

STATE OF WEST VIRGINIA

SPECIAL REPORT

OF

*TERMINAL LEAVE PAY
AND
PRO RATED ANNUAL INCREMENT*

AUGUST 14, 2001



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305-0610

**TERMINAL LEAVE PAY AND
PRO RATED ANNUAL INCREMENT**

AUGUST 14, 2001

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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To the Joint Committee on Government and Finance:

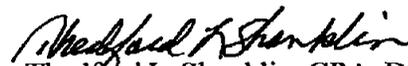
The objectives of this special report was to obtain an understanding of the Administrative Rules promulgated by the West Virginia Division of Personnel and the applicable sections of the West Virginia Code which relate to the calculation and payment of terminal leave and pro rated annual increment. It was also our objective to compare the aforementioned administrative rules and code sections to identify any differences or conflicts and determine the effect or potential effect of any differences or conflicts found to exist.

To achieve the above objectives, we performed the following:

1. Determined the correct method of calculating the payment for terminal leave and pro rated increment according to the West Virginia Code.
2. Determined the correct method of calculating the payment for terminal leave and pro rated annual increment according to West Virginia Division of Personnel Administrative Rule.
3. Noted differences in methods specified by the West Virginia Code and the method outlined in Division of Personnel administrative rules and policies.
4. Illustrated the monetary affect of using the two different methods to calculate terminal leave and pro rated annual increment.

The results of our work are contained in the General Remarks section of this Special Report.

Respectfully Submitted,


Theford L. Shanklin, CPA, Director
Legislative Post Audit Division

August 14, 2001
Auditors: Michael A. House, CPA, Supervisor

TERMINAL LEAVE PAY AND PRO RATED ANNUAL INCREMENT

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TERMINAL LEAVE PAY AND PRO RATED ANNUAL INCREMENT

INTRODUCTION

The West Virginia Division of Personnel has issued rules and regulations pertaining to terminal leave pay and pro rated annual increment for employees who are separated from employment by resignation, layoff, dismissal, retirement, death or termination. Those rules and regulations for covered agencies are set forth in the West Virginia Division of Personnel Administrative Rule Chapter 29-6-10, Series I, 2000 amended, and Annual Increment Policy Effective Date: March 1, 1992; Latest Revision: July 1, 2000. Some agencies not covered by the Division of Personnel also follow those rules and regulations. The West Virginia Code Chapter 5, Article 5, Sections 1, 2, and 3 as well as the Attorney General's Opinions dated August 17, 1988 and June 27, 1990 also relate to terminal leave payment and pro rated annual increment.

TERMINAL LEAVE PAY AND PRO RATED ANNUAL INCREMENT

SUMMARY OF FINDINGS

Payment for Accrued Annual Leave

According to the West Virginia Division of Personnel, annual leave days must be deducted from a separating employee's annual leave balance for holidays and all work days. This does not appear to be in compliance with the West Virginia Code Chapter 5, Article 5, Section 3 and the Attorney General's Opinion Number 3 dated August 17, 1988 which both state, in determining the annual leave entitlement, weekends, holidays or other periods of normal, non countable time shall be excluded.

Payment of Pro Rated Annual Increment for Separating Employees

According to The West Virginia Division of Personnel Annual Increment Policy Effective Date March 1, 1992; Latest Revision: July 1, 2000, pro rated increment is based on his totaled full years of service. This policy is not in compliance with the West Virginia Code Chapter 5, Article 5, Section 3 and the Attorney General's Opinions dated August 17, 1988 and June 27, 1990.

TERMINAL LEAVE PAY AND PRO RATED ANNUAL INCREMENT

GENERAL REMARKS

INTRODUCTION

We have completed an examination of the methods of paying employees for accrued annual leave and pro rated annual increment when they are separated from employment by resignation, layoff, dismissal, retirement, death or termination. This examination addresses laws, rules and regulations in effect August 14, 2001.

COMPLIANCE MATTERS

We have reviewed the Division of Personnel Administrative Rule Chapter 29-6-10, Series I, 2000 amended, The Division of Personnel Annual Increment Policy, The West Virginia Code Chapter 5, Article 5, Sections 1, 2 and 3 and applicable Attorney General's Opinions dated August 17, 1988 and June 27, 1990 as they pertain to terminal annual leave and pro rated annual increment. Our informational findings are discussed below.

