

# WEST VIRGINIA CODE: §29-6-10A

## **§29-6-10a. Reduction in work force.**

(a) Notwithstanding any other provision of this article or any rule promulgated thereunder to the contrary, an employee in the classified service who has performed work for a reasonable period of time in a position with a classification that is higher than the position in which he is employed and classified may, in the event that his regular position would be terminated as a result of a reduction in force in his division, have the right to request that his classification be reviewed and that, in his or her supervisor's discretion, he be promoted to the higher classified position by passing a qualifying examination for such higher position and providing sufficient evidence of his work periods and satisfactory performance of the duties and responsibilities of the higher classified position.

The commission shall provide by legislative rule for the maintenance of records by all covered agencies of the work periods and rating of job performance of employees performing work in a position or positions with a classification that is higher than the position in which he is employed and classified and the duration of work periods required to request review and promotion.

(b) The provisions of this subsection shall be of no force and effect on and after July 1, 1995. Notwithstanding any other provision of this code to the contrary, a managerial or supervisory employee in the classified service of this state with a classified service pay grade of sixteen or higher who is adversely affected by a reduction in force shall not be entitled to be reassigned, transferred or otherwise retained for any position in state government except as provided in this section, and no regulation or policy shall provide for such a right: Provided, That there shall be no redesignation of the levels of pay grades in the classified service in effect on May 1, 1994. Any such employee shall have the right, upon notice of and prior to the effective date of the reduction in force, to accept a position in a lower job class at no less than the entry salary of that position if the employee: (1) Has formerly performed the duties of that position or the substantial equivalent thereof and is otherwise qualified within the classified service for that position; and (2) is a more senior employee than the least senior employee then employed in such position. No provision of this section shall be construed to deny the right of the appointing authority, in his or her discretion, to reassign, transfer or otherwise retain such employee to or for another position for which the employee is qualified within the classified service. Where the employee is not reassigned, transferred or otherwise retained pursuant to the provisions of this section, no provision of this section shall be construed to deny the employee the opportunity to reapply for entrance in the classified service of the state through participation in competitive examinations.