prior to the appointments as part or all of the probationary period required under Section 10 of this rule. The appointing authority shall promptly report to the Director his or her decision for the records.

9.2. Original Appointments

(a) Appointing authorities shall make all original appointments to classified positions in accordance with this rule. An appointing authority shall select for each position first from the eligibles on an appropriate preference register in accordance with subdivision 12.4 (i) of this rule. Upon exhaustion of the preference register, the appointing authority shall select for each position from the top ten names on the register, including any persons scoring the same as the tenth name, or any persons scoring at or above the ninetieth percentile on the open competitive examination, as provided by subsection 8.2 of this rule. The appointing authority may exclude the names of those eligibles who failed to answer or who declined appointment or of those eligibles to whom the appointing authority offers an objection in writing based on subsection 6.4 of this rule and the objection is sustained by the Director.

(b) In selecting persons from among those certified, the appointing authority shall give due consideration, based on job related criteria, to all available eligibles and may examine their applications and reports of investigations and may interview them. Final selection shall be reported in writing by the appointing authority to the Director and shall include a statement by the appointing authority or his or her designee certifying that the person charged with making the selection: complied with the requirements of this subdivision; did not make the selection based on favoritism shown or patronage granted; and, considered all available eligibles for the position.

(c) If the eligible selected declines the appointment, the appointing authority shall transmit evidence of declination and other data to the Director for the permanent record. The Director may consider an eligible as having declined appointment if the eligible fails to reply after five days in addition to the time allowed for transmission of the letter and return of reply, or 48 hours, if notified by telegram. If an eligible accepts an appointment but fails to present himself or herself for duty at the time and place specified without giving reasons for the delay satisfactory to the appointing authority and the Director, he or she shall be considered to have declined the appointment.

9.3. Provisional Appointments

(a) If there are urgent reasons for filling a position and there is no appropriate preference register and there are fewer than three available eligibles on the competitive register established as a result of an examination for the position, and no other appropriate register exists, the appointing authority may submit to the Division of Personnel the name of a person to fill the position pending examination and establishment of a register. If that person's

qualifications have been certified by the Director as meeting the minimum qualifications as to training and experience for the position, that person may be provisionally appointed to fill the existing vacancy until an appropriate register is established and appointment made from the register. The position must be classified and minimum qualifications established for the position in accordance with this rule before provisional appointments may be made. No provisional appointment shall be continued for more than thirty days after an appropriate register has been established for the class of position and in no event for more than 6 months from the date of appointment, nor shall successive provisional appointments of the same person be permitted, nor shall a position be filled by repeated provisional appointments.

(b) Time spent on a leave of absence without pay shall not extend the period of a provisional appointment.

9.4. Intermittent Appointments

~~_____ (a) The Director shall prepare lists of names of persons who have successfully passed an examination for intermittent positions. The lists shall consist of the names of the successful candidates arranged in the order of final scores on the examination. Appointing authorities shall make their selection for each position from the ten highest available names on the list or from the names of any persons scoring at or above the ninetieth percentile. Once a person has received an intermittent appointment in accordance with this subdivision he or she may be given successive intermittent appointments without regard to standing on the list.~~

~~_____ (b) In no case shall intermittent employment of an individual continue for more than 945 hours worked and/or hours of paid sick and/or annual leave in any twelve-month period beginning with the date of the original intermittent appointment, nor shall an intermittent appointment be preceded or followed by a temporary appointment or any other limited term employment within the twelve-month period.~~

9.5. Temporary Appointments

~~_____ (a) If an employee is needed for a temporary period, the Director shall make a certification of the names of those eligibles who have indicated a willingness to accept temporary employment in the order of their places on an appropriate competitive register. The Director shall make the certification in the manner prescribed in Section 8 of this rule. Appointing authorities shall make temporary appointments in the same manner as prescribed in this rule for probationary appointments.~~

~~_____ (b) The duration of a temporary appointment shall be limited to the period of the need and in no event shall a temporary appointment continue for more than 6 consecutive months in any twelve-month period. The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or his or her eligibility for a probationary appointment. Successive temporary appointments to the same position shall not be made nor shall an employee receive continued temporary appointments in the same agency, nor shall a temporary appointment be preceded or followed by an intermittent appointment or any other limited term employment within the twelve-month period.~~

9.6 9.4. Limited Term Temporary Employment - Appointing authorities may employ individuals for a limited period of time not to exceed 1,000 hours in any twelve-month period in accordance with the provisions of this Rule and W.Va. Code §29-6-1 et seq. Individuals employed under the provisions of this subsection are exempt from the classified service. Limited term employment includes, but is not limited to, 30-day emergency, 90-day exempt, temporary, intermittent, and student appointments and seasonal employment with a state forest, park or recreational area.

9.7: 9.5 Posting of Job Openings - Whenever a job opening occurs in the classified service, the appointing authority shall post a notice within the building, facility or work area and throughout the agency that candidates will be considered to fill the job opening. Posting of job openings using electronic or other communications media shall satisfy the requirement to post a notice provided that the appointing authority makes regular and convenient access to the media used available to each classified employee in the agency, or otherwise provides notice to each classified employee in the agency. The notice shall be posted for at least ten (10) working days before making an appointment to fill the job opening. The notice shall state that a job opening has occurred, describe the duties to be performed, and the class to be used to fill the job opening.

(a) The term job opening refers to any vacancy to be filled by original appointment, promotion, demotion, lateral class change, reinstatement, or transfer, except any vacancy filled as a result of an employee exercising his or her bumping rights as provided in subdivision 12.4.(g) of this rule, and to any position to be filled by reallocation. Posting of a position to be filled by reallocation may be limited to the organizational unit in which the position exists, and the posting shall specify that consideration for the position is limited to employees of the organizational unit.

(b) The posting notice shall include a description of the duties to be performed by the person selected, the minimum qualifications for the position, the job class to be used in filling the job opening, the salary level or range that will be considered, the full-time equivalent for the position, and the job location.

(c) An established closing date, if any, for the receipt of applications shall allow sufficient time to ensure that the job vacancy circulation has been posted throughout the agency for ten (10) working days. The naming of an individual to fill the position is the appointment and is not altered by the fact that the individual will not assume the duties until a later date. Therefore, the agency shall not make an appointment to a position prior to the deadline for receipt of applications as listed on the posting.

(d) The appointing authority shall give due consideration of to those employees who apply and are eligible for the posted vacancy.

(e) If an individual selected for a posted vacancy refuses the offer of employment, fails to report to work, or, if after reporting to work, resigns or otherwise separates from employment within the first ten work days of employment, the appointing authority is not required to re-post the vacancy prior to an appointment to the vacant position.

~~(e)~~ (f) If a posted vacancy is not filled within six months of the established closing date, the appointing authority must re-post the vacancy prior to an appointment to the vacant position.

~~(f)~~ (g) Any employee in the classified service who believes that the posting time and notice requirements of this subdivision have been violated or who is denied consideration for the job opening has the right to initiate a grievance as provided for in W.Va. Code §29-6A-1 et seq.

~~(g)~~ (h) The vacancy posting requirements in this subdivision shall apply to all classified position vacancies except vacancies filled as a result of employees exercising bumping rights, demotions with prejudice and/or transfers for cause.

Section 10. Probationary Period

10.1. Nature, Purpose, and Duration

(a) The probationary period is a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency. It is an integral part of the examination process and the appointing authority shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work.

(b) Appointing authorities shall make all original appointments to permanent positions from officially promulgated registers for a probationary period of not more than one year. The Board shall fix the length of the probationary period for each class of position. The appointing authority shall notify the Director of Personnel when a probationary period has been completed and permanent status has been granted. This subdivision shall not be construed to prohibit application of time served in a provisional status to completion of a probationary period. The period of provisional appointment may apply toward completion of the probationary period only for that part served continuously, in the same class, and immediately prior to an original appointment. However, it is the responsibility of the appointing authority to state in writing at the time permanent status is being granted that the time served in a provisional status has been applied toward completion of a probationary period.

(c) Time spent by probationary employees on a leave of absence without pay extends the probationary period.

10.2. Conditions Preliminary to Permanent Appointment

(a) Four weeks prior to the end of the probationary period, the appointing authority shall obtain from the probationary employee's supervisor a statement in writing recommending that the employee be continued or not be continued in service. This statement shall include an appraisal of the employee's services and should include a service rating in conformity with the system of performance evaluation prescribed by the Director. If the appointing authority determines that the services of the employee shall be retained, the appointing authority shall notify the employee and the Director of Personnel of the action no later than the last day of the probationary period.

(b) In the event the appointing authority takes no action on the status of a probationary employee before the expiration of the probationary period, either to retain or terminate, the employee shall be considered as having attained permanent status. Permanent status begins the first day following the expiration of the probationary period.

10.3. Demotions during Probation - The serving of a probationary period shall not, of itself, prevent an employee from being demoted to a position in a lower class, provided he or she meets the minimum qualifications of the lower class. However, the appointing authority may not take this action until the employee has been presented with the reasons in writing and has been given a reasonable time to reply in writing, or to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall not take this action until the employee has completed one-third of the probationary period and the appointing authority has obtained the approval of the Director of Personnel. The probationary period for the class of position to which the employee is demoted begins with the date of demotion.

10.4. Transfers during Probation - An appointing authority shall not transfer an employee during his or her probationary period to a position in another class. An appointing authority shall not transfer an employee, certified to a vacancy on a geographic selective certification in accordance with the provisions of subsection 8.3 of this rule, from that geographic area to any other geographic area or class.

10.5. Dismissal during Probation

(a) If at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with subsection 12.2. of this rule. If the appointing authority gives the fifteen calendar days notice on or before the last day of the probationary period, but less than fifteen calendar days in advance of that date, the probationary period shall be extended fifteen days from the date of the notice and the employee shall not attain permanent status. This extension shall not apply to employees serving a twelve month probationary period.

(b) The Director may restore the name of a dismissed probationary appointee who has been dismissed to the register from which he or she was certified, in accordance with the procedure described in subsection 12.7 of this rule, but the Director shall not in the future certify the name of that person to the same appointing authority from the same register.

Section 11. Promotions, Demotions and Transfers

11.1. Method of Making Promotions

(a) In filling vacancies, appointing authorities shall make an effort to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees. Whenever practical and in the best interest of the service, an appointing authority may fill a vacancy by promotion, after consideration of the eligible permanent employees in the agency or in the classified service based on demonstrated capacity and quality and length of service.

(b) The Director must certify that a candidate for promotion possesses the qualifications for the position as set forth in the specifications for the class of position for which he or she is a candidate, and the appointing authority may require the candidate to qualify for the new position by a promotional competitive or non-competitive examination administered by the Director.

11.2. Promotion by Competitive Examination

(a) If it is determined by the appointing authority to fill vacancies in a particular class of position by promotion by competitive examination, the examination shall be given under the direction of the Director. To be eligible for promotion, an employee must, at the time the promotion is effective, have permanent status and must meet the minimum qualifications as to training and experience for the class of position. A promotional competitive examination shall consist of any combination of the following: written tests, ratings on training and experience, evaluation of recorded service ratings and seniority, performance tests and oral examinations. The combination in each case and the procedure for the determination of the passing grade shall be announced by the Director in advance of the examination, and shall take into consideration approved practices.

(b) The Director shall place the names of all employees who receive a passing grade on a promotional register for the class of position in order of their examination ratings.

(c) If a promotional and an original register exist, the Director shall certify the same number of names from each register in accordance with Section 8 of this rule. The appointing authority may make his or her selection from the names submitted from either register, giving such preference to present employees as the good of the service will permit.

11.3. Promotion by Noncompetitive Examination - If it is determined by the appointing authority to fill a vacancy by a non-competitive promotional examination, an employee proposed for promotion shall be examined by the Director in accordance with subsection 11.2 of this rule, and if found to qualify for the class will be certified.

11.4. Demotions - There are two types of demotion, demotion with prejudice and demotion without prejudice. A demotion with prejudice is a reduction in pay and/or a change in job class to a lower job class due to the inability of an employee to perform the duties of a position or for improper conduct. A demotion without prejudice is a change in job class of an employee to a lower job class, a transfer of an employee to a lower job class, or a reduction in the employee's pay due to business necessity. ~~An appointing authority may demote a permanent employee after presenting the employee with the reasons for the demotion stated in writing, and allowing the employee a reasonable time to reply in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall file the statement of reasons for the demotion and the reply with the Director of Personnel.~~ Prior to the effective date of the demotion, the appointing authority or his or her designee shall: meet with the employee in a predetermination conference and advise the employee of the contemplated demotion; give the employee oral notice confirmed in writing, or written notice of the specific reason or reasons for the demotion; and, give the employee a minimum of fifteen calendar days advance notice of the demotion to allow the employee a reasonable time to reply to the demotion in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall file the reasons for the demotion and the reply, if any, with the Director of Personnel. A predetermination conference and fifteen days notice are not required when the demotion is requested by the employee, voluntarily and without duress, such as to accept a posted position for which the employee has applied. An appointing authority may demote a probationary employee as provided for in subsection ~~10.4~~ 10.3 of this rule.

11.5. Lateral Class Change - An appointing authority may move a permanent employee from a position in one class to a vacant position in another class in the same pay grade if the employee is found by the Director to qualify for the vacant position.

11.6 Transfers

(a) Except as otherwise provided in subsection 10.4 of this rule, appointing authorities may transfer a permanent employee from a position in one organizational subdivision of an agency to a position in another organizational subdivision of the same or another agency at any time. In the case of inter-agency transfers, an appointing authority shall transfer all hours of accumulated annual and sick leave and all service credit with the employee. An appointing authority shall not treat an inter-agency transfer as a resignation and shall not require an employee transferring inter-agency to submit a resignation letter except when the employee is resigning from a classified position to accept employment in a classified-exempt position.

