

143CSR7

**TITLE 143
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF PERSONNEL**

**SERIES 7
INTERDEPARTMENTAL TRANSFER OF PERMANENT STATE EMPLOYEES**

Section 1. General

1.1. Scope: This rule implements the provisions set forth in West Virginia Code § 5F-2-7 regarding the interdepartmental transfer of permanent state employees.

1.2. Authority: This rule is issued under authority of West Virginia Code § 29-6-10 and § 5F-2-7.

1.3. Filing Date: May 4, 2007

1.4. Effective Date: May 7, 2007

Section 2. Definitions. Terms used in this rule which are not included in this section have the meaning given in the Administrative Rule of the Division of Personnel, 143CSR1.

2.1. Involuntary Transfer: Any transfer under the provisions of this rule which is not agreed to in writing, by the employee being transferred.

2.2. Permanent State Employee: Any person hired for permanent employment, either full or part-time, by any department, agency, commission or board of the state created by an act of the Legislature, except those persons employed by any higher education governing board or institution, uniformed members of the department of public safety, any employees of any constitutional officer and any employees of the Legislature.

2.3. Voluntary Transfer: Any transfer under the provisions of this rule which is agreed to, in writing, by the employee being transferred.

Section 3. Authorization of Transfers: When it becomes necessary by reason of shortage of work or funds, abolition of position, or material changes in duties or organization, a department secretary, in lieu of or preliminary to a layoff, may enter into an agreement with another department secretary to transfer a permanent state employee from a position that is to be consolidated or eliminated to a funded vacant position in another department, in accordance with the provisions of this rule. As the intent of this rule is, whenever possible, to provide continuous employment for permanent state employees whose positions are to be consolidated or eliminated instead of laying off those employees, the Director of Personnel shall interpret this rule in a manner consistent with existing law and rule regarding layoff.

3.1. Prior to an interdepartmental transfer due to consolidation or elimination of a position, the department secretary shall submit to the State Personnel Board for approval a description

of the organizational unit or units to which a consolidation or elimination will apply and from which the transfer will be made. The organizational unit may be an entire agency, division, bureau, or other organizational unit.

3.2. Prior to the interdepartmental transfer of any employee, the department secretary shall file with the Director a proposed plan which shall include:

- a. a statement of the circumstances requiring the consolidation or elimination;
- b. the approved organizational unit(s) in which the proposed consolidation or elimination will take place;
- c. a list of each job class affected by the consolidation or elimination;
- d. a list of all employees, in order of retention, in each job class in the approved organizational unit affected by the consolidation or elimination;
- e. the number of positions, by job class, to be eliminated or consolidated; and,
- f. a copy of the proposed agreement to be entered into by the department secretaries between which the transfer is to be made, including the number of positions, by job class, into which employees are proposed to be transferred.

3.3. It is the duty of the Director of Personnel to verify the details on which the plan is based and to notify the department secretaries in writing of the approval of the plan.

Section 4. Notice.

4.1. After the Board has approved the organizational unit to which the consolidation or elimination will apply and the Director has notified the department secretaries of the approval of the proposed interdepartmental transfer plan, the secretary of the department from which the employee will transfer shall notify each affected employee of the consolidation or elimination and proposed transfer in writing at least fifteen days prior to the proposed transfer.

4.2. The approved proposed interdepartmental transfer plan to be followed by the department secretaries shall be provided by the department secretaries in writing, to any employee affected by the consolidation or elimination.

Section 5. Order of Transfer.

5.1. After the department secretary has determined the number of positions by job class to be consolidated or eliminated, and the Board has approved the organizational unit to which the consolidation or elimination will apply, and the Director has approved the proposed plan for the consolidation and elimination of positions and the transfer of employees, the order of transfer shall be applied in the following manner.

a. The department secretary shall first transfer affected employees voluntarily agreeing in writing to be transferred. In all cases employees in the affected job class shall be offered the

opportunity to voluntarily transfer in order of most tenure as a permanent employee of a state agency or in the classified service.

b. If sufficient permanent employees in the affected job class in the approved organizational unit do not volunteer to be transferred, the department secretary may order an involuntary transfer. Selection of permanent employees for an involuntary transfer shall be from the affected job class in the approved organizational unit and in order of tenure as a permanent employee of a state agency or in the classified service consistent with statutory provisions regarding the receipt or withdrawal of a benefit. In all cases, employees will be retained in State employment, including employment in another department resulting from a voluntary or involuntary transfer, based on most tenure as a permanent employee of a state agency or in the classified service. An involuntary transfer may be rejected in writing by an employee if the involuntary transfer would require the employee to travel thirty miles or more, one way, than the distance, by customary route, the employee currently travels to his or her current job site.

5.2. Tenure credit does not accrue for periods during which terminal annual leave is paid or 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 WV 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.

5.3. In the event of a tie based on tenure, the department secretary or his or her representative and those employees who are tied shall agree on a means of breaking the tie and shall notify the Director in writing of the agreement and the results.

Section 6. Transfer Rights.

6.1. Transfers of classified employees under the provisions of West Virginia Code § 5F-2-7 shall comply with the provisions of the Administrative Rule of the Division of Personnel, 143CSR1, except that any employee transferred under the provisions of West Virginia Code § 5F-2-7 shall receive the same level of benefits and rate of compensation or higher, and shall retain the same level of tenure.

6.2. A classified employee who is transferred under the provisions of West Virginia Code § 5F-2-7 shall retain his or her classified status.

6.3. A classified exempt employee who is transferred under the provisions of West Virginia Code § 5F-2-7 shall retain his or her classified exempt status provided that the transfer is made in accordance with the law. A classified exempt employee who is transferred to a position in the classified service must be appointed from a register, reinstated to the classified service, or added to the classified service in accordance with the law.

Section 7. Reporting.

7.1. The department secretary shall report the names of all employees who are to be transferred out of his or her department to the Director of Personnel, in writing, no later than the date the department secretary notifies the employee of the transfer.

7.2. Upon completion of interdepartmental transfers made under the provisions of West Virginia Code § 5F-2-7, the department secretary transferring employees out of his or her department shall report the details of such transfers to the Director of Personnel, including but not limited to, the names of employees voluntarily and involuntarily transferred, as well as all furniture and equipment transfers.

Section 8. Appeals. Employees shall initiate appeals from involuntary interdepartmental transfers at level three of the Education and State Employees Grievance Procedure as provided in West Virginia Code §29-6A-1 et seq.

Section 9. Post-Transfer Layoff. After all transfers have been completed, the secretary of the department consolidating or eliminating positions shall initiate a layoff in accordance with existing rule and law for all remaining positions which are identified to be consolidated or eliminated in the plan approved under the provisions of sub-section 3.3 of this rule.