

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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SEP 26 9 31 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: University System of WV Board of Trustees TITLE NUMBER: 128

CITE AUTHORITY: WV Code 18-1-6

RULE TYPE: PROCEDURAL XX INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO XX

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 31

TITLE OF RULE BEING ADOPTED: Classified Employees

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS Oct. 28, 1996.



DEPARTMENT OF EDUCATION AND THE ARTS

Office of the Secretary

State Capitol Bldg. 1, R-151
Charleston, West Virginia 25305
Telephone: (304) 558-2440
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Gaston Caperton
Governor

Barbara Harmon-Schamberger
Cabinet Secretary

September 23, 1996

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

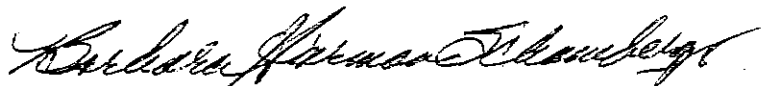
Dear Secretary Hechler,

I hereby grant consent as required pursuant to WV Code §5F-2-2 for the final filing of the following procedural rule of the University System of West Virginia Board of Trustees:

Title 128, Series 31: Classified Employees

A copy of the rule is attached.

Sincerely,



Barbara Harmon-Schamberger
Secretary

BHS:th

Attachment

cc: Dr. Clifford Trump
Dr. John Thralls

**TITLE 128
PROCEDURAL RULE
UNIVERSITY SYSTEM OF WEST VIRGINIA
BOARD OF TRUSTEES
SERIES 31**

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE: CLASSIFIED EMPLOYEES

SECTION 1. GENERAL

- 1.1 Scope - This rule establishes procedures related to West Virginia Code 18B.
- 1.2 Authority - West Virginia Code §18B-1-6.
- 1.3 Filing Date -
- 1.4 Effective Date -

SECTION 2. DEFINITIONS

- 2.1 Part-Time Regular Employee (PTR). An employee in a position created to last less than 1,040 hours during a twelve-month period. An employee in a PTR position is not eligible for benefits, but is covered under the classification program as set out in Series 62.
- 2.2 Temporary Employee. An employee hired into a position expected to last fewer than nine months of a twelve month period regardless of hours worked per week. A temporary employee is not eligible for benefits, but is covered by the classification program as set out in Series 62.
- 2.3 Casual Employee. A casual employee position is a position created to meet specific operational needs at an institution for no more than 225 hours in a 12-month period. Individuals in a casual employee position are not eligible for benefits and are not covered by the classification program as set out in Series 62.
- 2.4 Student Employee. An employee enrolled at the institution as a student and whose primary purpose for being at the institution is to obtain an education. A student employee is not eligible for benefits and is not covered by the classification program as set out in Series 62.

- 2.5 Classified Employee. An employee who is covered by the provisions of the classification program outlined in this rule as set out in Series 62.
- 2.6 Exempt. Employees not covered by the Fair Labor Standards Act (FLSA) for overtime purposes as set out in Series 62.

SECTION 3. PART-TIME AND TEMPORARY EMPLOYEES

- 3.1 Institutions shall not hire part-time employees solely to avoid the payment of benefits or in lieu of full-time employees and shall provide all qualified classified employees with nine-month or ten-month contracts with the opportunity to accept part-time or full-time summer employment before new persons are hired for the part-time or full-time employment. Consequently, institutions may only employ individuals into temporary positions when the function of the position is expected to require less than nine (9) consecutive months of employment (regardless of hours worked per week) to equal the full-time equivalency of the position.
- 3.2 Classified employees who are employed in less than twelve-month positions and who meet the minimum qualifications of a position shall be provided with an opportunity to accept part-time or full-time summer employment before new persons shall be hired for those positions.

SECTIONS 4. WORK SCHEDULES

- 4.1 Each institution shall establish a policy, with the advice and assistance of staff council and other groups representing classified employees, which shall: address any institution-specific procedures concerning the use of flexible work schedules, job sharing, and four-day work weeks; discourage temporary, non-emergency changes in an employee's work schedule; and provide a mechanism for changes in, and notification of, changes in work schedules. This policy shall also provide that, where possible, the institution shall provide the employee with a fifteen (15) day notice of such changes. Institutions shall develop such policies within 90-days of the effective date of this rule.

