WEST VIRGINIA CODE: §5-5-6

§5-5-6. Payment for unused sick leave.

(a) The Legislature declares that it is the purpose of this section to create a fund to reduce the unfunded liability that arises from the extended insurance coverage for eligible employees under section thirteen, article sixteen of this chapter, part of the West Virginia Public Employees Insurance Act.

(b) Every eligible employee, as defined in section one of this article, who is entitled upon retirement to credit his or her accrued annual and sick leave for extended insurance coverage as provided in section thirteen, article sixteen of this chapter and who has accumulated at least sixty-five days of unused sick leave may be paid, at his or her option, for unused sick leave in an amount of days as designated by the employee not to exceed the number of sick leave days that would reduce an employee's sick leave balance to less than fifty days: Provided, That any employee who applies for payment under this section may not be paid more than a total of $25,000, either at one time or over the course of multiple payments for unused sick leave.

(c) An employee who applies for payment under this section shall be paid at a rate equal to one quarter of his or her usual rate of daily pay during that calendar year.

(1) The "daily rate of pay" of an employee paid a monthly salary is calculated by multiplying the monthly salary by twelve and dividing that number by the number of workdays for that calendar year: Provided, That for any employee that falls under the provisions of subsection (d), section thirteen, article sixteen of this chapter, the highest monthly salary that the daily rate of pay shall be calculated by is $6,700. Any employee who falls under the provisions of said subsection and is paid more than $6,700 per month shall receive payment for unused sick leave at a rate equal to one quarter of the daily rate of pay of an employee paid a monthly salary of $6,700: Provided, however, That for any employee that falls under the provisions of subsection (e), section thirteen, article sixteen of this chapter, the highest monthly salary that the daily rate of pay shall be calculated by is $4,200. Any employee who falls under the provisions of said subsection and is paid more than $4,200 per month shall receive payment for unused sick leave at a rate equal to one quarter of the daily rate of pay of an employee paid a monthly salary of $4,200: Provided further, That any employee who falls under the provisions of subsection (g), section thirteen, article sixteen of this chapter is not eligible for payment under this section.

(2) As used in this section, "workday" does not include weekends.

(3) Any payment for unused sick leave may not be a part of final average salary computation.

(d) Payment for unused sick leave may be made upon application and after the Secretary of the Department of Administration verifies that the employee is eligible for payment under

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this section. Payments shall be made out of the fund established in subsection (g) of this section.

(e) Any eligible employee opting to receive payment in exchange for unused sick leave must contract, in a form to be prescribed by the Department of Administration, agreeing to reimburse the fund for the amount exchanged plus twelve percent per annum if the employee elects to separate from employment within sixty months of the date of the exchange pursuant to subsection (b) of this section. The Department of Administration shall pursue collection of the obligation, either by itself, or by contracting with a collection agency. For purposes of this section, "separation" does not include separation from employment by death or retirement, but does refer to any other manner in which employment may be terminated.

(f) Payments shall be made in the order that eligible employees apply for the payments so long as funds are available. In the event the fund is insufficient to pay all employees who have applied for payment in a fiscal year, employees who do not receive payment are eligible for payment in the next fiscal year, are not required to reapply and shall receive payment in the order in which they first applied, unless the employee chooses to withdraw the application prior to the next fiscal year.

(g) The special revenue account within the state Treasury known as the state Employee Sick Leave Fund is continued. The fund shall consist of moneys appropriated by the Legislature, moneys deposited into the fund in accordance with administrative rules of the Department of Administration and any interest or other return to moneys in the fund. The fund shall be administrated by the Secretary of the Department of Administration.

(h) The secretary shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this section. The rules shall include, but not be limited to, provisions for the application process and a rule authorizing the secretary to obtain reimbursement, where available and appropriate, to the state Employee Sick Leave Fund from any spending unit for a pro rata share of payments made under the provisions of this section to any employee whose salary is paid, in whole or in part, from a funding source other than the General Revenue Fund. The rules may also include provisions to adjust, when necessary, the highest monthly salary by which the daily rate of pay is calculated.

(i) Each spending unit, as defined in section one of this article, shall verify to the secretary whether an employee is eligible for payment under this section, shall verify the funding source or sources of the employee's salary and shall verify the total number of unused sick leave days for all employees at least once per year. The secretary shall maintain sick leave records for all spending units. All sick leave days for which an employee is paid as provided in this section shall be deducted from the employee's sick leave balance by the secretary and the secretary shall verify to each spending unit the amount of days that have been deducted from an employee's sick leave balance. An employee shall not be permitted to reacquire any sick leave days for which he or she received payment under the provisions of this section.

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(j) The provisions of this section are retroactive to December 1, 2008, to the extent that the provisions apply to those employees who have previously applied for payment for unused sick leave and have not been paid.

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