

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

Form #5

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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: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: 5-5-6

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

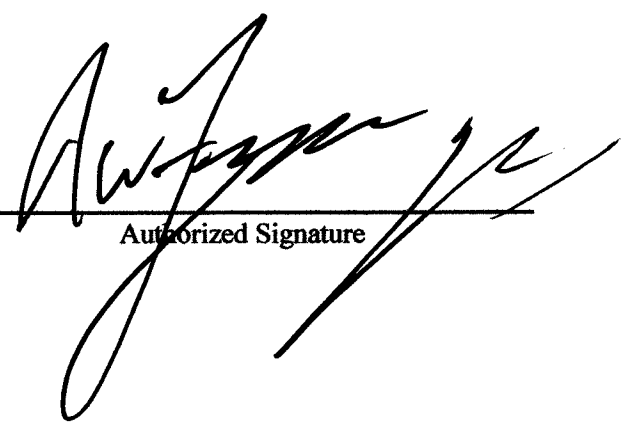
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: Procedure for Payment of Unused Sick Leave to Employees

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS November 3, 2008

  
\_\_\_\_\_  
Authorized Signature

148CSR21

TITLE 148  
PROCEDURAL RULE  
DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE SECRETARY

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SECRETARY OF STATE

SERIES 21  
PROCEDURE FOR PAYMENT OF UNUSED SICK LEAVE TO EMPLOYEES

**§148-21-1. General.**

1.1. Scope. - These procedural rules shall set forth the procedures for payment to eligible employees for accrued and unused sick leave.

1.2. Authority. - W.Va. Code §5-5-6

1.3. Filing Date -

1.4. Effective Date -

**§148-21-2. Definitions**

2.1. "Application Date" - means the date the employee's certified Application for Payment of Unused Sick Leave & Reimbursement Agreement is received by the Secretary.

2.2. "Certified Application" - means an Application for Payment of Unused Sick Leave and Reimbursement Agreement that has been certified by the Head of the Spending Unit, or his/her designee, for which the employee works certifying: that the employee is an eligible employee; the number of unused sick leave days available for which the employee may be paid; the employee's current annual budgeted salary, which includes the employee's base pay and does not include overtime pay or increment pay; the number of sick days the employee would have remaining after payment for available unused sick days; and the WV FIMS codes from which the employee is paid.

2.3. "Eligible Employee" - means every eligible employee, as defined in W.Va. Code §5-5-1, who is entitled upon retirement to credit his or her accrued annual and sick leave for extended insurance coverage as provided in section thirteen, article sixteen of chapter five of the Code, and who has accumulated at least sixty-five days of unused sick leave.

2.4. "Finance Director"- means the Director of the Division of Finance for the Department of Administration.

2.5. "Secretary" - means the Cabinet Secretary for the Department of Administration.

2.6. "Spending Unit" - means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

### **§148-21-3. Employee Application Procedure**

3.1. Any eligible employee wishing to be paid for his/her unused sick leave shall complete the Application for Payment of Unused Sick Leave & Reimbursement Agreement form established by the Department of Administration and submit it to the head of his/her Spending Unit.

3.2. Said application shall include the following information:

- 1) The date on which the employee began employment with the State of West Virginia, the employee's years of service, as defined under W.Va. Code §5-5-1, and the Spending Unit with which the employee is currently employed.
- 2) The number of unused sick days for which the employee is requesting payment.
- 3) The total number of unused sick days the employee has accumulated at the date of application.
- 4) The number of sick days the employee would have remaining after payment for available unused sick days. The employee must maintain a balance of at least fifty (50) days after payment.
- 5) The current budgeted annual salary of the employee seeking payment for unused sick leave. Current budgeted annual salary includes the base pay and does not include overtime pay or increment pay.
- 6) The current daily rate of pay of the employee seeking payment for unused sick leave, as well as an explanation of how the rate of daily pay was computed.
- 7) All sources of funds from which the employee seeking payment for unused sick leave is paid, including the WV FIMS codes.

3.3. Any employee wishing to be paid for his/her unused sick leave shall complete the appropriate state and federal tax forms prior to being paid for the employee's requested unused sick leave days. Said forms are entitled IRS Form W-4 and State of West Virginia form WV/IT-104.

3.4. In order for an employee to obtain payment for that employee's unused sick leave following the first full pay period in July, the application must be received by the Secretary on or before July 1st of that same year. In order for an employee to be compensated for their unused sick leave following the first full pay period in December, the application must be received by the Secretary on or before November 15<sup>th</sup> of that same year.

#### **§148-21-4. Spending Unit Certification**

4.1. The authorized representative of the Spending Unit for which the employee works shall review the employee's Application for Payment of Unused Sick Leave & Reimbursement Agreement. The authorized representative shall verify the eligibility of the employee and the number of unused sick days available for the employee requesting payment to the head of the Spending Unit.

4.2. The authorized representative of the Spending Unit for which the employee works shall review the Application for Payment of Unused Sick Leave and Reimbursement Agreement with the employee requesting payment to assist in that employee's understanding of the full ramifications of the Agreement prior to the employee accepting the terms set forth therein.

4.3. The head of the Spending Unit, or his/her designee, shall then certify to the Secretary, within ten working (10) days from receipt of the application from the employee, that the employee requesting payment for his/her unused sick leave meets or does not meet all eligibility requirements. The head of the Spending Unit, or his/her designee, must also certify to the Secretary the number of unused sick leave days the employee has available for which he/she may be paid; the employee's annual budgeted salary, which includes the base pay and does not include overtime pay or increment pay ; the number of sick days the employee would have remaining after payment for available unused sick days; the employee's daily rate of pay; and the sources of funds from which the employee is paid, including the WV FIMS codes.

4.4. The employee or head of the Spending Unit, or his/her designee, shall send the employee's Applications for Payment of Unused Sick Leave & Reimbursement Agreement to the Secretary for approval and payment of unused sick leave once it has been certified by the head of the Spending Unit for which the employee works.

#### **§148-21-5 Cabinet Secretary Authorization**

5.1. Upon receipt of the certified Application for Payment of Unused Sick Leave & Reimbursement Agreement, the Secretary shall approve or disapprove the Application for Payment of Sick Leave and Reimbursement Agreement based upon the certified facts in the application within ten (10) working days.

5.2. In the event that the Application for Payment of Unused Sick Leave & Reimbursement Agreement is disapproved by the Secretary, the Secretary shall advise the employee, in writing, that his/her Application was denied setting forth the reasons for said decision with a copy to the head of the Spending Unit or his/her designee.

5.3. The Secretary shall process all certified Applications for Payment of Unused Sick Leave & Reimbursement Agreements which have been approved according to the Application Date. The Secretary shall advise the employee as to whether the employee's application has been approved with a copy to the Spending Unit.

5.4. Following approval, the Secretary shall submit the original Application for Payment of Unused Sick Leave and Reimbursement Agreement to the Finance Director. The Finance Director shall process the Application for Payment of Unused Sick Leave and Reimbursement Agreement and submit it to the West Virginia State Auditor along with any other necessary completed documentation.

5.5. The Secretary, or his/her designee, shall contact the Spending Unit of the employee wishing to obtain payment for his/her unused sick leave to verify that the employee remains eligible and maintains the required sick leave balance prior to payment. If the employee's daily rate of pay has changed prior to payment, the employee may modify the Application for Payment of Unused Sick Leave and Reimbursement Agreement.

#### **§ 148-21-6 Payment Procedure**

6.1. Upon payment to an employee, whose salary is not paid from general revenue, the payroll clerk for the Spending Unit shall transfer funds into the State Employee Sick Leave Fund from the funds from which the employee is paid, in whole or in part, on a pro rata basis within ten (10) working days of receipt of invoice from the Finance Director. If funds are not immediately available for transfer, the Finance Director shall establish payment arrangements with the Spending Unit on a case-by-case basis.

6.2. Payments shall be made to employees who have met all certification requirements only once per fiscal year on either the pay day immediately following the first full pay period in July or the first full pay period in December, as long as funds are available in the State Employee Sick Leave Fund. The employee shall be paid at a rate equal to one quarter of their usual rate of daily pay as set forth in W.Va. Code §5-5-6. The daily rate of pay of an employee paid a monthly salary is calculated by multiplying the monthly salary by twelve and dividing that number by the number of workdays for that calendar year. Work day does not include weekends.

6.3. The Department of Administration shall issue a W-2 Form for the funds paid to the employee for their unused sick leave.

6.4. The West Virginia State Auditor shall include the funds received from the employee as wages on the employee's tax form but shall establish a separate code to

reflect that the income does not effect the calculation of the employee's pension. Any payment for unused sick leave may not be a part of the employee's final average salary computation.

6.5. The Spending Unit shall monitor the sick leave balance of the employee requesting payment for his/her unused sick leave to confirm the employee remains eligible from the time of request until the time of payment. If the employee becomes ineligible, the Spending Unit shall advise the Department of Administration prior to payment of the funds. The Spending Unit shall also advise the Department of Administration if the employee separates from employment.

6.6. In the event that the State Employee Sick Leave Fund has insufficient funds to pay the employees who have applied for payment in a fiscal year, then the employees who do not receive payment are eligible for payment in the next fiscal year without being required to reapply. Funds shall be paid in chronological order according to the "Application Date" unless the employee chooses to withdraw the application prior to the next fiscal year. The Finance Director shall maintain the approved applications until such funds are available for payment.

6.7. In the event that the State Employee Sick Leave Fund has insufficient funds to pay the employees who have applied for payment in a fiscal year, the Finance Director shall verify with the head of the Spending Unit, or his/her designee, that the employee is still eligible and meets all requirements of law prior to processing the Application for Payment of Unused Sick Leave & Reimbursement Agreement in the following fiscal year.

