



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY **Labor**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **42-37**
RULE NAME **Jobs Act Procedures**

CITE AUTHORITY **W. Va. Code §21-1C-5(e)**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Monday, January 22, 2018 4:30 PM

WRITTEN COMMENTS MAY BE MAILED TO
Mitchell E. Woodrum, Commissioner
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
Charleston, WV 25305

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 42-37



Rule Id: 16703



Document: 50138



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**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

AGENCY **Labor**
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RULE NAME **Jobs Act Procedures**

CITE AUTHORITY **W. Va. Code §21-1C-5(e)**

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

This procedural rule defines terms, specifies the responsibilities of public authorities under the Jobs Act, specifies employer responsibilities under the Jobs Act, specifies procedures for an employer to submit a job order to WorkForce WV for employees from the local labor market and for WorkForce WV to issue a waiver to an employer, specifies the Division of Labor's inspection and investigation procedures, provides for notice to an employer of Jobs Act violations, notice to an employer of civil penalties, and procedures for the Division to collect civil penalties, includes provisions for the Division to submit an annual report to the Joint Legislative Committee on Government and Finance, and includes an appendix that identifies the areas and counties within the local labor market.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Labor**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **42-37**
RULE NAME **Jobs Act Procedures**

CITE AUTHORITY **W. Va. Code §21-1C-5(e)**

PRIMARY CONTACT

Mitchell E. Woodrum
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
Charleston, WV 25304

SECONDARY CONTACT

Scott A. Adkins
1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 300
Charleston, WV 25305

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Labor**

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RULE NAME **Jobs Act Procedures**

CITE AUTHORITY **W. Va. Code §21-1C-5(e)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

This procedural rule will not have an impact on the costs or revenues of state government.

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Labor**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **42-37**
RULE NAME **Jobs Act Procedures**

CITE AUTHORITY **W. Va. Code §21-1C-5(e)**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	Unknown	Unknown	Unknown

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Labor**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **42-37**
RULE NAME **Jobs Act Procedures**

CITE AUTHORITY **W. Va. Code §21-1C-5(e)**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

See explanation below.

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY **Labor**
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RULE NAME **Jobs Act Procedures**

CITE AUTHORITY **W. Va. Code §21-1C-5(e)**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND/OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

The procedural rule does not establish the civil penalty amounts. These amounts are set forth in the Jobs Act.

The civil penalty amounts described in section 6 of the rule for employer violations of the Jobs Act are taken directly from W. Va. Code §21-1C-6.

It is not possible to estimate total revenues because the number of public improvement projects subject to the Jobs Act is unknown and the number of potential violations of the Jobs Act by employers is unknown.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 12 – BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Labor**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **42-37**
RULE NAME **Jobs Act Procedures**

CITE AUTHORITY **W. Va. Code §21-1C-5(e)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

This procedural rule is a new rule that implements the directions in W. Va. Code §21-1C-5 (e), which authorize the Division of Labor to establish procedures for the collection of data, for the collection of civil penalties, and for the transmittal of data to the Joint Committee on Government and Finance.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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TITLE 42
PROCEDURAL RULE
WEST VIRGINIA DIVISION OF LABOR AND WORKFORCE WEST VIRGINIA

SERIES 37
JOBS ACT PROCEDURES

§42-37-1. General.

1.1. Scope. – This rule establishes procedures for the efficient collection of data from employers and public authorities, procedures used by WorkForce West Virginia in issuing a waiver as prescribed in W. Va. Code §21-1C-4, procedures for the collection of penalties prescribed in W. Va. Code §21-1C-6, procedures for conducting inspections and investigations of public improvement projects for compliance with the Jobs Act, and procedures for the transmittal of data to the Joint Legislative Committee on Government and Finance.

1.2. Authority. -- W. Va. Code §21-1C-5(e).

1.3. Filing Date. --

1.4. Effective Date. – .

§42-37-2. Definitions.

2.1. “Act” means the West Virginia Jobs Act, W. Va. Code § 21-1C-1, et seq.

2.2. “Certified payroll records” means either the United States Department of Labor Form WH-347 or other comparable document that includes the name and address of the employer, identification of the payroll number and the work week ending date, the name of the project and project location, identification of the contract number, the names of employees, their work classification or job title, the county and state of the employees’ residence, the day and hours worked, hourly rate of pay or salary, gross wages, federal and state withholding amounts, other authorized deductions, and net pay.

2.3. “Division” means the West Virginia Division of Labor.

2.4. “Executive Director” means the executive director of WorkForce West Virginia or his or her authorized representatives.

2.5. “Job order” means the WorkForce West Virginia Job Order Details Form, ESD-102, that complies with W. Va. Code §21-1C-4(b).

2.6. “Qualified job applicant” means a prospective employee who has a current credential as required by the state of West Virginia to work on a construction project or as required by the contract with the public authority and who is a resident of the local labor market.

