

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS
Meeting of July 10, 2017

ITEM:

Notice of Proposed Rulemaking for changes to the following Policies:

West Virginia University Board of Governors Policy 8, Holidays;
West Virginia University Board of Governors Policy 13; Part-Time
Classified Employees;
West Virginia University Board of Governors Policy 24, Employee
Leave;
West Virginia University Board of Governors Policy 26, Employee
Development;
West Virginia University Board of Governors Policy 27, Work
Scheduling;
West Virginia University Board of Governors Policy 29, Salary Policy;
West Virginia University Board of Governors Policy 32, Rule on
Annual Increment;
West Virginia University Board of Governors Policy 34, Affirmative
Action & Equal Employment Opportunity;
West Virginia University Board of Governors Policy 45, Adoption or
Amendment of Rules;
West Virginia University Board of Governors Policy 50, Meal Breaks;
West Virginia University Board of Governors Policy 53, Emergency
Call-In; and West Virginia University Board of Governors Policy 56,
Drug and Alcohol Testing for Federal Transit Administration (FTA) &
Federal Motor Carrier Safety Administration (FMCSA) Covered
Positions.

Additionally, Notice of Proposed Rulemaking for four new Rules:

West Virginia University Board of Governors Talent & Culture Rule
3.1 – Administration and Employment Practices;
West Virginia University Board of Governors Talent & Culture Rule
3.3 – Classification and Compensation; West Virginia University
Board of Governors Talent and Culture Rule 3.8 – Performance
Management; and
West Virginia University Board of Governors Talent and Culture Rule
3.9 – Reduction in Force (RIF).

INSTITUTION: West Virginia University

COMMITTEE: Full Board

RECOMMENDATION: Resolved: That the West Virginia University Board of Governors approves the issuance of a Notice of Proposed Rulemaking, as presented.

STAFF MEMBER: Cris DeBord, Vice President for Talent & Culture;
Stephanie Taylor, General Counsel

BACKGROUND: The proposed changes are to amend, approve, rename/renumber, and, in some cases, repeal the current policies in order to implement new rules in accordance with W. Va. House Bill 2542 (2017) and W. Va. House Bill 2815 (2017). To that end, the term “Policy” will be replaced with “Rule” and these policies will be reformatted to the new design for BOG Rules, renumbered, and standard terms will be used when applicable. Moreover, all BOG Rules will be updated to supersede and repeal W. Va. Higher Education Policy Commission Rules, where applicable.

Substantively, the proposed changes to the policies above will result in additions, amendments, or repeals as set forth in detail in the table located in the Notice of Proposed Rulemaking.

Following the issuance of the Notice of Proposed Rulemaking, the proposed changes to the Policies will be posted for the required thirty (30) day public comment period from July 18 through August 17. The Board of Governors is asked to approve the issuance of the Notice of Proposed Rulemaking, as presented.

NOTICE OF PROPOSED RULEMAKING

This Notice of Proposed Rulemaking is issued pursuant to West Virginia University Board of Governors Policy 45 and W. Va. Code R. §§ 133-4-1 to -8. The proposed changes to current Board of Governors Policies are to:

- West Virginia University Board of Governors Policy 8, Holidays;
- West Virginia University Board of Governors Policy 13, Part-Time Classified Employees;
- West Virginia University Board of Governors Policy 24, Employee Leave;
- West Virginia University Board of Governors Policy 26, Employee Development;
- West Virginia University Board of Governors Policy 27, Work Scheduling;
- West Virginia University Board of Governors Policy 29, Salary Policy;
- West Virginia University Board of Governors Policy 32, Rule on Annual Increment;
- West Virginia University Board of Governors Policy 34, Affirmative Action & Equal Employment Opportunity;
- West Virginia University Board of Governors Policy 45, Adoption or Amendment of Rules;
- West Virginia University Board of Governors Policy 50, Meal Breaks;
- West Virginia University Board of Governors Policy 53, Emergency Call-In; and
- West Virginia University Board of Governors Policy 56, Drug and Alcohol Testing for Federal Transit Administration (FTA) & Federal Motor Carrier Safety Administration (FMCSA) Covered Positions.

Additionally, four new Board of Governor Rules (formerly called Policies) are proposed:

- West Virginia University Board of Governors Talent & Culture Rule 3.1 – Administration and Employment Practices;
- West Virginia University Board of Governors Talent & Culture Rule 3.3 – Classification and Compensation;
- West Virginia University Board of Governors Talent and Culture Rule 3.8 – Performance Management; and
- West Virginia University Board of Governors Talent and Culture Rule 3.9 – Reduction in Force (RIF).

The proposed changes are to amend, approve, and, in some cases, repeal current BOG Policies in order to implement new BOG Rules in accordance with W. Va. House Bill 2542 (2017) and W. Va. House Bill 2815 (2017). To that end, the term “Policy” will be replaced with “Rule” and these Policies will be reformatted to the new design for BOG Rules, renumbered, and standard terms are used, when applicable. Moreover, all BOG Rules will be updated to supersede and repeal W. Va. Higher Education Policy Commission Rules, where applicable.

Substantively, the proposed changes to the BOG Policies above will result in additions, amendments, or repeals as set forth below:

Current BOG Policy	Proposed Change	New BOG Rule	Brief Description
BOG Policy 8 – Holidays	Amend & Approve	BOG Talent and Culture Rule 3.6 – Holidays	<ul style="list-style-type: none"> • Amends to clarify President’s ability to grant either a floating holiday or a change to the holiday schedule in response to additionally granted holiday time by the Governor or other governmental entity. • Amends language to align Rule with the current practice of setting one holiday schedule for all University campuses.
BOG Policy 13 – Part-Time Classified Employees	Relocate & Repeal	BOG Talent and Culture Rule 3.1 – Administration and Employment Practices	<ul style="list-style-type: none"> • Incorporates substance of BOG Policy 13 into new BOG Talent & Culture Rule 3.1.
BOG Policy 24 – Employee Leave	Amend & Approve	BOG Talent and Culture Rule 3.5 – Employee Leave	<ul style="list-style-type: none"> • No substantive changes. • Re-numbers and re-formats original BOG Policy 24 into BOG Talent & Culture Rule 3.5.
BOG Policy 26 – Employee Development	Relocate & Repeal	BOG Talent and Culture Rule 3.1 – Administration and Employment Practices	<ul style="list-style-type: none"> • Incorporates substance of BOG Policy 26 into new BOG Talent & Culture Rule 3.1.
BOG Policy 27 – Work Scheduling	Relocate & Repeal	BOG Talent and Culture Rule 3.1 – Administration and Employment Practices	<ul style="list-style-type: none"> • Incorporates substance of BOG Policy 27 into new BOG Talent & Culture Rule 3.1.
BOG Policy 29 - Salary Policy	Repeal		<ul style="list-style-type: none"> • New, more comprehensive BOG Rule on compensation now required by W. Va. House Bill 2542 (2017), for non-Faculty, which will be contained within BOG Talent & Culture Rule 3.3.

Current BOG Policy	Proposed Change	New BOG Rule	Brief Description
BOG Policy 32 – Rule on Annual Increment	Amend & Approve	BOG Talent and Culture Rule 3.7 – Annual Increment	<ul style="list-style-type: none"> • No substantive changes. • Re-numbers and re-formats original BOG Policy 32 into BOG Talent & Culture Rule 3.7.
BOG Policy 34 – Affirmative Action & Equal Employment Opportunity	Amend & Approve	BOG Talent and Culture Rule 3.2 – Affirmative Action and Equal Employment Opportunity	<ul style="list-style-type: none"> • No substantive changes. • Re-numbers and re-formats original BOG Policy 32 into Talent & Culture Rule 3.2.
BOG Policy 45 – Adoption or Amendment of Rules	Amend & Approve	BOG Governance Rule 1.1 – Adoption, Amendment, or Repeal of Rules	<ul style="list-style-type: none"> • Amends language to reflect revised rulemaking authority and procedures, as permitted in W. Va. House Bill 2815 (2017). • Re-numbers and re-formats original BOG Policy 45 into Governance Rule 1.1.
BOG Policy 50 – Meal Breaks	Repeal		<ul style="list-style-type: none"> • A BOG Rule is not required on this topic, as meal break requirements are mandated by West Virginia statute.
BOG Policy 53 – Emergency Call-In	Relocate & Repeal	BOG Talent and Culture Rule 3.3 – Classification and Compensation	<ul style="list-style-type: none"> • Incorporates substance of BOG Policy 53 into new BOG Talent & Culture Rule 3.3.
BOG Policy 56 – Drug and Alcohol Testing for Federal Transit Administration (FTA) & Federal Motor Carrier Safety Administration (FMCSA) Covered Positions	Amend & Approve	BOG Talent and Culture Rule 3.4 – Drug and Alcohol Testing for Federal Transit Administration (FTA) & Federal Motor Carrier Safety Administration (FMCSA) Covered Positions	<ul style="list-style-type: none"> • Amends practice regarding second drug tests for dilute specimens. • Re-numbers and re-formats original BOG Policy 56 into BOG Talent & Culture Rule 3.4.

Current BOG Policy	Proposed Change	New BOG Rule	Brief Description
N/A	Approve	BOG Talent & Culture Rule 3.1 – Administration and Employment Practices	<ul style="list-style-type: none"> ▪ Re-states general delegation of authority to President for University’s human resources practices. ▪ Adds language required by W. Va. House Bill 2542 (2017) regarding continued engagement with Classified Staff Council regarding human resource practices, including: <ul style="list-style-type: none"> ○ Meeting with Classified Staff Council quarterly to review BOG Talent & Culture Rules. ○ Providing for external review of human resource practices at least once every 5 years, with opportunity to Classified Staff Council to speak with external auditors. ▪ Defines terms for all BOG Talent & Culture Rules. ▪ Incorporates or replaces current BOG Policies: <ul style="list-style-type: none"> ○ BOG Policy 13 – Part-Time Classified Employees ○ BOG Policy 26 – Employee Development ○ BOG Policy 27 – Work Scheduling
N/A	Approve	BOG Talent & Culture Rule 3.3 – Classification and Compensation	<ul style="list-style-type: none"> ▪ Provides guiding principles for establishing a University classification and compensation program for Classified and Non-Classified Employees, including procedures for determining new Employees classification, initial job title, job description, and compensation. ▪ Outlines what compensation elements can be considered for individual Employees’ pay. ▪ Eliminates point factor method for job change adjustments. ▪ Establishes new factors to evaluate when a job change adjustment is appropriate, which shifts focus on growing individual compensation towards performance and away from re-evaluation of individual job descriptions.

Current BOG Policy	Proposed Change	New BOG Rule	Brief Description
			<ul style="list-style-type: none"> ▪ Outlines additional compensation adjustments supervisors may use to increase an Employee's pay when applicable. ▪ Establishes periodic reviews of market data to assess competitiveness of compensation. ▪ Incorporates and replaces current BOG policies: <ul style="list-style-type: none"> ○ BOG Policy 29 – Salary Policy ○ BOG Policy 53 – Emergency Call-In
N/A	Approve New Rule	BOG Talent and Culture Rule 3.8 – Performance Management	<ul style="list-style-type: none"> ▪ Provides guiding principles for performance management for Classified and Non-Classified Employees. ▪ Requires all supervisors of Classified and Non-Classified Employees to complete a written performance evaluation for each Employee. ▪ Requires all supervisors of Classified and Non-Classified Employees to undergo training on performance management. ▪ Standardizes six- month performance reviews for new Classified and Non-Classified Employees. ▪ Allows Classified and Non-Classified Employees the opportunity to respond in writing to performance evaluation. ▪ Requires a performance improvement plan for all Classified and Non-Classified Employees who are rated below expectations.
N/A	Approve New Rule	BOG Talent and Culture Rule 3.9 – Reduction in Force (RIF)	<ul style="list-style-type: none"> ▪ Outlines guiding principles for reduction in Classified workforce due to budget reductions, loss of funding, reorganization, material changes to the duties or responsibilities of a position, program change/elimination, or an emergency that curtails operations.

Current BOG Policy	Proposed Change	New BOG Rule	Brief Description
			<ul style="list-style-type: none"> ▪ Unit supervisor must prepare a RIF plan and seek approval from Vice President for Talent & Culture or a Review Committee, depending on the number of Classified Employees involved. ▪ Review Committee will consist of senior leaders from Provost's Office, Strategic Initiatives, and Talent and Culture with advice from General Counsel's Office. ▪ Position eliminations determined based the following factors: performance (would include discipline in past 24 months), skills/qualifications, and seniority. ▪ Classified Employees will receive 60-day notice of elimination and may be offered a severance package based on years of service, not to exceed one year's base pay. ▪ Severance payment requires a waiver and release of claims, and Classified Employees will have 45 days to consider the agreement, with a 7 day revocation period. ▪ Certain positions are not applicable for severance, including but not limited to temporary positions and grant/contract funded positions (hired after 7/1/2017). ▪ Severance payments end if re-employed by WVU or a University Affiliate. ▪ Recall rights if individual impacted position is filled within 12 months of original decision to eliminate the position, and impacted employee left in good standing.

A copy of the current Policies can be found at <http://bog.wvu.edu/policies> and a copy of the proposed Rules and this Notice of Proposed Rulemaking can be found at <http://policies.wvu.edu/>. Additionally, copies of both are available at the President's Office in Room 103 of Stewart Hall.

There will be a 30-day public comment period from July 18, 2017 until August 17, 2017 for the submission of written comments. Comments should be submitted using the online submission form for each Rule, which can be found by clicking on the link to the Rule located at: <http://policies.wvu.edu/>. If there are any questions about the submission process, they can be directed to Valerie Lopez, Special Assistant to the Governing Board, at Valerie.Lopez@mail.wvu.edu or Valerie Lopez, Office of the President, West Virginia University, PO Box 6201, Morgantown, West Virginia 26506-6201.

Once the comment period has ended, all public comments received will be posted on the University's policy website. The Rules may be changed, subject to comments received.

Recommendation: Amend & Approve



Board of Governors Rule

Governance

Adoption, Repeal, or Amendment of Rules

Responsible Units: Office of the President and
Office of General Counsel

Adopted: [Proposed September 8, 2017]

Revision History: Prior BOG Policy 45
(September 8, 2006)

Review Date: September, 2022

BOG GOVERNANCE RULE 1.1 **ADOPTION, AMENDMENT, OR REPEAL OF RULES**

SECTION 1: PURPOSE & SCOPE.

- 1.1 The University seeks to provide a fair process that encourages and facilitates engagement by the University community, the public, and other interested parties regarding the adoption, amendment, or repeal of West Virginia University Board of Governors Rules.
- 1.2 This Rule outlines the guiding principles for the adoption, amendment, or repeal for all Board of Governors Rules. It also outlines the appropriate procedures for University community engagement, public comment, and publication of all Rules.
- 1.3 Unless specifically stated to the contrary within a Rule, all Rules of the Board of Governors apply to all institutions under the Board's control and authority, including West Virginia University, West Virginia University Institute of Technology, and West Virginia University Potomac State College.

SECTION 2: RULE DEVELOPMENT.

- 2.1 Should either the Board of Governors or the President determine that a new Rule is needed or a current Rule should be amended or repealed, an appropriate University unit(s) will be assigned by the President to evaluate and then draft new or amended Rule language.
- 2.2 The assigned University unit(s) is encouraged to consult with interested University community groups before finalizing a draft Rule that will be presented to the Board of Governors.
 - 2.2.1 In accordance with W. Va. Code §§ 18B-7-3 and 18B-9B-1, the University must consult with and provide 30 calendar days written notice to the University's Staff Council on any proposed Board of Governors Rule regarding a reduction in force or the University's classification and compensation system.

