

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

Form #5

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2005 NOV 14 P 4:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: WV Council for Community & Technical College Education TITLE NUMBER: 135

CITE AUTHORITY: 18B-2B-6

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code 18B-1-3(h)(2)

AMENDMENT TO AN EXISTING RULE: YES _____ NO

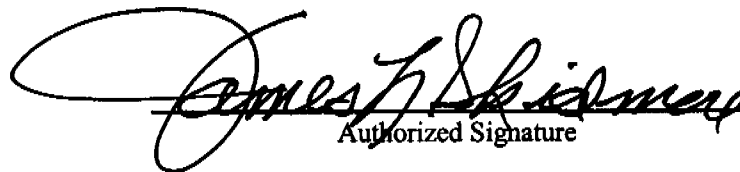
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 38

TITLE OF RULE BEING PROPOSED: Employee Leave

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS December 14, 2005


Authorized Signature

\$4.20

TITLE 1335
PROCEDURAL RULE
~~HIGHER EDUCATION POLICY COMMISSION~~
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

FILED

P 4: 42

SERIES 38
EMPLOYEE LEAVE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SECTION 1. GENERAL

- 1.1 Scope - Rule regarding annual leave, military leave, leave of absence without pay, sick leave, special emergency leave, catastrophic leave, parental leave, and witness and jury leave for employees of the Higher Education Policy Commission Council for Community and Technical College Education.
- 1.2 Authority - West Virginia Code § 18B-~~4~~2B-6
- 1.3 Filing Date - ~~October 20, 1992~~ November 14, 2005
- 1.4 Effective Date - ~~November 19, 1992~~ December 14, 2005

SECTION 2. GENERAL LEAVE COVERAGE

- 2.1 Eligibility for annual and sick leave shall be based on the following:
 - 2.1.1 Employees working on a regular and continuing basis for no less than 1950 hours within a twelve (12) consecutive month period are considered to be full-time employees and are eligible for leave as specified in this document.
 - 2.1.2 Employees working between 1,040 hours and less than 1,950 on a regular and continuing basis during a twelve (12) consecutive month period shall accumulate leave on a pro rata basis.
 - 2.1.3 Employees working less than 1,040 hours are not eligible for leave benefits.
- 2.2 Faculty members on twelve-month appointments are defined as full-time employees and accrue leave according to the appropriate sections of this rule. The provisions of this rule related to annual leave, sick leave, catastrophic leave, special emergency leave, and managing work time in areas affected by interruption to utility or similar situations do not apply to faculty members on annual appointments of less than twelve months.

- 2.3 Annual and sick leave may not be taken before it is accrued. If an employee works less than a full month, annual and sick leave shall be accumulated on a pro rata basis.
- 2.4 During a terminal leave period, no type of leave may be accrued. Terminal leave is the period following the last day of scheduled work from employment such as resignation, retirement, etc.
- 2.5 Length of service shall be total years of service which includes experience with state institutions of higher education and other state agencies. Continuous service is not required to complete the required term. Annual appointment periods of nine (9) months or more shall be credited for one (1) year of service for annual leave calculation purposes.
- 2.6 A recognized institutional holiday occurring during an employee's leave period shall not be considered as a day of leave, provided the employee is not in a terminal leave period.
- 2.7 Up to fifteen (15) days of annual leave may be transferred from other agencies of state government and state higher education institutions to other higher education institutions. Certification of the balance which existed in the agency or institution from which the employee is transferring must accompany the request for transfer and bear the signature of an officer of that agency. A request for transfer must be made within one (1) year from the last day of employment with the other agency or institution.
- 2.8 When an employee transfers from other agencies of state government or from other state institutions of higher education to another institution, the employee's accumulated sick leave may be transferred. Written verification of the accumulated amount of sick leave to be transferred must be provided by the state agency or institution of higher education wherein the employee accumulated the sick leave within one (1) year of the date of employment with the institution.
- 2.9 An employee is required to notify her/his supervisor immediately if ill or unable to work for any reason and to follow the institution's established procedures for absences from work. The notification shall be given to the immediate supervisor or designee, as determined by established procedures of the institution.
- 2.10 Employees on leave of absence without pay shall not accrue annual or sick leave or years of service credit for any and all full months in which they are off the payroll.
- 2.11 Each institution shall keep on file a record showing current leave status of each employee.

