WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Personnel TITLE-SERIES: 143-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 143-01 Administrative Rule of the West Virginia Division of Personnel

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §29-6-10

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

143CSR1 implements the provisions set forth in W. Va. Code § 29-6-1 et seq. which provides the State Personnel Board the authority to promulgate, amend or repeal rules regarding classification plans, pay plans, open competitive examinations, promotions, layoff and recall, appointments, dismissals, demotions and other matters consistent with W. Va. Code § 29-6-1 et seq.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/28/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/30/2021

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Notice of the public comment period was provided to Agency Heads and members of the State Human Resources Advisory Committee by email. An announcement was also placed on DOP's website available to the public and employees of the State.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The purpose of the Administrative Rule 143CSR1 of the Division of Personnel is for the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state or classified employment. Amendments have been proposed to the existing Rule to provide clarification and consistency to certain sections of the Rule, and to address statutory revisions with the passage of HB 2011, amending WV Code § 26-6-4.
Rule section and description of proposed amendments is provided below.

1.5.Added Sunset provision as required by the Legislative Rule of the Secretary of State (153CSR6).

3.1.Moved definition of Accrue to 3.2 in order of alphabetization.

3.5.Amended definition on "Agency" replacing the county health departments with "municipal agencies".

3.16.Amended language to provide more precise and easily understood terminology and remove unnecessary verbiage and remove reference to benefits.

3.24.Replaced the term plan with range to make the terminology consistent throughout the Rule.

3.61.Unnecessary language was removed from the definition of "Pay Increment".

3.62. Amended definition of "Pay Plan" by adding existing language consistent with other sections of the Rule.

3.69. Amended definition of "Probationary Period" to reflect changes made in the 2016 Rule requiring employees hired through reinstatement must also successfully complete the designated probationary work period and remove language indicating the trial work period is prescribed by the Director consistent with subsection 10.1.b of the Rule.

3.70.Added language to the definition of "Promotion" to clarify promotions are available to permanent employees only. Also replaced salary with compensation range for consistency with other relevant sections of the Rule.

3.80.Deleted the definition of Salary Range since the term is no longer used in the Rule. This also required renumbering. The referenced changes are listed with their new numbers, unless otherwise specified.

3.82. Deleted definition of "Seasonal Employment" in accordance with 2021 H.B. 2011.

3.83.Amended language eliminating any time requirements for temporary employees of work during a working year to be exempt from classified service; and exempting employees in state forests, parks, and recreational areas from classified service, in accordance with 2021 H.B. 2011.

3.91.Added a definition for Work Period to provide more clarification.

5.4.a.Replaced the terminology salary with compensation for consistency with other relevant sections of the Rule. See 3.24 above.

5.4.b.Amended the language to clarify experience for appointment above the entry salary must be qualifying experience and removed appointment above the minimum must be authorized by the Director.

5.4.f.2a.Removed language providing incumbents whose pay upon reclassification is above the maximum rate of the new range, is ineligible for salary advancements.

5.5.a.Updated subsection referenced in accordance with the updated numbering.

5.5.b.Removed language requiring the authorization by the Director to provide an additional increases up to the market rate and amended language clarifying training and experience for approval of incremental increases above the market rate must be qualifying training and experience.

5.7 Moved and struck through language of subdivision 5.5.b. to subsection 5.7. because it applies to subsections 5.4 and 5.6 Implementation of the Pay Plan of the Rule. This also required renumbering of subsection 5.5. through 5.11.

5.8.Amended language to clarify an employee must have achieved permanent classified status to be eligible for a lateral class change. Also added language providing incremental increases above the minimum required for the class is available to employees selected from a posted job opening only.

6.4.Added language clarifying the appointing authority is the executive or head of the agency.

6.5.a. Updated language to make the terminology consistent with current practices regarding the examination process.

6.5.b. Removed language disqualifying applicants from taking competitive assembled examinations for failure to present proper identification.

8.4.Corrected grammatical error in the subsection title.

8.4.c. Replaced terminology "qualified" with "eligible" consistent with language in subsection 6.4.

9.4.Amended language eliminating any time requirements for temporary employees to work during a working year to be exempt from classified service; and exempting employees in state forests, parks, and recreational areas from classified service, in accordance with 2021 H.B. 2011.

9.5.b. Amended language to make the terminology consistent with other sections of the Rule regarding "salary" and "compensation".

10.1.b.Added language regarding the probationary period clarifying original appointments to permanent positions are to positions in the classified service.

10.1.d.Amended language to provide more precise and easily understood terminology regarding full-time equivalency.

10.3.Added language clarifying demotion during the probationary period may only be completed through a demotion with prejudice.

10.5.b.Language added to clarify, disqualification of probationary appointees dismissed in accordance with subsection 7.4 of the Rule is to same appointing authority from the same register or for the same classification.

11.1.Added language clarifying to be eligible for promotion in the classified service an employee must have achieved permanent status in classified service.

11.2. Added language clarifying to be eligible for promotion by competitive examination in the classified service an employee must have achieved permanent status in classified service.

12.2.a.1.Removed language providing a predetermination conference is not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct.

12.2.c.Amended language to provide more precise and easily understood terminology and clarify specific reasons for dismissal for job abandonment.

12.3.a.Amended language to provide more clarification regarding the accrual of tenure during work periods involving disciplinary suspension.

12.3.a.1.Amended the language to clarify current practices and remove verbiage regarding withholding the predetermination conference.

12.4Added language clarifying the order of layoff and recall applies to permanent employees in classified service. Made a correction to terminology used 12.4.g.

12.6.Removed language limiting reinstatement to classifications within the occupational group previously held.

12.6.b.Added language to clarify reinstatement/reemployment rights for military personnel applies to active service with State armed service as well as federal armed service.

12.6.c.Added language clarifying annual leave credited back to employees reinstated to state service under provisions of subsection 12.6.b.is subject to the carry-forward rate established in subsection 14.3 or this Rule.

14.1.b.Moved the struck through language regarding eligibility for holiday observance. Eligibility language is more appropriate for and added to subsection 14.1.d.

14.2.Added the terminology work period throughout the Rule. See 3.92. above.

14.3.a.Added language clarifying annual leave accrual rates for employees working in agencies authorized to work more than the standard workweek.

14.3.d.Stuck through the term seasonal no longer used in the Rule.

14.3.f.Amended the subsection title to include the term annual leave.

14.4.b.Added language clarifying sick leave accrual rates for employees working in agencies authorized to work more than the standard workweek and struck through the term seasonal.

14.4.d.Amended language providing unpaid leave of absence consistent with 2016 Rule revisions.

14.7.Added the terminology work period throughout the Rule. See 3.92. above.

14.4.d. Amended language for consistency with other relevant sections of the Rule regarding the eligibility for medical leaves of absence.

14.4.f.3.Amended language to provide clarification and consistency with current practices regarding approval of leave due to exposure to contagious disease.

14.4.g.2.Corrected a grammatical error.

14.4.g.4.Amended language regarding the necessity of physicians/practitioners statements for consistency with federal Family Medical Leave Act practices regarding certification and recertification restrictions.

14.4.i.Amended language to remove unnecessary verbiage.

14.8.a.Language added providing for the use of an unpaid personal leave of absence for exposure to a contagious disease as supported by a physician.

14.8.c.3.Amended language to provide more precise and easily understood terminology related to the use of intermittent medical leave of absences.

14.9.c.Added language to clarify reemployment rights for military service apply to state service as well as federal armed services.

16.3.Removed subsection no longer necessary as the result of passage of HB 2720, creating a merit-based personnel system within the Department of Transportation.

17.1Amended language to provide more precise and easily understood terminology and remove unnecessary

verbiage.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

143CSR1 is necessary to implement provisions set forth in W. Va. Code § 29-6-1 et seq. and the establishment of a system of personnel administration based on merit principles regarding classification plans, pay plans, open competitive examinations, promotions, layoff and recall, appointments, dismissals, demotions and other matters consistent with W. Va. Code § 29-6-1 et seq.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

It is not anticipated these amendments will have a measurable impact on the cost and revenues of State government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

It is not anticipated the Rule will have a measurable impact on the cost and special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

It is not anticipated the Rule or amendments will have a measurable economic impact on the State or residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs and Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

It is not anticipated the Rule or amendments will have a measurable economic impact on the State or residents.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

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

TITLE 143
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF PERSONNEL

SERIES 1
ADMINISTRATIVE RULE OF THE
WEST VIRGINIA DIVISION OF PERSONNEL

§143-1-1. General.

1.1. Scope. -- This rule implements the provisions set forth in W. Va. Code § 29-6-1 et seq. regarding classification plans, pay plans, open competitive examinations, promotions, layoff and recall, appointments, dismissals, demotions and other matters consistent with W. Va. Code § 29-6-1 et seq.

1.2. Authority. -- This rule is issued under the authority of W. Va. Code § 29-6-10.

1.3. Filing Date. -- ~~June 13, 2016~~.

1.4. Effective Date. -- ~~July 1, 2016~~.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

§143-1-2. Preamble.

The general purpose of the Division of Personnel is to attract, develop, and retain to the service of this State personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state or classified employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state or classified employment because of his or her political or religious opinions or affiliations or race, gender, age, disability, ancestry or national origin, or for other reason(s) explicitly provided in federal and/or State law.

§143-1-3. Definitions.

~~3.1. Accrue. -- The process of increasing or accumulating periodically or by increment.~~

~~3.2.~~ 3.1. Accrual Rate. -- The grouping by the cumulative years of eligible employment which is used to determine the rate of accrual of annual leave benefits.

3.2. Accrue. -- The process of increasing or accumulating periodically or by increment.

3.3. Administrator. -- Any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as the head of the agency or board.

3.4. Affiliation. -- Adoption of employees of state agencies or parts of state agencies to the classified service by action of the legislature, or executive order of the Governor with the consent of the Board and the appointing authority concerned, and when additional county or municipal agencies are added to the classified service through agreement between the local government and the Director with the approval of the Board.

3.5. Agency. -- Any authority, board, bureau, commission, division or other entity of state government, however designated, transferred to or incorporated in one of the departments created in W. Va. Code § 5F-1-2, as well as any affiliated county ~~health department~~ or municipal agencies. Provided, that individual districts, offices, regions, sections and units within the same agency, however designated, shall not be considered a separate agency.

3.6. Allocation. -- The assignment of a position to a class by the Director of Personnel based on the duties performed and responsibilities assigned.

3.7. Annual Leave. -- An accrued benefit of paid time off from work that is earned by an employee to be used with prior approval of the appointing authority or designee.

3.8. Appeal. -- A request made to the Director or Board to reconsider a decision.

3.9. Appointing Authority. -- The executive or head of a department or agency who is authorized by statute to appoint employees in the classified or classified-exempt service. By written notification to the Director of Personnel, the appointing authority may delegate specific powers authorized by this rule to persons who satisfy the definition of employee as established in this rule.

3.10. Appointment. -- The act of hiring an applicant for employment.

3.11. Available. -- The indication, by an eligible applicant, of the conditions under which employment would be accepted including, but not limited to, location, salary, and starting date of employment.

3.12. Board. -- The State Personnel Board as provided for in W. Va. Code § 29-6-6.

3.13. Business Necessity. -- The reason or cause for any of a variety of personnel actions based upon the condition of the agency, in whole or in part, or specific program component(s) which may include, but is not limited to, lack of funds or work; abolishment of positions; material changes in mission, duties or organization; loss of budgeted, allocated or available positions; reinstatement of eligible employees returning from military duty or temporary total disability; reinstatement of an employee in compliance with a legal order; and for recall of employees previously laid off.

3.14. Carry Forward Days. -- The maximum number of annual leave days which can be accredited for use as of the first day of January based on an employee's length of service category.

3.15. Certification. -- The official list of eligible applicants given to an appointing authority for filling vacancies in the classified service.

3.16. Class or Class of Positions. -- One or more positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same title, the same qualifications, and the same salary schedule as defined in this section ~~of compensation and benefits~~ may be equitably applied to each position in the class.

3.17. Classification Action. -- The actions of allocation, reallocation, classification, and reclassification.

3.18. Classification Plan. -- The plan by which positions in the classified service and classified-exempt service have been allocated by class.

3.19. Class Specification. -- The official description of a class of positions for the purpose of describing the nature of work, providing examples of work performed, and identifying the knowledge, skills, and abilities~~,~~ required~~,~~ while stating the generally accepted minimum qualifications required for employment.

3.20. Classified Employee. -- An employee who occupies a position allocated to a class in the classified service.

3.21. Classified-Exempt Service. -- As established by statute, those positions which satisfy the definitions for "class" and "classify" but which are not covered under the Division of Personnel merit system standards or employment standards of the higher education systems.

3.22. Classified Service. -- Those positions which satisfy the definitions for "class" and "classify" and which are covered under the Division of Personnel merit system standards.

3.23. Classify. -- The process of ascertaining, analyzing, and evaluating the duties and responsibilities of positions to determine the number and kind of classes existing in the service and to group the positions in classes.

3.24. Compensation Range. -- The approved monthly and annual salary for a class which includes the minimum, maximum compensation.

3.25. Daily Rate. -- The usual rate of pay for the pay period divided by the total number of workdays plus paid holidays in the pay period for an employee whose position is assigned to a monthly pay rate.

3.26. Date and Time of Separation. -- Last date and time worked by an employee separated from employment due to dismissal, voluntary resignation, voluntary retirement, layoff, or death; the date of death of employees who die while on paid or unpaid leave; the date and time notification is received by employees resigning or retiring while on military leave, or while receiving workers' compensation temporary total disability benefits as a result of a personal injury or illness received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code § 23-4-1, or due to disability as verified by a physician/practitioner.

3.27. Day. -- Unless otherwise specified, an interval of 24 hours as represented by a calendar day.

3.28. Demotion. -- A change in the status of an employee from a position in one class to a position in a lower job class as measured by compensation range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower rate in the compensation range assigned to the class. There are two (2) types of demotion:

3.28.a. Demotion with Prejudice. -- A disciplinary action resulting in the reduction in pay and a change in job class to a lower job class.

3.28.b. Demotion without Prejudice. -- A reduction in pay and/or a change in job class to a lower

job class due to business necessity or as a result of an employee being selected for a vacant, posted position for which he or she applied.

3.29. Department. -- The departments of the executive branch of state government provided in W. Va. Code § 5F-1-2.

3.30. Director. -- The Director of Personnel, as provided in W. Va. Code § 29-6-7 and § 29-6-9, who serves as the executive head of the Division of Personnel, or his or her designee.

3.31. Disability. -- A physical or mental impairment which substantially limits one or more of a person's major life activities, a record of such impairment, or regarded as having such an impairment.

3.32. Discretionary. -- Open to individual choice or judgment.

3.33. Dismissal. -- Involuntary separation of employment of a classified employee initiated by an appointing authority for any reason specified in this rule or for good cause; involuntary separation of employment of a classified-exempt employee with or without cause.

3.34. Division of Personnel. -- The division of the Department of Administration responsible for the system of personnel administration for the classified and classified-exempt service.

3.35. Effective Date. -- The established date an action takes place.

3.36. Eligible Applicant or Eligible. -- An applicant accepted for a Division of Personnel examination who meets all minimum requirements and whose name is listed on the register established for the class of position.

3.37. Employee. -- Any person who lawfully occupies a position in an agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

3.38. Examination. -- The process of assessing or measuring and evaluating the relative skills, abilities and fitness of applicants by job-related procedures. Examples include, but are not limited to: application evaluation, written test, performance test, physical agility test, interview or oral assessment, psychological or behavioral assessment, drug screening, and background evaluation. Examinations may further be defined as follows:

3.38.a. Assembled Examination. -- Any assessment procedure requiring applicants to appear at a specified time and place.

3.38.b. Unassembled Examination. -- An appraisal of job-related training, experience or any other job qualifications without the necessity for the applicant's personal appearance at a specified place.

3.39. Exempt Service. -- All positions specifically exempted from the classified service by statute or statutory authority.

3.40. Fitness. -- Suitability to perform all essential duties of a position by virtue of meeting the established minimum qualifications and being otherwise qualified.

3.41. Full-time Employee. -- Any employee who works the full work schedule established for the

agency.

3.42. Hourly Rate. -- The total annual salary (excluding annual increment) divided by 2,080 hours for full-time permanent and temporary salaried employees or divided by the actual number of hours worked annually for part-time permanent employees, and temporary salaried employees. For hourly employees, the hourly rate is the actual rate established by the Board.

