west virginia
DIVISION OF PERSONNEL

LAYOFF - UNDERSTANDING YOUR RIGHTS

An Employees Guide to Layoff

DISCLAIMER

This guide is intended to be used as a reference and procedural information 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 guide may describe the law in a manner that 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 guide 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) 414-1853.

COVERAGE

Information in this guide pertains to employees of the State of West Virginia covered by the West Virginia Division of Personnel (DOP) merit system as provided in the DOP's *Administrative Rule* (W. VA. CODE R. § 143-1-1, *et seq*.) 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 notice of layoff 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 agency's 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 ("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, it often results in abolishing the position altogether. No agency is permitted to initiate a reduction-in-force without prior approval of the 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 shall be separated in the following order: 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 DOP 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. Unfortunately, your management team is probably not in a position to provide the emotional support you need, and more changes and uncertainties will likely preoccupy those co-workers who retain their jobs. Such individuals often suffer from "survivor syndrome" - guilt, anxiety, and the 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 behavior. Instead of functioning in a manner that creates stress for yourself, it is essential to develop adapting skills. If you cannot control the situation, you can at least control how 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 feel sympathy and guilt and are confused about how to convey those feeling 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 may create the initial stress, but how you react will either increase or reduce your stress response.

Convincing yourself that there is not much you can do about the situation will likely contribute to feelings such as anger, sadness, grief, fear, etc. Whether you harbor those feelings or find ways to acknowledge them and move on is important. 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. Many decisions must be made about your future, from telling 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. In addition, 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 beyond their control. If you are not in a position to control the situation, chances are this may cause increased frustration and feelings of hopelessness. 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 brainstorm ways to mitigate the impact. Involve loved ones, if possible, to expand the options and possible assistance that may be available.

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 with other affected employees to discuss your options. They will listen to your concerns, help you understand your options, 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 (ERP) 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. The ERP provides employees and their families with opportunities to obtain assistance for a variety of personal problems which may affect their quality of life. Referrals are made confidentially for treatment with independent, off-site professionals. Issues may include family/child difficulties, grief and loss, stress management, financial issues, mental and emotional wellness, addiction and recovery, and other interpersonal conflicts 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 DOP at (304) 414-1853, or visit the website at Division of Personnel, State Employees, Benefits, Employee Referral Program. You may also call or text the Help Line at 1-844-HELP4WV (1-844-435-7498). Chat with a HELP4WV representative online chat at www.HELP4WV.com.

The DOP 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- 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 DOP has defined occupational groups based on similarity of work and required skills, knowledge, and abilities.

Any classified employee who has completed the probationary period and been certified permanent, which 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.

A permanent employee who is subsequently scheduled for layoff as a result of another employee having greater tenure exercising his or her bumping rights by requesting a lateral class change or demotion without prejudice has the same bumping rights as provided for in this procedure.

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.

It is important to note that if selected for a position prior to the effective date of the layoff, 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. The 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 DOP merit system for which you meet the minimum qualifications.

Applying to State Government After Lay-off

Vacant Positions- After the effective date of layoff, former permanent classified employees may apply for any position for which they qualify within State Government. When applying for a position, it is important to note if the agency is covered under the DOP merit system or exempt.

When filling vacancies, directors of State agencies covered under the DOP merit system must give preference to qualified permanent classified employees who were laid off from an agency covered by the DOP 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 DOP 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 the order of seniority and county of availability and forwarded to agencies as vacant positions are advertised. Selection will be based on seniority and fitness overall but existing employees of the agency or its facilities. Recall rights have priority over preference.

Effective January 2022, the Department of Transportation (DOT) is covered under a merit system separate from DOP. The DOP preference register does not extend to individuals laid-off from the DOT.

When applying for positions with agencies not covered by the DOP merit system, check with the agency HR for rules regarding leave and service credit.

RECALL RIGHTS

A laid-off employee has recall rights in reverse order of the layoff (most seniority first) for vacancies within the agency from which the employee has been laid off that occurs 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 is located in the county or in contiguous counties where the employee's last place of employment was located.

An employee retains recall rights for the same period of time as their tenure on the date of layoff or for 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. Failure to maintain current contact information with the agency may result in missed employment opportunities or removal from the recall list. Individuals 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, 1701 5th Avenue, Suite 2, Charleston, West Virginia, 25387, and with the Director of the Division of Personnel, Building 3, Suite 500, 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 website at 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 guide).

