WEST VIRGINIA CODE CHAPTER 18B ARTICLE 7

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§18B-7-1. Legislative intent and purpose.

(a) The intent of the Legislature in enacting this article and articles eight, nine and nine-a of this chapter is to establish basic human resources policies applicable to public higher education capable of, but not limited to, assisting the governing boards in meeting the following objectives:

(1) Implementing contemporary programs and practices to reward and incentivize performance and enhance employee engagement;

(2) Providing benefits to the citizens of the State of West Virginia by supporting the public policy agenda as articulated by state policymakers;

(3) Assuring fiscal responsibility by making the best use of scarce resources;

(4) Promoting fairness, accountability, credibility, and transparency in personnel decision making;

(5) Providing for job requirements and performance standards for classified staff positions with annual job performance evaluations for classified staff, and provisions for job performance counseling when appropriate.

(6) Reducing or, wherever possible, eliminating arbitrary and capricious decisions affecting employees of higher education organizations as defined in section two, article nine-a of this chapter;

(7) Creating stable, self-regulating human resources policies capable of evolving to meet changing needs;

(8) Providing for institutional flexibility with meaningful accountability;

(9) Adhering to federal and state laws;

(10) Adhering to duly promulgated and adopted rules; and

(11) Enhancing the sharing of best practices throughout the state higher education system.

(12) Providing current, reliable data to governing boards, the commission, the council, the Governor and the Legislature to inform the decision-making process of these policymakers.

(b) To accomplish these goals, the Legislature encourages organizations to pursue a human resources strategy which provides monetary and nonmonetary returns to employees in exchange for their time, talents and efforts to meet articulated goals, objectives and priorities of the state, the commission and council, and the organization. The system should maximize the recruitment, motivation and retention of highly qualified employees, promote satisfaction and engagement of employees with their jobs, promote job performance and

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achieve desired results.

(c) It is the intent of the Legislature to establish a human resources strategy that is fair, accountable, credible, and transparent. In recognition of the importance of these qualities, the human resources strategy outlined in this article, together with articles eight and nine-a of this chapter, is designated and may be cited as " FACT for Higher Education".

(d) It is the intent of the Legislature to require each higher education organization to achieve full funding of the minimum salary levels for classified employees established in section six, article nine-a of this chapter.

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§18B-7-2. Definitions.

For the purposes of this article and articles eight, nine and nine-a of this chapter, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Benefits” means programs that an employer uses to supplement the cash compensation of employees and includes health and welfare plans, retirement plans, pay for time not worked and other employee prerequisites.

(2) “Compensation” means cash provided by an employer to an employee for services rendered.

(3) “Compensatory time” and “compensatory time off” mean hours during which the employee is not working, which are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation and for which the employee is compensated at the employee’s regular rate of pay.

(4) “Employee classification” or “employee class” means those employees designated as classified employees; nonclassified employees, including presidents, chief executives and administrators and faculty, as these terms are defined in this article and articles eight, nine and nine-a of this chapter.

(5) “Full-time” means a regular employee whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year

(6) “Health and welfare benefit plan” means an arrangement which provides any of the following: Medical, dental, visual, psychiatric or long-term health care, life insurance, accidental death or dismemberment benefits, disability benefits or comparable benefits.

(7) “More senior employees” means an employee who has greater longevity with the institution than another employee who is also subject to layoff as part of a reduction in force.

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§18B-7-3. Reducing workforce.

(a) Definitions for terms used in this section have the meanings ascribed to them in section two, article one of this chapter and section two, article nine of this chapter, except that, unless clearly noted otherwise, this section applies only to a regular employee who is classified and whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year.

(b) All decisions by an organization or its agents concerning reductions in workforce of full-time classified employees shall be made in accordance with this section and pursuant to a rule adopted by the applicable governing board of an organization, after consultation with and providing 30 days written notice to the applicable staff council of an organization.

(1) For layoffs for reason of lack of funds or work, or abolition of position or material changes in duties or organization, the institution may layoff the incumbent in the position being eliminated. In the case of elimination of some but not all of the positions of the same job title, consideration shall be given to an employee's documented quality of work performance as demonstrated in performance evaluations of record (including, but not limited to, disciplinary records), skills, seniority as measured by years of service, or other factors, as determined by the board.

(2) If the organization desires to lay off a more senior employee, the organization may offer to the more senior employee a severance package, the value of which shall not exceed the more senior employee's salary for one year.

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§18B-7-4. Supplemental health and welfare benefit plans.

(a) An organization may contract for supplemental health and welfare benefit plans for any or all of its employees in addition to the benefits the employees otherwise receive.

(b) An organization may make additional periodic deductions from the salary payments due employees in the amount they are required to contribute for any supplemental health and welfare plan.

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§18B-7-5. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

(a) Any reference in this code to the "additional retirement plan" relating to state higher education employees, means the "Higher Education Retirement Plan" provided in this section. Any state higher education employee participating in a retirement plan upon the effective date of this section continues to participate in that plan and may not elect to participate in any other state retirement plan. Any retirement plan continues to be governed by the provisions of law applicable on the effective date of this section.