6.8. An employee who has been paid for his/her unused sick leave shall not be permitted to reacquire any sick leave days for which he/she received payment.

6.9. The Secretary, or his/her designee, shall direct the Head of the Spending Unit, or his/her designee, to deduct from the employee's sick leave balance the number of sick leave days for which the employee was paid. The Head of the Spending Unit, or his/her designee, shall verify in writing to the Secretary, or his/her designee, the number of days that were deducted from the employee's sick leave balance.

#### **§148-21-7. Repayment of funds**

7.1. Prior to an employee receiving payment for unused sick leave, he/she must first contract with the Department of Administration and agree to reimburse the State Employee Sick Leave Fund for the amount exchanged plus twelve percent interest per annum if the employee elects to separate from employment within sixty (60) months of the date of the exchange. Separation from employment with the State of West Virginia, for purposes of W.Va. Code §5-5-6, does not include death or retirement.

7.2. The Secretary shall pursue collection of the obligation either by himself/herself or by contracting with a collection agency.

7.3. The State Auditor shall notify the Secretary when an employee who received payment for unused sick leave separates from employment so that the Secretary may pursue collection of the obligation. The Auditor shall provide reports to the Finance Director identifying all employees who received payment for their unused sick leave to ensure an employee does not receive payment more than once per year.

**§148-21-8. Record maintaining and reporting**

8.1. Each Spending Unit shall maintain an accurate record of sick leave for every individual employed in that Spending Unit. Said record should be kept up to date and available to the Secretary upon request.

8.2. Each Spending Unit shall provide the Secretary, or his/her designee, a report of all sick days taken and all sick days accumulated for every employee in it's unit by the last day of June of each fiscal year. Said annual report shall also identify the total sick leave days available to each employee.

8.3. The Secretary, or his/her designee, shall maintain sick leave records for all Spending Units.

## **BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS**

The Department of Administration received numerous comments in regard to the proposed procedural rules for the "Procedure for payment of unused sick leave to employees". Comments were received from the Division of Natural Resources, the West Virginia Higher Education Policy Commission, the Department of Revenue, West Virginia University and the Public Service Commission. Similar comments were received from each of these entities. If the same comments were received from different entities, the Department of Administration only responded once. The following briefly outlines the comments received and the Department of Administration's responses. A copy of the actual comments are also attached for review.

**Comment 1:** Payments should be made as a supplemental, not on regular paycheck.

**Agency Response 1:** The provision of payment for unused sick leave allows for a supplemental payment, which is not included within an employee's regular paycheck once per fiscal year to an eligible employee. The Department of Administration must pay eligible employees from the newly established State Employee Sick Leave Fund. Additionally, the payments received by eligible employees are not to be included in their respective final average salary computation used for retirement benefits; therefore, the auditor must code these payments differently.

**Amendment 1:** No amendments made as a result of these comments.

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**Comment 2:** Counseling should be provided by DOP applicants to ensure that the consequences are truly understood.

**Agency Response 2:** The Division of Personnel is not involved in the payment process. However, we do agree that the human resource person or payroll clerk for the employee's spending unit should

review the employee's Application for Payment of Unused Sick Leave & Reimbursement Agreement with the employee to help ensure the employee understands the full consequences of receiving the applicable payment of funds.

**Amendment 2:** The rule will be amended to require the spending unit review the employee's Application for Payment of Unused Sick Leave & Reimbursement Agreement with the employee and counsel the employee to help ensure full understanding of the employee's actions.

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**Comment 3:** The rules require the spending unit whose employees' salaries are paid from a funding source other than general revenue to transfer funds into the sick leave fund from the fund from which the employee is paid. Payment of many DNR employees is from protected funding sources making it impossible, and in some cases unlawful, to transfer such monies.

**Agency Response 3:** The Department of Administration would not require transfer of funds when impossible or unlawful. The statute states "where available and appropriate". The Department of Administration in requesting reimbursement from any spending unit for payments made to eligible employees whose salary is paid, in whole or in part, from funding source other than the General Revenue Fund will invoice each spending unit it's pro-rata share. The spending unit may respond to this invoice setting forth the reasons why it can not transfer the funds. The Department of Administration will evaluate the spending unit's response and make a decision on the reimbursement issue on a case-by-case basis.

**Amendment 3:** No amendments made as a result of these comments.

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**Comment 4:** The rules state that the Secretary, or his/her designee, shall maintain sick leave records for all spending units. We assume this only means that the Secretary will retain copies of all reports and sick leave records and does not transfer authority and possession over the sick leave management system of each spending unit.

**Agency Response 4:** Your assumption is correct. The Secretary must maintain accurate sick leave information for all spending units in order to deduct appropriate payments from the State Employee Sick Leave Fund, as well as deduct applicable sick leave days from

the employees' sick leave balances but will not take control or authority of the sick leave management system for each spending unit.

**Amendment 4:** No amendments made as a result of these comments.

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**Comment 5:** Request that the head of the spending unit be allowed to deny an application if it will have an adverse effect on the financial integrity of the spending unit.

**Agency Response 5:** The Statute does not give authority for the head of a spending unit to deny an application unless the employee does not meet all eligibility requirements.

**Amendment 5:** No modifications made as a result of these comments.

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**Comment 6:** Section 6.2 seems to require a spending unit to reimburse from any account an employee is paid from and not just those employees paid from non general revenue.

**Agency Response 6:** The Department of Administration agrees with this comment as Section 6.2 does not make it clear that the Secretary of the Department of Administration will only invoice and seek reimbursement from those spending units for a pro-rata share of payments made to any employee whose salary is paid, in whole or in part, from a funding source other than General Revenue Fund.

**Amendment 6:** The rules will be amended as a result of this comment.

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**Comment 7:** Suggest that an authorized representative of the head of the spending unit be substituted for the head of the spending unit so deadlines may be more effectively met.

**Agency Response 7:** The Department of Administration agrees that there may be circumstances wherein the head of the spending unit may not be available and would prefer to designate an employee to act on his/her behalf.

**Amendment 7:** The rules will be modified so that the head of the spending unit or his/her designee may certify the employee meets all requirements of law.

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**Comment 8:** Higher Education institutions have many employees funded through federal grants or programs. It is unlikely that the federal government would allow those funds to be used for a program like this. We ask that those funds be exempted from any reimbursement requirement.

**Agency Response 8:** The Department of Administration does not have the authority under the statute to exempt funds. Therefore, the Department of Administration is unable to place such an exemption in the procedural rules. The Department of Administration is required to seek reimbursement to the State Employee Sick Leave Fund from any spending for a pro-rata share of payments made to any employee whose salary is paid, in whole or in part, from a funding source other than the General Revenue Fund and will submit an invoice to such spending units. However, the spending unit may respond to the invoice setting forth the reasons why it can not transfer the funds with supporting documentation and the Department of Administration will evaluate this response and make a decision on the reimbursement issue on a case-by-case basis.

**Amendment 8:** No modifications are being made as a result of this comment.

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**Comment 9:** Suggest that “days” in any deadlines be defined as “working days”

**Agency Response 9:** The Department of Administration agrees with the suggestion and will modify the rules to state “work days”.

**Amendment 9:** The rules will be amended as a result of this comment.

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**Comment 10:** The spending unit must report “current budgeted annual salary”. Is that defined as just base salary or are incremental pay, overtime, and other supplemental pay to be included?

**Agency Response 10:** Only the base pay is to be included under the “current budgeted annual salary”. The rules will be modified to make that clear to the spending unit when calculating the daily rate of pay.

**Amendment 10:** The rules will be amended as a result of this comment.

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**Comment 11:** Section 3.2 requires an explanation of how the daily rate of pay was

computed; however there is no place on the form to demonstrate that. To ensure consistency, we would request that a formula and method for calculating the daily rate of pay be included.

**Agency Response 11:** Although the statute contains the formula for determining the daily rate of pay, the Department of Administration will modify the rules and the Application for Payment of Unused Sick Leave & Reimbursement Agreement form to include that information.

**Amendment 11:** The rules will be amended as a result of this comment.

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**Comment 12:** In Section 3.2 the spending unit must certify "years of service" of the employee. What is the definition of "years of service" for the purposes of this rule?

**Agency Response 12:** Years of service means full years of totaled service as an employee of the State of West Virginia. For full-time faculty as defined in W.Va. Code Section 5-5-1, each nine or more months of contracted employment during a fiscal year equals one full year of service. The "years of service" was included in the rules so that the Department of Administration would have good reporting data.

**Amendment 12:** No amendments are being made as a result of this comment.

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**Comment 13:** Are there only certain periods during the year that an employee may make an application or may they submit them any time during the year? We suggest certain enrollment periods with deadlines for applications.

**Agency Response 13:** The Department of Administration accepts and processes applications throughout the year and must pay employees in chronological order based upon the Application Date. The statute only allows payment following the first full pay day in July and December. The Department of Administration does not agree with the suggestion regarding enrollment periods. However, we do agree that a deadline in the rules would be helpful to employees.

**Amendment 13:** The rules will be amended as a result of this comment.

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**Comment 14:** Who shall be responsible for submitting the final completed application to Administration? We suggest the spending unit should submit the completed application to ensure accuracy.

**Agency Response 14:** The Department of Administration does not have an opinion as to who actually puts the application in the mail. However, if the Department of Administration requires the spending unit to mail the application then it could mean an extra step in the process, as the employee is the last person to sign and the signature must be before a notary. If there is no notary at the employee's place of business then he/she may need to take the application outside the office, and it would be easier for him/her to mail the application. The application must already be certified by the spending unit prior to the employee signing so there should not be a question of accuracy at the time of submission. The Department of Administration will not place any requirements as to who shall submit the application in the rules, as the employee is ultimately responsible for submitting the application to the Department of Administration if he/she desires payment of funds.

