

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 129.08

DATE: 01 December 2020

SUBJECT: LEAVE USAGE

POLICY DIRECTIVE

PURPOSE:

To ensure uniformity of procedures for the use of leave by employees.

REFERENCE:

Fair Labor Standards Act (FLSA); WV Code §§2-2-1 and 23-4-1; 143CSR1, 143CSR2 and 143CSR3; Title 143 Legislative Rules of the West Virginia Division of Personnel; and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject including DOC Policy Directive 129.08, dated 01 January 2004; DJS Policy 141.01, dated 01 January 2017; DJS Policy 155.00, dated 01 January 2017; RJA Policy 3014, dated 31 December 1988; RJA Policy 3015, dated 07 May 2008; RJA Policy 3016, dated 03 September 2015; RJA Policy 3017, dated 15 May 1997; RJA Policy 3018, dated 19 August 1997; and RJA Policy 3043, dated 23 October 1995.

APPLICABILITY:

All facilities and work units within the Division of Corrections and Rehabilitation (DCR). This Policy is to be reviewed in all employee orientation, on-the-job, basic, and in-service training. This Policy is available for general distribution.

DEFINITIONS:

Employee: Any permanent status employee (including probationary employees) of the State of West Virginia working at Central Office, a correctional facility or other work unit

within the West Virginia Division of Corrections and Rehabilitation. For the purposes of this policy, this does not include temporary employees, contractors and their employees or volunteers.

Workday: Any portion of the twenty-four (24) hour calendar day that an employee is scheduled to work, for which the employee is compensated for hours worked. (e.g. an employee may be scheduled to work four (4) hours of the twenty-four (24) hour calendar day, or sixteen (16) hours of the twenty-four (24) hour calendar day. Either would constitute a workday.)

Workweek: The designated workweek for DCR shall consist of seven (7) consecutive twenty-four (24) hour periods beginning at 0001 hours on Saturday and ending at 2400 hours on Friday.

POLICY:

- I. Employees are encouraged to try to schedule personal business, scheduled medical/dental appointments, etc. on their days off.
 - A. Employees who call in to utilize sick leave for a day previously requested as annual leave and then denied shall be required to provide a physician's/practitioner's statement for that day upon their return to work.
 - B. Full day absences require an employee to charge leave in an amount equal to the number of hours in his/her regularly scheduled workday. Leave shall NEVER be used to extend an employee's compensation for a workweek beyond forty (40) hours.
 - C. Sick and/or annual leave requested in the same pay period in which additional hours are worked shall be reduced and credited back to the employee's accrued balances to reduce or avoid payment for hours in excess of the employee's work schedule.
 - D. Employees shall request leave for planned absences as soon as possible but no less than seven (7) days prior to the planned leave, unless approved by the appointing authority. Employees shall request sick leave in advance of taking the leave when requesting leave for routine dental and medical appointments. Supervisors should make reasonable efforts to approve leave requests made in advance, provided that the needs of the facility or work unit are met.
 - E. Unplanned absences resulting in an employee's work schedule falling below his/her scheduled hours shall be supported by the appropriate leave requested through the leave system. Supervisors shall review all requested leave for accuracy with time records as soon as possible, but no later than Monday. The absence of approved requested leave to account for all scheduled hours not worked shall be treated as unauthorized leave and shall be handled in accordance with the Division of Personnel Administrative Rule.

- II. Employees shall be released from work with pay in observance of all official holidays, in accordance with WV Code §2-2-1. The DCR may schedule employees to work on the official holiday observance date to accommodate around-the-clock shifts or other special needs.
- A. Hourly employees that are eligible for overtime and are scheduled to work or have a regular scheduled day off on the officially observed holiday, may request to save (or “bank”) the holiday in order to observe it at a later date as long as they have physically worked, excluding all leave, at least forty (40) hours in the week.
 - 1. Employees will only be allowed to have a total of twenty-four (24) hours in their holiday “bank.” Anything in excess of twenty-four (24) hours will be paid out.
 - 2. Employees may only “bank” full holidays (e.g. eight (8) hours for full-day holidays or four (4) hours for half-day holidays).
 - B. Over-time exempt employees who work on the officially observed holiday shall use holiday hours within the same pay period.
 - C. Except when the schedule model allows for the alternate scheduling of holidays, when an employee works on a holiday, every effort should be made to schedule each employee an alternate day off during the week that the holiday occurs as long as minimum staffing requirements will allow. The alternative day off must be taken after the holiday has occurred.
 - D. If an employee is requesting to use a “banked” holiday as an alternate day off and the holiday hours do not cover his/her entire shift, the employee will need to complete a leave application for the remainder of his/her scheduled shift. If the employee works additional hours during the workweek, as applicable, the leave will be credited back to his/her balances accordingly as provided in this policy.
 - E. “Banked” holiday hours may be used in any increment.
 - F. If an employee uses his/her personal accrued leave in the same workweek as an observed holiday or “banked” holiday, the employee’s work and annual leave hours will be applied prior to applying holiday hours.
 - G. Employees shall not be permitted to use their personal accrued leave on a holiday, in lieu of using the holiday leave.
- III. All permanent, probationary, and provisional employees are eligible to accrue annual leave with pay and benefits. Annual leave is accrued based on the employee’s length of service at the end of each pay period or on the last workday for separating employees.
- A. Annual leave cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed forty (40) hours. Provided, however,