3.43. Immediate Family. -- Consists of the parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, stepparents, stepsiblings, stepchildren, foster children, individuals in an *in loco parentis* relationship, and individuals in a legal guardianship relationship.

3.44. Incapacity. -- An illness of, or injury to, an employee which temporarily prevents him or her from performing the essential duties of his or her position.

3.45. Incumbent. -- Any employee occupying a position.

3.46. Inter-Agency Transfer. -- Any transfer from one agency to another.

3.47. Intra-Agency Transfer. -- Any transfer within a single agency.

3.48. Job Abandonment. -- The absence from work under such conditions as to be synonymous with resignation.

3.49. Last Date and Time on Payroll. -- The calendar date and hour an employee's pay ceases.

3.50. Last Day of Work. -- The last calendar date and hour an employee is physically on the job.

3.51. Lateral Class Change. -- The movement of any employee from one class to another class in the same compensation range.

3.52. Layoff. -- A reduction in the number of employees resulting in involuntary separation from employment or reduction in work schedule due to business necessity.

3.53. Minimum Qualifications. -- The least experience and/or training required by the Board for employment in a class of position and admission to an examination for that class of position.

3.54. Month. -- Any of the twelve parts into which the calendar year is divided.

3.55. Occupational Group. -- A category of job classes grouped by similarity of occupation or profession.

3.56. Open Competitive Examination. -- An examination which permits the competition of all persons who meet the publicly announced minimum requirements for a class of position.

3.57. Original Appointment. -- Initial employment of an individual into the classified service as a result of selection from a certification of names from a register established by open competitive examination or from a preference register.

3.58. Part-time Employee. -- Any person who works less than the full-time work schedule established

for an agency.

3.59. Part-time Professional. -- Any classified-exempt employee engaged in professional services without administrative duties and who works no more than half the agency's full-time work schedule.

3.60. Pay Differential. -- A type of salary adjustment specifically approved by the Board to address circumstances including, but not limited to, class-wide recruitment and/or retention problems, regionally specific geographic pay disparities, apprenticeship program requirements, shift differentials for specified work periods, and temporary upgrade programs.

3.61. Pay Increment. -- The percentage increase amounts established by the Board to implement pay practices. ~~including hiring rates, salary advancements, and pay on promotion.~~

3.62. Pay Plan. -- ~~A compensation schedule for the classified service consistent with merit principles.~~ The official schedule of pay rates, the compensation range assigned to each class of positions and the salary regulations used in pay administration for the classified service.

3.63. Pay Rate. -- One of the monthly or hourly rates within the compensation range established by the Board for each class included in the approved pay plan; the usual rate of pay. Though pay may be expressed in terms of a monthly rate, employees may be paid on a bi-weekly basis.

3.64. Per Diem. -- A daily rate of pay.

3.65. Permanent Employee. -- Any classified employee who was hired from a register and who has completed the probationary period prescribed by the Board for the job class, or any classified-exempt employee who was hired to fill a position for an unlimited period of time, notwithstanding the appointing authority's right to terminate the employee for cause or at his or her will.

3.66. Physician/practitioner. -- A person licensed under the laws of a state to practice medicine or a medical practitioner approved by the Public Employees Insurance Agency.

3.67. Position. -- An authorized and identified group of duties and responsibilities assigned by the proper authority requiring the full-time or part-time employment of at least one person.

3.68. Position Description. -- The document which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information in position allocation.

3.69. Probationary Period. -- A specified trial work period ~~prescribed by the Director~~ designed to test the fitness of an employee selected from a competitive list of eligibles for the position for which an original appointment has been received or an employee hired through reinstatement.

3.70. Promotion. -- A change in the status of ~~an~~ a permanent employee from a position in one class to a vacant position in another class of higher rank as measured by ~~salary~~ compensation range and increased level of duties and/or responsibilities.

3.71. Provisional Appointment. -- The hiring of an employee to fill a position pending the administration of an open competitive examination and the establishment of a register.

3.72. Reallocation. -- Reassignment by the Director of a position from one class to a different class on the basis of a significant change in the kind and/or level of duties and responsibilities assigned to the position or to address a misalignment of title and duties.

3.73. Recall. -- The re-employment from a recall list of a former permanent classified employee separated due to layoff.

3.74. Reclassification. -- The revision by the Board of the specifications of a class or class series which results in a redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, compensation range, or minimum qualifications for the classes involved.

3.75. Register. -- An official list of currently available eligible applicants for a position or job class listed in the order of the final score as a result of the Division of Personnel examination for the competitive appointment or in tenure order for preference hiring of laid-off permanent classified employees.

3.76. Reinstatement. -- A type of re-employment of a former permanent classified employee.

3.77. Resignation. -- Voluntary separation from employment, including job abandonment, by an employee.

3.78. Salary Adjustment. -- A salary change resulting from a revision of the pay plan, the reassignment of a class to a different compensation range, a Board approved pay differential, a temporary classification upgrade, a general wage increase mandated by the Legislature or the Governor, or the correction of payroll errors.

3.79. Salary Advancement. -- A discretionary increase in compensation granted in recognition of the quality of job performance.

~~3.80. Salary Range. -- The approved monthly and annual salary for a class which includes the minimum, maximum and intervening steps.~~

~~3.81.~~ 3.80. Salary Schedule. -- The official schedule of salaries approved by the Governor consisting of multiple compensation ranges with minimum and maximum rates of pay for each range.

~~3.82. Seasonal Employment. -- Temporary employment exempt from the classified service in state forests, parks, and recreational areas for less than 1,733 hours per calendar year.~~

~~3.83.~~ 3.81. Sick Leave. -- An accrued benefit of paid time off for illnesses, injuries and other health related circumstances as specified by this rule.

~~3.84.~~ 3.82. Suspension. -- Action taken by an agency to temporarily relieve an employee of his or her duties and place the employee in unpaid status. There are two (2) types of suspension:

~~3.84.a.~~ 3.82.a. Disciplinary Suspension. -- A disciplinary action for cause.

~~3.84.b.~~ 3.82.b. Non-disciplinary Suspension. -- An indefinite period of suspension to perform an investigation regarding an employee's conduct which has a reasonable connection to the employee's performance of his or her job or when the employee is the subject of an indictment or other criminal proceeding.

~~3.85.~~3.83. Temporary Employment. -- Limited term ~~Employment~~ employment exempt from the classified service. ~~for a period not to exceed 1,000 work hours per twelve-month period.~~

~~3.86.~~ 3.84. Terminal Annual Leave. -- The balance of an employee's accrued and unused annual leave as of that employee's last day of work.

~~3.87.~~ 3.85. Termination. -- Separation from employment by the appointing authority as a result of the expiration of a limited term appointment or at the end of the period of need during limited term employment.

~~3.88.~~ 3.86. Transfer. -- The movement of an employee to a different subdivision of an agency or geographic location of the same or a different agency.

~~3.89.~~ 3.87. Vacancy. -- An unfilled budgeted position in the classified service to be filled by original appointment, promotion, demotion, lateral class change, transfer, or reinstatement.

~~3.90.~~ 3.88. Veteran. -- Any person who meets the requirements set forth in W. Va. Code § 6-13-1.

~~3.91.~~ 3.89. Veterans' Preference Points. -- An additional five (5) points added to the final passing score on an open competitive examination of any veteran as defined by this rule. An additional five (5) points are available to those veterans who also have a current and compensable service connected disability or who have received a Purple Heart award.

~~3.92. 3.90. Work Schedule. -- Designation of the periods of time during which work is performed.~~

~~3.93~~ ~~3.91.~~ 3.90. Work Day. -- Unless otherwise specified, the use of "work day" or "working day" means days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed as provided for by statute, rule, policy or practice.

~~3.92.~~3.91. Work Period. -- As authorized in the federal Fair Labor Standards Act (FLSA), a period from seven (7) consecutive days to 28 consecutive days in length for purposes of determining overtime eligibility for employees engaged in fire protection or law enforcement.

3.92 Work Schedule. -- Designation of the periods of time during which work is performed.

~~3.94.~~ 3.93. Workweek. -- The time period of seven (7) consecutive days, beginning and ending at specified days and times, during which work is performed and work hours reported for compliance with applicable federal and state labor laws.

~~3.95.~~ 3.94. Year. -- Twelve (12) consecutive month period, unless otherwise specified.

§143-1-4. Classification Plans.

4.1. Preparation of Plans. -- The Board, after conferring with the appointing authorities concerned, shall authorize the preparation, maintenance and revisions of a comprehensive classification plan for all positions in the classified and the classified-exempt service. The plan shall be based on an investigation and analysis of the duties and responsibilities of each position. The classification plan shall include an appropriate title for each class.

4.2. Revision of Plans. -- The Board may eliminate or modify existing classes of positions, or may add new classes upon the recommendation of the Director.

4.3. Class Specifications.

4.3.a. A class specification is a general description of the kinds of work characteristic of positions properly allocated to that class and does not prescribe the duties of any position. It does not limit the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.

4.3.b. Class specifications are descriptive and are not restrictive. The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

4.3.c. The statement of minimum qualifications expresses the lowest acceptable level of education, experience, licensure and/or professional standards generally necessary for an employee to successfully perform the required duties of positions in the job class. The use of a particular expression of qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.

4.3.d. In cases of recruitment difficulties or unique position requirements, the Director, in collaboration with the appointing authority, may use his or her discretion in interpreting minimum experience, training, licensure and/or professional standards.

4.3.e. The Director shall consider class specifications as a primary source of authority for the content of examinations for the class and for the evaluation of qualifications of applicants. Supplemental job information may be used as a further basis for examinations and minimum qualification standards. Provisions for the substitution of related experience, education, or other qualifications for specific education and/or experience requirements may be made in specific examination announcements for particular positions, even though these provisions are not part of the class specification.

4.4. Classification of Positions. -- The Director has the sole authority for the classification process.

4.4.a. The Director shall consider the class specifications to determine the class to which any position shall be allocated, and give consideration to the general duties, specific tasks, and responsibilities required and relationship to other classes.

4.4.b. The classification of a position shall not be based upon the individual characteristics or performance level of the employee occupying the position nor upon the classification of other positions.

4.4.c. The Director may authorize job audits for the purpose of position classification and for maintaining the integrity of the classification system.

4.5. Position Descriptions.

4.5.a. Position description forms shall be prescribed by the Director.

4.5.b. The position description is an official record of the duties and responsibilities assigned to a

position and shall be used by the Division of Personnel to allocate the position to its proper class.

4.5.c. The position description shall include a current description of specific duties, responsibilities and other pertinent information about the position as assigned by the appointing authority.

4.5.d. The position description shall not be construed in any way to limit the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.

4.5.e. Position descriptions shall be kept current by the appointing authority for each position under his or her jurisdiction. When the appointing authority significantly alters the duties and responsibilities of a position, the appointing authority shall provide a revised position description to the Director, certifying with signature its accuracy and completeness.

4.5.f. If an appointing authority fails to notify the Director of significant alterations in the duties and responsibilities of a position, the incumbent in the position may file with the Director a written request for a review of his or her position.

4.5.g. Falsification of information on position description forms may be grounds for disciplinary action.

4.6. Reclassification.

4.6.a. Upon its own initiative, or at the request of an appointing authority, the Board may reclassify positions by the creation or elimination of classes or by revision of the definition of the work. The appointing authority shall provide to the Director a current description of the duties and responsibilities assigned to each position affected.

4.6.b. The employee in the position at the time of a reclassification is entitled to continue to serve in that position, provided that the employee meets the minimum requirements. If ineligible to continue in the position, he or she may be transferred, promoted, or demoted by appropriate action in accordance with the provisions of this rule as the Director may determine to be applicable. In any case in which the incumbent is ineligible to continue in the position, and he or she is not transferred, promoted or demoted, the provisions of this rule regarding separations applies.

4.6.c. Any incumbent in a reclassified position has the right to appeal. After filing with the Director a written request for reconsideration, the employee and appointing authority shall be given a reasonable opportunity to be heard by the Director.

4.7. Position Reallocation. -- Whenever significant changes occur in the duties and responsibilities permanently assigned to a position, the Director shall reallocate the position to its proper class. The incumbent or the appointing authority may seek a reconsideration of the decision by submitting a written request to the Director within fifteen (15) working days of the notification of the decision.

4.7.a. The Director shall not reallocate a position based on temporary changes in the duties and responsibilities assigned to the position.

4.7.b. When a position is reallocated to a different class, the incumbent shall not be considered eligible to continue in the position unless he or she meets the minimum qualifications for the

classification. If ineligible to continue in the position, he or she may be transferred, promoted, or demoted by appropriate action in accordance with the provision of this rule as the Director may determine to be applicable. In any case in which the incumbent is ineligible to continue in the position, and he or she is not transferred, promoted or demoted, the provisions of this rule regarding separations applies.

4.8. Temporary Classification Upgrade. -- With the approval of the Director, an appointing authority may temporarily upgrade the classification of an employee temporarily performing the duties of a position in a higher compensation range due to a separation or an extended leave of absence, for a short-term project, or in an emergency situation.

4.8.a. A temporary classification upgrade, except for classes allocated to the approved hourly pay schedule, shall be for a continuous period of no less than thirty (30) days and no more than six (6) months.

4.8.b. Classified-exempt employees may only be upgraded within the classified-exempt service. A classified employee may serve in an acting capacity on a temporary basis in an exempt and/or appointive position without loss of his or her classified status.

4.8.c. The Director, at his or her discretion, may extend the period of a temporary classification upgrade upon written request from the appointing authority justifying the need for the extension.

4.8.d. Employees in the classified service approved for temporary upgrade to a classified position shall have attained permanent status and meet the minimum requirements for the position to which they will be temporarily upgraded.

4.9. Classification Plan for the Classified-Exempt Service. -- All positions not in the classified service, with the exception of positions under the authority of the higher education systems, are included in a classification plan known as the classified-exempt service.

4.9.a. Upon the recommendation of the Director, the Board shall adopt and make effective a classification plan for the classified-exempt service.

4.9.b. Each appointing authority shall report to the Director the establishment of new positions or any material changes in the duties and responsibilities of existing positions in the classified-exempt service. The Director may at any time require the appointing authority to submit a statement of the duties and responsibilities of incumbents of any position in the classified-exempt service.

4.9.c. The Director shall allocate classified-exempt positions in the same manner as classified positions.

4.9.d. An appointing authority may request names of applicants for consideration for employment in the classified-exempt service. In no event shall a classified service vacancy be filled from a certification prepared for a classified-exempt service vacancy.

4.9.e. Any incumbent within the classified-exempt service in an allocated position has the right to appeal. After filing with the Director a written request for reconsideration, the employee and appointing authority shall be given a reasonable opportunity to be heard by the Director. The incumbent or the appointing authority may seek a reconsideration of the decision by submitting a written request to the Director within fifteen (15) working days from the notification of the decision.

§143-1-5. Pay Plan and Salary Administration.

Pursuant to the provisions of the W. Va. Code § 29-6-10(2), the following salary regulations in this section apply to classified employees. The Director, upon approval of the Board, shall establish a policy to implement the provisions of this section.

5.1. Purpose and Intent. -- The purpose and intent of the pay plan is to attract and retain qualified employees in the classified service, the Board shall provide through the pay plan compensation based on equal pay for equal work and market rates as compared to compensation trends in other public and private organizations.

5.2. Preparation of the Pay Plan. -- After consultation with the appointing authorities and State fiscal officers and after a public hearing, the Director and the Board shall prepare and submit the pay plan to the Governor. The pay plan shall include salary schedules containing multiple compensation ranges with minimum and maximum rates of compensation for each range and a plan of implementation. The Board may make periodic amendments to the pay plan in the same manner.

5.3. Adoption of the Pay Plan. -- The plan or revised plan becomes effective only after it has been approved by the Governor. The approved pay plan constitutes the official schedule of salaries for the classified service.

5.4. Implementation of the Pay Plan.

5.4.a. Assignment of Classes. -- The Board shall assign each class of positions to an appropriate range of compensation consistent with the duties outlined in the class specification. No ~~salary~~ compensation range shall be approved by the Director unless it conforms to sound compensation practices.

5.4.b. Entry Salary. -- An applicant possessing qualifying training or experience above the minimum required for the class may be appointed at a salary up to market rate. The entry salary for any employee shall be no less than the minimum of the compensation range for the job classification. ~~The entry salary for any employee shall be no less than the minimum of the compensation range for the job classification. The Director may authorize appointment above the minimum for an individual possessing pertinent training or experience above the minimum required for the class.~~ The Director may authorize appointment at a rate above the market rate where the appointing authority can substantiate severe or unusual recruiting difficulties for the job class.

