



*West Virginia Division of Personnel*

**LAYOFF**  
**UNDERSTANDING YOUR RIGHTS**  
**A PRACTICAL GUIDE FOR EMPLOYEES**

**Employee Relations Section**  
June 2016

## TABLE OF CONTENTS

<b>DISCLAIMER</b> .....	iii
<b><u>Coverage</u></b> .....	1
<b><u>Why and How a Layoff Occurs</u></b> .....	1
<b><u>Surviving a Layoff</u></b> .....	2
Coping With Your Feelings .....	2
Gathering Information .....	3
Managing the Stress.....	3
Taking Advantage of Time Off.....	3
<b><u>Where to Get Assistance</u></b> .....	4
Human Resource Staff .....	4
Supervisor .....	4
Employee Referral Program .....	4
<b><u>Placement Options Within State Government</u></b> .....	5
Remaining With Your Current Agency .....	5
Bumping.....	5
Vacant Positions.....	5
Remaining in State Government With a Different Agency .....	5
Prior to Layoff.....	5
After Layoff .....	5
<b><u>Recall Rights</u></b> .....	6
<b><u>Appeal Rights</u></b> .....	6
<b><u>Benefits</u></b> .....	6
Annual Leave .....	6
Sick Leave.....	7
Continuation of Insurance After Layoff .....	7
Retirement Options .....	7
Unemployment Compensation.....	8
<b><u>Job Search Assistance</u></b> .....	8
Your Agency.....	8
Job Search Help from Workforce West Virginia.....	8
Outplacement Services.....	9
Job Search Help on the Internet .....	9
<b><u>Resource Contacts</u></b> .....	9
<b><u>Frequently Asked Questions</u></b> .....	10

## **DISCLAIMER**

---

This booklet is intended to be used as a reference and procedural guide to assist employees of the State of West Virginia in understanding their rights during a layoff. For purposes of brevity and as part of an effort to state legal concepts simply, this booklet may describe the law in a manner which is general and not necessarily precise in every respect. The general information it contains should not be construed to supersede any law, rule, or policy. In the case of any inconsistencies, the statutory and regulatory provisions shall prevail. The contents contained in this brochure are subject to revision, and are not intended to be a detailed statement of rules and regulations, nor should this be construed as a contractual document.

For technical assistance concerning specific situations, employees and employers may contact the Division of Personnel's Employee Relations Section at (304) 558-3950, extension 57209.

---

## COVERAGE

Information in this guide pertains to employees covered by the merit system of the State of West Virginia as provided in the *Administrative Rule* (W. VA. CODE R. § 143-1-1, *et seq.*) of the West Virginia Division of Personnel and in accordance with the provisions set forth in W. VA. CODE § 29-6-1 *et seq.* The purpose of this guide is to provide employees receiving a layoff letter with an overview of the issues associated with layoff and employment options as well as resources for assistance, so that the employee can understand the options available to them and receive guidance throughout the layoff and job seeking process. More specific information on the topics referenced in this guide is available through your human resources office.

## WHY AND HOW A LAYOFF OCCURS

Due to business necessity, an appointing authority may initiate a layoff, sometimes referred to as a reduction-in-force, in accordance with the provisions of the *Administrative Rule* and W. VA. CODE § 29-6-10(5) and (6) (as amended) and W. VA. CODE § 5F-2-2. Business necessity is defined in the *Administrative Rule* as:

The reason or cause for any of a variety of personnel actions based upon the condition of the agency, in whole or in part, or specific program component(s) which may include but is not limited to lack of funds or work; abolishment of positions; material changes in mission, duties or organization; loss of budgeted, allocated or available positions; reinstatement of eligible employees returning from military duty or temporary total disability; reinstatement of an employee in compliance with a legal order; and for recall of employees previously laid off.

When an agency determines that a reduction-in-force is necessary, the appointing authority must submit to the State Personnel Board the agency's organizational chart, the organizational units that will be affected, and the job classifications that have been identified for reduction. Though a reduction-in-force sometimes involves only a reduction in the number of work hours for a position, most often it results in abolishment of the position altogether. No agency is permitted to initiate a reduction-in-force without prior approval of the State Personnel Board. The Board will normally consider the agency layoff proposal during a regularly scheduled meeting and affected employees may attend and request to speak.

