

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

FILED

MAY 20 2 49 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 02

TITLE OF RULE BEING PROPOSED: Leave Donation Program

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 4229

SECTION 64-2-2, PASSED ON March 9, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: July 1, 1996



AUTHORIZED SIGNATURE

Chuck Polan, Cabinet Secretary
Department of Administration

3.00



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SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

March 12, 1996

Tari McClintock Crouse
Personnel
Bldg 6 Rm 416
1900 Kanawha Blvd East
Charleston, WV 25305-0139

HB 4229 authorizing, Title 143, Series 02, Leave Donation Program passed the Legislature on **March 9, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4229** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4229 Section 64-2-2**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division

FILED

143CSR2
WEST VIRGINIA DIVISION OF PERSONNEL
LEAVE DONATION PROGRAM

MAY 20 2 49 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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: May 20, 1996.

1.4. Effective Date: July 1, 1996.

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 continuously after the exhaustion of available leave as specified in subdivisions 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~~, or otherwise fails or ceases to meet eligibility requirements;
 - D. upon the exhaustion of the total dollar value of all leave donated to the recipient; or
 - E. upon the recipient's return to work.
- 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.

SENATE BILL NO. 214

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

Gov. Org.
Judiciary

143-2

6
7
8
9

10 A BILL to amend and reenact section three, article two,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the the division of personnel to
14 promulgate legislative rules relating to the leave
15 donation program.

16 Be it enacted by the Legislature of West Virginia:

17 That section three, article two, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION
22 TO PROMULGATE LEGISLATIVE RULES.

23 §64-2-3. Division of personnel.

24 (a) The legislative rules filed in the state register

1 on the fifteenth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section ten,
3 article six, chapter twenty-nine, modified by the division
4 of personnel to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the sixteenth day of December, one thousand
7 nine hundred ninety-four, relating to the division of
8 personnel (administrative rule of the West Virginia
9 division of personnel, 143 CSR 1), are authorized with the
10 amendment set forth below:

11 "on page 61, section 17.01, by striking out all of
12 paragraph (h)."

13 (b) The legislative rules filed in the state register
14 on the thirty-first day of July, one thousand nine hundred
15 ninety-five, authorized under the authority of section
16 twenty-seven, article six, chapter twenty-nine, of this
17 code, modified by the division of personnel to meet the
18 objections of the legislative rule-making review committee
19 and refiled in the state register on the thirty-first day
20 of October, one thousand nine hundred ninety-five, relating
21 to the division of personnel (leave donation program, 143
22 CSR 2), are authorized.

23

24 NOTE: The purpose of this bill is to authorize the
25 Division of Personnel to promulgate legislative rules

1 relating to the leave donation program.

2

3 Strike-throughs indicate language that would be
4 stricken from the present law, and underscoring indicates
5 new language that would be added.

4284

H. B. 4284

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)
(Introduced January 29, 1996 ; referred to the
Committee on Government Organization then the
Judiciary)

143-2

A BILL to amend and reenact section three, article two,
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Be it enacted by the Legislature of West Virginia:

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the code of West Virginia, one thousand nine hundred
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as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION
TO PROMULGATE LEGISLATIVE RULES.

§64-2-3. Division of personnel.

(a) The legislative rules filed in the state register

4284

1 on the fifteenth day of August, one thousand nine hundred
2 ninety-four, authorized under the authority of section ten,
3 article six, chapter twenty-nine, modified by the division
4 of personnel to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the sixteenth day of December, one thousand
7 nine hundred ninety-four, relating to the division of
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25 Division of Personnel to promulgate legislative rules

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3 Strike-throughs indicate language that would be
4 stricken from the present law, and underscoring indicates
5 new language that would be added.

4 twenty-seven, article six, chapter twenty-nine, of this code,
5 modified by the division of personnel to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the thirty-first day of
8 October, one thousand nine hundred ninety-five, relating
9 to the division of personnel (leave donation program, 143
10 ~~CSR2~~). are authorized, with the following amendments: —

11 "On page two, section 3.1, subsection (d), following
12 the words 'one half a month' by inserting the word
13 'continuously';

14 On page four, section 5.2, subsection (d), subdivision
15 C, following the word 'verification' by striking out the
16 semicolon and the word 'or,' and inserting in lieu thereof
17 the words 'or otherwise fails or ceases to meet eligibility
18 requirements;'

19 On page four, section 5.2, subsection (d), subdivision
20 D, following the word 'recipient' by striking out the period
21 and inserting a semicolon and the word 'or'

22 And,

23 On page four, section 5.2, subsection (d), by creating a
24 new subdivision E to read as follows: 'E. upon the
25 recipient's return to work.' "

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
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FILED

JUL 9 11 01 AM '96

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Supervisor, Corporations

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
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(Plus all the volunteer help we can get)

TO: TARI MCCLINTOCK CROUSE

AGENCY: PERSONNEL

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 24, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 2 TITLE: 143 PERSONNEL

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: *Tara McClintock Crouse*
TITLE OF PERSON SIGNING: *Asst. Dir., Employee Communications*
DATE: *7/8/96*

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.