SECTION 3. ANNUAL LEAVE

- 3.1 Full-time non-classified employees and faculty with twelve-month appointments shall be eligible for up to twenty-four (24) days leave per year calculated at the rate of 2.00 days per month from the date of employment. However, upon leaving a non-classified position, the accumulation rates outlined in Section 3.2 shall apply.
- 3.2 Employees occupying full-time classified positions shall be eligible for annual leave on the following basis:
 - 3.2.1 Less than 5 years' service: 1.25 days per month;
 - 3.2.2 5 but less than 10 years' service: 1.50 days per month;
 - 3.2.3 10 but less than 15 years' service: 1.75 days per month;
 - 3.2.4 15 or more years' service: 2.00 days per month.
- 3.3 Employees working at least 1,040 hours per twelve (12) consecutive months on a regular and continuing basis, but less than 1,950 hours shall accumulate annual leave on a pro rata basis.
- 3.4 Accumulated annual leave for continuing employees may be extended beyond that earned during a period of one (1) year by written approval of the president or her/his designee, but in no case shall it exceed twice the amount earned in any twelve-month period.
- 3.5 An employee is entitled to accumulated leave at termination of service, but in no case may this exceed the limits set in 3.4 above.

SECTION 4. OTHER CONDITIONS FOR ANNUAL LEAVE

- 4.1 At the request of the employee through established procedures, annual leave may be granted because of illness.
- 4.2 The work requirements of the institution shall take priority over the scheduling of annual leave or other leave for an employee. When operationally possible, the supervisor shall grant earned annual leave at the convenience of the employee. However, departmental needs must be met, and annual leave may not be taken without prior request and approval of the employee's supervisor.
- 4.3 In the event of an employee's death, the value of accumulated annual leave will be paid to the employee's estate.

SECTION 5. SICK AND EMERGENCY LEAVE

- 5.1 Full-time employees shall accumulate sick leave at the rate of 1.5 days per month. All other employees shall accumulate sick leave in accordance with Section 2.1 of this rule.
- 5.2 Sick leave may be accumulated without limit.
- 5.3 Sick leave may be used by the employee when ill or injured or when in need of medical attention or when death occurs in the immediate family.
- 5.4 An employee may use sick leave for a member of the immediate family who is ill, injured, or in need of medical attention. Immediate family is defined as: father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, granddaughter, grandson, stepmother, stepfather, step children, or others considered to be members of the household and living under the same roof.
- 5.5 Sick leave for more than five (5) consecutive days shall not be granted to an employee for illness without satisfactory proof of illness or injury, as evidenced by a statement of the attending physician or by other proof satisfactory to the institution. An employee having an extended illness or serious injury shall, before returning to duty, obtain satisfactory medical clearance to help ensure adequate protection and shall indicate the employee's ability to perform her/his duties. Such medical clearance shall be presented in writing.
- 5.6 The institution may require evidence from an employee for verification of an illness or other causes for which leave may be granted under this rule, regardless of the duration of the leave.
- 5.7 In cases, except those involving catastrophic sick leave as defined in Section 8.1, where all accumulated sick leave has been used and annual leave is available, it shall be the option of an employee either to use any accumulated annual leave until it has also expired, rather than being removed from the payroll, or to retain the accumulated annual leave for use after return to work, but be taken off the payroll immediately after the accumulated sick leave has expired.
- 5.8 On-the-job injuries or occupational illnesses which involve no more than three (3) days of disability leave or absence from work shall not be charged against the employee's accumulated sick leave as long as they are the next three (3) consecutive working days after injury or illness occurred. If on-the-job injuries or illnesses require a leave beyond the three-day period, it shall be the option of the employee either to use earned and accumulated sick and annual leave until both may be exhausted or to reserve for future use any earned and accumulated sick and annual leave and receive only Workers' Compensation benefits for which adjudged eligible.
- 5.9 Disabilities caused or contributed to by pregnancy, miscarriage, abortion,

