

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2130

(BY DELEGATE CAPUTO AND PYLES)

[Introduced January 9, 2019; Referred
to the Committee on Government Organization then
Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §29-6-9a, relating to establishing seniority rights for public employees; defining
3 when seniority begins; setting standards for accumulation of seniority; requiring notice of
4 job postings; requiring registers or certified lists of eligible applicants; allowing senior
5 employees the first right of refusal for additional duty, overtime, and promotions; and
6 determining seniority in case of absence.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-9a. Determination of seniority for public employees.

1 (a) A classified or classified exempt public employee begins to accrue seniority upon
2 commencement of the employee's duties.

3 (b) An employee shall receive seniority credit for each day the employee is employed
4 regardless of whether the employee receives pay for that day: *Provided*, That an employee who
5 is on an approved leave of absence accrues seniority during the period of time that the employee
6 is on the approved leave of absence.

7 (c) Any employee whose employment is terminated either voluntarily or through a
8 reduction-in-force shall, upon reemployment with the same employer in a regular full-time
9 position, receive credit for all seniority previously accumulated at the date the employee's
10 employment was terminated.

11 (d) Any employee whose employment has been terminated through a reduction-in-force
12 shall be listed by name on the preferred recall list and shall retain all accumulated seniority for
13 the purpose of seeking reemployment with the employer from which he or she was terminated
14 and nothing in this article may be construed to the contrary.

15 (e) Any employee employed for a full employment term but in a part-time position shall
16 receive seniority credit for each day of employment prorated to the proportion of a full employment

17 day the employee is required to work: *Provided*, That this subsection does not allow a regular
18 full-time employee to be credited with less than a full day of seniority credit for each day the
19 employee is employed: *Provided, however*, That this calculation of seniority for part-time
20 personnel is prospective and does not reduce any seniority credit accumulated by any employee
21 prior to the effective date of this section: *Provided further*, That for the purposes of this section
22 a part-time employee is defined as an employee who is employed less than three and one-half
23 hours per day.

24 (f) Seniority accumulation for a regular employee:

25 (1) Begins on the date the employee enters upon regular employment duties;

26 (2) Continues until the public employee's employment as a regular employee is severed;

27 and

28 (3) Does not cease to accumulate in any event where the employer has authorized an
29 absence whether without pay or due to illness or other reason over which the employee has no
30 control.

31 (g) Seniority of a regular employee does not continue to accumulate under the following
32 conditions:

33 (1) When an employee is willfully absent from employment duties because of a concerted
34 work stoppage or strike; or

35 (2) When an employee is suspended without pay.

36 (h) For all purposes including the filling of vacancies and reduction in force, seniority shall
37 be accumulated within particular classification categories of employment as those classification
38 categories are referred to in this article.

39 (i) When implementing a reduction in force, the employee with the least seniority within a
40 particular classification category shall be properly released and placed on the preferred recall list.
41 The particular classification title held by an employee within the classification category may not

42 be considered when implementing a reduction in force.

43 (j) On or before December 31 of each year, each employer shall post at each office the
44 current certified list of public employees by seniority in each classification. Each certified list
45 shall contain the name of each regularly full-time and part-time employed person employed in
46 each classification and the date that each employee began performing his or her assigned duties
47 in each classification. Current seniority lists of all classifications shall be available to employees
48 upon request at the Division of Personnel office. The division shall provide the requested
49 information within 15 working days.

50 (k) The seniority of a public employee who transfers out of a class title or classification
51 category of employment and subsequently returns to that class title or classification category of
52 employment is calculated as follows:

53 (1) The employer shall establish the number of calendar days between the date the
54 employee left the class title or category of employment in question and the date of return to the
55 class title or classification category of employment;

56 (2) This number of days shall be added to the employee's initial seniority date to establish
57 a new beginning seniority date within the class title or classification category;

58 (3) The employee then shall be considered as having held uninterrupted service within the
59 class title or classification category from the newly established seniority date; and

60 (4) The seniority of an employee who has had a break in the accumulation of seniority as
61 a result of being willfully absent from employment duties because of a concerted work stoppage
62 or strike shall be calculated in the same manner.

63 (l) All decisions affecting promotions, transfers and the filling of any vacancy or job posted
64 for employment by any employer shall be made on the basis of seniority, qualifications, and
65 evaluation of past service. Where similarly qualified employees are applicants who bid for the
66 same position, the employee with the greatest length of service time in a particular category of

67 employment shall be given priority consideration and shall have the first right of refusal in all
68 promotions and transfers.

69 (m) Additional-duty assignments.

70 (1) For the purpose of this article, "additional-duty assignment" means an irregular job that
71 occurs periodically or occasionally such as, but not limited to, overtime due to periodic work-
72 related activity, overtime due to staffing shortages and seasonal overtime activity.

73 (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting
74 public employees with respect to additional-duty assignments are made in the following manner:

75 (A) The employee with the greatest length of service time in a particular category of
76 employment is given priority in accepting additional-duty assignments, followed by fellow
77 employees on a rotating basis according to the length of their service time until all employees
78 have had an opportunity to perform similar assignments. The cycle then is repeated.