(b) The commission, on behalf of the council, governing boards and itself, shall contract for a retirement plan for their employees, to be known as the Higher Education Retirement Plan. The commission, council and governing boards shall make periodic deductions from the salary payments due employees in the amount they are required to contribute to the Higher Education Retirement Plan, which deductions shall be six percent.

(c) The commission, council and governing boards may contract for supplemental retirement plans for any or all of their employees to supplement the benefits employees otherwise receive. The commission, council and governing boards may make additional periodic deductions from the salary payments due the employees in the amount they are required to contribute for the supplemental retirement plan.

(d) An organization, by way of additional compensation to their employees, shall pay an amount, which, at a minimum, equals the contributions of the employees into the Higher Education Retirement Plan from funds appropriated to the commission, council, or governing board for personal services.

(e) As part of an overall compensation plan, the commission, council or a governing board, each at its sole discretion, may increase its contributions to any employee retirement plan to an amount that exceeds the contributions of employees.

(f) Each participating employee has a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into the Higher Education Retirement Plan or a supplemental retirement plan for his or her benefit. Upon proper requisition of a governing board, the commission, or council, the Auditor periodically shall issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the matching funds of the commission, council or governing board.

(g) Any person whose employment commences on or after July 1, 1991, and who is eligible to participate in the Higher Education Retirement Plan, shall participate in that plan and is not eligible to participate in any other state retirement system: *Provided*, That the foregoing provision does not apply to a person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code: *Provided, however*, That the foregoing provision does not apply to

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campus police officers in this state pursuant to §18B-4-5. The additional retirement plan contracted for by the governing boards prior to July 1, 1991, remains in effect unless changed by the commission. Nothing in this section considers employees of the council or governing boards as employees of the commission, nor is the commission responsible or liable for retirement benefits contracted by, or on behalf of, the council or governing boards.

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§18B-7-6. Continuing education and professional development.

(a) Each higher education organization shall establish and operate an employee continuing education and development program under a joint rule or rules promulgated by the governing board. Funds allocated or made available for employee continuing education and development may be used to compensate and pay expenses for any employees pursuing additional academic study or training to equip themselves better for their duties.

The rules shall encourage continuing education and staff development and shall require that employees be selected on a nonpartisan basis using fair and meaningful criteria which afford all employees opportunities to enhance their skills and productivity in the workforce of the organization. These rules also may include reasonable provisions for the continuation or return of any employee receiving the benefits of the education or training, or for reimbursement by the state for expenditures incurred on behalf of the employee.

(b) Subject to legislative appropriation therefor, the commission and council shall promote and facilitate additional, regular, training and professional development for employees engaged in human resources-related activities at all organizations. The training and professional development:

(1) Shall be developed with emphasis on distance learning, in consideration to limiting travel demands on employees; and

(2) Shall be in addition to and may not supplant the training and professional development regularly provided to any class of employees by each organization prior to the effective date of this section.

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§18B-7-7. Employment practices.

(a) Each governing board, with the advice and assistance of the staff council, shall promulgate and adopt a rule regarding the role of part-time classified employees. The rule shall discourage the hiring of part-time employees solely to avoid the payment of benefits or in lieu of full-time employees and shall provide all qualified classified employees who hold 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.

(b) Each governing board, with the advice and assistance of the staff councils and other groups representing classified employees, shall promulgate and adopt a rule in accordance with section six, article one of this chapter that discourages temporary, nonemergency, institutionally-imposed changes in an employee's work schedule; that maintains reasonable continuity in working schedules and conditions for employees; and that requires institutions to consider feasible and innovative ways to use the institution's classified employees most efficiently. These innovations may include, but are not limited to, flexibility in employee scheduling, job-sharing and four-day work weeks.

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§18B-7-8.

Repealed

Acts, 2019 Reg. Sess., Ch. 136.

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§18B-7-9

Repealed

Acts, 2017 Reg. Sess., Ch. 123.

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§18B-7-10. Compensatory time off in lieu of overtime; written agreement; other conditions.

(a) Notwithstanding any provision of this code to the contrary, in lieu of overtime compensation, employees of higher education organizations may receive compensatory time off at a rate not less than one and one-half hours for each hour of employment. Employees may receive compensatory time only under the following conditions:

(1) The time is awarded pursuant to a written agreement between the employer and the employee arrived at before the work is performed. A written agreement may be modified at the request of the employer or employee, but under no circumstances may changes in the agreement deny an employee compensatory time already acquired;

(2) The time is recorded in the employer's record of hours worked; and

(3) The employee has not accrued compensatory time in excess of the prescribed limits.

(b) An employee may accrue up to four hundred eighty hours of compensatory time if the employee's work is a public safety activity, an emergency response activity or a seasonal activity. An employee engaged in other work may accrue up to two hundred forty hours of compensatory time. An employee who has accrued four hundred eighty or two hundred forty hours of compensatory time, as the case may be, shall be paid overtime compensation for additional hours of work. If compensation is paid to an employee for accrued compensatory time, the compensation shall be paid at the regular rate earned by the employee at the time the employee received the payment.

