



West Virginia
Division of Personnel

SUPERVISOR'S GUIDE
TO
ATTENDANCE
MANAGEMENT

Employee Relations Section
October 2018

TABLE OF CONTENTS

DISCLAIMER

Discussion	1
Identifying Misuse of Leave	1
Absences Not Typically Included in Absenteeism Rate Calculation	3
Factors Considered in Leave Misuse Assessments	5
Considering Attendance When Evaluating Performance	8
Physician's/Practitioner's Statement	8
Corrective Measures	9
Coordination with Statutes and Division of Personnel Rule	10
Coordination with Agency Personnel and Payroll Staff	11
Citations to Relevant Sections of the <i>Administrative Rule</i>	12
Appendix A, Absenteeism Evaluation Assessment Form	14

DISCLAIMER

This booklet is intended to be used as a reference and procedural guide to the attendance management process. 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. This version of the guide supersedes all previous versions.

This booklet is written with the understanding that the West Virginia Division of Personnel is not engaged in rendering legal services. If legal advice or assistance is required, the services of an attorney should be sought. Supervisors should also refer to the policies, rules and regulations as well as consult with the human resources office within his or her respective agency.

For technical assistance concerning specific situations, employees and employers may contact the Division of Personnel's Employee Relations Section at (681) 313-2706.

ATTENDANCE MANAGEMENT

Public employers are often faced with complaints that leave provisions afforded their employees are too generous and limit management's ability to control work situations for a desired outcome. However, an agency's attendance standards are self-determined and consist of the values, beliefs, and norms on attendance and absenteeism within the agency. Misunderstanding and inconsistency often occur when attendance standards have not been previously communicated to employees. Unfortunately, many employees and supervisors erroneously believe that annual leave and sick leave are entitlements to be used at the employee's discretion. If excessive absenteeism is permitted, it communicates to staff that a high level of absenteeism is acceptable. The following information is offered to provide guidance to supervisors who desire to maintain an acceptable level of staff attendance. It is the responsibility of each manager to actively address attendance issues in a timely and consistent manner.

DISCUSSION

Questionable or excessive absenteeism can be costly to employers in terms of lost productivity, increased administrative burdens, and lowered employee morale. It may also necessitate work reassignment, cause service delivery delays, increase overtime costs, and reduce the quality and quantity of services provided. Absences which are excessive or extreme, and attendance that falls below established acceptable levels, also result in anger, frustration, and resentment on the part of conscientious employees and supervisors who must assume the absent employees' share of the workload.

To identify and correct excessive absenteeism, supervisors need to understand the scope and extent of their authority granted by the agency to deal with the problem. They must know and understand the rules and policies which govern leave usage and disciplinary action. Standards of attendance by which absences are to be judged should be job related and should be communicated to employees prior to their implementation.

Issues confronting managers responsible for maintaining satisfactory levels of attendance include: the difficulty of determining what constitutes excessive absenteeism; consistent leave request approval and denial based on agency standards and work necessity; the consistent application of acceptable minimum staffing levels in approving leave requests; attendance patterns as a factor in the evaluation process; the proper determination of when a physician's/practitioner's statement *is* required, and when it *may be* required; and how to appropriately administer corrective action.

IDENTIFYING MISUSE OF LEAVE

Since attendance is an essential element of every job, an undependable employee is of questionable value to an employer and poor or unacceptable attendance should be dealt with promptly. Supervisors are vested with the responsibility and authority to approve or deny discretionary leave requests based upon the business need and work flow of the unit. Supervisors who approve

discretionary leave (annual leave, personal leave of absence without pay, educational leave and disaster relief leave) cannot reasonably consider such approved absences as a misuse of leave.

While the abuse of any benefit is troublesome, the chronic or recurring misuse of leave, either annual or sick, is particularly bothersome because such absences cannot be planned for and, therefore, directly impact the efficient delivery of State services. The same may be true of **legitimate**, unforeseen absences, but the fact that these absences are typically unexpected and isolated incidents somewhat minimizes any inconvenience because other staff can usually be expected to assist for a legitimate absence. Short notice and frequent absences, including tardiness, however, may constitute an unsatisfactory attendance record because they result in a lack of dependability and poor work ethic that directly impacts the work output of the work/organizational unit and routinely burdens co-workers with unfair additional duties and/or overtime work.