After the appointing authority has determined the number of positions to be abolished and the Board has approved the organizational unit to which the layoff will apply, the order of separation shall be applied in the following manner:

1. Employees without permanent status in the same class or classes identified for layoff in the following order: seasonal, contract, temporary, exempt part-time professional, provisional, and probationary.
2. Permanent employees by job class on the basis of tenure as a permanent employee of a state agency or in the classified service regardless of job class or title. No tenure credit accrues for periods during which terminal annual leave is paid nor for periods during which an employee is not paid a wage or salary except for military leave, educational leave, or

periods during which the employee is paid temporary total disability benefits under the provisions of W. VA. CODE § 23-4-1 for a personal injury received in the course of and resulting from covered employment as a permanent employee of a state agency or in the classified service, or unless otherwise provided by State or Federal statute. In the event of a tie in the order of separation, the appointing authority or his or her representative and those employees who are tied shall agree on a means of breaking the tie by either a coin toss or lot drawing and shall notify the Director in writing of the agreement and the results.

There is no prescribed notification period for layoff; however, in the absence of a rule, regulation, or statute, an agency may want to give the same consideration to layoff as is prescribed by the *Administrative Rule* for separation (a minimum 15-day notice). Agencies are encouraged to advise employees of conditions or circumstances as they arise that may result in the need for staff reductions.

## **SURVIVING A LAYOFF**

You have just received a letter stating that your job is being eliminated, and you are now faced with several options. Most of us just wish the bad news would go away and feel afraid, angry, and ashamed about losing our job. When it does not simply go away, we initially look around for someone to blame, or someone we believe should be responsible for relieving our stress. Your management team probably is not in a position to provide the level of emotional support you need and it is very likely that more changes and uncertainties will preoccupy those co-workers who retain their jobs. Such individuals often suffer from "survivor syndrome" - guilt, anxiety, and challenge of doing more with less. It is important to remember that you are not being laid off because of the quality or quantity of your work or as a result of you personally and that you are considered to have left in good standing.

How do you survive this situation emotionally intact? You can begin by focusing on the way you manage your own behavior. Instead of functioning in a manner that actually creates stress for yourself, it is important to develop adapting skills. If you cannot control the situation, you can at least control the way you handle it. It is important to remember that the employees who do not lose their jobs did not create the situation and are feeling stress and anxiety also. Often co-workers are feeling relief, sympathy and guilt and are confused about how to convey those feelings to you. Many may say nothing for fear of saying the wrong thing.

### **Coping With Your Feelings**

Resisting change is one of the most common causes of stress on the job, though the average person may not see it that way. Most employees believe that receiving a layoff notice creates all the stress. The notice certainly may create the initial stress, but how you react will either increase or reduce your stress response.

By convincing yourself that there is not much you can do about the situation other than to feel helpless and resentful, you will probably intensify how much worse you feel. Seeing yourself as a victim actually reduces your options and contributes to a depressed state. It is normal to feel a range of feelings such as anger, sadness, grief, fear, etc. What is important is whether you harbor those feelings or find ways to acknowledge them and move on.

The more control you exercise over your fate the more resilient and empowered you will feel. Remember that with every situation, choices do exist. Take control by exploring the options presented by the change instead of letting the change control you.

Creating a plan of action to deal with various circumstances that the layoff will impact is a great way to begin taking control and moving forward with the next phase of your employment life. There are many decisions that must be made about your future from how to tell your loved ones about the job loss, making financial arrangements and decisions, to considering what type of work you would like to pursue or if it is time to fulfill some educational goals. Being forced to change jobs can create an opportunity to reassess your interests, skills and career objectives. The person who takes charge of the situation and takes action will feel a greater sense of satisfaction with the situation than the one who gets caught up in analysis paralysis.

### **Gathering Information**

Having as much information as possible about your choices is helpful to successful coping. Your layoff notice will outline some of the benefit options available to you and will advise you who to contact with questions. Seek guidance from your human resource office about your options and any employment opportunities or assistance that may be available. You might also consider consulting with family members and close friends. Though they are unlikely to know the technicalities of your layoff, they may provide support and feedback. They may also be able to help you brainstorm employment and career options that you have not considered.

### **Managing the Stress**

Some employees receiving layoff notices put their energy into trying to change matters that are beyond their control. This causes increased frustration and feelings of hopelessness by spinning their wheels on a situation they are not able to influence. If you are not really in a position to control the situation, chances are you will end up emotionally exhausted and miserable. Minimizing the stress of being laid off hinges on your ability to accept what you cannot change and putting your energy into considering and implementing actions you can control. Focus forward! Consider making a list of issues that must be addressed due to the layoff and then take one issue and brain storm ways to mitigate the impact. Involve loved ones, if possible, to expand the options and possible assistance that may be available.