employees on unpaid leave who are receiving workers compensation temporary total disability benefits continue to accrue annual leave while receiving such benefits.

- B. Employees shall request annual leave in advance of taking the leave. Annual leave may not be granted in advance of the accrual of the leave.
 - C. The minimum charge against annual leave shall be one quarter (1/4) hour. Additional leave shall be in multiples of a quarter hour.
 - D. The DCR shall pay employees upon separation from employment for any reason for all accrued and unused annual leave. Annual leave will not be accrued after the date and time of separation.
 - E. Employees who transfer or otherwise change employment from one agency to another, all service credit and hours of accrued annual leave shall be transferred.
 - F. Annual leave, if requested, shall be granted in circumstances when sick leave or the sick leave allowance for immediate family is exhausted. The necessity for a physician's/practitioner's statement when sick leave is used applies when annual leave is used under these circumstances.
 - G. An employee who becomes ill while on previously approved annual leave may request that all or part of the time be charged to sick leave. The employee must provide a physician's/practitioner's statement immediately upon return to work. This provision shall also apply when an employee requests to change annual leave to family sick leave due to the illness of an immediate family member.
 - H. In cases when an employee will need to use annual leave by the end of the year so as to not lose any, he/she should apply for that leave throughout the year and not wait until the end of the year. Doing so may risk disapproval of the employee's leave request, and lead to the possibility of losing that "built up" leave without any compensation. Monitoring of annual leave and the carryover rate is the employee's responsibility.
- IV. All permanent, probationary, and provisional employees shall receive accrued sick leave with pay and benefits. Sick leave is aggregated at a rate equal to one and one half (1 ½) days per month for full-time employees. Sick leave is accrued at the end of each pay period or on the last workday for separating employees.
- A. Sick leave cannot be accrued for hours not paid nor for hours worked beyond the normal workweek which shall not exceed forty (40) hours. There is unlimited accumulation of sick leave.
 - B. The minimum charge against sick leave is one quarter (1/4) hour. Additional leave is charged in multiples of one quarter hour.

- C. All accumulated sick leave shall be cancelled as of the date and time of separation. Employees who return to eligible employment within one year of the date and time of separation, including the first working day the reinstatement could be accomplished, all cancelled sick leave shall be restored. However, if an employee returns to eligible employment after one year from the effective date and time of separation from employment, no more than thirty (30) days of cancelled sick leave shall be restored.
- D. Sick leave may not be granted in advance of accrual of the leave. Accrued sick leave, when requested, shall be granted for the following reasons:
1. Sick leave shall be granted in the event of an employee's illness or injury which incapacitates him or her from performing his/her duties. Sick leave may not be granted in advance of the employee's accrual of the leave or when the employee's disability, as verified by a physician/practitioner on a prescribed physician's/practitioner's statement form is of such a nature as to render the employee permanently unable to perform his or her duties with or without accommodation; provided the employee may continue to utilize available sick leave during the accommodation consideration process not to exceed twelve (12) weeks. In the event of any serious health condition qualifying for leave under FMLA, paid leave shall be designated as FMLA leave. Employees shall request sick leave in advance of taking the leave when requesting leave for routine dental and medical appointments. For unplanned sick leave, the employee must submit the leave request immediately upon the return to work or, in cases of extended periods of leave, as directed by the appointing authority.
 2. Sick leave shall be granted up to three (3) scheduled work days to an employee for the death of any member of her or her immediate family; provided such time is not deducted from the eighty (80)-hour family sick leave usage allowance. Immediate family consists of parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, step-brothers, step-sisters, stepchildren, foster children, individuals in an *in loco parentis* relationship, and individuals in a legal guardianship relationship.
 3. Sick leave shall be granted in the case of exposure to a contagious disease when a physician/practitioner determines and states in writing that the employee's presence on duty may jeopardize the health of others.
 4. Incapacity due to pregnancy shall be charged to sick leave under the same conditions applying to any illness.
 5. Routine dental and medical appointments for treatment or examination of the employee shall be charged to sick leave. Reasonable travel time in addition to the time for the routine appointments may also be charged to sick leave.
 6. Employees may use up to eighty (80) hours of accrued sick leave per calendar year to provide care to an immediate family member, who is incapacitated due to illness