- 2.2.2 In accordance with W. Va. Code §18B-8-7, the University must consult with and provide 30 calendar days written notice to the University's Faculty Senate on any proposed Board of Governors Rule regarding full-time faculty salaries.
 - 2.2.3 Each of the 30 calendar days written notice periods referenced in Sections 2.2.1 and 2.2.2 may run concurrently with the 30 calendar days public comment period discussed in Section 3.2.
 - 2.3 A draft Rule must be approved by President in consultation with senior management leaders before it is presented to the Board of Governors.
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SECTION 3: BOARD OF GOVERNORS REVIEW, PUBLIC COMMENT, AND APPROVAL PROCESS.

3.1 *Notice of Proposed Rulemaking.*

- 3.1.1 After a draft Rule is approved by the President, the Board of Governors shall review the draft Rule and may proceed to issue a Notice of Proposed Rulemaking.
- 3.1.2 The Notice of Proposed Rulemaking must include:
 - 3.1.2.1 A copy of the proposed Rule if adoption or amendment is proposed, or a copy of the current Rule if repeal is proposed;
 - 3.1.2.2 A brief description of the subject matter of the Rule;
 - 3.1.2.3 How public comments will be received by the University; and
 - 3.1.2.4 The time frame during which public comments will be received.
- 3.1.3 The Notice of Proposed Rulemaking must be posted on the University's designated policy website. Additionally, the University shall inform faculty, staff, and students of the Notice of Proposed Rulemaking through email, University announcements, or as otherwise deemed appropriate by the President.

3.2 *Public Comment Period.*

- 3.2.1 A Notice of Proposed Rulemaking must provide for a public comment period of at least 30 calendar days during which written comments will be received.

- 3.2.2 If written comments are received during the public comment period, the University shall summarize the comments received and/or post these comments on the University's designated policy website for 10 calendar days before final Board of Governors action is taken.

3.3 *Approval of the Rule.*

- 3.3.1 If public comments are received during the public comment period, all proposals for the adoption, amendment, or repeal of a Rule require final Board action before the Rule will be effective. In those instances, the adoption, amendment, or repeal of the Rule will be effective 15 business days after the Board approves the Rule, or on such a later date that the Board may designate as the effective date of the Rule.
- 3.3.2 The Board of Governors or the President may amend a proposed Rule as a result of the comments received. If a proposed Rule is amended as a result of comments received, the Board may approve the proposed Rule as final without an additional notice or public comment period.
- 3.3.3 If no comments are received during the public comment period, Board of Governors action is not necessary for the adoption, amendment, or repeal of a Rule to be effective. But only if the Board, at the time of approving the Notice of Proposed Rulemaking, explicitly authorized such action without further Board approval. In those instances, the adoption, amendment, or repeal of the Rule will be effective on the 1 business day following the end of the 30 days comment period.

SECTION 4: EMERGENCY RULEMAKING.

- 4.1 The Board of Governors may adopt a new Rule, or amend or repeal a current Rule, as an Emergency Rule without first following the formal rulemaking procedures set forth in Sections 2 and 3.
- 4.2 An Emergency Rule may be adopted when such action is necessary:
- 4.2.1 to immediately preserve public peace, health, safety, or welfare at the University;
 - 4.2.2 to comply with a time limitation established by state or federal law or regulation;
 - 4.2.3 to prevent substantial harm to the public interest;

- 4.2.4 to address a financial exigency; or
 - 4.2.5 to immediately preserve critical University operations and functions.
 - 4.3 Any Emergency Rule approved by the Board shall be immediately posted on the University's policy website. Additionally, appropriate notice of the Emergency Rule shall be given to University faculty, staff, and students.
 - 4.4 Any Emergency Rule shall remain in effect no longer than 90 calendar days.
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SECTION 5: ORGANIZATION AND PUBLICATION OF RULES.

- 5.1 All approved Board of Governors Rules shall be assigned a topic category and provided an identifying number within that topic category.
 - 5.1.1 Board of Governors approval, through the formal rulemaking procedures set forth in Sections 2 and 3, is not required if a Rule is being re-numbered or moved into a different topic category. However, changes to the text of any Rule must go through the formal rulemaking procedures.
 - 5.2 All proposed and approved Board of Governor Rules shall be published on the University's designated policy website for easy access to the University community and to the public.
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SECTION 6: REPORTING REQUIREMENTS TO THE HIGHER EDUCATION POLICY COMMISSION

- 6.1 Within 15 business days of the adoption, amendment, or repeal of any Rule, and before the change is implemented, the Board of Governors must provide a copy of the Rule to the Higher Education Policy Commission (HEPC) for its review.
 - 6.2 No later than October 1 of each year, the Board of Governors shall file with HEPC a list of all Rules that were in effect for the University on July 1 of that year, including the most recent date on which each Rule was considered and adopted, amended, or repealed by the Board of Governors.
 - 6.2.1 The Board of Governors' submission to HEPC shall include a statement by the Chair of the Board certifying that the Board has complied with W.Va. Code § 18B-1-6 when each listed Rule was promulgated and adopted.
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SECTION 7: DEFINITIONS.

- 7.1 “Internal policies and procedures” means any regulation, guideline, directive, standard, statement of policy, or interpretation of general application that does not constitute a Rule, as defined below, and thus does not require Board of Governors approval.
- 7.2 “President” means the President of West Virginia University or his or her designee.
- 7.3 “Rule” means any regulation, guideline, directive, standard, statement of policy, or interpretation of general application which has institution-wide effect or which affects the rights, privileges, or interest of employees, students, or citizens of West Virginia. However, regulations, guidelines, or policies established for individual units, divisions, departments, or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department, or school or with academic curricular policies that do not constitute a mission change for the institution are excluded from the definition of a Rule.

SECTION 8: DELEGATION.

- 8.1 The Board of Governors delegates to the President the authority to adopt additional internal policies and procedures to effectuate the implementation of any Board of Governors Rule or in furtherance of any other authority that the Board of Governors has specifically delegated to the President.

SECTION 9: AUTHORITY.

- 9.1 W. Va. Code §18B-1-6, §18B-2A-4.

SECTION 10: SUPERSEDING PROVISIONS.

- 10.1 This Rule supersedes and replaces Higher Education Policy Commission (HEPC) Series 4 (W. Va. Code R. §§ 133-4-1 to -8), which was approved April 19, 2013 and any other Rule of HEPC which relates to the subject matter contained within this Rule. This Rule also supersedes and replaces West Virginia University Board of Governors Policy 45, which was approved September 8, 2006 and any internal policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Approve



Board of Governors Rule

Talent and Culture
Administration and Employment Practices
Responsible Unit: Talent and Culture
Adopted: [Proposed September 8, 2017]
Revision History: None
Review Date: September 2019

BOG TALENT AND CULTURE RULE 3.1 ADMINISTRATION AND EMPLOYMENT PRACTICES

SECTION 1: PURPOSE & SCOPE.

- 1.1 The University seeks to design and administer fair and flexible human resource practices for all employees that allow the University to attract, retain, and motivate high performing Employees.
- 1.2 This Rule outlines the guiding principles for establishing human resource practices for all University employee types and covers other employment practices required by State law. This Rule applies to all Classified Employees, Non-Classified Employees, Faculty, and any other employee positions of the West Virginia University Board of Governors. Specific application to various job types may be limited by each section below.

SECTION 2: DELEGATION TO PRESIDENT GENERAL ADMINISTRATION OF HUMAN RESOURCES PRACTICES.

- 2.1 To enable the University to function in a proper and expeditious manner and to advance the University's mission and objectives, the Board of Governors delegates to the President the following authority:
 - 2.1.1 To administer a system for all personnel matters, including but not limited to, hiring, promotions, demotions, transfers, compensation and benefits administration, discipline, performance management, alternative dispute resolution, and dismissal.
 - 2.1.2 To administer a system for hearing eligible employee grievances and appeals. *Provided*, that the grievance procedure established in State law is the exclusive mechanism for hearing eligible employee grievances and appeals.
 - 2.1.3 To contract and pay for disability insurance or any other supplemental employee benefit for to applicable Classified Employees, Non-Classified Employees, Faculty, and other employee positions. *Provided*, that if the disability insurance or supplemental employee benefit program incurs expense to the University, then the President shall first obtain approval from the Board of Governors.

- 2.1.4 To establish the standard work week and work schedules for Classified and Non-Classified Employees. *Provided*, that any significant and material change to the hours of the standard work week shall be approved by the Board of Governors before implementation by the President.
- 2.2 All human resource practices shall be consistent with Federal and State law and any Rule adopted by the Board of Governors.
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SECTION 3: ENGAGEMENT WITH STAFF COUNCIL ON TALENT & CULTURE RULES, POLICIES, AND PROCEDURES.

- 3.1 Pursuant to W. Va. Code §18B-7-1, et seq., §18B-9A-1, et seq., and §18B-9B-1, the Vice President for Talent and Culture shall meet at least quarterly with representatives of Staff Council to discuss the implementation and effectiveness of any Board of Governors Talent & Culture Rule. Where appropriate, the Vice President for Talent and Culture shall make recommendations to the President or Board of Governors to address concerns or issues identified by Staff Council regarding the implementation and effectiveness of the Talent & Culture Rules.
- 3.2 The Vice President for Talent and Culture shall initiate a comprehensive external review of human resource practices at least once every five years, relating to the University's compliance with W. Va. Code §18B-7-1, et seq., §18B-9A-1, et seq., and §18B-9B-1. Staff Council shall be given the opportunity to speak with the external auditors before the start of the audit and after its completion.
- 3.3 Where appropriate, the Vice President for Talent and Culture is encouraged to seek input from the University community, including, but not limited to, Staff Council, regarding the development and implementation of internal human resource policies and procedures.
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SECTION 4: ADDITIONAL EMPLOYMENT PRACTICES REGARDING CLASSIFIED EMPLOYEES.

- 4.1 *Part-Time Classified Employees.*
- 4.1.1 A Unit supervisor, in consultation and concurrence with the Vice President for Talent and Culture, shall only establish part-time classified positions based on the operational needs of a Unit, and shall not create part-time classified positions solely to avoid the payment of benefits.
- 4.1.2 All qualified Classified Employees who hold contracts that are at least nine-month and less than twelve-month in duration shall be given the first opportunity to accept

part-time or full-time summer positions at the University before a new employee is hired for such a position.

4.2 *Work Schedules for Classified Employees.*

4.2.1 Unit supervisors are discouraged from making temporary, non-emergency, or institutionally-imposed changes to a Classified Employee's work schedule.

4.2.1.1 However, a Unit supervisor may temporarily change a Classified Employee's work schedule due to a Unit's operational needs.

4.2.2 Any change to a Classified Employee's work schedule due to a Unit's operational need must be communicated directly to the affected Classified Employee. When possible, the Unit supervisor shall provide a Classified Employee with a 15 calendar day notice regarding work schedule changes.

4.2.3 A Unit supervisor may approve a Flex-Time work schedule for a Classified Employee, consistent with the operational needs and practices of the Unit and any relevant internal policies and procedures on human resource practices. Any expectations associated with the granting of a Flex-Time schedule shall be communicated directly to the affected Classified Employee.

4.3 *Continuing Education and Professional Development for Classified Employees.*

4.3.1 The Vice President for Talent & Culture shall establish and operate a continuing education and development program for Classified Employees that encourages and supports continuing education and professional development. However, Unit supervisors, with requested assistance from the Vice President Talent & Culture, shall primarily be responsible for identifying developmental opportunities in partnership with the individual Classified Employee.

4.3.2 Subject to appropriate supervisory approval, any Classified Employee is eligible to participate in continuing education and professional development programs appropriate to his or her position.

4.3.2.1 Any University programs or practices shall require that Classified Employees be selected on a nonpartisan basis using fair and meaningful criteria which afford all individuals opportunities to enhance their skills and productivity in the workforce.

4.3.3 Funds allocated or made available for continuing education and professional development may be used to compensate and pay expenses for any Classified Employees pursuing additional academic study or training to equip themselves better for their job duties.

- 4.3.3.1 The programs or practices may include reasonable provisions for the continuation or return of any Classified Employee receiving the benefits of the education or training, or for reimbursement to the University for expenditures incurred on behalf of the individual.
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SECTION 5: DEFINITIONS FOR ALL BOARD OF GOVERNORS TALENT AND CULTURE RULES.

- 5.1 “Affiliate” means the West Virginia University Research Corporation, the West Virginia University Innovation Corporation, the West Virginia University Hospital System or any of its subsidiaries or affiliates, the West Virginia University Foundation, and the West Virginia University Alumni Association, or other entities created by West Virginia University to serve the institution’s mission.
- 5.2 “Benefits” means programs that the University uses to supplement the cash compensation of Employees and includes health and welfare plans, retirement plans, pay for time not worked and other Employee prerequisites.
- 5.3 “Classified Employee” means a regular full-time or regular part-time employee of an organization who:
- 5.3.1 Does not meet the duties test for exempt status under the provisions of the Fair Labor Standards Act; or
 - 5.3.2 Was a classified employee as of January 1, 2017, unless otherwise deemed a Non-Classified employee pursuant to parts 5.10.1 through 5.10.4; or
 - 5.3.3 Does not qualify as a Non-Classified Employee as defined in sub-section 5.10, below.
- 5.4 “Critical to the institution” means the position is core to the University’s mission and has a significant impact on its business operations or services as determined by Talent and Culture.
- 5.5 “Faculty” means all faculty classifications as defined in current BOG Policy 2 (or successor BOG Rule).
- 5.6 “Flex-Time” means work schedules which do not comply with the standard work schedule for the Unit. Flex-time may include, but is not limited to, flexible schedules, job sharing and four-day work weeks.
- 5.7 “Full-Time Regular” means a position established to work a minimum total of one thousand forty (1,040) hours during a calendar year and extends over at least nine (9) months of a calendar year.

- 5.8 “Good Standing” means the employee had no active disciplinary actions within the last 24 months of employment and did not have a documented performance rating of development needed, or an equivalent rating within the last 24 months of employment.
- 5.9 “Information Technology Related” means the position has a primary responsibility of supporting information technology functions, as determined by the main duties or the majority of duties assigned.
- 5.10 “Non-Classified Employee” means a non-faculty regular employee of the University who meets one or more of the following criteria:
- 5.10.1 Holds a direct policy-making position at the department or organization level;
 - 5.10.2 Reports directly to the president or chief executive officer of the University;
 - 5.10.3 Is in a position considered by the president or designee to be critical to the institution pursuant to policies or decisions adopted by the governing board;
 - 5.10.4 Is in an information technology-related position;
 - 5.10.5 Is hired after July 1, 2017, and meets the duties test for exempt status under the provisions of the Fair Labor Standards Act at the time of hire or anytime thereafter;
or
 - 5.10.6 Was in a non-classified position as of January 1, 2017.
- 5.11 “President” means the President of West Virginia University or his or her designee
- 5.12 “Reduction in Force” or “RIF” means a separation from employment due to lack of funds, lack of work, redesign, or elimination of position(s) or reorganization, with no likelihood or expectation that the employee will be recalled because the position itself is eliminated.
- 5.13 “Staff Structure” means the pay ranges for Classified Employees (including Minimum, 25th percentile, Midpoint, 75th percentile, and Maximum) in effect as of the adoption of this Rule.
- 5.14 “Unit” means any department, budget unit, college, other identifiable employee group, or combination thereof.
- 5.15 “Vice President for Talent and Culture” means the Vice President for Talent and Culture or his or her designee.

Section 6: DELEGATION.

- 6.1 The Board of Governors delegates to the President the authority to adopt additional human resources internal policies and procedures to effectuate the implementation of this Board of Governors Rule or in furtherance of any other authority that the Board of Governors has specifically delegated to the President pursuant to this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.
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SECTION 7: AUTHORITY.