A guide to assist managers and supervisors in making informed decisions when determining whether or not leave requests should be approved or denied is available in the Supervisor's Toolbox section on the Division of Personnel's website at personnel.wv.gov.

[DOP Leave of Absence Approval / Denial Guidelines](#)

Assessing Absenteeism Rate

To evaluate whether an employee is misusing his or her leave, the employer must determine the number of work hours the employee has been available to work over a certain period of time (usually six months). Available work hours equal total regular scheduled work hours during the period being evaluated **minus** pre-approved annual leave, pre-approved compensatory time off, holidays, overtime, supported sick leave, approved medical and personal leaves of absence without pay, education leave, required military leave, court/jury/hearing leave, approved time off to vote, organ donation leave, approved emergency medical services (EMS)/fireman service leave, and approved disaster service leave **Note: unsupported sick leave, annual leave used when sick leave is exhausted, unauthorized leave, and suspensions due to unauthorized leave, leave misuse, and/or absenteeism are included in available work hours.**

Absences protected by law, such as the State Parental Leave Act (PLA), federal Family and Medical Leave Act (FMLA), workers' compensation, military leave, or leave as a form of reasonable accommodation under the American with Disabilities Act (ADA), as well as pre-approved annual leave, cannot be considered as an unsupported absence for disciplinary reasons, leave misuse, even if the absence was not designated as such leave.

Misuse of leave may be determined to occur when:

- 1) Unsupported sick leave hours are equal to or greater than five percent (5.0%) of the time available for work in a given six-month period or twelve-month period. This figure is calculated by dividing the total number of unsupported sick leave hours taken by the time available for work during the given period and multiplying that figure by 100 (Unsupported Sick Leave/Time Available for Work = _____ x 100 = _____%); OR

There is no presumption of sick leave misuse by virtue of an individual exceeding the established percentages referenced above. Sick leave misuse shall be determined to have occurred only after a full review of the circumstances involved and no disciplinary action should be initiated without a full review.

Absences Not Typically Included in Absenteeism Rate Calculations

Absences due to illness must be evaluated with full consideration to the circumstances of the absence. The following types of leave would not normally factor into any attendance/leave usage evaluation for the purposes of corrective action or performance evaluation:

- Supported Sick Leave or annual leave used when sick leave is exhausted is an absence that is documented with an authorizing and verifying statement from a physician/practitioner that the employee was seen by the physician (but which does not necessarily disclose the nature of the illness or a diagnosis) and the length of the absence. Supported sick leave is generally considered legitimate absences and is not included when tabulating absences to determine leave misuse, unless some fact brings the legitimacy of the absences into question, such as forgery of the statement or activities inconsistent with the statement, or a pattern of misuse exists. Verification of the physician statement should only be sought in limited situations, after discussion with legal counsel.
- Approved family leave including paid sick leave or annual leave used when family leave is exhausted for illness and/or routine dental and medical appointments (80-hour sick leave allotment during the calendar year), federal FMLA, and state PLA.
- Sick leave that is used for a death in the immediate family, as defined by the Division of Personnel (DOP) *Administrative Rule*, W. Va. Code R. §143-1-1 *et seq.*, is also not typically used when computing unsupported sick leave, provided the leave is limited to three or less days. If sick leave is requested to commence immediately preceding and/or following the leave granted for death in the immediate family, a physician's/practitioner's statement will not be required unless the employee is on leave restriction or the additional sick leave exceeds three (3) consecutive scheduled workdays, provided that the employee presents verification of a qualifying death.
- Pre-approved annual leave. An employee must request and obtain approval in advance for annual leave, compensatory time off and holiday leave. Except when requested under the provisions of the Parental Leave Act or FMLA, accrued annual leave shall be granted at those times that will not materially affect the agency's efficient operation. If business need precludes granting the leave, then it can and should be denied.
- Approved Emergency Annual. If misuse is suspected, supervisors may request verification of the need for leave.
- Approved FMLA and medical leave of absence without pay for the employee's own illness or injury, including workers' compensation leave.