(b) Appointing authorities shall report all inter and intra-agency transfers within a class to the Director on appropriate forms at the time of the transfer. The Director shall approve transfers to comparable classes prior to the transfers and shall require that the employee meet the minimum qualifications of the new class.

Section 12. Separations, Suspension, and Reinstatement

12.1. Resignations - An employee who resigns shall present the reasons for the resignation in writing to the appointing authority. The appointing authority shall forward a copy of the resignation to the Director of Personnel who shall record the resignation. If a written resignation cannot be obtained, the appointing authority shall notify the Director of Personnel in writing of the resignation of the employee and the circumstances of the resignation. The appointing authority shall not treat an intra-agency nor an inter-agency transfer as a resignation except when the employee is resigning from a classified position to accept employment in a classified-exempt position.

12.2. Dismissals

(a) An appointing authority may dismiss any employee for cause. Prior to the effective date of the dismissal, the appointing authority or his or her designee shall: meet with the employee in a predetermination conference and advise the employee of the contemplated dismissal; give the employee oral notice confirmed in writing, or written notice of the specific reason or reasons for the dismissal; and, give the employee a minimum of fifteen calendar days advance notice of the dismissal to allow the employee a reasonable time to reply to the dismissal in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall file the reasons for dismissal and the reply, if any, with the Director of Personnel. A predetermination conference and fifteen days notice are not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct. An appointing authority may dismiss an employee after oral notice stating specific reasons, confirmed in writing, when the dismissed employee's action(s) constitute a threat to the safety or welfare of persons or property.

(b) An appointing authority may require that an employee dismissed for cause immediately vacate the workplace, or an employee dismissed for cause may elect to do so. If the appointing authority requires a dismissed employee to immediately vacate the workplace in lieu of working during the notice period, or if an employee who receives notice of dismissal for cause elects to immediately vacate the workplace, the employee is entitled to receive severance pay attributable to the time he or she otherwise would have worked, up to a maximum of fifteen calendar days after vacating the workplace. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the dismissal.

(c) An appointing authority may dismiss an employee for job abandonment who is absent from work for more than three consecutive workdays without notice to the appointing authority of the reason for the absence as required by established agency policy. The dismissal is effective fifteen calendar days after the appointing authority notifies the employee of the dismissal. Under circumstances in which the term job abandonment becomes synonymous with the term resignation, an employee dismissed for job abandonment is not eligible for severance pay.

(d) In providing any employment verification or reference for a dismissed employee, the appointing authority must disclose that the separation was due to dismissal and that the employee did not leave employment in good standing, and must comply with the disclosure requirements of West Virginia Code §55-7-18a.

12.3. Suspension - An appointing authority may suspend any employee without pay for cause or to conduct an investigation regarding an employee's conduct which has a reasonable connection to the employee's performance of his or her job. The suspension shall be for a specific period of time, except where an employee is the subject of an indictment or other criminal proceeding. Accrued leave shall not be paid to employees during any period of suspension. Prior to the effective date of the suspension, the appointing authority or his or her designee shall: meet with the employee in a predetermination conference and advise the employee of the contemplated suspension; give the employee oral notice confirmed in writing, or written notice of the specific reason or reasons for the suspension; and, give the employee a minimum of three working days advance notice of the suspension to allow the employee being suspended a reasonable time to reply in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. A predetermination conference and three working days advance notice are not required for employees in certain cases when the public interests are best served by withholding the notice. The appointing authority shall file the statement of reasons for the suspension and the reply, if any, with the Director of Personnel.

12.4. Layoff

(a) When it becomes necessary by reason of shortage of work or funds, abolition of position, material changes in duties or organization, or to permit reinstatement of employees released from periods of military service in the armed forces of the United States or to implement the provisions of this subdivision, the appointing authority may initiate a layoff in accordance with the provisions of this rule.

(b) Organizational Unit. The appointing authority shall submit to the State Personnel Board for approval a description of the unit or units to which a layoff will apply. The organizational unit may be an entire agency, division, bureau, or other organizational unit.

(c) Prior to the separation or demotion without prejudice of any employee by layoff, the appointing authority shall file with the Director a proposed plan which shall include:

1. a statement of the circumstances requiring the layoff;
2. the approved organizational unit(s) in which the proposed layoff will take place; and,
3. a list of the employees in each class affected by the layoff in order of retention.

(d) It is the duty of the Director to verify the details on which the lists are based and to notify the appointing authority in writing of the plan's approval.

(e) The plan followed by the appointing authority shall be available, upon request in writing, to any employee or adversely affected former employees.

(f) Order of Separation. After the appointing authority has determined the number of positions to be abolished and the Board has approved the organizational unit to which the layoff will apply, the order of separation shall be applied in the following manner:

1. employees without permanent status in the same class or classes identified for layoff in the following order: emergency, ninety-day exempt, student, seasonal, contract, intermittent, temporary, exempt part-time professional, provisional, and probationary.

2. permanent employees by job class on the basis of tenure as a permanent employee of a state agency or in the classified service regardless of job class or title. No tenure credit accrues for periods during which terminal annual leave is paid nor for periods during which an employee is not paid a wage or salary except for military leave, educational leave, or periods during which the employee is paid temporary total disability benefits under the provisions of WV Code §23-4-1 for a personal injury received in the course of and resulting from covered employment as a permanent employee of a state agency or in the classified service, or unless otherwise provided by State or Federal statute. In the event of a tie in the order of separation, the appointing authority or his or her representative and those employees who are tied shall agree on a means of breaking the tie by either a coin toss or lot drawing and shall notify the Director in writing of the agreement and the results.

(g) Bumping Rights. A permanent employee who is to be laid off may request a lateral class change or an demotion without prejudice to a job class in a lower pay grade in the occupational group in the same unit approved by the Board for reduction in force unless the results would be to cause the layoff of another permanent employee who possesses greater seniority than the employee who is exercising the request for lateral class change or demotion without prejudice. The employee requesting the lateral class change or demotion without prejudice must be available for the work schedule and at the work location of the job to which he or she has requested the change or demotion. A permanent employee who is laid off under these provisions as a result of another employee having a greater seniority requesting a lateral class change or demotion with prejudice has the same bumping rights as provided for in this procedure. The Director shall develop the occupational groups in the classified service based on similarity of work and required knowledges, skills and abilities.

(h) Salary Reductions for Layoff. Salary reductions resulting from provisions of this subdivision shall follow subsection 5.6 of this rule for pay on demotion.

(i) Recall. Recall of a permanent employee shall be to the agency as a whole and in reverse order of the layoff to the class from which the employee was laid off or any lower class in the class series or to any class previously held in the occupational group. A permanent employee shall remain on the recall list for the length of his

or her tenure on the date of the layoff or for a period of two years, whichever is less. The agency shall first consider for reemployment those former permanent employees whose names appear on the recall list for the class in which a vacancy has occurred and no original appointment of a new employee or reinstatement of a former permanent employee shall be made to the class until all former permanent employees on the recall list have been given first chance of refusal of the vacancy. A permanent employee shall be recalled to jobs within the county wherein his or her last place of employment is located or within a contiguous county. The agency shall notify any laid off permanent employee who is eligible for recall to a position under these provisions by certified mail of the vacancy. It is the responsibility of the employee to notify the agency of any change in mailing address.

(j) Preference Hiring. When filling vacancies at agencies, appointing authorities shall, for a period of twelve months after the layoff of a permanent classified employee in another agency, give preference to those laid-off qualified permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities. This preference shall not supersede the recall rights of employees who have been laid off in the agency. Preference hiring shall be accomplished by original appointment.

(k) Reporting. The appointing authority shall report the names of all employees who are to be laid off to the Director in writing no later than the date notification of the layoff is mailed to the employee.

(l) Appeals. Employees shall file appeals from layoffs in accordance with W.Va. Code §29-6A-1 et seq.

12.5. Like Penalties for Like Offenses - In dismissals for cause and other disciplinary actions, appointing authorities shall impose like penalties for like offenses.

12.6. Reinstatement

(a) A former employee who had attained permanent status under the Division of Personnel who has resigned or who has been laid off is eligible for reinstatement, provided that he or she has been certified by the Director as meeting the current minimum qualifications as to training and experience of the class of position to which he or she is being appointed. Prior to making the certification, the Director may require the employee to pass a qualifying examination. The Director may refuse to reinstate a former employee for any of the causes stipulated in subdivision 6.4.(a) of this rule.

(b) Appointing authorities shall reinstate ~~provisional, probationary, or permanent~~ all qualifying employees who ~~leave the classified left state service to enter the armed forces of the United States in time of war or national emergency or under compulsory provisions of law of the United States in time of peace to their former positions or to positions of like class, seniority and pay within 30 days following application provided that within 90 days after release from active military service the employees indicate in writing or in person to the agency their readiness and ability to return to classified employment two weeks of their requests provided that such employees satisfy the eligibility standards set forth in Federal law commonly known as the Uniformed Services Employment and Reemployment Rights Act (USERRA). Veterans hospitalized immediately on release from the armed services due to service-connected disabilities must apply for reinstatement within 90 days of their release from hospitalization. Appointing authorities shall also reinstate, at the end of their recovery periods, all qualifying employees who are hospitalized for, or convalescing from, illnesses or injuries incurred in, or aggravated during, the performance of military service provided that such employees satisfy the eligibility standards set forth in USERRA. Appointing authorities may permit qualifying employees to return to work at less than full duty, but the terms of return are subject to the same conditions specified in subdivision 14.4(h) of this rule.~~

(c) ~~Any veteran who has been in the armed services of the United States and who has been granted military leave from one of the agencies and who returns to the agency~~ qualifying employee who is reinstated to state employment under the provisions of subdivision 12.6.(b) shall be granted all within-grade salary adjustments and may be granted salary advancements he or she would have received had he or she remained in active status in the classified service. He or she shall be credited with all annual and sick leave accumulated and unused at the time the military leave began. The appointing authority shall uniformly apply the provisions in this subdivision to all ~~veterans within an agency having had military leave and who return to the agency~~ qualifying employees who are reinstated to state employment under the provisions of subdivision 12.6.(b).

Section 13. Reconsideration - Any applicant or employee may request that the Director reconsider a decision which directly affects the applicant or employee. Unless otherwise specified in this rule, the request must be submitted in writing within fifteen days of the applicant's or employee's notification of the decision. Within thirty days of receipt of the applicant's or employee's request for reconsideration, the Director shall notify the applicant or employee of his or her decision.

Section 14. Attendance and Leave. In compliance with West Virginia Code §21-5C-1 et seq., §2-2-1 et seq., §15-5-15a, and §29-6-10 the following provisions apply to classified employees.

14.1. Official Holidays

(a) Employees shall be released from work with pay in observance of the following official holidays : New Year's Day, the first day of January; Martin Luther King's Birthday, the third Monday of January; ~~Lincoln's Birthday, the twelfth day of February; Washington's Birthday~~ Presidents' Day, the third Monday of February; Memorial Day, the last Monday in May; West Virginia Day, the twentieth day of June; Independence Day, the fourth day of July; Labor Day, the first Monday of September; Columbus Day, the second Monday of October; Veterans' Day, the eleventh day of November; Thanksgiving Day, the fourth Thursday of November; Lincoln's Day, the fourth Friday of November; Christmas Day, the twenty-fifth day of December; any day on which ~~an~~ a Primary or General election (~~Primary, General, or Special~~) is held throughout the State, and, such other days as the President, Governor or other duly constituted authority proclaim to be official holidays or days of special observance or thanksgiving, or days for the general cessation of business.

(b) When a holiday falls on a Sunday, the following Monday shall be observed as the official holiday. When a holiday falls on a Saturday, the previous Friday shall be observed as the official holiday. When Christmas or New Year's Day occurs on Tuesday, Wednesday, Thursday, or Friday, the last half of the scheduled workday immediately preceding the holiday will be given as time off not to exceed four hours. When an agency must modify holiday observances to accommodate around-the-clock shifts or other special needs, the agency shall notify employees in advance of the modification and shall schedule alternate holiday observances on days as close as possible to the holidays. The total amount of paid time off for holidays shall not exceed eight hours per full day holiday.

(c) Part-time employees are entitled to receive time off with pay for holidays, regardless of whether the holidays fall within the employees' regular work schedules, in proportion to the amount of time worked as compared to the employer's standard workweek for a full-time employee.

(d) To receive pay for any holiday, an employee must either, at a minimum, work or be on approved paid leave for either the his or her full scheduled workday before or the full scheduled workday after immediately preceding the holiday and either work or be on approved paid leave for any fraction of the at least one quarter hour of his or her scheduled workday before or the scheduled workday after immediately following the holiday to receive pay for the holiday or vice versa. No employee is entitled to payment. An employee is not eligible to be paid for any holiday that occurs prior to the his or her first day of work or after the his or her date of separation (as defined in subsection 3.25).

(e) Agencies Appointing authorities shall make reasonable accommodation to an employee's religious holidays as required by law.

(f) An appointing authority shall, if necessary, allow any employee required to work on any election day ample and convenient time and opportunity to cast his or her vote. Upon receipt of a written request at least three work days prior to an election, an appointing authority shall give any employee who has less than three hours of time away from work during hours polling places are open, up to three hours of paid time off between the opening and closing of the polls, to vote. The appointing authority shall schedule such time off to avoid impairment or disruption of essential services and operations.

14.2. Agency Work Schedules - Each appointing authority shall establish the work schedule for the

employees of his or her agency. The work schedule shall specify the number of hours of actual attendance on duty for full-time employees during a workweek, the day and time that the workweek begins and ends, and the time that each work shift begins and ends. The work schedule may include any work shifts the appointing authority determines to be appropriate for the efficient operation of the agency, including work shifts comprising work days of more than eight hours and/or work weeks of less than five days. The work schedules and changes must be submitted to the Director within fifteen (15) calendar days after employees commence work under the schedule.

