

**WEST VIRGINIA  
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OFFICE WEST VIRGINIA  
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Consolidated Public Retirement Board TITLE NUMBER: 162

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Service Credit for Accrued and Unused Sick and  
Annual Leave

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_  
\_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

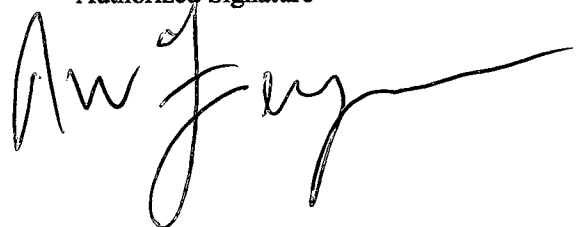
AUTHORIZATION IS CITED IN (house or senate bill number) SB 172

SECTION §64-2-1(f), PASSED ON April 11, 2009

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: July 1, 2009



Authorized Signature



**TITLE 162**  
**LEGISLATIVE RULE**  
**WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT BOARD**

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**SERIES 8**  
**SERVICE CREDIT FOR ACCRUED AND UNUSED SICK AND ANNUAL LEAVE**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§ 162-8-1. General.**

1.1. Scope. — This rule governs a member's eligibility to use accrued and unused sick and annual leave for additional retirement system service credit in the Public Employees Retirement System, the Teachers' Retirement System, the Deputy Sheriff Retirement System, the West Virginia State Police Retirement System and the West Virginia Emergency Medical Services Retirement System. Employees of the judicial and legislative branches of government are exempt from this rule.

1.2. Authority. — W. Va. Code § 5-10D-1.

1.3. Filing Date. — June 4, 2009.

1.4. Effective Date. — July 1, 2009.

**§ 162-8-2. Purpose.**

2.1. General — The purpose of this rule is to set forth guidelines to govern the conversion of a member's accrued and unused sick and annual leave to additional retirement system service credit in the Public Employees Retirement System, the Teachers' Retirement System, the Deputy Sheriff Retirement System, the West Virginia State Police Retirement System and the West Virginia Emergency Medical Services Retirement System.

2.2. Administrative Appeals — In all contested cases regarding service credit for accrued sick and annual leave, the Board shall follow its rules, Benefit Determination and Appeal, 162 CSR 2; West Virginia State Police, 162 CSR 9; and Deputy Sheriff Retirement System, 162 CSR 10; in reaching a decision on the appeal.

**§ 162-8-3. Definitions.**

3.1. The definitions of key terms used in the Public Employees Retirement System (W. Va. Code § 5-10-1 et seq.; 162 CSR 5), the Teachers' Retirement System (W. Va. Code § 18-7A-1 et seq.; 162 CSR 4), the Deputy Sheriff Retirement System (W. Va. Code § 7-14D-1 et seq.; 162 CSR 10), the West Virginia State Police Retirement System (W. Va. Code § 15-2A-1 et seq.; 162 CSR 9) and the West Virginia Emergency Medical Services Retirement System (W. Va. Code § 16-5V-1 et seq.) apply to this service credit rule as the context requires.

**§ 162-8-4. Public Employees Retirement System.**

4.1. Service Credit for Accrued Unused Sick and Annual Leave. — Members of the Public Employees Retirement System may elect to receive additional service credit in exchange for accrued and unused sick and annual leave at the time of retirement. Members who make this election are eligible for any additional service credit to which the member is entitled based upon the number of the member's accrued unused sick and annual leave days which stand to the member's credit with the member's last participating public employer at the time of retirement. In calculating a member's service credit for accrued unused sick and annual leave, the Board shall not include any accrued and unused sick and annual leave days which stand to the member's credit with any participating public employer prior to the member's last participating public employer which are not transferable to or recognized by the member's last participating public employer. In interpreting, applying and administering this rule and subject to the limitations found in subdivision 8.4.2 and 8.4.3 of this rule, the Board shall accept the policy of the member's last participating public employer for

the accrual of unused sick and annual leave. In order for a participating public employer's annual and sick leave policy to be recognized by the Board, the policy must be a written standard that is an accepted standard by the employer.