### **Taking Advantage of Time Off**

Try to relax and resist panicking over getting another job immediately. However, it would be beneficial to develop a plan or routine for searching for new employment. Seeking another job is a "job" and should be addressed with the same consistency of effort and attention as a paying job. It is also important that you remain occupied to avoid depression or undue worry. You can use some of your time off to catch up on projects that have been put off. Another productive use of your time would be networking with old friends or potential employment connections. Many jobs are filled through word-of-mouth referrals. Use your network of friends and business associates. This layoff could actually result in your obtaining the career you have always dreamed of and catch up on projects that you have been putting off!

## **WHERE TO GET ASSISTANCE**

### **Human Resource Staff**

There are a variety of places in which to get assistance during a layoff. Your agency has a human resource professional on staff to assist you and answer your questions about a layoff. The human resource staff person should be willing to meet with you one-on-one or along with other affected employees to talk about your options. They will listen to your concerns, help you understand the options available to you, and guide you through the layoff procedures. Bring a list of questions or concerns to your meeting with your human resource staff.

### **Supervisor**

Your supervisor should be your source of information regarding the layoff timeline and process. Your supervisor should be able to explain the reasons for your job being eliminated, identify resources to assist you with the layoff process, and/or direct you to the appropriate agency staff for correct and complete information. Your supervisor can also help you arrange for an Employee Referral Program (ERP) appointment.

### **Employee Referral Program**

The Employee Referral Program is provided to State employees as a service of the West Virginia Department of Health and Human Resources, in conjunction with the Division of Personnel. Referrals are made confidentially for treatment with independent, off-site, professionals. Problems may include family/child troubles, marital difficulties, financial predicaments, emotional problems, alcohol and/or drug abuse, and other life adjustment problems that affect both personal and work lives. The particular department for which you work may also offer an employee assistance program as well.

For general information about the Employee Referral Program, please contact the Division of Personnel at (304) 558-3950, extension 57209, or visit the web site at: [www.personnel.wv.gov/SiteCollectionDocuments/Miscellaneous%20Documents/EmpReferral.pdf](http://www.personnel.wv.gov/SiteCollectionDocuments/Miscellaneous%20Documents/EmpReferral.pdf)

The Division of Personnel does not make direct referrals for treatment. You and/or your family or representative are encouraged to thoroughly evaluate each service provider to determine if it will meet your individual and/or family needs. It is also recommended that you contact the Public Employees Insurance Agency (PEIA) or your health insurance provider to explore assistance options and to ensure coverage prior to making any determinations.

## **PLACEMENT OPTIONS WITHIN STATE GOVERNMENT**

### **Remaining With Your Current Agency**

There are two potential opportunities for remaining with your current employer after a notice of layoff has been issued. They are as follows:

**Bumping** - An employee who has completed the probationary period and been certified permanent who is targeted for layoff may request a lateral class change or a demotion without prejudice to an existing position within the same occupational group in the organizational unit in which he or she is employed. Other permanent employees also scheduled for layoff have the same rights. Bumping rights are based on tenure (length of service) as a permanent employee of a state agency or in the classified service regardless of job class or title. To comply with the provision which allows an employee to exercise bumping rights, the Division of Personnel has defined occupational groups based on similarity of work and required skills, knowledge, and abilities.

**Vacant Positions** - Prior to the effective date of layoff, you may apply for transfer as an internal applicant for advertised vacancies within your agency for which you meet the minimum qualifications. After layoff and separation from State employment, you may apply for posted vacancies with your current employer or any other classified agency.

It is important to note that if selected for a position you are not guaranteed that you will maintain your current salary as the personnel transaction will be processed in accordance with the provisions of the *Administrative Rule* depending upon the type of appointment. Availability of agency funds will also impact the agency's decision regarding the salary for the posted position.

### **Remaining in State Government With a Different Agency**

**Prior to Layoff** - Prior to the effective date of layoff, you may apply as an internal applicant for advertised vacancies within agencies covered by the merit system for which you meet the minimum qualifications.