5.4.c. Standard Rates of Pay. -- The pay plan provides standard compensation rates for all classes of positions in the classified service unless specifically exempted ~~excepted~~ by statute or statutory authority. The salary or wage paid is determined by the compensation range to which the class of the position has been allocated. All employees, including those serving in positions on a part-time basis, shall be paid in proportion to the actual time worked.

5.4.d. Additional Pay. -- Appointing authorities shall make no additions to the regular salary of any employee except for authorized overtime, Board approved pay differentials and monetary incentives, or other statutorily required and/or authorized payments.

5.4.e. Availability of Funds. -- The appointing authority and its fiscal officer will certify that funds for salary adjustments are available.

5.4.f. Salary Adjustments.

5.4.f.1. Establishment of a New Pay Plan.

5.4.f.1.A. Upon adoption of a new pay plan the Board shall require and may approve or modify a plan of implementation which ensures incumbents in the classified service receive equal treatment based on sound compensation practices.

5.4.f.1.B. An incumbent whose salary falls below the minimum rate of the new compensation range shall have his or her salary adjusted to the new minimum.

5.4.f.1.C. An incumbent whose salary falls above the maximum rate of the new compensation range shall maintain his or her current salary.

5.4.f.2. Pay on Reclassification.

5.4.f.2.A. When a class is reassigned by the Board to a compensation range having a higher minimum, the salaries of those incumbents below the new minimum shall be adjusted to the new minimum. Where the salary of the incumbent coincides with a pay rate in the new range, the salary shall remain unchanged. When a class is reassigned by the Board to a compensation range having a lower minimum, the salaries of those incumbents which are within the new range shall remain unchanged. Where the salary of the incumbent is above the maximum rate of the new range, the salary shall remain unchanged, ~~and the incumbent is ineligible for salary advancements~~.

5.4.f.2.B. The Board may approve or modify a plan of implementation on reclassification based on documented recruitment and/or retention difficulties or consideration of pay equity for reclassified employees.

5.4.f.3. Pay on Position Reallocation. -- When a position is reallocated to a different class, the salary of the incumbent shall be adjusted in accordance with the provisions of this rule for promotion, demotion and lateral class change.

5.4.f.4. Pay Differentials. -- The Board may approve the establishment of pay differentials to address circumstances which apply to reasonably defined groups of employees.

5.4.f.5. Separation from Employment. -- Employees whose last day of work occurs prior to the effective date of a new pay plan are not eligible for salary adjustments.

5.5. Pay on Promotion. -- When an employee is promoted, the employee's pay shall be adjusted as follows:

5.5.a. Minimum Increase. -- Any employee promoted will be compensated to at least the minimum of the compensation range of the job class to which he or she is promoted. An employee whose salary is within the range shall receive an increase of one (1) increment or a maximum established by the Board, except where an employee accepts a lesser increase within the compensation range to obtain the position. In no case shall any employee receive an increase which causes the employee's pay to exceed the maximum of the range except as provided in subdivision ~~5.5.b~~ ~~5.4.g~~ 5.7 of this rule.

~~5.5.b. Exceptions.~~

~~5.5.b.1. If the salary of an employee being promoted is at or above the maximum rate of the compensation range to which the employee is being promoted, or, if his or her salary is within one (1) pay increment, as established by the Board, of the maximum rate of the compensation range to which he or she is being promoted, the employee shall receive an increase of one (1) pay increment with the promotion.~~

~~5.5.b.2. If an employee has been demoted or reallocated to a class at a lower compensation range and is promoted or reallocated within the next twenty four (24) months within the same agency, the following procedure shall be used when calculating pay on promotion as provided in subdivisions 5.5.a and 5.5.b, of this rule. The promotional increase shall be calculated based on the compensation range of the employee's position prior to the demotion or reallocation, using the employee's current rate of pay plus any amount by which the employee's pay was reduced at the time of the demotion or reallocation. If, based on this procedure, no promotional increase is due, the employee's pay shall be increased by the amount his or her pay was reduced, if any, at the time of the demotion or reallocation.~~

~~5.5.b.3. Employees may receive compensation above the maximum of the compensation range of their job class as a result of legislative mandates or other exceptions approved by the Board.~~

~~5.5.c.~~ 5.5.b. Additional Increase. -- ~~The Director may authorize additional incremental increases, as established by the Board, to an employee being promoted if the employee has sufficient qualifications in excess of the minimum required for the new class.~~ An employee possessing qualifying training or experience above the minimum required for the class may be promoted to a salary up to the market rate. ~~The employee must possess pertinent experience or an equivalent amount of pertinent training for each additional incremental increase granted.~~ In no case shall the additional incremental increase cause the employee's pay to exceed the maximum for the compensation range.

5.6. Pay on Demotion.

5.6.a. Demotion Without Prejudice. -- The appointing authority has the discretion to reduce or not reduce the pay rate of any employee who is demoted without prejudice if the employee's pay rate is within the compensation range of the job class to which the employee is demoted.

5.6.b. Demotion With Prejudice. -- The appointing authority shall reduce the pay rate of an employee who is demoted with prejudice by at least one (1) increment as established by the Board and the employee's pay rate shall not exceed the maximum of the new compensation range.

~~5.5.b.~~ 5.7. Exceptions.

~~505.b.1~~ 5.7.a. If the salary of an employee being promoted is at or above the maximum rate of the compensation range to which the employee is being promoted, or, if his or her salary is within one (1) pay increment, as established by the Board, of the maximum rate of the compensation range to which he or she is being promoted, the employee shall receive an increase of one (1) pay increment with the promotion.

~~5.5.b.2~~. 5.7.b. If an employee has been demoted or reallocated to a class at a lower compensation range and is promoted or reallocated within the next twenty-four (24) months within the same agency, the following procedure shall be used when calculating pay on promotion as provided in subdivisions 5.5.a

and 5.5.b. of this rule. The promotional increase shall be calculated based on the compensation range of the employee's position prior to the demotion or reallocation, using the employee's current rate of pay plus any amount by which the employee's pay was reduced at the time of the demotion or reallocation. If, based on this procedure, no promotional increase is due, the employee's pay shall be increased by the amount his or her pay was reduced, if any, at the time of the demotion or reallocation.

~~5.5.b.3.~~ 5.7.c. Employees may receive compensation above the maximum of the compensation range of their job class as a result of legislative mandates or other exceptions approved by the Board.

~~5.7.~~ 5.8. Pay on Lateral Class Change. -- Any permanent classified employee who receives a lateral class change shall be paid the same salary received prior to the change except in cases where the change is to an agency or job class for which the Board has approved, or the Legislature has authorized, a higher compensation range for the job class. Provided, that an employee selected for a posted job opening possessing qualifying experience or training above the minimum required for the class may receive incremental increases, as established by the Board.

~~5.8.~~ 5.9. Pay on Reinstatement. -- The salary for an employee who is reinstated shall be established in accordance with subdivision 5.4.b of this rule.

~~5.9.~~ 5.10. Salary Advancements. -- Salary advancements are limited to permanent employees and shall not exceed the increase amount established by the Board and administered by the Director.

~~5.10.~~ 5.11. Annual Increment Increase. -- The Board may establish uniform procedures which shall be followed by all State agencies and spending units for providing an annual increment increase provided for in W. Va. Code § 5-5-2.

§143-1-6. Applications and Examinations.

6.1. Character of Examinations.

6.1.a. Examination procedures for appointment to a position in the classified service shall be conducted on an open competitive basis. Examination procedures shall be developed to reveal the capacity of the applicant to perform the duties of the position or job class for which he or she is competing.

6.1.b. Examinations shall, to the extent possible, be developed on the basis of objective analysis of the job and with the participation of appropriate job experts in the affected agencies and may include: written tests, performance tests, ratings of training and experience, oral examinations, or other assessment procedures related to the content of the job duties and job performance and will be administered without prejudice to all applicants in consideration for the position.

6.1.c. All examination scoring and weighting procedures shall be consistently applied and based on objective job criteria.

6.2. Notice of Examinations. -- The Director shall give public announcement of all open competitive examinations at least fifteen (15) days in advance of the closing date for receipt of applications. Notices of examinations and other publicity may be restricted to the places where additional eligible applicants are needed. Public announcement of examinations shall specify the title and compensation range of the class of position, the duties to be performed, the minimum qualifications required, the final date on which

applications will be accepted, and all other conditions of competition. The announcement shall also include any special minimum or substitute position qualification standards which will be used in evaluating applicants. The Director shall develop all announced qualifications for examination on the basis of information contained in class specifications, job description, and/or job analysis information obtained with the participation of appropriate job experts in affected agencies.

6.3. Filing Applications.

6.3.a. All applications shall be made on forms prescribed by the Director and must be filed with the Division of Personnel on or prior to the closing date specified in the announcement. The applications shall be completed in full and may require the inclusion of documents verifying pertinent education, training, licensure, eligibility for veterans' preference points, or any other information which the Director may consider necessary. All applications shall be signed or affirmed by the applicant. The Director may require electronic completion and submission of applications. Electronic applications shall require the applicant's agreed affirmation prior to submission in place of applicant signature. For electronic applications, applicant affirmation agreement and application submission shall be equivalent to affirmation and signature. The Director may verify any information provided on or with an application.

6.3.b. The Director may provide for continuous receipt of applications and for conducting examinations as needed.

6.4. Disqualification of Applicants.

6.4.a. The Director may temporarily or permanently prohibit the reinstatement, appointment, temporary employment, promotion, reallocation, demotion, lateral class change, temporary upgrade, transfer, or examination of an applicant, or after examination, may disqualify the applicant or remove his or her name from a register or certification, or refuse to certify any eligible on a register if:

6.4.a.1. he or she is found to lack any of the requirements established for the position/class;

6.4.a.2. he or she has a disability and is incapable of performing the essential functions of positions in the class with or without reasonable accommodation;

6.4.a.3. he or she has been convicted of a crime which has a reasonable connection to the position/class for which he or she is applying;

6.4.a.4. he or she has made a false statement or omission of material fact or has misrepresented his or her qualifications in his or her application;

6.4.a.5. he or she has previously been dismissed, or resigned in lieu of dismissal, from any public service for delinquency, misconduct, or other similar cause;

6.4.a.6. he or she has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;

6.4.a.7. he or she has directly or indirectly obtained information regarding examinations to which he or she was not entitled;

6.4.a.8. he or she has failed to submit his or her application correctly or within the

prescribed time limits;

6.4.a.9. he or she has taken part in the compilation, administration, or correction of the examination;

6.4.a.10. he or she has taken the same exact examination within the prescribed re-test waiting period;

6.4.a.11. at least two (2) former employers state that they would not re-employ him or her, or otherwise indicate that his or her services as an employee were unsatisfactory;

6.4.a.12. the register from which he or she is certified is for a class for which oral skills are essential, and at least two agencies have interviewed him or her and report that he or she is not considered to be suitable for a position in the class for which he or she interviewed;

6.4.a.13. he or she is not eligible to work in the United States;

6.4.a.14. he or she fails to comply with any other reasonable requirements established by the Director for the position;

6.4.a.15. sufficient evidence has revealed that, if employed in the classification or position applied for, the applicant is a significant risk to the safety or security of information or persons; or,

6.4.a.16. he or she has otherwise violated provisions of this rule.

6.4.b. Applicants who have previously been dismissed or resigned in lieu of dismissal for failure to return to work from medical leave of absence without pay, maintain required licensure, or meet performance expectations during probationary employment shall not be disqualified from employment except as provided in subdivision 10.5.b of this rule.

6.4.c. The Director shall notify a disqualified applicant of his or her disqualification. Any applicant whose application for examination has been rejected may request that the Director reconsider his or her qualifications. The Director shall consider the request if it is submitted in writing and received not later than fifteen (15) days following the date the rejection notice was sent. Within thirty (30) days after a properly submitted request for reconsideration is received, the Director shall report his or her decision in writing to the applicant. The Director shall determine that uniform rating or review procedures have been applied. A rating in any part of an examination shall not be changed unless the Director finds that an error has been made. Any correction resulting from the reconsideration shall not affect a certification or appointment that has already been made from a register.

6.4.d. An appointing authority may petition the Director, in writing, to reinstate an applicant to the register who has been disqualified under the provisions of subdivision 6.4.a of this rule; provided the appointing authority was the executive or head of the employing agency from which the employee was dismissed or resigned in lieu of dismissal. Approval of such request shall be at the discretion of the Director.

6.5. Conduct of Examinations.

~~6.5.a. Written tests shall be conducted in as many places as are practicable for proper~~

~~administration, and when found necessary by the Director to administer more effectively a continuous recruitment program as provided for in subdivision 6.3.b of this rule. The Director may designate such monitors as may be necessary to conduct examinations under instructions prescribed by him or her, and may also arrange for the use of public buildings in which to conduct the examinations. The Director shall provide for the compensation of monitors and assistants in accordance with the approved budget for that purpose.~~

6.5.a. Online examinations are available to applicants wherever there is internet access. An applicant may re-test and the applicant's most recent test score will be utilized for placement on the hiring register even if said score is lower than prior test scores.

~~6.5.b. Applicants taking competitive assembled examinations shall present personal identification which includes a signature and photograph prior to admission to an examination. Applicants without proper identification shall not be admitted to examinations.~~

6.6. Scoring Examinations.

6.6.a. The Director shall determine a final score for each applicant's examination, computed in accordance with the weights established for the several parts. Failure in any part of an examination may disqualify the applicant in the entire examination and may disqualify him or her from participation in subsequent parts of the examination. All applicants for the same position shall be accorded uniform and equal treatment in all phases of the examination procedures.

6.6.b. Any veteran (as defined in Section 3 of this rule) who claims veterans' preference and who has made a passing grade in an open competitive examination shall have five (5) points added to his or her final earned score. An additional five (5) points shall be added to the augmented earned score of any veteran with a compensable service-connected disability or who has been awarded the Purple Heart.

6.6.b.1. Any person claiming veterans' preference or disability preference shall submit satisfactory proof of his or her service or disability to the Director. Veterans' preference points are not added to final passing scores on promotional examinations.

6.6.b.2. To receive veterans' preference points, separation from active duty must have been under honorable conditions. This includes honorable and general discharges. A clemency discharge does not meet the requirement of this subsection. Active duty for training in the military reserve and national guard programs is not considered active duty for purposes of veteran preference.

6.6.c. The Director shall utilize appropriate professional standards, techniques and procedures in rating the results of examinations and in determining the final scores of competitors.

6.7. Rating Training and Experience. -- If training and experience form a part of the total examination, the Director shall determine a procedure for the evaluation of the training and experience qualifications of the various applicants. The procedure and standards used in the evaluation shall be job-related and consistently applied to all applicants.

6.8. Oral Examinations. -- When an oral examination forms part of a total examination for a position, the Director shall appoint one or more oral examination boards as needed. Any person holding political office shall not serve as a member of any of the boards.

6.9. Notice of Examination Results. -- Each applicant passing all parts of the examination shall be

notified of his or her final score as soon as practical after the scoring of the examination has been completed and the register established. The Director shall notify an applicant who fails any part of the examination or the total examination.

6.10. Special Examination. -- The Director may modify examination procedures to afford reasonable accommodation to otherwise qualified disabled applicants. The modifications may include changes in the existing testing procedures or the use of specific evaluations of the applicants' observable job skills and/or the applicants' record of past performance, experience and training.

6.11. Correction of Errors. -- If, within thirty (30) days after receipt of his or her score notice, an applicant notifies the Director of a manifest error in the scoring of an examination or other evaluation of the applicant's qualifications, the Director shall, after verification of the error, promptly correct that error. The Director shall send formal written notice of the correction to the applicant. These corrections of errors shall not invalidate any certifications or appointments made prior to corrections of the errors.

6.12. Examination Records. -- The Director is responsible for the maintenance of all records pertinent to the examination program in accordance with official retention schedules and shall hold the records in confidence as specified in W. Va. Code § 29B-1-1 et seq. and § 5A-8-21 and § 5A-8-22.

§143-1-7. Registers.

7.1. Establishment of Registers.

7.1.a. Competitive Registers. -- After each examination, the Director shall prepare a register of persons with passing grades. The names of these persons shall be placed on the register in the order of their final ratings starting with the highest.

7.1.b. Preference Registers. -- After the layoff of permanent classified employees, the Director shall prepare registers of qualified permanent classified employees who have been laid off. The names of these employees shall be arranged on the appropriate registers in order of tenure upon which the order of layoffs was based.