14.3. Annual Leave

(a) Amount, Accrual - Except as otherwise noted in this rule, each permanent, probationary, and provisional employee is eligible to accrue annual leave with pay and benefits. The table below lists the rates of accrual according to the employee's length of service category and the number of hours of annual leave that may be carried forward from one calendar year to another. Annual leave is accrued at the end of each pay period or on the last workday for separating employees. It may be prorated for employees granted a medical leave of absence or satisfying the conditions for approval of a medical leave of absence in accordance with subdivision 14.8(c) of this rule. Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period based on the proper length of service category. Annual leave cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed 40 hours. Provided, however, employees on unpaid leave who are receiving workers' compensation temporary total disability benefits continue to accrue annual leave while receiving such benefits.

Length of Service Category	Accrual Rate: Hours Equal To	Carry-forward Rate: Hours Equal To
Less than 5 years of qualifying service	1.25 days/month	30 days
5 years but less than 10 years of qualifying service	1.50 days/month	30 days
10 years but less than 15 years of qualifying service	1.75 days/month	35 days
15 years or more of qualifying service	2.00 days/month	40 days

(b) Service to Qualify - Qualifying service for length of service category is based on State employment or employment in the classified service. No service credit accrues for periods during which an employee is not paid a wage or salary unless otherwise provided by State or Federal statute. Provided, however, employees on unpaid leave who are receiving workers' compensation temporary total disability benefits continue to accrue service credit while receiving such benefits.

(c) Requesting, Granting - Accrued annual leave shall be granted at those times that will not materially affect the agency's efficient operation or when requested under the provisions of W. Va. Code §21-5D-1 et seq., the Parental Leave Act and 29 U.S.C. §2601-2654, The Family and Medical Leave Act of 1993. The employee shall request annual leave in advance of taking the leave except as noted elsewhere in this subdivision. Annual leave may not be granted in advance of the employee's accrual of the leave. Agencies are encouraged to grant annual leave when hazardous conditions make going to and from work difficult.

(d) Coverage

1. All full-time and part-time permanent, probationary, and provisional employees shall accrue annual leave.

~~1. 30-day emergency, per diem, student, seasonal, or 90-day exempt~~ 2. Temporary and seasonal employees shall not accrue annual leave.

2.3. Annual leave accrued by provisional, ~~intermittent, irregular part-time and temporary~~ ~~(appointed from the register)~~ employees shall be computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period not to exceed the full-time work schedule of the employer. ~~These~~ A provisional employees must take ~~their~~ his or her accrued annual leave prior to the expiration of the period of appointment, unless immediately followed by an appointment from the register, or the leave is forfeited.

3.4. Annual leave accrued by part-time employees shall be computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period based on the proper length of service category.

(e) Minimum Charge - The minimum charge against annual leave shall be one quarter (¼) hour. Additional leave shall be in multiples of a quarter hour.

(f) Separation from Employment - The appointing authority shall pay an employee who separates from employment for any reason for all accrued and unused annual leave. An employee does not accrue annual leave after his or her date of separation. The payment shall be made according to one of the following methods:

1. An employee may elect to be paid in semi-monthly installments at his or her usual rate of pay as if employment were continuing until the pay period during which the accrued annual leave is exhausted. If the last day for which leave payment is due falls before the day on which the pay period ends, terminal annual leave payment for those days within that pay period shall be calculated using the daily rate for the half-month in which the last day on payroll occurs. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures. No deductions may be made for contributions toward retirement from the payment for terminal annual leave;

2. Any eligible employee as defined in W.Va. Code §5-5-1 who is separated from employment by resignation, layoff, dismissal, retirement, death, or termination, may be paid in a lump sum, at his or her option, for accrued and unused annual leave. Terminal annual leave payment for an employee who selects a lump sum payment shall be calculated as if employment were continuing until the pay period during which the accrued annual leave is exhausted in accordance with paragraph one of this subdivision. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures. The lump sum payment shall be made by the time of what would have been the employee's next regular pay day had his or her employment continued. No deductions may be made for contributions toward retirement from the lump sum payment; or

3. An employee who retires may elect not to receive payment for any or all terminal annual leave and may apply the balance towards extended insurance coverage under guidelines established by the Public Employees Insurance Agency or to acquire additional credited service in the appropriate state retirement system.

(g) Transfer of Annual Leave

1. When a classified employee transfers or otherwise changes employment from one agency to another, all service credit and hours of accrued annual leave shall be transferred. The previous employer shall provide written documentation of the employee's annual leave balance to the other agency within thirty (30) calendar days after the employee commences work.

2. Annual leave accrued while in exempt or classified-exempt permanent employment shall be transferred to classified employment.

(h) When Sick Leave Exhausted - Annual leave, if requested, shall be granted in circumstances when sick leave or the sick leave allowance for an employee's immediate family is exhausted. The provisions of subdivision 14.4.(g) of this rule regarding the necessity for a physician's statement when sick leave is used apply when annual leave is used under these circumstances.

14.4. Sick Leave

(a) Accrual - Except as otherwise provided in this ~~subdivision rule~~, each permanent, probationary, and provisional employee shall receive accrued sick leave with pay and benefits. Sick leave is computed on the basis of

hours equal to 1.5 days per month for full-time employees. Sick leave is accrued at the end of each pay period or on the last workday for separating employees. It may be prorated for employees granted a medical leave of absence or satisfying the conditions for approval of a medical leave of absence in accordance with subdivision 14.8(c) of this rule. Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period. Sick leave cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed 40 hours. There is unlimited accumulation of sick leave.

(b) Coverage

1. All full-time and part-time permanent, probationary, and provisional employees shall accrue sick leave.

~~1. Sick leave shall not be accorded 30-day emergency, 90-day exempt, student, or per diem employees.~~ 2. Temporary and seasonal employees shall not accrue sick leave.

~~2 3. Provisional, temporary (appointed from the register), irregular part-time and intermittent~~ employees shall accrue sick leave in proportion to normal hours worked and/or hours of paid sick and/or annual leave in the pay period. The leave accrued by a provisional employee expires at the termination of the period of employment unless immediately followed by an appointment from the register for a permanent position.

~~3. Part-time, probationary, and permanent~~ employees shall accrue sick leave with pay and benefits in proportion to hours they are employed to work annually.

(c) Minimum Charge - The minimum charge against sick leave is one quarter (¼) hour. Additional leave is charged in multiples of one quarter hour.

(d) Maximum Charge - The maximum charge against sick leave is one work year per substantially continuous absence. The appointing authority may at his or her discretion grant additional accrued sick leave if the employee's disability, with or without accommodation, as verified by a physician, is not of such a nature as to render the employee permanently unable to perform the essential duties of the position.

(e) Separation from Employment - Sick leave does not accrue after the date of separation as defined in this rule.

1. Retirement - An employee eligible to retire at the time of separation from employment may use unused sick leave to purchase extended insurance coverage upon retirement under guidelines established by the Public Employees Insurance Agency or upon retirement to acquire additional credited service in the state retirement system under guidelines established by the Consolidated Public Retirement Board.

2. All Other Separations - All accumulated sick leave shall be cancelled as of the date of separation. If an employee returns to eligible employment, as provided in subdivision (b) of this subsection, within twelve (12) calendar months, including the first working day the reinstatement could be accomplished, all cancelled sick leave shall be restored. However, if the employee returns to eligible employment after more than twelve (12) calendar months from the effective date of separation of employment, no more than thirty (30) days of cancelled sick leave shall be restored. If an employee who has been laid off is ~~recalled from a layoff~~ re-employed in eligible employment, all cancelled sick leave shall be restored.

(f) Granting - Sick leave may not be granted in advance of the employee's accrual of the leave. Appointing authorities shall grant accrued sick leave requested by employees for the following reasons:

1. Illness - Sick leave shall be granted in the event of an employee's illness ~~of, or injury to, an employee~~ which incapacitates him or her from performing his or her duties ;

2. Death in the immediate family of the employee - Sick leave shall be granted up to 3 days to an employee for the death of any member of his or her immediate family as defined in this rule;

3. Exposure to Contagious Disease - Sick leave shall be granted in the case of exposure to a contagious disease when a physician determines and states in writing that the employee's presence on duty may jeopardize the health of others;

4. Pregnancy - An incapacity due to pregnancy shall be charged to sick leave under the same conditions applying to any illness;

5. Routine Dental and Medical Appointments-Employee - Routine dental and medical appointments for treatment or examination of the employee shall be charged to sick leave. Reasonable travel time for the appointments may also be charged to sick leave not to exceed a total of three hours per occurrence ;

6. Illness and/or Routine Dental and Medical Appointments-Immediate Family - Absence for illness or routine medical and dental appointments of a member of an employee's immediate family as defined in this rule shall be charged to accrued sick leave, not to exceed 40 hours per calendar year. Reasonable travel time for the appointments may also be charged to sick leave not to exceed a total of three hours per occurrence; or,

7. Work related illness or injury - An employee may elect to use sick leave due to a personal injury received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code §23-4-1. However, an employee who elects not to use sick leave under this paragraph must apply for a medical leave of absence without pay as provided under part 14.8(c)1.a.2 of this rule.

(g) Physician's Statement

1. The Director shall prescribe a physician's statement form to be supplied by all agencies to its employees. All agencies shall use this form or an alternate form or method, approved by the Director, to obtain the necessary information.

2. ~~Within two days of return to work, an employee shall furnish a prescribed physician's statement form from the attending physician/practitioner for all consecutive days of sick leave granted beyond three working days. Any employee requesting sick leave for an absence of more than three consecutive work days must, within two days of his or her return to work, provide a prescribed physician's statement from the attending physician for the entire absence.~~ If the employee's physician/practitioner has placed restrictions or limitations on the employee's work activities, the employee must furnish the prescribed physician's statement immediately upon return to work. The physician's statement form shall specify the period of incapacity and state that the employee was unable to perform his or her job or that the employee's absence was due to reasons provided in Paragraph 14.4(f)6 of this rule for a member of the employee's immediate family.

3. In the absence of a prescribed physician's statement form, the entire absence shall be charged to unauthorized leave as provided in subsection 14.6 of this rule, and the employee's pay shall be docked the following pay period for the entire period of absence. The appointing authority shall notify the employee in writing that his or her pay is being docked. If the physician's statement from the attending physician specifies a period of incapacity that is less than the entire absence, only the period of incapacity shall be charged to sick leave and the remaining absence shall be charged to annual leave, if annual leave is available to the employee and is not otherwise restricted.

4. For extended periods of sick leave, a prescribed physician's statement form confirming the necessity for continued leave must be submitted within thirty (30) calendar days of the commencement of the sick leave and must indicate a date the physician will release the employee to return to work or a date the physician will re-evaluate the employee's medical condition. For employees being re-evaluated, an additional physician's statement must be submitted upon re-evaluation. Failure to produce the required statement is grounds to terminate further sick leave benefits and the appointing authority shall immediately place the employee on unauthorized leave and notify the employee in writing of such action as provided in subsection 14.6 of this rule. This written notice shall allow the employee fifteen days to submit the required physician's statement. Failure of the employee to submit the required statement within the fifteen day notice period, except for satisfactory reasons submitted in advance to the appointing authority, is cause for dismissal. The necessity for absence because of exposure to contagious disease must be verified on a prescribed physician's statement form regardless of the length of absence.

(h) Return At Less Than Full Duty -

1. The appointing authority may permit an employee to return to work from sick leave at less than full duty for a period of no more than thirty days, but provided that the terms of the return shall be in writing and are subject to review by the Director. The review may include the requirement of additional information from a physician regarding the employee's ability to perform the essential duties of his or her job. An employee may request to continue to work at less than full duty beyond the period permitted by the appointing authority. The request must be submitted to the appointing authority at least five days before the end of the period. The appointing authority shall consider the request in the same manner as the original request.

~~1. Any denial of an employee's request to return to work at less than full duty must be approved by the Director.~~

2. The Director appointing authority, after receiving approval of the Director, may deny the

request to return or continue to work at less than full duty under conditions including, but not limited to, the following:

- (a) the employee cannot perform the essential duties of his or her job with or without accommodation;
- (b) the nature of the employee's job is such that it may aggravate the employee's medical condition; or;
- (c) a significant risk of substantial harm to the health or safety of the employee or others cannot be eliminated or reduced by reasonable accommodation; or;
- (d) the approval of the request would seriously impair the conduct of the agency's business.

3. ~~Approval of a return to work at less than full duty shall be granted for no longer than 30 days. Requests to continue at less than full duty for more than 30 days shall fall under the same requirements as an original request. Prior to making a decision on an employee's request to return or continue to work at less than full duty, the appointing authority and/or the Director may require additional information from the employee's physician or other physician regarding the employee's ability to perform the essential duties of his or her job, with or without accommodation.~~

(i) Transfer of Sick Leave

1. When a classified employee transfers or otherwise changes employment from one agency to another, all hours of accrued sick leave shall be transferred. The previous employer shall provide written documentation of the sick leave balance to the other agency within thirty (30) calendar days after the employee commences work.

2. At the discretion of the appointing authority, sick leave accrued while in other State employment may be transferable to covered agency employment.

(j) Illness While on Annual Leave - An employee who becomes ill and who is admitted to a hospital or has medical services performed in an emergency room while on previously approved annual leave may request that all or part of the time spent in a hospital or emergency room be charged to sick leave. The employee shall request that action immediately upon return to work and shall provide a physician's statement or hospital statement listing the specific dates of hospitalization or emergency room services. Sick leave may be charged only for the period of time the employee is hospitalized or in the emergency room. The remainder of the time shall be charged to annual leave.

14.5. Suspected Misuse of Leave Abuse - When an employee appears to have a pattern of leave ~~abuse~~ that is inconsistent with the reasons provided in subdivision 14.4(f) of this rule, including such frequent use of sick leave as to render the employee's services undependable, the appointing authority may request appropriate substantiation of the employee's claim for leave, for example, verification of an illness of less than three days. The appointing authority shall give the employee prior written notice of the requirement for appropriate substantiation.

