WEST VIRGINIA CODE CHAPTER 5 ARTICLE 5

WV Legislature

§5-5-1. Definitions.

For the purposes of this article:

(a) "Eligible employee" means:

(1) Any regular full-time employee of the state or any spending unit of the state who is eligible for membership in any state retirement system of the State of West Virginia or other retirement plan authorized by the state: Provided, That the mandatory salary increase required by this article does not apply to any employee of the state whose compensation is fixed by statute or by statutory schedule other than employees described in this section. Clerks, deputy clerks and magistrate assistants of magistrate courts are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the maximum salaries and compensation for the employee offices under the magistrate court system statutes of article one, chapter fifty of this code. Members of the board of Parole are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the salaries and compensation provided in section two-a, article seven, chapter six of this code. This article may not be construed to mandate an increase in the salary of any elected or appointed officer of the state;

(2) Any classified employee as defined in section two, article nine, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the Council for Community and Technical College Education; or

(3) Any full-time faculty member as defined in section one, article eight, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education.

(b) "Years of service" means full years of totaled service as an employee of the State of West Virginia. For full-time faculty as defined in this section, each nine or more months of contracted employment during a fiscal year equals one full year of service; and

(c) "Spending unit" means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

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§5-5-2. Granting incremental salary increases based on years of service.

(a) Every eligible employee with three or more years of service shall receive an annual salary increase equal to $60 times the employee's years of service. In each fiscal year and on or before July 31, each eligible employee shall receive an annual increment increase of $60 for that fiscal year.

(b) Every employee becoming newly eligible as a result of meeting the three years of service minimum requirement on July 1, in any fiscal year is entitled to the annual salary increase equal to $60 times the employee's years of service, where he or she has not in a previous fiscal year received the benefit of an increment computation. Thereafter, the employee shall receive a single annual increment increase of $60 for each subsequent fiscal year.

(c) These incremental increases are in addition to any across-the-board, cost-of-living, or percentage salary increases which may be granted in any fiscal year by the Legislature.

(d) This section shall not be construed to prohibit other pay increases based on merit, seniority, promotion, or other reason, if funds are available for the other pay increases: Provided, That the executive head of each spending unit shall first grant the mandated increase in compensation in this section to all eligible employees prior to the consideration of any increases based on merit, seniority, promotion, or other reason.

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§5-5-3. Optional payment to employee in lump sum amount for accrued and unused leave at termination of employment; no withholding of any employee contribution deduction; exception.

Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's usual rate of pay at the time. The lump sum payment shall be made by the time of what would have been the employee's next regular payday had his or her employment continued. In determining the amount of leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued leave of any kind or character, since no period of service credit is granted in relation thereto; however, lump sum payment for unused, accrued leave of any kind or character may not be a part of final average salary computation; and where any deduction of employee contribution may have been made previously, a refund of the amount deducted shall be granted the former employee and made by the head of the respective former employer spending unit: Provided, That the superintendent of the West Virginia State Police shall make deductions for retirement contributions of members of the State Police Death, Disability and Retirement Fund created and continued in section twenty-six, article two, chapter fifteen of this code since retirement benefits are based on cumulative earnings rather than period of service.

WV Legislature

§5-5-4. Department of Health and Human Resources salary adjustment.

[Repealed]

WV Legislature

§5-5-4a. Department of Health and Human Resources facility employee classifications.

[Repealed.]

WV Legislature

§5-5-4b. Division of Corrections, Division of Juvenile Services, and Regional Jail Authority pay equity salary adjustment.

(a) The Legislature hereby finds that the Division of Corrections, Division of Juvenile Services and the West Virginia Regional Jail and Correctional Facility Authority have extreme difficulty with recruiting and retaining employees of all types.

(b) The Legislature hereby directs that a pay equity salary adjustment and increase be provided to all employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority, regardless of where the employee reports to work. This salary adjustment shall be for a total of $6,000 apportioned over a three-year period as follows:

(1) On July 1, 2018, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000;

(2) On July 1, 2019, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000; and

(3) On July 1, 2020, applicable employees of the Division of Corrections, Division of Juvenile Services, and the West Virginia Regional Jail and Correctional Facility Authority shall be given an increase in annual pay of $2,000.

(c) Funding for the pay rates for employees of the Division of Corrections and Division of Juvenile Services shall be provided from the general revenue appropriations to the Division of Corrections and Division of Juvenile Services, respectively.

(d) The salary adjustment for employees of the West Virginia Regional Jail Authority shall be funded from the special revenue fund established in §31-20-10 of this code, and shall not require additional general revenue appropriations from the Legislature.

(e) In the event any provision of this section conflicts with any rule, policy, or provision of this code, this section shall control. Due to the limits of funding, the implementation of the pay rates and employment requirements shall not be subject to the provisions of §6C-2-1 et seq. of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

(f) If, following this pay raise, the employee will make more than the maximum allowable by the Division of Personnel for the pay grade, this salary increase shall still take effect, and that employee shall make more than the pay grade maximum.

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§5-5-4c. Unemployment compensation board of review salary adjustment.

(a) The Legislature hereby directs that an across-the-board salary adjustment, in the amount of 15 percent over the salary levels in effect as of the effective date of this section, be provided to employees of the unemployment compensation board of review created pursuant to §21A-4-1 *et seq*. of this code who hold the positions of Chief Administrative Law Judge, Administrative Law Judge 1, or Administrative Law Judge 2.

(b) The purpose of this salary adjustment is to ensure that unemployment compensation hearings before board of review are conducted in a timely manner.

(c) The salary adjustment provided for under this section is separate and apart from, and shall be in addition to, any other salary adjustments approved during the 2026 regular session of the Legislature relative to the fiscal year 2027 budget.

(d) Due to the limits of funding, the implementation of the salary adjustment provided for under this section shall not be subject to the provisions of §6C-2-1 *et seq*. of this code. It is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

(e) The provisions of this section shall be effective from passage.

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§5-5-5. Pay equity adjustment.

The Legislature hereby directs that a gender-based pay equity salary adjustment be provided to public employees as determined by the Secretary of the Department of Administration, based on recommendations of the equal pay commission, within the limitations provided by this section. This salary adjustment shall be provided from the funding appropriated to the Department of Administration, office of the secretary, for purposes of a "pay equity reserve" in the fiscal year 2002 and may not be construed to require additional appropriations from the Legislature. If any provision of this section conflicts with any rule, policy or provision of this code, the provisions of this section control. Because the provisions of this section are rehabilitative in nature, the results of the pay equity salary adjustments are not subject to the provisions of article two, chapter six-c of this code. Further, it is the specific intent of the Legislature that no private cause of action, either express or implied, is created by or otherwise arises from the enactment, provisions or implementation of this section.

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

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(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.

(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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