

## Form #4

OFFICE OF THE ATTORNEY GENERAL

\$2.80



# West Virginia Division of Personnel

Joe E. Smith, Acting Director

**STATE PERSONNEL BOARD**Roger Morgan, Chairman  
Rev Paul J. Gilmer ♦ Elizabeth D. Harter  
Sharon Lynch ♦ Eugene Stump**MEMORANDUM**

**TO:** Members of the State Personnel Board

**FROM:**  Joe E. Smith, Acting Director  
WV Division of Personnel

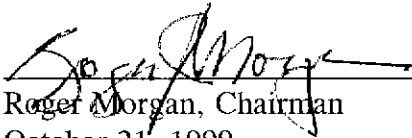
**RE:** Modifications to the Agency Approved Proposed Rule

**DATE:** October 21, 1999

Your approval is requested for filing modifications to the agency approved proposed 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., the agency approved proposed rule was filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee (Committee). At its meeting on Monday, October 18, 1999, the Committee recommended that the Legislature authorize the agency to promulgate the rule with technical modifications recommended by the Committee counsel and agreed to by the Division. We must now file these modifications with the Committee and the Secretary of State so the rule can be considered by the Legislature during its 2000 regular session.

Thank you for your consideration of this request.

**APPROVED:**  
Roger Morgan, Chairman  
October 21, 1999

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

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**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.

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 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.

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 ~~is not filed~~, the default option ~~will be~~ 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 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~~ 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 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 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.