14.6. Unauthorized Leave - When an employee is absent from work without authorization for sick or annual leave, the appointing authority shall dock the employee's pay in the next pay period for an equal amount of time paid during which no work was performed. The appointing authority shall notify the employee in writing that his or her pay is being docked and that the unauthorized leave is misconduct for which discipline is being imposed. The appointing authority shall use unauthorized leave only in cases when the employee fails to obtain the appropriate approval, according to agency policy, for the absence. The appointing authority shall transmit notice of the action in writing to the Director of Personnel.

14.7. Overtime Work and Holiday Work - An appointing authority or his or her designated representative may require an employee to work in excess of the prescribed working hours or on holidays when the work is considered necessary to the public interest. Compensation shall be made in accordance with the Federal Fair Labor Standards Act of 1986 and relevant Federal regulations and W.Va. Code §21-5(C)-1 et seq.

14.8. Leave of Absence Without Pay

(a) Personal Leave - An appointing authority may grant a permanent, probationary, or provisional

employee a leave of absence without pay for a specific period of time which normally should not exceed one year. The employee shall apply for the leave of absence in writing to the appointing authority. If the appointing authority approves the request, the approval shall be in writing. A leave of absence without pay may exceed the normal one year limitation and the appointing authority may grant the leave of absence at his or her discretion based on the agency's personnel needs. Time spent by provisional employees for leaves of absence does not extend the provisional period limitation. Written approval of the appointing authority is required in all cases. Approval of personal leave is discretionary with the appointing authority.

(b) Family Leave - The Board, by formal action, may establish uniform procedures, which shall be followed by all appointing authorities, for granting leave to eligible employees under the provisions of W.Va. Code §21-5D-1 et seq., the Parental Leave Act, and 29 U.S.C. § 2601-2654, the Family and Medical Leave Act of 1993.

(c) Medical Leave; Notice to Employee

1. An injured or ill permanent employee upon written application to the appointing authority shall be granted a medical leave of absence without pay not to exceed six (6) months within a twelve month period provided:

a. The employee (1) has exhausted all sick leave and makes application no later than fifteen (15) calendar days following the expiration of all sick leave or (2) has elected not to use sick leave for a personal injury received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code §23-4-1 and makes application no later than fifteen (15) calendar days following the date on which the employee filed a claim for Worker's Compensation ;

b. The employee's absence is due to an illness or injury which is verified by a physician/practitioner on the prescribed physician's statement form stating that the employee is unable to perform his or her duties and giving a date for the employee's return to work or the date the employee's medical condition will be re-evaluated;

c. A prescribed physician's statement form is submitted each time the employee's condition is re-evaluated to confirm the necessity for continued leave; and,

d. The disability, as verified by a physician/practitioner on the prescribed physician's statement form, is not of such nature as to render the employee permanently unable to perform his or her duties.

2. The appointing authority shall, at least 15 days prior to, if possible, but no later than five (5) days following the expiration of the employee's sick leave, mail to the employee a written notice of the employee's right to a medical leave of absence without pay and informing him or her that the leave will not be granted if he or she fails to apply within the time limits specified in subparagraph 14.8(c)1.a. of this rule.

(d) End of Leave

1. At the expiration of a leave of absence without pay, the employee shall be returned to duty to either his or her former position, or one of comparable pay and duties, without loss of rights, unless the position is no longer available due to a reduction-in-force.

2. If the leave of absence without pay was granted due to personal illness, the employee must furnish from the attending physician/practitioner a prescribed physician's statement form indicating the ability of the employee to return to work. The appointing authority may permit an employee to return to work at or before the expiration of the leave of absence at less than full duty, but the terms of return are subject to the same conditions specified in subdivision 14.4(h) of this rule.

3. Failure of the employee to report to work promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance to the appointing authority, is cause for dismissal.

(e) Reporting Procedures - The appointing authority must report a leave of absence without pay to the Director. The appropriate forms must include the provision of this Rule under which the leave is being granted, the employee's last date on the payroll, and the specific anticipated date for return to duty.

14.9. Military Leave

(a) State Active Duty and Reserve Military Service - In accordance with the provisions of West Virginia Code §15-1F-1(a), all officers and employees of the State who are members of the National Guard or of any of the reserve components of the armed forces of the federal government are entitled to a leave of absence from

employment without loss of pay, status, or efficiency rating, on all days during which they are engaged in drills or parades, or for examination to determine fitness for duty, inactive duty training, funeral honors duty for the State or federal government, active duty for training or active service for the State all to include reasonable travel time to and from the duty location, for a maximum period of thirty working days in any one calendar year when ordered or authorized by proper authority. The term "without loss of pay" means that the employee continues to receive his or her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation during the same period. An employee need not exhaust all annual leave or sick leave. Furthermore, the leave of absence is considered as time worked for the agency in computing seniority, eligibility for salary increase and experience with the agency. The terms of this subdivision do not apply under the provisions of any military selective service act. An employee shall provide to the appointing authority advance written or verbal notification of an obligation or intention to perform military duty and such written orders or other documentation, if available, in support of the request for military leave. None of the unused days of military leave for which an officer or employee is eligible under this subdivision may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in this subdivision only in the year he or she is called to active duty, and in subsequent years only after he or she has been discharged from military duty and returned to State employment.

(b) Federal Active Duty - In accordance with the provisions of West Virginia Code §15-1F-1(b), all officers and employees of the State who are ordered or called to active duty by properly designated federal authority are eligible for an additional leave of absence from employment without loss of pay, status, or efficiency rating for a maximum period of thirty working days for each single call to active duty, active duty for training, initial active duty for training, or full-time National Guard duty, all to include reasonable travel time to and from the duty location. All officers and employees of the State called to federal active duty or full-time National Guard duty who have not used all or some portion of the thirty working days of military leave granted by subdivision (a) of this subsection are eligible to use those unused days in the same calendar year prior to using the thirty days for which they are eligible under this subdivision, up to a maximum of sixty days for a single call to active duty. None of the unused days for which an officer or employee is eligible under subdivision (a) may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in subdivision (a) of this subsection only in the year he or she is called to active duty, and, in subsequent years, only for a subsequent call to duty and only after he or she has been discharged from military duty and returned to State employment. The term "without loss of pay" means that the employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation from federal or state sources during the same period.

(c) Other than as provided in subdivision (b) of this subsection, any employee hired for permanent employment entering the U.S. armed services in time of war, national emergency or under compulsory provisions of law of the U.S. in time of peace shall be granted a leave of absence from his or her service with the agency. Upon completion of and discharge from the armed services and within the applicable time period prescribed by federal statute, rule, or regulation regarding return to employment, the employee has the right to resume his or her service with the agency without any prejudice to his or her status, merit rating or standing by reason of the absence, in accordance with subdivision 12.6(b) of this rule. An employee shall be credited with all annual leave and sick leave not used at the commencement of his or her military leave in accordance with subdivision 12.6(c) of this rule. This subdivision shall not be construed:

1. As an attempt to enlarge or to extend the length of employment of any temporary employee or to create a definite term where no definite term with respect to the position previously existed;
2. As providing that the salary paid by the agency shall continue to be paid to the employee while he or she is not performing the duties of his or her position with the state because of the services with the armed forces of the United States; or,
3. As having precedence over the provisions of any applicable federal statute, rule, or regulation regarding military leave or re-employment rights with which this subdivision is inconsistent or in conflict including, but not limited to, the Uniformed Services Employment and Reemployment Rights Act.

14.10. Court, Jury, and Hearing Leave

(a) Upon application in writing, an employee hired for permanent employment shall be granted leave with pay when, in obedience to a subpoena or direction by proper authority, he or she serves upon a jury or appears as a

witness before any court or judge, any legislative committee, or any officer, board, or body authorized by law to conduct any hearing or inquiry. This subdivision shall not apply in cases where the employee or a member of his or her immediate family is a litigant plaintiff, defendant or other principal interested party or has a personal, financial, or familial vested interest in the outcome of the case or proceeding. This subdivision shall not be construed:

1. to deprive, prohibit, or infringe upon the rights of any employee who is a party to, or a witness in, a grievance proceeding or a court of law proceeding resulting from the course of his or her State and/or classified employment; or,

2. to deprive, prohibit, or infringe upon the rights of any employee in their his or her pursuit of personal legal matters or civic responsibilities while on annual leave or a personal leave of absence.

(b) The employee shall furnish such written confirmation of the absence as is required by the Director.

14.11. Education Leave

(a) Subsidized by Agency - An agency authorized by law to subsidize advanced educational training for classified employees may grant to selected employees educational leave subject to conditions stipulated by that agency. The procedures for granting educational leave and compensatory payment shall be filed with the Director of Personnel. The leave shall be considered as continuous employment, except that employees while on educational leave shall not accrue sick leave or annual leave, nor are the employees eligible for salary advancements.

(b) Non-subsidized by Agency - A personal leave of absence may be granted for educational purposes in conformance with the requirements of subdivision 14.8(a) of this rule.

14.12. Disaster Service Leave - Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave with pay, subject to the approval of the employee's immediate supervisor, in accordance with the provisions of West Virginia Code §15-5-15(a).

14.13. Supplemental Attendance and Leave Regulations - Each agency shall prepare supplemental rules as may be required. The rules shall not enhance nor diminish the benefits afforded by this subsection. Copies of all rules shall be filed with the Director who may approve, amend or disapprove the supplemental rules.

~~14.13~~ 14.14. Distribution of Regulations - Each agency shall make available to each of its employees a copy of this attendance and leave rule together with the agency's own supplemental attendance and leave rules.

~~14.14~~ 14.15. Leave Records - Each ~~agency~~ appointing authority shall maintain a current leave record of ~~its~~ the agency's employees' accrued and used leave. The appointing authority shall provide E each employee shall have access to his or her leave records subject to the appropriate agency's established rules and on a regular basis of no less than once each pay period. To the extent practical, each appointing authority shall use electronic or other communications media to provide employees with access to their leave records, provided that the appointing authority makes regular and convenient access to the media used available to each employee in the agency, or otherwise provides access to each employee in the agency. Supervisors and employees shall attest to the accuracy of the records on a periodic basis, but not less than twice annually.

Section 15. Performance Evaluations

The Director of Personnel, after consultation with the appointing authorities, and with the approval of the Board, shall establish and make effective a system of performance evaluation designed to provide a valid evaluation of the quality and quantity of work performed by employees. Insofar as practicable the system of performance evaluation in the classified service shall be standardized. The appointing authority shall prepare and record evaluations for all permanent employees at regular intervals not to exceed twelve months. The appointing authority shall consider performance evaluations as well as other recorded indicators of performance in determining salary advancements and in making promotions, demotions, and dismissals. The appointing authority shall notify an employee of his or her performance evaluation in writing and shall retain copies of performance evaluations in the employee's personnel record.

Section 16. Political Activities

16.1. Prohibition of Political Activities

(a) An appointing authority shall not appoint, promote, demote, or dismiss any person in the classified service or in any way favor or discriminate against any person with respect to such employment because of his or her political opinions or affiliations. Nothing in this subdivision shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(d) No employee in the classified service or member of the Board or the Director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of the West Virginia Code, no employee in the classified service shall:

1. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

2. Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

3. Be a candidate for any national or state paid public office or court of record; or hold any paid public office; or be a candidate or delegate to any state or national political party convention, a member of any national, state or local committee for a political party, or a financial agent or treasurer within the meaning of the provisions of W.Va. Code §3-8-3, 4, or 5(e). Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subdivision (d) of this subsection, are permitted.

(f) Political participation pertaining to constitutional amendments, referendums, approval of municipal ordinances or activities are not prohibited by the provisions of this subdivision.

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this subdivision shall request and receive a leave of absence without pay for the period of the candidacy, commencing upon the filing of the certificate of candidacy. If the employee withdraws his or her candidacy, he or she shall return from the leave of absence immediately upon such withdrawal. If the employee is not elected, he or she shall return from the leave of absence immediately after the official canvass of votes. At the expiration of the leave of absence without pay, the employee shall be returned to duty to either his or her former position or one of comparable pay and duties, without loss of rights, unless the position is no longer available due to a reduction-in-force. If elected, the employee shall resign or be dismissed from the position in the classified service to be effective no later than the date of assuming the elective office.

16.2. Application of the Hatch Act - Any classified or classified-exempt employee who, as a normal and foreseeable incident of his or her principle activity, performs duties in connection with programs financed wholly or in part by loans or grants made by the United States or a federal agency is subject to provisions of the Hatch Act for State and Local Government Employees restricting political activity, 5 USC 1501-8. Each appointing authority shall inform all classified and classified exempt employees of these provisions and employees shall adhere to these provisions.

16.3. Additional Prohibition for Highways Employees - No person may be appointed or employed in any capacity by the Division of Highways who is a candidate or holds any public office or is a member of any political

party committee. An employee of the Division of Highways may not be a candidate for or hold any public office or be a member of any political party committee. An employee of the Division of Highways who becomes a candidate for or holds any public office or becomes a member of any political party committee shall resign or be dismissed from his or her position with the division immediately on the date of the filing of candidacy or the date of assuming the public office or the political party committee membership.

16.4. Additional Prohibition for Rehabilitation Services Employees - No employee engaged in the administration of the Vocational Rehabilitation program shall take an active part in the management of political campaigns or participate in any political activity, except that he or she shall retain the right to vote as he or she may please and to express his or her opinions as a citizen on all subjects. They shall not solicit or receive, nor shall they be obliged to contribute or render any service, assistance, subscription, assessment, or contribution for any political purpose.

Section 17. Employment Conflicts

17.1. Other Employment. No employee shall hold other public office or have conflicting employment while in the classified service. Determination of the conflict shall be made jointly by the appointing authority and the Board, or may be specifically delegated by the Board to the appointing authority, who shall consider whether the other employment: (1) will be in conflict with the interests of the agency; (2) will interfere with the performance of the employee's official duties; (3) will use or appear to use information obtained in connection with official duties which is not generally available to the public; or, (4) may reasonably be regarded as official action.