4.2. Limitation on the Accrual of Unused Sick and Annual Leave. – Members employed by any participating public employer with a policy for the accrual of unused sick and annual leave which is more generous than that of the State of West Virginia for its state agency employees shall receive service credit only for accrued unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

4.3. Calculation of Service Credit for Accrued Unused Sick and Annual Leave. – The Consolidated Public Retirement Board may request information from the member and/or the member's last or prior participating public employer in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued and unused sick and annual leave. The conversion of accrued sick and annual leave to additional service shall be based upon the information received by the Board from the member's employer.

4.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.

#### **§ 162-8-5. Teachers' Retirement System.**

5.1. Service Credit for Accrued Unused Sick and Annual Leave. – The Board shall give members of the Teachers' Retirement System who elect, under the provisions of W. Va. Code § 5-16-13(f), to convert accrued and unused sick and annual leave to additional retirement system service credit any additional credit to which the member is entitled based upon the number of

accrued and unused sick and annual leave days which stand to the member's credit with the member's last employer at the time of retirement. Any unused sick and annual leave days accrued and which stand to the member's credit with any participating public employer prior to the member's last participating public employer, and which are not transferable to or recognized by the member's last participating public employer, are not used to calculate service credit. In interpreting, applying and administering this rule and subject to the limitations found in subdivision 8.5.2. of this rule, the Board shall be deferential to the policy of the member's last participating public employer for the accrual of unused sick and annual leave. In order for a participating public employee's annual and sick leave policy to be recognized by the Board, the policy shall have been formally adopted in writing by the employer.

5.2. Calculation of Service Credit for Accrued Unused Sick and Annual Leave. – The conversion of accrued leave to service credit shall be made in a manner consistent with the provisions of Teachers' Retirement System, 162 CSR 4 and W. Va. Code § 5-16-13(f). The Consolidated Public Retirement Board may request information from the member and/or the member's last or prior employers in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued sick and annual leave. The conversion of accrued sick and annual leave to additional service credit shall be based upon the information received by the Board from the member's employer.

5.3. Deferred Retirement. – A member of the Teachers' Retirement System who ceases employment prior to retirement or who takes a deferred retirement may not use accumulated unused sick and annual leave for enhanced retirement benefits, unless the member continues to be a covered participant in the West Virginia Public Employees Insurance Agency at the time his or her retirement annuity commences, either as a covered member or as a covered dependent of a

member under that Agency, pursuant to W. Va. Code § 5-16-13(f).

5.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.

#### **§ 162-8-6. Deputy Sheriff Retirement System.**

6.1. Service Credit for Accrued Unused Sick and Annual Leave. – Members of the Deputy Sheriff Retirement System may elect to receive additional service credit in exchange for accrued and unused sick and annual leave at the time of retirement. Members who make this election are eligible for any additional service credit to which the member is entitled based upon the number of the member's accrued unused sick and annual leave days which stand to the member's credit with the member's last covered employment employer at the time of retirement. In calculating a member's service credit for accrued unused sick and annual leave, the Board shall not include any accrued and unused sick and annual leave days which stand to the member's credit with any participating public employer prior to the member's last covered employment employer which are not transferable to or recognized by the member's last covered employment employer. In interpreting, applying and administering this rule and subject to the limitations found in subdivision 8.6.2 and 8.6.3 of this rule, the Board shall accept the policy of the member's last covered employment employer for the accrual of unused sick and annual leave. In order for a covered employment employer's annual and sick leave policy to be recognized by the Board, the policy must be a written standard that is an accepted standard by the employer.

6.2. Limitation on the Accrual of Unused Sick and Annual Leave. – Members employed by any covered employment employer with a policy for the accrual of unused sick and annual leave which is more generous than that of the State of

West Virginia for its state agency employees shall receive service credit only for accrued unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

6.3. Calculation of Service Credit for Accrued Unused Sick and Annual Leave. – The Consolidated Public Retirement Board may request information from the member and/or the member's last covered employment or prior participating public employer in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued and unused sick and annual leave. The conversion of accrued sick and annual leave to additional service shall be based upon the information received by the Board from the member's employer.

6.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.