Payment for Accrued Annual Leave

As we have reviewed terminal leave payments made by agencies we have audited, it has come to our attention that agencies covered by the Division of Personnel (DOP) as well as some agencies not covered by DOP are deducting annual leave days for holidays occurring in the pay periods for which the separated employee is being paid terminal annual leave. We have also noted some agencies are simply determining an hourly rate by dividing the separating employee's annual salary by the hours worked per year and then multiplying that hourly rate by the number of hours annual leave the separating employee had accrued. The West Virginia Code Chapter 5, Article 5, Section 3 states in part:

“Every eligible employee, as defined in section one [§5-5-1] of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's usual rate of pay at such time. The lump sum payment shall be made by the time of what would have been the employee's next regular payday had his employment continued. **In determining the amount of annual leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded,** and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued annual leave, since no period of service credit is granted in relation thereto; however, such lump sum payment may not be a part of final average salary computation; . . .” **(Emphasis Added)**

The West Virginia Code Chapter 5, Article 5, Section 1 states in part:

“For the purposes of this article: (1) "Eligible employee" means any regular full-time employee of the state or any spending unit thereof who is eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: . . .”

Attorney General's Opinion Number 3 dated August 17, 1988, states in part:

“ . . . During an employee's periods of normal active employment, his accrued annual leave days are only used and credited against such countable workdays (not used against weekend days, holidays or days properly taken as compensatory days earlier earned); therefore, it is the opinion of this office that the Legislature in Code 5-5-3 generally continues such application for determining the amount of the lump sum payment at the time of termination of employment, usually through resignation or retirement. Thus, although an eligible employee will not be remaining on the payroll, but instead will be electing and exercising his option to lump sum payment; nevertheless, the calendar month of the date of his last day on the payroll and/or subsequent calendar months must be used to determine the countable days against which his accrued annual leave days are to be applied and credited and the full month's and/or portion of a month's salary for which he is entitled to be paid in lump sum amount. In respect of any portion of a month and part of month's salary to which an employee may be entitled, such is to be computed by first striking from consideration as excludable, the aforesaid weekend days,

holidays, or other noncountable time, and thereafter determining the fractional part of the monthly salary which is to constitute such lump sum payment, with the numerator thereof being the accrued leave days of an employee remaining and applicable in such month and the denominator thereof being the countable days of such month remaining after the aforesaid exclusions. . . .”

The West Virginia Division of Personnel Administrative Rule Chapter 29-6-10, Series I, 2000

amended, section 14.3 states in part:

“ . . . (f) Separation from Employment- The appointing authority shall pay an employee who separates from employment for any reason for all accrued and unused annual leave. An employee does not accrue annual leave after his or her date of separation. The payment shall be made according to one of the following methods. . . .

. . . 1. An employee may elect to be paid in semi-monthly installments as if employment were continuing until the pay period during which the accrued annual leave is exhausted. If the last day for which terminal leave payment is due falls before the day on which the pay period ends, terminal leave payment for those days within that pay period shall be calculated using the daily rate for the half-month in which the last day on payroll occurs. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures. No deductions may be made for contributions toward retirement from the payment for terminal leave;

2. Any eligible employee as defined in W. Va. Code 5-5-1 who is separated from employment by resignation, layoff, dismissal, retirement, death, or termination, may be paid in a lump sum, at his or her option, for accrued and unused annual leave. Terminal leave payment for an employee who selects a lump sum payment shall be calculated using the daily rate of pay for the half-month(s) or portion of the month which the accrued and unused annual leave covers. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures. The lump sum payment shall be made by the time of what would have been the employee's next regular pay day had his or her employment continued. No deductions may be made for contributions toward retirement from the lump sum payment; . . .”

The West Virginia Division of Personnel Administrative Rule Chapter 29-6-10, Series I, 2000

amended, section 14.1 states in part:

“ . . . (d) An employee must either work or be on approved paid leave for either the full scheduled workday before or after the holiday and either work or be on approved paid leave for any fraction of the scheduled workday before or after the holiday to pay for the holiday. No employee is entitled to payment for any holiday which occurs prior to the first day of work or after the effective date of separation.”