**Amendment 14:** No amendment is being made as a result of this comment.

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**Comment 15:** May the employee withdraw an application before payment is made?

**Agency Response 15:** Yes. The statute allows the employee to withdraw the application.

**Amendment 15:** No amendment being made as a result of this comment.

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**Comment 16:** Will an employee be required to still be employed by the spending unit at the time of the leave payment? How will this be verified?

**Agency Response 16:** Yes. In order to be eligible by statute, the employee must be a current employee. The Department of Administration will contact the payroll clerk and/or head of the spending unit just prior to payment to ensure the employee still meets all requirements of law and continues to have the sick leave days for which they seek payment. The rules require the head of the spending unit to re-certify the application the following fiscal year when there are insufficient funds in the State Employee Sick Leave Fund. The Department of Administration will modify

the rules to require re-certification of all applications which are not able to be processed at time of submission.

**Amendment 16:** The rules will be amended as a result of this comment.

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**Comment 17:** Sec. 6.1 is unclear as to the exact process and timing of confirmation of available funds and payment to the employee. Why must the spending unit confirm whether funds are available?

**Agency Response 17:** The Department of Administration agrees with this comment and the rules will be amended to remove this provision.

**Amendment 17:** The rules will be amended as a result of this comment.

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**Comment 18:** Can the rule establish a procedure to ensure an employee that has made application does not drop below a 50 day balance from the time of application to the day of payment. Can the spending unit deny such leave and make the application null and void.

**Agency Response 18:** The modified rules will require certification by the spending unit at the time of payment. If the employee does not meet all requirements of law then the spending unit must mark that on the application that the application should be denied or modified giving the reasons why. The Secretary has the authority to approve, deny or request modification by the employee of the application.

**Amendment 18:** The rule will be amended to address this comment.

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**Comment 19:** We ask that the spending unit be copied on all correspondence with the employee regarding the application or payment, and that the spending unit be notified of payments from the Fund to employees sufficiently in advance of the payments to make any adjustments in budgeting.

**Agency Response 19:** The Department of Administration must advise the spending unit of the payment and get written confirmation from the spending unit that the spending unit adjusted the employee's leave balance accordingly. The spending unit must certify the applications and would have advance notice that the employee will be paid the amount requested either following the last pay

period in July or December, whichever comes first. The spending unit would only be required to budget for the funds if the employee was paid from some source other than general revenue.

**Amendment 19:** No amendment being made as a result of this comment.

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**Comment 20:** Under Section 6.5 must the spending unit automatically re-certify the application or must the applicant reapply?

**Agency Response 20:** The statute specifically states that the employee is not required to reapply. However, the rules will be modified so as to clarify the precise process regarding the handling of certified applications when funds are not available for payment in that fiscal year but must be paid in the following fiscal year.

**Amendment 20:** No amendments will be made as a result of this comment.

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**Comment 21:** If an applicant dies before payment will the payment still be made, and to whom?

**Agency Response 21:** The payment would not be made because the employee would no longer be a current employee, and he/she must be an employee to be eligible.

**Amendment 21:** No amendment will be made to the rules as a result of this comment.

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**Comment 22:** Under Section 8.2 as of what census date should the number of sick days taken and accumulated be assessed? Must institutions report on employees that would never be eligible for the payment for sick leave.

**Agency Response 22:** The statute requires the Secretary to verify the total number of unused sick leave days for all employees at least once per year. Agencies currently report this annually in mid July. The rule will be modified to provide a cut-off date as to when reports shall be run.

**Amendment 22:** The rules will be amended as a result of this comment.

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**Comment 23:** We propose that an authorized representative be allowed to be substituted for the head of the spending unit and a definition be added for "authorized representative"

**Agency Response 23:** The Department of Administration will modify the applicable rules to allow for the head of the spending unit having the ability to designate his/her duties under the statute to a designee.

**Amendment 23:** The rule is being amended as a result of this comment.

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**Comment 24:** Would like clarification of the term day. In higher education a standard full day is 7.5 hours. Some employees have flex-time schedules and a day may be more than 7.5 hours. For instance, a 12 month 1.00 FTE employee working a 37.5 hour week over four days would work 9.375 hours per day. Recommend that day be defined as a standard working day for a 1.00 FTE employee as defined by the spending unit.

**Agency Response 24:** The formula for calculating the daily rate of pay is in Statute. The Department of Administration is applying the Division of Personnel's calendar that is distributed to all payroll clerks when determining the number of days to be used in that formula. This year there are 262 working days in the calendar year.

**Amendment 24:** No amendment being made as a result of this comment.

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**Comment 25:** We are concerned that the law defines eligible employee under WV Code §5-5-1 differently from this definition. We will not be able to certify under the law that some of our employees with eligible sick leave are eligible due to WV Code §18B-8-1 and WVU BOG Policy #2.

**Agency Response 25:** W.Va. Code Section 5-5-6 refers to W.Va. Code Section 5-5-1 for the definition of eligible employee as well as sets forth additional eligibility criteria. The rule will be modified to delineate the full definition of eligible employee. It is up to the spending unit to certify to the Secretary that the employee is eligible and meets all requirements of law. If the spending unit recommends the application should not be approved they must state the reasons therefore on the application.

**Amendment 25:** No amendment is being made as a result of this comment.

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**Comment 26:** We have employees who do not meet the current definitions by WV Code §5-5-1(a) as eligible employee but have standing sick leave balances that can be used at retirement for premium conversion. Will they be able to participate in this program.

**Agency Response 26:** The spending unit must certify to the Secretary that the employee is eligible and meets all requirements of law. Only eligible employees can obtain payment for unused sick leave under statute. If the spending unit is unable to certify then the Secretary would not be able to approve the application.

**Amendment 26:** No amendment is being made as a result of this comment.

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**Comment 27:** Will full-time faculty, who are eligible to convert teaching service, be eligible to participate in this program.

**Agency Response 27:** No. only employees who can use their unused sick leave for free or reduced health insurance are eligible. The employee must have the amount of sick leave days available at the time of payment.

**Amendment 27:** No amendment is being made as a result of this comment.

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**Comment 28:** We can not verify the date that the employee began employment with the State. We can only verify when the employee started employment with us.

**Agency Response 28:** The spending unit is only required to certify information they know to be accurate. If the spending unit does not know when the employee began employment with the state then they should only certify the date they started employment with them. The information will be beneficial to the Department of Administration when reporting on the sick leave program.

**Amendment 28:** No amendment is being made as a result of this comment.

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**Comment 29:** We are concerned about the appropriate method for determining the annual budgeted salary and calculating the daily rate of pay.

**Agency Response 29:** The statute sets forth the formula for determining the daily rate

of pay, and the Department of Administration can not change this in a procedural rule. The annual budgeted salary does not include overtime pay or increment pay.

**Amendment 29:** No amendment is being made as a result of this comment.

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**Comment 30:** For our employees, funding sources may vary throughout the year depending on the ending and continuation of funding sources. Employees may move into different positions throughout the year that have different funding sources. How will this issue be handled?

**Agency Response 30:** For those employees who are not paid from general revenue, the Department of Administration will invoice for reimbursement of the pro-rata share of the funds that are paid on the Application and Agreement that was certified by the spending unit.

**Amendment 30:** No amendments are being made as a result of this comment.

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**Comment 31:** Will this payment run through a special payroll or concurrent with regular payroll? How will the system handle different tax allocations?

**Agency Response 31:** The employee must submit the federal and state tax forms along with the certified application. The Department of Administration is entering the employees' information in its system and will submit a separate check to those employees. The employee will get two W2 forms at the end of the year. One from their regular employer and one from the Department of Administration. The Auditor's Office has established a separate code in its system so that the funds received from the Department of Administration will not be pensionable or a part of an employee's final average salary.

**Amendment 31:** No amendment is being made as a result of this comment.

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**Comment 32:** How can we document who we have designated as our authorized representative? We are concerned that these applications must come from the agency and not the employee to guarantee that all certifications are authentic.

**Agency Response 32:** It will be up to the spending unit to determine the identity of the

authorized representative or designee. In most instances the payroll clerks for the spending unit will be verifying the sick leave information and calculating the daily rate of pay for the employee. The head of the spending unit should inform that person who is authorized, or designee, to certify the application if the head of the spending unit is not available. The Department of Administration reviews the certified application to ensure it was certified by someone other than the employee and that the person's job title tends to indicate that it is one of a management position. If the spending unit wishes to inform the Department of Administration who is the authorized representative or designee, we will check that against the applications. The Department of Administration will include relevant language in the proposed rules.

**Amendment 32:** The rules will be amended as a result of this comment.

\*\*\*\*\*

**Comment 33:** Please clarify the deadline noted in Section 4.2. We have 10 working days to certify the application from the date we receive the completed application from the employee. Higher Education has varying recognized holidays.

**Agency Response 33:** The intent of the deadline is to assure that a spending unit does not unnecessarily hold the applications. The 10 days includes working days and does not include holidays or closures.

**Amendment 33:** The rules are being amended as a result of this comment.

\*\*\*\*\*

**Comment 34:** Please clarify the deadline in Section 5.1. Will the Department of Administration approve or disapprove the application in 10 working days?

**Agency Response 34:** Yes. However, the funds will not be paid to eligible employees until July and December.

**Amendment 34:** No amendments are being made as a result of this comment.

\*\*\*\*\*

**Comment 35:** The spending unit should receive notification as to whether the application has been approved or disapproved so we can administer the use of the applicable sick leave.

