



WEST VIRGINIA SECRETARY OF STATE
KRIS 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: Transportation Department of TITLE-SERIES: 217-01
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: Yes
RULE NAME: 217-01 Employment Procedures

PRIMARY CONTACT

NAME: Employment Procedures
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CITE STATUTORY AUTHORITY: W. Va. Code §5F-2-8.

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:

W. Va. Code § 5F-2-8 transferred the Department of Transportation Personnel System to the Division of Personnel System making this rule no longer necessary.

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: 6/29/2026

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/29/2026

COMMENTS RECEIVED: No

(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?

N/A

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

Legislation passed in the 2026 regular session removed the exemption for the DOT from the Division of Personnel, making the rule no longer necessary and duplicative to the Division of Personnel's Administrative Procedures rule.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Legislation passed in the 2026 regular session removed the exemption for the DOT from the Division of Personnel, making the rule no longer necessary and duplicative to the Division of Personnel's Administrative Procedures rule.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

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

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

N/A

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

Yes

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

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~~TITLE 217~~
~~LEGISLATIVE RULE~~
~~DEPARTMENT OF TRANSPORTATION~~

~~SERIES 1~~
~~EMPLOYMENT PROCEDURES~~

~~§217-1-1. General.~~

~~1.1. Scope. — This rule implements the second of two civil service systems in West Virginia, in accordance with the provisions in W. Va. Code §5F-2-8 establishing employment procedures for promotions, appointments, and other matters consistent with establishment of a merit based employment process for the Department of Transportation.~~

~~1.2. Authority. — W. Va. Code §5F-2-8.~~

~~1.3. Technical amendment filed. — 06/24/2025~~

~~1.4. Effective Date. — 04/04/2022~~

~~1.5. Sunset Provision — This rule shall terminate and have no further effect on August 1, 2027.~~

~~§217-1-2. Definitions.~~

~~2.1. “Accrue” means the process of increasing or accumulating periodically or by increment.~~

~~2.2. “Accrual Rate” means the grouping by the cumulative years of eligible employment which is used to determine the rate of accrual of annual leave benefits.~~

~~2.3. “Agency” means any authority, bureau, commission, or Division or similar cabinet subpart of the Department of Transportation.~~

~~2.4. “Agency head” means the chief executive officer of an agency.~~

~~2.5. “Annual Leave” means 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.~~

~~2.6. “Allocation” means the assignment of a position to a class by the Division of Human Resources of the Department of Transportation based on the duties performed and responsibilities assigned.~~

~~2.7. “Appeal” means a request made to an agency head or the Division to reconsider a decision.~~

~~2.8. “Application” means a form used to gather information sufficient to demonstrate that the applicant for employment has the relevant skills, education, and experience to perform a job or class of jobs and indicates the applicant’s literacy and communication skills. The application may be prescribed by the Division of Human Resources.~~

~~2.9. “Appointment” means the act of hiring an applicant for employment.~~

~~2.10. “Business Necessity” means the reason or cause for any of a variety of personnel actions based upon the condition of the Department, in whole or in part, or a specific program component 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.~~

~~— 2.11. “DOT Pay Plan” means the Department of Transportation’s plan by which positions in the merit-based personnel system are designated as classified service or classified exempt service, allocated by class, assigned official pay rates and compensation ranges, and by which pay administration rules are established.~~

~~— 2.12. “Class” or “Class of Positions” means 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 schedule of compensation and benefits may be equitably applied to each position in the class.~~

~~— 2.13. “Class Specification” means 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.~~

~~— 2.14. “Classified Employee” means an employee who occupies a position allocated to a class in the classified service of the DOT Pay Plan or the West Virginia Division of Personnel classified service.~~

~~— 2.15. “Classified Exempt Service” means as established by statute, those positions which satisfy the definitions for “class” and “classify” but which are not covered under the DOT Pay Plan merit system.~~

~~— 2.16. “Classified Service” means those positions which satisfy the definitions for “class” and “classify” and which are covered under the DOT Pay Plan merit system standards or the West Virginia Division of Personnel classified service.~~

~~— 2.17. “Classify” means 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.~~

~~— 2.18. “Competitive list” or “register” means 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 Department of Transportation’s examination for the competitive appointment of classified employees.~~

~~— 2.19. “Date and Time of Separation” means the 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 Department of Transportation, or due to disability as verified by a physician or practitioner.~~

~~— 2.20. “Day” means an interval of 24 hours as represented by a calendar day, unless otherwise specified.~~

~~— 2.21. “Demotion” means 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.~~

~~— 2.22. “Demotion with Prejudice” means a disciplinary action resulting in the reduction in pay and a change in job class to a lower job class.~~

~~— 2.23. “Demotion without Prejudice” means a reduction in pay and 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.~~

~~2.24. “Department” means the Department of Transportation.~~

~~— 2.25. “Disability” means 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.~~

~~2.26. “Discretionary” means within a choice or judgment.~~

~~2.27. “Dismissal” means an involuntary separation of employment of a classified employee initiated by an agency head for any reason specified in this rule or for good cause; involuntary separation of employment of a classified exempt employee with or without cause.~~

~~2.28. “Division” means the Division of Human Resources within the Department of Transportation.~~

~~2.29. “Effective Date” means the established date an action takes place.~~

~~— 2.30. “Eligible Applicant” or “Eligible” means an applicant accepted for an examination who meets all minimum requirements and whose name is listed on the register or competitive list established for the class of position.~~

~~— 2.31. “Employee” means a person who lawfully occupies a position in a DOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship.~~

~~— 2.32. “Examination” means 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.~~

~~— 2.33. “Fitness” means suitability to perform all essential duties of a position by virtue of meeting the established minimum qualifications and being otherwise qualified.~~

~~— 2.34. “Full time Employee” means any employee who works the full work schedule established for the agency.~~

~~— 2.35. “Hourly Rate” means 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.~~

~~— 2.36. “Immediate Family” means 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.~~

~~— 2.37. “Incapacity” means an illness of, or injury to, an employee which temporarily prevents him or her from performing the essential duties of his or her position.~~

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- ~~2.38. "Incumbent" means any employee occupying a position.~~
- ~~2.39. "Job Abandonment" means the unauthorized absence from work under such conditions as to be synonymous with resignation.~~
- ~~2.40. "Last Date and Time on Payroll" means the calendar date and hour an employee's pay ceases.~~
- ~~2.41. "Last Day of Work" means the last calendar date and hour an employee is physically on the job.~~
- ~~2.42. "Lateral Class Change" means the movement of any employee from one class to another class in the same compensation range.~~
- ~~2.43. "Layoff" means a reduction in the number of employees resulting in involuntary separation from employment or reduction in work schedule due to business necessity.~~
- ~~2.44. "Minimum Qualifications" means the least experience, training, or a combination of both required by the Division for employment in a class of position and admission to an examination for that class of position.~~
- ~~2.45. "Month" means any of the twelve parts into which the calendar year is divided.~~
- ~~2.46. "Occupational Group" means a category of job classes grouped by similarity of occupation or profession.~~
- ~~2.47. "Open Competitive Examination" means an examination which permits the competition of all persons who meet the publicly announced minimum requirements for a class of position.~~
- ~~2.48. "Organization" means a hiring unit within the Department of Transportation.~~
- ~~2.49. "Original Appointment" means initial employment of an individual into the Department's Pay Plan merit system, or the West Virginia Division of Personnel's merit system, as a result of selection from a certification of names from a register or competitive list established by open competitive examination or from a preference register.~~
- ~~2.50. "Part time Employee" means any person who works less than the full time work schedule established for an agency.~~
- ~~2.51. "Pay Differential" means a type of salary adjustment to address circumstances including, but not limited to, class wide recruitment or retention problems, regionally specific geographic pay disparities, apprenticeship program requirements, shift differentials for specified work periods, and temporary upgrade programs.~~
- ~~2.52. "Pay Increment" means the step increase amounts established to implement pay practices including hiring rates, salary advancements, and pay on promotion within the DOT Pay Plan.~~
- ~~2.53. "Pay Plan" means a compensation schedule for the Department's classified service consistent with merit principles.~~