The West Virginia Division of Personnel Administrative Rule Chapter 29-6-10, Series I, 2000

amended, states in part:

“ . . . 3.25. Date of Separation: Last day of work of employees separating due to dismissal, voluntary resignation, voluntary retirement, layoff, or sudden death; the date of death of employees who die while on paid or unpaid leave; or the date of notification by employees resigning or retiring due to disability as verified by a physician.

3.53. Last day of Work: The last calendar date and hour an employee is physically on the job. . . .”

Division of Personnel Administrative Rules Section 14.1 paragraph (d) appears to contradict or conflict with Section 14.3 paragraph (f) 1, since an employee whose employment was continuing would not have annual leave deducted for holidays. However, in most agencies we have audited, a day is deducted from the separated employee's annual leave balance for all holidays when terminal leave pay is calculated.

It is our opinion Chapter 5, Article 5, Section 3 of the West Virginia Code prohibits charging separated employees annual leave days for weekends, holidays or other non countable time. This position is supported by the Attorney General's Opinion quoted above. The use of an hourly rate as described above is not in compliance with Chapter 5, Article 5, Section 3 of the West Virginia Code and it is not in compliance with DOP Administrative Rule.

As a result of agencies calculating terminal pay for accrued annual leave in accordance with the West Virginia Division Of Personnel Administrative Rule instead of in accordance with the West Virginia Code and the applicable Attorney General's Opinion, many employees are receiving a lesser amount of compensation for accrued annual leave when they separate from State employment. The following table illustrates the monetary effect of using the different methods mentioned above for calculating terminal annual leave pay.

TERMINAL ANNUAL LEAVE PAY

Termination Pay for Annual Leave

<u>Annual Salary</u>	<u>Semi Monthly Salary</u>	<u>Accrued Annual Leave Days</u>	<u>Effective Date of Separation</u>	<u>DOP Admin. Rule</u>	<u>Attorney General's Opinion</u>	<u>Hourly Rate Basis</u>
\$20,000.00	\$ 833.33	40	12/31/2000	\$ 3,095.24	\$ 3,405.80	\$ 3,076.92
\$30,000.00	\$1,250.00	40	12/31/2000	\$ 4,642.86	\$ 5,108.70	\$ 4,615.38
\$40,000.00	\$1,666.67	40	12/31/2000	\$ 6,190.48	\$ 6,811.59	\$ 6,153.85
\$50,000.00	\$2,083.33	40	12/31/2000	\$ 7,738.10	\$ 8,514.49	\$ 7,692.31
\$60,000.00	\$2,500.00	40	12/31/2000	\$ 9,285.72	\$10,217.39	\$ 9,230.77
\$70,000.00	\$2,916.67	40	12/31/2000	\$10,833.33	\$11,920.29	\$10,769.23
\$20,000.00	\$ 833.33	40	02/28/2001	\$ 3,106.06	\$ 3,106.06	\$ 3,076.92
\$30,000.00	\$1,250.00	40	02/28/2001	\$ 4,659.09	\$ 4,659.09	\$ 4,615.38
\$40,000.00	\$1,666.67	40	02/28/2001	\$ 6,212.12	\$ 6,212.12	\$ 6,153.85
\$50,000.00	\$2,083.33	40	02/28/2001	\$ 7,765.15	\$ 7,765.15	\$ 7,692.31
\$60,000.00	\$2,500.00	40	02/28/2001	\$ 9,318.18	\$ 9,318.18	\$ 9,230.77
\$70,000.00	\$2,916.67	40	02/28/2001	\$ 10,871.21	\$10,871.21	\$10,769.23

Payment of Pro Rated Annual Increment for Separating Employees

As we have performed audits of various agencies, we noted instances where pro rated annual increment payments were based on a fraction of the amount of the increment payment made on the preceding July 1st. In other instances, the pro rated increment payment was a fraction of the annual increment that would have been paid if the employee had been employed on the next July 1st.