**Agency Response 35:** The Secretary has no authority to disapprove an application that has been certified by the spending unit. The spending unit will be contacted prior to payment to ensure the employee still meets all requirements of law. The spending unit should not deduct the employees sick leave accordingly until the employee has been paid. The Department of Administration will contact the spending unit and advise the employee has been paid and instruct the spending unit to deduct the sick leave days and send written confirmation that this has been done.

**Amendment 35:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 36:** If multiple applications are received on the same date, but the funds are near exhaustion, how will the Department of Administration determine which applications will be selected for payment?

**Agency Response 36:** The Department of Administration time and date stamps the applications as soon as they are received. They would be processed on a first come, first serve basis according to the such time and date received.

**Amendment 36:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 37:** Will the Department of Administration make a partial pay to the employee, or must the fund have enough money to pay the entire amount requested to proceed with the payment to the employee. If partial payment is made, will the remaining balance of sick leave on the application stay pending for next year, or until the employee withdraws the application?

**Agency Response 37:** If there are not enough funds the issuance of full payment to an eligible employee who has submitted a certified application in a given fiscal year, the Department of Administration will make the payment in the following fiscal year.

**Amendment 37:** No amendments are being made as a result of this comment.

\*\*\*\*\*

**Comment 38:** If the fund has not been exhausted, but the employee would like to withdraw the application before payment is made, is that possible?

**Agency Response 38:** Yes. This is a voluntary program and the employee may

withdraw the application any time prior to payment.

**Amendment 38:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 39:** Will payments be made to ex-employees who met eligibility requirements at the time of the application?

**Agency Response 39:** No. In order to be eligible you must be a current employee. Someone who has separated his/her employment prior to compensation would not receive funds.

**Amendment 39:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 40:** The spending unit should receive notification that the application has been approved, even if it is not to be paid this year. The spending unit should also receive notification if an employee withdraws his/her application.

**Agency Response 40:** If the spending unit has certified that the employee meets all requirements of law, then the Department of Administration will approve and process the application. However, the Department of Administration may copy the spending unit on correspondence sent to the employee advising of the approval. If an employee withdraws his/her application prior to receiving payment, the Department of Administration will advise the spending unit.

**Amendment 40:** The rules are being amended as a result of that comment.

\*\*\*\*\*

**Comment 41:** Please clarify why the Finance Director shall remit payment to the employee within 10 days when the payment is only to occur twice per year.

**Agency Response 41:** The Finance Director will not remit the payment within 10 days. This was an oversight by the Department of Administration, as the original legislation did not contain that language and when we modified the rules we inadvertently forgot to remove it.

**Amendment 41:** The rule is being amended as a result of this comment.

\*\*\*\*\*

**Comment 42:** Some of our employees may be paid from funds other than state appropriations and the terms of the funding will often not allow us to use it for payment of this benefit. Thus, the University will need to determine other sources of revenue to pay for this benefit. The University is concerned that there does not appear to be a limit on how many days can be cashed in by employees with alternative funding sources.

**Agency Response 42:** The spending unit may respond to the invoice for reimbursement that will be sent by the Department of Administration setting forth the reasons why it cannot transfer the funds and include any supporting documentation, and the Department of Administration will evaluate and make a decision on the reimbursement issue on a case-by-case basis. As for the limit on how many days can be cashed in by employees with alternative funding, there is no limit established in statute, except that the sick leave balance may not be reduced to less than fifty (50) days.

**Amendment 42:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 43:** We are under the impression that the Department of Administration defines general revenue funded employee as funded strictly from state appropriated funds. However, we have employees compensated from Medicaid replacement, Lottery and Pop Tax funds which are treated "in lieu of" general revenue funds within the legislative appropriation process.

**Agency Response 43:** The Department of Administration does not consider those funding sources as general revenue and, therefore, would require reimbursement from those funds.

**Amendment 43:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 44:** We believe an error has been made in the numbering for section 6.3 as it appears twice.

**Agency Response 44:** You are correct. This was an oversight by the Department of Administration and the section will be renumbered.

**Amendment 44:** The rules are being amended as a result of this comment.

\*\*\*\*\*

**Comment 45:** What will the process be for re-certification? Will we have to recalculate the daily rate of pay given any annual budgeted salary increases/decreases? Will funding sources be re-verified? What if the employee has now dropped below a balance of 50 remaining days?

**Agency Response 45:** The Department of Administration will require the spending unit to re-certify all data on the application at the time of re-certification. If the sick leave balance of an employee drops below a balance of 50 days they are no longer eligible.

**Amendment 45:** The rules are being amended as a result of this comment.

\*\*\*\*\*

**Comment 46:** If the employee pays back the full amount, plus 12% per annum and still meets the requirements to bring back sick leave upon rehire will they be permitted to do so?

**Agency Response 46:** The employee can not reacquire the sick leave days for which they received payment according to statute. If the employee had other sick leave days, which they are allowed to bring back by law upon rehire, then this program would not impact that law.

**Amendment 46:** No amendments are being made as a result of this comment.

\*\*\*\*\*

**Comment 47:** Will an employee who ends employment due to worker's compensation reasons or disability reasons (without qualifying for disability retirement) be asked to repay this amount?

**Agency Response 47:** Yes. According to statute, an employee who separates from employment within sixty months of the date of payment, other than by death or retirement, will be required to pay the funds back.

**Amendment 47:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 48:** Who will bear the costs associated with the collection, the Department of Administration, the fund, or the agency?

**Agency Response 48:** The fund.

**Amendment 48:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 49:** If a terminated employee decides to grieve his/her termination, will the Department of Administration wait until a final determination is made on the grievance before seeking repayment? If not, and the termination is overturned, how will the employee be repaid the funds, and who will pay any applicable interest?

**Agency Response 49:** If the Department of Administration has actual knowledge of a pending grievance, which may affect the employment or termination status of an employee who has been paid for unused sick leave under this statute, the department would not invoke the portion of the statute related to Fund reimbursement until a final determination is made regarding the employment or termination status of that employee. If the termination of the employment stands, the termination date will be used (related to whether the separation occurred within sixty months of the date of exchange) to determine whether reimbursement of the Fund is required.

**Amendment 49:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 50:** We are assuming that once an employee submits an application for payment of sick leave, and we certify that application, the sick leave hours are no longer available to them for any use, unless the application is withdrawn. Is that correct?

**Agency Response 50:** No. The sick leave days for which an employee seeks compensation should remain in his/her sick leave balance until he/she actually receives compensation for such days.

**Amendment 50:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 51:** If the money collected through reimbursement by employees was originally paid by the spending unit, and not directly from the legislative appropriated funds, will the money be returned to the spending unit?

**Agency Response 51:** In the event that an employee who has been paid for his/her unused sick leave pays it back, the original amount will be given back to the spending unit but the interest will remain in the

Fund.

**Amendment 51:** No amendments are being made as a result of this comment.

\*\*\*\*\*

**Comment 52:** How will the State handle transfers of employees from one spending unit to another while an application is pending? How will the new spending unit be notified of the pending/paid application and how will funding of the payment be determined?

**Agency Response 52:** The certified application will be processed based upon the information which has been certified and the funds will come from the funds identified on the application. If an employee transfers to another spending unit, he/she can choose to withdraw and re-submit the application if he/she desires. The Department of Administration may not know whether an employee has transferred from one position in one spending unit to another position in another spending unit.

**Amendment 52:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 53:** Please clarify why a spending unit will be required to submit information regarding sick leave on employees who are not eligible for this program.

**Agency Response 53:** Every spending unit as defined by W.Va. Code Section 5-1-1, and as defined under this statute, shall, among other things, verify the total number of unused sick leave days for all employees at least once per year. Spending units are currently reporting on this information on an annual basis in mid-July.

**Amendment 53:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 54:** Employee's salary paid from other than General Revenue funding sources. What happens if an agency has limited funding for an employee paid from a special revenue source?

**Agency Response 54:** The source that pays the employees salary and benefits is responsible for paying the benefits and is required to reimburse the sick leave fund. The Department of Administration will work with the spending unit to work out payment arrangements on a case-by-case basis.

**Amendment 54:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 55:** Should the spending unit adjust the employees sick leave balance upon receipt of the application?

**Agency Response 55:** No. The employee is still entitled to the applicable sick leave days until he/she is compensated for them. The spending unit should adjust the employee's sick leave balance at time of payment. The spending unit will be notified when the employee is paid and will be requested to provide written confirmation to the Department of Administration that his/her sick leave balance has been adjusted accordingly.

**Amendment 55:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 56:** Will the spending unit receive a copy of the application once approved by the Secretary?

**Agency Response 56:** The Department of Administration will provide a copy of the final certified and approved application to the spending unit.

**Amendment 56:** The rules will be amended as a result of this comment.

\*\*\*\*\*

**Comment 57:** How will the approved employee receive payment? Direct deposit or paper check?

**Agency Response 57:** Department of Administration employees, who receive their regular paycheck by direct deposit, will receive payment by direct deposit for unused sick leave compensation. All other employees will be mailed a check.

**Amendment 57:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 58:** Will this payment be shown on the employee's annual W2 statement or will a 1099 be issued?

**Agency Response 58:** The funds received will be reflected on a W-2 form issued to the employee by the Department of Administration. If the employee works in another agency then he/she will receive two W-2

forms. One from his/her regular employer and one from the Department of Administration.

**Amendment 58:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 59:** Will this payment be subject to FICA taxes?

**Agency Response 59:** Yes

**Amendment 59:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 60:** Should the spending unit/payroll administrator maintain tracking of the application process?

**Agency Response 60:** Yes. The spending unit/payroll clerk should monitor the employee's sick leave balance to ensure that the employee remains eligible and does not drop below the 50 day requirement. Once a certified application is received by the Department of Administration, it must be processed within 10 days. However, the Department of Administration can only remit the funds to the employees after the first full pay period in July or December. The spending unit must advise the Department of Administration if the employee becomes ineligible. The Department of Administration will contact the spending unit to verify the submitted information in the application prior to making payment.

