WEST VIRGINIA CODE: §29-6-10

§29-6-10. Rule-making authority.

(a) The division may promulgate, adopt, amend, or repeal rules, pursuant to §29A-3-1 *et seq*. of this code, to implement the provisions of this article:

(1) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, including, as needed, department-specific classifications and positions based upon similarity of duties performed and responsibilities assumed. After each classification plan has been approved by the director and the head of the department, the director shall allocate every position in the classified service to one of the classes in the classified plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard.

(2) For the preparation, maintenance, and revision of a pay plan for all employees in the classified service, including, as needed, department-specific classifications and positions, after consultation with appointing authorities and the state fiscal officers. The pay plan shall become effective only after approval by the Governor. Amendments to the pay plan may be made in the same manner. Each classified employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he or she is employed. The principle of equal pay for equal work shall be followed in the pay plan as established hereby. The Governor or his or her designee shall have authority to restrict the implementation of annual adjustments of the pay plan as necessitated by fiscal constraints.

(3) For the open competition of applicants for the respective positions in the classified service. The competition may be by examination or by review of the training, experience, and other qualifications required for a position and shall be announced publicly at least five calendar days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio, or other media. The director may, however, in his or her discretion, continue to receive applications and examine candidates long enough to assure a sufficient number of eligible candidates to meet the needs of the service and may add the names of eligible candidates to existing eligible lists in accordance with their respective ratings.

Any veteran shall have an additional five points added to his or her examination or review score: *Provided*, That a disabled veteran is entitled to an additional 10 points, rather than five points.

(4) For promotions within the classified service which shall consider the applicant's qualifications, record of performance, seniority, and his or her score on a written

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examination, when such examination is practicable.. When any benefit such as a promotion, wage increase, or transfer is to be awarded, or when a withdrawal of a benefit such as a reduction in pay, a layoff, or job termination is to be made, and a choice is required between two or more employees in the classified service as to who will receive the benefit or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal qualifications and records of performance, consideration shall be given to the level of seniority of each of the respective employees as a factor in determining which of the employees will receive the benefit or have the benefit withdrawn. The division in its classification plans may, for designated classifications, permit substitution of qualifying experience for specific educational or training requirements at a rate determined by the director.

(5) For layoffs due to business necessity and for recall of laid off employees, consideration shall be given to an employee's seniority as measured by permanent employment in the classified service or a state agency. In the event that the agency wishes to lay off a more senior employee, the agency must demonstrate that the senior employee cannot perform the job duties of a position held by less senior employees within that agency in the job class or any other equivalent or lower job class for which the senior employee is qualified: *Provided*, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall as provided.

(6) For recall of employees, recall shall be by reverse order of layoff to any job class that the employee has previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his or her place on the recall list for the same period of time as his or her seniority on the date of his or her layoff or for a period of two years, whichever is less. No new employees may be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are given the opportunity to refuse that job class. An employee shall be recalled into jobs within the county wherein his or her last place of employment is located or within a county contiguous to that county. Any laid-off employee who is eligible for a vacant position shall be notified by certified mail of the vacancy. It is the responsibility of the employee to notify the agency of any change in his or her address.

(A) When filling vacancies in the classified system the appointing authority shall, for a period of 12 months after the layoff of a permanent classified employee in another agency, give preference to qualified permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities.

(B) Employment of these persons who are qualified and who were permanently employed immediately prior to their layoff shall not supersede the recall rights of employees who have been laid off in such agency or facility.

(7) For the establishment of lists of eligible candidates for appointment and promotion within the classified service. Eligibility for appointment from any such list shall continue for not longer than three years. An appointing authority shall make his or her selection from the

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top 20 names on the appropriate lists of eligible candidates or may choose any person scoring at or above the 80th percentile on the examination.

(8) For the establishment of lists of eligible candidates for preference as provided in subdivision (6) of this section, a list shall be provided according to seniority. An appointing authority shall make the selection of the most senior qualified person: *Provided*, That eligibility for appointment from any list shall continue not longer than one year and shall cease immediately upon appointment to a classified position.

(9) For the rejection of candidates within the classified, classified-exempt, and exempt service who fail to comply with reasonable requirements regarding such factors as age, physical condition, character, criminal background, training, or experience, who are addicted to alcohol or narcotics or who have attempted any deception or fraud in connection with an examination.

(10) For a probationary period not to exceed one year before appointment may be made permanent within the classified service.

(11) For provisional employment without competitive examination within the classified service when there is no appropriate list of eligible candidates available.

(12) For the maintenance of records of performance of all employees in the classified service, which may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotions; and as a factor in suspensions, demotions, dismissals, and transfers.

(13) For dismissal or reduction in rank or grade only for cause of employees in the classified service. Dismissal or reduction of these employees shall take place only after the person to be dismissed or reduced has been presented with the reasons for the dismissal or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his or her designee: *Provided*, That upon an involuntary dismissal for cause, the employer may require immediate separation from the workplace, or the employee may elect immediate separation. If separation is required by the employer in lieu of any advance notice of dismissal, or if immediate separation is elected by an employee who receives notice of an involuntary dismissal for cause, the employee is entitled to receive severance pay attributable to time the employee otherwise would have worked, up to a maximum of 15 calendar days following separation. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the dismissal. The statement of reasons for the dismissal and any reply shall be filed as a public record with the director. Notwithstanding the foregoing provisions of this subdivision, a permanent employee shall not be dismissed from the classified service for absenteeism solely due to exhausting all annual leave and sick leave when such use has been due to illness or injury as verified by a physician's certification or for other extenuating circumstances beyond the employee's control except when his or her disability is of such a nature as to permanently incapacitate him or her from the

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performance of the duties of his or her position or renders his or her services unreliable. Upon exhaustion of annual leave and sick leave for the reasons specified herein and with certification by a physician that the employee is temporarily unable to perform his or her duties, a permanent employee shall be granted a medical leave of absence without pay for a period not to exceed six months: *Provided*, That such employee is not permanently unable to satisfactorily perform the duties of his or her position. Probationary and permanent state employees are eligible for a medical leave of absence without pay for the period of time during which he or she is receiving temporary total disability benefits for a personal injury that occurred in the course of and resulting from state employment.

(14) For facilitating the efficient hiring, allocation, and assignment of personnel by the departments and agency heads;

(15) For a program under which annual leave accrued or accumulated by an employee of an agency may, if voluntarily agreed to by the employee, be donated to another designated employee if the other employee has exhausted his or her leave because of a medical emergency: *Provided*, That none of the leave transferred may be used to qualify for or add to service for any retirement system administered by the State of West Virginia; and

(16) For any other rules, not inconsistent with this article, as may be proper and necessary for its enforcement.

(b) The director shall periodically review the establishment of all classified-exempt positions by the departments and agencies of the state to ensure consistent interpretation of the provisions of this article.

(c) The provisions of this section are subject to any modifications contained in §5F-1-1 *et seq*. of this code. The division may include in the rules provided for in this article such provisions as are necessary to conform to regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding. The director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.

(d) Nothing in the rules provided for in this section may conflict with the requirements of §5B-1-2, §5B-2-1, §5B-2i-4, §5F-2-8, §5F-2-9, §5F-2-10, or §29-1-1a of this code.

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