17.2. Nepotism. No appointing authority shall influence or attempt to influence the employment or working conditions of his or her immediate family. It is the responsibility of the appointing authority to administer the employment of relatives of any agency employee in a consistent and impartial manner.

No employee shall directly supervise a member of his or her immediate family. More specifically, no employee shall review or audit the work of a member of his or her immediate family, or take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of his or her immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of his or her immediate family, the situation shall be resolved within thirty calendar days. Resolution may be made by transfer, reassignment, resignation, etc. of one of the involved employees or by other accommodation which protects the interests of the public.

Section 18. Payroll Certification

(a) No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of the pay bears the certification of the Director, or of his or her authorized agent, that the persons named in the voucher or account have been appointed and employed in accordance with the provisions of this rule. The Director may for proper cause withhold certification from an entire payroll or from any specific item or items on the payroll. The Director may, however, provide that certification of payrolls may be made once every six months, and the certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his or her payroll. In the latter case no voucher for payment of salary to the employee shall be issued or payment of salary made without further certification by the Director.

(b) If the Director wrongfully withholds certification of the payroll voucher or account of any employee, the employee may maintain a proceeding in the courts to compel the Director to certify the payroll voucher or account.

Section 19. Records and Reports

Each agency shall establish and maintain a personnel record for each employee, showing the employee's name, title, organizational unit, salary, changes in status, performance evaluations, and such other personnel information as may be considered pertinent. The Director shall maintain applications for examination for at least one year after the date of the application. All personnel records shall be open to the inspection of the Board but shall

otherwise be held confidential by each agency and the Director in accordance with section 21 of this rule.

Section 20. Confidentiality

The business of the division shall be conducted in such a manner as to ensure the privacy rights of all applicants and employees, in accordance with West Virginia Code §29B-1-1 et seq., the State Freedom of Information Act and §5A-8-1 et seq., the Public Records Management and Preservation Act. Examination scoring keys, applicant and employee residential addresses and phone numbers, applicant and employee medical information, and other information which the Director may deem confidential shall be maintained under strictest confidentiality and released only upon proper written authorization of the applicant or employee or by order of a court of competent jurisdiction.

Section 21. Duties of State Officers; Legal Proceedings to Secure Compliance; Penalties

21.1. Duties of State Officers - Pursuant to W.Va. Code §29-6-12, all agencies' officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of W.Va. Code §29-6-1 et seq., and the rules and orders promulgated in accordance with W.Va. Code §29-6-1 et seq. thereunder. All officers and employees shall furnish any records or information which the Director or the Board may request for any purpose of W.Va. Code §29-6-1 et seq. All officers and employees shall comply with all rules, policies and orders of the Director or the Board and shall not increase nor diminish any benefits afforded any classified employee by the rules or orders. All officers and employees shall furnish any proposed agreement and any records or information which the Director or Board may require in regard to any proposed agreement between an agency and an individual who is a current or former employee regarding the terms and/or conditions of the individual's employment with the agency. Any such agreement must be certified by the Director as being in compliance with W.Va. Code §29-6-1 et seq. or with an order of a court of competent jurisdiction before it can be effective.

21.2. Legal Proceedings to Secure Compliance - Pursuant to W.Va. Code §29-6-12, the Director may institute and maintain any action or proceeding at law or in equity which he or she considers necessary or appropriate to secure compliance with W.Va. Code §29-6-1 et seq., and the rules and orders promulgated under the code.

21.3. Penalties

(a) Any person who willfully violates any provision of W.Va. Code, §29-6-1 et seq. or of this rule is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned. Jurisdiction under this subdivision shall be in a court of record exercising criminal jurisdiction within the county where the offense is committed.

(b) Any person who is convicted of a misdemeanor under W.Va. Code §29-6-1 et seq. is, for a period of five years, ineligible for appointment to or employment in a position in the classified or classified-exempt service, and if he or she is an officer or employee of the state, shall forfeit his or her present office or position.

Section 22. Grievance Procedure - An employee hired for permanent employment may file a grievance with the Education and State Employees Grievance Board as provided for in W.Va. Code, §29-6A-1 et seq.

Section 23. Training and Development

23.1. Each agency is responsible for providing functional training to employees of the agency based upon the agency's needs and resources and the employee's needs and capabilities. Selection of employees for training and development shall ensure equal opportunity and shall not discriminate on the basis of race, sex, age, religion, national origin, political affiliation, disability or any other non-job related factors.

23.2. The Director of Personnel shall make available to the agencies technical assistance in the areas of organization and human resource development, needs assessment, determination of appropriate development strategies, course design, training techniques, training evaluation and coordination of training among the agencies.

23.3. The Director shall provide training courses on specific aspects of personnel administration under Division of Personnel law and this rule, and shall designate employees by class, or by duties, who must attend each type of course.

23.4. The Director shall make available to the agencies training and development opportunities that are broadly applicable to many classes in all agencies. Employee selection for the training and development opportunities shall be consistent with established agency and Division of Personnel nomination procedures.

Section 24. Employee Representative Organization Bulletin Boards

A bulletin board of a limited size shall be provided for posting notices of employee representative organizations. The bulletin boards shall be placed in convenient and generally accessible locations in all workplaces where the members of the organizations are employed. Provisions shall be made for separate bulletin boards for each employee representative organization. The cost of the bulletin boards shall be assumed by the requesting employee or the employee's representative organization. The boards shall be used exclusively by the employee representative organization and for organization purposes only.

Section 25. Authority of the Board

The State Personnel Board is authorized to interpret the application of this rule to any public body or entity and to establish by formal action programs and projects for a maximum of one year outside of the provisions of this rule, including, but not limited to, programs or projects designed to respond to public disaster or emergency.

Section 26. Amendments

If and when it appears desirable in the interests of good administration, the State Personnel Board, after public notice and public hearing and legislative approval, may amend the rules as it becomes necessary.

**Public Hearings on the Proposed Amendments to the Administrative Rule of the Division of
Personnel and the Workers' Compensation Temporary Total Disability Rule
June 15, 2006 at 2:00 p.m.**

Chairman Robert Ferguson: Public notice of proposed amendments to the Temporary Total Disability Rule public notices of the proposed amendments were filed with the Secretary of State on May eleventh, both written and oral comments will be accepted, oral comments at this time and written comments received or postmarked before midnight tonight. There is one sign-in sheet. Who has got the sign-in sheet?

Tari Crouse, Acting Director of the Division of Personnel: I have it, sir.

Chairman Robert Ferguson: You do? Okay. If you haven't already signed in, please sign in and indicate on the sign-in sheet if you wish to make an oral comment on either or both of the rules. Oral comments will be recorded so that a transcript may be submitted to the Legislative Rule Making Committee in accordance with the requirements. The first public hearing will be on Personnel, amendments to the Administrative Rule of the Division of Personnel. Ms. Crouse do you have anyone who wishes to make an oral comment.

Tari Crouse, Acting Director of the Division of Personnel: Yes sir, we have two people who wish to make comments. The first one on the list is J. Michael Adkins from the West Virginia Public Employees Insurance Agency.

Chairman Robert Ferguson: Mr. Adkins

J. Michael Adkins: Mr. Chairman and Board, I appreciate this opportunity to make a brief statement at this public hearing on the proposed rule change. We have submitted, as an agency under signature of B. Keith Huffman, General Counsel and also acting Co-Director for the Agency an objection to the inclusion of the words "tobacco use" under the rule change, specifically under the West Virginia Administrative Rule Division of Personnel Chapter 29-6-10 Series 1, Section 2, under the preamble. It is the opinion of the Agency that the inclusion of the words "tobacco use" are not warranted and have no basis in either federal or state statute or legal precedent and with the adoption of the amendment the inserting of these two words it is the belief, it is our belief that the PEIA will be immediately exposed to challenge by all its health plan members and are, that are presently paying a premium differential based on their use of tobacco products under the auspices of being a protected class. PEIA has diligently worked at tobacco cessation for the last five years and we feel that the inclusion in this particular rule of those two words would jeopardize that and we have submitted a written statement with the Agency Director's signature for your review.

Chairman Robert Ferguson: Okay. Give me the Cliff Notes version now.

J. Michael Adkins: Basically, Secretary Ferguson, it's the way the words "tobacco use" are put in in that particular section of the rule. It gives certain protected rights to persons that use tobacco that we feel may allow them or may expose PEIA to some kind of legal action to stop the tobacco differential premium differential that we presently have in place.

Chairman Robert Ferguson: Okay.

Elizabeth Walker, Personnel Board Member: What is?

Chairman Robert Ferguson: Questions? I'm sorry.

Elizabeth Walker, Personnel Board Member: No, I should have waited.

Chairman Robert Ferguson: That's okay.

Elizabeth Walker, Personnel Board Member: What is the, your all's position on the fact that a West Virginia statute protects folks who use tobacco from discrimination?

J. Michael Adkins: We were not aware of that when it went through and that kind of caught us off guard on that one but we would, we understand that there are certain rules about hiring and firing employees related to tobacco use it's just that the insertion of these two words in this particular place makes it look like a protected class and we feel like we're exposed to some litigation.

Elizabeth Walker, Personnel Board Member: Thank you.

Chairman Robert Ferguson: Any other questions? Are we, is this part of our agenda today, to vote on this?

Tari Crouse, Acting Director of the Division of Personnel: No sir, next, next meeting.

Chairman Robert Ferguson: Okay. Thank you Mr. Adkins.

J. Michael Adkins: Thank you sir.

Tari Crouse, Acting Director of the Division of Personnel: The next person.

Chairman Robert Ferguson: Do we have any others?

Tari Crouse, Acting Director of the Division of Personnel: Yes, uh huh. Kathi Elkins with the DHHR Tobacco Prevention Unit.

Kathi Elkins: Hello, I'm Kathi Elkins, Policy Specialist for the West Virginia Division of Tobacco Prevention. We've also sent in written comments but if I may clarify something Mr. Adkins was responding to in your last question. When the section of state code 21-3-19 was put

into the state code, that was 1989-90, many, many years before PEIA had its differential premium policy so of course they didn't foresee at that time that that might complicate their or at that time it won't complicate it because 20 um, what is it, 21-3-19 speaks to not discriminating against hiring and firing an employee when they're using tobacco products on non-work time and on, and not on state property. The way the draft of the rules are in your version, for DOP, it is much broader than that and says in any event of employment the tobacco use would be a protected status. Our written comments from our division reflect our opposition to that language, we also want to raise the question of elevating tobacco use in that protected status and not considering any other health behaviors such as alcohol use or abuse, legal or illegal drug use or abuse, obesity. Tobacco use is the only health behavior that is mentioned there along with nation of origin, religion, politics, ethnicity and gender, so we would suggest that that wording be removed from the draft.

Chairman Robert Ferguson: Thank you. Any questions for this witness? Thank you. Any others?

Tari Crouse, Acting Director of the Division of Personnel: No, that's it.

**Amendments to the Division of Personnel Administrative Rule
and Workers' Compensation Temporary Total Disability Rule**
June 15, 2006, 2:00 p.m.

[illegible]



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

Krista Duncan, General Counsel
West Virginia Department of Transportation
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Ms. Duncan,

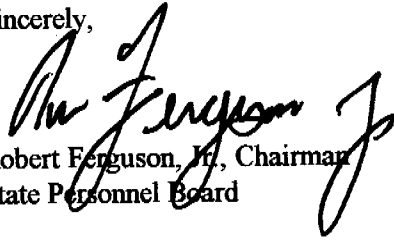
As Chairman of the State Personnel Board, I wish to thank you for taking the time to review and comment on the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel* and the *Workers' Compensation Temporary Total Disability Rule*.

Your comment on the possibility of the amendment to subdivision 9.2.(b) of the *Administrative Rule of the West Virginia Division of Personnel* creating a burdensome process is well-taken and consequently we have modified that section to change the term "affidavit" to "statement." This change, however, does not lessen the Board's expectation that all agencies and their staff comply with both the spirit and the letter of the law and rule regarding selection of employees for positions in the classified service. Further, we found your comment on the structure of the language in this subdivision very helpful, and we have made the appropriate clarification.

In regard to the interaction of job abandonment and dismissal, the Board appreciates your comments, but as you noted, since this section is not proposed for amendment any consideration of changes will have to wait.

Again, thank you for your participation in this process.

Sincerely,


Robert Ferguson, Jr., Chairman
State Personnel Board

Tari Crouse - Comment- Rules 2006

From: "Krista Duncan" <KDuncan@dot.state.wv.us>
To: <tcrouse@wvadmin.gov>
Date: 6/15/2006 1:16 PM
Subject: Comment- Rules 2006
CC: "Jeff Black" <jblack@dot.state.wv.us>, <jwells@wvadmin.gov>

Good afternoon, Tari.

Comments on the proposed Administrative Rule:

1. Addition of Affidavit Requirement to 9.2(b): Although I am not familiar with the rationale behind this change or the anticipated benefit, I am concerned about two points:

a. This seems to place an additional requirement on appointing authorities, some of whom may not have a notary public immediately available, without corresponding benefit to the State. For instance, some officials within the Division of Highways would likely be uncomfortable with delegating authority to the county highway administrators, but even if they chose to do so, notaries public may not be readily or reasonably available to them at those locations. Retaining the authority at the higher levels is likely not a reasonable alternative because they may not be comfortable vouching for the new Rule material on behalf of lower-level administrators. For these reasons, I would suggest that the affidavit requirement not be added.

b. As written, the phrase "without consideration of other applicants or qualifications required to perform the job" modifies "favoritism shown or patronage granted." I believe that this is a problem because actual favoritism (not based on job responsibilities) *cannot* be shown or patronage appointments granted, period. As written, the new sentence implies that making a selection based on favoritism or patronage is acceptable as long as other applicants were considered or the favored person's qualifications were also considered. To clarify the sentence's meaning and assuming that the addition will be retained, I would

suggest that a list be used: "shall include an affidavit by the appointing authority or his or her designee certifying that the person charged with making the selection (1) complied with the requirements of this subdivision; (2) did not make the selection based on favoritism shown or patronage granted; and (3) considered other applicants, if any, for the position." I would omit the portion about "other qualifications," although I imagine this is intended to distinguish between qualification-based or legitimate favoritism and allegations of favoritism, because it is unclear whether this is referring to the favored person's other qualifications or those of other applicants, and I am not sure this phrase adds anything of substance given the legal definitions of favoritism.