7.2. Duration of Registers.

7.2.a. Competitive Registers. -- The life of scores on a register shall be adequate to meet the recruitment needs of the agency. If the Director reduces the life of a register, he or she shall notify each eligible remaining on the register to this effect.

7.2.b. Preference Registers. -- A laid off permanent classified employee is eligible for employment from a preference register for no longer than one (1) year after placement on the preference register and the eligibility ceases immediately upon employment in a classified position.

7.2.c. Notice of Vacancies. -- It is the duty of the appointing authority to notify the Director as far in advance as possible of vacancies which may occur in the agency. The Director is responsible for determining the adequacy of existing registers and for the establishment and maintenance of appropriate registers for all positions to be filled, exclusive of exempt positions.

7.2.d. The Director shall nullify a register for any of the following reasons:

7.2.d.1. Changes in the minimum qualifications or classification standards of a class of positions;

7.2.d.2. Elimination of the class for which the register was established; or,

7.2.d.3. Substantial revision of the examination used to establish the register.

7.2.e. When a register is declared null and void by the Director, he or she shall notify the affected persons of the action.

7.3. Removal of Names from Registers.

7.3.a. Competitive Registers. -- The Director may remove the name of an eligible from a register:

7.3.a.1. for any of the causes stipulated in subdivision 6.4.a of this rule;

7.3.a.2. on evidence that the eligible cannot be located;

7.3.a.3. on receipt of a statement from the eligible declining an appointment and stating that he or she no longer desires consideration for an appointment; or,

7.3.a.4. if he or she declines an offer of a probationary appointment for the class for which the register was established in a location for which he or she has declared himself or herself available.

7.3.b. Preference Registers. -- The Director may remove the name of an eligible from a preference register:

7.3.b.1. for any of the causes stipulated in subdivision 7.3.a of this rule;

7.3.b.2. upon appointment of the eligible to a classified position; or,

7.3.b.3. on evidence that the eligible does not meet the applicable standards of qualifications and fitness for a position.

7.3.c. The Director shall notify the eligible that his or her name has been removed from the register and the reasons for the removal. The applicant is responsible for updating his or her contact information or notifying the Director of changes.

7.3.d. Any person whose name has been removed from a register allegedly for reasons specified in this rule may appeal to the Board for reconsideration. The appeal must be filed in writing with the Director within fifteen (15) days after the date on which notification to the applicant was sent. The appeal shall state the reasons why the applicant should not be removed from the register.

7.3.e. The Board shall review all relevant information to determine if the action appealed was taken in accordance with this rule. Within sixty (60) days after a properly submitted appeal is received, the Director shall report the Board's decision in writing to the applicant.

7.4. Reinstatement to Register.

7.4.a. A person who has had his or her name withdrawn from a register at his or her request may have his or her name reinstated on the currently effective register for the same position class provided that the original register is still in effect and that his or her examination score is still valid. His or her rank on the register shall be determined by his or her final earned examination score.

7.4.b. Reinstatement to a register as provided in the previous subdivision is subject to the following conditions:

7.4.b.1. The person petitioning for reinstatement shall make his or her request to the Director in writing and shall furnish whatever information the Director may require.

7.4.b.2. No person may be reinstated to a register who does not satisfy the current minimum qualifications for the position class for which the register is maintained. The Director may require that he or she pass an appropriate examination in the case of position classes requiring special skills.

7.4.b.3. No person may be reinstated to a register from which he or she has been disqualified under subsections 6.4, 7.3, or 8.2 of this rule.

§143-1-8. Certification of Eligibles.

8.1. Request for Certification. -- If a vacancy occurs in any position in an agency or if new positions are established and new employees are needed, requisitions shall be submitted by the appointing authority to the Division of Personnel in the manner prescribed by the Director. This requisition shall state the number of positions to be filled in each class, identifying each class title and all other pertinent information.

8.2. Certification Methods.

8.2.a. Nothing in this subdivision shall be construed as altering the exhaustion point of a register as described in subdivision 7.2.a of this rule.

8.2.a.1. Upon receipt of a requisition, the Director shall first certify and submit the names of all available eligibles from the appropriate preference register. If no appropriate preference register exists or there are no available qualified eligibles on the appropriate preference register, then the Director shall certify and submit to the appointing authority the top ten (10) names or the names of any persons scoring at or above the ninetieth percentile on the open competitive examination for the class of position. The certification shall include any person tied with the last person in the top ten or ninetieth percentile group. The Director may certify additional names at his or her discretion to compensate for possible unavailable eligibles in the top group.

8.2.a.2. If the competitive register established as a result of a Division of Personnel examination for a specific class of position is exhausted, the Director may certify names from the register, or registers, most appropriate. If there is no register which the Director considers appropriate, then the Director may certify and submit names from a register established as described in subsection 7.1 of this rule.

8.2.a.3. Appointments may be made from a certification anytime within six (6) months of the date of the certification, after which the certification shall be null and void.

8.2.b. If an eligible receives a probationary or permanent appointment, the appointment constitutes a waiver of his or her right to certification from any other register on which his or her name appears for a class of position, the salary of which is either equal to or lower than that salary covered by his or her appointment. If a laid-off permanent classified employee receives a probationary or permanent appointment to a classified position, that employee is no longer eligible for appointment from any preference register.

8.2.c. The name of each employee whose name appears on a register for a class of position shall be certified and submitted by the Director and given consideration by the agency for the higher class of position if his or her name is reached.

8.2.d. If, in the exercise of his or her choice provided under subsection 9.2 of this rule, the appointing authority passes over the name of an eligible on a competitive register in connection with three (3) separate appointments he or she has made from the register, written request may be made of the Director that the name of the eligible be omitted from any subsequent certification of the same agency from the same competitive register for a period of no less than one (1) year from the date of the request. The name of the eligible shall thereafter not be certified to the appointing authority from that register for future vacancies in that job class, or from subsequent registers established for that class of position. If, after that one (1) year period, the eligible is again certified for the same class of position, and passed over in connection with one appointment, the agency may again request that the name of the eligible be omitted from any subsequent certification as stated above.

8.2.e. An eligible may be considered not available by the Director if he or she fails to reply to electronic communication [i.e., telephone or electronic mail] or a written inquiry by mail after five (5) days in addition to the time required for the transmission of the inquiry to his or her last-known address and the reply to the inquiry.

8.3. Selective Certification. -- Any certification may limit consideration to only those individuals who possess specific qualifications determined to be essential for performance of the duties of a specific position. Selective certification must be approved by the Director.

8.3.a. If a specific position requires special qualifications that are not common to all positions in that class, the appointing authority may request that certification be limited to candidates possessing those qualifications. Eligibles shall have adequate opportunity for special qualification consideration. The specific criteria for the restriction of certification shall be based on the duties of the position as verified by job analysis or by an official position description and written justification.

8.3.b. The Director may approve a request for selective certification by gender if the appointing authority provides written justification which clearly shows that only persons of the required gender can perform the duties of the position and the Director has conferred with the Human Rights Commission.

8.3.c. The Director may limit certification to candidates available to work at the location of the job. The Director may further limit certification geographically when the duties of the position require rapid response to unscheduled emergencies during off duty hours. The appointing authority shall provide written justification of any request for geographic selective certification based on essential duties of the position. The Director shall establish the boundaries of the acceptable geographic areas based on the specific location and demands of the job. The appointing authority shall consider candidates living outside the boundary if they are willing to relocate to the area.

8.3.d. Except for preference certifications, the Director may determine, for certain unskilled or semiskilled job classes for which no previous education, training, or experience is required, that eligibles may be selected for certification by lot. In those cases, all eligibles shall have equal opportunity for certification. No rank order shall be established for the register. Selection for certification by lot will be determined as vacancy requests are received. Once the certification has been made for a particular vacancy, a new certification shall not be issued for the same class and location for sixty (60) days. The employing agency shall offer opportunities for interviews to candidates in the order in which they appear on the certification. It is the responsibility of the employing agency to ensure, to the extent practicable, that appointments from the certifications are made based on job-related merit and fitness.

8.4. ~~Corrections~~ Correction of Errors.

8.4.a. In the event that a name is certified in error and the error is discovered before a personnel transaction has been finalized and one of the named applicants is notified that he or she is appointed, the Director shall withdraw the erroneous certification and make a correct certification. If a certification is to fill more than one position, the Director shall withdraw only that portion of it pertaining to positions for which personnel transactions have not been finalized and applicants have not been notified that they are appointed. Appointing authorities shall only make conditional offers of employment to applicants until such time the personnel transaction to appoint has received all necessary approvals.

8.4.b. In the event a name is certified in error and the error is discovered after one of the named applicants is notified that he or she is appointed but prior to the effective date of the appointment and the applicant is not disqualified for any of the reasons provided in subdivision 6.4.a of this rule other than not meeting minimum qualifications, the Director shall withdraw the certification and appointment as in subdivision 8.4.a of this subsection unless the applicant provides verification to the Director that:

8.4.b.1. acceptance of the appointment caused the named applicant to change his or her place of residence; or,

8.4.b.2. acceptance of the appointment caused the named applicant to resign from a position that cannot be regained.

8.4.c. In the event a name is certified in error and the error is discovered after the effective date of the appointment of one of the named applicants or the certification could not be withdrawn for reasons provided in subparagraphs 8.4.b.1 and 8.4.b.2, the appointment shall continue. Provided, the applicant or employee is not disqualified for any of the reasons specified in subdivision 6.4.a of this rule other than not meeting minimum qualifications and it has been determined by the Director and hiring agency that there is no undue risk in the applicant performing the duties. If the applicant or employee is not ~~qualified~~ eligible to perform the duties of the position, the appointing authority shall assign the applicant to a vacant position for which he or she meets the minimum qualifications, in the same location and agency to which he or she was certified and at the same salary. If continued employment or alternate assignment is deemed inappropriate by the Director, the provisions of this rule regarding separations shall apply.

§143-1-9. Appointments.

9.1. Appointments to Positions Added to the Classified Service.

9.1.a. When additional state agencies or parts of state agencies are added to the classified service through affiliation by action of the legislature, executive order of the Governor with the consent of the

Board and the appointing authority concerned, and when additional county or municipal agencies are added to the classified service through affiliation by agreement between the local government and the Director with the approval of the Board, a date for the addition shall be fixed by agreement.

9.1.b. All appointments made on and after that date to the positions added to the classified service shall be made in accordance with this rule.

9.1.c. The Director shall administer qualifying examinations to any person employed in a position added to the classified service. If recommended by the appointing authority, the Director may admit an employee to a qualifying examination regardless of the minimum qualifications for the class to which his or her position is allocated. The appointing authority shall appoint each person passing the qualifying examination for probationary employment. The qualifying examinations shall be completed within six (6) months after the date of addition of the position to the classified service. The examinations shall include appropriate assessment(s) of the person's job-related competencies. The appointing authority shall, within thirty (30) days after the examination or competency assessment determination, separate from employment any employee who fails to pass the qualifying examination or otherwise meet minimum competency standards unless there are no available eligibles on the register for the class, in which case his or her employment may be continued but he or she must be separated from employment within thirty (30) days after certification of available eligibles.

9.1.d. In making the appointments provided for in subdivision 9.1.c of this rule the appointing authority may count employment in the agency immediately prior to the appointments as part or all of the probationary period required under Section 10 of this rule. The appointing authority shall promptly report to the Director his or her decision for the records.

9.1.e. Assignment of the position to the appropriate classification shall be accomplished through reclassification as provided in subsection 4.6 of this rule.

9.2. Original Appointments.

9.2.a. Appointing authorities shall make all original appointments to classified positions in accordance with this rule. An appointing authority shall, for each position, select first from the eligibles on the preference register in accordance with subdivision 12.4.i of this rule. Upon exhaustion of the preference register, the appointing authority shall select for each position from the top ten (10) names on the register, including any persons scoring the same as the tenth name, or any persons scoring at or above the ninetieth percentile on the open competitive examination, as provided by subsection 8.2 of this rule. The appointing authority may exclude the names of those eligibles who failed to answer or who declined appointment or of those eligibles to whom the appointing authority offers an objection in writing based on subsection 6.4 of this rule and the objection is sustained by the Director.

9.2.b. In selecting persons from among those certified, the appointing authority shall give due consideration, based on job related criteria, to all available eligibles and may examine their applications and reports of investigations and may interview them. Final selection shall be reported in writing by the appointing authority to the Director and shall include a statement by the appointing authority or his or her designee certifying that the person charged with making the selection: complied with the requirements of this subdivision; did not make the selection based on favoritism shown or patronage granted; and, considered all available eligibles for the position.

9.2.c. If the eligible selected declines the appointment, the appointing authority shall transmit

evidence of declination and other data to the Director for the permanent record. The Director may consider an eligible as having declined appointment if the eligible fails to reply to electronic communication [i.e., telephone or electronic mail] or a written inquiry by mail after five (5) days in addition to the time allowed for transmission of the letter to his or her last-known address and return of reply. If an eligible accepts an appointment but fails to report for duty at the time and place specified, without giving reasons for the delay satisfactory to the appointing authority and the Director, he or she shall be considered to have declined the appointment.

9.3. Provisional Appointments.

9.3.a. If there are urgent reasons for filling a position and there is no appropriate preference register and there are fewer than three (3) available eligibles on the competitive register established as a result of an examination for the position, and no other appropriate register exists, the appointing authority may submit to the Division of Personnel the name of a person to fill the position pending examination and establishment of a register. If that person's qualifications have been certified by the Director as meeting the minimum qualifications as to training and experience for the position, that person may be provisionally appointed to fill the existing vacancy until an appropriate register is established and appointment made from the register. The position must be classified and minimum qualifications established for the position in accordance with this rule before provisional appointments may be made. No provisional appointment shall be continued for more than six (6) months from the date of appointment, nor shall successive provisional appointments of the same person be permitted, nor shall a position be filled by repeated provisional appointments.

9.3.b. Time spent on a leave of absence without pay shall not extend the period of a provisional appointment.

9.4. Temporary Employment. -- Appointing authorities may employ individuals for a limited period of time ~~not to exceed 1,000 hours in a twelve-month period~~ in accordance with the provisions of this rule and W. Va. Code § 29-6-1 et seq. Individuals employed under the provisions of this subsection are exempt from the classified service. Provided, temporary employees may be retained in a temporary appointment status while receiving workers' compensation temporary total disability benefits as a result of a personal injury or illness received in the course of and resulting from employment with the State or its political subdivisions in accordance with W. Va. Code § 23-4-1.

9.5. Posting of Job Openings. -- Whenever a job opening occurs in the classified service, the appointing authority shall post a notice within the building, facility or work area and throughout the agency that candidates will be considered to fill the job opening. Posting of job openings using electronic or other communications media shall satisfy the requirement to post a notice provided that the appointing authority makes regular and convenient access to the media used available to each classified employee in the agency, or otherwise provides notice to each classified employee in the agency. The notice shall be posted for at least ten (10) days before making an appointment to fill the job opening. The notice shall state that a job opening has occurred, describe the duties to be performed, and the class to be used to fill the job opening.

9.5.a. The term job opening refers to any vacancy to be filled by original appointment, promotion, demotion without prejudice, lateral class change, reinstatement, or transfer.

9.5.b. The posting notice shall include a description of the duties to be performed by the person selected, the minimum qualifications for the position, the job class to be used in filling the job opening,

the ~~salary~~ compensation ~~level or~~ range that will be considered, the full-time equivalent for the position, and the job location.

9.5.c. An established closing date shall allow sufficient time to ensure that the job vacancy circulation has been posted throughout the agency for a minimum of ten (10) days. The naming of an individual to fill the position is the appointment and is not altered by the fact that the individual will not assume the duties until a later date. Therefore, the agency shall not make an appointment to a position prior to the closing date as listed on the posting. The appointing authority may accept applications after the closing date; however, all applications received on or prior to any established cut-off date must be accepted and considered.

9.5.d. The appointing authority shall give due consideration to those employees who apply and are eligible for the posted vacancy.

9.5.e. If a posted vacancy is not filled within six (6) months of the established closing date, the appointing authority must re-post the vacancy prior to an appointment to the vacant position.

9.5.f. The vacancy posting requirements in this subdivision shall apply to all classified position vacancies except vacancies filled as a result of employees exercising bumping or recall rights, demotions with prejudice and/or disciplinary transfers for cause.