- 7.1 W. Va. Code §18B-1-6, §18B-2A-4, §18B-7-1, et seq., §18B-9A-1, et seq., §18B-9B-1.
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SECTION 8: SUPERSEDING PROVISIONS.

- 8.1 This Rule supersedes and replaces Higher Education Policy Commission (“HEPC”) Series 8 (W. Va. Code R. §§ 133-8-1 to -19), which was adopted November, 22, 2001; HEPC Series 39 (W. Va. Code R. §§ 133-39-1 to -8), which was adopted September 5, 1996; HEPC Series 53 (W. Va. Code R. §§ 133-53-1 to -17), which was adopted May 2, 2013; and any other Rule of the HEPC which relates to the subject matter contained within this Rule. This Rule also repeals and supersedes WVU BOG R. 13 – Part Time Classified Employees, which was adopted October 3, 2003; WVU BOG R. 26 – Employee Development, which was adopted April 8, 2005; WVU BOG R. 27 – Work Scheduling, which was adopted April 8, 2005; and any other internal human resource policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Amend & Approve



Board of Governors Rule

Talent and Culture
Affirmative Action and Equal Employment Opportunity
Responsible Unit: Talent and Culture
Adopted: [Proposed September 8, 2017]
Revision History: Prior BOG Policy 34 (June, 2, 2006)
Review Date: September, 2019

BOG TALENT AND CULTURE RULE 3.2 AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

SECTION 1: PURPOSE & SCOPE.

- 1.1 This Rule sets forth the West Virginia University Board of Governors' Affirmative Action and Equal Employment Opportunity Policy.
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SECTION 2: POLICY STATEMENT.

- 2.1 The West Virginia University Board of Governors ~~(BOG)~~ reaffirms its commitment to the full realization of Affirmative Action and Equal Employment Opportunity in its employment practices.
- 2.2 It is the policy of the West Virginia University Board of Governors to:
- 2.2.1 Recruit, hire, train, promote, retain, tenure, and compensate persons in all applicable administrative, ~~C~~lassified, ~~F~~aculty, ~~N~~on-~~un~~Classified, and ~~S~~tudent job titles without regard to age, ethnicity, disability status, national origin, race, religion, sex, sexual orientation, ~~protected-or~~ veteran status, or any other class protected under the University's non-discrimination policy (BOG Policy 44, or successor Rule), unless otherwise prohibited by applicable law;
 - 2.2.2 Base decisions of employment to further the principles of affirmative action and equal employment opportunity;
 - 2.2.3 Ensure that promotion, reappointment and tenure decisions are in accordance with the principles of affirmative action and equal employment opportunity by imposing only valid requirements for promotional, reappointment and tenure opportunities;
 - 2.2.4 Ensure that all personnel action including compensation, benefits, reduction in force~~lay-off~~, ~~recall~~~~return from lay-off~~, training, education/tuition assistance, social and recreational programs will be administered without regard to age, ethnicity, disability status, national origin, race, religion, sex, sexual orientation,

protected veteran status, or any other class protected under the University's non-discrimination policy (BOG Policy 44, or successor Rule), or veteran status unless otherwise prohibited by applicable law.

SECTION 3: DEFINITIONS.

- 3.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.
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SECTION 4: DELEGATION.

- 4.1 The Board of Governors delegates to the Vice President for Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.
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SECTION 5: AUTHORITY.

- 5.1 W. Va. Code §18B-1-6, §18B-2A-4.
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SECTION 6: SUPERSEDING PROVISIONS.

- 6.1 This Rule supersedes and replaces Higher Education Policy Commission ("HEPC") Series 40 (W. Va. Code R. §§ 133-40-1 to -2), which was adopted November 6, 2013, and any other Rule of the HEPC which relates to the subject matter contained within this Rule. This Rule also repeals and supersedes WVU BOG R. 34 – Affirmative Action and Equal Employment Opportunity, which was adopted on June 2, 2006, and any other Human Resources policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Approve



Board of Governors Rule

Talent and Culture
Classification and Compensation
Responsible Unit: Talent and Culture
Adopted: [Proposed September 8, 2017]
Revision History: None
Review Date: September 2019

BOG TALENT AND CULTURE RULE 3.3 CLASSIFICATION AND COMPENSATION

SECTION 1: PURPOSE & SCOPE.

- 1.1 The University seeks to design and administer a fair and flexible compensation program for its Classified and Non-Classified Employees that allows the University to attract, retain, and motivate high performing employees.
- 1.2 This Rule outlines the guiding principles for establishing a classification and compensation program for Classified and Non-Classified Employees. Faculty positions are not covered by this Rule.

SECTION 2: OVERVIEW OF PHILOSOPHY AND RESPONSIBILITIES OF THE CLASSIFICATION AND COMPENSATION PROGRAM.

- 2.1 The Vice President for Talent and Culture shall design and administer a classification and compensation program that aligns with the University's mission, vision, and values and meets the following objectives:
 - 2.1.1 Attracting and retaining a high performing, qualified and diverse workforce;
 - 2.1.2 Motivating and rewarding Classified and Non-Classified Employees for high levels of performance;
 - 2.1.3 Competing within comparable labor markets; and
 - 2.1.4 Providing flexibility to respond to changes in the labor market, within available financial resources.
- 2.2 The Vice President for Talent and Culture shall analyze emerging trends and changing circumstances that impact compensation in order to keep the compensation program consistent with best practices and make any appropriate changes to the classification and compensation program. The Vice President for Talent and Culture shall obtain the approval of the Board prior to implementing any change that would make fundamental, systemic changes to the overall classification and compensation program.

- 2.3 The Vice President for Talent and Culture shall develop and maintain job titles, pay ranges, and alignment of job titles to respective pay ranges for all Classified and Non-Classified Employees; and implement the Staff Structure for Classified Employees.
- 2.4 Units are most familiar with work performed in their respective units and the abilities of the individuals who do the work and therefore Units have the primary and significant responsibility for determining pay in consultation with and concurrence of Talent and Culture.
- 2.5 Job Descriptions.
- 2.5.1 Development and Maintenance of Standardized Job Descriptions. Talent and Culture shall develop and maintain a standardized job description for all Classified Employee job titles and, where appropriate, Non-Classified job titles. The current and existing library of standardized job descriptions shall serve as the initial set of standardized job descriptions and may be updated and modified by the Vice President for Talent and Culture, as appropriate.
- 2.5.2 Development and Maintenance of Individual Job Descriptions. Units shall develop individualized job descriptions for all Classified and Non-Classified positions and submit the job descriptions to Talent and Culture. Talent and Culture shall maintain completed individual job descriptions.
- 2.5.2.1 Individual job descriptions must include a summary of the essential duties and the level of the work performed.
- 2.5.2.2 To maintain accurate job descriptions, supervisors shall periodically review individual job descriptions and notify Talent and Culture if the content of a position undergoes a fundamental change, pursuant to the provisions of Section 7 of this Rule.

SECTION 3: INITIAL JOB TITLE ASSIGNMENT AND COMPENSATION FOR CLASSIFIED EMPLOYEES.

- 3.1 The job titles in place as of the adoption of this Rule shall remain in effect until otherwise modified by the Vice President for Talent and Culture.
- 3.2 The Staff Structure remains in effect until otherwise modified by the Vice President for Talent and Culture.
- 3.3 Standardized and individual job descriptions for Classified Employees in place as of the adoption of this Rule shall remain in effect until otherwise modified by a Unit or by Talent and Culture, as applicable.

- 3.4 Pursuant to the provisions of Sections 3.1, 3.2, and 3.3, Classified Employees shall retain their respective classification, current job titles, job descriptions, and compensation until otherwise modified pursuant to actions taken consistent with this Rule or other administrative policy, except as set forth in West Virginia Code §18B-9A-2.
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SECTION 4: DETERMINATION OF CLASSIFICATION STATUS, JOB TITLE, JOB DESCRIPTIONS, AND COMPENSATION OF CLASSIFIED EMPLOYEES.

- 4.1 Prior to posting or reviewing a position, a Unit shall submit to Talent and Culture a set of proposed position duties, responsibilities, functions, skills, education, and experience required for the position. Talent and Culture shall then determine whether a position is Classified or Non-Classified.
- 4.2 If the position is deemed Classified, then Talent and Culture shall evaluate the submitted duties, responsibilities, functions, and the skills, education, and experience required for the position and compare those factors to the standardized job descriptions. Following this analysis, Talent and Culture shall assign a job title to the position. In undertaking this analysis, Talent and Culture will no longer evaluate the submitted duties and responsibilities using a point factor methodology.
- 4.3 Talent and Culture shall then slot the position into the corresponding range in the Staff Structure for the chosen job title, and the Unit shall then determine the individual's compensation level pursuant to Section 6.
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SECTION 5: DETERMINING JOB TITLE, JOB DESCRIPTION, AND COMPENSATION OF NON-CLASSIFIED EMPLOYEES.

- 5.1 If Talent and Culture deems a job posting or review as Non-Classified, Talent and Culture shall evaluate a position's submitted duties, responsibilities, functions, skills, education, and experience required for the position, as provided by the respective Unit, and then compare those factors to internal and external jobs to determine the job title and the corresponding pay range for the position.
- 5.2 Following the Talent and Culture's determination of the pay range, the Unit shall then determine the individual's compensation level, pursuant to Section 6.
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SECTION 6: COMPENSATION ELEMENTS.

- 6.1 Once a Classified or Non-Classified position has been slotted in the appropriate job title and assigned to the appropriate pay range, the Unit shall assess the individual's qualifications and make a salary determination within the designated range after

consultation with and the concurrence of Talent and Culture. The individual's placement in the respective pay range involves an assessment of elements such as education, experience, skill measures, performance, internal salary equities, and any budget parameters established by the Board of Governors or the President.

- 6.2 A Classified or Non-Classified Employee's compensation may include any of the following elements, consistent with the West Virginia Code and the West Virginia Constitution:

6.2.1 **Base Compensation**, defined as the hourly rate or salary.

6.2.2 **Annual Increment**, defined as the annual lump sum payment based on years of state service multiplied by a flat dollar amount contemplated by the West Virginia Code §5-5-2.

6.2.3 **Incentive Compensation**, defined as one-time payments based on (i) the achievement of previously defined, objective quantifiable metrics over a defined time period; (ii) incentive to motivate an employee to remain employed in current position until a certain date; or (iii) other contractual agreements, including substantial work on projects deemed critical to the department, division, or institution.

6.2.4 **Shift Differential Compensation**, defined as additional compensation for hours worked that are deemed outside the typical business schedule by the University.

6.2.5 **Emergency Call-in Compensation**, defined as compensation for applicable, regular, non-exempt employees who respond to a request for emergency call-in shall be guaranteed a minimum of two and one-half (2.5) hours of compensation, at the applicable rate of pay, for each occasion in which the employee responds in an emergency call-in situation, at the request of management.

6.2.6 **Overtime and Holiday Compensation**, defined as compensation for applicable, eligible employees who are required to work Overtime, or during a Holiday or Emergency Closure shall be eligible for additional pay.

6.2.7 **Compensatory Time-Off (CTO)**, may be offered by a supervisor to an eligible, non-exempt employee in lieu of overtime pay.

6.2.8 Other compensation elements may be considered as deemed appropriate by the Vice President for Talent and Culture.

- 6.3 A Classified or Non-Classified Employee's compensation shall not be placed below the minimum of the selected range for the selected job title. Any instance of a Classified or Non-Classified Employee's compensation outside of the established pay range for the selected job title must be approved by the Vice President for Talent and Culture.

SECTION 7: JOB CHANGE ADJUSTMENTS FOR EXISTING CLASSIFIED OR NON-CLASSIFIED EMPLOYEES.

- 7.1 A Unit may request that Talent and Culture review a Classified or Non-Classified Employee's individual job description to determine whether the individual's job description, as modified to fit current duties, amounts to a fundamental change compared to the employee's previous individual job description, to determine whether the employee should be assigned to a new job title and corresponding pay range.
- 7.2 If Talent and Culture determines that a *significant* change in duties and responsibilities has occurred such that there is a fundamental change in the position, then Talent and Culture shall assign the Classified or Non-Classified Employee's position to a new job title. A fundamental change is a change in the relative worth of the position in achieving an organization's objectives and is assessed by considering a number of factors, including the duties and responsibilities, essential requirements, qualifications, experience, and skills required to perform the position. It is not sufficient that there be a mere change in the volume of work.
- 7.3 In determining whether a fundamental change has occurred, Talent and Culture shall consider the following:
- 7.3.1 the current job description of the incumbent in relation to the work actually being or proposed to be performed;
 - 7.3.2 changes that have occurred to the position, considering the duties, responsibilities, essential requirements, and organizational hierarchy of the role;
 - 7.3.3 comparable positions to ensure equity and consistency in measurement of work value within the unit and across the University;
 - 7.3.4 the ongoing nature of the changes to the duties, responsibilities, and essential requirements; and
 - 7.3.5 other factors deemed appropriate by Talent and Culture.
- 7.4 The following factors do not justify a job change adjustment:
- 7.4.1 the incumbent Classified or Non-Classified Employee's performance in the position;
 - 7.4.2 the length of service or time in the position;

- 7.4.3 the education beyond the minimum required education of the job title, including but not limited to obtaining additional degrees in a field not related to the Classified or Non-Classified Employee's current job duties;
 - 7.4.4 the knowledge, skills, and abilities of the incumbent Classified or Non-Classified Employee that are not directly relevant to the position under review;
 - 7.4.5 any differences in job change adjustments in other Units;
 - 7.4.6 any temporary duties (not including interim assignments) performed in addition to the incumbent Classified or Non-Classified Employee's regular position description duties or a one-off project (such circumstances may warrant a supplemental pay adjustment); or
 - 7.4.7 efforts to undertake a job change adjustment to retain an incumbent Classified or Non-Classified Employee (such circumstances may warrant a critical retention adjustment).
 - 7.5 If Talent and Culture determines that a fundamental change has occurred, then Talent and Culture shall assign the Classified or Non-Classified Employee to the most appropriate job title consistent with the employee's new duties and responsibilities.
 - 7.5.1 For Classified Employees, the determination of the most appropriate job title shall be determined by undertaking the analysis contemplated by Section 4.2.
 - 7.5.2 For Non-Classified Employees, the determination of the most appropriate job title shall be determined by undertaking the analysis contemplated by Section 5.1.
 - 7.6 The effective date of a job change adjustment and any accompanying salary adjustment should generally follow the date of approval by Talent and Culture.
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SECTION 8: COMPENSATION ADJUSTMENTS FOR EXISTING CLASSIFIED OR NON-CLASSIFIED EMPLOYEES.

- 8.1 A Unit may, after consultation with and concurrence by Talent and Culture, modify a current Classified or Non-Classified Employee's compensation for one of the following reasons, provided it comports with the West Virginia Code and the West Virginia Constitution:
 - 8.1.1 ***Performance-Based Merit Adjustments:*** Performance-based merit adjustments are designed to reward employees' performance and should not be treated as a cost of living adjustment. These adjustments should be tied to an employee's annual performance evaluations and may be either base adjustments or one-time, lump sum payments.

- 8.1.2 **Market Adjustments:** Market adjustments may be requested when the employee's placement within the pay range is not consistent with relevant external market data, where individual pay circumstances require consideration of external market data for similar jobs, or in instances with high turnover or low supply of qualified applicants. Market adjustments may only be an increase to an employee's base pay, and not a one-time payment.
- 8.1.3 **Critical Retention Adjustments:** Critical retention adjustments are intended to retain an employee that occupies a critical position to the mission of the University. Critical retention adjustments should be reserved for a job involving unique skills, experience, or knowledge or jobs that are extremely hard to fill. Critical retention adjustments may only be an increase to an employee's base pay, and not a one-time payment.
- 8.1.4 **Job Change Adjustments:** A job change adjustment pursuant to Section 7. A Job Change Adjustment may only be an increase to an employee's base pay, and not a one-time payment.
- 8.1.5 **Supplemental Pay Adjustments:** Supplemental pay is used to compensate employees performing additional responsibilities that are functionally different or broader in scope than the current assignment. Supplemental pay adjustments may only be an increase to an employee's base pay, and not a one-time payment.
- 8.1.6 Other adjustments may be considered as deemed appropriate by the Vice President for Talent and Culture. *Provided*, that any inequities between employees' compensation within the same job title may not alone justify an adjustment to compensation.