or injury or to accompany an immediate family member to routine healthcare appointments. Reasonable travel time in addition to the time for the routine appointments may also be charged to sick leave.

7. An employee may elect to use sick leave due to a personal injury received in the course of and resulting from covered employment with the State in accordance with WV Code §23-4-1. Upon a work-related injury or illness, the employee must submit an Election of Option form to the human resource/payroll office. However, should the employee elect not to use sick leave under this paragraph, the employee must apply for a medical leave of absence without pay. Provided, that such paid or unpaid leave due to a work-related injury or illness shall be, if qualifying, counted as, and run concurrently with FMLA leave.
- E. Any employee requesting sick leave for an absence of more than three (3) consecutive scheduled workdays or scheduled shifts must immediately, upon his or her return to work, provide a physician's/practitioner's statement from the attending physician/practitioner for the entire absence. Consecutive scheduled workdays are determined without regard to scheduled days off that occur during the period of sick leave. Thus, annual leave, holidays, modified holiday observance, compensatory time, regularly scheduled days off, or any other time for which the employee was not scheduled to work during the period of absence shall not constitute a break when determining the three consecutive scheduled work days.
 - F. If the employee's physician/practitioner has placed restrictions or limitations on the employee's work activities, the employee must furnish the prescribed physician's/practitioner's statement immediately upon return to work. The physician's/practitioner's statement form shall specify the period of incapacity and state that the employee was unable to perform his or her job or that the employee's absence was to provide care to an immediate family member, who is incapacitated due to illness or injury or to accompany an immediate family member to routine healthcare appointments.
 - G. In the absence of a physician's/practitioner's statement, the entire absence shall be charged to unauthorized leave, and the employee's pay shall be docked for the entire period of absence.
 1. The employee shall be notified in writing that his or her pay is being docked.
 2. If the physician's/practitioner's statement from the attending physician/practitioner specifies a period of incapacity that is less than the entire absence, only the period of incapacity shall be charged to sick leave and the remaining absence shall be charged to annual leave, if annual leave is available to the employee and is not otherwise restricted.
 - H. For extended periods of sick leave, a prescribed physician's/practitioner's statement form confirming the necessity for continued leave must be submitted within thirty (30)

calendar days of the commencement of the sick leave and must indicate a date the physician/practitioner will release the employee to return to work or a date the physician/practitioner will re-evaluate the employee's medical condition. For employees being re-evaluated, an additional physician's/practitioner's statement must be submitted upon re-evaluation. Failure to produce the required statement is grounds to terminate further sick leave benefits and the employee shall immediately be placed on unauthorized leave and notified in writing of such action. This written notice shall allow the employee fifteen (15) days to submit the required physician's/practitioner's statement. Failure of the employee to submit the required statement within the fifteen (15) day notice period, except for satisfactory reasons submitted in advance is cause for dismissal. The necessity for absence because of exposure to contagious disease must be verified on a prescribed physician's/practitioner's statement form regardless of the length of absence.

- I. When a classified employee transfers or otherwise changes employment from one agency to another, all accrued and unused sick leave shall be transferred.
 - J. When an employee appears to have a pattern or incident of leave use that is inconsistent with the reasons provided above, including, but not limited to, such frequent use of sick leave as to render the employee's services undependable, requesting sick leave for days when annual leave was previously denied, and requesting unplanned leave in connection with scheduled days off, the Division may request appropriate substantiation of the employee's claim for leave, for example, verification of an illness of less than three days or scheduled shifts. The Division shall give the employee prior written notice of the requirement for appropriate substantiation.
- V. The Commissioner/designee may permit an employee to return to work from sick leave, military duty in which the employee was injured or became ill, or medical leave of absence at less than full duty for a period of no more than thirty (30) days, provided that the terms of the return shall be in writing. An employee may request to continue to work at less than full duty beyond the period permitted by the Commissioner/designee. The request must be submitted to the Commissioner/designee at least five (5) days before the end of the period. The Commissioner/designee shall consider the request in the same manner as the original request.
- A. The Commissioner/designee may deny the request to return or continue to work at less than full duty under conditions including, but not limited to, the following:
 - 1. The employee cannot perform the essential duties of his or her job with or without accommodation.
 - 2. The nature of the employee's job is such that it may aggravate the employee's medical condition.
 - 3. A significant risk of substantial harm to the health or safety of the employee or others cannot be eliminated or reduced by reasonable accommodation.