2. Interaction of Job Abandonment and Dismissal: Although this may have to wait until the next revision, I believe that including job abandonment in the section of the Rule relating to dismissal leads to an inconsistency. Both job abandonment and dismissal appear to be properly defined in the definition section of the Rule. However, the inclusion of job abandonment in the dismissal section of the Rule would seem to imply that it is a separation for good cause, requiring compliance with due process protections, etc. As counsel for a State employer, I would strongly recommend that this discrepancy be addressed to reduce the burden on State employers and to clarify the relevant standard.

If I can provide additional information, please let me know.

Krista

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West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

Christopher G. Morris, Deputy Tax Commissioner and
Chief of Staff
West Virginia State Tax Department
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Mr. Morris,

As Chairman of the State Personnel Board, I wish to thank you for sharing the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel* and the *Workers' Compensation Temporary Total Disability Rule* with your staff and having them take the time to review and comment on these rules.

Your comment on the possibility of the amendment to subdivision 9.2.(b) of the *Administrative Rule of the West Virginia Division of Personnel* creating a burdensome process is well-taken and consequently we have modified that section to change the term "affidavit" to "statement." This change, however, does not lessen the Board's expectation that all agencies and their staff comply with both the spirit and the letter of the law and rule regarding selection of employees for positions in the classified service.

In regard to your other comments:

- disclosure requirements of West Virginia Code §55-7-18a, these are reflected in amendments to this statutory provision resulting from the passage of House Bill 4296 in the 2006 Regular Session of the Legislature;
- the specific provisions regarding paid time off for an American Red Cross volunteer can be found in West Virginia Code §15-5-15(a); and,
- the added language regarding election of option distinguish between injuries employees of the State or a political subdivision may have sustained while employed by another employer (i.e., not the State or a political subdivision).

Again, thank you for your participation in this process.

Sincerely,

Robert Ferguson, Jr., Chairman
State Personnel Board

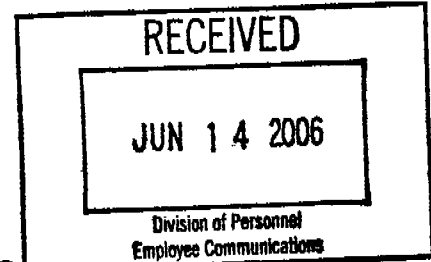


STATE OF WEST VIRGINIA
Department of Revenue
State Tax Department

Joe Manchin III
Governor

Virgil T. Helton, Acting
State Tax Commissioner

MEMORANDUM



TO: Tari McClintock Crouse, Acting Director
WV Division of Personnel

FROM: Christopher G. Morris, Deputy Tax Commissioner and
Chief of Staff

RE: Amendments to Division of Personnel Legislative Rules

DATE: June 12, 2006

This memorandum is submitted in response to the Notice of Public Hearing filed for proposed amendments to the *Division of Personnel Administrative Rule and the Workers' Compensation Temporary Total Disability Rule*. After review of the rule, the general consensus to the proposed rule is favorable. However, comments expressed the need for the proposed rule to clarify the following:

Administrative Rule:

- Section 9 *Appointments*, 9.2. Original Appointments (b). Final selection shall be in writing by the appointing authority to the Director of the Division of Personnel and shall include an affidavit by the appointing authority or designee certifying that the person charged with making the selection.... etc. A number of employees indicated that this may be a burdensome process.
- Section 12. Separations, Suspension, and Reinstatement (d). Please clarify "disclosure requirements" of WV Code §55-7-18a.
- Section 14.12. Disaster Service Leave. Clarify the statement that an American Red Cross volunteer may be granted leave with pay? Is this a certain limited time and/or can this leave be denied?

Worker's Compensation TTD Rule:

- Section 3.1. Election of Option (a). Clarify underlined language.

If you have any questions or need to discuss this matter further, please contact me at 558-8351.

CGM/PJH

CC: John C. Musgrave, Acting Cabinet Secretary
Virgil T. Helton, Acting Tax Commissioner
Patricia J. Haddy, Director of Operations

Operations Division, State Capitol Bldg. 1, Room W417
Charleston, West Virginia 25305
(304) 558-0760 or Fax (304) 558-1070



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

Bruce W. Adkins
Office of Epidemiology and Health Promotion
350 Capitol Street
Room 206
Charleston, WV 25301-3715

Dear Mr. Adkins:

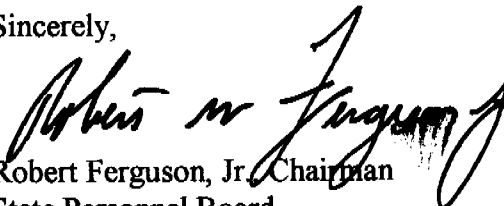
As Chairman of the State Personnel Board, I wish to thank you for taking the time to review and comment on the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel*.

Your comments on the inclusion of "tobacco use" in Section 2 are well-taken. As you have clearly pointed out, this inclusion could have consequences well beyond our intention to provide a more comprehensive list of characteristics that have some kind of statutory protection. Consequently, in modifications we will submit as our Agency Approved Proposed Rule, the pertinent part of Section 2 will read as follows:

Section 2. Preamble. The general purpose of the Division of Personnel is to attract to the service of this State personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, disability, ancestry or national origin, or for other reason(s) explicitly provided in Federal and/or State law.

Again, thank you for your participation in the process to establish this rule.

Sincerely,



Robert W. Ferguson, Jr., Chairman
State Personnel Board



Department of Health and Human Resources
Bureau for Public Health

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 8, 2006

Mr. Maxwell Farley, Director
West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Charleston, WV 25305

RECEIVED

JUN - 8 2006

WV DIVISION OF PERSONNEL
DIRECTOR'S OFFICE

Dear Mr. Farley:

The purpose of this letter is to provide written comment concerning proposed rule changes to 143CSR1, Division of Personnel Administrative Rule. The West Virginia Division of Tobacco Prevention (DTP) is charged with four goals, including eliminating exposure to secondhand smoke and promoting cessation of tobacco use among adults and young people. Tobacco use, in particular cigarette smoking, is the number one cause of preventable death and disease in West Virginia and in the U. S. Each year over 4,000 West Virginia residents die prematurely from smoking, and the economic costs are about \$2 million.

The proposed rule change to 143CSR1 includes language in Section 2: Preamble (page 1) that states:

".....All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, pregnancy, disability, tobacco use, military status, citizenship, ancestry, or national origin....."

The added language elevates "tobacco use" to a protected status, in other words, it implies that tobacco use is a right. There is already a state law, §21-3-19, that provides some protection to tobacco users, but the proposed language in 143CSR1 is too broad and goes beyond §21-3-19.

DTP consults with employers, local and state level government agencies and other organizations concerning restricting smoking and the use of other tobacco, and limiting access to tobacco. Health and medical studies indicate that these policy changes are effective in decreasing the rate of smoking among adults and youth, which translates into lives saved and economic savings. In addition to DTP there are many other state agencies that are actively conducting programs to reduce the rate of tobacco use: WVU Prevention Research Center; WV Prevention Resource Center; Office of Maternal, Child and Family Health; Bureau for

Office of Epidemiology and Health Promotion
Division of Tobacco Prevention
350 Capitol Street
Room 206
Charleston, West Virginia 25301-3715

Phone (304) 558-2939

Fax (304) 558-2285

Medical Services; Public Employees Insurance Agency; Division of Alcohol and Drug Abuse; Division of Criminal Justice Services; and the Department of Education.

I am concerned that this proposed rule change as written, will nullify policies already in effect, such as DOP-P1 Smoking Restrictions in the Workplace, WV Parkways Authority policy, WV Department of Education rules, rules governing county health departments, and policy changes taking place at Department of Military Affairs and Public Safety. It could also jeopardize policies such as Public Employees Insurance Agency differential premium for tobacco users.

From Kerry Cork, Staff Attorney, Tobacco Control Legal Consortium: "Attempts have been made in the past to establish tobacco use as protected under federal or state Equal Protection clauses, but not one of them has succeeded. These clauses give special protection to only a few categories of people, based on race, national origin, ethnicity, gender, illegitimacy. The use of tobacco is not an immutable characteristic (*not capable of or susceptible to change*) because people are not born using tobacco. Other challenges may include the allegation that tobacco use is a constitutionally protected liberty. The U. S. Constitution only affords due process protection to fundamental rights and liberties such as the right to marry, to procreate, to educate and raise children, to marital privacy, to travel and to vote. The use of tobacco is not a fundamental right or liberty....."

If 143CSR1 proceeds as written it could require physical accommodations for smokers (the creation of smoking buildings with AC/heating, seating, etc.) or increase in the frequency or duration of break time for employees to obtain nicotine. No accommodations should ever be afforded to tobacco users, especially at the cost of state government and taxpayers.

There is no reason to list "tobacco use" as a protected status in 143CSR1. Therefore I am requesting that "tobacco use" be deleted from Section 2: Preamble, of proposed changes to 143CSR1.

Sincerely,



Bruce W. Adkins, Director

Office of Epidemiology and Health Promotion
Division of Tobacco Prevention
350 Capitol Street
Room 206
Charleston, West Virginia 25301-3715

Phone (304) 558-2939

Fax (304) 558-2285



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

Chuck Hamsher
WV American Heart Association
162 Court Street
Charleston, WV 25301

Dear Mr. Hamsher:

As Chairman of the State Personnel Board, I wish to thank you for taking the time to review and comment on the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel*.

Your comments on the inclusion of "tobacco use" in Section 2 are well-taken. As you have clearly pointed out, this inclusion could have consequences well beyond our intention to provide a more comprehensive list of characteristics that have some kind of statutory protection. Consequently, in modifications we will submit as our Agency Approved Proposed Rule, the pertinent part of Section 2 will read as follows:

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Again, thank you for your participation in the process to establish this rule.

Sincerely,

Robert Ferguson, Jr., Chairman
State Personnel Board

Tari Crouse - Comment of Proposed Changes to 143CSR1

From: "Chuck Hamsher" <chuck.hamsher@heart.org>
To: <tcrouse@wvadmin.gov>
Date: 6/14/2006 8:07 AM
Subject: Comment of Proposed Changes to 143CSR1

Dear Ms. Crouse -

Thank you for speaking with me on Monday regarding the proposed changes to Administrative Rule 143CSR1.

On behalf of the American Heart Association, I am attaching our official comment on the proposed rules change. I will also be mailing you a hard copy but wanted to send this electronically for your convenience and to make certain we met the deadline for comment.

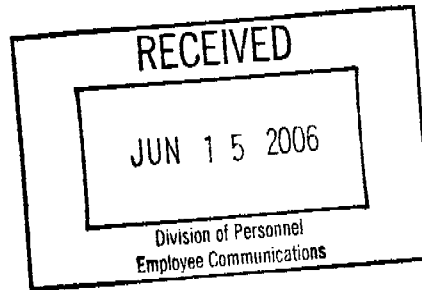
Please let me know if you have any questions or if we can be of any assistance.

Thank you!

Chuck Hamsher
Director of Public Advocacy - WV
American Heart Association
162 Court Street
Charleston, WV 25301
304-720-9001 Ext 23
304-552-4084 Cell

June 14, 2006

Ms. Tari Crouse
West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Charleston, WV 25305



American Heart Association® 
Learn and Livesm

162 Court Street
Charleston, WV 25301
Tel. 304/720-9001
800/926-4278
Fax 304/720-9008
americanheart.org

Dear Ms. Crouse:

On behalf of The American Heart Association, we would like to make the following comments on the proposed amendments to Administrative Rules 143CSR1.

The American Heart Association is a national voluntary health agency whose mission is to reduce disability and death from cardiovascular diseases and stroke.

Heart disease and stroke and the number one and number three killers in West Virginia. The leading preventable cause of cardiovascular disease is tobacco use.

Tobacco use in West Virginia is an epidemic and more than 4,000 West Virginians die each year – 12 every day – from smoking-related diseases. West Virginians pay \$897 million a year for the direct health care costs of smoking.

Given these facts, the American Heart Association strongly urges the State Personnel Board to revise the proposed rule by eliminating the words "tobacco use" in Section 2 of 143CSR1 prior to final filing of the Rule in July.

The American Heart Association *opposes* the inclusion of tobacco use in this section for the following reasons:

- 1- The proposed rule change elevates tobacco use to a status that goes beyond the WV State Code 21-3-19, which only applies to tobacco use "off the premises of the employer during nonworking hours".
- 2- As currently stated this change would require state agencies, such as the Bureau for Public Health, PEIA, Department of Education - Office of Healthy Schools and local health departments who would be covered under these rules, to not consider tobacco use by a potential employee even when the nature of the position is to combat tobacco use, provide cessation assistance, or enforce regulations.
- 3- The proposed rule change could nullify some provisions of policies already in effect, such as DOP-P1 Smoking Restrictions in the Workplace.

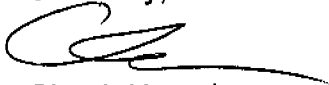
Please remember the American Heart Association in your will.

- 4- The legal standard for such equal protection clauses provide that people should not be subjected to discrimination on the basis of characteristics that are "immutable"-distinctions, like gender or race, over which they have no control- and that bear no relation to ability. Tobacco use clearly does not fall in that category and the inclusion of tobacco use trivializes the rights of those currently protected from discrimination under this Rule.

