



WEST VIRGINIA
H I G H E R
E D U C A T I O N
P O L I C Y
C O M M I S S I O N

J. Thomas Jones
Chairman

J. Michael Mullen
Chancellor

July 11, 2002

The Honorable Joe Manchin
Secretary of State
State Capitol
Charleston, WV 25305

FILED

2002 JUL 11 PM 4:05

Dear Secretary Manchin:

Attn: Judy Cooper

WEST VIRGINIA
SECRETARY OF STATE

On behalf of the Higher Education Policy Commission, I am filing rules with technical changes that were approved on June 21, 2002, by the Higher Education Policy Commission. These rules are being transferred from the former University System Board of Trustees (Title 128) and State College System Board of Directors (Title 131) to the Policy Commission (Title 133) with technical changes to reflect the changes made by Senate Bill 653. The rules are as follows:

Title 133, Series 35: Correspondence, Business, Occupational and Trade Schools, which replaces Title 131, Series 3.

Title 133, Series 36: Sports Programs at Community and Technical Colleges, which replaces Title 128, Series 53, and Title 131, Series 53

Title 133, Series 37: Increased Flexibility for Community and Technical Colleges, which replaces Title 131, Series 25

Title 133, Series 38: Employee Leave, which replaces Title 128, Series 35, and Title 131, Series 35

Title 133, Series 39: Classified Employees, which replaces Title 128, Series 31, and Title 131, Series 31

Title 133, Series 40: Equal Opportunity and Affirmative Action, which replaces Title 128, Series 45, and Title 131, Series 45.

The Higher Education Policy Commission also voted at the June 21 meeting to abolish the following rule of the former systems and transfer jurisdiction to the individual institutional governing boards:

Title 128, Series 39, and Title 131, Series 39, Measles & Rubella Immunization.

Sincerely,

J. Michael Mullen
Chancellor

SCANNED

TITLE 133
PROCEDURAL RULE
HIGHER EDUCATION POLICY COMMISSION

SERIES 39

CLASSIFIED EMPLOYEES

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SECTION 1. GENERAL

- 1.1 Scope - This rule establishes procedures related to West Virginia Code 18B.
- 1.2 Authority - West Virginia Code §18B-1-6.
- 1.3 Filing Date - August 5, 1996
- 1.4 Effective Date - September 5, 1996

SECTION 2. DEFINITIONS

- 2.1 Part-Time Regular Employee (PTR). An employee in a position created to last less than 1,040 hours during a twelve-month period. An employee in a PTR position is not eligible for benefits, but is covered under the classification program as set out in Series 8.
- 2.2 Temporary Employee. An employee hired into a position expected to last fewer than nine months of a twelve month period regardless of hours worked per week. A temporary employee is not eligible for benefits, but is covered by the classification program as set out in Series 8.
- 2.3 Casual Employee. A casual employee position is a position created to meet specific operational needs at an institution for no more than 225 hours in a 12-month period. Individuals in a casual employee position are not eligible for benefits and are not covered by the classification program as set out in Series 8.
- 2.4 Student Employee. An employee enrolled at the institution as a student and whose primary purpose for being at the institution is to obtain an education. A student employee is not eligible for benefits and is not covered by the classification program as set out in Series 8.
- 2.5 Classified Employee. An employee who is covered by the provisions of the classification program outlined in this rule as set out in Series 8.
- 2.6 Exempt. Employees not covered by the Fair Labor Standards Act (FLSA) for overtime purposes as set out in Series 8.

SECTION 3. PART-TIME AND TEMPORARY EMPLOYEES

- 3.1 Institutions shall not hire part-time employees solely to avoid the payment of

benefits or in lieu of full-time employees and shall provide all qualified classified employees with nine-month or ten-month contracts with the opportunity to accept part-time or full-time summer employment before new persons are hired for the part-time or full-time employment. Consequently, institutions may only employ individuals into temporary positions when the function of the position is expected to require less than nine (9) consecutive months of employment (regardless of hours worked per week) to equal the full-time equivalency of the position.

3.2 Classified employees who are employed in less than twelve-month positions and who meet the minimum qualifications of a position shall be provided with an opportunity to accept part-time or full-time summer employment before new persons shall be hired for those positions.