4. The approval of the request would seriously impair the conduct of the division's business.
- B. Prior to making a decision on an employee's request to return or continue to work at less than full duty, the Commissioner/designee may require additional information from the employee's physician/practitioner or other physician/practitioner regarding the employee's ability to perform the essential duties of his or her job, with or without accommodation.
- VI. When an employee is absent from work without authorization for sick or annual leave, the Division shall dock the employee's pay in the next pay period for an equal amount of time during which no work was performed. The Division shall notify the employee in writing that his or her pay is being docked and that the unauthorized leave is misconduct for which discipline is being imposed. The Division shall use unauthorized leave only in cases when the employee fails to obtain the appropriate approval for the absence.
 - VII. The Superintendent, or work unit supervisor/director as appropriate, may grant an employee a leave of absence without pay for a specific period of time which normally should not exceed one year. The employee shall apply for the leave of absence in writing to the Superintendent, or work unit supervisor/director as appropriate. Written approval of the Superintendent, or work unit supervisor/director as appropriate, is required in all cases. Approval of personal leave is discretionary with the Superintendent or work unit supervisor/director as appropriate.
 - A. An employee may request a leave of absence based on the Parental Leave Act or the Family and Medical Leave Act. Any employee requesting this type of leave of absence must meet eligibility requirements and request the leave for a qualifying event. More information on the Family and Medical Leave Act/Parental Leave Act can be found on the Division of Personnel's website.
 - B. An injured or ill permanent employee upon written application to the Superintendent, or work unit supervisor/director as appropriate, shall be granted a medical leave of absence without pay not to exceed six (6) months within a twelve (12) month period provided they meet the eligibility requirements.
 - C. At the expiration of a leave of absence without pay, the employee shall be returned to duty to his or her former position. If the leave of absence without pay was granted due to personal illness, the employee must furnish from the attending physician/practitioner a prescribed physician's/practitioner's statement form indicating the ability of the employee to return to work. Failure of the employee to report to work promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance and approved by the Superintendent, or work unit supervisor/director as appropriate, is cause for dismissal.
 - D. Any employee on a Parental or Personal Leave of Absence without pay shall be required to pay for both the employer's portion and the employee's portion of insurance premiums while on leave.

VIII. A voluntary leave donation program is available for state employees.

- A. In order to be eligible to receive donations of annual leave, an employee must meet the following conditions:
1. Have a medical emergency involving a medical condition of the employee or a member of the employee's immediate family.
 2. In the case of a medical emergency involving a medical condition of the employee, the employee must have exhausted all sick leave and all annual leave as well as any other accrued paid leave to which the employee is entitled.
 3. In the case of a medical emergency involving a medical condition of a member of the employee's immediate family, the employee must have exhausted all annual leave and the sick leave allowance for members of the employee's immediate family.
 4. The medical condition of the employee or the member of the employee's immediate family must be verified in writing by a physician/practitioner as requiring the absence of the employee from work for at least one half a month continuously after the exhaustion of available leave. The employee must apply to receive donated leave according to procedures established by the Division of Personnel. Employees who are recipients of donated leave are considered in leave without pay status.
- B. The following restrictions regarding benefits shall apply to recipients while in this status:
1. Recipients do not accrue annual or sick leave, nor do they earn years of service credit for leave accrual purposes.
 2. Recipients are not eligible for paid holidays.
 2. Recipients do not earn tenure for purposes of order of separation on layoff.
 3. Recipients do not earn service credit for purposes of an annual increment.
 4. Recipients do not earn service credit for any retirement system administered by the state of West Virginia.
- C. In order to be eligible to make donations of annual leave, an employee must meet the following conditions:
1. The employee must have a remaining balance of eighty (80) hours of accrued sick and/or annual leave after making the annual leave donation; and,
 2. Must make the leave donation according to procedures established by the Division

of Personnel. Donations shall be in the form of whole hours of annual leave only.