9.5.g. If an individual selected for a posted vacancy refuses the offer of employment, fails to report to work, or resigns or otherwise separates from employment within the first ten (10) work days of employment, the appointing authority is not required to repost the vacancy prior to making another appointment to the position. Provided that the date and time of separation occurs within the first ten (10) work days and the appointment is made within thirty (30) calendar days of the separation and the appointment is made from the pool of eligible applicants from which the first employee was hired. This time period supersedes the six-month limitation specified in subdivision e of this subsection.

§143-1-10. Probationary Period.

10.1. Nature, Purpose, and Duration.

10.1.a. The probationary period is a trial work period designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the work of his or her position and to adjust himself or herself to the organization and program of the agency. It is an integral part of the examination process and the appointing authority shall use the probationary period for the most effective adjustment of a new employee and the elimination of those employees who do not meet the required standards of work.

10.1.b. Appointing authorities shall make all original appointments to permanent positions in the classified service from officially promulgated registers for a probationary period of not more than one (1) year. The Board shall fix the length of the probationary period for each class of position. The appointing authority shall notify the Director when a probationary period has been completed and permanent status has been granted. This subdivision shall not be construed to prohibit application of time served in a provisional status to completion of a probationary period. The period of provisional appointment may apply toward completion of the probationary period only for that part served continuously, in the same class, and immediately prior to an original appointment. However, it is the responsibility of the appointing authority to state in writing at the time permanent status is being granted that the time served in a

provisional status has been applied toward completion of a probationary period.

10.1.c. Time spent by probationary employees on unpaid leave of absence, disciplinary suspension, or non-disciplinary suspension resulting in separation from employment through resignation, transfer or dismissal extends the probationary period correspondingly.

10.1.d. The probationary period for part-time employees shall be for an ~~equivalent~~ equal amount of ~~work hours~~ time based on the full-time equivalent as that for a full-time employee in the same classification [i.e., a six-month probationary period for a ~~full-time~~ 50% full-time equivalent part-time employee would be twelve (12) months ~~typically equate to 1,040 hours~~].

10.2. Conditions Preliminary to Permanent Appointment.

10.2.a. Four (4) weeks prior to the end of the probationary period, the appointing authority shall obtain from the probationary employee's supervisor a statement in writing recommending that the employee be continued or not be continued in service. This statement shall include an appraisal of the employee's services and should include a service rating in conformity with the system of performance evaluation prescribed by the Director. If the appointing authority determines that the services of the employee shall be retained, the appointing authority shall notify the employee and the Director of the action no later than the last day of the probationary period.

10.2.b. In the event the appointing authority takes no action on the status of a probationary employee before the expiration of the probationary period, either to retain or dismiss, the employee shall be considered as having attained permanent status. Permanent status begins the first day following the expiration of the probationary period.

10.3. Demotions during Probation. -- The serving of a probationary period shall not, of itself, prevent an employee from being demoted with prejudice to a position in a lower class, provided he or she meets the minimum qualifications of the lower class. However, the appointing authority may not take this action until the employee has been presented with the reasons in writing and has been given a reasonable time to reply in writing, or to appear personally and reply to the appointing authority or his or her designee. The appointing authority shall not take this action until the employee has completed one-third of the probationary period and the appointing authority has obtained the approval of the Director. The probationary period for the class of position to which the employee is demoted begins with the date of demotion.

10.4. Transfers during Probation. -- An appointing authority shall not transfer an employee during his or her probationary period.

10.5. Dismissal during Probation.

10.5.a. If at any time during the probationary period, the appointing authority determines that the services of the employee are unsatisfactory, the appointing authority may dismiss the employee in accordance with subsection 12.2 of this rule. If the appointing authority gives the fifteen (15) days' notice on or before the last day of the probationary period, but less than fifteen (15) days in advance of that date, the probationary period shall be extended fifteen (15) days from the date of the notice and the employee shall not attain permanent status. This extension shall not apply to employees serving a twelve-month probationary period.

10.5.b. The Director may restore the name of a probationary appointee who has been dismissed to the register from which he or she was certified, in accordance with the procedure described in subsection 7.4 of this rule, but the Director shall not in the future certify the name of that person to the same appointing authority from the same register or for the same classification.

§143-1-11. Promotions, Demotions and Transfers.

11.1. Method of Making Promotions.

11.1.a. In filling vacancies, appointing authorities shall make an effort to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees. Whenever practical and in the best interest of the service, an appointing authority may fill a vacancy by promotion, after consideration of the eligible permanent classified employees in the agency or in the classified service based on demonstrated capacity and quality and length of service.

11.1.b. The Director must certify that a candidate for promotion possesses the qualifications for the position as set forth in the specifications for the class of position for which he or she is a candidate, and the appointing authority may require the candidate to qualify for the new position by a promotional competitive or non-competitive examination administered by the Director.

11.2. Promotion by Competitive Examination.

11.2.a. If it is determined by the appointing authority to fill vacancies in a particular class of position by promotion by competitive examination, the examination shall be given under the direction of the Director. To be eligible for promotion, an employee must, at the time the promotion is effective, have permanent status in the classified service and must meet the minimum qualifications as to training and experience for the class of position. A promotional competitive examination shall consist of any combination of the same objective procedures provided in subdivision 6.1.b of this rule. The combination in each case and the procedure for ranking applicants shall be determined by the Director and shall take into consideration available job information and professional practices.

11.2.b. The Director shall place the names of all employees who receive a passing grade on a promotional register for the class of position in order of their examination ratings.

11.2.c. If a promotional and an original register exist, the Director shall certify the same number of names from each register in accordance with Section 8 of this rule. The appointing authority may make his or her selection from the names submitted from either register.

11.3. Promotion by Noncompetitive Examination. -- If it is determined by the appointing authority to fill a vacancy by a non-competitive promotional examination, an employee proposed for promotion shall be examined by the Director in accordance with subsection 11.2 of this rule, and if found to qualify for the class will be certified.

11.4. Demotions. -- An appointing authority may demote an employee with or without prejudice and may demote a probationary employee as provided for in subsection 10.3 of this rule. The appointing authority shall file the reasons for the demotion and the reply, if any, with the Director. Prior to the effective date of the demotion, the appointing authority or his or her designee shall:

11.4.a. meet with the employee in a predetermination conference and advise the employee of

the contemplated demotion, provided that the conference is not required when the demotion is requested by the employee, voluntarily and without duress, such as to accept a posted position for which the employee has applied;

11.4.b. give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the demotion; and,

11.4.c. give the employee a minimum of fifteen (15) days' advance notice of the demotion to allow the employee a reasonable time to reply to the demotion in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. Provided, that fifteen (15) days' notice is not required when the demotion is requested by the employee, voluntarily and without duress, such as to accept a posted position for which the employee has applied.

11.5. Lateral Class Change. -- An appointing authority may move a permanent classified employee from a position in one class to a vacant position in another class in the same compensation range if the employee is found by the Director to qualify for the vacant position.

11.6. Transfers.

11.6.a. Subject to the posting requirements provided in subsection 9.5 of this rule, appointing authorities may transfer a permanent employee from a position in one organizational subdivision of an agency to a position in another organizational subdivision of the same or another agency at any time. In the case of inter-agency transfers, an appointing authority shall transfer all hours of accumulated annual and sick leave and all service credit with the employee. Transfer within the classified service, without a break in service, shall not be considered a resignation.

11.6.b. Appointing authorities shall report all inter- and intra-agency transfers within a class to the Director on appropriate forms at the time of the transfer. The Director shall approve transfers to comparable classes prior to the transfers and shall require that the employees meet the minimum qualifications of the new classes.

§143-1-12. Separations, Suspension, and Reinstatement.

12.1. Resignation.

12.1.a. An employee who resigns shall present the reasons for the resignation in writing to the appointing authority. The appointing authority shall forward a copy of the resignation to the Director who shall record the resignation. If a written resignation cannot be obtained, the appointing authority shall notify the Director in writing of the resignation of the employee and the circumstances of the resignation.

12.1.b. The appointing authority shall notify the Director when an employee resigns in lieu of being dismissed. Such notice shall specify the reasons for the intended dismissal. Employees informed of contemplated dismissal who choose to resign prior to issuance of formal notice or employees permitted to resign through settlement after being dismissed are considered to have not separated in good standing, and the employee is ineligible for reinstatement and may be disqualified from employment in the classified service as provided in subsection 6.4 of this rule. Provided, that employees resigning in lieu of dismissal for failure to return to work from medical leave of absence without pay, maintain required licensure, or meet probationary performance expectations shall not be disqualified from future employment except as provided in subdivision 10.5.b of this rule.

12.2. Dismissal.

12.2.a. An appointing authority may dismiss any employee for cause. The appointing authority shall file the reasons for dismissal and the reply, if any, with the Director. Prior to the effective date of the dismissal, the appointing authority or his or her designee shall:

12.2.a.1. meet with the employee in a predetermination conference and advise the employee of the contemplated dismissal~~, provided that a conference is not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct~~;

12.2.a.2. give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the dismissal; and,

12.2.a.3. give the employee a minimum of fifteen (15) days' advance notice of the dismissal to allow the employee a reasonable time to reply to the dismissal in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. Provided, that fifteen (15) days' advance notice is not required when the public interests are best served by withholding the notice or when the cause of dismissal is gross misconduct.

12.2.b. An appointing authority may require that a classified employee dismissed for cause immediately vacate the workplace, or a classified employee dismissed for cause may elect to do so. If the appointing authority requires a dismissed employee to immediately vacate the workplace in lieu of working during the notice period, or if an employee who receives notice of dismissal elects to immediately vacate the workplace, the employee is entitled to receive severance pay attributable to the time he or she otherwise would have worked, up to a maximum of fifteen (15) days after vacating the workplace. An appointing authority shall not provide severance pay when notice is withheld as provided in subdivision 12.2.a of this rule. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the dismissal.

12.2.c. An appointing authority may dismiss an employee for job abandonment who is absent from work for more than three (3) consecutive workdays or scheduled shifts without notice to the appointing authority of the reason for the absence ~~or approval for the absence~~ as required by established agency policy. Consecutive scheduled workdays or scheduled shifts are determined without regard to scheduled days off that occur during the period of absence without notice ~~or approval~~. Thus, annual leave, holidays, modified holiday observance, compensatory time, regularly scheduled days off, or any other time for which the employee was not scheduled to work during the period of absence shall not constitute a break when determining the three (3) consecutive scheduled work days. The dismissal is effective fifteen (15) days after the appointing authority notifies the employee of the dismissal. Whereas job abandonment is synonymous with the term resignation, a predetermination conference is not required and an employee dismissed for job abandonment is not eligible for severance pay.

12.2.d. In providing any employment verification or reference to another appointing authority for a dismissed employee, or an employee who resigns in lieu of dismissal, the appointing authority must disclose that the separation was due to dismissal, or resignation in lieu of dismissal, and that the employee did not leave employment in good standing, and must comply with the disclosure requirements of W. Va. Code § 55-7-18a.

12.3. Suspension.

12.3.a. Disciplinary Suspension. -- An appointing authority may suspend any employee without pay for a specified period of time for cause. Accrued leave shall not be paid to employees during the period of suspension. Further, an employee who works additional hours during the same workweek or work period as the suspension will still have tenure reduced for the length of the suspension. The appointing authority shall file the statement of reasons for the suspension and the reply, if any, with the Director. Prior to the effective date of the suspension, the appointing authority or his or her designee shall:

12.3.a.1. meet with the employee in a predetermination conference and advise the employee of the contemplated suspension~~, provided that a predetermination conference is not required in certain cases when the public interests are best served by withholding the notice~~.

12.3.a.2. give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the suspension; and,

12.3.a.3. give the employee a minimum of three (3) working days' advance notice of the suspension to allow the employee being suspended a reasonable time to reply in writing, or upon request to appear personally and reply to the appointing authority or his or her designee. Provided, that three (3) working days' advance notice is not required in certain cases when the public interests are best served by withholding the notice.

12.3.b. Non-disciplinary Suspension. -- An appointing authority may suspend any employee without pay indefinitely to perform an investigation regarding an employee's conduct which has a reasonable connection to the employee's performance of his or her job or when the employee is the subject of an indictment or other criminal proceeding. Such suspensions are not considered disciplinary in nature and an employee may choose to use accrued annual leave during the period of non-disciplinary suspension but is not eligible for any other leave afforded in this rule. The appointing authority shall give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the suspension. A predetermination conference and three (3) working days' advance notice are not required; however, the appointing authority shall file the statement of reasons for the suspension and the reply, if any, with the Director.

Upon completion of the investigation or criminal proceeding, the appointing authority shall:

12.3.b.1. initiate appropriate disciplinary action as provided in this rule; and,

12.3.b.2. unless the employee is dismissed or otherwise separates from employment prior to completion of the investigation or criminal proceeding, provide retroactive wages or restore annual leave for the period of suspension; provided, that such retroactive wages may be mitigated by other earnings received during the period of suspension. Further, the appointing authority and employee may agree to consider all or part of the period of unpaid suspension pending investigation or criminal indictment or proceeding as fulfilling the period of any disciplinary suspension without pay.

12.4. Layoff.

12.4.a. When due to business necessity, as defined in this rule, it becomes necessary to implement the provisions of this subdivision, the appointing authority may initiate a layoff in accordance with the provisions of this rule.

12.4.b. Organizational Unit. -- The appointing authority shall submit to the Board for approval a description of the unit or units to which a layoff will apply. The organizational unit may be an entire department, agency, or subunit thereof.

12.4.c. Prior to the separation, involuntary reduction in work schedule, or demotion without prejudice of any employee as a result of layoff, the appointing authority shall file with the Director a proposed plan which shall include:

12.4.c.1. a statement of the circumstances requiring the layoff;

12.4.c.2. the approved organizational unit(s) in which the proposed layoff will take place; and,

12.4.c.3. a list of the employees in each class affected by the layoff in order of retention.

12.4.d. It is the duty of the Director to verify the details on which the lists are based and to notify the appointing authority in writing of the plan's approval.

12.4.e. The plan followed by the appointing authority shall be available, upon request in writing, to any employee or adversely affected former employees.

12.4.f. Order of Separation or Reduction. -- After the appointing authority has determined the number and class of positions to be abolished or reduced and the Board has approved the organizational unit to which the layoff will apply, the order of separation or reduction shall be applied in the following manner and order:

12.4.f.1. employees without classified permanent status in the same class or classes identified for layoff in the following order: ~~seasonal,~~ contract, temporary, exempt part-time professional, provisional, and probationary. Provided, that an employee in the organizational unit to which the layoff will apply may volunteer to be separated through layoff in place of a probationary or permanent employee with less tenure.

12.4.f.2. permanent employees by job class on the basis of tenure as a permanent employee of a state agency or in the classified service regardless of job class or title. No tenure credit accrues for periods during which terminal annual leave is paid nor for periods during which an employee is not paid a wage or salary except for military leave, subsidized education leave, or periods during which the employee is paid temporary total disability benefits under the provisions of W. Va. Code § 23-4-1 for a personal injury received in the course of and resulting from covered employment as a permanent employee of a state agency or in the classified service, or unless otherwise provided by State or federal statute. In the event of a tie in the order of separation or reduction, the appointing authority or his or her representative and those employees who are tied shall agree on a means of breaking the tie by either a coin toss or lot drawing and shall notify the Director in writing of the agreement and the results. In the event that the agency wishes to lay off a more tenured employee, the appointing authority must demonstrate that the tenured employee cannot perform any other job duties held by less tenured employees within the designated organizational unit in the job class or any other equivalent or lower job class for which the tenured employee is qualified.

12.4.g. Bumping Rights. -- A classified permanent employee who is to be separated or reduced in hours due to layoff may request a reassignment and lateral class change or demotion without prejudice

to an existing position in a class in the occupational group in the same organizational unit approved by the Board for reduction in force unless the result would be to cause the layoff of another permanent employee who possesses greater tenure. The employee exercising bumping rights must be available for the work schedule and location of the job to which he or she has requested. A permanent employee who is subsequently scheduled for layoff under these provisions as a result of another employee having greater tenure exercising his or her bumping rights by requesting a lateral class change or demotion without prejudice has the same bumping rights as provided for in this procedure. The Director shall develop the occupational groups in the classified service based on similarity of work and required knowledge, skills and abilities. Provided, an employee exercising bumping rights as a result of a reduction in hours shall assume the full work schedule of the position and may have his or her compensation reduced if the position is assigned to a lower ~~classification~~ compensation range.

12.4.h. Salary Reductions for Layoff. -- Salary reductions resulting from provisions of this subdivision shall follow subsection 5.6 of this rule for pay on demotion.