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, 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 canceled 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 the coverage. 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 a third-party administrator. The premium payment should be submitted monthly and payable to the program administrator. You may wish to contact your payroll office or PEIA at (304) 558-7850 or 1-888-680-7342 for specific eligibility, coverage, and premium information. Other health coverage options may be available, including coverage through the Health Insurance Marketplace. Visit www.HealthCare.gov or call 1-800-318-2596 for more information.

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 the age of 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 (CPRB) at (304) 558-3570 or visit their website at West Virginia Consolidated Public Retirement Board (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 at West Virginia Consolidated Public Retirement Board (wvretirement.com)

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

Unemployment Compensation

Individuals should report to the nearest local unemployment office or file an unemployment claim online as soon as possible after separation from employment to file a claim for unemployment benefits. The individual must also be able to work, be available for suitable, full-time work, be actively seeking work, and be 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. Filing information and office locations can be found at WorkForce West Virginia - Home (workforcewv.org) or by calling 1-800-252-JOBS.

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 CPRB, 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's Personnel Transaction Review and Staffing Services sections will provide outplacement services to affected employees in cooperation with Workforce West Virginia and other State agencies. The Division of Personnel provides guidance to determine areas of occupational interest as well as information on reviewing vacancy announcements.

Job Search Help on the Internet

There are many useful websites offering information on employment seeking and availability. Examples include:

Division of Personnel
WV Department of Transportation
WorkForce West Virginia - Steps to Employment (workforcewv.org)
www.careeronestop.org/jobsearch/findjobs/state-job-banks.aspx

RESOURCE CONTACTS

West Virginia Division of Personnel
Capitol Complex, Building 3, Suite 500
1900 Kanawha Boulevard, East — 304-558-3950
Charleston, West Virginia 25305-0139

- *Personnel Transaction Review* — 304-414-1855
- *Employee Relations Section* — 304-414-1853
- *Staffing Services* — 304-414-1852

Web Site: www.personnel.wv.gov

Public Employees Insurance Agency
601 57th St., SE, Suite 2 — 304-558-7850
Charleston, West Virginia 25304-2345 — 1-888-680-7342
Web Site: www.peia.wv.gov

Consolidated Public Retirement Board
4101 MacCorkle Avenue SE — 304-558-3570
Charleston, West Virginia 25304 — 1-800-654-4406
Web Site: www.wvretirement.com

WorkForce West Virginia
Employment Service
To Locate the Office in Your Area — 1-800-252-5627
Web Site: www.workforcewv.org

FREQUENTLY ASKED QUESTIONS

Q. What is the definition of an organizational unit?

An 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.

Q. What is the prescribed notification period for layoff?

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 one 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."

Q. May the least tenured employee in the organizational unit who is on an approved medical leave of absence without pay be laid-off?

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.

Q. Can an employee "bump" to a vacancy?

Yes, an employee may bump to a vacant position in the classified service within the occupational group of the organizational unit approved by the State Personnel Board for reduction-in-force, provided the agency intends to fill the vacancy.

Q. Can an employee choose the individual to bump?

No. If the employee exercises his or her right to bump, he or she must choose a classification.

Q. How should a laid-off employee notify the agency of his or her desire to exercise bumping rights?

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 the date of receipt of the notice.

Q. How does an employee know what positions he or she might be eligible to bump?

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.

Q. Does an employee have appeal rights if his or her position is abolished as a result of reorganization?

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.

Q. At what level of the Grievance Procedure may an employee who has been laid off file a grievance?

A laid-off employee must submit his or her grievance on the prescribed form to the chief administrator, or his or her designee, the West Virginia Public Employees Grievance Board at 1701 5th Avenue, Suite 2, Charleston, West Virginia, 25387and to the Director of the Division of Personnel, Building 3, Suite 500, 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.

Q. What happens to an employee's accrued annual and sick leave when he or she is laid off?

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.

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

Health insurance coverage 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. After the mandatory 3-month period, all health insurance will be canceled 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 or call 1-800-318-2596 for more information.

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

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 within the DOP merit system. Selection will be based on seniority and fitness overall but existing employees of the agency or its facilities. Recall rights have priority over preference, and preference eligibility ceases immediately upon appointment to a classified position.

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

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.

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?

Yes.

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

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

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

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.

Q. What happens to a transferring employee's sick and annual leave?

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.

Q. Is an employee transferring from one agency to another required to submit a letter of resignation?

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.

Q. When an employee transfers from one agency to another, does his or her personnel file transfer with the employee?

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.

Q. When is it appropriate to reallocate a position from one class to another?

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."

Q. Is there any recourse available to the employee who disagrees with the reallocation of his or her position?

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 West Virginia Public Employees Grievance Procedure.