- Supported discretionary personal leaves of absence and education leave.
- Required military leave
- Court/jury/hearing leave.
- Organ donation leave.
- Approved disaster service leave.
- Paid leave for certain state officers and employees during a declared state of emergency.
- Approved EMS/fireman service leave.
- Approved time off to vote.

- Emergency Situations/Inclement Weather. All employees shall be required to report to work as scheduled during ES/IWC, unless specifically directed otherwise by the Governor or the Governor's designee. Employees unavailable to report to work due to previously scheduled leave, unwillingness, or inability to report to work as scheduled during ES/IWC shall be charged annual leave, accrued compensatory time, or are required to take a personal leave of absence without pay for time absent from work. The Division of Personnel's Emergency Situations/ Inclement Weather policy is available at the link below and on the DOP website at personnel.wv.gov.

[Emergency situations/ Inclement Weather Policy](#)
- Grievant or Employee Representative. In accordance with W.Va. Code §6C-2-3(m), an employee, who is either the grievant, witness or the employee's representative in a grievance, shall be granted time during regular work hours for preparation of the grievance procedure. Such time shall not exceed four (4) hours per grievance and is granted in addition to time spent in grievance conferences and/ or hearings. Such time shall be without loss of pay and without charge to annual leave. The employee must submit a request to his or her supervisor in advance for this type of leave.

It is important to note that according to law, leave for federal military duty may not be adversely counted against an employee's attendance and performance record and employers may not discriminate against employees who are absent and receiving temporary total disability benefits due to a work-related, compensable injury or who are performing federal military duty. It should further be noted that Red Cross volunteer disaster leave is discretionary.

Factors Considered in Leave Misuse Assessments

In order to identify and correct the misuse of sick and annual leave, supervisors should consider these factors:

- **Number, Frequency and Duration:** Numerous and frequent short-term absences of one or two days duration for which either “emergency” annual leave or sick leave is requested may suggest an attendance problem. “Emergency” annual leave is leave requested and approved the same day of the absence or upon short notice for unforeseen events. Numerous absences of three days or less due to illness which do not ordinarily require a physician’s/practitioner’s statement and are unsupported may also suggest a misuse of leave.
- **Patterns:** A history of unscheduled absences which occur immediately before or after scheduled or approved days off or which precede or follow holidays may suggest an attendance problem. Such absences evoke suspicion because they extend the number of uninterrupted days the employee is away from the job. A "pattern" of misuse of leave should not solely be based on any arbitrarily set number of missed days or occurrences. Mitigating circumstances regarding absences, if any exist, should be considered on a case-by-case basis.

To more easily identify *patterns* of misuse of leave, the use of color-coded calendars is beneficial. Such calendars may also be used as demonstrative evidence to identify attendance versus absences by types of leave in the corrective discipline process or in a grievance proceeding. The supervisor could record each absence duration and type on a calendar page, then color code by the nature of the different absences. Coding could be for pre-approved, versus “emergency” and sick versus annual. Examples of patterns of absences that may represent misuse of leave include, but are not limited to:

1. Hooking – The unplanned absences of short duration which may be linked or “hooked” with scheduled days off, holidays, weekends, or periods of annual leave;
2. Repeated unscheduled absences on a specific day of each week or calendar date;
3. Unscheduled absences on the day following required overtime worked; (day after payday is suspect.)
4. Use of leave immediately upon accrual, thus maintaining zero or near zero leave balances;
5. When scheduled for undesirable temporary shifts, assignments, or during periods of peak workload, or during periods when annual leave was prohibited due to business necessity;
6. When expecting notice of unsatisfactory job performance (i.e., following a work incident when expecting or following discipline or a regularly scheduled performance evaluation);

7. Reporting/Requesting sick leave when annual leave was denied. NOTE OF CAUTION: This could be a legitimate request if the employee requested annual leave for a medical appointment and it was denied; then the employee would have to request sick leave which cannot be denied;
 8. Providing peculiar and increasingly improbable or unacceptable excuses for emergency or sick leave; or,
 9. In any such way that a repetitive use of sick leave or emergency annual leave can be established in relation to an event or occurrence, e.g., the day following a college football game.
- **Excessive Use of Annual Leave:** In accordance with the *Administrative Rule*, annual leave is subject to advance approval. Therefore, the misuse of annual leave would occur in only limited situations, such as when the employee has insufficient accrued leave for a requested absence when the employee does not obtain advance approval or when unscheduled annual leave is requested for medical reasons in lieu of sick leave or upon the exhaustion of paid sick leave for the employee's own illness or for the illness of a family member.