We strongly urge the State Personnel Board to act in the best interest of West Virginians and remove the reference to tobacco use from Section 2 of this proposed rule.

If you have any questions or if we can be of any assistance while you consider this issue please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chuck Hamsher', with a long horizontal flourish extending to the right.

Chuck Hamsher
Director of Public Advocacy – WV



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

Cinny Kittle
Coalition for a Tobacco-Free WV
100 Association Drive
Charleston, WV 25311

Dear Ms. Kittle:

As Chairman of the State Personnel Board, I wish to thank you for taking the time to review and comment on the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel*.

Your comments on the inclusion of "tobacco use" in Section 2 are well-taken. As you have clearly pointed out, this inclusion could have consequences well beyond our intention to provide a more comprehensive list of characteristics that have some kind of statutory protection. Consequently, in modifications we will submit as our Agency Approved Proposed Rule, the pertinent part of Section 2 will read as follows:

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Again, thank you for your participation in the process to establish this rule.

Sincerely,

Robert Ferguson, Jr., Chairman
State Personnel Board

Tari Crouse - written comments regarding Administrative Rule change

From: "Cinny Kittle" <ckittle@wvha.org>
To: <tcrouse@wvadmin.gov>
Date: 6/14/2006 10:30 AM
Subject: written comments regarding Administrative Rule change

Please accept the attached written comments from the Coalition for a Tobacco-Free West Virginia regarding the proposed rule change to 143CSR1, Administrative Rule of the Division of Personnel. A hard copy of these comments is being mailed to you today.

Thank you,

Cinny Kittle, MS
Executive Director
Coalition for a Tobacco-Free WV
West Virginia Hospital Association
100 Association Drive
Charleston, WV 25311
Phone: 304-344-9744 or 304-419-0899
FAX: 304-344-9745
ckittle@wvha.org
www.ctfwv.com



June 14, 2006

Ms. Tari Crouse
West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Ms. Crouse:

On behalf of The Coalition for a Tobacco-Free West Virginia (CTFWV), I would like to make the following comments on the proposed Administrative Rules 143CSR1. The Coalition for a Tobacco-Free West Virginia is a statewide organization made up of member organizations and members-at-large. The membership represents a cross-section of West Virginia, including health care organizations, public and private businesses, schools, civic organizations and interested individuals.

West Virginia has the dubious distinction of being a leader nationwide in smoking among youth, adults and pregnant women. We lead the nation in smokeless tobacco use with a rate more than twice the national average. It is well documented that tobacco use is the number one preventable cause of death and disease in the United States. West Virginia loses 4,314 of its citizens each year to the ravages of tobacco use. Furthermore, the economic burden to the state is nearly \$900 million a year for the direct health care costs of smoking.

Given these facts, we strongly urge the striking of "tobacco use" in Section 2 of 143CSR1 as proposed.

The CTFWV *opposes* the inclusion of tobacco use as a protected status for state workers on the following grounds:

- 1- The proposed rule change elevates tobacco use to a status that goes beyond the WV State Code 21-3-19, which only applies to tobacco use "off the premises of the employer during nonworking hours".

- 2- The proposed rule change could nullify some provisions of policies already in effect, such as DOP-P1 Smoking Restrictions in the Workplace.
- 3- The legal standard for such equal protection clauses provide that people should not be subjected to discrimination on the basis of characteristics that are "immutable" distinctions, such as gender or race, over which they have no control and that bear no relation to ability. Tobacco use clearly does not fall in that category and the inclusion of tobacco use trivializes the rights of those currently protected from discrimination under this Rule.

Thank you for consideration of our comments. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Cinny Kittle, MS
Executive Director
Coalition for a Tobacco-Free West Virginia
100 Association Drive
Charleston, WV 25311

Phone: 304-344-9744
Fax: 304-344-9745
E-mail: ckittle@wvha.org

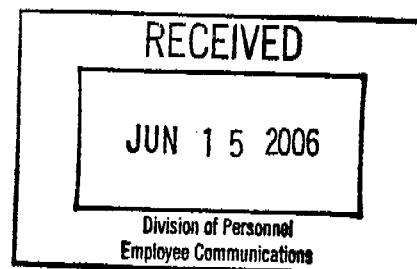


Coalition for a Tobacco-Free West Virginia

The mission of the Coalition for a Tobacco-Free West Virginia is to educate the public about tobacco-related issues and advocate for policies that reduce, with the intent to eliminate, tobacco use in West Virginia.

June 14, 2006

Ms. Tari Crouse
West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Charleston, WV 25305



Dear Ms. Crouse:

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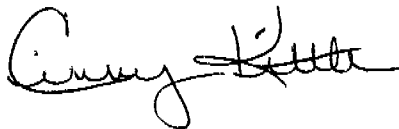
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Thank you for consideration of our comments. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cinny Kittle".

Cinny Kittle, MS
Executive Director
Coalition for a Tobacco-Free West Virginia
100 Association Drive
Charleston, WV 25311

Phone: 304-344-9744
Fax: 304-344-9745
E-mail: ckittle@wvha.org



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

Chantal Centofanti-Fields
American Lung Association of the Mid Atlantic
415 Dickinson Street
P. O. Box 3980
Charleston, WV 25339

Dear Ms. Centofanti-Fields:

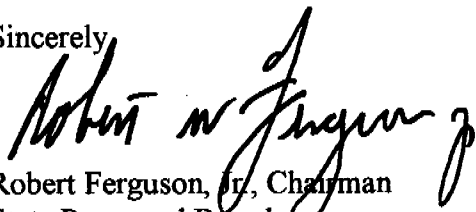
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Your comments on the inclusion of "tobacco use" in Section 2 are well-taken. As you have clearly pointed out, this inclusion could have consequences well beyond our intention to provide a more comprehensive list of characteristics that have some kind of statutory protection. Consequently, in modifications we will submit as our Agency Approved Proposed Rule, the pertinent part of Section 2 will read as follows:

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Again, thank you for your participation in the process to establish this rule.

Sincerely,



Robert Ferguson, Jr., Chairman
State Personnel Board

Tari Crouse - ALA Comment

From: "Chantal Fields" <chantal@alawv.org>
To: <tcrouse@wvadmin.gov>
Date: 6/14/2006 10:18 AM
Subject: ALA Comment

Attached is comment from the American Lung Association to proposed changes to Administrative Rule 143CSR1.

Chantal Centofanti-Fields, cfields@lunginfo.org

Regional Vice President
American Lung Association of the Mid Atlantic
American Lung Association of West Virginia
415 Dickinson Street, P.O. Box 3980
Charleston, WV 25339
Phone: 304-342-6600 Fax: 304-342-6096

PLEASE NOTE: I have a new email address. It is cfields@lunginfo.org.

EDUCATE. ADVOCATE. DONATE. ELIMINATE.

Advocating for better public health policies is vital to saving lives. If you care about lung diseases such as asthma, COPD and lung cancer, tobacco issues and clean air concerns, make your voice heard by joining the American Lung Association Action Network at www.lungaction.org. Get involved today so we can all breathe easier tomorrow!

Ms. Tari Crouse
West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Ms. Crouse:

On behalf of The American Lung Association, we would like to make the following comments on the proposed amendments to Administrative Rules 143CSR1. The mission of the American Lung Association (ALA) is to prevent lung disease and promote lung health.

The ALA is the oldest voluntary health organization in the United States. Founded in 1904 to fight tuberculosis, the American Lung Association today fights lung disease in all its forms, with special emphasis on asthma, tobacco control and environmental health.

Tobacco use in West Virginia is an epidemic and more than 4,000 West Virginians die each year -- 12 every day -- from smoking-related diseases. West Virginians pay \$897 million a year for the direct health care costs of smoking.

Given these facts, the American Lung Association strongly urges the State Personnel Board to revise the proposed rule by eliminating the words "tobacco use" in Section 2 of 143CSR1 prior to final filing of the Rule in July.

The ALA *opposes* the inclusion of tobacco use in this section for the following reasons:

- 1- The proposed rule change elevates tobacco use to a status that goes beyond the WV State Code 21-3-19, which only applies to tobacco use "off the premises of the employer during nonworking hours".
- 2- As currently stated this change would require state agencies, such as the Bureau for Public Health, PEIA, Department of Education - Office of Healthy Schools and local health departments who would be covered under these rules, to not consider tobacco use by a potential employee even when the nature of the position is to combat tobacco use, provide cessation assistance, or enforce regulations.
- 3- The proposed rule change could nullify some provisions of policies already in effect, such as DOP-P1 Smoking Restrictions in the Workplace.
- 4- The legal standard for such equal protection clauses provide that people should not be subjected to discrimination on the basis of characteristics that are "immutable"-distinctions, like gender or race, over which they have no control-and that bear no relation to ability. Tobacco use clearly does not fall in that category and the inclusion of tobacco use trivializes the rights of those currently protected from discrimination under this Rule.

Thank you for consideration of our comments. If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Chantal Centofanti-Fields
Regional Vice President
American Lung Association of West Virginia
P O Box 3980
Charleston, WV 25339-3980
304-342-6600

cc: Via email to tcrouse@wvadmin.gov on June 14, 2006

415 Dickinson Street
P.O. Box 3980
Charleston, WV 25339-3980
Phone: (304) 342-6600
Toll-free: (800) LUNG-USA
Fax: (304) 342-6096

America Online: Keyword ALA
ALA Internet:
<http://www.lungusa.org>
<http://www.alawv.org>

Ms. Tari Crouse
West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Charleston, WV 25305



Dear Ms. Crouse:

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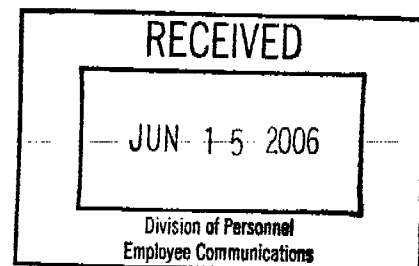
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- 2- As currently stated this change would require state agencies, such as the Bureau for Public Health, PEIA, Department of Education - Office of Healthy Schools and local health departments who would be covered under these rules, to not consider tobacco use by a potential employee even when the nature of the position is to combat tobacco use, provide cessation assistance, or enforce regulations.
- 3- The proposed rule change could nullify some provisions of policies already in effect, such as DOP-P1 Smoking Restrictions in the Workplace.
- 4- The legal standard for such equal protection clauses provide that people should not be subjected to discrimination on the basis of characteristics that are "immutable"-distinctions, like gender or race, over which they have no control-and that bear no relation to ability. Tobacco use clearly does not fall in that category and the inclusion of tobacco use trivializes the rights of those currently protected from discrimination under this Rule.

Thank you for consideration of our comments. If you have any questions or concerns, please don't hesitate to contact me.

**Improving Life,
One Breath at a Time**

For more than 100 years the American Lung Association has led the fight against lung disease.



Sincerely,

A handwritten signature in cursive script that reads "Chantal Fields".

Chantal Centofanti-Fields

Regional Vice President

American Lung Association of West Virginia

P O Box 3980

Charleston, WV 25339-3980

304-342-6600

cc: Via email to tcrouse@wvadmin.gov on June 14, 2006



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD
Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

B. Keith Huffman
Public Employees Insurance Agency
Building 5, Room 1001
1900 Kanawha Blvd., East
Charleston, WV 25305-0710

Dear Mr. Huffman:

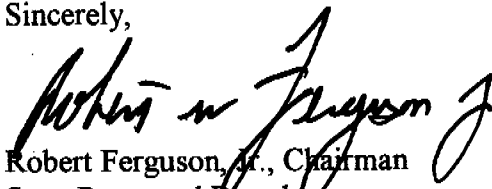
As Chairman of the State Personnel Board, I wish to thank you for taking the time to review and comment on the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel*.

Your comments on the inclusion of "tobacco use" in Section 2 are well-taken. As you have clearly pointed out, this inclusion could have consequences well beyond our intention to provide a more comprehensive list of characteristics that have some kind of statutory protection. Consequently, in modifications we will submit as our Agency Approved Proposed Rule, the pertinent part of Section 2 will read as follows:

Section 2. Preamble. The general purpose of the Division of Personnel is to attract to the service of this State personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, disability, ancestry or national origin, or for other reason(s) explicitly provided in Federal and/or State law.

Again, thank you for your participation in the process to establish this rule.

Sincerely,



Robert Ferguson, Jr., Chairman
State Personnel Board

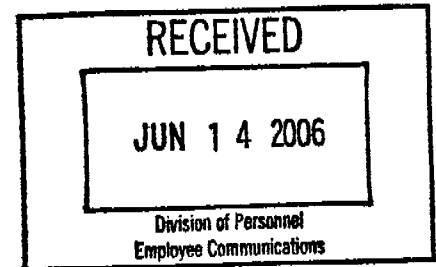
Joe Manchin III
Governor



Keith Huffman
Acting Co-director and
General Counsel

WV Toll-free: 1-888-680-PEIA • Phone: 1-304-558-7850 • Fax: 1-304-558-2516 • Internet: www.wvpeia.com

MEMORANDUM



TO: Tari McClintock Crouse, Acting Director
Division of Personnel

FROM: 
B. Keith Huffman, General Counsel and Acting Co-Director

DATE: June 12, 2006

RE: Amendments to Division of Personnel Legislative Rules

After reviewing the proposed amendments to the Division of Personnel Legislative Rules presently up for public comment, it is the opinion of the PEIA management that one particularly serious change needs addressed.

Specifically, WV Administrative Rule, Division of Personnel, Chapter 29-6-10, Series I, 2005 at Section 2 (Preamble), has been amended to include: "**tobacco use, military status, citizenship, ancestry**". The Preamble contains provisions that set forth hiring on merit and fitness and sets out the groups that are protected from unlawful or discriminatory hiring practices.