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~~2.54. “Pay Rate” means one of the monthly or hourly rates within the compensation range established 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.~~

~~2.55. “Per Diem” means a daily rate of pay.~~

~~2.56. “Permanent Employee” means any classified employee who has completed the probationary period prescribed for the job class, or any classified exempt employee who was hired to fill a position for an unlimited period of time, notwithstanding the agency’s right to terminate the employee for cause for a classified exempt employee, at the will and pleasure of the agency head.~~

~~2.57. “Physician or practitioner” means a person licensed under the laws of a state to practice medicine or a medical practitioner.~~

~~2.58. “Posting” means the method of announcing a job vacancy either internally or externally.~~

~~2.58.a. An internal posting is a job vacancy announced to all current and former certified permanent state employees in the classified service through the Division’s posting system.~~

~~2.58.b. An external posting is an announcement to the general public through a public service announcement that the Division is accepting applications for an examination.~~

~~2.59. “Position” means an authorized and identified group of duties and responsibilities assigned by the Division requiring the full-time or part-time employment of at least one person.~~

~~2.60. “Position Description” means 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. It may be prescribed by the Division.~~

~~2.61. “Probationary Period” means a specified trial work period designed to test the fitness of an employee for the position for which an original appointment has been made.~~

~~2.62. “Promotion” means a change in the status of an employee from a position in one class to a vacant position in another class of higher rank as measured by salary range or increased level of duties, responsibilities, or both.~~

~~2.63. “Reallocation” means reassignment of a position by the Division from one class to a different class on the basis of a change in the kind or level of duties or a combination of both, assigned to the position, or to address a misalignment of title and duties.~~

~~2.64. “Recall” means the re-employment from a recall list of a former permanent classified employee separated due to layoff.~~

~~2.65. “Reclassification” means the revision by the Division 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.~~

~~2.66. “Reinstatement” means a type of re-employment of a former permanent classified employee.~~

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~~2.67. "Resignation" means voluntary separation from employment, including job abandonment, by an employee.~~

~~2.68. "Secretary" means the Department of Transportation Cabinet Secretary.~~

~~2.69. "Separation" means separation from employment that may be either voluntary or involuntary.~~

~~2.70. "Sick Leave" means an accrued benefit of paid time off for illnesses, injuries and other health related circumstances as specified by this rule.~~

~~2.71. "Suspension" means 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 types of suspension:~~

~~2.71.a. "Disciplinary Suspension" means a disciplinary action for cause.~~

~~2.71.b. "Non-disciplinary Suspension" means 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.~~

~~2.72. "Temporary Employment" means employment exempt from the classified service for a period generally not to exceed 1,000 work hours per twelve month period.~~

~~2.73. "Terminal annual leave" means the balance of an employee's accrued and unused annual leave as of that employee's last day of work.~~

~~2.74. "Vacancy" means an unfilled or soon to be vacated budgeted position in the classified service.~~

~~2.75. "Veteran" means any person who meets the requirements set forth in W. Va. Code § 6-13-1, et seq.~~

~~2.76. "Veterans' Preference Points" means an additional five points added to the final passing score on an open competitive examination of any veteran as defined by this rule. An additional five points are available to those veterans who also have a current and compensable service connected disability or who have received a Purple Heart award.~~

~~2.77. "Work Schedule" means the designation of the periods of time during which work is performed.~~

~~2.78. "Workday" 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.~~

~~2.79. "Workweek" means the time period of seven 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.~~

~~2.80. "Year" means a 12 consecutive month period, unless otherwise specified.~~

§217-1-3. Classification Plan.

~~3.1. Class Specifications.~~

~~3.1.1. 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 agency head to prescribe or alter the duties of any position.~~

~~3.1.2. Class specifications are descriptive and are not restrictive. The fact that all of the actual tasks performed in 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.~~

~~3.1.3. The statement of minimum qualifications expresses the lowest acceptable level of education, experience, licensure, and 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.~~

~~3.1.4. In cases of recruitment difficulties or unique position requirements, the Division, in collaboration with the agency head, may use its discretion in interpreting minimum experience, training, licensure, and professional standards.~~

~~3.1.5. The Division 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 or experience requirements may be made in specific examination announcements for particular positions, even though these provisions are not part of the class specification.~~

~~3.2. Classification of Positions. The Division on behalf of the Cabinet Secretary has the sole authority for the classification process.~~

~~3.2.1. The Division 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.~~

~~3.2.2. 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.~~

~~3.2.3. The Division may authorize job audits for the purpose of position classification and for maintaining the integrity of the classification system.~~

~~3.3. Position Descriptions.~~

~~3.3.1. Position description forms shall be prescribed by the Division.~~

~~3.3.2. The position description is an official record of the duties and responsibilities assigned to a position and shall be used by the Division to allocate the position to its proper class.~~

~~3.3.3. The position description shall include a current description of specific duties, responsibilities, and other pertinent information about the position.~~

~~3.3.4. The position description shall not be construed in any way to limit the expressed or implied authority of the agency head to prescribe or alter the duties of any position.~~

~~3.3.5. Position descriptions shall be kept current by the agency head for each position under his or her jurisdiction. When the agency head significantly alters the duties and responsibilities of a position, he or she shall provide a revised position description to the Division, certifying by his or her signature its accuracy and completeness.~~

~~3.3.6. If an agency head fails to notify the Division of significant alterations in the duties and responsibilities of a position, the incumbent in the position may file with the Division a written request for a review of his or her position.~~

~~3.3.7. Falsification of information on position description forms may be grounds for disciplinary action.~~

~~3.4. Reclassification.~~

~~3.4.1. Upon its own initiative, or at the request of an agency head, the Division may reclassify positions by the creation or elimination of classes or by revision of the definition of the work. The agency head shall provide to the Division a current description of the duties and responsibilities assigned to each position affected.~~

~~3.4.2. 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 as appropriate. 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 apply.~~

~~3.4.3. Any incumbent in a reclassified position has the right to appeal. After filing with the Division, a written request for reconsideration, the employee and agency head shall be given a reasonable opportunity to be heard by the Division.~~

~~3.5. Position Reallocation. Whenever significant changes occur in the duties and responsibilities permanently assigned to a position, the Division shall reallocate the position to its proper class. The incumbent or the agency head may seek a reconsideration of the decision by submitting a written request to the Division within 15 working days of the notification of the decision.~~

~~3.5.1. The Division shall not reallocate a position based on temporary changes in the duties and responsibilities assigned to the position.~~

~~3.5.2. When a position is reallocated to a different class, the incumbent is not 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. 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.~~

~~3.6. Temporary Classification Upgrade. With the approval of the Division, an agency head 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.~~

~~3.6.1. A temporary classification upgrade, except for classes allocated to the approved hourly pay schedule, shall be for a continuous period of no less than 30 days and no more than six months.~~

~~3.6.2. 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 or appointive position without loss of his or her classified status.~~

~~3.6.3. The Division, at its discretion, may extend the period of a temporary classification upgrade upon written request from the agency head justifying the need for the extension.~~

~~3.6.4. Employees in the classified service approved for temporary upgrade to a classified position must be permanent employees and meet the minimum requirements for the position to which they will be temporarily upgraded.~~

~~3.7. Classification Plan for the Classified Exempt Service. — All positions not in the classified service, are included in a classification plan known as the classified exempt service.~~

~~3.7.1. Upon the recommendation of the Secretary, the Division shall adopt and make effective a classification plan for the classified exempt employees of the Department.~~

~~3.7.2. Each agency head shall report to the Division the establishment of new classified exempt positions or any material changes in the duties and responsibilities of existing positions in the classified exempt service. The Division may at any time require the agency head to submit a statement of the duties and responsibilities of incumbents of any position in the classified exempt service.~~

~~3.7.3. The Division shall allocate classified exempt positions in the same manner as classified positions.~~

~~3.7.4. An agency head 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.~~

~~3.7.5. When a change is made to the classified or classified exempt status of a position, any incumbent in an allocated position has the right to appeal. After filing a written request for reconsideration with the Division, the employee and agency head shall be given a reasonable opportunity to be heard by the Division. The incumbent or the agency head may seek a reconsideration of the decision by submitting a written request to the Division within 15 working days from the notification of the decision.~~

