WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

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 Rule

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

Department of Administration

West Virginia Division of Personnel

Billie Jo Streyle-Anderson, Director

Joe Manchin III, Governor
Robert W. Ferguson, Jr., Cabinet Secretary

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
Division of Personnel

RE: Amendments to the *Workers' Compensation Temporary Total Disability Rule*

DATE: July 20, 2006

Your approval is requested for the filing of proposed amendments to the *Workers' Compensation Temporary Total Disability Rule* 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 response to the one written comment is included with your materials. No changes were made to the proposed amendments based on the comment received.

Thank you for your consideration of this request.

APPROVED:

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:
Workers' Compensation Temporary Total Disability Rule

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:

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 <u>phone/fax/e-mail numbers</u>** 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. **<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)

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
AND
STATEMENT OF CIRCUMSTANCES REQUIRING
AMENDMENT TO THE
WORKERS' COMPENSATION TEMPORARY TOTAL DISABILITY RULE

The existing rule is being amended to comply with a Supreme Court ruling requiring that public employees receiving workers' compensation temporary total disability benefits continue to accrue annual leave and service credit for annual leave while receiving such benefits.

6 May 2006

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Workers' Compensation Temporary Total Disability Rule

Type of Rule: [X] 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 a ruling of the West Virginia Supreme Court of Appeals. Specifically, subsection 4.2 has been amended to comply with the 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: Workers' Compensation Temporary Total Disability Rule

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

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 months x 1.75 days/month = 3.5 days x $167/day = $584.50/claim x 1500 claims/ year =

$876,750 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 Administrative Rule of the West Virginia Division of Personnel (143CSR1) 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

Patricia M. Gouse

143CSR3
WEST VIRGINIA DIVISION OF PERSONNEL
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 ~~state~~ 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 25, 2000.~~

1.4. Effective Date: ~~July 1, 2000.~~

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 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 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.

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 ~~but does not accrue credit for years of service~~.

Section 4. Leave

4.1. An employee electing to receive accumulated sick leave continues to accrue 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 shall apply for a medical leave of absence without pay and, for purposes of leave, ~~is treated the same as any other employee granted a medical leave of absence without pay in~~ continues to accrue 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 which an employee is paid 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.

Public Hearing on the Proposed Amendments to the Workers' Compensation Temporary Total Disability Rule
June 15, 2006 at 2:00 p.m.

Chairman Robert Ferguson: Thank you Ms. Crouse. The next public hearing will be on the proposed amendments to the Workers' Compensation Temporary Total Disability Rule. Ms. Crouse do we have anyone who wishes to make a comment?

Tari Crouse, Acting Director of the Division of Personnel: No we do not sir.

Chairman Robert Ferguson: That concludes the public hearing proposed amendments to the Workers' Compensation Temporary Total Disability Rule.

SIGN-IN SHEET
PUBLIC HEARING ON
Amendments to the Division of Personnel Administrative Rule
and Workers' Compensation Temporary Total Disability Rule
June 15, 2006, 2:00 p.m.

NAME	AGENCY or ORGANIZATION	Do you wish to make oral comments?			
		Administrative Rule		Workers' Compensation	
		Yes	No	Yes	No
J. Michael Atkins	WV PEIA	✓			
Cynthia Kittle	Coalition for a Tobacco Free WV				
Kathi Elkins	DHHR / Tobacco Prevention	✓			
John Melton	Lottery		✓		
Terri Martin	Lottery		✓		