

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

FILED

MAY 18 3 33 PM '99

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§ 23-4-1 and 23-5A-4

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: 3

TITLE OF RULE BEING PROPOSED: West Virginia Division of Personnel Workers'
Compensation Temporary Total Disability Rule

DATE OF PUBLIC HEARING: Thursday, June 17, 1999 TIME: 2:15 p.m.

LOCATION OF PUBLIC HEARING: State Capitol Complex
Building 6, Room 425
1900 Kanawha Boulevard, East
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL ☐, WRITTEN ☐, BOTH ☒

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Division of Personnel

Bldg. 6, Room 416

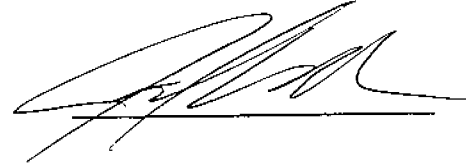
1900 Kanawha Blvd., E.

Charleston, WV 25305-0139

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



\$2.60

SUMMARY OF PROPOSED RULE

The proposed rule implements the provisions of West Virginia Code §§ 23-4-1 (1989; previously included in 143CSR1) and 23-5A-4 (1999) relating to compensation for state employees who receive personal injuries in the course of and resulting from covered employment.

The rule provides that a state employee who receives a compensable injury may elect to receive either temporary total disability (TTD) benefits or accrued sick leave for his or her absence from work, but not both for the same period. It specifies a means for the employee to elect an option. It provides that the employee, if electing to receive TTD benefits, may be paid sick leave until he or she receives TTD benefits, and that once the employee receives the TTD benefits, he or she must pay back the net value of the sick leave at which time his or her sick leave will be restored. The rule makes it clear that an employee who elects to use accrued sick leave for his or her absence may receive TTD benefits once his or her leave is exhausted.

The rule provides that a state employee who elects to receive TTD benefits continues to accrue annual increment pay, but not years of service credit. It provides that periods during which an employee receives TTD benefits are included as tenure for purposes of order of separation on layoff. The rule relates receipt of sick leave and TTD benefits to the attendance and leave provisions established in the Division of Personnel Administrative Rule 143CSR1.

**WEST VIRGINIA DIVISION OF PERSONNEL
WORKERS' COMPENSATION TEMPORARY TOTAL DISABILITY RULE**

The rule is being proposed to comply with the provisions of W.Va. Code §§ 23-4-1 and 23-5A-4 which require the Division of Personnel to promulgate legislative rules regarding compensation for state employees who have received personal injuries in the course of and resulting from covered employment.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Division of Personnel 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 416)
Charleston, West Virginia 25305-0139

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
PERSONAL SERVICES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
CURRENT EXPENSE	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
REPAIRS & ALTERATIONS	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
EQUIPMENT	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
OTHER	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

2. Explanation of above estimates:

We do not anticipate that the proposed amendments to the existing rule will have any fiscal impact on this agency or other state agencies.

3. Objectives of these rules:

These rules implement the provisions of the West Virginia Code §§ 23-4-1 and 23-5A-4 relating to State employees' accrual of increment pay while receiving temporary total disability benefits and their choice to receive either accrued sick leave or temporary disability benefits, but not both, for compensable injuries.

Rule Title: West Virginia Division of Personnel Workers' Compensation Temporary Total Disability Rule

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

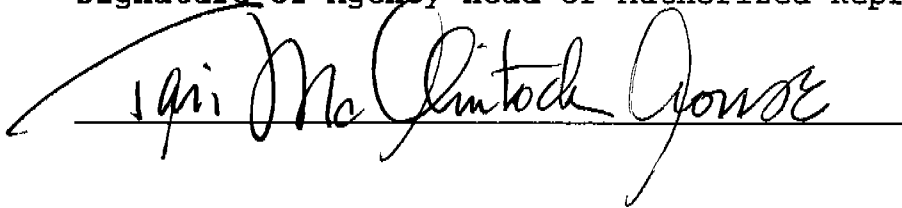
N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: May 17, 1999

Signature of Agency Head or Authorized Representative

A handwritten signature in cursive script, reading "J. McIntosh Jones", is written over a horizontal line.

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 17, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Personnel

Building 6, Room 416, 1900 Kanawha Boulevard, East, Charleston, WV 25305-0139

Phone: 558-3950

LEGISLATIVE RULE TITLE: West Virginia Division of Personnel Workers' Compensation
Temporary Total Disability Rule

1. Authorizing statute(s) citation W.Va. Code §§ 23-4-1 and 23-5A-4

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

May 18, 1999

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

Copies to all state agencies and interested employee organizations.

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

June 17, 1999 (prospective)

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

N/A

Attached _____ 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 phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Tari McClintock Crouse, Assistant Director for Employee Communications

Building 6, Room 416, 1900 Kanawha Blvd., E., Charleston, WV 25305-0139

Phone: 304/558-3950, extension 202; FAX: 304/558-1587

E-mail: tcrouse@gmail.state.wv.us

- g. **IF DIFFERENT 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

143CSR3
WEST VIRGINIA DIVISION OF PERSONNEL
WORKERS' COMPENSATION TEMPORARY TOTAL DISABILITY RULE

FILED

May 18 3 33 PM '99

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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.

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

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 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.

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 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.

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 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 election of option form is not filed, the default option will be 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 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 must 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 accordance with the provisions of the Division of Personnel Administrative Rule 143CSR1.

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 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.