~~§217-1.4. Pay Plan and Salary Administration.~~

~~The following salary requirements in this section apply to classified employees. The Division, in cooperation with the agency heads, shall establish a policy to implement the provisions of this section.~~

~~4.1. Purpose and Intent. — The purpose and intent of the pay plan is to attract and retain qualified employees in the classified service. The Division 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.~~

~~4.2. Preparation of the DOT Pay Plan. — After consultation with the agency heads and agency fiscal officers, the Division shall prepare and submit the pay plan to the Secretary. The DOT 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 Division may propose periodic amendments to the DOT Pay Plan in the same manner it was adopted.~~

~~4.3. Adoption of the DOT Pay Plan. The plan or revised plan becomes effective only after it has been approved by the Secretary. The approved pay plan constitutes the official schedule of salaries for the classified service of the Department of Transportation.~~

~~4.4. Implementation of the DOT Pay Plan.~~

~~4.4.1. Assignment of Classes. The Division shall assign each class of positions to an appropriate range of compensation consistent with the duties outlined in the class specification. No salary range shall be approved by the Division unless it conforms to sound compensation practices.~~

~~4.4.2. Entry Salary. The entry salary for any employee shall be no less than the minimum of the compensation range for the job classification. The Division may authorize appointment above the minimum for an individual possessing pertinent training or experience above the minimum required for the class. The Division may authorize appointment at a rate above the market rate where the agency head can substantiate severe or unusual recruiting difficulties for the job class.~~

~~4.4.3. Standard Rates of Pay. The DOT Pay Plan provides standard compensation rates for all classes of positions in the classified service unless specifically 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. An agency head may, in limited and unusual circumstances, propose an increase for an individual above the maximum compensation for a job classification if the agency head establishes that the employee provides the agency significantly exceptional value or a highly sought after skill or ability that warrants the increase. Any such proposed increase must be approved by the Secretary.~~

~~4.4.4. Additional Pay. Agency heads may not make additions to the regular salary of any employee except for authorized overtime, Division approved pay differentials and monetary incentives, or other statutorily required or authorized payments.~~

~~4.4.5. Availability of Funds. Each agency head and his or her fiscal officer will certify that funds for salary adjustments are available.~~

~~4.4.6. Salary Adjustments.~~

~~4.4.6.a. Establishment of a New DOT Pay Plan.~~

~~4.4.6.a.1. Upon adoption of a new DOT Pay Plan for the Department of Transportation, the Division 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.~~

~~4.4.6.a.2. 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.~~

~~4.4.6.a.3. An incumbent whose salary falls above the maximum rate of the new compensation range shall maintain his or her current salary.~~

~~4.4.6.b. Pay on Reclassification.~~

~~4.4.6.b.1. When a class is reassigned by the Division 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 Division 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.~~

~~4.4.6.b.2. The Division may approve or modify a plan of implementation on reclassification based on documented recruitment or retention difficulties or consideration of pay equity for reclassified employees.~~

~~4.4.6.c. 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.~~

~~4.4.6.d. Pay Differentials. The Division may approve the establishment of pay differentials to address circumstances which apply to reasonably defined groups of employees.~~

~~4.4.6.e. 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.~~

~~4.5. Pay on Promotion. When an employee is promoted, the employee's pay shall be adjusted as follows:~~

~~4.5.1. 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 in accordance with the established DOT Pay Plan principles or a maximum established by the Division, except where an employee accepts a lesser increase within the compensation range to obtain the position. The employee's pay may not exceed the maximum of the range except as provided in subdivision 4.5.b. of this rule.~~

~~4.5.2. Additional Increase. The Division may authorize additional incremental increases, as recommended by the agency head, to an employee being promoted if the employee has sufficient qualifications in excess of the minimum required for the new class, as certified by the Division. The employee must possess pertinent experience or an equivalent amount of pertinent training for each additional incremental increase granted.~~

~~4.6. Pay on Demotion.~~

~~4.6.1. Demotion Without Prejudice. The agency shall reduce the pay rate of any employee who is demoted without prejudice in accordance with approved DOT Pay Plan principles as long as the employee's pay rate is within the compensation range of the job class to which the employee is demoted.~~

~~4.6.2. Demotion With Prejudice. The agency shall reduce the pay rate of any employee who is demoted with prejudice in accordance with approved DOT Pay Plan principles as long as the employee's pay rate is within the compensation range of the job class to which the employee is demoted.~~

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~~4.7. Pay on Lateral Class Change.— Any 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 Division has approved, or the Legislature has authorized, a higher compensation range for the job class.~~

~~4.8. Pay on Reinstatement.— The salary for an employee who is reinstated shall be established in accordance with subdivision 5.4.b. of this rule.~~

~~4.9. Salary Advancements.— Salary advancements are limited to permanent employees and shall not exceed the increase amount established by the Division.~~

~~4.10. Annual Increment Increase.— The Division shall establish uniform procedures which shall be followed by all DOT agencies for providing an annual increment increase pursuant to W. Va. Code §5-5-2.~~

~~4.11. Leave Donation Program.— the Division shall establish uniform procedures which shall be followed by all Dot agencies for providing a leave donation program pursuant to W. Va. Code §29-6-27.~~

§217-1-5. Applications and Examinations.

5.1. Character of Examinations.

~~5.1.1. 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.~~

~~5.1.2. 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.~~

~~5.1.3. All examination scoring and weighting procedures shall be consistently applied and based on objective job criteria.~~

~~5.2. Notice of Examinations.— The Division shall give public announcement of all open competitive examinations at least seven 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 Division shall develop all announced qualifications for examination based on information contained in class specifications, position descriptions, postings, or job analysis information obtained with the participation of appropriate job experts in affected agencies.~~

5.3. Filing Applications.

~~5.3.1. All applications shall be made on forms prescribed by the Division and must be filed with the Division 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 agency head or~~

~~Division may consider necessary. All applications shall be signed or affirmed by the applicant. The Division 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 Division may verify any information provided on or with an application.~~

~~5.3.2. The Division may provide for continuous receipt of applications and for conducting examinations as needed.~~

~~5.4. Disqualification of Applicants.~~

~~5.4.1. The Division 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:~~

~~5.4.1.a. he or she is found to lack any of the requirements established for the position or class;~~

~~5.4.1.b. he or she has a disability and is incapable of performing the essential functions of positions in the class with or without reasonable accommodation;~~

~~5.4.1.c. he or she has been convicted of a crime which has a reasonable connection to the position or class for which he or she is applying;~~

~~5.4.1.d. 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;~~

~~5.4.1.e. he or she has previously been dismissed, or resigned in lieu of dismissal, from any state public employment for delinquency, misconduct, or other similar cause;~~

~~5.4.1.f. he or she has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;~~

~~5.4.1.g. he or she has directly or indirectly obtained information regarding examinations to which he or she was not entitled;~~

~~5.4.1.h. he or she has failed to submit his or her application correctly or within the prescribed time limits;~~

~~5.4.1.i. he or she has taken part in the compilation, administration, or correction of the examination;~~

~~5.4.1.j. he or she has taken the same exact examination within the prescribed re-test waiting period;~~

~~5.4.1.k. at least two 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;~~

~~5.4.1.l. 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;~~

~~5.4.1.m. he or she is not eligible to work in the United States;~~

~~5.4.1.n. he or she fails to comply with any other reasonable requirements established by the agency head or Division for the position;~~

~~5.4.1.o. 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 property; or,~~

~~5.4.1.p. he or she has otherwise violated provisions of this rule or law.~~

~~5.4.2. 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 will be disqualified from employment as provided in this rule.~~

~~5.4.3. The Division will notify a disqualified applicant of his or her disqualification. Any applicant whose application for examination has been rejected may request that the Division reconsider his or her qualifications. The Division shall consider the request if it is submitted electronically and received no later than three working days following the date the rejection notice was sent. Within seven days after a properly submitted request for reconsideration is received, the Division shall report the decision electronically to the applicant. The Division shall determine whether uniform rating or review procedures have been applied. A rating in any part of an examination shall not be changed unless the Division finds that an error has been made. Any correction resulting from the reconsideration will not affect a certification or appointment that has been made prior to the correction.~~

