

**WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**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: 3

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2616

SECTION §64-2-3(b), PASSED ON March 8, 2007

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 7, 2007


Authorized Signature

143CSR3

**TITLE 143
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF PERSONNEL**

**SERIES 3
WORKERS' COMPENSATION TEMPORARY TOTAL DISABILITY**

PROMULGATION HISTORY

May 11, 2006	Filed Notice of a Public Hearing on a Proposed Rule
June 15, 2006	Public Hearing Held
July 21, 2006	Filed Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee
March 8, 2007	Legislative Rule Authorized in House Bill 2616

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 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 .

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, 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.