- IX. Upon submission of an Application for Leave with Pay (DOP-L1), an employee shall be released from work without charge to leave or loss of pay when, in obedience to a subpoena or direction by proper authority, he or she serves upon a jury or appears as a witness before any court or judge, any legislative committee, or any officer, board, or body authorized by law to conduct any hearing or inquiry.
- A. A copy of the court documentation must be supplied with the leave request in advance of the requested time off. Failure to submit a subpoena or summons in advance of the employee's absence shall result in the absence being charged to accrued annual leave. Failure to submit the required documentation at all to document the employee's absence shall result in the employee's pay being docked in the next pay period for an equal amount of time paid during which no work was performed.
 - B. Subsequent to the submission of a summons, the employee shall be entitled to a leave with pay for the period of absence required to perform such jury duty during the period the employee was scheduled to work. Upon return to work, the employee shall submit an official document from the court showing date(s) and time(s) served.
 - C. This does not apply in cases where the employee or a member of his or her immediate family is a plaintiff, defendant or other interested party or has a personal, financial, or vested interest in the outcome of the proceeding or when the hours spent in compliance to a subpoena to serve on a jury or appear as a witness are outside the employee's scheduled workday.
 - D. When an employee is released from service prior to the end of the workday, and there is more than one hour remaining in the employee's scheduled workday after allowing for reasonable return travel time, the employee shall return to work or request approval for annual leave.
 - E. Employees hired for temporary or intermittent employment shall not be paid for time off when summoned for jury service.
 - F. Hours spent in compliance to a subpoena to serve on a jury or appear as a witness, outside an employee's scheduled workday, are not subject to this policy.
- X. Employees who are members of the National Guard or of any of the reserve components of the armed forces of the federal government are entitled to a leave of absence from employment without loss of pay, status, or efficiency rating, on all days during which they are engaged in drills or parades, or for examination to determine fitness for duty, inactive duty training, funeral, service schools, active duty for training or active service for the State during business hours all to include reasonable travel time to and from the duty location, for a maximum period of thirty (30) scheduled workdays in any one (1) calendar year, not to exceed two hundred forty (240) hours, when ordered or authorized by proper authority.

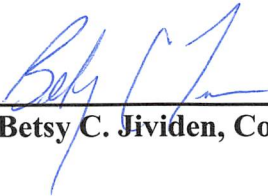
- A. Without loss of pay means the employee continues to receive his or her normal salary, notwithstanding the fact that the employee may receive other compensation during the same period.
 - B. The leave of absence is considered as time worked for the DCR in computing tenure, eligibility for salary increase and experience with the DCR.
 - C. The employee shall provide advance written or verbal notification of an obligation or intention to perform military duty and such written orders or other documentation, if available, in support of the request for military leave.
 - D. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in section X. only in the year he or she is called to active duty, and in subsequent years only after he or she has been discharged from military duty and returned to employment.
- XI. Employees who are called to active duty by properly designated federal authority are eligible for an additional leave of absence without loss of pay, status, or efficiency rating for a maximum period of thirty (30) workdays, not to exceed two hundred forty (240) hours, for each single call to active duty, active duty for training, initial active duty for training, or full-time National Guard duty, all to include reasonable travel time to and from the duty location.
- A. All eligible employees called to federal active duty or full-time National Guard duty who have not used all or some portion of the thirty (30) scheduled workdays of military leave granted in section X. are eligible to use those unused days in the same calendar year prior to using the thirty (30) workdays for which they are eligible under section XI., up to a maximum of sixty (60) scheduled workdays for a single call to active duty.
 - B. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in section XI. only in the year he or she is called to active duty, and, in subsequent years, only for a subsequent call to duty and only after he or she has been discharged from military duty and returned to employment.
 - C. Without loss of pay means the employee shall continue to receive his or her normal salary, notwithstanding the fact that the employee may receive other compensation from federal or state sources during the same period.
 - D. Other than as provided in section XI., any employee entering the United States armed services in time of war, national emergency or under compulsory provisions of law of the United States in time of peace shall be granted a leave of absence from his or her service with the DCR. Upon completion and discharge from the armed services and within the applicable time period prescribed by federal statute, rule, or regulation regarding return to employment, the employee has the right to resume his or her service with the DCR without any prejudice to his or her status, merit rating or standing by reason of absence. This shall not be construed as to providing the salary paid by the DCR shall continue to be paid to the employee while he or she is not performing the

duties of his or her position because of the services with the armed forces of the United States.

ATTACHMENT(S):

None.

APPROVED SIGNATURE: _____



Betsy C. Jividen, Commissioner

11-19-20

Date