~~5.4.4. The Division shall provide and the West Virginia Division of Personnel shall exchange names of persons disqualified under this section and subdivision 6.4. of to the West Virginia Division of Personnel Rule, 143CSR1.~~

~~5.5. Conduct of Examinations.~~

~~5.5.1. Electronic testing shall be conducted for classifications as deemed necessary by the agency head or the Division.~~

~~5.6. Scoring Examinations.~~

~~5.6.1. The Division shall determine a final score for each applicant's examination. All applicants for the same position shall be accorded uniform and equal treatment in all phases of the examination procedures.~~

~~5.6.2. Any veteran, as defined in this rule, who claims veterans' preference and who has made a passing grade in an open competitive examination shall have five points added to his or her final earned score. An additional five 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.~~

~~5.6.2.a. Any person claiming veterans' preference or disability preference shall submit satisfactory proof of his or her service, award, or disability to the Division.~~

~~5.6.2.b. 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.~~

~~5.6.2.c. Veterans' preference points are not added to final passing scores on promotional examinations.~~

~~5.6.3. The Division shall utilize appropriate professional standards, techniques, and procedures in rating the results of examinations and in determining the final scores of competitors.~~

~~5.7. Rating Training and Experience. — If training and experience form a part of the total examination, the Division 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.~~

~~5.8. 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 competitive list or register established. The Division shall notify an applicant who fails any part of the examination or the total examination.~~

~~5.9. Special Examination. — The Division 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 or the applicants' record of past performance, experience, and training.~~

~~5.10. Examination Records. — The Division 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.~~

~~§217-1-6. Registers.~~

~~6.1. Establishment of Registers.~~

~~6.1.1. Competitive Registers. — After each examination, the Division 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, except for the Transportation Worker 1 classification and internal applicants.~~

~~6.1.2. Preference Registers. — After the layoff of permanent classified employees, the Division 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.~~

~~6.2. Duration of Registers.~~

~~6.2.1. Competitive Registers. — The life of scores on a register shall be adequate to meet the recruitment needs of the agency. If the Division reduces the life of a register, each eligible remaining on the register will be notified to this effect.~~

~~6.2.2. Preference Registers. — A laid off permanent classified employee is eligible for employment from a preference register for no longer than 90 days after placement on the preference register and the eligibility ceases immediately upon employment in a classified position.~~

~~6.2.3. Notice of Vacancies. — It is the duty of the agency head to notify the Division as far in advance as possible of vacancies which may occur in the agency. The Division 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.~~

~~6.2.4. The Division shall nullify a register for any of the following reasons:~~

~~6.2.4.a. Changes in the minimum qualifications or classification standards of a class of positions;~~

~~6.2.4.b. Elimination of the class for which the register was established; or,~~

~~6.2.4.c. Substantial revision of the examination used to establish the register.~~

~~6.2.5. When a register is declared null and void by the Division, the Division shall notify the affected applicants of the action.~~

~~6.3. Removal of Names from Registers.~~

~~6.3.1. Competitive Registers. The Division may remove the name of an eligible from a register:~~

~~6.3.1.a. for any of the causes stipulated in subdivision 5.4.a. of this rule;~~

~~6.3.1.b. on evidence that the eligible cannot be located;~~

~~6.3.1.c. 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,~~

~~6.3.1.d. 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.~~

~~6.3.2. Preference Registers. — The Division may remove the name of an eligible from a preference register:~~

~~6.3.2.a. for any of the causes for removal stipulated in this rule;~~

~~6.3.2.b. upon appointment of the eligible to a classified position; or,~~

~~6.3.2.c. on evidence that the eligible does not meet the applicable standards of qualifications and fitness for a position.~~

~~6.3.3. The Division 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 Division of changes.~~

~~6.3.4. Any person whose name has been removed from a register allegedly for reasons specified in this rule may appeal to the Division for reconsideration. The appeal must be filed in writing with the Division within seven 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.~~

~~6.3.5. The Division shall review all relevant information to determine if the action appealed was taken in accordance with this rule. Within 30 days after a properly submitted appeal is received, the Division shall report the decision in writing to the applicant.~~

~~6.4. Reinstatement to Register.~~

~~6.4.1. A person whose name was 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.~~

~~6.4.2. Reinstatement to a register as provided in the previous subdivision is subject to the following conditions:~~

~~6.4.2.a. The person petitioning for reinstatement shall make his or her request to the Division electronically and shall furnish whatever information the Division may require.~~

~~6.4.2.b. 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 Division may require that he or she pass an appropriate examination in the case of position classes requiring special skills.~~

~~6.4.2.c. No person may be reinstated to a register from which he or she has been disqualified under this rule.~~

~~§217-1-7. Certification of Eligibles.~~

~~7.1. 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 agency head to the Division in the manner prescribed by the Division. This requisition shall state the number of positions to be filled in each class, identifying each class title and all other pertinent information.~~

~~7.2. Certification Methods.~~

~~7.2.1. Nothing in this subdivision shall be construed as altering the exhaustion point of a register as described in this rule.~~

~~7.2.1.a. Upon receipt of a request, the Division 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 Division shall certify and submit to the agency head the names of any persons meeting the minimum qualifications for the classification. The Division may certify additional names at its discretion to compensate for possible unavailable eligibles.~~

~~7.2.1.b. If the competitive register established as a result of a Division examination for a specific class of position is exhausted, the Division may certify additional names from the register, or registers, most appropriate. If there is no register which the Division considers appropriate, then the Division may certify and submit names from a register established as described in this section.~~

~~7.2.1.c. Appointments may be made from a certification anytime within 60 days of the date of the certification, after which the certification is void. An extension may be granted by the Division upon request.~~

~~7.2.2. If, in the exercise of his or her choice provided under Section eight of this rule, the agency head passes over the name of an eligible on a competitive register in connection with three separate appointments he or she has made from the register, written request may be made of the Division that the name of the eligible be omitted from any subsequent certification of the same organization from the same competitive register for a period of no less than one year from the date of the request. The name of the eligible shall thereafter not be certified to the agency head from that register for future vacancies in that job class, or from subsequent registers established for that class of position. If, after that one 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.~~

~~7.2.3. An eligible may be considered not available by the Division if he or she fails to reply to electronic communication i.e., telephone or electronic mail after five days.~~

~~7.3. 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 Division.~~

~~7.3.1. If a specific position requires special qualifications that are not common to all positions in that class, the agency 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.~~

~~7.3.2. The Division may limit certification to candidates available to work at the location of the job. The Division may further limit certification geographically when the duties of the position require rapid response to unscheduled emergencies during off duty hours. The agency head shall provide written justification of any request for geographic selective certification based on essential duties of the position. The agency head shall establish the boundaries of the acceptable geographic areas based on the specific location and demands of the job. The agency head shall consider candidates living outside the boundary if they are willing to relocate to the area.~~

~~7.4. Corrections of Errors.~~

~~7.4.1. 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 Division and agency head shall withdraw the erroneous certification and make a correct certification. If a certification is to fill more than one position, the agency head 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. Agencies shall only make conditional offers of employment to applicants until such time the personnel transaction to appoint has received all necessary approvals.~~

~~7.4.2. 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 subdivisions 5.4 or 6.4 of this rule, other than not meeting minimum qualifications, the agency head shall withdraw the certification and appointment as provided in Section 8 of this rule unless the applicant provides verification to the agency that:~~

~~7.4.2.a. acceptance of the appointment caused the named applicant to change his or her place of residence; or,~~

~~7.4.2.b. acceptance of the appointment caused the named applicant to resign from a position that cannot be regained.~~

~~7.4.3. 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 this section, the appointment shall continue. Provided, the applicant or employee is not disqualified for any of the reasons specified in subdivision 5.4. or 6.4. of this rule other than not meeting minimum qualifications and it has been determined by the Division and hiring agency that there is no undue risk in the applicant performing the duties. If the applicant or employee is not qualified to perform the duties of the position, the agency 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 agency head, the provisions of this rule regarding separations apply.~~

