



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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October 18, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Tari McClintock Crouse
Division of Personnel
Capitol Complex
Building 6, Room 416

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **WV Division of Personnel Worker's Compensation Temporary Total Disability Rule, 143CSR3**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Division of Personnel

Subject: West Virginia Division of Personnel Workers Compensation
Temporary Total Disability Rule, 143CSR3

PERTINENT DATES

Filed for public comment: May 18, 1999
Public comment period ended: June 17, 1999
Filed following public comment period: August 6, 1999
Filed LRMRC: August 6, 1999
Filed as emergency:

Fiscal Impact: None

OFFICE OF THE
SECRETARY OF
STATE
WEST VIRGINIA
DEPARTMENT OF
LEGISLATION

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ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 which relates to pay requires 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, to elect to receive either sick leave or temporary total disability benefits but not both for the same period of absence. It provides that an employee electing to receive temporary total disability benefits may collect sick leave benefits and annual leave benefits until he or she receives temporary total disability benefits. Upon receipt of temporary total disability benefits, the employee is required to pay his or her employer the net value of the sick or annual leave after which the leave is to be restored to the employee.

It also provides that an employee electing to receive sick leave continues to accrue annual increment pay and years of service

credit while being paid sick leave. An employee electing to receive temporary total disability benefits continues to receive annual increment pay but does not accrue credit for years of service.

Section 4 relates to leave. It states that an employee electing to receive accumulated sick leave continues to accrue sick and annual leave and service credit in accordance with the Division's rules. An employee electing to receive temporary total disability benefits is required to apply for a medical leave of absence without pay and is treated as similar employees under the Division's rule.

Section 5 relating to order of separation for layoff provides that periods during which an employee is paid temporary total disability benefits is 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.

AUTHORITY

Statutory authority: W.Va. Code, §23-5A-4, which provides, in part, as follows:

(b) The director of the division of personnel shall propose rules for legislative approval to implement the provisions of this section.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. Subdivision 3.2.b provides that employees receiving temporary total disability benefits do not accrue credit for years of service. This conflicts with Consolidated Public Retirement System's rule, Public Employees Retirement System, 162CSR5, which provides that a member of the retirement system who is receiving workers compensation benefits shall receive credited service towards his or her retirement.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.