12.4.i. Recall. -- Recall of a classified permanent employee separated or reduced in hours due to layoff shall be in reverse order of the layoff to the class from which the employee was laid off or any lower class in the class series or to any class previously held in the occupational group. A recall list shall be created and maintained by the appointing authority. A permanent employee shall remain on the recall list for the length of his or her tenure on the date of the layoff or for a period of two (2) years, whichever is less. The agency shall first consider for reemployment those former permanent employees whose names appear on the recall list for the class in which a vacancy has occurred and no original appointment of a new employee or reinstatement of a former permanent employee shall be made to the class until all former permanent employees on the recall list have been given first chance of refusal of the vacancy. A permanent employee shall be recalled to jobs within the county wherein his or her last place of employment is located or within a contiguous county. The agency shall notify any laid off permanent employee who is eligible for recall to a position under these provisions by certified mail of the vacancy. It is the responsibility of the employee to notify the agency of any change in mailing address. Individuals who have been hired for permanent employment after layoff shall not forfeit the remainder of the recall eligibility period and are not required to serve a probationary period.

12.4.j. Preference Hiring. -- When filling vacancies at agencies, appointing authorities shall, for a period of twelve (12) months after a permanent classified employee in another agency has been placed on a preference register due to layoff, give preference to such employee based on tenure and fitness over all but existing classified employees of the agency. This preference shall not supersede the recall rights of employees who have been laid off in the agency. Preference hiring shall be accomplished by original appointment.

12.4.k. Reporting. -- The appointing authority shall report the names of all employees who are to be laid off to the Director in writing no later than the date notification of the layoff is mailed to the employee.

12.4.l. Appeals. -- Employees may file appeals from layoffs in accordance with W. Va. Code § 6C-2-1 et seq.

12.5. Like Penalties for Like Offenses. -- In dismissals for cause and other disciplinary actions, appointing authorities shall impose like penalties for like offenses.

12.6. Reinstatement.

12.6.a. A former employee who had attained permanent status under the Division of Personnel who has resigned in good standing, retired, or who has been laid off is eligible for reinstatement. Provided, that he or she has ~~previously worked in the occupational grouping of the job class and has~~ been certified by the Director as meeting the current minimum qualifications as to training and experience of the class of position to which he or she is being appointed. Prior to making the certification, the Director may require the employee to pass a qualifying examination. The Director may refuse to reinstate a former employee for any of the causes stipulated in subdivision 6.4.a of this rule. Employees appointed through reinstatement shall serve a probationary period as provided in Section 10 of this rule.

12.6.b. Appointing authorities shall reinstate all qualifying employees who left state or classified service to enter the ~~State or~~ federal armed forces of the United States or armed forces of the State to their former positions or to positions of like class, tenure and pay within two (2) weeks of their requests provided that such employees satisfy the eligibility standards set forth in federal law commonly known as the Uniformed Services Employment and Reemployment Rights Act (USERRA). Appointing authorities shall also reinstate, at the end of their recovery periods, all qualifying employees who are hospitalized for, or convalescing from, illnesses or injuries incurred in, or aggravated during, the performance of military service provided that such employees satisfy the eligibility standards set forth in USERRA. Appointing authorities may permit qualifying employees to return to work at less than full duty, but the terms of return are subject to the same conditions specified in subdivision 14.4.h of this rule.

12.6.c. Any qualifying employee who is reinstated to state or classified employment under the provisions of subdivision 12.6.b shall be granted all within-range salary adjustments and may be granted salary advancements he or she would have received had he or she remained in active status in the classified service. He or she shall be credited with all annual and sick leave accumulated and unused at the time the military leave began subject to the maximum carry-forward rates established in subsection 14.3 of this rule. The appointing authority shall uniformly apply the provisions in this subdivision to all qualifying employees who are reinstated to state or classified employment under the provisions of subdivision 12.6.b.

§143-1-13. Reconsideration.

Any applicant or employee may request that the Director reconsider a decision which directly affects the applicant or employee. Unless otherwise specified in this rule, the request must be submitted in writing within fifteen (15) days of the applicant's or employee's notification of the decision. Within thirty (30) days of receipt of the applicant's or employee's request for reconsideration, the Director shall notify the applicant or employee of his or her decision.

§143-1-14. Attendance and Leave.

In compliance with state and federal law governing holidays and leave, including 29 U.S.C.§ 2601-2654, the federal Family and Medical Leave Act (FMLA), the following provisions apply to eligible classified employees.

14.1. Official Holidays.

14.1.a. Employees shall be released from work with pay in observance of the following official holidays: New Year's Day, the first day of January; Martin Luther King's Birthday, the third Monday of January; Presidents' Day, the third Monday of February; Memorial Day, the last Monday in May; West

Virginia Day, the twentieth day of June; Independence Day, the fourth day of July; Labor Day, the first Monday of September; Columbus Day, the second Monday of October; Veterans' Day, the eleventh day of November; Thanksgiving Day, the fourth Thursday of November; Lincoln's Day, the day after Thanksgiving Day; Christmas Day, the twenty-fifth day of December; any day on which a State-wide election (Primary, General, or Special) is held, and, such other days as the President, Governor or other duly constituted authority proclaim to be official holidays or days for which employees are released from work. Provided, that an election held on a Saturday is not an official holiday as provided in this subsection.

14.1.b. When a holiday falls on a Sunday, the following Monday shall be observed as the official holiday. When a holiday falls on a Saturday, the previous Friday shall be observed as the official holiday. When Christmas or New Year's Day occurs on Tuesday, Wednesday, Thursday, or Friday, the last half of the scheduled workday immediately preceding the holiday will be given as time off not to exceed four (4) hours. ~~To receive pay for the four (4) hours of time off, an employee must work or be on approved paid leave for the preceding four (4) hours of work time.~~

Agencies may schedule employees to work on the official holiday observance date to accommodate around-the-clock shifts or other special needs. The agency shall notify employees in advance of the modification and shall schedule alternate holiday paid time off for a date as close as possible but not prior to the official holiday observance date. In the alternative, an employee may agree to be paid for the holiday rather than observing it at a later date. The total amount of paid time off for holidays shall not exceed eight (8) hours per holiday or four (4) hours per one-half day of time off as provided in this paragraph.

14.1.c. Part-time employees are entitled to receive time off with pay for holidays, regardless of whether the holidays fall within the employees' regular work schedules, in proportion to the amount of time worked as compared to the employer's standard workweek for a full-time employee. When a holiday falls on a day on which a part-time or full-time employee is not scheduled to work, the employee should be released from work on his or her next scheduled work shift or as soon as reasonably possible.

14.1.d. To receive pay for any holiday, an employee must, at a minimum, work or be on approved paid leave for his or her full scheduled workday immediately preceding and following the holiday. <u>To receive pay for a four (4) hour holiday, an employee must work or be on approved paid leave for the preceding four (4) hours of work time and the full scheduled workday immediately following the holiday.</u> Provided, that an employee who works on the holiday is eligible to receive pay for the holiday irrespective of working or being on approved paid leave the day before and after. However, an employee who is scheduled to work on the holiday but fails to report is ineligible to receive pay for the holiday irrespective of working or being on approved paid leave on that day or the days before and after. An employee is not eligible to be paid for any holiday that occurs prior to his or her first day of work or after his or her date and time of separation as defined in this rule.

14.1.e. Appointing authorities shall make reasonable accommodation to an employee's religious holidays as required by law.

14.1.f. An appointing authority shall, if necessary, allow any employee required to work on any election day ample and convenient time and opportunity to cast his or her vote. Upon receipt of a written request at least three (3) work days prior to an election, an appointing authority shall give any employee who has less than three (3) hours of time away from work during hours polling places are open, up to three (3) hours of paid time off between the opening and closing of the polls, to vote. The appointing authority shall schedule such time off to avoid impairment or disruption of essential services and

operations.

14.2. Agency Work Schedules. -- Each appointing authority shall establish the work schedule for the employees of his or her agency. The work schedule shall specify the number of hours of actual attendance on duty for full-time employees during a workweek or work period, the day and time that the workweek or work period begins and ends, and the time that each work shift begins and ends. The work schedule may include any work shifts the appointing authority determines to be appropriate for the efficient operation of the agency, including work shifts comprising work days of more than eight (8) hours and/or work weeks of less than five (5) days. The work schedules and changes must be submitted to the Director within fifteen (15) days after employees commence work under the schedule.

14.3. Annual Leave.

14.3.a. Amount, Accrual. -- Except as otherwise noted in this rule, each permanent, probationary, and provisional employee is eligible to accrue annual leave with pay and benefits. The table below lists the rates of accrual according to the employee's length of service category and the number of hours of annual leave that may be carried forward from one calendar year to another; provided, that a "day" is based on the agency's established number of hours in the work day and shall not exceed eight (8) hours. Annual leave is accrued at the end of each pay period or on the last workday for separating employees. Though the rates below are expressed in terms of a monthly rate, the leave accrual may be calculated on a bi-weekly basis. It may be prorated for employees granted a medical leave of absence or satisfying the conditions for approval of a medical leave of absence in accordance with subdivision 14.8.c of this rule. Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period based on the proper length of service category. Annual leave cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed 40 hours. Provided, however, employees on unpaid leave who are receiving workers' compensation temporary total disability benefits continue to accrue annual leave while receiving such benefits. Annual leave accrued at agencies with an authorized work period of more than the standard workweek may accrue for hours beyond 40 in a standard workweek but shall not exceed the monthly rates below.

Length of Service Category	Accrual Rate: Hours Equal To	Carry-forward Rate: Hours Equal To
Less than 5 years of qualifying service	1.25 days/month	30 days
5 years but less than 10 years of qualifying service	1.50 days/month	30 days
10 years but less than 15 years of qualifying service	1.75 days/month	35 days
15 years or more of qualifying service	2.00 days/month	40 days

14.3.b. Service to Qualify. -- Qualifying service for length of service category is based on State employment or employment in the classified service not of a limited-term or temporary nature (except that certain limited-term service to the State Legislature may qualify) and provided that any exempt service must be leave-accruing service to qualify. No service credit accrues for periods during which an employee is not paid a wage or salary unless otherwise provided by State or federal statute. Provided, however, employees on unpaid leave who are receiving workers' compensation temporary total disability benefits continue to accrue service credit while receiving such benefits.

14.3.c. Requesting, Granting. -- Accrued annual leave shall be granted at those times that will not materially affect the agency's efficient operation or when requested under the provisions of the Parental

Leave Act or FMLA. The employee shall request annual leave in advance of taking the leave except as noted elsewhere in this subdivision or, for unplanned annual leave, submit the leave request immediately upon return to work or, in cases of extended periods of leave, as directed by the appointing authority. Annual leave may not be granted in advance of the employee's accrual of the leave.

14.3.d. Coverage.

14.3.d.1. Full-time and part-time permanent, probationary, and provisional employees shall accrue annual leave.

14.3.d.2. Temporary ~~and seasonal~~ employees shall not accrue annual leave.

14.3.d.3. Annual leave accrued by provisional employees shall be computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period not to exceed the full-time work schedule of the employer. A provisional employee must take his or her accrued annual leave prior to the expiration of the period of appointment, unless immediately followed by an appointment from the register, or the leave is forfeited.

14.3.d.4. Annual leave accrued by part-time permanent employees shall be computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period based on the proper length of service category.

14.3.e. Minimum Charge. -- The minimum charge against annual leave shall be one-quarter (¼) hour. Additional leave shall be in multiples of a quarter hour. Provided, that annual leave may be calculated in lesser denominations when being exhausted prior to leave of absence without pay.

14.3.f. Separation from Employment. -- The appointing authority shall pay an employee who separates from employment for any reason for all accrued and unused annual leave. An employee does not accrue annual leave after his or her date and time of separation. The payment shall be made according to one of the following methods:

14.3.f.1. An employee may elect to be paid in installments at his or her usual rate and frequency of pay as if employment were continuing until the pay period during which the accrued annual leave is exhausted. If the last day for which leave payment is due falls before the day on which the pay period ends, terminal annual leave payment for those days within that pay period shall be calculated using the daily rate for the pay period in which the last day on payroll occurs. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures;

14.3.f.2. Lump Sum Payment <u>of Annual Leave</u>. -- Any eligible employee as defined in W. Va. Code § 5-5-1 who is separated from employment by resignation, layoff, dismissal, retirement, death, or termination, may be paid in a lump sum, at his or her option, for accrued and unused annual leave. Terminal annual leave payment for an employee who selects a lump sum payment shall be calculated as if employment were continuing until the pay period during which the accrued annual leave is exhausted in accordance with paragraph one (1) of this subdivision. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures. The lump sum payment shall be made by the time of what would have been the employee's next regular pay day had his or her employment continued. No deductions may be made for contributions toward retirement from the lump sum payment; or

14.3.f.3. Retirement. -- An eligible employee who retires may elect not to receive payment for any or all terminal annual leave and may apply the balance toward extended insurance coverage under guidelines established by the Public Employees Insurance Agency or to acquire additional credited service in the appropriate state retirement system under guidelines established by the Consolidated Public Retirement Board.

14.3.g. Transfer of Annual Leave.

14.3.g.1. When a classified employee transfers or otherwise changes employment from one agency to another, all service credit and accrued and unused annual leave shall be transferred. The previous employer shall provide written documentation of the employee's annual leave balance computed in days and fractions of days to the other agency within thirty (30) days after the employee commences work. The previous employer shall also provide the days of State and federal Military, FMLA, Parental Leave Act, and Red Cross Disaster Service leave eligibility exhausted within the year, if applicable.

14.3.g.2. Annual leave accrued while in exempt or classified-exempt permanent employment shall be transferred to classified employment.

14.3.h. When Sick Leave is Exhausted. -- Annual leave shall be used in circumstances when sick leave or the sick leave allowance for an employee's immediate family is exhausted. The provisions of subdivision 14.4.g of this rule regarding the necessity for a physician's/practitioner's statement when sick leave is used apply when annual leave is used under these circumstances. Paid leave taken for a qualifying serious health condition shall be designated as FMLA leave.

14.4. Sick Leave.

14.4.a. Accrual. -- Except as otherwise provided in this rule, each permanent, probationary, and provisional employee shall receive accrued sick leave with pay and benefits. Sick leave is computed on the basis of hours equal to 1.5 days per month for full-time employees; provided that a "day" is based on the agency's established number of hours in the work day and shall not exceed eight (8) hours. Sick leave is accrued at the end of each pay period or on the last workday for separating employees. Though the accrual amount is expressed in terms of a monthly rate, the leave accrual may be calculated on a bi-weekly basis. It may be prorated for employees granted a medical leave of absence or satisfying the conditions for approval of a medical leave of absence in accordance with subdivision 14.8.c of this rule. Prorated leave is computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period. Sick leave cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed 40 hours. Sick leave accrued at agencies with an authorized work period of more than the standard workweek may accrue for hours beyond 40 in a standard workweek but shall not exceed the rate of 1.5 days per month. There is unlimited accumulation of sick leave.

14.4.b. Coverage.

14.4.b.1. Full-time and part-time permanent, probationary, and provisional employees shall accrue sick leave.

14.4.b.2. Temporary ~~and seasonal~~ employees shall not accrue sick leave.

14.4.b.3. Provisional employees shall accrue sick leave in proportion to normal hours worked and/or hours of paid sick and/or annual leave in the pay period. The leave accrued by a provisional employee expires at the termination of the period of employment unless immediately followed by an appointment from the register for a permanent position.

14.4.b.4. Sick leave accrued by part-time employees shall be computed in proportion to normal hours worked and/or hours of paid sick and/or annual leave during the pay period.

14.4.c. Minimum Charge. -- The minimum charge against sick leave is one-quarter (¼) hour. Additional leave is charged in multiples of one quarter hour. Provided, that sick leave may be calculated in lesser denominations when being exhausted prior to leave of absence without pay.

14.4.d. Maximum Charge. -- The maximum charge against sick leave is one (1) work year per substantially continuous absence; however, the appointing authority may at his or her discretion grant additional accrued sick leave. If the appointing authority does not approve additional sick leave, an eligible employee may request a ~~medical~~ personal leave of absence without pay upon exhaustion of his or her annual leave.

14.4.e. Separation from Employment. -- Sick leave shall not accrue after the date and time of separation as defined in this rule. As of the date and time of separation, all accrued and/or scheduled sick leave shall be cancelled, and payment shall not be made for sick leave subsequent to the date and time of separation, except as provided under paragraph 14.4.e.1 of this rule. Recovery of payment for sick leave made subsequent to the date and time of separation shall be made, by civil action if necessary.