**After Layoff** - When filling vacancies, directors of State agencies must give preference to qualified permanent classified employees who were laid-off from an agency covered by the merit system of the State of West Virginia. This preference must be extended for not longer than one year and ceases immediately upon appointment to a classified position. The Division of Personnel will prepare registers of qualified permanent classified employees who have been laid off. The names of these employees will be arranged on the register in order of seniority and county of availability and forwarded to agencies as vacant positions are advertised. Selection will be based on seniority and fitness over all but existing employees of the agency or its facilities. Recall rights have priority over preference.



## **RECALL RIGHTS**

A laid-off employee has recall rights in reverse order (most seniority first) of the layoff for vacancies within the agency from which the employee has been laid off that occur in: (1) the class from which the employee was laid-off; (2) any lower class in the class series; or (3) any class previously held in the occupational group that are located in the county or in contiguous counties where the employee's last place of employment was located. An employee shall retain his or her recall rights for the same period of time as his or her tenure on the date of his or her layoff, or for a period of two (2) years, whichever is less. A laid-off employee shall be notified of such vacancies through certified mail by the agency from which the employee was laid-off. The laid off employee is responsible for notifying the agency of any change of address and failure to maintain current contact information with the agency may result in missed employment opportunities or removal from the recall list. Individuals who have been hired for permanent employment after layoff shall not forfeit the remainder of the recall eligibility period.

## **APPEAL RIGHTS**

In accordance with W. VA. CODE § 6C-2-1 *et seq.*, the West Virginia Public Employees Grievance Procedure, an employee has the right to appeal a layoff action within fifteen (15) working days of the final action. If you choose to exercise your grievance rights, you must submit your grievance, in writing, to the chief administrator, or his or her designee, at Level I of the Procedure. However, you may proceed directly to Level III upon the agreement of the chief administrator. You must also file a copy of the grievance with the West Virginia Public Employees Grievance Board, 1596 Kanawha Boulevard, East, Charleston, West Virginia, 25311, and with the Director of the Division of Personnel, Building 6, Room B-416, State Capitol Complex, Charleston, West Virginia, 25305.

Questions concerning the grievance procedure should be directed to the Public Employees Grievance Board at (304) 558-3361 or (866) 747-6743. Information is also available on the Grievance Board's web site at [www.pegb.wv.gov](http://www.pegb.wv.gov).

## **BENEFITS**

### **Annual Leave**

Upon separation from employment, an employee shall be paid for all accrued and unused annual leave, compensatory time, and or holidays as of the effective date of separation. In this situation, the date of separation is defined in the *Administrative Rule* as the last date and time worked by an employee separated from employment due to layoff. The employee may elect to be paid for annual leave in a lump sum on the next regular payday or to remain on the payroll until all annual leave is paid. The method of annual leave payment selected may have an effect on the employee's insurance termination date. (See Health Insurance Coverage Section of this brochure).

## **Sick Leave**

All accrued and unused sick leave shall be forfeited as of the effective date of separation from employment or the last day physically worked. However, if an employee is re-employed in eligible employment, all canceled sick leave shall be restored in accordance with the provisions of the *Administrative Rule*.

## **Continuation of Insurance After Layoff**

PEIA offers valuable benefit options to employees who participate in the health insurance program. Agency contributions for health insurance coverage for laid-off employees will continue for the entire month in which the separation occurs, and for an additional three (3) months at no additional cost to the employee as provided in W. VA. CODE § 5-16-13(c). The employee is responsible for timely payment of the employee share of the premium and failure to submit such payment by the due date may result in termination of insurance coverage. Employees who elect to receive their annual leave in a lump sum payment will have insurance coverage through the end of the month in which they are removed from the payroll plus an additional three (3) months. Employees who elect to remain on the agency payroll until all accumulated annual leave is paid will have insurance coverage through the end of the month in which their annual leave payments end and they are removed from the payroll plus an additional three (3) months. Thus, employees may wish to remain on the payroll until all annual leave is exhausted in order to extend their eligibility for agency contributions to the cost of their insurance coverage. After the mandatory three-month period, all health insurance will be cancelled for employees unless they elect to continue their insurance coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 USC 1161.