The West Virginia Code Chapter 5, Article 5, Section 2 states in part:

“Effective for the fiscal year beginning the first day of July, one thousand nine hundred ninety-six, every eligible employee with three or more years of service shall receive an annual salary increase equal to fifty dollars times the employees' years of service, not to exceed twenty years of service. **In each fiscal year thereafter and on the first day of July, each eligible employee shall receive an annual increment increase of fifty dollars for that fiscal year.** Every employee becoming newly eligible as a result of meeting the three years of service minimum requirement on the first day of July in any fiscal year subsequent to one thousand nine hundred ninety-six, is entitled to the annual salary increase equal to fifty dollars times the employees' years of service, where he or she has not in a previous fiscal year received the benefit of an increment computation; and shall receive a single annual increment increase thereafter of fifty dollars for each subsequent fiscal year. . . .” (Emphasis Added)

Attorney General's Opinion Number 3 dated August 17, 1988, states in part:

“ . . . Finally, we turn to consideration of your request that this opinion be expanded, as deemed necessary to give the clearest guidance. The statutory provision, Code 5-5-3, as we earlier noted, is cross-referenced to Code 5-5-1 wherein the increment for certain “eligible employees” is provided, and since Code 5-5-2 also addresses such increment, it must be read in parimateria with Code 5-5-1, both of which latter sections specify that such annual increment constitutes an “annual salary increase” is thus an integral part of an employee's gross annual salary, and such increment is not to be deleted or subtracted in the course of determining the value of payment for accrued and unused annual leave days, either under the “remaining on the payroll” method or under the “lump sum payment” optional method, since such deletion or subtraction unlawfully reduces the value payable for accrued annual leave days. . . .”

Attorney General's Opinion dated June 27, 1990, states in part:

“ . . . Considering that the W. Va. Code 5-5-2 incremental increase constitutes part of an eligible state employee's regular pay for services previously rendered, any such employee has a statutory right to any accrued pro rata share of that increment owing but not due on his final day of employment. **By entitlement to a pro rata share, it is meant that an employee who does not work an entire fiscal year is entitled to a fractional portion of the total increment to which the employee would have be entitled had he been employed during the entire fiscal year.** The fraction would have as a numerator the number of pay periods employed, and as a denominator the number twenty-four if the employing agency pays its employees twice monthly. Any other pay plan would require the use of a fraction that would similarly provide the employee with that portion of the salary increment he earned during his final year of employment.

This office similarly opined on August 17, 1988, when it advised the State Auditor Glen B. Gainer, Jr., that the W. Va. Code 5-5-2 increase is an integral part of an employee's gross annual salary, and such increment is not to be deleted or subtracted in the course of determining the value of payment for accrued and unused annual leave days upon termination of employment. It remains the position of this office today that such a deletion or subtraction for any purpose would unlawfully reduce the value due and payable for past services rendered. . . .” **(Emphasis Added)**

The West Virginia Division of Personnel Annual Increment Policy Section 4, states in part:

“ . . .B. Separating employees shall be paid the annual increment on a pro rata basis for the portion of service rendered by the employee during the current fiscal year of employment.

1. Such service period shall include tenure value of any terminal annual leave, regardless of the method elected for payment of the leave (i.e., lump sum or remaining on payroll).

2. The prorated portion an employee receives upon separation prior to June 30, shall be based on his totaled full years of service, and shall be computed based on the months of service rendered in the fiscal year in which the employee terminates. . . .”

The DOP Annual Increment Policy specifies the pro rated annual increment be based on a fraction of his totaled full years of service. This policy is the reason why the pro rated increment is in some instances based on the annual increment paid on the preceding July 1st and in other instances is based on the annual increment the employee would have received had he remained employed through the next July 1st.

Since the aforementioned code section specifies that the \$50.00 annual increment is an increase in annual salary effective on July 1st for that fiscal year, it appears the DOP instructions for calculating pro rated increment are not in compliance with Chapter 5, Article 5, Section 2 of the West Virginia Code which is further evidenced by the related Attorney General's Opinions quoted above. The difference in the amount paid to the separating employee when DOP instructions are followed in calculating pro rated annual increment as opposed to strictly adhering to the Code when making the calculation are minimal. The difference ranges between \$0.00 and \$50.00.

STATE OF WEST VIRGINIA

OFFICE OF LEGISLATIVE AUDITOR, TO WIT:

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report of audit appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true copy of said report.

Given under my hand this 20th day of August

2001.



Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of Administration to be filed as a public record.

Copies forwarded to the Governor; Attorney General; and, State Auditor.