

# WEST VIRGINIA CODE: §22A-1-12

## **§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications; examinations; salary and expenses; reinstatement; removal.**

(a) The office shall employ as many underground mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a mine inspector the applicant shall be: (1) A citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which have been in mines of this state: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; (3) a person who has had practical experience with dangerous gases found in coal mines; and (4) a person who has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced underground miner prior to actually performing such duties.

(c) In order to qualify for appointment as an underground mine inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the Mine Inspectors' Examining Board and furnish evidence of good health, character, and other facts establishing eligibility as the board may require. The examinations shall relate to the duties to be performed by an underground mine inspector and, subject to the approval of the Mine Inspectors' Examining Board, may be prepared by the director. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed each required examination, with a grade of at least 75 percent or an overall combined average score of 80 percent, the board shall add the applicant's name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the director. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Underground mine inspectors shall be paid an annual salary of not less than \$38,160; assistant inspectors-at-large, not less than \$44,448; inspectors-at-large, not less than \$46,104, each of which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. In accordance with established rules of the state's Travel Management Office, underground mine inspectors shall also be allowed and paid expenses necessarily incident to the performance of their official duties: *Provided*, That no reimbursement for expenses may be made other than upon the timely submittal of a properly itemized expense account settlement completed by the underground mine inspector, approved and countersigned by the director, or his or her designated

representative, verifying that the expenses were actually incurred in the performance of official duties. Underground mine inspectors shall devote all of their time to the duties of the office and shall be afforded compensatory time or compensation of at least the regular rate for all time in excess of 40 hours per week.

(e) (1) An underground mine inspector, after having received a permanent appointment, may be removed from office only for physical or mental impairment, incompetency, neglect of duty, public intoxication, malfeasance in office, or other similarly good cause.

(2) The director may remove an underground mine inspector at any time for the reasons set forth in §22A-1-12(e)(1) of this code. Upon such removal, the inspector shall be provided a written notice of removal, describing the cause(s) for removal and setting forth with particularity the facts on which the removal was based. Not less than 20 reputable citizens, who are operators or employees in mines in this state, may petition the director for the removal of an underground mine inspector. If the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the alleged facts to be made. If, after the investigation, the director finds that there is substantial evidence that warrants removal of the inspector, the director shall remove the inspector and provide him or her a written notice of removal, describing the cause(s) for removal and setting forth with particularity the evidence found in the investigation: *Provided*, That in all cases of removal, the inspector may request, in writing, a hearing before the Board of Coal Mine Health and Safety within 15 days of receipt of the notice of removal. The director shall provide the inspector written notice of the right to a hearing in the notice of removal.

(3) If the inspector requests a hearing in writing, the board shall promptly schedule a hearing and provide notice to the inspector of the time and place for such hearing, at which time and place the board shall hear all evidence offered in support of the removal and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at the hearing. No continuance may be granted except for good cause shown. The administrator of the board, or in their absence a member of the board designated by the board, has the power to administer oaths and subpoena witnesses.

(4) If any removed mine inspector requests a hearing and thereafter willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the basis that the testimony or answer might incriminate him or her or refuses to waive immunity from prosecution because of any relevant matter about which the inspector may be asked to testify, then the inspector shall forfeit his or her position.

(5) If the inspector fails to request a hearing in writing, or after requesting a hearing in writing and such hearing having been held, the board finds that the inspector should be removed based on a preponderance of the evidence, the board shall enter an order to that effect. Should the board find that the inspector should not have been removed, the inspector shall be reinstated. The decision of the board is final and is not subject to judicial review.