#### **§ 162-8-7. West Virginia State Police Retirement System.**

7.1. Service Credit for Accrued Unused Sick and Annual Leave. – Members of the West Virginia State Police Retirement System may elect to receive additional service credit in exchange for accrued and unused sick and annual leave at the time of retirement. Members who make this election are eligible for any additional service credit to which the member is entitled based upon the number of the member's accrued unused sick and annual leave days which stand to the member's credit at the time of retirement. In calculating a member's service credit for accrued unused sick and annual leave, the Board shall not include any accrued and unused sick and annual leave days which stand to the member's credit with any participating public employer prior to the

member's employment at the West Virginia State Police which are not transferable to or recognized by the West Virginia State Police. In interpreting, applying and administering this rule and subject to the limitations found in subdivision 8.7.2 and 8.7.3 of this rule, the Board shall accept the policy of the West Virginia State Police for the accrual of unused sick and annual leave. In order for the West Virginia State Police's annual and sick leave policy to be recognized by the Board, the policy must be a written standard that is an accepted standard by the employer.

**7.2. Limitation on the Accrual of Unused Sick and Annual Leave.** - If the West Virginia State Police policy for the accrual of unused sick and annual leave is more generous than that of the State of West Virginia for its state agency employees, trooper members shall receive service credit only for unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel, except as provided in 7.2.1.

**7.2.1.** Except as provided in 7.2.2. of this rule, for purposes of determining service credit that may be received by a trooper member for accrued and unused annual leave, a trooper member with up to 480 hours (60 work days) accrued and unused annual leave that was carried forward from 2005 to 2006 may carry forward accrued and unused annual leave from 2006 to 2007 in an amount not to exceed either the amount of accrued and unused annual leave actually carried over from 2005 to 2006 or the amount of accrued and unused annual leave actually remaining to the trooper member at the expiration of calendar year 2006, whichever is lesser. At the end of each calendar year thereafter, the trooper member may carry over the lesser of the amount carried over the previous year or the amount actually remaining to the trooper member at the expiration of calendar year.

**7.2.2.** If the amount of a trooper member's unused annual leave carried over from 2005 to 2006, or from any year to the next thereafter, is less than the amount of unused annual

leave permitted to be carried over as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel, the provisions of 7.2.1. of this rule do not apply and the trooper member shall thereafter be governed by the provisions of 7.2. of this rule and for purposes of determining service credit that may be received by a trooper member for accrued and unused annual leave, is permitted to carry over annual leave up to but not exceeding the amounts permitted to be carried over as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

**7.2.3.** The provisions of this rule govern the determination of service credit that may be received by a trooper member for accrued and unused annual leave, and may not be construed to supersede any West Virginia State Police policy for the accrual of unused sick and annual leave applicable to contributing trooper members before retirement.

**7.3. Calculation of Service Credit for Accrued Unused Sick and Annual Leave.** - The Consolidated Public Retirement Board may request information from the member and/or the West Virginia State Police or prior participating public employer in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued and unused sick and annual leave. The conversion of accrued sick and annual leave to additional service shall be based upon the information received by the Board from the member's employer.

**7.4. Lump Sum Payment for Accrued Leave.** - If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.

## **§ 162-8-8. Emergency Medical Services**

## **Retirement System.**

8.1. Service Credit for Accrued Unused Sick and Annual Leave. – Members of the Emergency Medical Services Retirement System may elect to receive additional service credit in exchange for accrued and unused sick and annual leave at the time of retirement. Members who make this election are eligible for any additional service credit to which the member is entitled based upon the number of the member's accrued unused sick and annual leave days which stand to the member's credit with the member's last covered employment employer at the time of retirement. In calculating a member's service credit for accrued unused sick and annual leave, the Board shall not include any accrued and unused sick and annual leave days which stand to the member's credit with any participating public employer prior to the member's last covered employment employer which are not transferable to or recognized by the member's last covered employment employer. In interpreting, applying and administering this rule and subject to the limitations found in subdivision 8.8.2 and 8.8.3 of this rule, the Board shall accept the policy of the member's last covered employment employer for the accrual of unused sick and annual leave. In order for a covered employment employer's annual and sick leave policy to be recognized by the Board, the policy must be a written standard that is an accepted standard by the employer.

8.2. Limitation on the Accrual of Unused Sick and Annual Leave. – Members employed by any covered employment employer with a policy for the accrual of unused sick and annual leave which is more generous than that of the State of West Virginia for its state agency employees shall receive service credit only for accrued unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

8.3. Calculation of Service Credit for

Accrued Unused Sick and Annual Leave. – The Consolidated Public Retirement Board may request information from the member and/or the member's last covered employment or prior participating public employer in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued and unused sick and annual leave. The conversion of accrued sick and annual leave to additional service shall be based upon the information received by the Board from the member's employer.

8.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.