79 (B) An alternative procedure for making additional-duty assignments within a particular
80 classification category of employment may be used if the alternative procedure is approved both
81 by the Division of Personnel Board and by an affirmative vote of two thirds of the employees within
82 that classification category of employment.

83 (n) Each employer and the division shall post and date notices of all job vacancies of
84 existing or newly created positions in conspicuous places for all public employees to observe for
85 at least 10 working days.

86 (1) Posting locations include any website maintained by or available for the use of any
87 employer and the division.

88 (2) Notice of a job vacancy shall include the job description, the period of employment, the
89 amount of pay and any benefits and other information that is helpful to prospective applicants to
90 understand the particulars of the job. Job postings for vacancies made pursuant to this article
91 shall be written to ensure that the largest possible pool of qualified applicants may apply. Job

92 postings may not require criteria which are not necessary for the successful performance of the
93 job and may not be written with the intent to favor a specific applicant.

94 (3) After the 10-day minimum posting period, all vacancies not filled within 30 days from
95 the posting date notice of any job vacancies of existing or newly created positions, shall be posted
96 in the same manner as the initial posting.

97 (4) The employer shall notify any person who has applied for a job posted pursuant to this
98 article of the status of his or her application as soon as possible after the employer makes a hiring
99 decision regarding the posted position. Notice may be provided by regular mail, electronic mail
100 return receipt requested or by interdepartmental mail: *Provided*, That written notice shall be
101 provided to employees that were not selected within five work days after the employer makes a
102 hiring decision regarding the posted position.

103 (o) The seniority of a public employee is determined on the basis of the length of time the
104 employee has been employed within a particular job classification. For the purpose of
105 establishing seniority for a preferred recall list as provided in this article, a public employee who
106 has been employed in one or more classifications retains the seniority accrued in each previous
107 classification.

108 (p) If an employer is required to reduce the number of public employees within a particular
109 job classification, the following conditions apply:

110 (1) The employee with the least amount of seniority within that classification or grades of
111 classification is properly released and employed in a different grade of that classification if there
112 is a job vacancy:

113 (2) If there is no job vacancy for employment within that classification or grades of
114 classification, the public employee is employed in any other job classification which he or she
115 previously held if there is a vacancy and retains any seniority accrued in the job classification or
116 grade of classification.

117 (q) After a reduction in force or transfer is approved an employer in its sole and exclusive
118 judgment may determine that the reason for any particular reduction in force or transfer no longer
119 exists.

120 (1) If the employer makes this determination, it shall rescind the reduction in force or
121 transfer and notify the affected employee in writing of the right to be restored to his or her former
122 position of employment.

123 (2) The affected employee shall notify the employer of his or her intent to return to the
124 former position of employment within 10 work days of being notified or lose the right to be restored
125 to the former position.

126 (3) The employer may not rescind the reduction in force of an employee until all public
127 employees with more seniority in the classification category on the preferred recall list have been
128 offered the opportunity for recall to regular employment as provided in this article.

129 (4) If there are insufficient vacant positions to permit reemployment of all more senior
130 employees on the preferred recall list within the classification category of the public employee
131 who was subject to reduction in force, the position of the released employee shall be posted and
132 filled in accordance with this article.

133 (r) All public employees whose seniority with the employer is insufficient to allow their
134 retention by the employer during a reduction in work force shall be placed upon a preferred recall
135 list and shall be recalled to employment by the employer on the basis of seniority.

136 (s) A public employee placed on the preferred recall list shall be recalled to any position
137 openings by the employer within the classification(s) where he or she had previously been
138 employed, to any lateral position for which the public employee is qualified or to a lateral area for
139 which a public employee has certification and/or licensure.

140 (t) A public employee on the preferred recall list does not forfeit the right to recall by the
141 employer if compelling reasons require him or her to refuse an offer of reemployment by the

142 employer.

143 (u) The employer shall notify all public employees on the preferred recall list of all position
144 openings that exist from time to time. The notice shall be sent by certified mail to the last known
145 address of the public employee. Each public employee shall notify the employer of any change
146 of address.

147 (v) Position openings may not be filled by the employer, whether temporary or permanent,
148 until all public employees on the preferred recall list have been properly notified of existing
149 vacancies and have been given an opportunity to accept reemployment.

150 (w) Any employer failing to comply with the provisions of this article may be compelled to
151 do so by mandamus and is liable to any party prevailing against the employer for court costs and
152 the prevailing party's reasonable attorney fee, as determined and established by the court.

153 (1) A public employee denied promotion or employment in violation of this article shall be
154 awarded the job, pay, and any applicable benefits retroactively to the date of the violation.

155 (2) The employer is liable to any party prevailing against the employer for any court
156 reporter costs including copies of transcripts.

157 (x) The seniority rights conferred herein shall apply retroactively to all classified and
158 classified exempt employees and shall commence as of the effective date of this section.

159 (y) Rules of the division promulgated pursuant to §29-6-10 of this code shall conform or
160 be construed to conform to the seniority provisions of this section.

NOTE: The purpose of this bill is to establish seniority preference for all civil service workers bidding on jobs, seeking to transfer, or affected by reduction in force.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.