Under the provisions of COBRA, eligible employees and their dependents have an opportunity to continue their health insurance coverage for up to an additional 18 months beyond the mandatory three-month extension period. Employees who wish to continue their coverage must apply within 60 days of the end of coverage. HealthSmart is responsible for the administration of COBRA benefits and the notification of eligibility to the insureds. Disabled COBRA beneficiaries may extend their insurance coverage for 29 months beyond the mandatory three-month extension period. In either case, the insured is responsible for paying the entire premium for insurance coverage under the COBRA provisions. Enrollment for COBRA coverage is coordinated through and checks are to be made payable to HealthSmart. The premium payment should be submitted monthly to HealthSmart. Other health coverage options may be available to you, including coverage through the Health Insurance Marketplace. Visit [www.HealthCare.gov](http://www.HealthCare.gov) or call 1-800-318-2596 for more information.

Any additional questions or information requests should be directed to PEIA at (304) 558-7850 or 1-888-680-7342.

## **Retirement Options**

Upon separation from employment, an employee may apply for a refund of his or her retirement contributions (including eligible interest) provided the request is made prior to attaining age 60. The refund will be made approximately 60 days after the last day the employee's name appears on the agency payroll. Accumulated interest on employee contributions will be refunded if the

employee has at least two (2) years of contributing service (interest is posted at the end of each calendar year). All credited service is forfeited upon the withdrawal of the contributions.

In order to qualify for retirement benefits, members of the Public Employees Retirement System (PERS) must meet eligibility requirements. To determine your eligibility, please contact the West Virginia Consolidated Public Retirement Board at (304) 558-3570 or visit their website at [www.wvretirement.com](http://www.wvretirement.com).

An individual wishing to withdraw accumulated contributions from PERS should complete a Request for Refund of Accumulated Contributions Form. Contributions automatically remain on deposit with PERS if separating employees do not complete a Request for Refund Form. This form can be obtained from the PERS office, from the individual's payroll location, or online at: [www.wvretirement.com/Forms/RefundAppPERS.pdf](http://www.wvretirement.com/Forms/RefundAppPERS.pdf)

Any additional questions or information requests should be directed to the Consolidated Public Retirement Board (CPRB) at (304) 558-3570 or 1-800-654-4406.

### **Unemployment Compensation**

Individuals should report to the nearest local unemployment office as soon as possible after separation from employment to file a claim for unemployment benefits. To qualify for unemployment benefits, an individual must have been paid wages of at least \$2,200 in covered employment during the base period and paid wages in at least two quarters of the base period (this will be explained more fully by the Workforce West Virginia staff). The individual must also be able to work, be available for suitable, full-time work, be actively seeking work, and registered with the nearest Job Service Office. When applying for unemployment, you must present your Social Security card or, if your card is unavailable, a valid driver's license, photo identification, W-2, etc., verifying your Social Security number.

## **JOB SEARCH ASSISTANCE**

### **Your Agency**

You may wish to request an appointment with your human resources office - alone or as a group; to seek assistance as opportunities may be available or provided by your agency. Human resources can also provide you access to your personnel records so that you may prepare a resume and complete applications. You can also obtain information from human resources regarding any agency policy regarding work time to look for work, prepare applications, attend interviews, contact PERS, PEIA, Workforce West Virginia, etc.

### **Job Search Help from Workforce West Virginia**

Workforce West Virginia will make every effort possible in the transition from layoff to other gainful employment to assist displaced employees in obtaining available State jobs. In addition, they will provide employment assistance designed to help affected employees gain private employment while also offering a wide range of other services such as vocational counseling, testing, and referral to appropriate support services. Workforce West Virginia will also be able to

provide you with information regarding additional training that may assist you in obtaining your desired vocation. Colleges, vocational schools, and other training providers will also have placement assistance available.

### **Outplacement Services**

The Division of Personnel will provide outplacement services to affected employees in cooperation with Workforce West Virginia and other State agencies. The outplacement office for State employees is located in the Division of Personnel's Internal Employee Placement Unit of the Staffing Services Section. This office provides counseling services to determine areas of occupational interest as well as information on reviewing vacancy announcements.