SECTION 4. WORK SCHEDULES

4.1 Each institution shall establish a policy, with the advice and assistance of staff council and other groups representing classified employees, which shall: address any institution-specific procedures concerning the use of flexible work schedules, job sharing, and four-day work weeks; discourage temporary, non-emergency changes in an employee's work schedule; and provide a mechanism for changes in, and notification of, changes in work schedules. This policy shall also provide that, where possible, the institution shall provide the employee with a fifteen (15) day notice of such changes. Institutions shall develop such policies within 90-days of the effective date of this rule.

SECTION 5. APPOINTMENT OR PROMOTION

5.1 Pursuant to W.Va. Code §18B-7-1(d), non-exempt classified employees who apply for and meet the minimum qualifications as determined by the institutional human resources director or other designee of the president for a posted non-exempt position within an institution and are currently employed at the institution shall be hired into the posted position prior to hiring someone from outside the institution.

5.2 If more than one qualified, non-exempt classified employee applies, the best-qualified non-exempt classified employee shall be awarded the position. In such cases, if the employees are equally qualified, the employee with the greatest amount of continuous seniority at the institution shall be awarded the position. A random selection method such as drawing of lots, rolling dice, or selection of playing cards shall be utilized if two or more employees have equal qualifications and seniority. Such method shall be mutually agreed upon by the affected employees and approved by the President or her/his designee. If the employees cannot agree on a random selection method, the President of the institution shall use the drawing of lots to determine rankings.

5.3 Provisions of this section shall not apply to casual, temporary and student employees, nor shall they apply to exempt positions.

5.4 Pursuant to W. Va. Code §18B-7-1d, the provisions of this section shall not take precedence over the mandates in an institution's affirmative action plan adopted pursuant to the provisions of Executive Order 11246 or pursuant to any other federal or state requirement. In no event shall an institution's affirmative action plan require the use of quotas to meet its affirmative action goals or require the hiring of an unqualified person for any non-exempt position.

SECTION 6. PROBATIONARY PERIOD

6.1 Full-time regular classified employees shall serve a six-month probationary period beginning at the original date of employment.

6.2 At the end of three months and the end of the six-month probationary period, the employee shall receive a written evaluation of her/his performance and shall be informed as to whether her/his employment will continue beyond the probationary period. As with all positions, continued employment is based on adequate funding, satisfactory performance and adherence to system and institution rules and regulations.

SECTION 7. COMPENSATORY/OVERTIME PROVISIONS

7.1 Non-exempt employees may receive compensatory time off in lieu of overtime pay. All hours worked beyond 37½ and up to and including 40 hours are calculated at the employee's regular hourly rate. Time worked beyond 40 hours in a work week are to be calculated at a rate of one and one-half times the regular hourly rate.

7.2 A written agreement between the employee and the institution shall exist when the employee chooses compensatory time off in lieu of overtime pay. The written agreement may be modified at the request of either the employee or employer at any time but under no circumstances shall a change in the agreement deny the employee compensatory time heretofore acquired.

7.3 Within 60 days of passage of this rule, institutions shall develop an agreement form for compensatory time accumulation in lieu of overtime payment and shall specify the required approval process which must be completed before a non-exempt employee may work beyond 37½ hours.

7.4 Employees may accumulate up to two hundred forty (240) hours of compensatory time and shall be paid for all hours worked above the maximum accrual.

7.5 Employees in public safety, seasonal work, and/or emergency response categories may accumulate up to four hundred eighty (480) hours and shall be paid for all hours worked above the maximum accrual.

7.6 Compensatory time must be used within one year of accrual. The use of compensatory time off shall be requested two weeks in advance of the use of the time off. Approval of the request shall be contingent upon whether it will unduly disrupt the operation of the institutional unit.

7.7 Should an individual's employment be terminated, any unused compensatory time shall be reimbursed as follows:

7.7.1 The average regular rate received by such employee during the first three years of the employee's employment; or,

7.7.2 The final regular rate received by such employee, whichever is higher.

7.8 An employee may not work overtime unless approved in advance per institutional policy.

SECTION 8. POSTING

8.1 Each institution shall develop a policy for posting of classified positions both internally and externally in order to provide employees adequate time to make application for positions. Institutions shall develop such policy within 90-days of the effective date of this rule.

8.2 Posting shall not apply to casual or temporary positions.