childbirth, and recovery therefrom shall be, for all job-related purposes, temporary disabilities and shall be treated the same as any other illness or disability would be treated for sick leave entitlement. For this reason, employees shall be entitled to sick leave for their disabilities related to pregnancy and childbirth on the same terms and conditions as they or other employees would be entitled for other illnesses and disabilities. In determining whether an employee is unable to work because of a disability related to pregnancy or childbirth, the same criteria shall be used as would be used in the case of another type of illness or disability.

- 5.10 Sick leave provisions are contingent upon continued employment. When the services of an employee have terminated, all sick leave credited to the employee shall be considered cancelled as of the last working day with the institution, and no reimbursement shall be provided for unused sick leave except in the event of retirement, in which case sick leave may be converted to insurance coverage or for provisions lawfully provided for at that time. Employees who resign in good standing and are later reemployed may have their total accumulated sick leave reinstated, provided the date of termination is one (1) year or less from the date of reemployment. However, if the employee returns to work after more than one (1) year from the date of termination, no more than 30 days of accumulated sick leave may be reinstated.

SECTION 6. MEDICAL LEAVE OF ABSENCE WITHOUT PAY

- 6.1 Any employee requesting a medical leave of absence without pay must provide the institutional president or the president's designee, through established procedures, with satisfactory medical evidence (such as a statement from the attending physician) that he/she is unable to work. The medical statement shall include a diagnosis, prognosis, and expected date that the employee can return to work. If the evidence is satisfactory, the president or her/his designee may authorize a medical leave of absence without pay only for the period of disability specified by the attending physician.
- 6.2 The employee shall be expected to report to work on the first workday following expiration of the disability period. Failure of the employee to report promptly at the expiration of a medical leave of absence without pay, except for satisfactory reasons submitted in advance, shall be cause for termination of employment by the institution. An employee, prior to return to duty, shall obtain satisfactory medical clearance to help ensure adequate protection and which shall indicate the employee's ability to perform her/his duties. Such medical clearance shall be presented in writing.
- 6.3 A medical leave of absence without pay may be granted for no more than a twelve (12) consecutive month period. Employees who may need an extended medical leave beyond twelve (12) consecutive months may apply for an extension through institutional procedures or may consider other options, such as disability.
- 6.4 After an employee has taken a twelve-month medical leave, the institution shall

continue group health insurance coverage provided that the employee pays the institution the full premium cost of such group health plan.

- 6.5 Any employee who is separated from employment following a medical leave of absence of twelve (12) consecutive months and who had chosen to maintain her/his accumulated annual leave will receive payment for such accumulated annual leave in a lump sum payment.

SECTION 7. PARENTAL LEAVE

- 7.1 A full-time employee who has worked at least twelve (12) consecutive weeks for the state may request up to twelve (12) weeks unpaid parental leave.
- 7.2 The request must be due to birth or adoption by the employee or because of a planned medical treatment or care for the employee's spouse, son, daughter, parent, or dependent who has a serious health condition.
- 7.3 The employee must provide her/his supervisor with written notice two (2) weeks prior to the expected birth or adoption; or for the medical treatment; or for the supervision of a dependent. Failure to submit a written request may be cause for denial.
- 7.4 The employee must provide the employer with certification by the treating physician and/or documentation regarding dependency status.
- 7.5 All annual leave must be exhausted before the parental leave begins. No more than a total of twelve (12) weeks of parental leave may be taken in any twelve (12) consecutive month period.
- 7.6 During the parental leave by an employee, the institution shall continue group health insurance coverage provided that the employee pays the employer the full premium cost of such group health plan.
- 7.7 The position held by the employee immediately before the leave is commenced shall be held for a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position. However, the institution may employ a temporary employee to fill the position for the period of the parental leave.