It is the opinion of this agency that the inclusion of the words "tobacco use" are not warranted and have no basis in either Federal or State statute or legal precedent. With the adoption of the amendment the inserting of these two words, it is our belief, that the PEIA will be immediately exposed to challenge by all its health plan members that are presently paying a premium differential based upon their use of tobacco products under the auspices of being a "protected class."

The use of tobacco products has repeatedly been show to drive up health care costs and as a result the use of premium differentials is now an accepted industry practice that is utilized to offset the claims costs associated with this "lifestyle choice" behavior. PEIA has for over five (5) years been offering a tobacco cessation program along with the

Page 2
MEMORANDUM
June 12, 2006

premium differentials to tobacco users to attempt to curb costs to the Plan and to improve the overall health of our members. To allow the introduction of language into a Legislative Rule that would reverse the progress made to date in reducing tobacco use with our members and to also expose the Plan to increased tobacco claims without a method of recouping the payment of those greater claims from the tobacco users themselves is unjustified.

PEIA strongly recommends the removal of the words "tobacco use" from the suggested amendment change to the WV Division of Personnel, Administrative Rules, 29-6-10, Series I, Section 2. Preamble.

Either Mike Adkins, Deputy Director of Operations, or myself will be present at the Public Hearing to answer questions regarding the PEIA's comment on this proposed amendment should it be necessary.



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

Sharon M. Covert
Wellness Council of West Virginia
Barron Drive
P. O. Box 710
Institute, WV 25112-0710

Dear Ms. Covert:

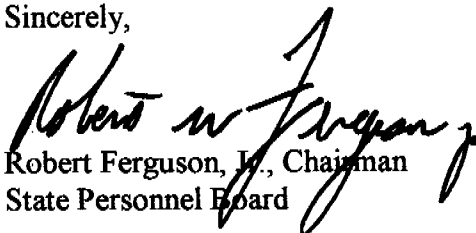
As Chairman of the State Personnel Board, I wish to thank you for taking the time to review and comment on the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel*.

Your comments on the inclusion of "tobacco use" in Section 2 are well-taken. As you have clearly pointed out, this inclusion could have consequences well beyond our intention to provide a more comprehensive list of characteristics that have some kind of statutory protection. Consequently, in modifications we will submit as our Agency Approved Proposed Rule, the pertinent part of Section 2 will read as follows:

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Again, thank you for your participation in the process to establish this rule.

Sincerely,


Robert Ferguson, Jr., Chairman
State Personnel Board



Mr. Maxwell Farley, Director
West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Farley:

I write regarding the proposed rule change to 143CSR1, Division of Personnel Administrative Rule. Specifically, I would like to address the proposed rule change to 143CSR1 language in Section 2: Preamble (page 1) that states:

".....All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, pregnancy, disability, tobacco use, military status, citizenship, ancestry, or national origin..... "

The Wellness Council of West Virginia, (WCWV), for over twenty years, has provided businesses with the highest quality, affordable and easy-to-use resources designed to successfully develop and manage a comprehensive worksite wellness program. The Council's Worksite Wellness Tobacco Policy Project, (WWTPP), is a project funded through the WV Bureau for Public Health's Tobacco Prevention Program to assist statewide businesses with worksite tobacco policies and health promotion programs. This project is designed to develop, modify, and update tobacco restriction policies and supportive services, as well as introduce worksite wellness to employees. Through this project the WWTPP and WCWV have worked with hundreds of WV employers and thousands of employees in order to promote responsible tobacco policies and cessation strategies in the workforce.

It is the concern of the Council that the added language previously referenced implies that "tobacco use" is a protected status among employees and that tobacco use is a personal right with detrimental environmental effects that can be imposed on non-tobacco using co-workers. While the State of WV must, of course, maintain Equal Opportunity Employment practices, we request that "tobacco use" be removed from the language.

Please do not hesitate to contact me with questions or comments in this matter. Thank you for your time and consideration.

Respectfully,

A handwritten signature in dark ink, appearing to read "Sharon M. Covert", is written over a horizontal line.

Sharon M. Covert
Executive Director

RECEIVED

JUN 12 2006

WV DIVISION OF PERSONNEL
DIRECTOR'S OFFICE



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

Perry Bryant
WVAHC
1544 Lee Street
Charleston, WV 25311

Dear Mr. Bryant:

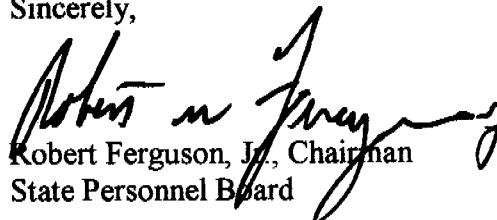
As Chairman of the State Personnel Board, I wish to thank you for taking the time to review and comment on the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel*.

Your comments on the inclusion of "tobacco use" in Section 2 are well-taken. As you have clearly pointed out, this inclusion could have consequences well beyond our intention to provide a more comprehensive list of characteristics that have some kind of statutory protection. Consequently, in modifications we will submit as our Agency Approved Proposed Rule, the pertinent part of Section 2 will read as follows:

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Again, thank you for your participation in the process to establish this rule.

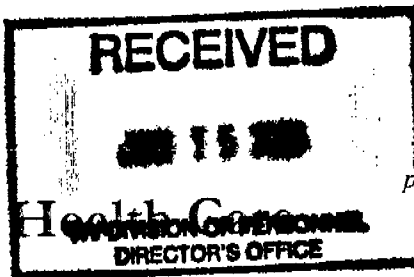
Sincerely,



Robert W. Ferguson, Jr., Chairman
State Personnel Board



West Virginians for Affordable Health Care



Perry Bryant
Executive Director

perrybryant@charter.net
www.wvahc.org

BOARD MEMBERS

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Physicians for a
National Health Plan

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Healthy Kids and
Families Coalition

Jennifer Boyd
New River Health Clinic

Charles Delauder
West Virginia
Education Association

David Forinash

Senator Dan Foster, MD

Gary Fritz
SEIU District 1199

Cheri Heflin
Cheri Heflin and Company

Sam Hickman
National Association of
Social Workers
West Virginia Chapter

Marvin Masters

Gary Zuckett
WV Citizen Action Group

West Virginia Division of Personnel
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Dear Division of Personnel,

On behalf of West Virginians for Affordable Health Care (WVAHC), I would like to make the following comments on the proposed Administrative Rules 143CSR1. WVAHC is a public interest group working to contain medical cost and supports meaningful reform of our health care system.

While the effects of tobacco use are well known, for the record I would like to include the following summary from the American Cancer Society:

"The cost of tobacco to society is best measured by the number of people who die or suffer illness because of its use. One in five Americans die each year from tobacco use. Tobacco also drains the economy of more than \$100 billion in health care costs and lost productivity annually. Health care expenditures caused directly by smoking totaled \$50 billion in 1993, according to the CDC. Of these costs, 43 percent were paid by government funds, including Medicaid and Medicare. Even though smokers die younger than the average American, over the course of their lives current and former smokers generate an estimated \$501 billion in excess health care costs. Tobacco use costs Medicare more than \$10 billion annually, and it costs Medicaid about \$12.9 billion per year."
(http://www.cancer.org/docroot/NWS/content/NWS_1_1x_The_Use_of_Tobacco.asp)

Clearly, West Virginia has a substantial interest in reducing tobacco usage, and any effort to provide tobacco users with protection against discrimination should be tailored as narrowly as possible. The proposed regulation does not achieve this standard.

While §21-3-19 limits anti-discrimination based "solely because such individual uses tobacco products off the premises of

the employer during nonworking hours," the proposed regulation does not contain these limitation, and could expand the anti-discrimination limitation to the work site and during work hours.

WVAHC would strongly recommend that, at a minimum, that the Preamble in the final regulation be amended by adding the language from §21-3-19 (i.e., "off the premises of the employer (and) during nonworking hours") following the words "tobacco user."

Thank you for consideration of our comments. If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Perry Bryant", with a stylized flourish at the end.

Perry Bryant

C: Secretary Rob Ferguson



West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

STATE PERSONNEL BOARD

Robert W. Ferguson, Jr., Chairman
Sharon Lynch ♦ Eugene Stump
Elizabeth Walker

July 20, 2006

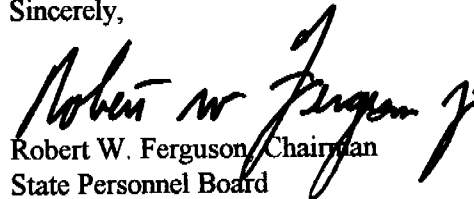
Thomas K. Rardin, Assistant Director
Bureau of Employment Programs, Human Resources
112 California Avenue
Charleston, West Virginia 25305

Dear Mr. Rardin,

As Chairman of the State Personnel Board, I wish to thank you for sharing the proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel* and the *Workers' Compensation Temporary Total Disability Rule* with the staff of WORKFORCE West Virginia and having them take the time to review and comment on these rules.

Although the WORKFORCE West Virginia staff did not have comments, I appreciate your participation in this process.

Sincerely,



Robert W. Ferguson, Chairman
State Personnel Board

MEMORANDUM

TO: Theresa M. Crouse, Acting Director, DOP

FROM:  Thomas K. Rardin, Assistant Director, HR, BEP

DATE: June 15, 2006

SUBJECT: PROPOSED REVISIONS TO THE ADMINISTRATIVE RULE

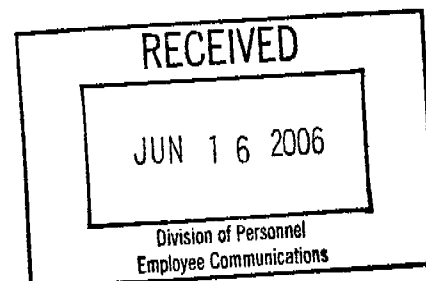
WORKFORCE West Virginia's Divisions have been given the opportunity to review and comment on the proposed Administrative Rule. The Human Resources staff has also reviewed the proposed changes.

No comments on the revisions have been received from any of the above entities. Therefore, WORKFORCE West Virginia does not have any comments to include on the revisions. In fact, the further clarifications made will be helpful in interpreting the Rule.

Thank you for the opportunity to comment.

TKR/ll

cc: Ronald E. Radcliff, Executive Director
Mark S. Miller, Deputy Executive Director
Donald H. Pardue, Deputy Executive Director
File (with proposed Rule)



Human Resources
Fiscal and Administrative Management Division
112 California Avenue, Charleston, West Virginia 25305-0112
<http://www.wvbep.org/bep/> • <https://www.workforcewv.org/>

an equal opportunity/affirmative action employer and agency of the Department of Commerce
L. Thomas Bulla, Cabinet Secretary

**AMENDMENTS MADE TO THE PROPOSED AMENDMENTS
AS A RESULT OF COMMENTS OR OTHER INFORMATION RECEIVED**

AMENDED FROM:

Section 2. Preamble. The general purpose of the Division of Personnel is to attract to the service of this State personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, pregnancy, disability, tobacco use, military status, citizenship, ancestry, or national origin. All employment positions not in the classified service, with the exception of the State College System of West Virginia and the University System of West Virginia, are included in a classification plan known as classified-exempt service.



4.9. Classification Plan for the Classified-Exempt Service

(a) Upon the recommendation of the Director, the Board shall adopt and make effective a classification plan for the classified-exempt service. This plan shall be developed and maintained . . .

AMENDED TO:

Section 2. Preamble. The general purpose of the Division of Personnel is to attract to the service of this State personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, disability, ancestry or national origin, or for other reason(s) explicitly provided in Federal and/or State law. ~~All employment positions not in the classified service, with the exception of the State College System of West Virginia and the University System of West Virginia, are included in a classification plan known as classified-exempt service.~~



4.9. Classification Plan for the Classified-Exempt Service. All employment positions not in the classified service, with the exception of the State College System of West Virginia and the University System of West Virginia, are included in a classification plan known as classified-exempt service.

(a) Upon the recommendation of the Director, the Board shall adopt and make effective a classification plan for the classified-exempt service. This plan shall be developed and maintained . . .

REASON FOR THE AMENDMENTS:

We received several comments on the inclusion of "tobacco use" in Section 2. These comments made it clear that this inclusion could have consequences well beyond our intention to provide a more

comprehensive list of characteristics that have some kind of statutory protection. We believe that the revised language will satisfy the stated objections while still serving our purpose of alerting readers to the fact that there are Federal and State laws that explicitly provide protections for reasons other than those listed.

Also, while revising this section, it became obvious that the last sentence should be included in the subsection covering a classification plan for the classified-exempt service. Consequently, we deleted it from Section 2 and added it to subsection 4.9.

AMENDED FROM:

9.2. Original Appointments

(a) Appointing authorities shall make all original appointments . . .

(b) In selecting persons from among those certified, the appointing authority shall give due consideration, based on job related criteria, to all available eligibles and may examine their applications and reports of investigations and may interview them. Final selection shall be reported in writing by the appointing authority to the Director and shall include an affidavit by the appointing authority or his or her designee certifying that the person charged with making the selection complied with the requirements of this subdivision and that he or she has not made the selection based on favoritism shown or patronage granted without consideration of other applicants or qualifications required to perform the job.

AMENDED TO:

9.2. Original Appointments

(a) Appointing authorities shall make all original appointments . . .

(b) In selecting persons from among those certified, the appointing authority shall give due consideration, based on job related criteria, to all available eligibles and may examine their applications and reports of investigations and may interview them. Final selection shall be reported in writing by the appointing authority to the Director and shall include a statement by the appointing authority or his or her designee certifying that the person charged with making the selection: complied with the requirements of this subdivision; did not make the selection based on favoritism shown or patronage granted; and, considered all available eligibles for the position.

REASON FOR THE AMENDMENTS:

We received comments on the possibility of the amendment to subdivision 9.2.(b) of the *Administrative Rule of the West Virginia Division of Personnel* creating a burdensome process, and consequently we have modified that section to change the term "affidavit" to "statement." We also found the comment on the structure of the language in this subdivision very helpful, and we have made the appropriate clarification.