WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

FILED

2011 MAY 20 AM 9:26

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

RULE TYPE: Legislative CITE AUTHORITY: West Virginia Code §§ 23-4-1 and 23-5A-4

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Workers' Compensation Temporary Total Disability

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 30, 2011 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Division of Personnel
Employee Relations Section
1900 Kanawha Boulevard, East
Building 6, Room 416
Charleston, WV 25305
or by email to:
Joe.F.Thomas@wv.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Workers' Compensation Temporary Total Disability

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: West Virginia Division of Personnel

Address: 1900 Kanawha Boulevard, East
Building 6, Room 416
Charleston, WV 25305

Phone Number: 304-558-3950, ext. 57290 Email: joe.f.thomas@wv.gov

Fiscal Note Summary

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

It is not anticipated that these amendments will have a measurable impact on the costs and revenues of State government.

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Workers' Compensation Temporary Total Disability

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

It is not anticipated that these amendments will have a measurable impact on the costs and revenues of State government.

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.

Date: May 19, 2011

Signature of Agency Head or Authorized Representative

Tasha P. Walker

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: May 20, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Building 6, Room 416
Charleston, WV 25305
304-558-3950, extension 57290

LEGISLATIVE RULE TITLE:

Workers' Compensation Temporary Total Disability

1. Authorizing statute(s) citation

West Virginia Code §§ 23-4-1 and 23-5A-4

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

Filed with Secretary of State May 20, 2011

b. What other notice, including advertising, did you give of the hearing?

To be posted on Division of Personnel web site, communicated via email to State agencies, county health departments, and other interested entities.

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

Public comment period scheduled to end on June 30, 2011

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

Attached Pending No comments received

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

N/A

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

Joe Thomas
1900 Kanawha Boulevard, East
Building 6, Room 416
Charleston, WV 25305
Phone: 304-558-3950, extension 57290
Fax: 304-558-1852

g. **<u>IF DIFFERENT</u> 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)

(same)

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 West Virginia Division of Personnel *Workers' Compensation Temporary Total Disability Rule* (143CSR3). 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.

REFERENCE	SUMMARY
3.1. b. 2.	Added language pertaining to restoration of interim sick and annual leave upon receipt of temporary total disability benefits consistent with current practices.
4.1. and 4.2.	Added language pertaining to the carrying forward of annual leave from one calendar year to another consistent with current practices.
4.2.	Added language to make consistent with language in W. Va. Code § 23-4-1(a) and the *Administrative Rule* of the Division of Personnel (143CSR1).

STATEMENT OF CIRCUMSTANCES REQUIRING
AMENDMENT TO THE
WEST VIRGINIA DIVISION OF PERSONNEL
WORKERS' COMPENSATION TEMPORARY TOTAL DISABILITY RULE

The existing Rule is being amended to clarify certain sections of the rule, to improve the consistency of the rule, and, generally, to improve the rule.

May 11, 2011

FILED

2011 MAY 20 AM 9:27

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

143CSR3

TITLE 143
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF PERSONNEL

SERIES 3
WORKERS' COMPENSATION TEMPORARY TOTAL DISABILITY

Section 1. General

1.1. Scope: This rule implements the provisions set forth in W. Va. Code §§ 23-4-1 and 23-5A-4 regarding compensation for employees who have received personal injuries in the course of and resulting from covered employment with the State or its political subdivisions as provided in W. Va. Code § 23-4-1(a).

1.2. Authority: This rule is issued under authority of W. Va. Code §§ 23-4-1 and 23-5A-4.

1.3. Filing Date: ~~May 4, 2007~~

1.4. Effective Date: ~~May 7, 2007~~

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 Increment: The incremental salary increase based on years of service as provided in W. Va. Code §§ 5-5-1 and 5-5-2.

2.2. 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.

2.3. 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.

2.4. Injury or personal injury: an injury subject to the Workers' Compensation provisions of chapter 23 of the ~~West Virginia~~ W. Va. Code.

2.5. Report of Occupational Injury: the form prescribed by W. Va. Code § 23-4-1b for report of injuries subject to chapter 23 of the ~~West Virginia~~ W. Va. Code.

2.6. Service: Total eligible employment time which is used for determining the rate of accrual of annual leave.

2.7. Sick leave: An earned employee benefit of paid time off from work for illness, injury or other circumstances as provided in the Division of Personnel Administrative Rule 143CSR1.

2.8. Temporary total disability benefits: Payments made to employees in accordance with the Workers' Compensation provisions of W. Va. Code § 23-4-1 et seq.

2.9. Years of service: full years of totaled service as an employee of the state of West Virginia as provided in W. Va. Code § 5-5-1 and 5-5-2 for the purpose of determining the amount of annual increment due an employee.