### **Job Search Help on the Internet**

There are many useful internet web sites offering information on employment seeking and availability. Examples include:

[www.personnel.wv.gov](http://www.personnel.wv.gov)

[www.workforcewv.org](http://www.workforcewv.org)

[www.careeronestop.org/jobsearch/findjobs/state-job-banks.aspx](http://www.careeronestop.org/jobsearch/findjobs/state-job-banks.aspx)

## **RESOURCE CONTACTS**

### **West Virginia Division of Personnel**

Capitol Complex, Building 6, Room 416

1900 Kanawha Boulevard, East .....304-558-3950

Charleston, West Virginia 25305-0139

*Internal Placement Unit, Employee Transaction Section*.....Extension 57205

*Employee Relations Section*.....Extension 57209

Web Site: [www.personnel.wv.gov](http://www.personnel.wv.gov)

### **Public Employees Insurance Agency**

601 57<sup>th</sup> St., SE, Suite 2 .....304-558-7850

Charleston, West Virginia 25304-2345 .....1-888-680-7342

Web Site: [www.peia.wv.gov](http://www.peia.wv.gov)

### **Consolidated Public Retirement Board**

State Capitol Complex, Building 5, Suite 1000

1900 Kanawha Boulevard, East .....304-558-3570

Charleston, West Virginia 25305-0720 .....1-800-654-4406

Web Site: [www.wvretirement.com](http://www.wvretirement.com)

### **Workforce West Virginia**

Employment Service

*To Locate the Office in Your Area* .....1-800-252-5627

Web Site: [www.workforcewv.org](http://www.workforcewv.org)

## FREQUENTLY ASKED QUESTIONS

1. Q. What is the definition of an organizational unit?
  - A. Organizational unit is not defined in the Division of Personnel's *Administrative Rule*. In practice, the organizational unit is identified by the agency, and may be the entire agency, or a division, bureau, or other section or unit within the agency. In considering agency proposals for reduction-in-force, the State Personnel Board will consider the appropriateness of the organizational unit to ensure fairness and objectivity in the reduction-in-force process.
  
2. Q. What is the prescribed notification period for layoff?
  - A. There is no prescribed notification period for layoff in DOP's law, rule, or policy; however, subsection 4.2 of the West Virginia Division of Labor's *Wage Payment and Collection* legislative rule, W. Va. Code R. §42-5-1 *et seq.*, provides:

When an employer changes an employee's rate of pay, pay period, place or method of payment, time of payment, or any other term of employment, the employer shall furnish a written notice to the affected employee at least 1 full pay period prior to the effective date of the change.

The Rule defines Pay Period as "...the scheduled number of days for which an employee is paid, which may or may not coincide with the day an employee is paid."
  
3. Q. May I lay off the least tenured employee in the organizational unit who is on an approved medical leave of absence without pay?
  - A. An employee who is on an approved medical leave of absence without pay, for either a work- or non-work related injury or illness, must continue to be granted the benefits of the leave until the expiration of the leave; however, the employee should be provided with immediate notice that the layoff is effective at the expiration of the leave of absence without pay. To maintain the integrity of the recall and bumping lists, and to keep the employee aware of the situation, immediate notification of the layoff, as well as the right of recall and bumping, should be given.
  
4. Q. Can an employee "bump" to a vacancy?
  - A. Yes, an employee may bump to a vacant position in the classified service within the occupational group of the organizational unit approved by the Board for reduction-in-force, provided the agency intends to fill the vacancy.
  
5. Q. Can an employee choose the individual to bump?
  - A. No. If the employee exercises his or her right to bump, he or she must choose a classification.

6. Q. How should a laid off employee notify the agency of his or her desire to exercise bumping rights?
  - A. The employee should notify in writing the individual whose signature appears on the layoff notice of his or her desire to exercise bumping rights within 15 calendar days from date of receipt of the notice.
7. Q. How does an employee know what positions he or she might be eligible to bump to?
  - A. Positions to which the employee may bump should be listed as an attachment to the reduction-in-force notice letter received by the employee. An employee must meet the minimum qualifications for the position as well as be more senior than the person occupying the position and others interested in bumping into the position.
8. Q. Does an employee have appeal rights if his or her position is abolished as a result of reorganization?
  - A. The layoff notification letter should contain a provision advising the employee of his or her right to file a grievance according to W. VA. CODE § 6C-2-1 *et seq.*, the West Virginia Public Employees Grievance Procedure.
9. Q. At what level of the Grievance Procedure may an employee who has been laid off file a grievance?
  - A. A laid off employee must submit his or her grievance on the prescribed form to the chief administrator, or his or her designee, the Public Employee Grievance Board at 1596 Kanawha Boulevard, East, Charleston, West Virginia, 25311 and to the Director of the Division of Personnel, Building 6, Room B-416, State Capitol Complex, Charleston, West Virginia, 25305 at Level I of the procedure. However, an employee may proceed directly to Level III upon the agreement of the chief administrator or when the grievant has been discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits.
10. Q. What happens to an employee's accrued annual and sick leave when he or she is laid off?
  - A. Upon separation from employment, an employee shall be paid for all accrued and unused annual leave, compensatory time, and or holidays as of the effective date of separation. The employee may elect to be paid for annual leave in a lump sum on the next regular payday or to remain on the payroll until all annual leave is paid. All accrued and unused sick leave shall be forfeited as of the effective date of separation from employment or the last day physically worked. However, if an employee is re-employed in eligible employment, all canceled sick leave shall be restored in accordance with the provisions of the *Administrative Rule*.