2.7. “Violation” means the employer’s failure to meet the requirements of section 4 of the Act or the employer’s failure to comply with the terms of a waiver issued by WorkForce West Virginia, and which is determined by the number of employees that an employer needs on a daily basis to meet the 75% local labor market threshold.

2.8. "Waiver" or "waiver certificate" means the written document issued by WorkForce West Virginia to an employer, after receipt of a properly completed job order, that states that WorkForce is unable to refer the number of qualified applicants requested, that there are no applicants available, and that the employer is permitted to fill a specific number of positions from outside the local labor market who meet specific criteria.

2.9. "WorkForce West Virginia" or "WorkForce" includes all local offices located throughout the state and whose contact information can be found at workforcewv.org/about-us/contact-us.html.

§42-37-3. Responsibilities of Public Authorities.

3.1. A public authority that solicits bids for a public improvement and construction project subject to the Act shall include the following statements and information in the bid package:

3.1.a. Specification of the employer's responsibilities under the Act;

3.1.b. The employer's responsibility to submit weekly certified payroll records and waiver certificates, if any, to the public authority; and

3.1.c. Specification of credentials required to work on the construction project, including the employer's WV Contractor License number and classifications.

3.2. A public authority shall notify the Division as soon as possible of construction projects that are or will be covered by the Act, including the start date of the project, the project location and contract number if available.

3.3. A public authority shall notify the Division at least 10 days in advance of all pre-bid meetings. This notification shall include the dates, times and locations.

3.4. When the project begins, the public authority shall submit certified payroll records and waiver certificates, if any, to the Division.

3.5. A public authority shall monitor the employer's compliance with the construction project contract, and shall promptly notify the Division of Labor, WorkForce, and the West Virginia Tax Department or other state agency, if applicable, of an employer's possible violations, including actions taken by the public authority to require the employer's compliance with its contractual obligations.

§42-37-4. Responsibilities of Employers; Calculation of the 75% Threshold; Procedures for Submitting a Job Order to WorkForce; Issuance of a Waiver by WorkForce.

4.1. An employer shall employ at least 75% of employees from the local labor market, with 2 employees permitted from outside the local labor market.

4.2. An example of how to calculate the number of employees needed to meet the 75% threshold from the local labor market when there are no waivers issued by WorkForce West Virginia is as follows:

4.2.a. The employer has 10 employees working on the project, excluding supervisory personnel;

4.2.b. 10 employees minus 2 employees permissible from outside the local labor market = 8 employees subject to the 75% threshold calculation;

4.2.c. 8 employees x .75 = 6 employees that must be from the local labor market to comply with the Act.

4.3. An example of how to calculate the number of employees needed to meet the 75% threshold from the local labor market when there are waivers issued by WorkForce West Virginia is as follows:

4.3.a. The employer has 12 employees working on the project, excluding supervisory personnel;

4.3.b. WorkForce has issued 2 waivers: 12 employees minus 2 employees with waivers = 10 employees;

4.3.c. 10 employees minus 2 employees permissible from outside the local labor market = 8 employees subject to the 75% threshold calculation;

4.3.d. 8 employees x .75 = 6 employees that must be from the local labor market to comply with the Act.

4.4. If an employer is unable to hire at least 75% of employees from the local labor market, the employer must submit a properly completed Job Order to the nearest WorkForce office as soon as practical, but prior to starting work on the project to allow WorkForce to have 3 business days to respond to the Job Order and for the employer to interview prospective employees.

4.5. If WorkForce is unable to refer qualified job applicants to the employer within 3 business days after receipt of a properly completed Job Order, WorkForce shall issue a written waiver to the employer.

4.6. The waiver shall include the following information and statements:

4.6.a. The employer name and address;

4.6.b. The name of the employer's contact person and contact information;

4.6.c. The maximum number of employees that the employer may hire from outside the local labor market;

4.6.d. The specific terms and conditions, including credentials, that employees from outside the local labor market must have;

4.6.e. A statement that the waiver is not transferable and is only valid for an identified project at a specific location;

4.6.f. Effective dates of the waiver;

4.6.g. A statement that the waiver can be revoked or revised at any time if the employer fails to comply with the terms and conditions of the waiver, or if the waiver was issued due to incorrect or false or fraudulent information provided by the employer;

4.6.h. The signature of the Executive Director or his or her authorized representative; and

4.6.i. The notarized signature of the employer, certifying that the employer fully understands the terms and conditions of the waiver and will at all times comply with the waiver.

4.7. WorkForce shall provide a copy of the waiver to the employer, to the public authority responsible for the public improvement project and to the Division.

§42-37-5. Inspection and Investigation by the Division.

5.1. The Commissioner may conduct routine inspections of any public improvement construction project to determine compliance with the Act.