**Amendment 60:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 61:** Will the spending unit be notified when payment is made?

**Agency Response 61:** Yes. When payment is made the agency head/payroll clerk will be notified so he/she can adjust the employee's sick leave balances accordingly and send written confirmation to the Department of Administration of the adjustment to employee's sick leave balance.

**Amendment 61:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 62:** When should the Department of Administration be notified if an

employee that has received sick leave payment under the statute separates from employment?

**Agency Response 62:** Immediately.

**Amendment 62:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 63:** What if the employee receives sick leave payment and later requests a medical leave of absence where they go off payroll. If that person still eligible to request donated leave?

**Agency Response 63:** Yes. If the employee meets all eligibility requirements to receive donated leave then the fact that they were previously compensated for unused days would have no impact on their ability to receive that donated leave. Additionally, if an employee gets donated leave from another employee, this could further reduce the OPEB liability.

**Amendment 63:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 64:** When does the spending unit transfer the funds?

**Agency Response 64:** If an employee is not paid from general revenue, then the spending unit will receive an invoice from the Department of Administration seeking reimbursement of the Fund with the necessary information to transfer the funds.

**Amendment 64:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 65:** Is the transfer of funds only for "special revenue" accounts?

**Agency Response 65:** No. A transfer of funds will be required when the employee is paid from a funding source other than the General Revenue Fund.

**Amendment 65:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 66:** Definition of "day" needs to be clearly stated. If employee is in a .80 FTE position and works 6 hours a day, would the employee's balance of sick leave be based on his/her FTE?

**Agency Response 66:** The formula for calculating the daily rate of pay is set forth in statute. To calculate an employee's "daily rate of pay", a spending unit must use the base monthly salary for an employee and multiply such monthly salary by twelve and divide that number by the number of workdays for that calendar year. For purposes of this statute, the spending units shall use the calendar maintained by the Division of Personnel, which reflects the work-days for that calendar year.

**Amendment 66:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 67:** Are non-leave eligible employees (9 months faculty) who were once leave eligible able to take advantage of this benefit? Currently, leave held is considered a liability on the books for the institution.

**Agency Response 67:** No. Only employees who can use their unused sick leave for free or reduced health insurance are eligible. The employee must have the amount of sick leave days available at the time of payment.

**Amendment 67:** No amendment is being made as a result of this comment.

\*\*\*\*\*g

**Comment 68:** Recommend changing the definition of "eligible employee" to reflect current practice which is that an employee who returns within 12 months will have their sick leave reinstated, but the basic life date changes. The basic life date is the date PEIA uses to determine if an employee is eligible for conversion of sick leave for the paid up insurance benefits.

**Agency Response 68:** The definition of "eligible employee" is set forth by statute and cannot be changed by a procedural rule.

**Amendment 68:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 69:** Can the employee pay it back? What about a buy back? In the event they want to use it for pension purposes for retirement or use it an another institution?.

**Agency Response 69:** No. The statute specifically states that an employee may not reacquire the sick leave days for which he/she was compensated.

**Amendment 69:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 70:** Will the State be responsible for withholding funds from an employee's salary when pursuing collection or will the spending unit be responsible? What if an employee goes off payroll due to illness or worker's compensation?

**Agency Response 70:** The Department of Administration is responsible for any applicable collections activity if an employee separates from employment within sixty months of the date of exchange, except for by death or retirement. The collection method will be decided on a case-by-case basis.

**Amendment 70:** No amendment is being made as a result of this comment.



**DIVISION OF NATURAL RESOURCES**


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Joe Manchin III  
Governor

Frank Jezioro  
Director

**MEMORANDUM**

**TO:** Donna Lipscomb, Executive Coordinator  
Department of Administration

**FROM:** Harry F. Price, Executive Secretary 

**DATE:** June 26, 2008

**SUB:** Comments: Proposed Rule for Compensation  
for Unused Sick Leave

The Division of Natural Resources offers the following comments regarding 148-CSR-21.

- (1) Payments should be made as a supplemental, not on regular paycheck.
- (2) Counseling should be provided by DOP applicants to ensure that the consequences are truly understood.

Thank you for the opportunity to comment.

HFP/mb

cc: Emily Fleming



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Joe Manchin III  
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Frank Jezioro  
Director

August 27, 2008

Donna Lipscomb, Executive Coordinator  
Department of Administration  
1900 Kanawha Boulevard, East  
Building 1, Room E-119  
Charleston, WV 25305

RE: *Comments concerning proposed Rule 148 CSR 21.*

Dear Ms. Lipscomb:

Pursuant to the August 4, 2008 "Notice of Comment Period on a Proposed Rule," please accept the following comment on behalf of the Division of Natural Resources (DNR).

148 CSR 21 relates to the procedure for payment of unused sick leave as codified by W.Va. Code § 5-5-6, as amended by the 2008 term of the Legislature. W.Va. Code § 5-5-6 sets forth the authority of the Department of Administration to establish the State Employee Sick Leave Fund (the Fund) and requires the promulgation of rules to obtain reimbursement to this fund, where available and appropriate, from any spending unit for employees whose salaries are paid, in whole or in part, from a funding source other than the General Revenue Fund. After payment to an employee from the Fund, the proposed Rule § 148-21-6.2 would require a spending unit whose employees' salaries are paid from a funding source other than the General Revenue Fund to "...transfer funds into the State Employee Sick Leave Fund *from the funds from which the employee is paid*, in whole or in part, on a pro rate basis within ten (10) days." [Emphasis added.]

The payment of many DNR employees is from protected funding sources making it impossible, and in some case unlawful, to transfer such monies into the Sick Leave Fund in order to comply with the reimbursement requirement of the rule.

Donna Lipscomb, Executive Coordinator

Page 2

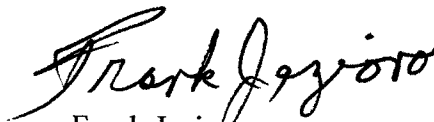
August 27, 2008

The first protected funding source is the "License Fund-Wildlife Resources" as set forth in W.Va. Code § 20-2-34, and said monies are to be used "...solely for law enforcement and for other purposes directly relating to the conservation, protection, propagation and distribution of wildlife in this state pursuant to the provisions of [Chapter 20]." On August 6, 1999, the DNR received correspondence from the United States Department of the Interior regarding W.Va. Code § 5A-2-14a, which required the transfer of one percent of the DNR's annualized expenditures from state funds to the Public Employees Insurance Reserve Fund. This letter unequivocally advised that such transfer of funds from the DNR License Fund for general use would constitute a "diversion" of those funds in violation of the Code of Federal Regulations 50 CFR Part 80, Section 80.4(c). The proposed rule creates an identical diversion situation rendering compliance by the DNR with the reimbursement requirement a diversion. Strict compliance with the proposed rule would also constitute a violation of W.Va. Code § 20-2-34 in that the monies transferred would not be used solely for the purposes enumerated therein.

The DNR also receives funds in compliance with the West Virginia Constitution, Art. VI, Secs. 55 and 56 entitled respectively, "Revenues and properties applicable to fish and wildlife conservation" and "Revenues applicable to nongame wildlife resources in the state." These sections provide revenue collection, to be deposited in either the "license fund" or the "nongame wildlife fund," which is reserved solely for the conservation, restoration, management, educational benefit and recreational and scientific use of fish, wildlife and nongame wildlife resources. Once again, the DNR is without the authority to divert funds from this source for deposit in the Sick Leave Fund.

Based upon the above comments it is the DNR's position that payment made from the Sick Leave Fund to employees paid from those certain restricted and protected special revenue funds would preclude reimbursement, and an exception to such reimbursement from this agency must be crafted to avoid the aforementioned statutory, constitutional and federal diversion obstacles. If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,



Frank Jeziorek  
Director

FJ:wvl

cc: Kelley M. Goes, Secretary

David R. Tyson  
Chair



Brian Noland  
Chancellor

West Virginia Higher Education Policy Commission  
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(304) 558-2102  
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June 17, 2008

Donna M. Lipscomb  
Executive Coordinator  
W. Va. Dept. of Administration  
1900 Kanawha Boulevard, E.  
Building 1, Room E-119  
Charleston, West Virginia 25305

Re: Proposed Title 148, Series 21

Dear Ms. Lipscomb:

In reference to the above proposed procedural rule sent out for public comment, we would like to make the following observation. Section 8.3 states that "The Secretary, or his/her designee, shall maintain sick leave records for all spending units." We assume this only means that the Secretary will retain copies of all reports and sick leave records sent him and that it does not transfer authority and possession over the sick leave management system of each spending unit. To the extent that assumption is incorrect we would ask that our institutions retain control and management of our sick leave records.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce Ray Walker".

Bruce Ray Walker  
General Counsel

BRW/bc



David Tyson  
Chairman

Brian Noland  
Chancellor

**West Virginia Higher Education Policy Commission**  
**West Virginia Community and Technical College System**

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Nelson Robinson  
Chairman

James Skidmore  
Chancellor

September 2, 2008

Ms. Donna Lipscomb  
Executive Coordinator  
Department of Administration  
1900 Kanawha Boulevard, East  
Building 1, Room E-119  
Charleston, West Virginia 25305

Dear Ms. Lipscomb:

We would like to comment on the proposed rule Title 148, Series 21 Procedure for Payment of Unused Sick Leave to Employees. First, to protect the financial integrity of institutions we would ask that the rule be amended to allow the head of a spending unit to deny an application if it will have an adverse effect on the financial integrity of the spending unit. Such a provision is important since Section 6.2 of the rule seems to require a spending unit to transfer funds to Administration to pay for the buy-back out of the account the employee is paid for payroll. Some accounts simply would not have the funds to fund the buy-back and continue to pay the employee's salary.

