

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2142**

BY DELEGATES TONEY PAYNTER

[Introduced February 10, 2021; Referred to the  
Committee on Workforce Development then  
Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §29-6-29, relating to establishing seniority rights for public employees; defining  
 3 when seniority begin; 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 extra 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.**

**§29-6-29. 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. However, an employee who is on  
 5 an approved leave of absence accrues seniority during the period of time that the employee is on  
 6 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. However, this section does not allow a regular full-time

18 employee to be credited with less than a full day of seniority credit for each day the employee is  
19 employed. The calculation of seniority for part-time personnel is prospective and does not reduce  
20 any seniority credit accumulated by any employee prior to the effective date of this section. For  
21 the purposes of this section a part-time employee is defined as an employee who is employed  
22 less than three and one-half hours per day.

23 (f) Seniority accumulation for a regular employee:

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

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

26 and

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

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

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

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

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

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

42 (j) On or before December 31 of each year, each employer shall post at each office the  
43 current certified list of public employees by seniority in each classification. Each certified list shall

44 contain the name of each regularly full-time and part-time employed person employed in each  
45 classification and the date that each employee began performing his or her assigned duties in  
46 each classification. Current seniority lists of all classifications shall be available to employees  
47 upon request at the Division of Personnel office.

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

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

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

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

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

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

67 (m) *Extra-duty assignments.* –

68 (1) For the purpose of this section, "extra-duty assignment" means an irregular job that  
69 occurs periodically or occasionally such as, but not limited to, overtime due to periodic work-

70 related activity, overtime due to staffing shortages and seasonal overtime activity.

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

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

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

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

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

86 (2) Notice of a job vacancy shall include the job description, the period of employment, the  
87 amount of pay and any benefits and other information that is helpful to prospective applicants to  
88 understand the particulars of the job. Job postings for vacancies made pursuant to this article  
89 shall be written to ensure that the largest possible pool of qualified applicants may apply. Job  
90 postings may not require criteria which are not necessary for the successful performance of the  
91 job and may not be written with the intent to favor a specific applicant.

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

95 (4) The employer shall notify any person who has applied for a job posted pursuant to this

96 article of the status of his or her application as soon as possible after the employer makes a hiring  
97 decision regarding the posted position. Notice may be provided by regular mail, electronic mail  
98 return receipt requested or by interdepartmental mail. However, written notice shall be provided  
99 to employees who were not selected within five work days after the employer makes a hiring  
100 decision regarding the posted position.

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

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

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

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

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

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

121 (2) The affected employee shall notify the employer of his or her intent to return to the

122 former position of employment within 10 work days of being notified or lose the right to be restored  
123 to the former position.

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to recognize seniority for public employees for the purposes of promotion, transfer, advancement, lay off, reduction in force and recall.

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