14.4.e.1. Retirement. -- An employee eligible to retire at the time of separation from employment may use unused sick leave to purchase extended insurance coverage upon retirement under guidelines established by the Public Employees Insurance Agency or upon retirement to acquire additional credited service in the state retirement system under guidelines established by the Consolidated Public Retirement Board.

14.4.e.2. All Other Separations. -- All accumulated sick leave shall be cancelled as of the date and time of separation. If an employee returns to eligible employment, as provided in subdivision b. of this subsection, within one year of the date and time of separation, including the first working day the reinstatement could be accomplished, all cancelled sick leave shall be restored. However, if the employee returns to eligible employment after more than one year from the date and time of separation from employment, no more than thirty (30) days of cancelled sick leave shall be restored. If an employee who has been laid off is re-employed in eligible employment, all cancelled sick leave shall be restored.

14.4.f. Requesting, Granting. -- Sick leave may not be granted in advance of the employee's accrual of the leave or when the employee's disability, as verified by a physician/practitioner on a prescribed physician's/practitioner's statement form, is of such a nature as to render the employee permanently unable to perform his or her duties with or without accommodation; provided the employee may continue to utilize available sick leave during the accommodation consideration process not to exceed twelve (12) weeks. Paid leave taken for a qualifying serious health condition shall be designated as FMLA leave.

Employees shall request sick leave in advance of taking the leave when requesting leave for routine dental and medical appointments. For unplanned sick leave, the employee must submit the leave request immediately upon return to work or, in cases of extended periods of leave, as directed by the

appointing authority. Appointing authorities shall grant accrued sick leave requested by employees for the following reasons:

14.4.f.1. Illness. -- Sick leave shall be granted in the event of an employee's illness or injury which incapacitates him or her from performing his or her duties;

14.4.f.2. Death in the Immediate Family of the Employee. -- Sick leave shall be granted up to three (3) scheduled work days to an employee for the death of any member of his or her immediate family as defined in this rule; provided such time is not deducted from the eighty (80)-hour family sick leave usage allowance. If sick leave is requested to commence immediately preceding and/or following the leave granted for death in the immediate family, a physician's/practitioner's statement will not be required unless the employee is on leave restriction or the additional sick leave exceeds three (3) consecutive scheduled workdays, provided that the employee presents verification of a qualifying death. In the absence of verification of a qualifying death, the employee shall be required to present a physician's/practitioner's statement for the entire period of absence in accordance with subsections 14.4.g.2 and 3 of this rule;

14.4.f.3. Exposure to Contagious Disease. -- Sick leave and personal leave of absence without pay upon exhaustion of sick and annual leave, shall be granted in the case of exposure to a contagious disease when a physician/practitioner determines and states in writing that the employee's presence on duty may jeopardize the health of others;

14.4.f.4. Pregnancy. -- Incapacity due to pregnancy shall be charged to sick leave under the same conditions applying to any illness;

14.4.f.5. Routine Dental and Medical Appointments - Employee. -- Routine dental and medical appointments for treatment or examination of the employee shall be charged to sick leave. Reasonable travel time in addition to the time for the routine appointments may also be charged to sick leave;

14.4.f.6. Illness and/or Routine Dental and Medical Appointments - Immediate Family. -- Employees may use up to eighty (80) hours of accrued sick leave per calendar year to provide care to an immediate family member, as defined in this rule, who is incapacitated due to illness or injury or to accompany an immediate family member to routine healthcare appointments; provided such time is prorated for part-time employees. Reasonable travel time in addition to the time for the routine appointments may also be charged to sick leave; or,

14.4.f.7. Work Related Illness or Injury. -- An employee may elect to use sick leave due to a personal injury received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code § 23-4-1. Upon a work-related injury or illness, the employee must submit an Election of Option form to the agency payroll office. An employee who elects not to use sick leave under this paragraph shall be placed on a medical leave of absence without pay as provided under subsection 14.8 of this rule. Provided, that such paid or unpaid leave due to a work-related injury or illness shall be, if qualifying, counted as and run concurrently with FMLA leave.

14.4.g. Physician's/practitioner's Statement.

14.4.g.1. The Director shall prescribe a physician's/practitioner's statement form to be supplied by all agencies to its employees. All agencies shall use this form or an alternate form or method,

approved by the Director, to obtain the necessary information. Appointing authorities shall comply with FMLA provisions pertaining to certification and recertification, when applicable.

14.4.g.2. ~~Any employee~~ Employees requesting sick leave, or annual leave upon exhaustion of sick leave, for ~~themself~~ themselves, a family member, or a combination thereof, for more than three (3) consecutive scheduled work days or scheduled shifts must, immediately upon his or her return to work, provide a prescribed physician's/practitioner's statement from the attending physician/practitioner for the entire absence. Consecutive scheduled workdays are determined without regard to scheduled days off that occur during the period of sick leave or annual leave used upon exhaustion of sick leave. Thus, annual leave, holidays, modified holiday observance, compensatory time, regularly scheduled days off, or any other time for which the employee was not scheduled to work during the period of absence shall not constitute a break when determining the three (3) consecutive scheduled work days. The physician's/practitioner's statement form shall specify the period of incapacity and state that the employee was unable to perform his or her job or that the employee's absence was due to reasons provided in paragraph 14.4.f.6 of this rule for a member of the employee's immediate family.

14.4.g.3. In the absence of a prescribed physician's/practitioner's statement form, the entire absence shall be charged to unauthorized leave as provided in subsection 14.6 of this rule, and the employee's pay shall be docked for the entire period of absence. The appointing authority shall notify the employee in writing that his or her pay is being docked. If the physician's/practitioner's statement from the attending physician/practitioner specifies a period of incapacity that is less than the entire absence, only the period of incapacity shall be charged to sick leave and the remaining absence shall be charged to annual leave, if annual leave is available to the employee and is not otherwise restricted.

14.4.g.4. For extended periods of sick leave, a prescribed physician's/practitioner's statement form confirming the necessity for continued leave must be submitted within ~~thirty (30)~~ fifteen (15) days of the commencement of the sick leave and must indicate a date the physician/practitioner will release the employee to return to work or a date the physician/practitioner will re-evaluate the employee's medical condition. For employees being re-evaluated, an additional physician's/practitioner's statement must be submitted upon re-evaluation. Failure to produce the required statement is grounds to terminate further sick leave benefits and the appointing authority shall immediately place the employee on unauthorized leave and notify the employee in writing of such action as provided in subsection 14.6 of this rule. This written notice shall allow the employee fifteen (15) days to submit the required physician's/practitioner's statement. Failure of the employee to submit the required statement within the fifteen-day notice period, except for satisfactory reasons submitted in advance to the appointing authority, is cause for dismissal. The necessity for absence because of exposure to contagious disease must be verified on a prescribed physician's/practitioner's statement form regardless of the length of absence.

14.4.h. Return At Less Than Full Duty.

14.4.h.1. The appointing authority may permit an employee to work or return to work from sick leave, military duty in which the employee was injured or became ill, or medical leave of absence at less than full duty for a period of no more than thirty (30) days, provided that the terms of the return shall be in writing. An employee may request to continue to work at less than full duty beyond the period permitted by the appointing authority. The request must be submitted to the appointing authority at least five (5) days before the end of the thirty (30)-day period. The appointing authority shall consider the request in the same manner as the original request.

14.4.h.2. The appointing authority may require an employee to return at less than full duty or to transitional duties where the absence is due to a personal injury received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code § 23-4-1 et seq. and a physician/practitioner has released the employee to perform such work.

14.4.h.3. The appointing authority may deny a request to return or continue to work at less than full duty or with restrictions under conditions including, but not limited to, the following:

14.4.h.3.A. the employee cannot perform the essential duties of his or her job with or without accommodation;

14.4.h.3.B. the nature of the employee's job is such that it may aggravate the employee's medical condition;

14.4.h.3.C. a significant risk of substantial harm to the health or safety of the employee or others cannot be eliminated or reduced by reasonable accommodation; or,

14.4.h.3.D. the approval of the request would seriously impair the conduct of the agency's business.

14.4.h.4. Prior to making a decision on an employee's request to return or continue to work at less than full duty or with restrictions, the appointing authority may require additional information from the employee's physician/practitioner or other physician/practitioner regarding the employee's ability to perform the essential duties of his or her job, with or without accommodation.

14.4.i. Transfer of Sick Leave.

14.4.i.1. When a classified employee transfers or otherwise changes employment from one agency to another, all accrued and unused sick leave shall be transferred. The previous employer shall provide written documentation of the sick leave balance computed in days and fractions of days to the other agency within thirty (30) days after the employee commences work. The previous employer shall also provide the days of State and federal Military, FMLA, Parental Leave Act, and Red Cross Disaster Service leave eligibility exhausted within the year, if applicable.

14.4.i.2. At the discretion of the appointing authority, sick leave accrued while in other State ~~or classified~~ employment may be transferable to covered agency employment.

14.4.j. Illness While on Annual Leave. -- An employee who becomes ill while on previously approved annual leave may request that all or part of the time be charged to sick leave. This provision shall also apply when an employee requests to change annual leave to family sick leave due to the illness of an immediate family member. The employee shall request that action immediately, provided that any annual leave used prior to the request being made shall not be charged to sick leave. The employee must provide a physician's/practitioner's statement immediately upon return to work.

14.5. Suspected Misuse of Leave. -- When an employee appears to have a pattern or incident of leave use that is inconsistent with the reasons provided in subdivision 14.4.f of this rule, the appointing authority may request appropriate substantiation of the employee's claim for leave, for example, verification of an illness of less than three (3) consecutive scheduled work days or scheduled shifts. Misuse of leave may include, but is not limited to, frequent use of sick leave rendering the employee's services undependable, requesting sick leave for days when annual leave was previously denied, and requesting

unplanned leave in connection with scheduled days off. The appointing authority shall give the employee prior written notice of the requirement for appropriate substantiation.

14.6. Unauthorized Leave. -- When an employee is absent from work without authorization for sick or annual leave, the appointing authority shall dock the employee's pay for an equal amount of time paid during which no work was performed. The appointing authority shall notify the employee in writing that his or her pay is being docked and that the unauthorized leave is misconduct for which discipline is being imposed. The appointing authority shall use unauthorized leave only in cases when the employee fails to obtain the appropriate approval, according to agency policy, for the absence. The appointing authority shall transmit notice of the action in writing to the Director.

14.7. Overtime Work and Holiday Work. -- An appointing authority or his or her designated representative may require an employee to work in excess of the prescribed working hours or on holidays when the work is considered by the employer to be necessary to the public interest. Compensation shall be made in accordance with the federal Fair Labor Standards Act and relevant federal regulations and W. Va. Code § 21-5C-1 et seq. Sick and/or annual leave requested in the same workweek or work period in which additional hours are worked shall be reduced and credited back to the employee's accrued balances to reduce or avoid payment for hours in excess of the agency work schedule.

14.8. Leave of Absence Without Pay.

14.8.a. Personal Leave. – Except as otherwise provided in subsection 14.4.f.3 of this rule, ~~An~~ an appointing authority may, at his or her discretion based on the agency's personnel needs, grant a permanent, probationary, or provisional employee a leave of absence without pay for a specific period of time which normally should not exceed one (1) year. The employee shall apply for the leave of absence in writing to the appointing authority. Time spent by provisional employees for leaves of absence does not extend the provisional period limitation. Written approval of the appointing authority is required in all cases.

14.8.b. Family Leave. -- The Board may establish uniform procedures, which shall be followed by all appointing authorities, for granting leave to eligible employees under the Parental Leave Act and FMLA.

14.8.c. Medical Leave; Notice to Employee.

14.8.c.1. An injured or ill permanent classified employee upon written application to the appointing authority shall be granted a medical leave of absence without pay not to exceed six (6) months within a twelve-month period provided:

14.8.c.1.A. The employee:

14.8.c.1.A.1. Has worked or been on approved leave with or without pay for military service or leave without pay while receiving workers' compensation temporary total disability benefits for at least 1,040 hours, or fifty (50) percent of the normal work schedule for part-time permanent classified employees, during the twelve-month period immediately preceding the beginning of the leave;

14.8.c.1.A.2. Makes application no later than fifteen (15) days following the exhaustion of all sick and annual leave; and,

14.8.c.1.A.3. Has exhausted all available sick and annual leave or has elected not to

use sick and annual leave for a personal injury or illness received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code § 23-4-1.

14.8.c.1.B. The employee's absence is due to an illness or injury which is verified by a physician/practitioner on the prescribed physician's/practitioner's statement form stating that the employee is unable to perform his or her duties and giving a date for the employee's return to work or the date the employee's medical condition will be re-evaluated;

14.8.c.1.C. A prescribed physician's/practitioner's statement form is submitted each time the employee's condition is re-evaluated to confirm the necessity for continued leave; and,

14.8.c.1.D. The disability, as verified by a physician/practitioner, is not of such nature as to render the employee permanently unable to perform his or her duties. Though not eligible for medical leave of absence under this subsection, the employee may be eligible for leave under FMLA.

14.8.c.2. The appointing authority shall, at least fifteen (15) days prior to, if possible, but no later than five (5) days following the expiration of the employee's sick leave, mail to the employee a written notice of the employee's right to a medical leave of absence without pay and informing him or her that the leave will not be granted if he or she fails to apply within the time limits specified in subparagraph 14.8.c.1.A of this rule. Notice shall not be required for subsequent absence for the same reason during the applicable twelve-month period.

14.8.c.3. The twelve-month period shall be calculated based upon a rolling twelve-month period measured backward from the date of leave use. The amount of leave available during the twelve-month period shall be based upon the equivalent number of hours the employee is normally scheduled to work during a six-month period. Such leave runs concurrently with FMLA and may only be taken intermittently when running concurrently with FMLA leave.

14.8.c.4. Exceptions. -- Employees, including probationary and provisional employees, shall be granted and will remain on medical leave of absence without pay while receiving workers' compensation temporary total disability benefits as a result of a personal injury or illness received in the course of and resulting from covered employment with the State or its political subdivisions in accordance with W. Va. Code § 23-4-1.

14.8.d. End of Leave.

14.8.d.1. At the expiration of a leave of absence without pay, the employee shall be returned to duty to either his or her former position, or one of comparable pay and duties, without loss of rights, unless the position is no longer available due to a reduction-in-force.

14.8.d.2. If the leave of absence without pay was granted due to personal illness, the employee must furnish from the attending physician/practitioner a prescribed physician's/practitioner's statement form indicating the ability of the employee to return to work. The appointing authority may permit an employee to return to work at or before the expiration of the leave of absence at less than full duty, but the terms of return are subject to the same conditions specified in subdivision 14.4.h of this rule.

14.8.d.3. Failure of the employee to report to work promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance to and approved by the appointing authority, is cause for dismissal. An employee dismissed for failure to return from leave of

absence without pay is not eligible for severance pay.

14.8.e. Reporting Procedures. -- The appointing authority must report a leave of absence without pay to the Director. The appropriate forms must include the provision of this rule under which the leave is being granted, the employee's last date and time on the payroll, and the specific anticipated date for return to duty.

14.9. Military Leave.

14.9.a. State Active Duty and Reserve Military Service. -- All officers and employees of the State, county or municipal government hired for permanent employment who are members of the National Guard or of any of the reserve components of the armed forces of the federal government are entitled to a leave of absence from employment without loss of pay, status, or efficiency rating, on all days during which they are engaged in drills or parades, or for examination to determine fitness for duty, inactive duty training, funeral, service schools, active duty for training or active service for the State during business hours all to include reasonable travel time to and from the duty location, for a maximum period of thirty (30) scheduled work days in any one (1) calendar year, not to exceed two hundred forty hours, when ordered or authorized by proper authority. The term "without loss of pay" means that the employee continues to receive his or her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation during the same period. An employee need not exhaust any or all annual leave or sick leave. Furthermore, the leave of absence is considered as time worked for the agency in computing tenure, eligibility for salary increase and experience with the agency. The terms of this subdivision do not apply under the provisions of any military selective service act. An employee shall provide to the appointing authority advance written or verbal notification of an obligation or intention to perform military duty and such written orders or other documentation, if available, in support of the request for military leave. None of the unused days of military leave for which an officer or employee is eligible under this subdivision may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in this subdivision only in the year he or she is called to active duty, and in subsequent years only after he or she has been discharged from military duty and returned to employment.