While the employee is responsible for appropriate use of his or her leave benefits, the supervisor also is charged with the responsibility to verify that sufficient annual leave is available prior to approving leave requests. When identifying excessive use, it is important to distinguish between pre-approved annual leave and unscheduled annual leave used when sick leave is exhausted. Misuse may also occur, when "**emergency**" annual leave is frequently requested. When "emergency" absences become excessive, ***requests for such leave require closer scrutiny and legitimate documentation to substantiate validity (e.g. accident report or service receipts from a mechanic, repairman, etc.) may be required.*** An employee may be less inclined to fabricate personal emergencies or disasters when the validity of a claim must be documented upon return to duty. Supervisors should always inquire as to the reason for emergency leave or tardiness and emergency annual leave may be denied when business needs require attendance. Uniform and consistent standards which include consideration of the critical level of attendance for the position must be applied when reviewing and denying annual leave requests.

- **Tardiness:** It is an employee's responsibility to be at his or her work station or assigned area ready to begin work promptly at his or her starting time according to the work schedule established by the supervisor. However, an emergency situation beyond the employee's control, which causes an employee to be late, may be excused by the supervisor in accordance with established agency standards. If an emergency is likely to cause tardiness of more than a previously communicated period of time (e.g., arrival within 30 minutes), the supervisor or designee should be contacted and given the expected time of arrival. Managers and supervisors are responsible for ensuring timely completion of leave requests by the employee's unit. Supervisors are also responsible for submittal of leave and attendance records to the individual responsible for maintenance of agency leave records.

The employee may be permitted to utilize annual leave for the absence. However, the minimum charge is 15 minutes, so the employee must not begin work until 15 minutes after the start of her or his scheduled start time. If the employee has insufficient accrued and unused leave, he or she can be taken off from the payroll for the period of tardiness (typically processed as a personal leave of absence). If no acceptable reason is provided for the tardiness, the employee's pay can be docked for unauthorized leave. In certain situations, an employee may be required to vacate the office area for the remainder of time between reporting to work late and the completion of a full 15-minute leave charge interval. The employee would be expected to promptly report as directed and to be ready to begin working. If the employee has no accrued annual leave or desires not to use accrued leave and is not on leave restriction, he or she may be allowed to schedule adjust and make up the time by staying late or coming in early within the same workweek. Except in mitigating circumstances, if the employee is on leave restriction his or her pay should be docked for unauthorized leave and appropriate disciplinary action may be taken. If tardiness has become a pattern for the employee, his or her leave usage should be reviewed, and the employee should be advised that future incidents may result in his or her pay being docked for unauthorized leave and appropriate disciplinary action may be taken.

- **Critical Level of Attendance:** There are positions where attendance is a critical function and is properly given greater weight as an essential function of a position. For these positions, a higher standard and faster response to attendance lapses are appropriate. Examples include positions providing direct patient/resident care and essential services in residential and/or correctional facilities which operate on a 24-hour-a-day basis. Work during agency peak periods, such as tax return season or deer hunting season, or any designated periods of mandatory attendance based on business necessity, requires a higher level of attendance.

Though it is reasonable to believe that regular attendance is an essential function of every position; that is not necessarily true (e.g., jobs that can be performed at alternate locations or that are not time-sensitive). When determining whether or not regular attendance is an essential function of a position, consider the following:

1. Do other workers have to cover the employee's work in addition to or at the abandonment of their own duties?
 2. Can the work be made up by the absent employee upon his or her return?
 3. What are tangible consequences to the employer or customer of not being able to plan for the unscheduled absence?
- **Excessive Use of Unsupported Sick Leave:** Any absence for which an employee has requested paid sick leave, *regardless of the duration*, that is not substantiated by a physician's/practitioner's statement verifying the legitimacy of the absence is unsupported sick leave. If an employee's unsupported sick leave (generally during a six-month period) exceeds a reasonable percentage of the available work time, the supervisor should counsel the employee regarding the current attendance record and agency expectations/standards). If the employee offers no reasonable explanation, the supervisor may consider imposing sick leave restrictions according to subsection 14.5. of the *Administrative Rule*.