~~§217-1-8. Appointments.~~

~~8.1. Appointments to Positions Added to the DOT Pay Plan Classified Service.~~

~~8.1.1. When an agency or parts of an agency are added to the classified service through affiliation by action of the legislature, executive order of the Governor, or with the consent of the Division and the agency head concerned, a date for the addition shall be fixed by agreement.~~

~~8.1.2. All appointments made on and after that date to the positions added to the classified service shall be made in accordance with this rule.~~

~~8.1.3. The Division shall administer qualifying examinations to any person employed in a position added to the classified service. If recommended by the agency head, the Division may admit an employee to a qualifying examination for the class to which his or her position is allocated. A person passing the qualifying examination may be selected for probationary employment. The qualifying examinations shall be completed within six 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.~~

~~8.1.4. In making the appointments provided for in this section of this rule the agency head may count employment in the agency immediately prior to the appointments as part or all of the probationary period required under Section 9. of this rule. The agency head shall promptly report to the Division his or her decision for the records.~~

~~8.2. Original Appointments.~~

~~8.2.1. An agency shall make all original appointments to classified positions in accordance with this rule. An agency shall interview and consider qualified eligibles on the preference register in accordance with subsection 11.4.j. of this rule. Upon exhaustion of the preference register, the agency shall consider other eligible applicants. The agency may exclude the names of those eligibles who failed to answer or who declined appointment or of those eligibles to whom the agency offers an objection in writing based on subsection 5.4. of this rule and the objection is sustained by the Division.~~

~~8.2.2. In selecting persons from among those certified, the agency 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 agency to the Division and shall include a statement by the agency head 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.~~

~~8.2.3. If the eligible selected declines the appointment, the agency shall transmit evidence of declination and other data to the Division for the permanent record. The agency may consider an eligible as having declined appointment if the eligible fails to reply to electronic communication, i.e., telephone or electronic mail after three days. 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 agency and the Division, he or she shall be considered to have declined the appointment.~~

~~8.3. Temporary Employment. Agencies may employ individuals for a limited period of time generally not to exceed 1,000 hours in any twelve month period in accordance with the provisions of this rule. The Secretary may grant an extension if deemed necessary. 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 an agency in accordance with W. Va. Code §23-4-1 et seq.~~

~~8.4. Posting of Job Openings. Whenever a job opening occurs in the classified service, the agency 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 agency 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 seven 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.~~

~~8.4.1. The term job opening refers to any vacancy to be filled by original appointment, promotion, demotion without prejudice, lateral class change, reinstatement, or transfer.~~

~~8.4.2. 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 level or range that will be considered, the full time equivalent for the position, and the job location.~~

~~8.4.3. 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 seven 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. At the discretion of the agency, the posting application period may be extended past the required seven days to accept applications after the closing date.~~

~~8.4.4. The agency shall give due consideration to those employees who apply and are eligible for the posted vacancy.~~

~~8.4.5. If a posted vacancy is not filled within one year of the established closing date, the agency must re-post the vacancy prior to an appointment to the vacant position.~~

~~8.4.6. The vacancy posting requirements in this subdivision apply to all classified position vacancies except vacancies filled as a result of employees exercising bumping or recall rights, demotions with prejudice or disciplinary transfers for cause.~~

~~8.4.7. 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 working days of employment, the agency 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 working days and the new appointment is made within 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 one year limitation specified in subdivision 8.4.e. of this subsection.~~

~~§217-1-9. Probationary Period.~~

~~9.1. Nature, Purpose, and Duration.~~

~~9.1.1. The probationary period is a trial work period designed to allow the agency 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 agency is to 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.~~

~~9.1.2. Agencies will make all original appointments to permanent positions from officially promulgated registers for a probationary period of not more than one year. The Division shall fix the length of the probationary period for each class of position. The agency shall notify the Division when a probationary period has been completed and permanent status has been granted.~~

~~9.1.3. 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.~~

~~9.1.4. The probationary period for part time employees shall be for an equivalent amount of work hours as that for a full time employee in the same classification i.e., a six-month probationary period for a full time employee would typically equate to 1,040 hours.~~

~~9.2. Conditions Preliminary to Permanent Appointment.~~

~~9.2.1. Four weeks prior to the end of the probationary period, the agency must 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 must 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 Division. If the agency determines that the services of the employee will be retained, the~~

agency will notify the employee and the Division of the action no later than the last day of the probationary period.

~~9.2.2. In the event the agency does not act on the status of a probationary employee before the expiration of the probationary period, either to retain or dismiss, the employee will attain permanent status. Permanent status begins the first day following the expiration of the probationary period.~~

~~9.3. Transfers during Probation. — An agency shall not transfer an employee during his or her probationary period.~~

~~9.4. Dismissal during Probation.~~

~~9.4.1. If at any time during the probationary period, the agency determines that the services of the employee are unsatisfactory, the agency may dismiss the employee in accordance with section 11 of this rule. If the agency gives the 15 days' notice on or before the last day of the probationary period, the probationary period will be extended 15 days from the date of the notice. The employee does not attain permanent status.~~

~~9.4.2. The Division 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 section 6.4 of this rule, but the Division shall not in the future certify the name of that person to the same agency from the same register.~~

~~§217-10. Promotions, Demotions and Transfers.~~

~~10.1. Method of Making Promotions.~~

~~10.1.1. In filling vacancies, agencies must 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 agency may fill a vacancy by promotion, after consideration of the eligible permanent employees in the agency or in the classified service based on demonstrated capacity and quality and length of service.~~

~~10.1.2. The agency 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 may require the candidate to qualify for the new position by a promotional competitive or non-competitive examination administered by the Division.~~

~~10.2. Demotions. — An agency head may demote an employee with or without prejudice. The agency shall file the reasons for the demotion and the reply, if any, with the Division. Prior to the effective date of the demotion, the agency head, or his or her designee shall:~~

~~10.2.1. Meet with the employee in a predetermination conference and advise the employee of the contemplated demotion. The conference is not required when the demotion is requested by the employee, voluntarily and without duress, to accept a posted position for which the employee has applied;~~

~~10.2.2. Give the employee oral notice confirmed in writing within three working days, or written notice of the specific reason or reasons for the demotion; and,~~

~~10.2.3. Give the employee a minimum of 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 agency head, or his or her designee. The 15 days' notice is not required when the demotion is requested by the employee, voluntarily and without duress, to accept a posted position for which the employee has applied.

~~10.3. Transfers.~~

~~10.3.1. Subject to the posting requirements provided in subsection 8.5. of this rule, an agency 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 agency 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.~~

~~10.3.2. Agencies must report all inter and intra agency transfers within a class to the Division on appropriate forms prior to the time of the transfer. The Division shall approve transfers to comparable classes prior to the transfers and shall require that the employees meet the minimum qualifications of the new classes.~~

~~§217-11. Separations, Suspension, and Reinstatement.~~

~~11.1. Resignation.~~

~~11.1.1. An employee who resigns shall present the reasons for the resignation in writing to the agency. The agency shall forward a copy of the resignation to the Division which shall record the resignation. If a written resignation cannot be obtained, the agency shall notify the Division in writing of the resignation of the employee and the circumstances of the resignation.~~

~~11.1.2. The agency shall notify the Division when an employee resigns in lieu of being dismissed. The 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 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 5.4. 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 subsection 9.4. of this rule.~~

~~11.2. Dismissal.~~

~~11.2.1. An agency may dismiss any employee for cause. The agency shall file the reasons for dismissal and the reply, if any, with the Division. Prior to the effective date of the dismissal, the agency head or his or her designee shall:~~

~~11.2.1.a. 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;~~

~~11.2.1.b. Give the employee oral notice confirmed in writing within three working days, or written notice of the specific reason or reasons for the dismissal; and,~~

~~11.2.1.c. Give the employee a minimum of 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 agency head or his or her designee. Provided, that 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.~~

~~11.2.2. An agency 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 15 days after vacating the workplace. An agency shall not provide severance pay when notice is withheld as provided in this section. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the dismissal.~~

~~11.2.3. An agency may dismiss an employee for job abandonment who is absent from work for more than three consecutive workdays or scheduled shifts without notice to the agency 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 consecutive scheduled workdays. The dismissal is effective 15 days after the agency 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.~~

