

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Division of Personnel TITLE NUMBER: 143

CITE AUTHORITY W.V. Code §29-6-27

AMENDMENT TO AN EXISTING RULE: YES___ NO X

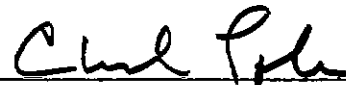
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Leave Donation Program

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

3.20

143CSR2
WEST VIRGINIA DIVISION OF PERSONNEL
LEAVE DONATION PROGRAM

Section 1. General

1.1. Scope: This rule implements the provisions set forth in WV Code §29-6-27 regarding a voluntary annual leave donation program for state employees.

1.2. Authority: This rule is issued under authority of WV Code §29-6-27.

1.3. Filing Date:

1.4. Effective Date:

Section 2. Definitions. Terms used in this rule which are not included in this section have the meaning given in the Administrative Rule of the Division of Personnel, 143CSR1.

2.1 Annual Leave: An earned employee benefit of paid time off from work as provided in the Administrative Rule of the West Virginia Division of Personnel, 143CSR1.

2.2. Appointing Authority: The executive or administrative head of a governmental unit who is authorized by statute to appoint employees in the classified and/or classified-exempt service or employees exempt from coverage.

2.3. Dollar Value of Annual Leave: The hourly rate of an employee multiplied by the number of hours of annual leave.

2.4. Donor: An employee who voluntarily donates accrued annual leave to a recipient.

2.5. Employee: Any person occupying a classified or classified-exempt state position or a state position exempt from coverage who is paid a wage or salary and who is entitled to annual leave as a benefit of employment.

2.6. Hourly Rate: The total annual base salary for a full-time employee divided by 2,080 hours or, for a part-time employee, divided by the actual numbers of hours worked annually.

2.7. Immediate Family: The immediate family consists of the parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, step-siblings, stepchildren, and individuals in a legal guardianship relationship.

2.8. Inter-Agency Donation: A donation of annual leave where the donor is paid from one operating account and the recipient is paid from another operating account.

2.9. Medical Emergency: A medical condition of an employee or a member of the employee's immediate family that is likely to require the prolonged absence of the employee from duty and which will result in a substantial loss of income to the employee because of the unavailability of paid leave.

2.10. Recipient: An employee who receives (an) annual leave donations from other employees.

2.11. Substantial Loss of Income: An amount greater than or equal to one-half month of an employee's base pay.

Section 3. Eligibility

3.1. Recipient Eligibility. In order to be eligible to receive donations of annual leave, an employee must meet the following conditions:

a. The employee must have a medical emergency involving a medical condition of the employee or a member of the employee's immediate family;

b. In the case of a medical emergency involving a medical condition of the employee, the employee must have exhausted all sick leave and all annual leave as well as any other accrued paid leave to which the employee is entitled;

c. In the case of a medical emergency involving a medical condition of a member of the employee's immediate family, the employee must have exhausted all annual leave and the sick leave allowance for members of the employee's immediate family as provided in the Administrative Rule of the Division of Personnel, 143CSR1;

d. The medical condition of the employee or the member of the employee's immediate family must be verified in writing by a physician or medical practitioner as requiring the absence of the employee from work for at least one half a month after the exhaustion of available leave as specified in sub-divisions 3.1.b. and 3.1.c. of this section. The Director of Personnel shall establish the criteria for the physician's or medical practitioner's verification;

e. The employee must apply to receive donated leave according to procedures established by the Director of Personnel. If, because of the nature of an employee's medical condition, the employee is unable to apply to receive donated leave, the application may be made by a member of the employee's immediate family or by the employee's appointing authority; and,

f. The employee must not be receiving or be eligible to receive compensation for his or her absence from work from the Workers' Compensation Fund, nor may the employee be receiving Social Security Disability benefits for his or her absence from work.

3.2. Donor Eligibility. In order to be eligible to make donations of annual leave, an employee must meet the following conditions:

a. The employee must have a remaining balance of 80 hours of accrued sick and/or annual leave after making the annual leave donation; and,

b. The employee must make the leave donation according to procedures established by the Director of Personnel.

Section 4. Recipient Status. Employees who are recipients of donated leave are considered in leave without pay status in accordance with the Administrative Rule of the Division of Personnel, 143CSR1.