- **Excessive Use of Sick Leave:** Grievance case law has established that any written policy regarding excessive use of sick leave or excessive absenteeism should be carefully written, communicated to the employee in advance and strictly enforced/applied before being considered legitimate justification as a basis for disciplinary action.

The determination of excessive absenteeism is not necessarily established with a pre-determined number of occasions or days absent. (Complete Appendix A to determine the employee Absenteeism Rate.) A determination of a satisfactory or unsatisfactory level of attendance must be based upon the totality of the circumstances and agency business need. Such determination is at the discretion of the appointing authority and implemented by agency managers and supervisors and is to be based on the essential functions of the specific organizational unit and position. Defining a critical level for **each individual** position, however, is discouraged as it will likely result in discriminatory treatment and/or inconsistent application.

- **Use Inconsistent with Certification from a Health Care Provider:** Leave use inconsistent with the prescribed need such as the period or frequency of incapacity, treatment or significant variances from the circumstances described in the certification may suggest leave misuse or consideration of other factors impacting attendance.
- **Return at Less Than Full Duty:** The appointing authority may permit an employee to return to work at less than full duty from sick leave or a medical or personal leave of absence (for medical reasons) without pay; however, there may be times when doing so would impair the ability of an organization to operate in a safe and effective manner. Accordingly, any return at less than full duty must be coordinated in compliance with subdivision 14.4(h) of the *Administrative Rule*.
- **Reasonable Accommodation:** Although reasonable accommodations must be made for qualified individuals according to the provisions of the ADA, the agency reserves the right to determine the tasks that constitute the essential functions of an employee's position and what changes, if any, should be made in order to make a **reasonable** accommodation. Reasonable accommodations must be considered in consultation with the employee as an interactive process. Accommodations may involve additional time off, paid or unpaid. Paid time off as an ADA accommodation must be designated as sick leave or annual leave as there is no separate category for "ADA" leave.

CONSIDERING ATTENDANCE WHEN EVALUATING PERFORMANCE

The established Employee Performance Appraisal process for State agencies requires assessment of an employee's Availability for Work, including reliability and dependability. Excessive leave usage should be considered when evaluating an employee's performance and deficiencies should be reported to the employee and reflected in his or her score. When leave is used for other than its intended purpose, employees must be made aware of this issue not only during performance appraisal, but on a continuous basis throughout the year. However, keep in mind the information above regarding leave use is not typically considered when evaluating performance.

PHYSICIAN'S/PRACTITIONER'S STATEMENT

The physician's or practitioner's statement requirement is to establish the legitimacy of an employee's need for and duration of absence due to illness/injury. Submittal of the statement is required under certain defined conditions and may be required by agency management when warranted by an employee's attendance pattern. When applicable, conditions of the requirement are subject to the recertification provisions of FMLA.

The prescribed DOP Physician's/Practitioner's Statement (DOP-L3) is required verification of incapacity when:

- An employee is absent due to medical necessity for self, member of their immediate family or combination thereof **for more than three (3)** consecutive work days or scheduled shifts and requests paid sick leave, annual leave taken in lieu of sick leave or upon the exhaustion of paid sick leave.
- If an employee's unsupported sick leave usage is determined to be excessive, the employee may be required in the future to provide verification by a physician/practitioner of an illness of ***less than three consecutive scheduled work days or scheduled shifts***, or for medical/dental appointments according to subsection 14.5. of the *Administrative Rule*. Such action may be taken for a specified period of time when the employee appears to be misusing sick leave and the employee has been previously counseled and placed on written notice that verification is being required. Requirements should be spelled out in a written improvement plan and provided to the employee, as discussed below.