11. Q. Is a laid off employee eligible for continued health insurance coverage?

A. Health insurance coverage will continue for the entire month in which the separation occurs, and for an additional 3 months at no additional cost to the employee. After the mandatory 3-month period, all health insurance will be cancelled unless the employee elects to continue his or her insurance coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Specific questions should be directed to PEIA at (304) 558-7850 or 1-888-680-7342. Other health care coverage options may be available to you, including coverage through the Health Insurance Marketplace. Visit [www.HealthCare.gov](http://www.HealthCare.gov) or call 1-800-318-2596 for more information.

12. Q. Is the State required to re-employ a laid off employee?

A. A laid off employee has recall rights within the agency from which the employee was laid off and will retain his or her place on the recall list for the same period of time as his or her tenure on the date of layoff or for a period of two years, whichever is less.

Additionally, for a period of one year, the employee's name is placed on a preference list for positions for which he or she is qualified. When filling vacancies, agencies must give preference to qualified permanent classified employees who were laid off from another agency. Selection will be based on seniority and fitness over all but existing employees of the agency or its facilities. Recall rights have priority over preference.

13. Q. Are there any counseling services available for a laid off employee concerning re-employment with the State?

A. Workforce West Virginia assists the displaced employee in the transition from layoff to other gainful employment, both in the private and public sectors. The Division of Personnel provides technical assistance to aid the affected employee in obtaining any available State job for which he or she is qualified.

14. Q. If the laid off employee accepts a private sector job or employment with the State in a classified-exempt position, will his or her name remain on the recall and preference lists?

A. Yes.

15. Q. May an employee transfer during his or her probationary period?

A. Subsection 10.4 of the *Administrative Rule* prohibits an appointing authority from transferring a probationary employee during his or her probationary period.

16. Q. May an employee be transferred against his or her will?

A. Subdivision 11.6(a) of the *Administrative Rule* provides that an appointing authority may transfer a permanent employee from a position in one organizational subdivision of an agency to a position in another organizational subdivision of the same or another agency at any time. Involuntary transfers, however, must serve a legitimate business purpose, and not be arbitrary, capricious, or an abuse of discretion.

17. Q. What happens to a transferring employee's sick and annual leave?
- A. As provided in subdivision 11.6(a), in the case of inter-agency transfer, an appointing authority shall transfer all hours of accumulated annual and sick leave and all service credit with the employee.
18. Q. Is an employee transferring from one agency to another required to submit a letter of resignation?
- A. Subdivision 11.6(a) provides that an appointing authority shall not treat an inter-agency transfer without a break in service as a resignation, and shall not require a transferring employee to submit a letter of resignation except when the employee is resigning from a classified position to accept employment in a classified-exempt (not covered under civil service) position.
19. Q. When an employee transfers from one agency to another, does his or her personnel file transfer with the employee?
- A. Subsection 19.1 of the *Administrative Rule* provides that a complete and accurate copy of the employee's personnel file shall be provided by the previous employer upon inter-departmental transfer or other appointment of the employee by another agency.
20. Q. When is it appropriate to reallocate a position from one class to another?
- A. As provided in section 4.7 of the *Administrative Rule*, whenever significant changes occur in the duties and responsibilities permanently assigned to a position, the Director of the Division of Personnel shall reallocate the position to the proper class. This presumes that the duties of the position have evolved to the point that the classification assigned to the position no longer represents the "best fit".
21. Q. Is there any recourse available to the employee who disagrees with the reallocation of his or her position?
- A. The incumbent or the appointing authority may seek a reconsideration of the allocation action by submitting a written request to the Director of the Division of Personnel within fifteen (15) working days of the effective date of the notification of the decision. The employee may also seek relief through the Public Employees Grievance Procedure.