

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **Senate Bill 676**

BY SENATORS ROBERTS AND RUCKER

[Introduced February 18, 2022; referred  
to the Committee on Education]

1 A BILL to amend and reenact §18A-4-10 of the Code of West Virginia, 1931, as amended, relating  
 2 to the \$500 bonus for a classroom teacher who has not used more than four days of  
 3 personal leave during the employment term; allowing a teacher who uses personal leave  
 4 to avoid working on a day or days because working that day or those days would conflict  
 5 with the teacher's sincerely held religious beliefs to apply to exclude the use of one or  
 6 more personal leave days from the four-day limit when determining the teacher's eligibility  
 7 for the \$500 bonus; and providing that a person filing a false affidavit stating that his or  
 8 her working on that day or those days conflicts with his or her sincerely held religious  
 9 beliefs and that he or she will not or did not perform any other work for remuneration on  
 10 that day is subject to the penalty for false swearing.

*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 full-time employee of a county board is  
 3 entitled annually to at least one and one-half days personal leave for each employment month or  
 4 major fraction thereof in the employee's employment term. Unused leave shall be accumulative  
 5 without limitation and is transferable within the state. A change in job assignment during the school  
 6 year does not affect the employee's rights or benefits.

7 (2) A regular full-time employee who is absent from assigned duties due to accident,  
 8 sickness, death in the immediate family, or life threatening illness of the employee's spouse,  
 9 parents or child, or other cause authorized or approved by the board, shall be paid the full salary  
 10 from his or her regular budgeted salary appropriation during the period which the employee is  
 11 absent, but not to exceed the total amount of leave to which the employee is entitled.

12 (3) Each employee is permitted to use ~~three days of leave annually without regard to the~~  
 13 ~~cause for the absence: *Provided, That effective July 1, 2019, each employee is permitted to use*~~

14 four days of leave annually without regard to the cause for the absence. Personal leave without  
15 cause may not be used on consecutive work days unless authorized or approved by the  
16 employee's principal or immediate supervisor, as appropriate. The employee shall give notice of  
17 leave without cause to the principal or immediate supervisor at least 24 hours in advance, except  
18 that in the case of sudden and unexpected circumstances, notice shall be given as soon as  
19 reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the  
20 time notice is given, either 15 percent of the employees or three employees, whichever is greater,  
21 under the supervision of the principal or immediate supervisor, have previously given notice of  
22 their intention to use that day for leave. Personal leave may not be used in connection with a  
23 concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of  
24 the employment term, the employee shall be paid for time lost after the start of the employment  
25 term. If an employee uses personal leave which the employee has not yet accumulated on a  
26 monthly basis and subsequently leaves the employment, the employee is required to reimburse  
27 the board for the salary or wages paid for the unaccumulated leave.

28 (4) The State Board shall maintain a rule to restrict the payment of personal leave benefits  
29 and the charging of personal leave time used to an employee receiving a workers' compensation  
30 benefit from a claim filed against and billed to the county board by which the person is employed.  
31 If an employee is awarded this benefit, the employee shall receive personal leave compensation  
32 only to the extent the compensation is required, when added to the workers' compensation  
33 benefit, to equal the amount of compensation regularly paid the employee. If personal leave  
34 compensation equal to the employee's regular pay is paid prior to the award of the workers'  
35 compensation benefit, the amount which, when added to the benefit, is in excess of the  
36 employee's regular pay shall be deducted from the employee's subsequent pay. The employee's  
37 accrued personal leave days shall be charged only for such days as equal the amount of personal  
38 leave compensation required to compensate the employee at the employee's regular rate of pay.

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

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

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

44 (b) *Leave Banks.*

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

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

51 (A) May limit the maximum number of days used by an employee;

52 (B) Shall limit the use of leave bank days to an active employee with fewer than five days  
53 accumulated personal leave who is absent from work due to accident or illness of the employee;  
54 and

55 (C) Shall prohibit the use of days to:

56 (i) Qualify for or add to service for any retirement system administered by the state; or

57 (ii) Extend insurance coverage pursuant to §5-16-13 of this code.

58 (D) Shall require that each personal leave day contributed:

59 (i) Is deducted from the number of personal leave days to which the donor employee is  
60 entitled by this section;

61 (ii) Is not deducted from the personal leave days without cause to which a donor employee  
62 is entitled if sufficient general personal leave days are otherwise available to the donor employee;

63 (iii) Is credited to the receiving employee as one full personal leave day;

64 (iv) May not be credited for more or less than a full day by calculating the value of the  
65 leave according to the hourly wage of each employee; and

66 (v) May be used only for an absence due to the purpose for which the leave was  
67 transferred. Any transferred days remaining when the catastrophic medical emergency ends  
68 revert back to the leave bank.

69 (3) The administration, subject to county board approval, may use its discretion as to the  
70 need for a substitute where limited absence may prevail, when an allowable absence does not:

71 (i) Directly affect the instruction of the students; or

72 (ii) Require a substitute employee because of the nature of the work and the duration of  
73 the cause for the absence.

74 (4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of  
75 substitutes for meeting the provisions of this section, the remainder shall be paid on or before the  
76 August 31 from the budget of the next fiscal year.

77 (5) A county board may supplement the leave provisions in any manner it considers  
78 advisable in accordance with applicable rules of the state Board and the provisions of this chapter  
79 and chapter 18 of this code.

80 (c) ~~Effective July 1, 2019, a~~ A classroom teacher who has not utilized more than four days  
81 of personal leave during the 200-day employment term shall receive a bonus of \$500 at the end  
82 of the school year. If the appropriations to the Department of Education for this purpose are  
83 insufficient to compensate all applicable classroom teachers, the Department of Education shall  
84 request a supplemental appropriation in an amount sufficient to compensate all eligible classroom  
85 teachers. This bonus may not be counted as part of the final average salary for the purpose of  
86 calculating retirement. If a teacher uses personal leave to avoid working on a day or days because  
87 working that day or those days would conflict with the teacher's sincerely held religious beliefs,  
88 he or she may apply to the county superintendent, or other central office administrator designated  
89 by the county superintendent, to exclude the use of one or more personal leave days from the

90 four-day limit when determining the teacher's eligibility for the \$500 bonus pursuant to the  
91 following:

92 (1) No exclusion of the use of a personal leave day may be granted unless the teacher  
93 files with the county superintendent, or other central office administrator designated by the county  
94 superintendent:

95 (A) An application on a form prescribed by the state superintendent, to exclude one or  
96 more personal leave days from being included in the determination of whether the teacher is  
97 eligible for the \$500 bonus because working that day or those days would conflict with the  
98 teacher's sincerely held religious beliefs. The application at least shall inquire into the nature and  
99 sincerity of the teacher's religious beliefs; and

100 (B) A notarized affidavit, on a form prescribed by the state superintendent, stating that his  
101 or her working on that day or those days conflicts with his or her sincerely held religious beliefs  
102 and that he or she will not or did not perform any other work for remuneration on that day;

103 (2) The county superintendent, or other central office administrator designated by the  
104 county superintendent, shall grant the exclusion of one or more personal leave days used if he or  
105 she determines that working on that day or those days conflict with the teacher's sincerely held  
106 religious beliefs; and

107 (3) A person who files a false affidavit pursuant to this subsection is subject to the penalty  
108 for false swearing provided in §61-5-3 of this code.

NOTE: The purpose of this bill is to allow a classroom teacher to apply to the county superintendent to exclude any personal leave used for religious reasons from counting as a personal leave day for the purposes of determining whether that teacher is eligible for the \$500 bonus available to classroom teachers who use not more than four days of personal leave.

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