CORRECTIVE MEASURES

Supervisors should use informal or less severe progressive corrective and disciplinary steps prior to formal disciplinary action when addressing unacceptable attendance patterns. Individualized instruction by a supervisor should explain/clarify the agency's attendance standards and policy, if applicable, where the policy may be located, specific expectations, and a specific time when attendance will again be evaluated. Such positive (non-punitive) approaches should be included as an initial part of any comprehensive plan to correct attendance deficiencies. Formal disciplinary action should only be considered after other corrective measures, such as education, coaching, counseling, and improvement plans, have been attempted. Progressive discipline steps may be found in the "*Supervisor's Guide to Progressive Corrective and Disciplinary Action*," on the Division of Personnel's web site at: [DOP Supervisor's Toolbox](#).

The employee's attendance should be monitored and reassessed on a two to three-month basis to determine the effectiveness of any corrective action plan that has been implemented. Supervisors may use the form at the end of this document (Appendix) in the calculation of the absenteeism rate which should generally not exceed 5%.

It is not prudent to develop agency policies that are written so restrictively as to remove an agency's discretion in determining what constitutes misuse of leave. Furthermore, agencies should not establish inflexible penalties requiring discipline for certain numbers of missed days or occurrences due to the many factors that must be considered in a fair evaluation, including federal law. NOTE: In accordance with the *Administrative Rule*, agency supplemental attendance policies must be reviewed and approved by the Director of the Division of Personnel.

COORDINATION WITH STATUTES AND DOP RULES

Nothing in agency-specific procedures shall enhance or diminish the provisions of any federal or State law or any properly promulgated DOP rule. Corrective measures must be coordinated and taken in accordance with federal and State laws, including the ADA, FMLA, PLA, W. Va. Workers' Compensation statute, W. Va. Human Rights Act, and relevant sections of DOP rules. Any absence due to illness or injury, whether work-related or not, may entitle the employee to the protections of any one or more of the following federal/State laws and DOP rules:

Americans with Disabilities Act: The ADA is a federal non-discrimination statute designed to remove barriers that prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities. Where an individual's disability impedes job performance, an employer must make reasonable accommodations to help the individual overcome the particular impediment, unless doing so would impose an undue hardship. However, the employee must be able to perform the essential functions of the position with or without accommodation. Appropriate accommodations must be determined through an open dialogue with the employee and may involve consideration of proposed accommodations related to attendance standards for the position.

Family and Medical Leave Act: The FMLA entitles eligible employees to take up to 12 weeks of unpaid, job protected leave in a 12-month period, for specified family and medical reasons including any "qualifying exigency" arising out of the active duty or call to active duty status of a spouse, son, daughter or parent. Further, the FMLA allows employees to take up to 26 weeks of unpaid leave in each 12-month period to care for family members who suffered a serious injury or illness while on active military duty.

W. Va. Parental Leave Act: In 1989 the Legislature enacted "The Parental Leave Act," codified as W. Va. Code§21-5D-1 *et seq.*, to provide employees with unpaid time away from work (after exhausting annual and applicable paid leave) without risk of employment loss. The *PLA* provides that an employee shall be entitled to up to a total of 12 weeks during any 12-month period of unpaid Family Leave, for the birth of a child of the employee; the adoption of a child; or to care for the employee's child, spouse, parent or dependent who has a serious health condition, after exhausting annual and applicable paid leave. Since it is without pay, sick leave and annual leave should not be an issue unless the employee decides to use paid leave under FMLA.

If an employee is eligible for leave under FMLA, PLA, and/or the various leave benefits provided in the DOP *Administrative Rule*, the employee is entitled to the greatest benefit or most generous rights afforded under the different parts of each law or the *Administrative Rule*. The determination of the most generous benefit is at the employee's discretion.

In 2010, DOP promulgated the *Family and Medical Leave Act / Parental Leave Act* policy (DOP-P23) to achieve consistency among agencies regarding administration of leave. The policy established standards for the calculation method to be used and for the substitution of paid leave for qualifying absences. Refer to the *DOP Reference Guide to Federal Family and Medical Leave & West Virginia Parental Leave*, for further guidance. This guide and other guidance material may be viewed and downloaded at the DOP's web site at:

[Family and Medical Leave Act/Parental Leave Act \(FMLA/PLA\)](#)

W. Va. Workers' Compensation Act: State law, at W. Va. Code §23-5A-3, provides that an employer shall not terminate an injured employee while the injured employee is off work due to a compensable injury and is **receiving or is eligible to receive** Temporary Total Disability (TTD) benefits unless the injured employee has committed a separate, dischargeable offense. A separate dischargeable offense means misconduct by the injured employee that is wholly unrelated to the injury or to the absence from work resulting from the injury.