SECTION 9: MARKET ANALYSES, PROGRAMMATIC CHANGES, AND QUARTERLY CONSULTATION WITH STAFF COUNCIL.

- 9.1 The Vice President for Talent and Culture shall periodically, but at least once every five years, undertake a comprehensive study of market salaries to facilitate a review of established pay ranges and job titles at the University. Additionally, the Vice President for Talent and Culture shall undertake informal reviews of the market salaries at least three years after each comprehensive study is completed.
- 9.2 Nothing in this section or Rule shall prohibit the Vice President and Talent and Culture from modifying pay ranges, job titles, and standardized job descriptions in the absence of a comprehensive market study.

- 9.3 In undertaking the quarterly meetings outlined by Talent and Culture Rule 3.1, the Vice President for Talent and Culture shall on a quarterly basis advise and seek input from Staff Council as to efforts to consider and make potential changes to the compensation and classification plan, including revising pay ranges and job titles, and analyses of market forces that impact classification and compensation at the University.
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SECTION 10: DEFINITIONS.

- 10.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.
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SECTION 11: DELEGATION.

- 11.1 The Board of Governors delegates to the Vice President for Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.
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SECTION 12: AUTHORITY.

- 12.1 The Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201, et seq.
- 12.2 W. Va. Const. Art.VI, §38.
- 12.3 W. Va. Code §6C-2-1, et seq., §18B-1-6, §18B-2A-4, §18B-7-10; §18B-9A-2 and §18B-9B-1
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SECTION 13: SUPERSEDING PROVISIONS.

- 13.1 This Rule supersedes and replaces Higher Education Policy Commission (“HEPC”) Series 8 (W. Va. Code R. §§ 133-8-1 to -19), which was adopted November, 22, 2001; HEPC Series 39 (W. Va. Code R. §§ 133-39-1 to -8), which was adopted September 5, 1996; HEPC Series 53 (W. Va. Code R. §§ 133-53-1 to -17), which was adopted May 2, 2013 and any other Rule of the HEPC which relates to the subject matter contained within this Rule. This Rule also repeals and supersedes WVU BOG R. 29 – Salary Policy, which was adopted on October 5, 2001, and amended on November 16, 2012; WVU BOG R. 53 – Emergency Call-In and the related procedure, which was adopted May 1, 2009; and any other Human Resources policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Amend & Approve



Board of Governors Rule

Talent and Culture
Drug and Alcohol Testing for FTA & FMCSA
Covered Positions
Responsible Unit: Talent and Culture
Adopted: [Proposed September 8, 2017]
Revision History: Prior BOG Policy 56
(December 11, 2009 and September 25, 2015)
Review Date: September, 2019

BOG TALENT AND CULTURE RULE 3.4 DRUG AND ALCOHOL TESTING FOR FEDERAL TRANSIT ADMINISTRATION (FTA) & FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) COVERED POSITIONS

SECTION 1: PURPOSE & SCOPE.

- 1.1 To outline the rules to be followed in the administration of the drug and alcohol testing program for FTA and FMCSA covered positions.
- 1.2 This Rule applies to ~~C~~covered ~~E~~employees of the West Virginia University Board of Governors, as defined by section 2.2 of this Rule, as well as any contractors who stand in the shoes of FTA ~~C~~covered ~~E~~employees as defined in section 2.3 of this Rule.

SECTION 2: POLICY.

2.1 General

- 2.1.1 West Virginia University is committed to maintaining a safe and efficient working environment for all of its employees, and it will not tolerate any risk to safety, quality or productivity that may be caused by a ~~Covered~~ ~~E~~employee who uses drugs or alcohol. This policy complies with 49 C.F.R §§ 40, 382, and 655, as amended. Copies of these regulations, which include detailed definitions for the terms used in this ~~Rule~~~~policy~~, are available in ~~Talent and Culture~~~~the Division of Human Resources~~, and can be found on the internet at the Office of Drug & Alcohol Policy & Compliance's website at <https://www.transportation.gov/odapc>. <http://www.dot.gov/ost/dapc/index.html>.

2.1.2 **Independent Authority**

The United States Department of Transportation (DOT) allows the University to make several decisions under its independent authority that go beyond Federal laws, as long as the decisions specific to the University are identified. Therefore, where this ~~policy~~**Rule** goes beyond the requirements of the DOT, the text below is highlighted in bold print.

2.1.3 Compliance with the Drug & Alcohol Testing Program. Participation and compliance with the University's DOT Drug & Alcohol Testing Program is a requirement for all **Ceovered Eemployees**, and therefore, is a condition of employment. **Failure to participate and comply with the requirements of the DOT Drug & Alcohol Testing Program may be grounds for disciplinary action, up to and including termination of employment.**

2.1.4 Designated Employer Representative/Contact. The designated employer representative (DER) is the employee authorized by the University to take immediate action(s) to remove **Ceovered Eemployees** from safety-sensitive duties, or cause **Ceovered Eemployees** to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the University, consistent with the requirements of Federal law. Anyone who has questions regarding this policy or the University's DOT drug and alcohol testing program should contact the University's DER. Contact information can be found by clicking on the link below or by calling the following telephone number.

[Talent and Culture Division of Human Resources](#)
(304) 293-5700 ext. 8

2.1.5 Information Disclosure.

2.1.5.1 To be considered for employment, all applicants for covered positions shall be asked to give consent to conduct a background check of their previous DOT covered employers, as required by applicable DOT regulations. Refusal to do so will result in removal from consideration for employment in the covered position.

2.1.5.2 In addition, to be considered for employment, all applicants will also be asked to verify whether or not they have tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the applicant applied for a position in safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two (2) years, but did not obtain. If the applicant admits that he/she had a positive test or a refusal to test, the University will not further consider the applicant for employment in a covered position, until the applicant documents successful completion of the return-to-duty process, as outlined by DOT regulations.

2.1.5.3 **If it is determined that a **Ceovered Eemployee** provided inaccurate or untruthful information regarding his/her previous**

DOT drug & alcohol testing history, it will be considered a falsification of application information and shall result in denial for consideration of employment, and/or disciplinary action, up to and including termination of employment.

2.2 Covered Employees

2.2.1 This ~~policy~~**Rule** applies to every employee whose position requires the possession of a commercial driver's license (CDL); every employee performing a "safety-sensitive function" as defined herein, and any person applying for or volunteering in such positions.

2.2.1 Under FMCSA, a ~~Ce~~**covered** ~~E~~**employee** is any employee who operates a commercial motor vehicle and performs safety-sensitive functions. Safety-sensitive functions shall include:

- all time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the ~~Ce~~**covered** ~~E~~**employee** has been relieved from duty by the University;
- all time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- all time spent at the driving controls of a commercial motor vehicle in operation;
- all time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

2.2.2 Under FTA, a ~~Ce~~**covered** ~~E~~**employee** is performing a safety-sensitive function if they are responsible for:

- operation of a revenue service vehicle, including when not in revenue service;
- operation of a non-revenue vehicle requiring a CDL;
- controlling movement or dispatch of a revenue service vehicle;
- maintenance (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used on revenue service.
- security personnel who carry firearms (**this does not include the University Police Department**).

2.2.3 A volunteer is a ~~C~~covered ~~E~~mployee if:

- he/she is required to hold a commercial driver's license to operate the vehicle; or
- he/she performs a safety-sensitive function for the University and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

2.2.4 ~~Talent and Culture~~~~The Division of Human Resources~~ shall post a list of covered job titles on its website.

2.2.5 **Covered ~~E~~mployees are expected to be immediately available to perform safety sensitive functions, anytime that they are at work.**

2.3 **Contractors Hired by the University**

2.3.1 Contractors hired by the University that fall under 49 C.F.R. Part 655 (FTA) shall be required to submit a copy of their DOT Drug Testing Program to ~~Talent and Culture~~~~the Division of Human Resources~~, and may also be required to submit quarterly reports that state for that period:

- number of ~~Covered e~~mployees tested;
- type of test;
- number of positive drug tests and resulting action for those that tested positive;
- number of alcohol tests that indicated an alcohol concentration of 0.04 or greater and the resulting action;
- number of alcohol tests that indicated an alcohol concentration of 0.02 or greater, but less than 0.04 and the resulting action.

2.3.2 Contractors shall allow access to their property and records by a University representative or any DOT agency with regulatory authority over the contractor for the purpose of monitoring the contractor's compliance with the requirements of DOT drug and alcohol testing requirements.

2.4 **Prohibited Conduct & Substances**

2.4.1 **Conduct.** Covered ~~E~~mployees shall not perform safety-sensitive functions while impaired by drugs or alcohol. Supervisors shall immediately remove any ~~C~~covered ~~E~~mployee from the performance of safety-sensitive functions if the ~~C~~covered ~~E~~mployee is perceived to be impaired and shall request a reasonable suspicion test as set forth in section 2.5.3. In addition, it is also the responsibility of the ~~C~~covered ~~E~~mployee voluntarily to remove himself/herself from the

performance of safety sensitive functions if he/she is impaired. **A supervisor or Ceovered Employee who fails to perform these responsibilities may be subject to disciplinary action.**

2.4.2 **Drugs.** Covered Employees are prohibited by the DOT from using the following controlled substances at any time, and the University is required to test for these drugs and associated metabolites:

- Marijuana/THC;
- Cocaine;
- Phencyclidine (PCP);
- Amphetamines, Methamphetamine, and Methylenedioxymethamphetamine (MDMA); and
- Opiates [Codeine, Morphine, and Heroin.]

If the University receives a verified positive, adulterated, or substituted drug test result, the Ceovered Employee will be immediately removed from performing safety-sensitive functions.

2.4.3 **Alcohol.** A Ceovered Employee will be removed from performing safety-sensitive functions:

- if the Ceovered Employee's test results indicate an alcohol concentration of 0.04 or greater;
- if the Ceovered Employee has used alcohol within four (4) hours prior to performing safety sensitive functions;
- if the Ceovered Employee uses alcohol on the job;
- if during the eight (8) hours following an accident the Ceovered Employee's involvement has not been discounted as a contributing factor in the accident or until the Ceovered Employee is tested;
- if the Ceovered Employee refuses to submit to required alcohol tests; or
- if the Ceovered Employee is in possession of alcohol.

If a Ceovered Employee is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, or if the Ceovered Employee is under the influence of or impaired by alcohol, as indicated by behavior, speech, and performance indicators, and a reasonable suspicion alcohol test cannot be obtained, the Ceovered Employee shall be removed from safety-sensitive duties for a period of twenty-four (24) hours under the FMCSA regulations or for a period of eight (8) hours under FTA regulations.

2.4.4 Prescription Drugs and Over-the-Counter Medications

2.4.4.1 The appropriate use of legally prescribed drugs and over-the-counter medication is not prohibited. It is, however, a **Ceovered Eemployee's** responsibility to inform his/her physician of the **Ceovered Eemployee's** job duties and submit a determination from the physician to the DER as to whether or not the prescribed drug/over-the-counter medication may impair the **Ceovered Eemployee's** job performance.

2.4.4.2 According to DOT compliance notices, the use of marijuana for medical or recreational purposes will not be a valid explanation for a positive drug test result, even if the use occurred in a state that has legalized marijuana for such purposes. **Therefore, the University will continue to treat a positive test result for marijuana as a verified positive drug test which shall subject the Ceovered Eemployee to the consequences for violations, as outlined in section 2.8 below.**

If a Ceovered Eemployee is legally prescribed marijuana for a medical purpose, he/she must notify the DER immediately. The Ceovered Eemployee shall be removed from the performance of all safety-sensitive functions. The DER will determine when or if the Covered Eemployee can return to the performance of safety-sensitive functions.

2.4.4.3 A **Ceovered Eemployee** may be subject to disciplinary action if he/she fails to report the use of drugs/over-the-counter medications, or fails to provide proper medical documentation.

2.5 **Drug & Alcohol Testing Requirements.** Covered **Eemployees** subject to this **policyRule** are required to be tested under the following types of tests:

2.5.1 Pre-Employment

2.5.1.1 An offer of employment for an FTA or FMCSA covered position is contingent upon successfully passing a pre-employment drug test. The individual will not be hired, and thus will not be allowed to perform safety-sensitive functions, unless he/she successfully passes the pre-employment drug test.

2.5.1.2 A pre-employment drug test will be conducted when an applicant is selected to be hired for an FTA or FMCSA covered position.

2.5.1.3 A pre-employment drug test will be conducted when a current employee transfers from a position not covered by FTA or FMCSA into a covered position.

2.5.1.4 If a current Cecovered Employee has been removed from the random testing pool, as per section 2.5.2.6 below, a pre-employment drug test will be required before the Cecovered Employee will be allowed to resume the performance of safety-sensitive functions.

2.5.1.5 If a pre-employment test is canceled, the applicant/current employee is required to submit to and pass another test.

2.5.2 Random

2.5.2.1 All Cecovered Employees working in an FTA or FMCSA covered position are subject to unannounced testing based on random selection. A Cecovered Employee may be randomly picked more than once or not picked at all during the annual period.

2.5.2.2 Random notifications will be conducted as discreetly as possible in order to ensure the confidentiality and integrity of the process.

2.5.2.3 All Cecovered Employees in FTA or FMCSA covered positions will be placed into either an FTA or FMCSA pool, as applicable. Covered Employees will remain in the random testing pools at all times, regardless of whether or not they have been previously selected for testing. **To ensure the integrity of the University's drug and alcohol testing program, Cecovered Employees will be selected for random testing by a third party administrator.**

2.5.2.4 Random testing will be sporadic throughout each quarter of the annual cycle to prevent Cecovered Employees from matching their drug/alcohol use patterns to the schedule for collection. Selected Cecovered Employees will not be notified until immediately prior to the time that they are due at the collection site.

2.5.2.5 If a Cecovered Employee is temporarily unavailable, or it is their day off, the test will be conducted immediately upon his/her return to work within the same testing period.

2.5.2.6 If a Cecovered Employee who is restricted for any reason from performing safety-sensitive functions is selected, the test will be postponed until he/she is released to return to the performance of safety-sensitive functions. If the Cecovered Employee is expected to

be or has been restricted for any reason for greater than ninety (90) days, he/she will be removed from the random testing pool, and another Ceovered Employee will be selected for random testing. However, a Ceovered Employee removed from the random testing pool for any reason will be required to submit to a pre-employment drug test prior to being allowed to return to safety-sensitive functions (please see section 2.5.1.4 above.)

2.5.2.7 For each pool, the University will test at least fifty percent (50%) of the Ceovered Employees in an annual period for prohibited drugs. This rate is subject to adjustment by the DOT, as based on the industry's violation rate.

2.5.2.8 For each pool, the University will test at least ten percent (10%) of the Ceovered Employees in an annual period for alcohol use. This rate is subject to adjustment by the DOT based on the industry's violation rate.