~~11.2.4. In providing any employment verification or reference to another state agency for a dismissed employee, or an employee who resigns in lieu of dismissal, the agency 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.~~

~~11.3. Suspension:~~

~~11.3.1. Disciplinary Suspension.— An agency 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. The agency shall file the statement of reasons for the suspension and the reply, if any, with the Division. Prior to the effective date of the suspension, the agency head, or his or her designee shall:~~

~~11.3.1.a. 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;~~

~~11.3.1.b. Give the employee oral notice confirmed in writing within three working days, or written notice of the specific reason or reasons for the suspension; and,~~

~~11.3.1.c. Give the employee a minimum of three 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 agency head or his or her designee. Provided, that three working days'~~

~~advance notice is not required in certain cases when the public interests are best served by withholding the notice.~~

~~11.3.2. Non-disciplinary Suspension. — An agency 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 agency shall give the employee oral notice confirmed in writing within three working days, or written notice of the specific reason or reasons for the suspension. A predetermination conference and three working days' advance notice are not required; however, the agency shall file the statement of reasons for the suspension and the reply, if any, with the Division. Upon completion of the investigation or criminal proceeding, the agency shall:~~

~~11.3.2.a. Initiate appropriate disciplinary action as provided in this rule; and,~~

~~11.3.2.b. 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 the retroactive wages may be mitigated by other earnings received during the period of suspension. Further, the agency 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.~~

~~11.4. Layoff.~~

~~11.4.1. When due to business necessity, as defined in this rule, it becomes necessary to implement the provisions of this subdivision, the agency may initiate a layoff in accordance with the provisions of this rule.~~

~~11.4.2. Organizational Unit. — The agency shall submit to the Division 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.~~

~~11.4.3. Prior to the separation, involuntary reduction in work schedule, or demotion without prejudice of any employee as a result of layoff, the agency shall file with the Division a proposed plan which shall include:~~

~~11.4.3.a. A statement of the circumstances requiring the layoff;~~

~~11.4.3.b. The approved organizational unit(s) in which the proposed layoff will take place; and,~~

~~11.4.3.c. A list of the employees in each class affected by the layoff in order of retention.~~

~~11.4.4. It is the duty of the Division to verify the details on which the lists are based and to notify the agency head in writing of the plan's approval or disapproval.~~

~~11.4.5. The plan followed by the agency shall be available, upon request in writing, to any employee or adversely affected former employee.~~

~~11.4.6. Order of Separation or Reduction.—After the agency has determined the number and class of positions to be abolished or reduced, and the Division 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:~~

~~11.4.6.a. Employees without permanent status in the same class or classes identified for layoff in the following order: seasonal, contract, temporary, exempt part time professional, 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.~~

~~11.4.6.b. 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, or periods during which the employee is paid temporary total disability benefits under the provisions of W. Va. Code §23-4-1 et seq. 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 agency head 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 Division in writing of the agreement and the results. In the event that the agency wishes to lay off a more tenured employee, the agency 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.~~

~~11.4.7. Bumping Rights.—A 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 Division 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 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 Division 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 range.~~

~~11.4.8. Salary Reductions for Layoff.—Salary reductions resulting from provisions of this subdivision shall follow subsection 4.6. of this rule for pay on demotion.~~

~~11.4.9. Recall.—Recall of a 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 agency. 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 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 or by e-mail with delivery confirmed, of the vacancy. It is the responsibility of the employee to notify the agency of any change in mailing and e-mail address.~~

~~11.4.10. Preference Hiring. — When filling vacancies, agencies shall, for a period of 90 days 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 demonstrated capacity, quality, and length of service 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.~~

~~11.4.11. Reporting. — The agency shall report the names of all employees who are to be laid off to the Division in writing no later than 30 days prior to the date notification of the layoff is mailed to the employee.~~

~~11.4.12. Appeals. — Employees may file appeals from layoffs in accordance with W. Va. Code §6C-2-1 et seq.~~

~~11.5. Like Penalties for Like Offenses. — In dismissals for cause and other disciplinary actions, agencies shall impose like penalties for like offenses.~~

~~11.6. Reinstatement.~~

~~11.6.1. A former employee who had attained permanent status under an agency of the Department of Transportation, who resigned in good standing, retired, or was laid off, is eligible for reinstatement. Provided, that he or she has been certified by the Division 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 Division may require the employee to pass a qualifying examination. The agency may refuse to reinstate a former employee for any of the causes stipulated in subsection 5.4 of this rule. Employees appointed through reinstatement shall serve a probationary period as provided in Section 9 of this rule.~~

~~11.6.2. Agencies shall reinstate all qualifying employees who left their employment to enter the armed forces of the United States to their former positions or to positions of like class, tenure and pay within two weeks of their requests. The employees must satisfy the eligibility standards set forth in federal law commonly known as the Uniformed Services Employment and Reemployment Rights Act (USERRA). Agencies 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. Agencies 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 subsection 13.4.h. of this rule.~~

~~11.6.3. Any qualifying employee who is reinstated to employment under the provisions of this section 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 employment status. He or she shall be credited with all annual and sick leave accumulated and unused at the time the military leave began. The agency shall uniformly apply the provisions in this subdivision to all qualifying employees who are reinstated to employment under the provisions of this section.~~

§217-1-12. Attendance and Leave.

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

~~————— 12.1. Official Holidays.~~

~~————— 12.1.1. 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; 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.~~

~~————— 12.1.2. 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 hours. To receive pay for the four hours of time off, an employee must work or be on approved paid leave for the preceding four hours of work time.~~

~~————— 12.1.3. 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 hours per holiday or four hours per one half day of time off as provided in this subsection.~~

~~————— 12.1.4. 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.~~

~~————— 12.1.5. 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. 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.~~

~~————— 12.1.6. Agencies shall make reasonable accommodation to an employee's religious holidays as required by law.~~

~~————— 12.1.7. An agency 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 working days prior to an election, an agency shall give any employee who has less than three hours of accrued leave, time away from work during hours polling places are open, up to three hours of paid time off between the opening and closing of the polls, to vote. The agency shall schedule such time off to avoid impairment or disruption of essential services and operations.~~

~~12.2. Agency Work Schedules. — Each agency 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, the day and time that the workweek begins and ends, and the time that each work shift begins and ends. The work schedule may include any work shifts the agency determines to be appropriate for the efficient operation of the agency, including work shifts comprising workdays of more than eight hours, or work weeks of less than five days, or both. The work schedules and changes must be submitted to the agency within 15 days after employees commence work under the schedule.~~

~~12.3. Annual Leave:~~

~~12.3.1. Amount, Accrual. — Except as otherwise noted in this rule, each permanent, full-time, part-time, and probationary, 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. — A "day" is based on the agency's established number of hours in the workday and shall not exceed eight 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, or hours of paid sick, 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.~~

Length of Service	—Accrual Rate: Hours	Carry forward Rate: Hours
Category	—Equal To	Equal To
Less than 5 years of qualifying service	—4.616660 hours/pay period	240 hours
5 years but less than 10 years of qualifying service	—5.550000 hours/pay period	240 hours
10 years but less than 15 years of qualifying service	—6.470000 hours/pay period	280 hours
15 years or more of qualifying service	—7.400000 hours/pay period	320 hours

~~12.3.2. Service to Qualify. — Qualifying service for length of service category is based on State employment or employment in the classified service, for any state agency, not of a limited term or temporary nature 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.~~

~~12.3.3. 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 agency. Annual leave may not be granted in advance of the employee's accrual of the leave.~~

~~12.3.4. Coverage.~~

~~12.3.4.a. Full time and part time permanent, probationary, employees accrue annual leave.~~

~~12.3.4.b. Temporary and seasonal employees do not accrue annual leave.~~

~~12.3.4.c. Annual leave accrued by part time permanent employees is computed in proportion to normal hours worked or hours of paid sick or annual leave during the pay period based on the proper length of service category.~~

~~12.3.5. Minimum Charge.—The minimum charge against annual leave is one quarter hour. Additional leave will 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.~~

~~12.3.6. Separation from Employment. The agency 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:~~

~~12.3.6.a. 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 is 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 Division shall be paid according to those standard procedures;~~