Also, Section 6.2 seems to require a spending unit to reimburse Administration from any account an employee is paid from and not just from those employees paid from non General Revenue Funds, which seems to be contrary to the legislation. Attached are additional comments besides these general ones.

Very truly yours,

Bruce Ray Walker  
General Counsel

BRW/bc

Attachments

### Comments to Proposed Title 148, Series 21

- Many sections of the proposed rule require the head of the spending unit to make certain certifications regarding eligibility. We would suggest that an authorized representative of the head of the spending unit be substituted for the head of the spending unit so that deadlines may be more effectively met. Often the Presidents of our institutions may not be available within the time period established.
- The rule does not specifically limit the requirement of reimbursement of the Fund from non General Revenue funded positions. Is it the intent of the rule that every spending unit must reimburse the Fund---no matter what the source of the funding paying the salary of the employee? If that is not the intent then what is the specific definition for the spending units and funds from which reimbursement is required under the rule?
- Some spending units may not have the funds to reimburse Administration. We would ask that a spending unit be able to reject an application if adequate funds are not available to reimburse Administration.
- Higher education institutions have many employees funded through federal grants or programs. It is unlikely that the federal government would allow those funds to be used for a program like this. We would ask that those funds be exempted from any reimbursement requirement.
- Higher education schedules holidays in a manner different from other agencies. Thus, we would ask that the “days” in any deadlines be defined as “working days”.
- The spending unit must report “current budgeted annual salary” for an applicant. Is that defined as just base salary or are incremental pay, overtime, and other supplemental pay to be included?
- Sec. 3.2 requires an explanation of how the daily rate of pay was computed; however there is no place on the form to

demonstrate that. To ensure consistency, we would request that a formula and method for calculating the daily rate of pay be included in the rule.

- In Sec. 3.2 the spending unit must certify “years of service” of the employee. What is the definition of “years of service” for purposes of the rule?
- Are there only certain periods during the year that an employee may make an application or may they submit an application at any time during the year? We suggest certain prescribed enrollment periods with deadlines for applications.
- Who shall be responsible for submitting the final completed application to Administration? We suggest the spending unit, to ensure accuracy, should submit the completed application to Administration.
- May an employee withdraw an application before payment is made?
- Will an employee be required to still be employed by the spending unit at the time of the leave payment? How will this be verified?
- Sec. 6.1 is unclear as to the exact process and timing of confirmation of available funds and payment to the employee. Why must the spending unit confirm whether funds are available?
- Can the rule establish a procedure to ensure an employee that has made application does not drop below a 50 day balance from the time of application to the date of payment? May the spending unit deny such leave if it will fall below 50 days or will the application be null and void?
- We would ask that the spending unit be copied on all correspondence with the employee regarding an application or payment, and that the spending unit be notified of payments from the Fund to its employees sufficiently in advance of the payments to make any adjustments in budgeting.
- Under Sec. 6.5 must the spending unit automatically re-certify the applicant or must the applicant reapply?

- If an applicant dies before payment will the payment still be made, and to whom?
- Under Sec. 8.2, as of what census date should the number of sick days taken and accumulated be assessed? Must institutions report on employees that would never be eligible for the payment for sick leave?

**Lipscomb, Donna M**

---

**From:** Bruce Walker [walkerb@HEPC.WVNET.EDU]  
**Sent:** Tuesday, September 02, 2008 9:53 AM  
**To:** Lipscomb, Donna M  
**Subject:** Series 21 comments  
**Attachments:** Series 21 - Comments from WVU.doc

Dear Ms. Lipscomb, WVU asked that we forward these comments they had regarding the proposed Series 21. They were unsure whether you had received them from WVU.

Bruce Ray Walker  
General Counsel  
West Virginia Higher Education  
Policy Commission  
Suite 700  
1018 Kanawha Blvd., East  
Charleston, WV 25301  
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148CSR21

Title 148  
Procedural Rule  
Department of Administration  
Office of the Secretary

Series 21  
Procedures for Payment of Unused Sick Leave To Employees

## COMMENTS

August 28, 2008

### §148-21-2. Definitions

#### 2.2

- **Issue/Explanation**

Given the time lines to complete this process, it is unlikely that the head of our spending unit (President of the University) will always be available to sign these documents, given his/her job duties and responsibilities.

**Recommendation**

We propose that this rule be amended to substitute the language *authorized representative for the head of the spending unit*. In addition, we propose a new definition be created for *authorized representative*.

“Authorized Representative” - means the employee(s) designated by the Head of the Spending Unit to certify the Application for Payment of Unused Sick Leave and Reimbursement Agreement on behalf of the spending unit.

- **Issue/Explanation**

We would like clarification of the concept of *current annual budgeted salary*. Are we to include annual increment payments, overtime pay, grant incentive pay or supplemental assignment pays? Does an unpaid leave of absence affect the calculation of the annual budgeted salary?

**Recommendation**

We propose that the *current annual budgeted salary* be defined as the base salary for the employee's primary appointment with the spending unit, at the time the Application for Payment of Unused Sick Leave and Reimbursement Agreement is certified by the spending unit.

- **Issue/Explanation**

We would like clarification of the term *day*. In higher education a standard full day is 7.5 hours. In addition, for some of our employees in flex-time schedules a day may be more than 7.5 hours. For instance a 12 month, 1.00 FTE employee working a 37.5 hour week over four days would work 9.375 hours per day.

**Recommendation**

We propose that *day* be defined as the standard working day for a 1.00 FTE employee, as defined by the employing spending unit.

## 2.3

- **Issue/Explanation**

While we understand the purpose of this definition, we are concerned that the law defines *eligible employee* under WV Code § 5-5-1 differently from this definition, and that we will not be able to certify under the law that some of our employees with eligible sick leave time are *eligible employees*. For instance, according to WV Code § 5-5-1(a) (3) a full-time faculty member is one as defined by WV Code § 18B-8-1. WV Code §18B-8-1(f) defines full-time faculty as follows:

*(f) "Full-time faculty" means any faculty member designated as such by the president, consistent with approved policy of the appropriate governing board, and those persons with faculty rank who have research or administrative responsibilities*

West Virginia University defines full-time faculty under WVU BOG Policy # 2 as an employee in a 1.00 FTE position for at least nine (9) consecutive months. Thus, we have some of our faculty who may have eligible sick leave (from previous positions with the State), but who would not meet the definition of "eligible employee" as defined in WV Code § 5-5-1.

**Recommendation**

We propose that *eligible employee* be defined using the definitions already established in WV Code § 5-5-1(a):

(a) "Eligible employee" means:

(1) Any regular full-time employee of the State or any spending unit of the State who is eligible for membership in any state retirement system of the State of West Virginia or other retirement plan authorized by the State: Provided, That the mandatory salary increase required by this article does not apply to any employee of the State whose compensation is fixed by statute or by statutory schedule other than employees described in this section. Clerks, deputy clerks and magistrate assistants of magistrate courts are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the maximum salaries and compensation for the employee offices under the magistrate court system statutes of article one [§§

50-1-1 et seq.], chapter fifty of this code. Members of the Board of Parole are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the salaries and compensation provided in section two-a [§ 6-7-2a], article seven, chapter six of this code. This article may not be construed to mandate an increase in the salary of any elected or appointed officer of the State;

(2) Any classified employee as defined in section two [§ 18B-9-2], article nine, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the Council for Community and Technical College Education; or

(3) Any full-time faculty member as defined in section one [§ 18B-8-1], article eight, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education.

- **Issue/Explanation**

We have employees who do not meet this current definition of *eligible employee* but who have standing sick leave balances that can be used at retirement for premium conversion. Will they be able to participate in this program?

**Recommendation (1)**

We propose that under the current definitions established by WV Code §5-5-1(a) the employees would not be considered eligible to participate in this program.

**Recommendation (2)**

To address this issue, we propose the following future amendment to WV Code § 5-5-6:

For the purposes of this section eligible employee means any active employee of the state or any spending unit of the state who is entitled upon retirement to credit his or accrued annual and sick leave and/or his or her teaching service for extended insurance coverage as provided in section thirteen, article sixteen of this chapter.

- **Issue/Explanation**

PEIA has a provision that allows conversion of full-time faculty teaching service into premium coverage as follows:

***Extending Coverage for Higher Education Faculty***

*If you are a full-time faculty member employed on an annual contract basis for a period other than 12 months, you may extend your employer-paid insurance coverage based on your years of teaching service. Your benefit is calculated as follows:*

*3 1/3 years of teaching service = 1 year of single coverage*  
*5 years of teaching service = 1 year of family coverage*

While other State employees hired on or after 7/1/2001, cannot apply for premium conversions, newly hired higher education full-time faculty continue to still be eligible for this benefit. Thus, it is a continuing and growing liability. Will full-time faculty, who are eligible to convert teaching service, be eligible to participate in this program?

**Recommendation (1)**

We propose that under the requirements outlined in WV Code § 5-5-6 the employees would not be able to receive payment for teaching service under this program.

**Recommendation (2)**

To address the issue of eligibility to receive payment for teaching service, we propose the future amendment to WV Code § 5-5-6 for the definition of eligible employee drafted above.

**Recommendation (3)**

To address the issue regarding the continued growing liability to the State for teaching service credit, we propose the following future amendment to WV Code §5-16-13

**(n) Prohibition on conversion of teaching service for certain higher education employees for extended coverage upon retirement for new employees who elect to participate in the plan after June, two thousand nine.**

Any higher education employee hired on or after the first day July, two thousand nine who elects to participate in the plan may not apply teaching service toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased retirement benefits, as authorized by this section: Provided, That any person who has participated in the plan prior to the first day of July, two thousand nine, is not a new employee for purposes of this subsection if he or she becomes reemployed with an employer participating in the plan within two years following his or her separation from employment and he or she elects to participate in the plan upon his or her reemployment.

