



SEVERANCE PAY

I. PURPOSE:

The purpose of this policy is to implement the West Virginia Legislature's 1999 amendment to *W. Va. Code* § 29-6-10 (12), pending revision of Section 12.2 of the *Administrative Rule* of the Division of Personnel.

II. AUTHORITY:

Presently, Section 12.2 of the *Administrative Rule* of the Division of Personnel provides that an employee shall receive a fifteen (15) calendar-day written notice of discharge and be permitted to work out the notice period when dismissed for cause. Effective June 9, 1999, *W. Va. Code* § 29-6-10(12) was amended to provide for severance pay in cases of involuntary discharge for cause. That section now reads, in pertinent part:

Provided, [t]hat upon an involuntary discharge 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 discharge, or if immediate separation is elected by an employee who receives notice of an involuntary discharge for cause, the employee is entitled to receive severance pay attributable to time the employee otherwise would have worked, up to a maximum of fifteen calendar days following separation. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the discharge.

III. POLICY:

A. Dismissal In General

1. An appointing authority may dismiss an employee, for cause, after providing the employee with a fifteen (15) calendar-day advance written notice of the discharge for cause which:
 - a. states the specific reason(s) for the dismissal;
 - b. provides the employee the option of working out the notice period or receiving severance pay in lieu thereof (except in the case of dismissal for job abandonment);
 - c. provides a fifteen (15) calendar-day period for the employee to respond, either in person or in writing, and
 - d. advises the employee of applicable appeal rights.
2. An employee may work out the notice period, if immediate separation from the workplace is not required by the employer or elected by the employee; however, an employee cannot be required to work out the notice period.
3. In all cases of dismissal, with or without advance written notice, and/or with or without the opportunity to work out the notice period, the appointing authority shall provide the Director of Personnel with a copy of the dismissal letter and any written reply, thereto, from the employee.



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B. Dismissal With Immediate Separation and Severance Pay

1. The fifteen (15) calendar-day advance written notice of dismissal and the opportunity to work out the notice period are not required when the employer requires an employee's immediate separation from the workplace or when the employee elects immediate separation from the workplace following written or verbal notification of involuntary discharge for cause.
2. In cases where immediate separation is required by the employer or elected by the employee, the employer is still obligated to provide the employee with written notice of the dismissal which:
 - a. states the specific reason(s) for the dismissal;
 - b. provides a fifteen (15) calendar-day period for the employee to respond, either in person or in writing, and
 - c. advises the employee of applicable appeal rights.
3. When an employee is dismissed for cause and the appointing authority requires, or the employee elects, immediate separation from the workplace:
 - a. the employee is entitled to receive severance pay for the workdays that he or she, would have been scheduled to work during the notice period, up to a maximum of fifteen (15) calendar days.
 - b. the employee shall be eligible to receive the pro rata share of the annual increment to which he or she is entitled; however, the employee shall not be paid for holidays or accrue increment pay, annual leave, sick leave or tenure for the period of time for which severance pay is received.
 - c. no deductions from severance pay may be made for contributions toward retirement.
 - d. payment for any terminal accrued annual leave, which may be due an employee, shall not commence until after the effective date of the dismissal, which shall be the day following the end of the fifteen (15) calendar-day response period.
4. An employee who is dismissed for abandoning his or her position is not eligible for severance pay, such cause for dismissal being synonymous with resignation.
5. Severance pay does not apply to a reduction- in-force (layoff) necessitated by a lack of funds or a lack of need of services, since such personnel actions are not disciplinary in nature.
6. Receipt of severance pay does not affect any other right to which an employee is entitled with respect to dismissal (e.g., grievance rights, health insurance coverage, payment for accrued annual leave, etc.).

 *West Virginia Division of Personnel*

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IV. REFERENCES:

- A. *W. Va. Code* § 29-6-10(12), as amended.
- B. Division of Personnel *Administrative Rule*, Section 12.2 (revision pending).

V. EFFECTIVE DATE: September 16, 1999.

VI. POLICY NUMBER: DOP-P19.

Approved and Issued By:



Joe E. Smith, Acting Director of Personnel

Date: September 16, 1999.