~~12.3.6.b. Lump Sum Payment.—Any eligible employee as defined in W. Va. Code §5-5-1 et seq. 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 will be calculated as if employment were continuing until the pay period during which the accrued annual leave is exhausted in accordance with paragraph one of this subdivision. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Division 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~~

~~12.3.6.c. 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 Division.~~

~~12.3.7. Transfer of Annual Leave.~~

~~12.3.7.a. 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 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.~~

~~12.3.7.b. Annual leave accrued while in exempt or classified exempt permanent employment shall be transferred to classified employment.~~

~~12.3.8. 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 12.4.g of this rule regarding the necessity for a physician's or 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.~~

~~12.4. Sick Leave.~~

~~12.4.1. Accrual. Except as otherwise provided in this rule, each permanent and probationary, employee shall receive accrued sick leave with pay and benefits. Sick leave is computed on the basis of hours equal to 5.550000 per pay period for fulltime employees; provided that a "day" is based on the agency's established number of hours in the workday and shall not exceed eight hours. Sick leave is accrued at the end of each pay period or on the last workday for separating employees. 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 12.8.c. of this rule. Prorated leave is computed in proportion to normal hours worked or hours of paid sick 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. There is unlimited accumulation of sick leave.~~

~~12.4.2. Coverage.~~

~~12.4.2.a. Full-time and part-time permanent, and probationary employees accrue sick leave.~~

~~12.4.2.b. Temporary and seasonal employees shall not accrue sick leave.~~

~~12.4.3.c. Sick leave accrued by part-time employees is computed in proportion to normal hours worked or hours of paid sick or annual leave during the pay period.~~

~~12.4.3. Minimum Charge. The minimum charge against sick leave is one-quarter 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.~~

~~12.4.4. Maximum Charge. The maximum charge against sick leave is one year per substantially continuous absence; however, the agency may, at his or her discretion, grant additional accrued sick leave.~~

If the agency does not approve additional sick leave, an eligible employee may request a medical leave of absence without pay upon exhaustion of his or her annual leave.

~~12.4.5. 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 or scheduled sick leave will be cancelled. Payment will not be made for sick leave subsequent to the date and time of separation, except as provided under paragraph 12.4e.1 of this section. Payment for sick leave paid subsequent to the date and time of separation shall be recovered, by civil action if necessary.~~

~~12.4.5.a. 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 Division.~~

~~12.4.5.b. 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 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.~~

~~12.4.6. 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 or practitioner on a prescribed physician's or 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 12 weeks. Paid leave taken for a qualifying serious health condition shall be designated as FMLA leave.~~

~~12.4.6.a. 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 agency. Agencies shall grant accrued sick leave requested by employees for the following reasons:~~

~~12.4.6.b. 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;~~

~~12.4.6.c. Death in the Immediate Family of the Employee. Sick leave shall be granted up to three scheduled workdays to an employee for the death of any member of his or her immediate family as defined in this rule. Such time is not deducted from the 80 hour family sick leave usage allowance. If sick leave is requested to commence immediately preceding or following the leave granted for death in the immediate family, a physician's or practitioner's statement is not required unless the employee is on leave restriction, or the additional sick leave exceeds three consecutive scheduled workdays. The employee must present verification of a qualifying death. In the absence of verification of a qualifying death, the employee will be required to present a physician's or practitioner's statement for the entire period of absence in accordance with subsections 12.4.7 b and c of this section;~~

~~12.4.6.d. Exposure to Contagious Disease. Sick leave shall be granted in the case of exposure to a contagious disease when a physician or practitioner determines and states in writing that the employee's presence on duty may jeopardize the health of others;~~

~~12.4.6.e. Pregnancy. — Incapacity due to pregnancy will be charged to sick leave under the same conditions applying to any illness;~~

~~12.4.6.f. 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;~~

~~12.4.6.g. Illness or Routine Dental and Medical Appointments — Immediate Family. — Employees may use up to 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. Such time will be 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,~~

~~12.4.6.h. 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 an agency in accordance with W. Va. Code §23-4-1 et seq. 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 will be placed on a medical leave of absence without pay as provided under subsection 12.8 of this section. 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.~~

~~12.4.7. Physician's or practitioner's Statement.~~

~~12.4.7.a. The Division shall prescribe a physician's or 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 Division, to obtain the necessary information. Agencies shall comply with FMLA provisions pertaining to certification and recertification, when applicable.~~

~~12.4.7.b. Any employee requesting sick leave, or annual leave upon exhaustion of sick leave, for themselves, a family member, or a combination thereof, for more than three consecutive scheduled working days or scheduled shifts must, immediately upon his or her return to work, provide a prescribed physician's or practitioner's statement from the attending physician or 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 consecutive scheduled workdays. The physician's or practitioner's statement 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 12.4.f.6. of this section for a member of the employee's immediate family.~~

~~12.4.7.c. In the absence of a prescribed physician's or practitioner's statement form, the entire absence shall be charged to unauthorized leave as provided in subsection 12.6 of this section, and the employee's pay shall be docked for the entire period of absence.~~

~~12.4.7.d. The agency shall notify the employee in writing that his or her pay is being docked. If the physician's or practitioner's statement from the attending physician or 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.

~~12.4.7.e. For extended periods of sick leave, a prescribed physician's or practitioner's statement form confirming the necessity for continued leave must be submitted within seven days of employee's knowledge of the commencement of the sick leave and must indicate a date the physician or practitioner will release the employee to return to work or a date the physician or practitioner will re-evaluate the employee's medical condition. For employees being re-evaluated, an additional physician's or 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 agency will immediately place the employee on unauthorized leave and notify the employee in writing of such action as provided in subsection 12.6 of this rule. The necessity for absence because of exposure to contagious disease must be verified on a prescribed physician's or practitioner's statement form regardless of the length of absence.~~

~~12.4.8. Return At Less Than Full Duty.~~

~~12.4.8.a. The agency 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 30 days. The terms of the return must be in writing. An employee may request to continue to work at less than full duty beyond the 30 day period. The request must be submitted to the agency at least five days before the end of the 30 day period. The agency will consider the request in the same manner as the original request.~~

~~12.4.8.b. The agency 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 or practitioner has released the employee to perform such work.~~

~~12.4.8.c. The agency 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:~~

~~12.4.8.c.1. the employee cannot perform the essential duties of his or her job with or without accommodation;~~

~~12.4.8.c.2. the nature of the employee's job is such that it may aggravate the employee's medical condition;~~

~~12.4.8.c.3. 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,~~

~~12.4.8.c.4. the approval of the request would seriously impair the conduct of the agency's business.~~

~~12.4.8.d. 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 agency may require additional information from the employee's physician or practitioner or other physician or practitioner regarding the employee's ability to perform the essential duties of his or her job, with or without accommodation.~~

~~12.4.9. Transfer of Sick Leave. — When a classified employee transfers or otherwise changes employment from any state 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 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.~~

~~12.4.10. 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 or practitioner's statement immediately upon return to work.~~

~~12.5. 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 this section, the agency may request appropriate substantiation of the employee's claim for leave, for example, verification of an illness of less than three consecutive scheduled workdays 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 agency shall give the employee prior written notice of the requirement for appropriate substantiation.~~

~~12.6. Unauthorized Leave. — When an employee is absent from work without authorization for sick or annual leave, the agency will dock the employee's pay for an equal amount of time paid during which no work was performed. The agency 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 agency shall use unauthorized leave only in cases when the employee fails to obtain the appropriate approval, according to agency policy, for the absence.~~

~~12.7. Overtime Work and Holiday Work. — An agency 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, relevant federal regulations, W. Va. Code §21-5C-1 *et seq.* and agency policy.~~

~~12.8. Leave of Absence Without Pay.~~

~~12.8.1. Personal Leave. — An agency, based on the agency's personnel needs, may grant a permanent, probationary, employee a leave of absence without pay for a specific period of time which normally should not exceed one year. The employee shall apply for the leave of absence in writing to the agency head no later than 30 days prior to commencement of the leave of absence unless the absence is medical in nature. Written approval of the agency head is required in all cases.~~