2.5.2.9 A Ceovered Employee may be randomly tested for prohibited drug use anytime while on duty.

2.5.2.10 A Ceovered Employee shall only be tested for alcohol while the Ceovered Employee is performing, just before the Ceovered Employee is to perform, or just after the Ceovered Employee has performed safety-sensitive functions (**please see section 2.2.5 above for the University's position on the performance of safety-sensitive functions.**)

2.5.3 Reasonable Suspicion

2.5.3.1 When there is reasonable suspicion to believe that a Ceovered Employee is using prohibited drugs or alcohol while on duty, the Ceovered Employee will be required to take a drug and/or alcohol test. The required observations for reasonable suspicion testing shall be made by a supervisor or University official who has received training, authorized by Talent and Culture~~the Division of Human Resources~~, in drug/alcohol use symptoms.

2.5.3.2 A decision to test must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, or odors of the Ceovered Employee. The observations may include indications of the chronic and withdrawal effects of drugs. Alcohol testing is authorized only if the observations are made during, just preceding, or just after a Ceovered Employee's work day (**please see**

section 2.2.5 above for the University's position on the performance of safety-sensitive functions.)

2.5.3.3 The supervisor must record the observable behaviors that support the determination to conduct a reasonable suspicion test. This documentation should be prepared and signed by the supervisor within twenty-four (24) hours of the request for a test or before the results of the tests are released, whichever is earlier, if possible. **A copy of this documentation must be forwarded to the DER. A supervisor who fails to comply with the provisions of this section may be subject to disciplinary action.**

2.5.3.4 If an alcohol test is required, but is not administered within two (2) hours following the request for the test, the University shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the request, the University shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

2.5.3.5 Notwithstanding the absence of a reasonable suspicion alcohol and/or drug test under this section, no ~~Ce~~covered ~~E~~mployee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the ~~Ce~~covered ~~E~~mployee is perceived to be under the influence of or impaired by alcohol or drugs, as shown by the behavioral, speech, and performance indicators of alcohol misuse or drug use, nor shall the University permit the ~~Ce~~covered ~~E~~mployee to perform or continue to perform safety sensitive functions until:

1. Negative drug test results are reported; and/or
2. An alcohol test is administered and the ~~Ce~~covered ~~E~~mployee's alcohol concentrations measure less than 0.02; or the applicable period of time has elapsed following the determination that there was reasonable suspicion to believe that the ~~Ce~~covered ~~E~~mployee had violated the alcohol provisions of this ~~policy~~Rule. The applicable period of time for FMCSA and FTA is twenty-four (24) hours and eight (8) hours, respectively.

2.5.4 **Post Accident.** Covered ~~E~~mployees whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident will be tested as soon as practicable.

2.5.4.1 **FMCSA Qualifying Accident.** An FMCSA qualifying accident is an occurrence involving a commercial motor vehicle operating on a public road in commerce where a ~~C~~eovered ~~E~~mployee was performing safety-sensitive functions, and:

1. the accident involved the loss of human life; or
2. the ~~C~~eovered ~~E~~mployee receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - a. bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - b. one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

2.5.4.2 **FTA Qualifying Accident.** An FTA qualifying accident means an occurrence associated with the operation of a vehicle, and:

1. an individual dies;
2. an individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident;
3. with respect to an occurrence in which the mass transit vehicle is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
4. with respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

2.5.4.3 **Time Frame for Testing ~~Covered~~ Employees**

- 2.5.4.3.1 As soon as practicable following an accident, the University shall perform required post-accident testing for drugs and alcohol.

- 2.5.4.3.2 The Ceovered Employee will be tested for prohibited drugs as soon as possible, but no later than thirty-two (32) hours after the accident. If the required drug test is not performed within thirty-two (32) hours, the University shall cease attempts to administer a drug test, and prepare and maintain on file a record stating the reasons the test was not promptly administered.
- 2.5.4.3.3 The Ceovered Employee will be tested for alcohol use as soon as possible, but not later than eight (8) hours after the accident. If an alcohol test is required, but is not administered within two (2) hours following the accident, the University shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the accident, the University shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.
- 2.5.4.3.4 The decision not to administer a test shall be based on the University's determination, using the best available information at the time of the determination, that the Ceovered Employee's performance could not have contributed to the accident.
- 2.5.4.3.5 A Ceovered Employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the University of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the University to have refused to submit to testing. Nothing in this policyRule shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a Ceovered Employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- 2.5.4.3.6 The results of a drug or alcohol test conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements for post accident testing, provided such tests conform to the applicable Federal, State or local drug and alcohol testing

requirements, and that the results of the tests are obtained by the University.

2.5.5 Return to Duty/Follow-up Testing.

2.5.5.1 The University has a zero tolerance policy for drug and alcohol use resulting in the termination of employment, as outlined in section 2.8 below. Thus, return to duty and follow-up testing will be limited to the instances outlined below.

2.5.5.2 The University does allow for self-disclosure of drug and alcohol use, as outlined in section 2.10 below, and will conduct return to duty testing and only non-DOT drug/alcohol testing forms will be utilized.

2.5.5.3 Per the provisions of DOT regulations, new hires that have had a positive drug and/or alcohol test at a previous DOT regulated employer and have successfully completed the required return-to work process, will continue the follow-up testing plan as prescribed by the Substance Abuse Professional (SAP) to assure that the requirements of the SAP's follow-up plan "follows the Covered Employee" to subsequent employers or through breaks in service. The previous employer's SAP must present the University's DER with any pertinent information regarding the Covered Employee's rehabilitation compliance and release to return to duty, including a follow-up testing plan outlining the number and frequency of unannounced testing, as required by regulations. The SAP, following the Covered Employee's successful completion of the mandatory testing requirements the first year, may terminate follow-up testing. Follow-up testing is in addition to the other required drug and alcohol testing described in this policyRule. Follow-up testing must be performed as recommended by the SAP's testing plan. If testing is not performed as outlined, the Covered Employee will not be permitted to perform safety-sensitive functions, and shall be subject to disciplinary action up to and including termination of employment.

2.6 Drug & Alcohol Testing Procedures.

2.6.1 All testing will be conducted as required by the U.S. Department of Transportation (49 C.F.R. § 40), as well as where applicable the FTA (49 C.F.R § 655), and the FMCSA (49 C.F.R. §382).

2.6.2 Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). Testing will be performed in a private, confidential manner and every effort will be

made to protect the Ceovered Employee, the integrity of the testing procedure, and the validity of the test result.

2.6.3 A Ceovered Employee has the right to request and receive from the University a copy of the test result report on any drug or alcohol test for which he/she provided a urine or breath sample. The request, verbal or written, should be addressed to the DER (for alcohol test results), and to the Medical Review Officer (MRO) (for drug test results).

2.6.4 Split Specimen

2.6.4.1 In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, can be transported to a second laboratory in the event that the Ceovered Employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

2.6.4.2 When an MRO notifies a Ceovered Employee that he/she has a verified positive drug test and/or refusal to test because of adulteration or substitution, the Ceovered Employee has seventy-two (72) hours from the time of notification to request a test of the split specimen. The request may be verbal or written. Split specimen testing will not be conducted for an invalid result.

2.6.4.3 If the Ceovered Employee fails to request a test of the split specimen within seventy-two (72) hours, the Ceovered Employee may inform the MRO of his/her reason(s) for failure to request the test, and the MRO shall have the authority to determine if a legitimate reason exists to allow for testing of the split specimen.

2.6.4.4 The University shall pay for the costs associated with a split specimen test.

2.6.5 Dilute Specimen.

2.6.5.1 A dilute specimen is a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

2.6.5.2 If the MRO informs the University that a positive drug test was dilute, it will be treated as a verified positive test.

2.6.5.3 If the MRO informs the University that a negative test was dilute, the University will require that the Ceovered Employee undergo a second

test, when recollection requires direct observation. ~~which may or may not involve direct observation.~~

2.7 **Refusals to Test.** A **Ceovered Eemployee** has refused to test if the **Ceovered Eemployee**:

- fails to appear at a urine/alcohol collection site when directed to report;
- fails to remain at the urine/alcohol collection site as directed by the collector;
- fails to provide a urine specimen or an adequate amount of saliva or breath;
- fails to permit a monitored or observed collection;
- fails to provide a sufficient amount of urine, if the MRO determines that there was no medical reason for the **Ceovered Eemployee** to provide an insufficient amount of urine;
- fails to provide a sufficient breath specimen, if an evaluating physician find that there was no medical reason for the **Ceovered Eemployee** to provide an insufficient amount of breath;
- fails or declines to take an additional drug test the University or collector has directed;
- fails to undergo a medical examination or evaluation, as directed by the MRO or University;
- fails to cooperate with any part of the drug or alcohol testing collection process;
- for an observed collection, fails to follow the instructions to raise and lower clothes and turn around;
- possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
- admits to the collector to having adulterated or substituted the specimen;
- adulterates or substitutes the urine specimen, as determined by the MRO;
- admits to the MRO to having adulterated or substituted the specimen; or
- fails to sign the certification statement at Step 2 of the Alcohol Testing Form.

2.8 **Consequences for Violations**

2.8.1 Engaging in any of the prohibited conduct, as outlined in section 2.4 of this **policyRule**, will result in a **Ceovered Eemployee** being required to immediately ceasing performance of all safety-sensitive functions, **and may subject a Ceovered Eemployee to disciplinary action, up to and including termination of employment.**

2.8.2 **The following violations will be considered gross misconduct and shall result in termination of employment of a Ceovered Eemployee:**

- refusing to submit to a test, as outlined in section 2.7 of this **policyRule**;
- a verified positive drug test;
- a confirmed alcohol test result of 0.04 or greater; or

- a negative test result because of a diluted, substituted or adulterated specimen, as verified by the MRO.

2.8.3 Any other instances of failure to comply with this ~~policy~~**Rule**, as determined by ~~Talent and Culture~~**the Division of Human Resources**, may also subject a ~~Ce~~**covered** ~~E~~**employee** to disciplinary action, up to and including termination of employment.

2.9 **Substance Abuse Professional (SAP) Services & Treatment Recommendations.**

2.9.1 A ~~Ce~~**covered** ~~E~~**employee**, including an applicant, who fails a drug test, alcohol test (0.04 or greater), or refuses to be tested will be referred to a qualified SAP.

2.9.2 Any and all costs associated with substance abuse professional services and treatment recommendations shall be the responsibility of the ~~Ce~~**covered** ~~E~~**employee** and shall not be paid by the University.

2.10 **Employee Self Disclosure of Drug & Alcohol Use.**

2.10.1 Covered ~~E~~**employees** who self-disclose to the DER that they may have a problem from the use of drugs and/or alcohol shall be provided a referral to the University's Faculty and Staff Assistance Program (FSAP).

2.10.2 A ~~Ce~~**covered** ~~E~~**employee** will be given the opportunity to obtain a chemical use assessment from the FSAP and shall provide the University with a signed authorization for the release of the results of the assessment to the DER, including any subsequent reports related to the assessment.

2.10.3 A ~~Ce~~**covered** ~~E~~**employee's** self-disclosure to the DER shall:

- occur prior to the ~~Ce~~**covered** ~~E~~**employee** reporting for duty;
- not be made in an attempt to avoid a required drug or alcohol test;
- **require ~~Ce~~**covered** ~~E~~**employee** to initiate an assessment through the FSAP within three (3) business days after the self-disclosure; and**
- require the University to remove the ~~Ce~~**covered** ~~E~~**employee** who self-discloses from performing any safety-sensitive functions.

2.10.4 A ~~Ce~~**covered** ~~E~~**employee** who complies satisfactorily with the FSAP assessment and recommendations for treatment, will be permitted to return to safety-sensitive function if the ~~Ce~~**covered** ~~E~~**employee** passes a return to duty test that confirms:

- an alcohol concentration of less than 0.02; and/or
- a verified negative test result for prohibited drugs.

2.10.5 A **C**eovered **E**mployee who self-discloses and fully complies with the assessment and recommendations for treatment from the FSAP will not be subject to disciplinary action. **However, a **C**eovered **E**mployee who self-discloses under this **policyRule**, and who then fails to comply with the recommendations made by the FSAP may be subject to disciplinary action.**

2.11 **Education & Training**. The University will establish and maintain a program to ensure that **C**eovered **E**mployees and their supervisors are properly educated and trained on the requirements of the University's DOT Drugs and Alcohol Testing Program, as well as the effects of drug and alcohol use.

2.11.1 **Education on the Effects of Drugs and Alcohol Use**. Covered **E**mployees and their supervisors will receive information on the effects of alcohol and drug use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a drug problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a drug use problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

2.11.2 **Required Training**

2.11.2.1 **Covered Employees**

FTA Requirements: Covered **E**mployees must receive at least sixty (60) minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

2.11.2.2 **Supervisors**

FTA & FMCSA Requirements: All supervisors of **C**eovered **E**mployees shall receive at **least** sixty (60) minutes of training on alcohol misuse and they shall also receive at least sixty (60) minutes of additional training on drug use. The training will be used by supervisors to determine whether reasonable suspicion exists to require a **C**eovered **E**mployee to undergo drug and/or alcohol testing as required by this **policyRule**. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs.

2.11.3 **PolicyRule & Program Material Distribution**

2.11.3.1 Prior to any testing for drugs or alcohol of **C**eovered **E**mployees, the University shall provide educational materials and a copy of this **policyRule** to each current **C**eovered **E**mployee and his/her supervisor and to any

applicant for a position which is covered by the provisions of this ~~policy~~Rule.

2.11.3.2 The University shall also provide written notice to representatives of employee organizations of the availability of this information.

2.12 **Drug-Free Workplace Act of 1988.** In accordance with the Drug Free Work Place Act of 1988, an employee who is convicted of any criminal drug statute for a violation occurring in the work place shall notify ~~Talent and Culture~~the Division of Human Resources no later than five (5) days after such conviction.

2.13 **Records**

2.13.1 Records pertaining to the Drug and Alcohol Testing Program shall be maintained in secured and locked confidential files in ~~Talent and Culture~~the Division of Human Resources. Internal access to these records shall be limited to ~~Talent and Culture~~the Division of Human Resources and administrative officials on a need-to-know basis.

2.13.2 Except as required by law or expressly authorized or required by FTA or FMCSA rules and regulations, a ~~Ceovered E~~mployee may have access to his/her own records or the ~~Ceovered E~~mployee may authorize, in writing, the release of his/her records to a third party.

2.13.3 Records and report data shall be maintained as specified by Federal laws or regulations.

SECTION 3. DEFINITIONS.

3.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.

SECTION 4: DELEGATION.

4.1 The Board of Governors delegates to the Vice President of Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.

4.2 To the extent federal and state law is inconsistent with this ~~policy~~Rule and it is not possible for the University to comply with all, applicable law will govern. Accordingly ~~Talent and Culture~~the Division of Human Resources has the discretion to implement any necessary changes in order to comply with its legal obligations.

SECTION 5: AUTHORITY.

- 5.1 41 U.S.C. § 8102 (2017); 49 U.S.C §§ 5331, 31133, 31136, and 31306 (2017); 49 C.F.R §§ Parts 40, 382 and 655 (2016); W. Va. Code §18B-1-6 and §18B-2A-4
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SECTION 6: SUPERSEDING PROVISIONS.

- 6.1 This Rule also repeals and supersedes WVU BOG R. 56 – Drug and Alcohol Testing for Federal Transit Administration (FTA) & Federal Motor Carrier Safety Administration (FMCSA) Covered Positions, which was adopted on December 11, 2009, and amended on September 25, 2015, and any other human resources policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Amend & Approve



Board of Governors Rule

Talent and Culture

Employee Leave

Responsible Unit: Talent and Culture

Adopted: [Proposed September 8, 2017]

Revision History: Prior BOG Policy 24 (June 17, 2005)

Review Date: September, 2019

BOG TALENT AND CULTURE RULE 3.5 EMPLOYEE LEAVE

SECTION 1: PURPOSE & SCOPE.