SECTION 8. CATASTROPHIC LEAVE

- 8.1 Catastrophic leave is provided for employees and a catastrophic illness is defined as: a medically verified illness or injury which is expected to incapacitate the employee and which creates a financial hardship because the employee has exhausted all leave and other paid time off. Catastrophic illness or injury shall also include an incapacitated immediate family member if this results in the

employee being required to take time off from work to care for the family member and the employee has exhausted all leave and other paid time off.

- 8.2 Each institutional president and the Chancellor of the ~~Higher Education Policy Commission~~ Council for Community and Technical College Education will have the option to establish a leave bank and/or a procedure for direct transfer of sick or annual leave to an employee who has requested and been approved to receive leave donations due to a catastrophic illness or injury. The institution may develop procedures which limit the amount of deposits an employee may make in any twelve (12) continuous month period.
- 8.3 A catastrophic leave bank provides for the deposit of sick and annual leave into a "bank" from which employees approved for catastrophic leave may withdraw leave.
- 8.4 A direct transfer provides for sick and annual leave to be donated at the request of the employee upon appropriate medical verification that the individual is unable to work due to the catastrophic illness or injury as determined by the president of the institution or the Chancellor of the ~~Higher Education Policy Commission~~ Council for Community and Technical College Education.
- 8.4.1 Upon approval for an employee to receive direct transfer of catastrophic leave, any employee may, upon written notice to the human resources department, donate sick and/or annual leave in one-day increments. No employee shall be compelled to donate sick leave. Any leave donated by an employee, but not used by the employee to whom it was donated, shall be returned to the donating employee and reflected in her/his leave balance.
- 8.5 An employee receiving the transfer of leave shall have any time which is donated credited to such employee's leave record in one-day increments and reflected as a day-for-day addition to the leave balance of the receiving employee. The leave record of the donating employee shall have the donated leave reflected as a day-for-day reduction of the leave balance.
- 8.6 Use of donated credits may not exceed a maximum of twelve (12) continuous calendar months for any one catastrophic illness or injury. The total amount of leave received by transfer or withdrawn from a bank may not exceed an amount sufficient to ensure the continuance of regular compensation and shall not be used to extend insurance coverage pursuant to Section 13, Article 16, Chapter 5 of the Code, which relates to insurance coverage for state employees. The employee receiving donations of leave shall use any leave personally accrued on a monthly basis prior to receiving additional donated leave.
- 8.7 Direct transfer of leave or deposits into a leave bank may be inter- institutional. The president or her/his designee shall notify in writing other institutional presidents requesting that the institution consider the transfer of leave by either the direct transfer method or from the institution's leave bank. Upon approval of the receiving president, transfer leave will be made through appropriate institutional procedures.

- 8.8 Each institution and the higher education policy commission office on behalf of the Council for Community and Technical College Education shall be responsible for the administration of catastrophic leave and shall develop and disseminate procedures for the administration of this policy.

SECTION 9. PERSONAL LEAVE OF ABSENCE WITHOUT PAY

- 9.1 An employee, upon application in writing and upon written approval by the institutional president or her/his designee, may be granted a continuous leave of absence without pay for a period of time not to exceed twelve (12) consecutive months provided all accrued annual leave has been exhausted.
- 9.2 The president or the president's designee, at her/his discretion, may require the written approval of the supervisor before accepting the written application of an employee for a leave of absence without pay.
- 9.3 The president or the president's designee, at her/his discretion, shall determine if the purpose for which such a leave is requested is proper and within sound administrative policy.
- 9.4 At the expiration of leave of absence without pay, the employee shall be reinstated without loss of any rights, unless the position is no longer available due to a reduction in staff caused by curtailment of funds or a reduced workload. Failure of the employee to report promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance, shall be cause for termination of employment by the institution.
- 9.5 During a personal leave, the institution shall continue group health insurance coverage provided that the employee pays the employer the full premium costs of such group health plan.