(c) If employment is terminated, an employee who has accrued compensatory time pursuant to this section, shall be paid for the unused compensatory time at a rate of compensation not less than the higher amount calculated using one of the following formulas:

(1) The average regular rate received by the employee during the first three years of the employee's employment; or

(2) The final regular rate received by the employee.

(d) An employee who has accrued compensatory time as authorized by this section, and who has requested the use of compensatory time, shall be permitted by the employer to use this time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operation of the employing agency. Compensatory time must be used within one year from the time it is accrued.

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§18B-7-11

Repealed

Acts, 2017 Reg. Sess., Ch. 123.

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§18B-7-12

Repealed

Acts, 2017 Reg. Sess., Ch. 123.

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§18B-7-13. Probationary employment period; evaluation.

Each full-time classified employee hired by an organization shall serve an initial probationary period of six months. At the end of the probationary period, the employee shall receive a written evaluation of his or her performance. The employee's supervisor shall meet with the employee and explain the contents of the evaluation and whether the employee is being offered regular employment.

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§18B-7-14. Higher education employees' catastrophic leave bank and leave transfer.

(a) For the purposes of this section, "employee" means either of the following:

(1) A classified or nonclassified employee who is employed by a higher education governing board, by the commission or by the council; or

(2) A faculty member, as defined in section one, article eight of this chapter, who is eligible to accrue sick leave.

(b) An employee may donate sick and annual leave to a leave bank established and operated in accordance with subsection (d) of this section or directly to another employee in accordance with subsection (e) of this section. No employee may be compelled to donate sick or annual leave. Any leave donated by an employee pursuant to this section shall be used only for the purpose of catastrophic illness or injury as defined in subsection (c) of this section and shall reduce, to the extent of such donation, the number of days of annual or sick leave to which the employee is entitled.

(c) For the purpose of this section, a catastrophic illness or injury is one that is expected to incapacitate the employee and create a financial hardship because the employee has exhausted all sick and annual leave and other paid time off. Catastrophic illness or injury also includes an incapacitated immediate family member as defined by a governing board, the commission or the council, as appropriate, if this results in the employee being required to take time off from work for an extended period of time to care for the family member and if the employee has exhausted all sick and annual leave and other paid time off.

(d) A leave bank or banks may be established at each state institution of higher education, the commission or the council to which employees may donate either sick or annual leave. The bank or banks may be established jointly by the policy commission and the governing boards or may be established for the commission, the council, and each of the governing boards. Sick or annual leave may be deposited in the leave bank, and shall be reflected as a day-for-day deduction from the sick or annual leave balance of the depositing employee.

Donated leave may be withdrawn by any employee experiencing a catastrophic illness or injury when the following conditions are met:

(1) The president of the institution or the chancellor of the commission or the council, as appropriate, verifies that the employee is unable to work due to the catastrophic illness or injury; and

(2) The president of the institution or a chancellor, as appropriate, approves the withdrawal and provides written notice to the personnel office.

The withdrawal shall be reflected as a day-for-day addition to the leave balance of the withdrawing employee.

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(e) Sick or annual leave may be donated to an employee experiencing a catastrophic illness or injury. The leave shall be donated at the request of the employee after appropriate verification that the employee is unable to work due to the catastrophic illness or injury as determined by the president of the institution or the appropriate chancellor. When transfer of sick or annual leave is approved by the president of the institution or the appropriate chancellor, any employee may donate sick or annual leave in one-day increments by providing written notice to the personnel office. Donations shall be reflected as a day-for-day deduction from the sick or annual leave balance of the donating employee. An employee receiving the donated sick or annual leave shall have any time which is donated credited to his or her account in one-day increments and reflected as a day-for-day addition to the leave balance of the receiving employee.

(f) Use of donated credits may not exceed a maximum of twelve continuous calendar months for any one catastrophic illness or injury.

(1) The total amount of sick or annual leave withdrawn or received may not exceed an amount sufficient to ensure the continuance of regular compensation and may not be used to extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code.

(2) An employee withdrawing or receiving donations of sick or annual leave pursuant to this section shall use any leave personally accrued on a monthly basis prior to receiving additional donated sick or annual leave.

(g) Donated sick or annual leave deposited in an institutional leave bank or transferred under subsection (d) of this section may be inter-institutional in accordance with the policies of the appropriate governing board. Each institution, the commission or the council is responsible for the administration of the sick or annual leave deposits, withdrawals and transfers of its employees. Rules implementing the provisions of this section may be adopted jointly or separately by the governing boards, the commission or the council in accordance with section six, article one of this chapter and, in the case of the commission and council, in accordance with article three-a, chapter twenty-nine-a of this code.

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§18B-7-15. Merit increases.

Higher education organizations may grant merit increases which are in accordance with this article and articles eight, nine and nine-a of this chapter and with duly promulgated rules of the commission and council.

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§18B-7-16. Study of employment practices.

[Repealed].

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