1.1 [This Rule outlines the guiding principles for](#) annual leave, sick leave, medical leave, funeral leave, catastrophic leave, parental leave, the Family Medical Leave Act, personal leave of absence without pay, military leave, special emergency leave without pay, witness and jury leave and leave usage during facility disruption, utility service interruption and inclement weather for Employees of the West Virginia University Board of Governors.

SECTION 2: GENERAL LEAVE COVERAGE.

2.1 Eligibility for annual and sick leave shall be based on the following:

2.1.1 Classified and Non-~~C~~lassified Employees

2.1.1.1 [Classified and Non-Classified](#) Employees working on a regular and continuing basis for at least 1,040 hours over a minimum of nine (9) months within a twelve (12) month period are eligible for leave as specified in this document.

2.1.1.2 [Classified and Non-Classified](#) Employees working less than 1,040 hours within a twelve (12) month period are not eligible for leave benefits.

2.1.1.3 Temporary employees are not eligible for leave.

2.1.2 Faculty/Faculty Equivalent Academic Professionals (FEAPs) Employees

2.1.~~2~~.1 Faculty/FEAP ~~E~~mployees on twelve-month appointments are defined as leave eligible employees and accrue leave according to the appropriate sections of this [R](#)ule.

2.1.~~2~~.2 Faculty/FEAP ~~E~~mployees on annual appointments of less than twelve months do not accrue annual or sick leave. Thus, they are not eligible to participate in the catastrophic leave program.

2.2 *Leave Accrual.*

- 2.2.1 All leave eligible employees on payroll as of the 15th of the month earn ½ of their monthly leave accruals.
- 2.2.2 All leave eligible employees on payroll as of the last day of the month earn ½ of their monthly leave accruals.
- 2.2.3 During a terminal leave period, no type of leave may be accrued. The terminal leave period is the period for which an [leave eligible](#) employee may receive pay following the [leave eligible](#) employee's last active day at work.
- 2.2.4 [Leave eligible](#) ~~E~~employees on leave of absence without pay shall not accrue annual or sick leave or years of service credit for any and all full months in which they are off the payroll.
- 2.2.5 ~~Each institution~~[The University](#) shall keep on file a record showing the current leave status of each [leave eligible](#) employee.

2.3 *Leave Usage.*

- 2.3.1 Annual and sick leave may not be taken before it is accrued.
- 2.3.2 A recognized institutional holiday occurring during an [leave eligible](#) employee's leave period shall not be considered as a day of leave, provided the [leave eligible](#) employee is not in a terminal leave period.

SECTION 3: ANNUAL LEAVE.

3.1 *Leave Accrual.*

3.1.1 *Classified Employees.*

- 3.1.1.1 Leave eligible ~~C~~classified ~~E~~employees occupying 1.0 FTE positions shall be eligible for annual leave on the following basis: Less than 5 years' service: 1.25 days per month; 5 but less than 10 years' service: 1.50 days per month; 10 but less than 15 years' service: 1.75 days per month; 15 or more years' service: 2.00 days per month.
- 3.1.1.2 Leave eligible ~~C~~classified ~~E~~employees expected to work at least 1,040 hours over a minimum of nine (9) months within a twelve (12) month

period on a regular and continuing basis, but less than 1,950 hours over a 12 month period shall accumulate annual leave on a pro rata basis.

3.1.1.3 Length of service shall be total years of service to the state of West Virginia including experience with WV state institutions of higher education and other state agencies.

3.1.1.3.1 Annual appointment periods of nine (9) months at 1.0 FTE or more shall be credited for one (1) year of service for annual leave calculation purposes.

3.1.1.3.2 Years of service shall be prorated for all Classified Employees with appointments of less than 1.0 FTE.

3.1.2 ***Faculty/FEAP Employees.***

3.1.2.1 Leave eligible Faculty/FEAP Employees occupying 1.0 FTE positions shall be eligible for 2.00 days per month of annual leave.

3.1.2.2 Leave eligible Faculty/FEAP Employees occupying positions which are less than 1.0 FTE shall accumulate annual leave on a pro-rata basis.

3.1.3 ***Non-Classified Employees.***

3.1.3.1 Non-Classified Employees occupying 1.0 FTE positions shall be eligible for 2.00 days per month of annual leave.

3.1.3.2 Non-Classified Employees expected to work at least 1,040 hours over a minimum of nine (9) months within a twelve (12) month period on a regular and continuing basis, but less than 1,950 hours over a 12 month period hours shall accumulate annual leave on a pro rata basis.

3.2 ***Annual Leave Usage.***

3.2.1 The work requirements of the institution shall take priority over the scheduling of annual leave or other leave for an leave eligible -employee. When operationally possible, the supervisor shall grant earned annual leave at the convenience of the leave eligible employee. However, departmental needs must be met, and annual leave should not be taken without prior request and approval of the leave eligible employee's supervisor.

3.2.1.1 If an leave eligible employee does not follow established procedures for requesting leave, the charge to annual leave shall be processed as an unauthorized leave.

3.2.2 After all sick leave is exhausted, at the request of the [leave eligible](#) employee, accumulated annual leave shall be granted because of illness.

3.3 *Annual Leave Accrual Maximums.*

3.3.1 The maximum for accumulated annual leave shall be twelve times the [leave eligible](#) employee's monthly accrual.

3.3.2 The maximum for accumulated annual leave may be increased up to 24 times the [leave eligible](#) employee's monthly accrual upon approval by [Talent and Culture](#)~~the Department of Human Resources~~. Such extension of the [leave eligible](#) employee's maximum accrual may not be extended beyond one (1) year.

3.4 Up to fifteen (15) days of unused/unpaid annual leave may be transferred from other eligible agencies of WV state government and state higher education institutions to other higher education institutions. Certification of the balance which existed in the agency or institution from which the [leave eligible](#) employee is transferring must accompany the request for transfer and bear the signature of an officer of that agency. A request for transfer must be made within one (1) year from the last day of employment with the other agency or institution.

3.5 A [leave eligible](#) employee is entitled to be paid for unused/unpaid annual leave at termination of service, but in no case may this exceed the limits set in 3.3.2 above. The [leave eligible](#) employee may elect a lump-sum payout of annual leave, choose to remain on payroll in a terminal leave period equaling the number of annual leave days he/she has accumulated or transfer unused/unpaid annual leave to another eligible state agency.

3.5.1 In the event of a [leave eligible](#) employee's death, the value of accumulated annual leave will be paid to the [leave eligible](#) employee's estate.

SECTION 4: SICK LEAVE.

4.1 *Sick Leave Accrual.*

4.1.1 Leave eligible employees occupying 1.0 FTE positions shall accumulate sick leave at the rate of 1.5 days per month.

4.1.2 Leave eligible employees occupying positions which are less than 1.0 FTE shall accumulate sick leave on a pro-rata basis.

4.1.3 Sick leave may be accumulated without limit.

4.2 *Sick Leave Usage.*

4.2.1 Sick leave may be used by the [leave eligible](#) employee when ill or injured or when in need of medical attention or when death occurs in the immediate family per Section 5 of this [Rulepolicy](#).

4.2.2 An [leave eligible](#) employee may use sick leave for a member of the immediate family who is ill, injured, or in need of medical attention. Immediate family for this purpose is defined as: father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, granddaughter, grandson, stepmother, stepfather, step children, or others considered to be members of the household and living under the same roof.

4.2.3 An [leave eligible](#) employee is required to notify his/her supervisor prior to the beginning of his/her shift (unless not feasible due to hospitalization, etc.) or immediately if the [leave eligible](#) employee becomes ill or unable to work for any reason while at work and to follow the institution's established procedures for absences from work. The notification shall be given to the immediate supervisor or designee, as determined by established procedures of the institution.

4.2.4 *Medical Documentation.*

4.2.4.1 The institution may require evidence from an [leave eligible](#) employee for verification of an illness or other causes for which leave may be granted under this [Rule](#), regardless of the duration of the leave. Such verification shall be provided to [Talent and CultureHuman Resources](#). Documentation regarding a [leave eligible](#) employee's² medical conditions is not required to be submitted to the [leave eligible](#) employee's department.

4.2.4.2 Sick leave for more than five (5) consecutive days shall not be granted to an [leave eligible](#) employee for illness without satisfactory proof of illness or injury, as evidenced by a statement of the attending physician or by other proof satisfactory to the institution.

4.2.4.3 An [leave eligible](#) employee having an extended illness or serious injury shall, before returning to duty, obtain satisfactory medical clearance to help ensure adequate protection and shall indicate the [leave eligible](#) employee's ability to perform his/her duties. Such medical clearance shall be presented in writing within the requested timeframes.

4.2.5 In cases, except those involving catastrophic sick leave as defined in Section 7.1.1, where all accumulated sick leave has been used and annual leave is available, it shall be the option of an [leave eligible](#) employee either to use any accumulated annual leave until it has also expired, rather than being removed from the payroll,

or to retain the accumulated annual leave for use after return to work, but be taken off the payroll immediately after the accumulated sick leave has expired.

- 4.3 When an [leave eligible](#) employee transfers from another eligible agency of [West Virginia](#) state government or from other state institutions of higher education to another institution, the [leave eligible](#) employee's accumulated sick leave may be transferred. Written verification of the accumulated amount of sick leave to be transferred must be provided by the state agency or institution of higher education wherein the [leave eligible](#) employee accumulated the sick leave within one (1) year of the date of employment with the institution.
- 4.4 Sick leave provisions are contingent upon continued employment. When the services of an [leave eligible](#) employee have terminated, all sick leave credited to the [leave eligible](#) employee shall be considered cancelled as of the last working day with the institution, and no reimbursement shall be provided for unused sick leave except in the event of retirement, in which case sick leave may be converted to insurance coverage based on [the leave eligible](#) employee's eligibility for this benefit or for provisions lawfully provided for at that time. [Leave eligible](#) employees who resign in good standing and are later reemployed may have their total accumulated sick leave reinstated, provided the date of termination is one (1) year or less from the date of reemployment. However, if the [leave eligible](#) employee returns to work after more than one (1) year from the date of termination, no more than 30 days of accumulated sick leave may be reinstated.

SECTION 5: MEDICAL LEAVE.

- 5.1 Any employee requesting a medical leave must provide [Talent and Culture](#)~~the Department of Human Resources~~, through established procedures, with satisfactory medical evidence (such as a statement from the attending physician) that he/she is unable to work. The medical statement shall include a diagnosis, prognosis, and expected date that the employee can return to work. If the evidence is satisfactory, [Talent and Culture](#)~~the Department of Human Resources~~ may authorize a medical leave only for the period of disability specified by the attending physician.
- 5.2 Medical Leave shall be with pay for all time that can be covered by use of sick leave, annual leave and/or catastrophic leave (as contained in Section 7 of this [Rule](#)~~policy~~). Medical Leave without pay may be granted when all available leave has been exhausted
- 5.3 The employee shall be expected to report to work on the first workday following expiration of the disability period. An employee, prior to return to duty, shall obtain satisfactory medical clearance to help ensure adequate protection and which shall indicate the employee's ability to perform his/her duties. Such medical clearance shall be presented in writing to [Talent and Culture](#)~~the Department of Human Resources~~. The employee will not be permitted to return to work until authorized by [Talent and Culture](#)~~Human Resources~~.

- 5.3.1 Failure of the employee to report promptly at the expiration of a medical leave of absence without pay, except for satisfactory reasons submitted in advance, shall be cause for termination of employment by the institution.
- 5.4 A medical leave may be granted for no more than a twelve (12) consecutive month period. Employees who may need an extended medical leave beyond twelve (12) consecutive months may apply for an extension through institutional procedures or may consider other options, such as disability.
- 5.5 An employee who is separated from employment following a medical leave of absence of twelve (12) consecutive months may elect group health insurance coverage through COBRA. If such coverage is elected, the former employee is responsible for the full (employer and employee portions) premium cost of such coverage.
- 5.6 Any employee who is separated from employment following a medical leave of absence of twelve (12) consecutive months and who had chosen to maintain her/his accumulated annual leave will receive payment for such accumulated annual leave in a lump sum payment.
- 5.7 On-the-job injuries or occupational illnesses which involve no more than three (3) days of disability leave or absence from work shall not be charged against ~~the~~ a leave eligible employee's accumulated sick leave as long as they are the next three (3) consecutive working days after injury or illness occurred. If on-the-job injuries or illnesses require a leave beyond the three-day period, it shall be the option of ~~the~~ a leave eligible employee either to use earned and accumulated sick and annual leave until both may be exhausted or to reserve for future use any earned and accumulated sick and annual leave and receive only Workers' Compensation benefits for which adjudged eligible. Once the leave eligible employee has elected one of the above described options in writing that decision is final.
- 5.8 Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom shall be, for all job-related purposes, temporary disabilities and shall be treated the same as any other illness or disability would be treated for sick leave entitlement. For this reason, leave eligible employees shall be entitled to sick leave for their disabilities related to pregnancy and childbirth on the same terms and conditions as they or other leave eligible employees would be entitled for other illnesses and disabilities. In determining whether an employee is unable to work because of a disability related to pregnancy or childbirth, the same criteria shall be used as would be used in the case of another type of illness or disability.

SECTION 6: FUNERAL LEAVE.

- 6.1 Funeral leave is intended to provide ~~the~~ [a leave eligible](#) employee time to arrange for and attend the funeral and related services of an immediate family member, including travel time.
- 6.1.1 Immediate family is defined for this purpose as: parents, siblings or children by blood or law; spouse; grandparents and grandchildren; or others considered to be part of the household living under the same roof.
- 6.1.2 Up to five (5) days of funeral leave may be charged as sick leave. Additional time necessary to meet the obligations outlined above shall be charged as annual leave.
- 6.2 Funeral leave is not provided for estate legal obligations and/or an extended bereavement period. Annual leave may be requested for these purposes.
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SECTION 7: CATASTROPHIC LEAVE.

- 7.1 The catastrophic leave program is available to provide salary continuation to leave eligible employees who have suffered a catastrophic illness or injury.
- 7.1.1 Catastrophic illness or injury is defined as: a medically verified illness or injury that is expected to incapacitate the [leave eligible](#) employee and create a financial hardship because the [leave eligible](#) employee has exhausted all sick and annual leave and other paid time off.
- 7.1.2 Catastrophic illness or injury also includes an incapacitated immediate family member as defined in Section 4.2.2 above, as appropriate, if this results in the [leave eligible](#) employee being required to take time off from work for an extended period of time to care for the family member and if the [leave eligible](#) employee has exhausted all sick and annual leave and other paid time off.
- 7.2 In order to participate in the catastrophic leave program, an [leave eligible](#) employee must complete an application, provide all requested medical documentation and be approved for participation.
- 7.3 WVU maintains a procedure for direct transfer of sick or annual leave to an [leave eligible](#) employee who has requested and been approved for catastrophic leave.

- 7.3.1 Any leave donated by an leave eligible employee, but not used by the leave eligible employee to whom it was donated, shall be returned to the donating leave eligible employee and reflected in his/her leave balance.
- 7.4 WVU maintains a catastrophic leave bank which provides for the deposit of sick and annual leave into a "bank" from which leave eligible employees approved for catastrophic leave may withdraw leave.
- 7.5 Upon approval for an leave eligible employee to receive catastrophic leave, any leave eligible employee may donate sick and/or annual leave in one-day (7.5 hour) increments by following the approved procedures. No leave eligible employee shall be compelled to donate sick leave.
- 7.6 An leave eligible employee receiving the transfer of leave shall have any time which is donated credited to his/her leave record in one-day increments and reflected as a day-for-day addition to his/her leave balance. The leave record of the donating leave eligible employee shall have the donated leave reflected as a day-for-day reduction of the leave balance.
- 7.7 Use of donated credits may not exceed a maximum of twelve (12) continuous calendar months for any one catastrophic illness or injury. The total amount of leave received by transfer or withdrawn from a bank may not exceed an amount sufficient to ensure the continuance of regular compensation and shall not be used to extend insurance coverage post retirement pursuant to West Virginia Code § 5-16-13 . The leave eligible employee receiving donations of leave shall use any leave personally accrued on a monthly basis prior to receiving additional donated leave.
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SECTION 8: PARENTAL LEAVE.