~~12.8.2. Family Leave. — The Division may establish uniform procedures, which must be followed by all agencies, for granting leave to eligible employees under the Parental Leave Act and FMLA.~~

~~12.8.3. Medical Leave; Notice to Employee.~~

~~12.8.3.a. An injured or ill permanent classified employee upon written application to the agency head shall be granted a medical leave of absence without pay not to exceed six months within a 12 month period provided:~~

~~12.8. 3. a.1. The employee:~~

~~12.8.3.a.1.A. 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 50 percent of the normal work schedule for part time permanent classified employees, during the 12 month period immediately preceding the beginning of the leave;~~

~~12.8.3.a.1.B. Makes application no later than five days following the exhaustion of all sick and annual leave; and,~~

~~12.8.3.a.1.C. 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 in accordance with W. Va. Code §23-4-1 et seq.~~

~~12.8.3.a.2. The employee's absence is due to an illness or injury which is verified by a physician or practitioner on the prescribed physician's or 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 reevaluated;~~

~~12.8.3.a.3. A prescribed physician's or practitioner's statement form is submitted each time the employee's condition is re-evaluated to confirm the necessity for continued leave; and,~~

~~12.8.3.a.4. The disability, as verified by a physician or 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.~~

~~12.8.3.b. The agency shall, at least 15 days prior to, if possible, but no later than five days prior to 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 this section. Notice is not required for subsequent absence for the same reason during the applicable 12 month period.~~

~~12.8.3.c. The 12 month period shall be calculated based upon a rolling 12 month period measured backward from the date of leave use. The amount of leave available during the 12 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 may be taken intermittently only when running concurrently with FMLA leave.~~

~~12.8.3.d. Exceptions. Employees, including probationary 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 in accordance with W. Va. Code §23-4-1 et seq.~~

~~12.8.4. End of Leave.~~

~~12.8.4.a. 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.~~

~~12.8.4.b. If the leave of absence without pay was granted due to personal illness, the employee must furnish from the attending physician or practitioner a prescribed physician's or practitioner's statement form indicating the ability of the employee to return to work. The agency 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 this section.~~

~~12.8.4.c. 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 agency, is cause for dismissal. An employee dismissed for failure to return from leave of absence without pay is not eligible for severance pay.~~

~~12.8.5. Reporting Procedures. — The agency must report a leave of absence without pay to the Division. 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.~~

~~12.9. Military Leave.~~

~~12.9.1. State Active Duty and Reserve Military Service. — All permanent employees 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 30 scheduled work days in any one calendar year, not to exceed 240 hours, when ordered or authorized by proper authority.~~

~~12.9.2. 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.~~

~~12.9.3. 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.~~

~~12.9.4. 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.~~

~~12.9.5. 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.~~

~~12.9.6. Federal Active Duty. — All officers and permanent employees 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 30 scheduled work days, not to exceed 240 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.~~

~~12.9.7. 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 30 scheduled workdays 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 30 workdays for which they are eligible under this subdivision, up to a maximum of 60 scheduled workdays for a single call to active duty. None of the unused days for which an officer or employee is eligible under subdivision a. of this subsection may be carried over and used in the next calendar year.~~

~~12.9.8. 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.~~

~~12.9.9. 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.~~

~~12.9.10. 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 and within the applicable time period prescribed by 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 11.6.b. of this rule. 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 11.6.c. of this rule.~~

~~12.9.11. This subdivision does not mean and may not be construed:~~

~~12.9.11.a. 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; or,~~

~~12.9.11.b. 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.~~

~~12.10. Court, Jury, and Hearing Leave.~~

~~12.10.1. 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, Division, or body authorized by law to conduct any hearing or inquiry. This subdivision does 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.~~

~~12.10.2. 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:~~

~~12.10.2.a. 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 employment; or,~~

~~12.10.2.b. 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. The employee shall furnish such written confirmation of the absence as is required by the agency head.~~

~~12.10.3. 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 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.~~

~~12.11. Other Leave.~~

~~12.11.1. Disaster Service Leave. — Any agency 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.~~

~~12.11.2. 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 agency head who may approve, amend, or disapprove the supplemental policies.~~

~~12.11.3. Distribution of Rule. — Each agency shall make available to each of its employees a copy of this rule together with the agency's own supplemental attendance and leave policy.~~

~~12.11.4. Leave Records. — Each agency shall maintain a current leave record of its employees' accrued and used leave. The agency shall provide each employee access to his or her leave records subject to established procedures and on a regular basis of no less than once each pay period. To the extent practical, each agency 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 agency head or his or her designee.~~

~~§217-1-13. Performance Evaluations.~~

~~— The Division 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 12 months. The agency shall consider performance evaluations as well as other recorded indicators of performance in determining salary advancements and in making promotions, demotions, and dismissals. The agency 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.~~

~~§217-1-14. Political Activities.~~

~~14.1. Prohibition of Political Activities.~~

~~14.1.1. An agency may 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.~~

~~14.1.2. No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.~~

~~14.1.3. 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.~~

~~14.1.4. No employee 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.~~

~~14.1.5. Notwithstanding any provision of the West Virginia Code to the contrary, no employee in the classified service shall:~~

~~14.1.5.a. 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;~~

~~14.1.5.b. 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,~~

~~14.1.5.c. 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.~~

~~14.1.6. 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.~~

~~14.1.7. 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.~~

~~14.2. Application of the Hatch Act. — Any classified or classified exempt employee who, as a normal and foreseeable incident of his or her principal 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 14.01-8. Each agency shall inform all classified and classified exempt employees of these provisions and employees shall adhere to these provisions.~~

~~14.3. Additional Prohibition for Highways Employees. — No person may be appointed or employed in any capacity by the Division of Highways who is a candidate for 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 of Highways immediately on the date of the filing of candidacy or the date of assuming the public office or the political party committee membership.~~

~~§217-1-15. Employment Conflicts.~~

~~15.1. Other Employment and Certain Volunteer Activity. No employee shall hold other public office, have conflicting employment, or participate in conflicting volunteer activity while in the classified service. Determination of the conflict shall be made jointly by the agency and the Division, or may be specifically delegated by the Division to the agency, 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.~~

~~15.2. Nepotism. 15.2.1. No employee may influence or attempt to influence the employment or working conditions of his or her immediate family. It is the responsibility of the agency to administer the employment of relatives of any agency employee in a consistent and impartial manner.~~

~~15.2.2. 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 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.~~

~~§217-1-16. Payroll.~~

~~No state 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 agency may not modify the wages of a person in the classified service unless the agency head has approved the modification in accordance with the provisions of this rule. The agency head may for proper cause withhold certification from an entire payroll or from any specific item or items on the payroll. The agency head may, however, provide that certification of payrolls may be made once every six 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 agency head. If the agency head wrongfully withholds certification of the payroll voucher or account of any employee, the employee may maintain a proceeding in the courts to compel the agency head to certify the payroll voucher or account.~~

~~§217-1-17. Records and Reports.~~

~~————— Agency and Division 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 is the custodian of records for agency employee personnel files. The Division shall maintain applications for examination for at least one year after the date of the application. All personnel records, whether held by the agency or the Division, shall be held confidential by each agency and the agency head in accordance with Section 18 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 State agency.~~

~~§217-1-18. Confidentiality.~~

~~————— The business of the Department 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-8-1 *et 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 Division 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, or in defense of the agency upon a related matter.~~

~~§217-1-19. Training and Development.~~

~~————— 19.1. 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 or State law.~~

~~————— 19.2. Division Responsibilities. — The Division shall:~~

~~————— 19.2.1. Make available to all DOT 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; and~~

~~————— 19.2.2. Provide training courses for supervisors and managers on specific aspects of personnel administration under state law and this rule, and shall designate employees by class, or by duties, who must attend each type of course.; and~~

~~————— 19.2.3. 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 nomination procedures.~~

~~§217-1-20. Employee Representative Organization Bulletin Boards.~~

~~———— A bulletin board of a limited size shall be provided for posting notices of employee representative organizations. The bulletin board 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 board shall be assumed by the requesting employee or the employee's representative organization. The bulletin boards shall be used exclusively by the employee representative organization and for organization purposes only.~~