**3.1**

• **Issue/Explanation/Recommendation**

Per our comment for section 2.2, we propose that this rule be amended to substitute the language *authorized representative for the head of the spending unit*.

## 3.2

(1)

- **Issue/Explanation**

We cannot verify the date that the employee began employment with the State of West Virginia. We can only verify when the employee started employment with us.

**Recommendation**

We propose that the request for this information be eliminated, or in the alternative that agencies be exempt from certifying the accuracy of this information.

- **Issue/Explanation**

If needed, please define the term *years of service*. Higher Education has several different definitions for "years of service."

**Recommendation**

To minimize the effort on spending units to certify this information, we propose that certifying years of service be eliminated as an unnecessary step of the process. If certifying years of service must remain, then we propose that *years of service* be defined as outlined in WV Code § 5-5-1(b)

(b) "Years of service" means full years of totaled service as an employee of the State of West Virginia. For full-time faculty as defined in this section, each nine or more months of contracted employment during a fiscal year equals one full year of service.

(6)

- **Issue/Explanation**

Please clarify the calculation for *daily rate of pay*. WV Code § 5-5-6(a) defines the following:

*...The employee shall be paid at a rate equal to one quarter of their usual rate of daily pay during that calendar year. The "daily rate of pay" of an employee paid a monthly salary is calculated by multiplying the monthly salary by twelve and dividing that number by the number of workdays for that calendar year. As used in this section, "workday" does not include weekends. Any payment for unused sick leave may not be a part of final average salary computation.*

In conjunction with our concerns on determining the *annual budgeted salary*, we are also concerned regarding the appropriate method for calculating the *daily rate of pay*. First, depending on what is included in the *annual budgeted salary* our employees will not always have the same monthly salary. Second, we are concerned that calculations will not be accurate for employees who work in positions that are not 12 month, 1.00 FTE positions.

### **Recommendation**

To address the issue of determining the daily rate of pay, we propose the following future amendment to WV Code § 5-5-6:

(a)..... The employee shall be paid at a rate equal to one quarter of his or her usual daily rate of pay for the base salary for his or her primary appointment with the spending unit on the date that the application is certified by the spending unit's authorized representative. ~~that calendar year.~~ The "daily rate of pay" of an employee shall be determined by the spending unit. ~~paid a monthly salary is calculated by multiplying the monthly salary by twelve and dividing that number by the number of workdays for that calendar year. As used in this section, "workday" does not include weekends.~~ Any payment for unused sick leave may not be a part of final average salary computation.

(7)

- **Issue/Explanation**

For our employees, funding sources may vary throughout the year depending on the ending or continuation of funding sources (other than state appropriated funds). In addition, employees may move into different positions (promotion/demotion/upgrade/downgrade) throughout the year that have different funding sources. How will this issue be handled?

### **Recommendation**

We propose that the funding source(s) be defined as the funding source(s) used for the employee's primary appointment with the spending unit, at the time the Application for Payment of Unused Sick Leave and Reimbursement Agreement is certified by the spending unit. Please also see the issue/explanation and recommendation for section 6.2 below.

3.3

- **Issue/Explanation**

Will this payment run through a special payroll or concurrent with regular payroll? How will the system handle different tax allocations?

### **Recommendation**

We propose that this payment be made as a special payroll that is separate from the regular bi-monthly payrolls. In addition, we suggest that efforts be made to limit any change in tax allocations only to this special payroll.

4.1

- **Issue/Explanation**

How can we document who we have designated as our *authorized representatives*? We are concerned that these applications must come from the agency and not the employee to guarantee that all certifications are authentic.

### **Recommendation**

We propose that agencies be required to submit and update the names of the employees that have been designated as authorized representatives. Furthermore, we propose that this rule require that the Application for Payment of Unused Sick Leave and Reimbursement Agreement must be submitted to the Department of Administration by the spending unit, not the employee.

- **Issue/Explanation/Recommendation**

Per our comment for section 2.2, we propose that this rule be amended to substitute the language *authorized representative for the head of the spending unit*.

## **4.2**

- **Issue/Explanation/Recommendation**

Per our comment for section 2.2, we propose that this rule be amended to substitute the language *authorized representative for the head of the spending unit*.

- **Issue/Explanation**

Please clarify the deadline noted in this section. Will we have ten (10) working days (excluding recognized holidays or closures) to certify the application from the date we receive a completed application from the employee? (Please note that all higher education institutions will have varying recognized holidays.)

### **Recommendation**

We propose that the spending unit have ten (10) working days, which excludes agency recognized holidays and/or closures, to certify the Application for Payment of Unused Sick Leave and Reimbursement Agreement from the date it receives a completed application from the employee.

- **Issue/Explanation**

According to the law the payment will be made immediately following the first full pay periods in either July or December. Will there be a deadline to submit applications in order to meet the July or December payment dates?

### **Recommendation**

We propose that the Department of Administration consider an enrollment period for this program, to allow agencies to plan for appropriate staffing levels to meet the needs of this program, as well as the established deadlines for submission. In the event that an enrollment period is developed, the language regarding ten (10) day deadlines could be removed from the rule.

- **Issue/Explanation/Recommendation**

We also reiterate here the same issues/explanation and recommendations mentioned above regarding definitions of eligible employee, day, annual budgeted salary and daily rate of pay, as well as our concerns regarding the source of funding.

### 4.3

- **Issue/Explanation/Recommendation**

Per our comment for section 2.2, we propose that this rule be amended to substitute the language *authorized representative for the head of the spending unit*.

### 5.1

- **Issue/Explanation**

Please clarify the deadline noted in this section. Will the Department of Administration approve or disapprove the application in ten (10) working days (excluding recognized holidays or closures)?

**Recommendation**

We propose that the rule be clarified to give the Department of Administration ten (10) working days, which excludes Department of Administration recognized holidays and/or closures, to approve or disapprove the Application for Payment of Unused Sick Leave and Reimbursement.

### 5.2

- **Issue/Explanation**

The spending unit should also receive notification regarding whether the application has been approved or disapproved so that we can administer the use of the applicable sick leave.

**Recommendation**

We propose that the spending unit be copied on any communications sent to the employee.

### 5.3

- **Issue/Explanation**

If multiple applications are received on the same application date, but the funds are near exhaustion, how will the Department of Administration determine which applications will be selected for payment?

**Recommendation**

We propose that the Department of Administration determine a selection method for determining which applications will be chosen for payment, and document the method of selection in this rule.

- **Issue/Explanation**

Will the Department of Administration make a partial pay to the employee, or must the fund have enough money to pay the entire amount requested to proceed with the payment to the employee? If a partial pay is made, will the remaining balance of sick leave on the application stay pending for next year, or until the employee withdraws the application?

**Recommendation**

To limit confusion and opportunity for errors, we propose that only full payments be made to employees.

• **Issue/Explanation**

If the fund has not been exhausted, but the employee would like to withdraw the application before payment is made in either July or December – is that possible?

**Recommendation**

We propose that an employee not be allowed to withdraw a pending application that is already scheduled for payment. The opportunity to withdraw the application should be limited only to when the fund has been exhausted and payment cannot be made.

• **Issue/Explanation**

If an employee with a certified and approved application dies or retires before the payment is made - will the payment still be made? In the case of an employee death, will the payment be made to a designated beneficiary or the employee's estate?

**Recommendation**

We propose that if an employee retires before the payment has been made, that the employee would still be eligible for payment. If the employee dies, the payment should be made to the employees designated beneficiary or the employee's estate.

• **Issue/Explanation**

Will payments be made to an ex-employee who met eligibility requirements at the time that the Application for Payment of Unused Sick Leave and Reimbursement was certified and approved, but separates from employment before the payment is made in either July or December?

**Recommendation**

We propose that that the Department of Administration sends a document to the authorized representative that lists each of the employees from the spending unit who are scheduled to receive an upcoming payment, prior to the payment date. The authorized representative will be required to verify that the employee is still employed by the spending unit, or otherwise eligible for payment under the rules adopted by the Department of Administration. This recommendation should prevent payment to an ex-employee that then requires collection efforts on the part of the Department of Administration.

5.4

• **Issue/Explanation**

The spending unit should also receive notification that the application has been approved – even if it is not to be paid this year. The spending unit should also receive notification if an employee withdraws his/her application.

**Recommendation**

We propose that the spending unit be copied on any communications sent to the employee.

**6.1**

• **Issue/Explanation**

Please clarify this section. Why will a payroll clerk from the spending unit need to confirm that money is available in the fund before the Finance Director remits payment to the employee?

**Recommendation**

We propose that the Finance Director submit a list to the authorized representative of the reimbursement amounts required after payment has been made. The authorized representative will ensure that the funds are transferred into the fund within ten (10) working days, which excludes agency recognized holidays and/or closures, from the date it receives notification from the Finance Director.

• **Issue/Explanation**

Please also clarify why this section states that the Finance Director will remit payment to the employee *within ten (10) days* when the payment is only to occur twice per fiscal year.

**Recommendation**

We propose that this section be amended to state the following:

...If funds are available, the Finance Director shall remit payment to the employee for the requested number of unused sick leave days on either the pay day immediately following the first full pay period in July or the first full pay period in December.

**6.2**

• **Issue/Explanation**

While some of our employees may be paid with funds other than State appropriations, the terms of that funding will often not allow us to use it for payment of this benefit (such as federal grants.) Thus, the University will need to determine other sources of revenue to pay for this benefit. The University is concerned that there does not appear to be a limit on how many days can be cashed in by employees with alternative funding sources. In addition, the University is concerned regarding the determination of funds that can be used to pay this benefit.