W. Va. Human Rights Act: This State statute, codified at W. Va. Code §5-11-1 *et seq.*, prohibits disability discrimination and is similar to the federal ADA. The definition of disability under both Acts is identical. This Act also prohibits discrimination against an employee due to a disability which results in the employee using protected leave.

COORDINATION WITH AGENCY PERSONNEL AND PAYROLL STAFF

It is the responsibility of all managers and supervisors to insure employees under his or her supervision properly record work hours and leave use each pay period. Supervisors are responsible to monitor leave balances of all employees under their supervision prior to approving leave. Managers and supervisors should immediately communicate to the agency human resources/payroll office, as appropriate, any situation requiring special handling, reporting, or pay adjustment, (i.e., approved leaves of absence, unauthorized leave, suspension, or dismissal) needs to be promptly reported to and coordinated with the agency human resources office.

RELEVANT SECTIONS
of the
DIVISION OF PERSONNEL ADMINISTRATIVE RULE

DISCLAIMER

These subsections cited below do not represent the entire Division of Personnel *Administrative Rule*, W. Va. Code R. §143-1-1, *et seq.*, as the Rule is subject to change. It is suggested that relevant subsections/subdivisions be downloaded and provided to the employee. The Rule is located at:

www.personnel.wv.gov/rules/doprules/Pages/default.aspx

Specific questions should be directed to the Division of Personnel's Employee Relations Section, at 681-313-2706.

Relevant sub-sections of W. Va. Code R. §143-1-1, *et seq.* (2016) are referenced below:

Annual Leave

- Subsection 3.7. Definition - Annual Leave
- Subdivision 14.3.c. Requesting, Granting
- Subdivision 14.3.h. When Sick Leave is Exhausted

Sick Leave

- Subsection 3.83. Definition - Sick Leave
- Subsection 3.43. Definition - Immediate Family
- Subdivision 14.4.f. Requesting, Granting

Physician's/Practitioner's Statement

- Subdivision 14.4.g. Physician's/Practitioner's Statement

Return at Less Than Full Duty

- Subdivision 14.4.h. Return at Less Than Full Duty

Suspected Misuse of Leave

- Subsection 14.5. Suspected Misuse of Leave

Unauthorized Leave

- Subsection 14.6. - Unauthorized Leave

Leaves of Absence Without Pay

- Subsection 14.8. Leave of Absence Without Pay

Military Leave

- Subsection 14.9. Military Leave

Court, Jury, and Hearing Leave

Subsection 14.10. Court, Jury, and Hearing Leave

Education Leave

Subsection 14.11. Education Leave

Other DOP Rules relating to attendance:

Leave Donation Program Rule, W. Va. Code R. §143-2-1, *et seq.* (1996)

Workers' Compensation Temporary Total Disability, W. Va. Code R. §143-3-1, *et seq.* (2012).

Organ Donation Program, W. Va. Code R. §143-5-1, *et seq.* (2007).

***EXPLANATION OF SUPPORTED AND UNSUPPORTED
FOR PURPOSES OF THIS CALCULATION:**

Supported Sick Leave or Supported Annual Leave when Sick Leave is Exhausted is any absence from work granted to an employee when used for an appropriate reason which **IS** documented by proper authority such as a Physician's or Practitioner's statement specifying that the employee or the family member that necessitated the absence was treated and/or incapacitated and the exact period of the employee's absence from work that was necessary, justified, and/or appropriate.

Sick Leave for Death in the Immediate Family should be considered Supported Sick Leave when the death and qualifying relationship is confirmed and does not exceed three scheduled workdays. If sick leave requested immediately preceding and/ or following leave granted for death in the immediate family, a physician/practitioner's statement will not be required unless the employee is on leave restriction or the additional sick leave exceeds three (3) consecutive scheduled workdays, provided the employee provides verification of the qualifying death.

