

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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2010 JUL -8 AM 9: 52

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: 21

TITLE OF RULE BEING AMENDED: Procedure for the payment of unused sick leave to employees

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

EFFECTIVE DATE OF THIS RULE IS August 8, 2010



Authorized Signature

#3.60

Agency: Department of Administration
Rule Type: Procedural

Title Number: 148
Cite Authority: 5-5-6

COMMENTS / RESPONSES

No comments were received during the comment period by the Department of Administration regarding the procedures for payment of unused sick leave to employees. Therefore, no responses were required.

148CSR21

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**TITLE 148
PROCEDURAL RULE
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE SECRETARY**

OFFICE WEST VIRGINIA
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 - July 7, 2010

1.4. Effective Date - August 7, 2010

§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 and §5-5-6, 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 the employee's 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) If the employee's monthly salary exceeds the amount of the cap established in W.Va. Code §5-5-6(c)(1), the Application for Payment of Unused Sick Leave & Reimbursement Agreement shall reflect that the daily rate of pay was computed based upon such cap, or the legal amount allowed under §5-5-6(c)(1).

- 8) 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 and shall be submitted at the time of application.

3.4 The Department of Administration shall process the applications in the order of receipt and within thirty (30) days from receipt of such application.

§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. If the employee's monthly salary exceeds the amount of the cap established in W.Va Code §5-5-6(c)(1), the Application for Payment of Unused Sick Leave & Reimbursement Agreement shall reflect that the daily rate of pay was computed based upon such cap, or the legal amount allowed under §5-5-6(c)(1).

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.

§ 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 eligible employees who have met all certification requirements, 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. In determining the daily rate of pay of an employee, the spending unit shall adhere to the salary caps in accordance with W.Va. Code §5-5-6(c)(1) and the life-time cap in accordance with W.Va. Code §5-5-6(b).

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, the employee 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 directly 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.

7.4. The Department of Administration shall not pay any employee more than \$25,000.00 total compensation for such employee's unused sick leave. If an employee requests additional funds the Department of Administration shall advise the employee that the employee has already received the maximum amount allowed by law.

§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.