**Recommendation (1)**

To address this issue, we propose the following future amendment to WV Code § 5-5-6:

(e) ...The fund shall consist of moneys appropriated by the Legislature, ~~moneys deposited into the fund in accordance with administrative rules of the Department of Administration,~~ and any interest or other return to moneys in the fund. The fund shall be administrated by the Secretary of the Department of Administration.

(f) ...The rules shall include, but not be limited to, provisions for the application process, ~~and a rule authorizing the secretary to obtain reimbursement, where available and appropriate, to the State Employee Sick Leave Fund from any spending unit for a pro rata share of payments made under the provisions of this section to any employee whose salary is paid, in whole or in part, from a funding source other than the General Revenue Fund.~~

**Recommendation (2)**

If the alternative to Recommendation (1), we propose that rules be developed to limit this potential liability for the spending units. The maximum amount to be expended on payments for unused sick leave for all eligible employees shall be restricted each year by the total funds appropriated by the Legislature to the State Employee Sick Leave Fund. Any remaining monies in the fund once the maximum has been reached will be used to fund future legislative appropriations to the State Employee Sick Leave Fund. If WV Code § 5-5-6 is amended in the future to include teaching service in this program, then the language "and/or teaching service" will need to be added after "unused sick leave"

• **Issue/Explanation**

We are under the impression that the Department of Administration defines general revenue funded employees as funded strictly from state appropriated funds. However, we have employees compensated from Medicaid replacement, Lottery and Pop Tax funds which are treated as "in lieu of" general revenue funds within the legislative appropriation process.

**Recommendation**

Depending upon the decision made regarding the recommendations listed for section 6.2, we propose that general revenue funded employees also include employees paid from such funds. If all funds to pay for this benefit come from the funds appropriated by the Legislature, then this recommendation would not be necessary.

• **Issue/Explanation**

Please clarify the deadline noted in this section. Will we have ten (10) working days (excluding recognized holidays or closures) to transfer funds from the date that payment is made to the employee (Please note that all higher education institutions will have varying recognized holidays.) Also, how will our payroll clerk know that payment has been made to the employee?

**Recommendation**

We propose that the spending unit have ten (10) working days, which excludes agency recognized holidays and/or closures, from the date it's authorized representative receives notification from the Finance Director that the employee has been paid to transfer funds to the State Employee Sick Leave Fund.

### 6.3

- **Issue/Explanation/Recommendation**

We also reiterate here the same issues/explanation and recommendations mentioned above regarding calculations for daily rate of pay.

- **Issue/Explanation/Recommendation**

We believe that an error has occurred in the numbering for this section. Section number 6.3 appears twice.

### 6.4

- **Issue/Explanation/Recommendation**

We also reiterate here the same issues/explanation and recommendations mentioned above regarding a limitation on payments for funding other than State appropriations.

- **Issue/Explanation/Recommendation**

We propose that the spending unit be copied on any communications sent to the employee.

### 6.5

- **Issue/Explanation**

What will the process be for re-certification? Will we have to recalculate the *daily rate of pay* given any *annual budgeted salary* increases/decreases? Will funding sources be re-verified? What if the employee has now dropped below a balance of 50 remaining days – will he/she now be ineligible for payment?

**Recommendation**

We propose that the authorize representative be asked to certify only that the employee is still an eligible employee, per the new definition drafted above.

### 6.6

- **Issue/Explanation**

If an employee pays back the full amount, plus 12% per annum, and still meets the requirements to bring back sick leave upon rehire will they be permitted to do so?

**Recommendation**

We propose that the rules be clarified as follows:

6.6 An employee who has been paid for their unused sick leave shall not be permitted to reacquire any sick leave days for which he/she received payment, even if the employee is ultimately required to pay back the amount exchanged plus twelve percent per annum upon separation. This includes requests to buy back the sick leave as an active employee, and/or requests to reinstate sick leave as a reemployed employee.

## 6.7

- **Issue/Explanation**

Please clarify this section. We are assuming that once an employee submits an application for the payment of sick leave, and we certify that application, the sick leave hours are no longer available to them for any use, unless the application is withdrawn. Is this correct?

**Recommendation**

We propose that once an application has been certified by the spending unit, the sick leave hours are no longer available to the employee for any use, unless the application has been withdrawn. Sick leave hours that have been paid will be considered used.

## 7.1

- **Issue/Explanation**

Please clarify this section. Will an employee who ends employment due to worker's compensation reasons or disability reasons (without qualifying for disability retirement) be asked to repay this amount – or will the Department of Administration have any discretion?

**Recommendation**

We propose that the Department of Administration consider rules or legislative amendments regarding the repayment requirements that exclude employees who separate from employment under worker's compensation or due to a qualified social security disability without retirement.

## 7.2/7.3

- **Issue/Explanation**

Who will bear the costs associated with collection - the Department of Administration, the fund, or the agency?

**Recommendation**

We propose that any costs associated with collection be paid from the fund, if possible, or by the Department of Administration.

- **Issue/Explanation**

If a terminated employee decides to grieve his/her termination, will the Department of Administration wait until a final determination is made on the grievance before seeking repayment? If not, and the termination is overturned, how will the employee be repaid the funds, and who will pay any applicable interest?

**Recommendation**

We propose that Department of Administration refrain from collection efforts if the ex-employee has filed a grievance or lawsuit regarding the validity of the termination, until such time as the matter has been resolved.

- **Issue/Explanation**

If the money collected was originally paid by the spending unit, and not directly from the legislative appropriated funds, will the money be returned to the spending unit?

**Recommendation**

We propose that any money paid by the spending unit, be returned to the spending unit, less any costs associated with collection.

- **Issue/Explanation**

How will the State handle transfers of employees from one spending unit to another – while an application is pending? How will the new spending unit be notified of the pending/paid application – and how will funding of the payment be determined?

**Recommendation**

To minimize confusion and opportunity for error, we propose that employees not be allowed to transfer application to other spending units. If allowable under the rules, an employee may be eligible to withdraw the application and resubmit with the new spending unit. But simply transferring the application, as certified by another spending unit, should not be allowed.

### **8.1/8.2/8.3**

- **Issue/Explanation**

Please clarify why a spending unit will be required to submit information regarding sick leave on employees who are not eligible for this program?

**Recommendation**

We propose that all efforts should be made to minimize the administrative burden of this program. While we do keep accurate records regarding sick leave balances and usage, we propose that information only be required that helps effectuate the purposes of this program.

### **Additional Comments Regarding the Current Application**

- **Recommendation**

We propose that the first section of the application (completed by the employee) be limited to require the following:

- Employee Name
- Employee Work Address
- Employee Work Telephone Number
- Employee Home Address
- Employee Home Telephone Number
- Date of Birth
- Number of Sick Days Requested for Payment
- Date Employment Began with State

The authorized representative should not be asked to verify the information listed above, because the employee should be required to verify the accuracy of this information. The additional information requested should be completed by the spending unit authorized representative. However, we also propose that documentation of years of service be deleted, or clarified if not deleted.

- **Issue/Explanation/Recommendation**

The rule requires that we explain our method for calculating the employee's daily rate of pay. However, the application does not have an area for this explanation.

- **Issue/Explanation/Recommendation**

Per our comment for section 2.2 of the rule, we propose that these forms be amended to substitute the language *authorized representative for the head of the spending unit*.

- **Issue/Explanation/Recommendation**

The application requires that the spending unit representative certify that the employee will continue to have no less than fifty (50) sick days available in his/her sick leave balance. Since an employee may use sick leave after the payment is made, we propose the following language amendment:

The sick leave balance remaining at the time of this application will be no less than the required fifty (50) sick days.

## **Payment of Unused Sick Leave – Effective July 1, 2008**

### **QUESTIONS:**

- 1. Employee's salary paid from other than General Revenue funding sources. What happens if an agency has limited funding for an employee paid from a special revenue source?**
- 2. Should spending unit adjust the employees leave balance upon receipt of the application?**
- 3. Will spending unit receive a copy of application once approved by the DOA Cabinet Secretary?**
- 4. How will approved employee receive payment? Direct deposit or paper check?**
- 5. Will this payment be shown on the employee's annual W2 statement or will a 1099 be issued?**
- 6. Will this payment also be subject to FICA taxes?**
- 7. Should spending unit/payroll administrator maintain tracking of application process?**
- 8. Will spending unit be notified when payment is made?**
- 9. When should DOA be notified if an employee that has received sick leave payment separates employment?**
- 10. The form indicates an employee will reimburse the State Employee Sick Leave Fund plus interest. What if the payment was made from "special revenue"? Will the spending unit receive and IGT to return the funds to the special revenue fund?**
- 11. What if the employee receives sick leave payment and later requests a medical leave of absence where they go off payroll, is this person still eligible to request donated leave?**
- 12. When does the spending agency transfer the funds funds?**
- 13. Is the transfer of funds only for "special revenue" accounts?  
Please clarify.**

# Public Service Commission Of West Virginia

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201 Brooks Street, P. O. Box 812  
Charleston, West Virginia 25323

Michael A. Albert  
Chairman



August 12, 2008

Donna Lipscomb, Executive Coordinator  
Department of Administration  
1900 Kanawha Boulevard, East  
Building 1, Room E-119  
Charleston, West Virginia 25305-0120

Dear Ms. Lipscomb:

Thank you for your letter dated August 4, 2008, wherein you asked that agency heads review proposed rules, identified as 148-CSR-21, that would allow eligible employees to be compensated for their unused sick leave.

The Public Service Commission reviewed the proposed rules and has no issues with them.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mike Albert", written over a white background.

Michael A. Albert  
Chairman

MAA/klm