Unsupported Sick Leave or Unsupported Annual Leave when Sick Leave is Exhausted is any absence from work granted to an employee which is **NOT** documented by a Physician's or Practitioner's statement specifying that the employee or the family member that necessitated the absence was treated and/or incapacitated and the full period of the employee's absence from work was necessary, justified, and/or appropriate.

For example, Unsupported Emergency Annual Leave could include emergency leave due to a vehicle break down or accident without written verification from a service provider of corrective measures taken. Documentation of emergency annual leave may be such verification as a police accident report, receipt from a towing service or other documentation verifying the reason and time of the absence and necessity for the employee's presence.

ABSENTEEISM EVALUATION ASSESSMENT FORM

EMPLOYEE NAME: _____

ABSENTEEISM EVALUATION REVIEW PERIOD: _____ to _____
 (At least six month period is recommended.)

A. GATHER DATA NECESSARY TO CALCULATE ABSENTEEISM RATE.

STEP 1. Using a calendar, tabulate the TOTAL NUMBER OF SCHEDULED WORK HOURS during the specified work period. Based on the employee’s normal work schedule for the period (not to exceed 40 hours per week), the number of hours (excluding any overtime hours of work) the employee **was scheduled** to work in the period specified above based upon the established standard work week for the agency. Do not include Holiday hours if the employee was not scheduled to work.

TOTAL NUMBER OF SCHEDULED WORK HOURS: #1 _____

STEP 2. During the work period specified above, using leave slips, work reports and payroll records on file, allocate all of the employee’s hours of absence to the following categories of leave:

HOURS ABSENT Column A	HOURS ABSENT Column B	CATEGORY OF LEAVE USAGE *Explanation of Supported and Unsupported
		Pre- Approved Annual Leave
		Unsupported (Emergency) Annual Leave
		Annual Leave When Sick Leave Exhausted – Supported
		Annual Leave When Sick Leave Exhausted – Unsupported
		Leave Without Pay due to insufficient accumulated Sick Leave or Annual Leave – When Sick Leave is Exhausted – Supported
		Leave Without Pay due to insufficient accumulated Sick Leave or Annual Leave – When Sick Leave is Exhausted – Unsupported
		Leave Without Pay due to insufficient accumulated Annual Leave when used for personal reasons unrelated to health
		Pre-approved Use of Accumulated Compensatory and Holiday Leave
		Sick Leave (Including Family Sick Leave) – Supported
		Sick Leave (Including Family Sick Leave) – Unsupported
		Sick Leave for Death in the Immediate Family

		Approved Leave of Absence (Personal Leave of Absence, Family Medical Leave Act, Medical Leave of Absence, & Workers' Compensation)
		Unauthorized Leave
		Suspension due to unauthorized leave, leave misuse, or absenteeism
		Suspension when the cause is unrelated to attendance
		Authorized Education Leave
		Approved Organ Donation Leave, EMS/Fireman, and/or Disaster Service Leave
		Military Leave
		Court, Jury and Hearing Leave and pre-approved Time Off to Vote
#2		ADD HOURS IN COLUMN A –AGENCY APPROVED/DIRECTED ABSENCES
	#4	ADD HOURS IN COLUMN B – QUESTIONABLE/UNACCEPTABLE ABSENCES

B. CALCULATION OF ABSENTEEISM RATE TO EVALUATE ATTENDANCE:

PART 1.

Total Number Scheduled Working Hours (#1) minus Total Hours Approved/Directed Absences (#2) equals Hours Available for Work (#3)

$$\#1 \text{ _____} - \#2 \text{ _____} = \#3 \text{ _____}$$

PART 2.

Total Hours Questionable/Unacceptable Absences identified in column (#4) divided by Total Hours Available for Work identified in column (#3) equals the employee Absenteeism Rate.

$$\text{Total in \#4 } \text{ _____} \div \text{Total in \#3 } \text{ _____} = \text{ _____}\%$$

<p>ABSENTEEISM RATE _____%</p> <p>Misuse of Leave may be determined to have occurred when the Unsupported Absenteeism Rate is equal to or greater than five percent (5.0%) during a six or twelve-month work period. Extenuating circumstances should be considered when evaluating leave usage. If a determination of Leave Misuse is made, corrective action including counseling, leave restrictions or discipline may be appropriate.</p>
<p>Completed By: _____ Date: _____</p>