

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

SECOND ENGROSSED

Committee Substitute

for

Senate Bill 509

BY SENATOR RUCKER

[Originating in the Committee on Education; reported

on February 9, 2022]

1 A BILL to amend and reenact §18A-4-10 of the Code of West Virginia, 1931, as amended, relating
2 to providing that county board of education employee personal leave be accrued as
3 earned throughout the employment term at the end of each pay period or on the last
4 workday for separating employees; adding any reason for which an employee is entitled
5 to leave under The Parental Leave Act or the Family and Medical Leave Act as one of the
6 causes for which personal leave can be used; allowing a county superintendent to
7 advance an employee a limited amount of personal leave during the employee's first year
8 of employment in certain instances; and removing unnecessary language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

1 (a) *Personal Leave.* —

2 (1) ~~At the beginning of the employment term, any~~ Any full-time employee of a county board
3 ~~is entitled annually to~~ shall earn at least one and one-half days personal leave for each
4 employment month or major fraction thereof in the employee's employment term. The personal
5 leave shall be accrued as earned throughout the employment term at the end of each pay period
6 or on the last workday for separating employees. Unused leave shall be accumulative without
7 limitation and is transferable within the state. A change in job assignment during the school year
8 does not affect the employee's rights or benefits.

9 (2) A regular full-time employee who is absent from assigned duties due to accident,
10 sickness, death in the immediate family, life threatening illness of the employee's spouse, parents,
11 or child, any reason for which an employee is entitled to leave under The Parental Leave Act as
12 set forth in §21-5D-1 *et seq.* of this code or the Family and Medical Leave Act as set forth in §29
13 U.S.C. 2601 *et seq.* or other cause authorized or approved by the board, shall be paid the full
14 salary from his or her regular budgeted salary appropriation during the period which the employee

15 is absent, but not to exceed the total amount of leave ~~to which the employee is entitled~~ accrued,
16 subject to the following:

17 (A) The county superintendent may advance an employee personal leave during the
18 employee's first year of employment if the employee needs to be absent from assigned duties for
19 one or more of the aforementioned reasons set forth in this subdivision and if the employee has
20 never earned personal leave pursuant to this section in any prior employment term;

21 (B) The county superintendent may not advance any county board employee more
22 personal leave than that employee is to earn pursuant to subdivision (1) of this subsection during
23 his or her first employment term minus any personal leave that employee has already used; and

24 (C) If an employee uses personal leave which the employee has not yet accumulated on
25 a monthly basis and subsequently leaves the employment before the personal leave he or she
26 used accumulates, the employee is required to reimburse the board for the salary or wages paid
27 for the unaccumulated leave.

28 (3) ~~Each employee is permitted to use three days of leave annually without regard to the~~
29 ~~cause for the absence: *Provided*, That effective July 1, 2019, each employee is permitted to use~~
30 four days of leave annually without regard to the cause for the absence. Personal leave without
31 cause may not be used on consecutive work days unless authorized or approved by the
32 employee's principal or immediate supervisor, as appropriate. The employee shall give notice of
33 leave without cause to the principal or immediate supervisor at least 24 hours in advance, except
34 that in the case of sudden and unexpected circumstances, notice shall be given as soon as
35 reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the
36 time notice is given, either 15 percent of the employees or three employees, whichever is greater,
37 under the supervision of the principal or immediate supervisor, have previously given notice of
38 their intention to use that day for leave. Personal leave may not be used in connection with a
39 concerted work stoppage or strike. ~~Where the cause for leave originated prior to the beginning of~~
40 ~~the employment term, the employee shall be paid for time lost after the start of the employment~~

41 ~~term. If an employee uses personal leave which the employee has not yet accumulated on a~~
42 ~~monthly basis and subsequently leaves the employment, the employee is required to reimburse~~
43 ~~the board for the salary or wages paid for the unaccumulated leave~~

44 (4) The State Board shall maintain a rule to restrict the payment of personal leave benefits
45 and the charging of personal leave time used to an employee receiving a workers' compensation
46 benefit from a claim filed against and billed to the county board by which the person is employed.
47 If an employee is awarded this benefit, the employee shall receive personal leave compensation
48 only to the extent the compensation is required, when added to the workers' compensation
49 benefit, to equal the amount of compensation regularly paid to the employee. If personal leave
50 compensation equal to the employee's regular pay is paid prior to the award of the workers'
51 compensation benefit, the amount which, when added to the benefit, is in excess of the
52 employee's regular pay shall be deducted from the employee's subsequent pay. The employee's
53 accrued personal leave days shall be charged only for such days as equal the amount of personal
54 leave compensation required to compensate the employee at the employee's regular rate of pay.

55 (5) The county board may establish reasonable rules for reporting and verification of
56 absences for cause. If any error in reporting absences occurs, the county board may make
57 necessary salary adjustments:

58 (A) In the next pay after the employee has returned to duty; or

59 (B) In the final pay if the absence occurs during the last month of the employment term.

60 (b) *Leave Banks.* —

61 (1) Each county board shall establish a personal leave bank that is available to all school
62 personnel. The board may establish joint or separate banks for professional personnel and school
63 service personnel. Each employee may contribute up to two days of personal leave per school
64 year. An employee may not be coerced or compelled to contribute to a personal leave bank.

65 (2) The personal leave bank shall be established and operated pursuant to a rule adopted
66 by the county board. The rule:

- 67 (A) May limit the maximum number of days used by an employee;
- 68 (B) Shall limit the use of leave bank days to an active employee with fewer than five days
69 accumulated personal leave who is absent from work due to accident or illness of the employee;
70 and
- 71 (C) Shall prohibit the use of days to:
- 72 (i) Qualify for or add to service for any retirement system administered by the state; or
73 (ii) Extend insurance coverage pursuant to §5-16-13 of this code.
- 74 (D) Shall require that each personal leave day contributed:
- 75 (i) Is deducted from the number of personal leave days to which the donor employee is
76 entitled by this section;
- 77 (ii) Is not deducted from the personal leave days without cause to which a donor employee
78 is entitled if sufficient general personal leave days are otherwise available to the donor employee;
- 79 (iii) Is credited to the receiving employee as one full personal leave day;
- 80 (iv) May not be credited for more or less than a full day by calculating the value of the
81 leave according to the hourly wage of each employee; and
- 82 (v) May be used only for an absence due to the purpose for which the leave was
83 transferred. Any transferred days remaining when the catastrophic medical emergency ends
84 revert back to the leave bank.
- 85 (3) The administration, subject to county board approval, may use its discretion as to the
86 need for a substitute where limited absence may prevail, when an allowable absence does not:
- 87 (i) Directly affect the instruction of the students; or
88 (ii) Require a substitute employee because of the nature of the work and the duration of
89 the cause for the absence.
- 90 (4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of
91 substitutes for meeting the provisions of this section, the remainder shall be paid on or before the
92 August 31 from the budget of the next fiscal year.

93 (5) A county board may supplement the leave provisions in any manner it considers
94 advisable in accordance with applicable rules of the State Board and the provisions of this chapter
95 and §18-1-1 *et seq.* of this code.

96 (c) Effective July 1, 2019, a classroom teacher who has not utilized more than four days
97 of personal leave during the 200-day employment term shall receive a bonus of \$500 at the end
98 of the school year. If the appropriations to the Department of Education for this purpose are
99 insufficient to compensate all applicable classroom teachers, the Department of Education shall
100 request a supplemental appropriation in an amount sufficient to compensate all eligible classroom
101 teachers. This bonus may not be counted as part of the final average salary for the purpose of
102 calculating retirement.