8.1 *Parental Leave Program Description.*

- 8.1.1 Parental leave is an unpaid leave program.
- 8.1.2 During the parental leave, the institution shall continue group health insurance coverage provided that the employee pays the employer the full (employer and employee portions) premium cost of such group health plan.
- 8.1.3 The position held by the employee immediately before the leave is commenced shall be held for a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position.

8.2 *Eligibility for Parental Leave.*

8.2.1 An employee who has worked at least twelve (12) consecutive weeks for the state may request up to twelve (12) weeks unpaid parental leave.

8.2.2 The request must be due to birth or adoption by the employee or because of a planned medical treatment or care for the employee's spouse, son, daughter, parent, or dependent who has a serious health condition.

8.2.3 All annual leave must be exhausted before the parental leave begins. No more than a total of twelve (12) weeks of parental leave may be taken in any twelve (12) consecutive month period.

8.3 The employee should provide his/her supervisor with written notice two (2) weeks prior to the expected birth or adoption; or for the medical treatment; or for the supervision of a dependent. Failure to submit a written request may be cause for denial.

8.4 The employee must provide [Talent and Culture Human Resources](#) with certification by the treating physician and/or documentation regarding dependency status.

SECTION 9: FAMILY MEDICAL LEAVE ACT.

9.1 The institution shall comply with the provision of the federal Family Medical Leave Act, which provisions shall run concurrently with parental leave and/or any other applicable leave programs.

SECTION 10: PERSONAL LEAVE OF ABSENCE WITHOUT PAY.

10.1 A [leave eligible](#) employee, upon application in writing and upon written approval by the institutional ~~P~~resident ~~or his/her designee~~, may be granted a continuous leave of absence without pay for a period of time not to exceed twelve (12) consecutive months provided all accrued annual leave has been exhausted.

10.2 The ~~P~~resident ~~or the president's designee~~, at his/her discretion, may require the written approval of the supervisor before accepting the written application of a [leave eligible](#) employee for a leave of absence without pay.

10.3 The ~~P~~resident ~~or the president's designee~~, at his/her discretion, shall determine if the purpose for which such a leave is requested is proper and within sound administrative policy.

- 10.4 At the expiration of a leave of absence without pay, the [leave eligible](#) employee shall be reinstated without loss of any rights, unless the position is no longer available due to a reduction in staff caused by curtailment of funds or a reduced workload.
- 10.5 Failure of the [leave eligible](#) employee to report promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance, shall be cause for termination of employment by the institution.
- 10.6 During a personal leave, the institution shall continue group health insurance coverage provided that the [leave eligible](#) employee pays the employer the full (employer and employee portion) premium costs of such group health plan.
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SECTION 11: MILITARY LEAVE.

- 11.1 An employee who is a member of the National Guard or any reserve component of the armed forces of the United States shall be entitled to and shall receive a leave of absence without loss of pay, status, or efficiency rating, for all days in which engaged in drills or parades, field service or active service to the State ordered by proper authority, or for field training or active service for the maximum period as provided by state and/or federal law.
- 11.2 The term "without loss of pay" shall mean that the employee shall continue to receive normal salary or compensation, notwithstanding the fact that such employee may receive other compensation from federal sources during the same period. Furthermore, such leave of absence shall be considered as time worked in computing seniority, eligibility for salary increases, credit for years of service and experience with the institution. An employee shall be required to submit an order or statement from the appropriate military officer in support of the request for such military leave unless military necessity prevents giving of such notice.
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SECTION 12: SPECIAL EMERGENCY LEAVE WITH PAY.

- 12.1 Special emergency leave with pay may be granted by the [President](#) of the institution or his/her designee to full-time employees in the event of extreme misfortune to the employee or the immediate family. The leave should be the minimum necessary, and in no case may it exceed five (5) days within any twelve (12) consecutive month period. Typical events which may qualify an employee for such leave are fire, flood, or other events (other than personal illness or injury or serious illness or death in the immediate family) of a nature requiring emergency attention by the employee.

SECTION 13: WITNESS AND JURY LEAVE.

- 13.1 Upon application in writing, an leave eligible employee may be granted leave with pay as indicated hereinafter in this section provided the leave eligible employee is not a party to the action. Annual leave will not be charged under the provisions of this section.
- 13.1.1 When, in obedience to a subpoena or direction by proper authority, an leave eligible employee appears as a witness for the Federal Government, the State of West Virginia, or a political subdivision thereof, the leave eligible employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 13.1.2 When an leave eligible employee serves upon a jury, or is subpoenaed in litigation, the leave eligible employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 13.2 When attendance in a court is in connection with an leave eligible employee's usual official duties, time required in going and returning shall not be considered as absence from duty.
- 13.3 The leave eligible employee shall report to work if he/she is excused by the court before the end of his/her regular work day. Provisions for leave eligible employees who work a shift other than day shift shall be made according to institutional policy.

SECTION 14: LEAVE USE AS IT RELATES TO FACILITY DISRUPTION AND UTILITY SERVICE INTERRUPTION.

- 14.1 Utility Service Interruptions - When extended power and utility service interruptions occur or work facilities are not available for other reasons, administrators should make arrangements for leave eligible employees' usual work routine to be accomplished at alternate work locations, or make affected leave eligible employees available to other administrators for work in other areas. Also, if an administrator deems it advisable and the leave eligible employee agrees, time off during the utility service interruption may be granted and charged against an leave eligible employee's accumulated annual leave or Compensatory Time Off ~~(CTO)~~. Combinations of the above alternatives may be necessary, but in all cases interruptions of work schedules must be dealt with in accordance with applicable laws, including West Virginia Code §12-3-13. This law is interpreted to mean that if pay is associated with the absence from work, the absence must be charged to accumulated annual leave or Compensatory Time Off ~~(CTO)~~.

SECTION 15: LEAVE USE AS IT RELATES TO INCLEMENT WEATHER.

- 15.1 In the event that a weather emergency exists, the ~~P~~resident, ~~or his designee~~, in conjunction with local or state public safety officials, has the authority to comply with the emergency situation and close the institution or part of the institution. The ~~P~~resident, ~~or his designee~~, working with public safety officials, will determine when the emergency condition no longer exists. Should a leave eligible ~~n~~-employee be required to work by the ~~P~~resident ~~or her/his designee~~ during a declared emergency, the time worked shall be compensated according to policies and procedures established by the Vice President for Talent and Culture~~the provisions of Series 8~~. Work time lost by any leave eligible employee during a declared emergency will be considered regular work time for pay purposes and will not require that the time be charged to annual leave nor will there be a requirement that the time be made up.
- 15.2 Absences from work due to weather conditions other than during a declared emergency must be charged against accumulated annual leave, accumulated compensatory time, or the leave eligible employee must be removed from the payroll for the time in question. Where institutions employ the "floating holiday" or Personal day concept, the personal time may be charged. Sick leave may not be charged for absence due to weather. Time lost from work may be made up in the same work week at the discretion of the leave eligible employee's supervisor.

SECTION 16. DEFINITIONS.

- 16.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.

SECTION 17: DELEGATION.

- 17.1 The Board of Governors delegates to the Vice President for Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.

SECTION 18: AUTHORITY.

- 18.1 W. Va. Code §18B-1-6; §18B-2A-4; §18B-7-14; and §21-5D-1, et seq.

SECTION 19: SUPERSEDING PROVISIONS.

- 19.1 This Rule supersedes and replaces Higher Education Policy Commission (“HEPC”) Series 38 (W. Va. Code R. §§133-38-1 to -13), which was adopted November 19, 1992, and any other Rule of the HEPC which relates to the subject matter contained within this Rule. This Rule also repeals and supersedes WVU BOG R. 24 – Employee Leave, which was adopted on June 17, 2005, and any other Human Resources policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Amend & Approve



Board of Governors Rule

Talent and Culture

Holidays

Responsible Unit: Talent and Culture

Adopted: [Proposed September 8, 2017]

Revision History: Prior BOG Policy 8
(September 6, 2002)

Review Date: September, 2019

BOG TALENT AND CULTURE RULE 3.6 HOLIDAYS

SECTION 1: PURPOSE & SCOPE.

1.1 This Rule establishes the guiding principles for setting the holiday schedules for West Virginia University, including the Divisional Campuses.

SECTION 2: GRANTING POWER.

2.1 The West Virginia University Board of Governors hereby directs that the Ppresident ~~of each institution~~ shall determine six ~~(6)~~ floating holidays, which will be observed by the employees of that institution in addition to the six ~~(6)~~ holidays specified in Section 3.1 of this Rule.

SECTION 3: NUMBER OF HOLIDAYS.

3.1 The number of full holidays shall be ~~twelve (12 days)~~, plus additional days for any Election Day (primary or general) held throughout the State. Days taken shall include Martin Luther King Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day. Six additional days determined by the President ~~of each institution~~ as provided in Section 2.1 shall also be taken. If a specified holiday falls on a Saturday or Sunday, the preceding Friday or the following Monday will be observed as the legal holiday.

3.2 Proclamation of additional legal holidays by the President of the United States, Governor, or other duly constituted authority may be observed by University employees ~~of the West Virginia University Board of Governor's Institutions through the HEPC chancellor's office to~~ if the President of West Virginia University determines that the additional legal holiday should be observed by University employees.

3.2.1 In the instances where an additional legal holiday is proclaimed, the President may designate the additional legal holiday through either a change to the holiday schedule or as floating holiday time for leave eligible employees. If granted as a

floating holiday, that holiday time must be used by the end of the fiscal year in which it was granted, and the time is not eligible for pay out.

SECTION 4: HALF HOLIDAYS.

- 4.1 To provide equity with the Executive Branch of government, one-half day preceding Christmas or New Year's Day shall be a holiday when Christmas or New Year's Day falls on Tuesday, Wednesday, Thursday, or Friday. These days will be scheduled at the discretion of ~~the each p~~President giving due consideration to operational needs of the ~~University. institution.~~
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SECTION 5: SCHEDULES.

- 5.1 Holiday schedules are to be established and used on a fiscal year basis.
- 5.2 The ~~P~~resident ~~of each institution~~ shall submit to the Board of Governors by June 30 of each year and shall post on campus a list of the holidays to be observed ~~by the University at that institution~~ by the University for the upcoming fiscal year.
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SECTION 6. DEFINITIONS.

- 6.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.
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SECTION 7: DELEGATION.

- 7.1 The Board of Governors delegates to the Vice President for Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.
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SECTION 8: AUTHORITY.

- 8.1 W. Va. Code §18B-1-6; §18B-2A-4; §2-2-1.

SECTION 9: SUPERSEDING PROVISIONS.

- 9.1 This Rule supersedes and replaces Higher Education Policy Commission (“HEPC”) Series 8 (W. Va. Code R. §§ 133-8-1 to -19), which was adopted November, 22, 2001; HEPC Series 14 (W. Va. Code R. §§ 133-14-1 to -6), which was adopted April 19, 2002; HEPC Series 38 (W. Va. Code R. §§ 133-38-1 to -13), which was adopted November 19, 1992; HEPC Series 53 (W. Va. Code R. §§ 133-53-1 to -17), which was adopted May 2, 2013; and any other Rule of the HEPC which relates to the subject matter contained within this Rule. This Rule also repeals and supersedes WVU BOG R. 8 – Holidays, which was adopted on September 6, 2002, and any other Human Resources policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Amend & Approve



Board of Governors Rule

Talent and Culture

Annual Increment

Responsible Unit: Talent and Culture

Adopted: [Proposed September 8, 2017]

Revision History: Prior BOG Policy 32 (July 1, 2006; July 1, 2007; July 1, 2008)

Review Date: September, 2019

BOG TALENT AND CULTURE RULE 3.7

ANNUAL INCREMENT

SECTION 1: PURPOSE & SCOPE.

- 1.1 This Rule outlines the guiding principles for determining annual increment payments (also called “longevity”) for eligible employees of the West Virginia University Board of Governors. Specific eligibility is further defined below.
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SECTION 2: GENERAL REQUIREMENTS.

- 2.1 Every eligible employee, as defined below in Section 3, with at least the minimum statutorily defined or more years of credited West Virginia State service, shall receive an annual increment payment equal to the statutorily defined dollars times the eligible employee’s eligible West Virginia State years of service, without limit.
- 2.2 During the month of July of each fiscal year, the Auditor’s Office shall pay annual increment to all eligible employees in the form of a lump sum payment. All eligible employees on a leave of absence without pay at the time payment is made shall receive any annual increment payment due to them concurrently with all other eligible employees.
- 2.3 The annual increment payment shall be in addition to any across-the-board, cost of living, or percentage salary increases which may be granted in any fiscal year by the Legislature. This shall not be construed to prohibit other increases based on merit, seniority, promotion, or other reason, if funds are available for the other pay increases. The West Virginia University Board of Governors shall first grant the annual increment payment to all eligible employees prior to the consideration of any increases based on merit, seniority, promotion, or other reason.
- 2.4 Only years of service earned while working in an eligible West Virginia State employee position are credited. Prior service with a county school board or political subdivision will not be considered eligible years of service for the purpose of calculating annual increment. Section 3 below further defines “eligible employee” and the years of service calculation for each type of West Virginia State employee. An eligible employee cannot be credited for more years of service than the total number of fiscal years that the eligible employee has performed services for the State of West Virginia.

- 2.5 An employee hired into an eligible employee position shall not receive any credit toward the calculation of annual increment for service earned in a temporary State employee position, including, but not limited to, Mountaineer Temp positions. Any current eligible employee, hired prior to July 1, 2007, who previously received credit for Mountaineer Temp service, shall continue to receive years of service credit for his/her Mountaineer Temp service, so long as his/her employment with West Virginia University is continuous and uninterrupted.
- 2.6 All eligible West Virginia State years of service shall be calculated based on the rules applicable to that type of service. For example: A nine (9) month, 1.00 fulltime equivalent (FTE), Faculty member, who has prior service as a 9 month, 1.00 FTE, Classified Employee, would have their years of service during the time spent in the classified assignment calculated based on the rules applicable to classified service. Thus, the 9 months of service in the classified position **would not** be equal to 12 months of service for the purpose of calculating annual increment.
- 2.7 The eligible employee is responsible for obtaining verification of qualifying service and such service must be verified from each former West Virginia State employer. If an eligible employee subsequently provides verification of qualifying service, the service will be calculated into the eligible employee's totaled years of service. However, the eligible employee shall not be entitled to any back pay of annual increment for fiscal years prior to the fiscal year in which the obligation to verify service was met by the eligible employee.
- 2.8 Separating eligible employees shall be paid the annual increment on a pro-rata basis for the portion of service rendered by the eligible employee during the current fiscal year of employment, in his/her final paycheck.
- 2.9 Where the eligible employee provided no service during the fiscal year, the eligible employee shall receive no annual increment payment consistent with the provisions of section thirteen, article three, chapter twelve of the West Virginia Code (§12-3-13). However, an eligible employee on leave without pay while receiving temporary total disability benefits, consistent with section four, article five-A, chapter twenty-three of the West Virginia Code (§23-5A-4), or on military service leave or certain types of service in the National Disaster Medical System, consistent with the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. § 4301 et seq., continues to accrue increment pay and service credit while on leave without pay from West Virginia University, and such payment will be made as appropriate in July following the service year, concurrent with all other eligible employees.
- 2.10 Any eligible employee who transfers from another West Virginia State agency, having received a prorated annual increment payment upon termination of employment, shall be responsible for notifying Talent and Culture~~the West Virginia University Department of Human Resources~~ of the amount of prorated annual increment received. The eligible employee shall receive his/her annual increment payment concurrently with all other

eligible employees, less the amount of prorated annual increment received during that fiscal year.