SECTION 5. APPOINTMENT OR PROMOTION

- 5.1 Pursuant to W.Va. Code §18B-7-1(d), non-exempt classified employees who apply for and meet the minimum qualifications as determined by the institutional human resources director or other designee of the president for a posted non-exempt position within an institution and are currently

employed at the institution shall be hired into the posted position prior to hiring someone from outside the institution.

- 5.2 If more than one qualified, non-exempt classified employee applies, the best-qualified non-exempt classified employee shall be awarded the position. In such cases, if the employees are equally qualified, the employee with the greatest amount of continuous seniority at the institution shall be awarded the position. A random selection method such as drawing of lots, rolling dice, or selection of playing cards shall be utilized if two or more employees have equal qualifications and seniority. Such method shall be mutually agreed upon by the affected employees and approved by the President or her/his designee. If the employees cannot agree on a random selection method, the President of the institution shall use the drawing of lots to determine rankings.
- 5.3 Provisions of this section shall not apply to casual, temporary and student employees, nor shall they apply to exempt positions.
- 5.4 Pursuant to W. Va. Code §18B-7-1d, the provisions of this section shall not take precedence over the mandates in an institution's affirmative action plan adopted pursuant to the provisions of Executive Order 11246 or pursuant to any other federal or state requirement. In no event shall an institution's affirmative action plan require the use of quotas to meet its affirmative action goals or require the hiring of an unqualified person for any non-exempt position.

SECTION 6. PROBATIONARY PERIOD

- 6.1 Full-time regular classified employees shall serve a six-month probationary period beginning at the original date of employment.
- 6.2 At the end of three-months and the end of the six-month probationary period, the employee shall receive a written evaluation of her/his performance and shall be informed as to whether her/his employment will continue beyond the probationary period. As with all positions, continued employment is based on adequate funding, satisfactory performance and adherence to system and institution rules and regulations.

SECTION 7. COMPENSATORY/OVERTIME PROVISIONS

- 7.1 Non-exempt employees may receive compensatory time off in lieu of overtime pay. All hours worked beyond 37½ and up to and including 40

hours are calculated at the employee's regular hourly rate. Time worked beyond 40 hours in a work week are to be calculated at a rate of one and one-half times the regular hourly rate.

- 7.2 A written agreement between the employee and the institution shall exist when the employee chooses compensatory time off in lieu of overtime pay. The written agreement may be modified at the request of either the employee or employer at any time but under no circumstances shall a change in the agreement deny the employee compensatory time heretofore acquired.
- 7.3 Within 60 days of passage of this rule, institutions shall develop an agreement form for compensatory time accumulation in lieu of overtime payment and shall specify the required approval process which must be completed before a non-exempt employee may work beyond 37½ hours.
- 7.4 Employees may accumulate up to two hundred forty hours (240 hours) of compensatory time and shall be paid for all hours worked above the maximum accrual.
- 7.5 Employees in public safety, seasonal work, and/or emergency response categories may accumulate up to four hundred eighty hours (480 hours) and shall be paid for all hours worked above the maximum accrual.
- 7.6 Compensatory time must be used within one year of accrual. The use of compensatory time off shall be requested two weeks in advance of the use of the time off. Approval of the request shall be contingent upon whether it will unduly disrupt the operation of the institutional unit.
- 7.7 Should an individual's employment be terminated, any unused compensatory time shall be reimbursed as follows:
 - 7.7.1 The average regular rate received by such employee during the first three years of the employee's employment; or,
 - 7.7.2 The final regular rate received by such employee, whichever is higher.
 - 7.7.3 An employee may not work overtime unless approved in advance per institutional policy.

SECTION 8. POSTING

- 8.1 Each institution shall develop a policy for posting of classified positions both internally and externally in order to provide employees adequate time to make application for positions. Institutions shall develop such policy within 90-days of the effective date of this rule.

- 8.2 Posting shall not apply to casual or temporary positions.



KEN HECHLER
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(Plus all the volunteer help we can get)

TO: JOYCE DANIELS

AGENCY: TRUSTEES

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: November 12, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

OFFICE OF THE SECRETARY

JAN 7 12 27 1997

FILED

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 31 TITLE: 128 TRUSTEES

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Joyce W Daniels

TITLE OF PERSON SIGNING: Exec Assistant to The Chancellor

DATE: 1/6/97

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.