

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

House Bill 3547

By Delegates Clark, Ferrell, Longanacre, Maynor,

Jennings, Walker, Ellington and Toney

[Introduced February 14, 2023; Referred

to the Committee on Education then Finance]

1 A BILL to amend and reenact §18A-4-10 of the Code of West Virginia, 1931, as amended, relating
2 to increasing number of personal leave days an employee may use without regard to the
3 cause for the absence; and providing for use on consecutive days.

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~~ four days of leave annually without regard to
13 the cause for the absence: *Provided*, That effective ~~July 1, 2019~~ July 1, 2023, each employee is
14 permitted to use ~~four~~ five days of leave annually without regard to the cause for the absence.
15 Personal leave without cause may not be used on consecutive work days unless authorized or
16 approved by the employee's principal or immediate supervisor, as appropriate, or the employee
17 may provide 14 days notice. For non-consecutive days, the employee shall give notice of leave
18 without cause to the principal or immediate supervisor at least 24 hours in advance, except that in
19 the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably
20 practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is

21 given, either 15 percent of the employees or three employees, whichever is greater, under the
22 supervision of the principal or immediate supervisor, have previously given notice of their intention
23 to use that day for leave. Personal leave may not be used in connection with a concerted work
24 stoppage or strike. Where the cause for leave originated prior to the beginning of the employment
25 term, the employee shall be paid for time lost after the start of the employment term. If an
26 employee uses personal leave which the employee has not yet accumulated on a monthly basis
27 and subsequently leaves the employment, the employee is required to reimburse the board for the
28 salary or wages paid for the unaccumulated leave.

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

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

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

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

45 (b) Leave Banks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to increase the number of personal leave days that county board of education employees may use without regard to the cause for the absence from four to five.

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