SECTION 10. MILITARY LEAVE

- 10.1 An employee who is a member of the National Guard or any reserve component of the armed forces of the United States shall be entitled to and shall receive a leave of absence without loss of pay, status, or efficiency rating, for all days in which engaged in drills or parades ordered by proper authority, or for field training or active service for a maximum period of thirty (30) working days ordered or authorized under provisions of state law in any one (1) calendar year. The term "without loss of pay" shall mean that the employee shall continue to receive normal salary or compensation, notwithstanding the fact that such employee may receive other compensation from federal sources during the same period. Furthermore, such leave of absence shall be considered as time worked in computing seniority, eligibility for salary increased, and experience with the institution. An employee shall be required to submit an order or statement in writing from the appropriate military officer in support of the request for such military leave.

- 10.2 Benefits of this section shall accrue to individuals ordered or called to active duty by the President of the United States for thirty (30) working days after they report for active service.

SECTION 11. SPECIAL EMERGENCY LEAVE WITH PAY

- 11.1 Special emergency leave with pay may be granted by the president of the institution or her/his designee to full-time employees in the event of extreme misfortune to the employee or the immediate family. The leave should be the minimum necessary, and in no case may it exceed five (5) days within any twelve (12) consecutive month period. Typical events which may qualify an employee for such leave are fire, flood, or other events (other than personal illness or injury or serious illness or death in the immediate family) of a nature requiring emergency attention by the employee.

SECTION 12. WITNESS AND JURY LEAVE

- 12.1 Upon application in writing, an employee of the a higher education institution or the ~~Higher Education Policy Commission~~ Council for Community and Technical College Education may be granted leave as indicated hereinafter in this section provided the employee is not a party to the action. Annual leave will not be charged under the provisions of this section.
- 12.2 When, in obedience to a subpoena or direction by proper authority, an employee appears as a witness for the Federal Government, the State of West Virginia, or a political subdivision thereof, the employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 12.3 When attendance in a court is in connection with an employee's usual official duties, time required in going and returning shall not be considered as absence from duty.
- 12.4 When an employee serves upon a jury, or is subpoenaed in litigation, the employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 12.5 The employee shall report to work if he/she is excused by the court before the end of her/his regular work day. Provisions for employees who work a shift other than day shift shall be made according to institutional policy.

SECTION 13. MANAGING WORK TIME IN AREAS AFFECTED BY INTERRUPTION TO UTILITY SERVICE OR SIMILAR SITUATIONS

- 13.1 Utility Service Interruptions - When extended power and utility service interruptions occur, administrators should make arrangements for employees' usual work routine to be accomplished at alternate work locations, or make affected employees available to other administrators for work in other areas. Also, if an administrator deems it advisable and the employee agrees, time off during the utility service interruption may be granted and charged against an

employee's accumulated annual leave. Combinations of the above alternatives may be necessary, but in all cases interruptions of work schedules must be dealt with in accordance with applicable laws, including West Virginia Code 12-3-13. This law is interpreted to mean that if pay is associated with the absence from work, the absence must be charged to accumulated annual leave.

- 13.2 Emergency Situations - In the event that an emergency exists, the president, in conjunction with local or state public safety officials, has the authority to comply with the emergency situation and close the institution. Such a declaration will be transmitted to the chancellor of the ~~Higher Education Policy Commission~~ Council for Community and Technical College Education. The president, working with public safety officials, will determine when the emergency condition no longer exists. Should an employee be required to work by the president or her/his designee during a declared emergency, the time worked shall be compensated according to the provisions of Series 8. Work time lost by any employee during a declared emergency will be considered regular work time for pay purposes and will not require that the time be charged to annual leave nor will there be a requirement that the time be made up.
- 13.3 Absences from work due to weather conditions other than during a declared emergency must be charged against accumulated annual leave, accumulated compensatory time, or the employee must be removed from the payroll for the time in question. Where institutions employ the "floating holiday" concept, the holiday record may be charged. Sick leave may not be charged for absence due to weather. Time lost from work may be made up in the same work week at the discretion of the employee's supervisor.