14.9.b. Federal Active Duty. -- All officers and employees of the State, county or municipal government hired for permanent employment who are ordered or called to active duty by properly designated federal authority are eligible for an additional leave of absence from employment without loss of pay, status, or efficiency rating for a maximum period of thirty (30) scheduled work days, not to exceed two hundred forty hours, for each single call to active duty, active duty for training, initial active duty for training, or full-time National Guard duty, all to include reasonable travel time to and from the duty location. All eligible officers and employees of the State called to federal active duty or full-time National Guard duty who have not used all or some portion of the thirty (30) scheduled work days of military leave granted by subdivision a of this subsection are eligible to use those unused days in the same calendar year prior to using the thirty (30) work days for which they are eligible under this subdivision, up to a maximum of sixty (60) scheduled work days for a single call to active duty. None of the unused days for which an officer or employee is eligible under subdivision a may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in subdivision a of this subsection only in the year he or she is called to active duty, and, in subsequent years, only for a subsequent call to duty and only after he or she has been discharged from military duty and returned to employment. The term "without loss of pay" means that the employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation from federal or state sources during the same period.

14.9.c. Other than as provided in subdivision b of this subsection, any employee hired for permanent employment entering the United States armed services in time of war, national emergency or under compulsory provisions of law of the United States in time of peace shall be granted a leave of absence from his or her service with the agency. Upon completion of and discharge from ~~the armed services~~ military service and within the applicable time period prescribed by State and federal statute, rule, or regulation regarding return to employment, the employee has the right to resume his or her service with the agency without any prejudice to his or her status, merit rating or standing by reason of the absence, in accordance with subdivision 12.6.b of this rule. Members of the organized militia in the active service of the state or another state shall be entitled to the same reemployment rights granted to members of the reserve components of the Armed Forces of the United States by applicable federal law, including rights protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, 38 U. S. C. §§ 4301-4334. Upon return to employment ~~An~~ an employee shall be credited with all annual leave and sick leave not used at the commencement of his or her military leave in accordance with subdivision 12.6.c of this rule. This subdivision shall not be construed:

14.9.c.1. As providing that the salary paid by the agency shall continue to be paid to the employee while he or she is not performing the duties of his or her position because of ~~the services with the armed forces of the United States~~ military service; or,

14.9.c.2. As having precedence over the provisions of any applicable federal statute, rule, or regulation regarding military leave or re-employment rights with which this subdivision is inconsistent or in conflict including, but not limited to, the Uniformed Services Employment and Reemployment Rights Act.

14.10. Court, Jury, and Hearing Leave.

14.10.a. Upon application in writing, an employee hired for permanent employment shall be released from work without charge to leave or loss of pay when, in obedience to a subpoena or direction by proper authority, he or she serves upon a jury or appears as a witness before any court or judge, any legislative committee, or any officer, board, or body authorized by law to conduct any hearing or inquiry. This subdivision shall not apply in cases where the employee or a member of his or her immediate family is a plaintiff, defendant or other interested party or has a personal, financial, or vested interest in the outcome of the proceeding or when the hours spent in compliance to a subpoena to serve on a jury or appear as a witness are outside the employee's scheduled workday. Employees subpoenaed by proper authority who are not eligible for court, jury or hearing leave shall be granted sufficient annual leave or leave without pay to fulfill the order. This subdivision shall not be construed to:

14.10.a.1. deprive, prohibit, or infringe upon the rights of any employee who is a party to, or a witness in, a grievance proceeding or a court of law proceeding resulting from the course of his or her State and/or classified employment; or,

14.10.a.2. deprive, prohibit, or infringe upon the rights of any employee in his or her pursuit of personal legal matters or civic responsibilities while on annual leave or a personal leave of absence.

14.10.b. The employee shall furnish such written confirmation of the absence as is required by the Director.

14.10.c. When an employee is to report to or is released from service prior to the beginning or

end of the workday, and there is more than one (1) hour remaining in the employee's scheduled work shift after allowing for reasonable return travel time, the employee shall report or return to work or request approval for annual leave.

14.11. Education Leave.

14.11.a. Subsidized by Agency. -- An agency authorized by law to subsidize advanced educational training for classified employees may grant to selected employees education leave subject to conditions stipulated by that agency. The procedures for granting education leave and compensatory payment shall be filed with the Director. The leave shall be considered as continuous employment, except that employees while on education leave shall not accrue sick leave or annual leave, nor are the employees eligible for salary advancements.

14.11.b. Non-subsidized by Agency. -- A personal leave of absence may be granted for educational purposes in conformance with the requirements of subdivision 14.8.a of this rule.

14.12. Disaster Service Leave. -- Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave with pay, subject to the approval of the employee's immediate supervisor, in accordance with the provisions of W. Va. Code § 15-5-15a.

14.13. Supplemental Attendance and Leave Policies. -- Each agency shall prepare supplemental policies as may be required. The policies shall not enhance nor diminish the benefits afforded by this subsection. Copies of all policies shall be filed with the Director who may approve, amend or disapprove the supplemental policies.

14.14. Distribution of Regulations. -- Each agency shall make available to each of its employees a copy of this attendance and leave rule together with the agency's own supplemental attendance and leave rules.

14.15. Leave Records. -- Each appointing authority shall maintain a current leave record of the agency's employees' accrued and used leave. The appointing authority shall provide each employee access to his or her leave records subject to established rules and on a regular basis of no less than once each pay period. To the extent practical, each appointing authority shall use electronic or other communications media to provide employees with access to their leave records, provided that the appointing authority makes regular and convenient access to the media used available to each employee in the agency, or otherwise provides access to each employee in the agency. Employees shall report inaccuracies in their leave records to the appointing authority or his or her designee.

§143-1-15. Performance Evaluations.

The Director, after consultation with the appointing authorities, and with the approval of the Board, shall establish and make effective a system of performance evaluation designed to provide a valid evaluation of the quality and quantity of work performed by employees. Insofar as practicable, the system of performance evaluation in the classified service shall be standardized. The appointing authority shall prepare and record evaluations for all permanent employees at regular intervals not to exceed twelve (12) months. The appointing authority shall consider performance evaluations as well as other recorded indicators of performance in determining salary advancements and in making promotions, demotions, and dismissals. The appointing authority shall notify an employee of his or her performance evaluation in writing and shall retain copies of performance evaluations in the employee's personnel record.

§143-1-16. Political Activities.

16.1. Prohibition of Political Activities.

16.1.a. An appointing authority shall not appoint, promote, demote, or dismiss any person in the classified service or in any way favor or discriminate against any person with respect to such employment because of his or her political opinions or affiliations. Nothing in this subdivision shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

16.1.b. No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

16.1.c. No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any position, for the purpose of influencing the vote or political action of any person, or for any consideration.

16.1.d. No employee in the classified service or member of the Board or the Director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any assessment, subscription, contribution or service of any employee in the classified service.

16.1.e. Notwithstanding any other provision of the W. Va. Code, no employee in the classified service shall:

16.1.e.1. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

16.1.e.2. Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or,

16.1.e.3. Be a candidate for any national or state paid public office or court of record; or hold any paid public office other than as a paid poll clerk or worker; or be a member of any national, state or local committee of a political party, or a financial agent or treasurer within the meaning of the provisions of W. Va. Code § 3-8-3, 4, or 5(e). Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subdivision d of this subsection, are permitted.

16.1.f. Political participation pertaining to constitutional amendments, referendums, approval of municipal ordinances or activities, serving as a poll clerk or worker or being a candidate for or serving as a delegate to any state or national political party convention are not prohibited by the provisions of this subdivision.

16.1.g. Any classified employee who becomes a candidate for any paid public office as permitted by this subdivision shall request and receive a leave of absence without pay for the period of the candidacy, commencing upon the filing of the certificate of candidacy. If the employee withdraws his or her candidacy, he or she shall return from the leave of absence immediately upon such withdrawal. If the employee is not elected, he or she shall return from the leave of absence immediately after the official canvass of votes. At the expiration of the leave of absence without pay, the employee shall be returned to duty to either his or her former position or one of comparable pay and duties, without loss of rights, unless the position is no longer available due to a reduction-in-force. If elected, the employee shall resign or be dismissed from the position in the classified service to be effective no later than the date of assuming the elective office.

16.2. Application of the Hatch Act. -- Any classified or classified-exempt employee who, as a normal and foreseeable incident of his or her principle activity, performs duties in connection with programs financed wholly or in part by or whose salary is paid for completely by loans or grants made by the United States or a federal agency is subject to provisions of the Hatch Act for State and Local Government Employees restricting political activity, 5 USC 1501-8. Each appointing authority shall inform all classified and classified-exempt employees of these provisions and employees shall adhere to these provisions.

~~16.3. Additional Prohibition for Highways Employees. -- No person may be appointed or employed in any capacity by the Division of Highways who is a candidate or holds any public office or is a member of any political party committee. An employee of the Division of Highways may not be a candidate for or hold any public office or be a member of any political party committee. An employee of the Division of Highways who becomes a candidate for or holds any public office or becomes a member of any political party committee shall resign or be dismissed from his or her position with the division immediately on the date of the filing of candidacy or the date of assuming the public office or the political party committee membership.~~

§143-1-17. Employment Conflicts.

17.1. Other Employment and Certain Volunteer Activity. -- ~~No employee~~ Employees shall not hold other public office, secondary employment or participate in voluntary activity conflicting with their employment in the classified service. ~~have conflicting employment, or participate in conflicting volunteer activity while in the classified service.~~ Determination of the conflict shall be made jointly by the appointing authority and the Board, or may be specifically delegated by the Board to the appointing authority, who shall consider whether the other employment or volunteer activity: (1) will be in conflict with the interests of the agency; (2) will interfere with the performance of the employee's official duties; (3) will use or appear to use information obtained in connection with official duties which is not generally available to the public; or, (4) may reasonably be regarded as official action.

17.2. Nepotism. -- No appointing authority shall influence or attempt to influence the employment or working conditions of his or her immediate family. It is the responsibility of the appointing authority to administer the employment of relatives of any agency employee in a consistent and impartial manner.

No employee shall directly supervise a member of his or her immediate family. This prohibition includes reviewing, auditing or evaluating work or taking part in discussions or making recommendations concerning employment, assignment, compensation, discipline or related matters. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of his or her immediate family, the situation shall be resolved within thirty (30) days. Resolution may be made by transfer, reassignment, resignation, dismissal, etc. of one of the involved employees or by other

accommodation which protects the interests of the public.

§143-1-18. Payroll.

No state, county or municipal disbursing or auditing officer shall make, approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the person has been appointed and employed in accordance with the provisions of this rule. An appointing authority may not modify the wages of a person in the classified service unless the Director has approved the modification in accordance with the provisions of this rule. The Director may for proper cause withhold certification from an entire payroll or from any specific item or items on the payroll. The Director may, however, provide that certification of payrolls may be made once every six (6) months, and the certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his or her payroll. In the latter case no voucher for payment of salary to the employee shall be issued or payment of salary made without further certification by the Director.

If the Director wrongfully withholds certification of the payroll voucher or account of any employee, the employee may maintain a proceeding in the courts to compel the Director to certify the payroll voucher or account.

§143-1-19. Records and Reports.

19.1. Agency and Division of Personnel Records. -- Each agency shall establish and maintain a personnel record for each employee, showing the employee's name, title, organizational unit, salary, changes in status, performance evaluations, and such other personnel information as may be considered pertinent. The Division of Personnel is not the custodian of records for agency employee personnel files. The Director shall maintain applications for examination for at least one (1) year after the date of the application. All personnel records shall be open to the inspection of the Board but shall otherwise be held confidential by each agency and the Director in accordance with Section 21 of this rule. A complete and accurate copy of the employee's personnel file shall be provided by the previous employer upon inter-departmental transfer or other appointment of the employee by another agency.

19.2. Legislature Access. -- Neither this section nor any other provision of this rule shall interfere with the right of the Legislature, its committees, administrative units and staff to have access to agency personnel records under the common law, or pursuant to the provisions of W. Va. Code § § 4-2-5, 4-3-4, 4-5-3, 4-10-5, or any other statutory provision giving a legislative agency or subunit access to records of a state or classified agency. The Legislature, its committees, administrative units and staff having access to these records shall maintain the confidentiality of the records, to the extent reasonably possible.

§143-1-20. Confidentiality.

The business of the Division of Personnel shall be conducted in such a manner as to ensure the privacy rights of all applicants and employees, in accordance with W. Va. Code § 29B-1-1 et seq., the State Freedom of Information Act and § 5A-8-1et seq., the Public Records Management and Preservation Act. Examination scoring keys, applicant and employee residential addresses and phone numbers, applicant and employee medical information, and other information which the Director may deem confidential shall be maintained under strictest confidentiality and released only upon proper written authorization of the applicant or employee or by order of a court of competent jurisdiction.

§143-1-21. Duties of Officers; Legal Proceedings to Secure Compliance; Penalties.

21.1. Duties of Officers. -- Pursuant to W. Va. Code § 29-6-12, all affiliated agencies' officers and employees shall comply with and aid in all proper ways in carrying out the provisions of W. Va. Code § 29-6-1 et seq., and the rules and orders promulgated thereunder. All officers and employees shall furnish any records or information which the Director or the Board may request for any purpose of W. Va. Code § 29-6-1 et seq. All officers and employees shall comply with all rules, policies and orders of the Director or the Board and shall not increase nor diminish any benefits afforded any classified employee by the rules or orders. All officers and employees shall furnish any proposed agreement and any records or information which the Director or Board may require in regard to any proposed agreement between an agency and an individual who is a current or former employee regarding the terms and/or conditions of the individual's employment with the agency. Any such agreement must be certified by the Director as being in compliance with W. Va. Code § 29-6-1 et seq. or with an order of a court of competent jurisdiction before it can be effective.

21.2. Legal Proceedings to Secure Compliance. -- Pursuant to W. Va. Code § 29-6-12, the Director may institute and maintain any action or proceeding at law or in equity which he or she considers necessary or appropriate to secure compliance with W. Va. Code § 29-6-1 et seq., and the rules and orders promulgated under the code.

21.3. Penalties.

21.3.a. Any person who willfully violates any provision of W. Va. Code § 29-6-1 et seq. or of this rule is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for a period not to exceed one (1) year, or both fined and imprisoned. Jurisdiction under this subdivision shall be in a court of record exercising criminal jurisdiction within the county where the offense is committed.

21.3.b. Any person who is convicted of a misdemeanor under W. Va. Code § 29-6-1 et seq. is, for a period of five (5) years, ineligible for appointment to or employment in a position in the classified or classified-exempt service, and if he or she is an officer or employee of the state or a classified agency, shall forfeit his or her present office or position.

§143-1-22. Grievance Procedure.

An employee hired for permanent employment may file a grievance with the Public Employees Grievance Board as provided for in W.Va. Code § 6C-2-1 et seq.

§143-1-23. Training and Development.

23.1. Agency Responsibilities. -- Each agency is responsible for providing functional training to employees of the agency based upon the agency's needs and resources and the employees' needs and capabilities. Selection of employees for training and development shall ensure equal opportunity and shall not discriminate on the basis of race, sex, age, religion, national origin, political affiliation, disability or for other reason(s) explicitly prohibited by federal and/or State law.

23.2. Division of Personnel Responsibilities. -- The Director shall:

23.2.a. Make available to the agencies technical assistance in the areas of performance improvement, organization and human resource development, needs assessment, determination of

appropriate development strategies, course design, training techniques, and training evaluation.

23.2.b. Provide training courses for supervisors and managers on specific aspects of personnel administration under Division of Personnel law and this rule, and shall designate employees by class, or by duties, who must attend each type of course.

23.2.c. Make available to the agencies training and development opportunities that are broadly applicable to many classes in all agencies. Employee selection for the training and development opportunities shall be consistent with established agency and Division of Personnel nomination procedures.

§143-1-24. Employee Representative Organization Bulletin Boards.

A bulletin board of a limited size shall be provided for posting notices of employee representative organizations. The bulletin boards shall be placed in convenient and generally accessible locations in all workplaces where the members of the organizations are employed. Provisions shall be made for separate bulletin boards for each employee representative organization. The cost of the bulletin boards shall be assumed by the requesting employee or the employee's representative organization. The boards shall be used exclusively by the employee representative organization and for organization purposes only.

§143-1-25. Authority of the Board.

The Board is authorized to interpret the application of this rule to any public body or entity and to establish by formal action programs and projects for a maximum of one (1) year outside of the provisions of this rule, including, but not limited to, programs or projects designed to respond to public disaster or emergency.

§143-1-26. Amendments.

If and when it appears desirable in the interests of good administration, the Board, after public notice and public hearing and legislative approval, may amend the rules as it becomes necessary.