Section 3. Pay

3.1. Election of Option

a. An employee absent from work due to receiving a personal injury in the course of and resulting from his or her covered employment with the State or its political subdivisions may elect to receive either his or her accumulated sick leave or temporary total disability benefits, but not both for the same period of absence. Provided, however, that an employee of the State or one of its political subdivisions may receive his or her accumulated sick leave and temporary total disability benefits for the same period of absence if the temporary total disability benefits are paid as a result of a personal injury in the course of and resulting from his or her covered employment with an employer other than the State or one of its political subdivisions.

1. The Director of Personnel shall prescribe the form by which an employee who receives a personal injury in the course of and resulting from his or her covered employment with the State or its political subdivisions elects which option, either accumulated sick leave or temporary total disability benefits, he or she chooses to receive for his or her absence from work.

2. It is the joint responsibility of the employer and the injured employee to file an election of option form with the Report of Occupational Injury.

3. If the employee does not file the election of option form, the default option is accumulated sick leave.

b. Interim Payment of Sick Leave

1. An employee electing to receive temporary total disability benefits may collect sick leave benefits and, upon exhaustion of sick leave benefits, annual leave benefits until he or she receives temporary total disability benefits.

2. Upon receipt of the initial temporary total disability payment the employee shall pay or assign to his or her employer the net value of the sick leave, or sick and annual leave paid, after which his or her sick leave and annual leave, if used, shall be restored. The leave shall be restored retroactively based upon the date it was initially used. The maximum number of hours of annual leave that may be carried forward from one calendar year to another, as provided in the Administrative Rule of the Division of Personnel 143CSR1, shall apply. All sick leave accrued during this period of time shall be forfeited.

c. Temporary Total Disability After Exhaustion of Sick Leave

1. An employee electing to receive accumulated sick leave may receive temporary total disability benefits upon exhaustion of his or her accumulated sick leave prior to his or her return to work.

2. An employee electing to receive temporary total disability benefits must apply for a medical leave of absence without pay.

3.2. Annual increment pay

a. An employee electing to receive accumulated sick leave continues to accrue annual increment pay and years of service credit while being paid sick leave.

b. An employee electing to receive temporary total disability benefits continues to accrue annual increment pay and credit for years of service while receiving temporary total disability benefits.

Section 4. Leave

4.1. An employee electing to receive accumulated sick leave continues to accrue and carry forward forward from one calendar year to another sick and annual leave and

service credit in accordance with the provisions of the Division of Personnel Administrative Rule 143CSR1.

4.2. An employee electing to receive temporary total disability benefits due to receiving a personal injury in the course of and resulting from his or her covered employment with the State or its political subdivisions shall apply for a medical leave of absence without pay and, for purposes of leave, continues to accrue and carry forward from one calendar year to another annual leave and service credit for accrual of annual leave in accordance with the provisions of the Division of Personnel Administrative Rule 143CSR1, but does not accrue sick leave or holiday pay for the period the temporary total disability benefits are paid.

Section 5. Order of Separation for Layoff. Periods during ~~w hich~~ which an employee is paid ~~tem porary~~ temporary total disability benefits under the provisions of W. Va. Code § 23-4-1 due to receiving a personal injury in the course of and resulting from his or her covered employment as a permanent employee of a state agency or in the classified service are included as tenure as a permanent employee of a state agency or in the classified service regardless of job class or title for purposes of order of separation as provided in paragraph 12.4.(f)2 of the Division of Personnel Administrative Rule 143CSR1.

Department of Administration

West Virginia Division of Personnel

Sara P. Walker, Director

Earl Ray Tomblin, Governor
Robert W. Ferguson, Jr., Cabinet Secretary

STATE PERSONNEL BOARD
Robert W. Ferguson, Jr., Chairman
John A. Canfield ✦ Mark W. Carbone
Sharon Lynch ✦ Eugene Stump
Elizabeth Walker

MEMORANDUM

TO: Members of the State Personnel Board

FROM: Sara P. Walker, Director
Division of Personnel

DATE: May 19, 2011

RE: **Proposed Amendments to Legislative Rules**

Your approval is requested for filing notices of public comment on proposed amendments to the *Administrative Rule of the West Virginia Division of Personnel*, 143CSR1, and the *West Virginia Division of Personnel Workers' Compensation Temporary Total Disability Rule*, 143CSR3, with the Legislative Rule-Making Review Committee and the Secretary of State's Office in accordance with the provisions of W. VA. CODE §29A-3-1 *et seq.* Copies of the rules with proposed amendments are attached.

Thank you for your consideration of this request.

APPROVED:

Robert W. Ferguson, Jr., Chairman
State Personnel Board
May 19, 2011

SPW/jft

Attachments