4.1. Recipients whose absences are due to their own medical condition are considered on medical leave of absence without pay for up to six months, and, if requested by the employee and approved by the appointing authority, on personal leave of absence for medical reasons for up to an additional six months.

4.2. Recipients whose absences are due to the medical conditions of members of their immediate family are considered on personal leave of absence without pay.

4.3. The following restrictions regarding benefits shall apply to recipients:

- a. Recipients do not accrue annual or sick leave, nor do they earn years of service credit for leave accrual purposes, while in this status;
- b. Recipients are not eligible for paid holidays while in this status;
- c. Recipients do not earn tenure for purposes of order of separation on layoff while in this status;
- d. Recipients do not earn service credit for purposes of an annual increment while in this status;
- e. Recipients do not earn service credit for any retirement system administered by the state of West Virginia while in this status; and,
- f. Recipients' eligibility to have the employer share of insurance premiums paid is determined in accordance with rules and procedures of the Public Employees' Insurance Agency for employees in leave without pay status.

4.4. The receipt of donated leave in no way relieves an employee of the responsibilities of applying for either a personal or a medical leave of absence without pay or receiving approval for a personal leave of absence without pay in accordance with the Administrative Rule of the Division of Personnel, 143CSR1.

Section 5. Method of Donations and Use of Donated Leave. All donations of annual leave and the use of donated leave is governed by the following criteria as well as procedures established by the Director of Personnel in conformance with these criteria.

5.1. Method of Donations

- a. Donations shall be in the form of whole hours of annual leave only.
- b. Donors shall specifically designate the recipient(s) of the leave donation.
- c. The appointing authority shall deduct the total donation from the annual leave balance of the donor upon receipt of the donation form specified by the Director of Personnel.
- d. The appointing authority of the donor shall calculate the dollar value of the donated leave and, in the case of inter-agency donations, shall transmit that information to the appointing authority of the recipient according to procedures established by the Director of Personnel.
- e. For inter-agency donations, the appointing authority of the donor shall reimburse the account from which the recipient was paid according to procedures established by the Director of Personnel.
- f. An appointing authority of a potential donor may limit inter-agency donations when he or she determines that the donation will cause the operating account from which the potential donation is paid to exceed its appropriation or cash balance.

5.2. Use of Donated Leave

- a. Donated leave shall be used at its present dollar value.
- b. The appointing authority of a recipient of donated leave shall continue to pay the recipient, according to procedures established by the Director of Personnel, as long as there is a positive balance of the total dollar value of all leave donated to the recipient.
- c. For inter-agency donations, the appointing authority of the recipient shall request reimbursement from the appointing authority of the donor according to procedures established by the Director of Personnel.
- d. A recipient's use of donated leave shall cease:
 - A. if the recipient, for any reason, ceases employment with the state;
 - B. if the recipient voluntarily requests termination of the use of donated leave;
 - C. if the recipient fails to provide the required physician/practitioner's verification;or,
 - D. upon the exhaustion of the total dollar value of all leave donated to the recipient.
- e. Any unused leave donation shall be returned to the donor and re-credited to his or her annual leave balance according to procedures established by the Director of Personnel.

Section 6. Appointing Authorities' Responsibilities. Appointing authorities are responsible for compliance with this rule and the procedures established by the Division of Personnel for implementation of the rule.

6.1. Appointing authorities are responsible for assuring that donors and recipients meet all conditions of eligibility for the leave donation program.

6.2. Appointing authorities are solely responsible for and authorized to provide information regarding instances of eligible employees seeking donations of annual leave in accordance with procedures established by the Division of Personnel.

6.3. Appointing authorities shall maintain all records of donations and use of donated leave in accordance with procedures established by the Division of Personnel.

6.4. Appointing authorities shall provide all required and requested information and reports in accordance with procedures established by the Division of Personnel.

Section 7. Division of Personnel's Responsibilities and Annual Report. The Division of Personnel is responsible for establishing standards and procedures for implementation of this rule and for preparing an annual status report on the leave donation program to be presented to the Joint Committee on Government and Finance no later than the fifth day of January each year.



FILED

OCT 23 10 44 AM '95

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

October 17, 1995

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Robert L. Stephens, Jr., Director
WV Division of Personnel
Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Leave Donation Program

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

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency

X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Tari McClintock Crouse