5.2. A public authority and all employers engaged in the construction of a public improvement shall make employee and payroll records available to the Commissioner for inspection and investigation as he or she deems necessary and appropriate to determine compliance with the Act.

5.3. Upon receipt a written complaint alleging violations of the Act, the Commissioner shall investigate to determine the validity of the complaint.

§42-37-6. Notice to Employer of Violation of the Act; Notice to Employer of Penalties; Collection of Penalties.

6.1. If, after inspection or investigation, the Commissioner determines that an employer has violated the Act, he or she shall provide a written notice of violation to the employer and the public authority, setting forth the number of violations, the amount of the penalty that will be imposed if the employer continues to violate the Act, and directing the public authority to withhold final payment to the employer until the employer has paid the penalty or the matter has been otherwise resolved.

6.2. After receipt of the notice of violation, if the employer continues to violate the Act, the employer shall be subject to a civil penalty of \$250 for each employee less than the required 75% threshold per day.

6.3. If the Commissioner determines that an employer is continuing to violate the Act after receipt of the notice of violation, he or she shall provide a written notice of penalties to the employer and the public authority.

6.4. Examples of the civil penalty calculation: an employer needs to have 6 employees from the local labor market to meet the required 75% threshold.

Day 1: the employer has 5 employees from the local labor market = 1 violation.

Day 2: the employer has 4 employees from the local labor market = 2 violations.

Day 3: the employer has 6 employees from the local labor market = 0 violations.

Day 4: the employer has 4 employees from the local labor market = 2 violations.

Day 5: the employer has 6 employees from the local labor market = 0 violations.

Day 6: the employer has 5 employees from the local labor market = 1 violation.

Total violations for the work week: 6 violations x \$250 = a civil penalty of \$1,500.

6.5. After 14 calendar days from receipt of the notice of violation, if the employer continues to violate the Act, the employer shall be subject to a civil penalty of \$500 for each employee less than the required 75% threshold per day.

§42-37-7. Annual Report to the Joint Legislative Committee on Government and Finance.

The Division shall compile the following information, and submit it annually to the Joint Committee on Government and Finance by October 15th:

7.1. The name of the public authority, including the name and title of the project's contact person;

7.2. The name of the project, the project's start and completion dates, and the project location;

7.3. Whether the public authority's contract included the provisions required by the Act;

7.4. Dates and results of the Division's inspections or investigations;

7.5. The number of qualified applicants referred to the employer by WorkForce WV and the number of employees the employer reported hired to WorkForce;

7.6. The number of waiver certificates issued by WorkForce WV;

7.7. Whether the employer's payroll records complied with the requirements of the Act; and

7.8. The number of violations and the amount of penalties collected.

APPENDIX

LIST OF LOCAL LABOR MARKET COUNTIES AND AREAS
WITHIN 50 MILES OF THE WEST VIRGINIA BORDER

DISTRICT OF COLUMBIA

KENTUCKY

Bath

Boyd

Breathitt

Carter

Elliott

Fleming

Floyd

Greenup

Johnson

Knott

Lawrence

Letcher

Lewis

Magoffin

Martin

Menifee

Morgan

Perry

Pike

Rowan

Wolfe

MARYLAND

Allegany

Anne Arundel

Baltimore

Carroll

Charles

Frederick

Garrett

Howard

Montgomery

Prince George's

Washington

NORTH CAROLINA

Alleghany

Ashe

Surry

OHIO

Adams
Athens
Belmont
Carroll
Columbiana
Coshocton
Fairfield
Gallia
Guernsey
Harrison
Hocking
Jackson
Jefferson
Lawrence
Mahoning
Meigs
Monroe
Morgan
Muskingum
Nobel
Perry
Pickaway
Pike
Portage
Ross
Scioto
Stark
Summit
Trumbull
Tuscarawas
Vinton
Washington

PENNSYLVANIA

Adams
Allegheny
Armstrong
Beaver
Bedford
Blair
Butler
Cambria
Cumberland
Fayette
Franklin
Fulton
Greene

PENNSYLVANIA, continued

Huntingdon

Indiana

Juniata

Lawrence

Mercer

Perry

Somerset

Venango

Washington

Westmoreland

York

TENNESSEE

Johnson

Sullivan

VIRGINIA

Albemarle

Alleghany

Amherst

Augusta

Bath

Bedford

Bland

Botetourt

Buchanan

Carroll

Clarke

Craig

Culpeper

Dickenson

Fairfax

Fauquier

Floyd

Franklin

Frederick

Giles

Grayson

Greene

Henry

Highland

Lee

Loudoun

Madison

Montgomery

Nelson

VIRGINIA, continued

Orange

Page

Patrick

Prince William

Pulaski

Rappahannock

Roanoke

Rockbridge

Rockingham

Russell

Scott

Shenandoah

Smyth

Stafford

Tazewell

Warren

Washington

Wise

Wythe

WEST VIRGINIA

All counties