- 2.11 Any eligible employee overpaid the amount of annual increment entitled to him/her shall be responsible for reimbursing the University for the amount overpaid.
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SECTION 3: SPECIFIC REQUIREMENTS.

3.1 *Classified Employees.*

3.1.1 Eligible employee means any Classified Employee who is appointed to a regular full-time or regular part-time position with the West Virginia University Board of Governors, ~~that is assigned a particular job title and pay grade in accordance with the personnel classification system, consistent with subpart (a), section two, article nine, chapter eighteen B of the West Virginia Code [§18B-9-2(a)].~~

3.1.2 An eligible employee will be credited for all service performed as an eligible Classified Employee under the following calculation. All service will be calculated based on full years of totaled service as a Classified Employee of a West Virginia State institution of higher education, the Higher Education Policy Commission, or the Council for Community and Technical College Education, consistent with section one, article five, chapter five of the West Virginia Code (§5-5-1). For example: An eligible Classified Employee must work twelve (12) months in order to earn (1) year of credited service. Service in eligible classified positions that are less than twelve (12) months, 1.00 FTE, will be given pro-rated service credit. The pro-rated service credit will be cumulative.

3.2 *Faculty and Non-Classified Employees with Faculty Rank.*

3.2.1 Eligible employee, as of the first day of July, two-thousand and six (07/01/2006), means any Faculty or Non-Classified Employee with Faculty rank, who is appointed to a position with the West Virginia University Board of Governors, that is at least a nine (9) month, 1.00 FTE position, which is defined as full-time per BOG Policy 2 (or successor BOG Rule)~~West Virginia University Board of Governors Policy # 2~~, consistent with subpart (f), section one, article eight, chapter eighteen-B of the West Virginia Code [§18B-8-1(f)]. ~~Eligible faculty positions are further defined as tenured faculty, tenure track faculty, clinical track faculty, non tenure track faculty, librarian track faculty, extension faculty, faculty equivalent/academic professionals (FE/AP) employees, and postdoctoral employees, consistent with West Virginia University Board of Governors Policy # 2.~~

3.2.2 A ~~F~~faculty or ~~N~~non-~~C~~lassified ~~E~~mployee with ~~F~~faculty rank, who is appointed to a position that is not at least nine (9) month or not at least 1.00 FTE, is not eligible to receive an annual increment payment. This type of service will not be given any credit toward the calculation of years of service for annual increment, even if the employee is later appointed to another position that is eligible to receive annual increment.

3.2.3 An eligible employee will be credited for all service performed as an eligible ~~F~~faculty or ~~N~~non-~~C~~lassified ~~E~~mployee with ~~F~~faculty rank, under the following calculation. All service performed as an eligible ~~F~~faculty or ~~N~~non-~~C~~lassified ~~E~~mployee with ~~F~~faculty rank, as an employee of a West Virginia State institution of higher education, the Higher Education Policy Commission, or the Council for Community and Technical College Education, will be calculated so that nine (9) or more months of service during the fiscal year is equal to one (1) full year of credited service, consistent with section one, article five, chapter five of the West Virginia Code (§5-5-1).

3.3 *Non-Classified Employees without Faculty Rank.*

3.3.1 Eligible employee means any ~~N~~non-~~C~~lassified ~~E~~mployee without ~~F~~faculty rank, who is appointed to a regular full-time, benefits eligible position with the West Virginia University Board of Governors, consistent with subpart (a) (1), section one, article five, chapter five of the West Virginia Code [§5-5-1(a) (1)].

3.3.2 An employee currently in a temporary ~~N~~non-~~C~~lassified position without ~~F~~faculty rank is not eligible to receive an annual increment payment.

3.3.3 An eligible employee will be credited for all service performed as an eligible ~~N~~non-~~C~~lassified ~~E~~mployee without ~~F~~faculty rank under the following calculation. All service will be calculated based on full years of totaled service as a ~~N~~non-~~C~~lassified ~~E~~mployee without ~~F~~faculty rank of a West Virginia State institution of higher education, the Higher Education Policy Commission, or the Council for Community and Technical College Education, consistent with section one, article five, chapter five of the West Virginia Code (§5-5-1). For example: An eligible ~~N~~non-~~C~~lassified ~~E~~mployee without ~~F~~faculty rank must work twelve (12) months in order to earn (1) year of credited service. Service in eligible ~~N~~non-~~C~~lassified positions without ~~F~~faculty rank that are less than twelve (12) months, 1.00 FTE will be given pro-rated credit. The pro-rated service credit will be cumulative.

3.4 *Other West Virginia State Employee Service.*

3.4.1 For the purpose of crediting all other prior West Virginia State employee service, eligible employee means any regular full-time or part-time employee of the State of West Virginia or any spending unit thereof who is eligible for membership in

any State retirement system of the State of West Virginia or any other retirement plan authorized by the State.

- 3.4.2 Eligibility for annual increment shall not apply to any employee of the State whose compensation is fixed by statute or by statutory schedule, (except for the clerks, deputy clerks, and magistrate assistants of magistrate courts), nor shall it apply to any elected or appointed officer of the State of West Virginia. Conservation Officers, whose salaries are fixed by subpart (c), section one, article seven, chapter twenty of the West Virginia Code [§20-7-1(c)], are eligible for annual increment.
- 3.4.3 Any employee that is excluded from eligibility for annual increment as defined in 3.4.2 above, will not be given any credit toward the calculation of years of service for annual increment, even if the employee is later appointed to another position with the West Virginia University Board of Governors that is eligible to receive annual increment.
- 3.4.4 An eligible employee will be given prior service credit for all service performed as an eligible West Virginia State employee, consistent with this policy, as well as section one, article five, chapter five of the West Virginia Code (§5-5-1). For example: An eligible West Virginia State employee must work twelve (12) months in order to earn (1) year of credited service. Service in eligible West Virginia State positions that are less than twelve (12) months, 1.00 FTE will be given pro-rated credit. The pro-rated service credit will be cumulative.

SECTION 4. DEFINITIONS.

- 4.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.
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SECTION 5: DELEGATION.

- 5.1 The Board of Governors delegates to the Vice President for Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.
-

SECTION 6: AUTHORITY.

- 6.1 Uniformed Services Employment and Reemployment Act (“USERRA”) 38 U.S.C. §4301, et seq. (2017); W. Va. Code §5-5-1; §5-5-2; §12-3-13; §18B-1-6; §18B-2A-4; §18B-8-1;

~~§18B-9-2~~ §18B-9A-2; §23-5A-4; WVU BOG R. 2 – Academic Freedom, Professional Responsibility, Promotion, and Tenure (2008)(or successor BOG Rule).

SECTION 7: SUPERSEDING PROVISIONS.

- 7.1 This Rule repeals and supersedes WVU BOG R. 32 – Rule on Annual Increment, which was adopted on July 1, 2006, and amended on July 1, 2007 and July 1, 2008; and any other Human Resources policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Approve



Board of Governors Rule

Talent and Culture
Performance Management
Responsible Unit: Talent and Culture
Adopted: [Proposed September 8, 2017]
Revision History: None
Review Date: September 2019

BOG TALENT AND CULTURE RULE 3.8 PERFORMANCE MANAGEMENT

SECTION 1: PURPOSE & SCOPE.

- 1.1 The University seeks to foster a high performance culture. Fundamentally, an effective performance management system is an ongoing process that provides clear performance objectives, coaching, feedback and recognition for outstanding work.
- 1.2 This Rule outlines the guiding principles for performance management.
- 1.3 This Rule applies to Classified and Non-Classified Employees of the West Virginia University Board of Governors. All employees, including Faculty who supervise a Classified or Non-Classified Employee, shall follow the provisions of this Rule with regards to such supervision.

SECTION 2: PERFORMANCE MANAGEMENT.

- 2.1 Strategic alignment of the workforce with our mission, vision, and values is critical to the continued growth and success of the University. Performance management will be used to ensure strategic alignment and also support Classified and Non-Classified Employees as they work to achieve their fullest potential.
- 2.2 The Vice President for Talent and Culture shall develop a performance management plan for Employees that accomplishes the following objectives:
 - Provide a fair assessment of job performance;
 - Provide counseling regarding development opportunities or areas of needed improvement;
 - Provide a basis for compensation decisions;
 - Serve as a factor for reduction in force decisions; and
 - Support and provide documentation for personnel actions.
- 2.3 Supervisors shall undertake performance management in a manner that is consistent and objective, and should not reflect personal prejudice, bias, or favoritism.
- 2.4 Each Classified Employee hired by the University shall serve an initial probationary period of six months. At the end of the probationary period, the Classified Employee's

- supervisor shall provide a written evaluation to the Classified Employee based on the performance standards or goals established by the supervisor for the position. The supervisor shall meet with the Classified Employee and explain the contents of the evaluation and whether the Classified Employee is being offered regular employment.
- 2.5 At the end of the first six months of employment, each supervisor of a Non-Classified Employee hired by the University shall provide a written evaluation based on the performance standards or goals established by the supervisor for the position. The supervisor shall meet with the Non-Classified Employee and explain the contents of the evaluation.
- 2.6 Classified and Non-Classified Employees shall receive a written annual performance review based on the performance standards or annual goals established by the supervisor for the position, during the time period determined by the Unit, and approved by the Vice President for Talent and Culture. Supervisors should also provide regular, informal feedback throughout the year.
- 2.6.1 Before a performance evaluation is completed, a supervisor shall solicit feedback from the Employee's prior University supervisor if the Employee has changed supervisors within the current performance evaluation period.
- 2.7 Any employee who supervises one or more Classified or Non-Classified Employees shall complete a training on performance management policies and processes, as required by the Vice President for Talent and Culture. All such supervisors shall also be provided with refresher materials on performance management policies and processes every three years.
- 2.7.1 Each year the Vice President for Talent and Culture will offer training on performance management policies and processes for newly appointed supervisors prior to completion of the initial performance evaluation process.

SECTION 3: RIGHTS OF CLASSIFIED AND NON-CLASSIFIED EMPLOYEES.

- 3.1 Once the annual written performance review is completed, the supervisor shall meet with the Classified or Non-Classified Employee and explain the contents of the evaluation.
- 3.2 A Classified or Non-Classified Employee shall be given ten business days to respond in writing regarding the results of his or her performance review, if the employee would like to do so. The response shall be delivered to the employee's supervisor.
- 3.2.1. Upon receipt, the supervisor will review the employee's written response and determine if any changes should be made to the performance review.

- 3.3 If a Classified or Non-Classified Employee has a concern, he or she is encouraged to talk to his or her supervisor, next-level supervisor, or Employee Relations. However, the University considers a performance review finalized fifteen business days after it is first delivered by the supervisor.
- 3.4 A Classified or Non-Classified Employee who receives an evaluation of development needed or its equivalent designation shall be placed on a performance improvement plan with defined objectives and timelines for improvement, as determined by the employee's supervisor. An employee who does not meet the objectives for improvement in accordance with the timeline specified in the improvement plan may be considered for additional personnel action, including termination of employment.
- 3.5 In accordance with W. Va. Code §6C-2-1, et seq., eligible employees may utilize the West Virginia Public Employee Grievance Procedure to seek resolution for their grievable issues involving performance management.

SECTION 4: DEFINITIONS.

- 4.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.

SECTION 5: DELEGATION.

- 5.1 The Board of Governors delegates to the Vice President of Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.

SECTION 6: AUTHORITY.

- 6.1 W. Va. Code §18B-1-6, §18B-2A-4, §18B-7-1, §18B-7-13, and §18B-9B-1

SECTION 7: SUPERSEDING PROVISIONS.

- 7.1 This Rule supersedes and replaces Higher Education Policy Commission ("HEPC") Series 39 (W. Va. Code R. §§ 133-39-1 to -8), which was approved September 5, 1996; and HEPC Series 53 (W. Va. Code R. §§ 133-53-1 to -17), which was approved May 2, 2013 and any other Rule of HEPC which relates to the subject matter contained within this Rule. This Rule also supersedes and replaces any internal University policy or procedure which relates to the subject matter contained within this Rule.

Recommendation: Approve



Board of Governors Rule

Talent and Culture
Reduction in Force
Responsible Unit: Talent and Culture
Adopted: [Proposed September 8, 2017]
Revision History: None
Review Date: September 2019

BOG TALENT AND CULTURE RULE 3.9 REDUCTION IN FORCE

SECTION 1: PURPOSE & SCOPE.

- 1.1 The University seeks to provide a positive and stable work environment. However, conditions may arise that necessitate the elimination of positions held by Classified Employees, otherwise known as a Reduction in Force (RIF).
- 1.2 This Rule outlines the guiding principles for and is applicable to Reductions in Force for all Classified Employees of the West Virginia University Board of Governors, who are employed in Full-Time Regular positions.

SECTION 2: REDUCTIONS IN FORCE PROCESS AND REVIEW COMMITTEE.

- 2.1 Reasons to implement a RIF may include, but are not limited to, budget reductions, loss of funding, reorganization, material changes to the duties or responsibilities of a position, program change/elimination, or an emergency that curtails operations.
- 2.2 The President of the University shall establish and appoint a Review Committee to review and approve any RIF Plan to implement a RIF involving more than five Full-Time Regular Classified Employees. The members of the Review Committee should include, but are not limited to, representatives from the Provost's Office, Strategic Initiatives, and Talent and Culture, with advice from the Office of General Counsel.
- 2.3 If the RIF would eliminate the positions of more than five Full-Time Regular Classified Employees, the Unit shall obtain the approval of the Review Committee prior to implementing the RIF Plan.
 - 2.3.1 If the RIF would eliminate the positions of five Full-Time Regular Classified Employees or less, the Unit shall obtain the approval of the Vice President for Talent and Culture prior to the implementation of the RIF Plan.
 - 2.3.2 The Vice President for Talent and Culture may, but is not required to, refer any RIF Plan to the Review Committee.

- 2.4 When a Unit becomes aware that there may be a need for a RIF, the leader of the Unit is responsible to contact and work with the Vice President for Talent and Culture and the Review Committee, as applicable, to develop a RIF Plan.
- 2.5 Prior to undertaking any RIF, a Unit shall develop a proposed RIF Plan in the form and substance required by the Vice President for Talent Culture. The RIF Plan shall, at a minimum:
- 2.5.1 List reasonable alternative solutions (*e.g.*, where applicable, reductions of operating expenses other than payroll, moratorium on further hiring, or voluntary separation) to a RIF that were considered;
 - 2.5.2 Identify the reasons for implementing the RIF;
 - 2.5.3 Identify the positions recommended for elimination and the reasons for the elimination;
 - 2.5.4 Describe any re-organization of the Unit or other changes that will occur as a result of the RIF;
 - 2.5.5 Describe the impact of the RIF Plan to other employee types, including whether other positions will also be eliminated; and
 - 2.5.6 Any other matters required by the Review Committee or the Vice President for Talent and Culture.
- 2.6 A RIF is not intended to be a performance management tool.
- 2.7 In situations where a Unit proposes to eliminate some, but not all of the positions within the same job family within the Unit, the Unit shall evaluate the skills and qualifications of the individual employees potentially subject to the RIF. The Vice President for Talent and Culture shall assist in the review process, evaluate performance criteria, and provide seniority validations. In these situations, the Unit shall give consideration to the following:
- 2.7.1 **Performance:** each Classified Employee's documented quality of work performance over the previous twenty-four months as demonstrated in performance evaluations of record including, but not limited to, performance evaluations and disciplinary history;
 - 2.7.2 **Skills and qualifications:** specific duties and responsibilities of each position, the Classified Employee's knowledge and skills; and

- 2.7.3 **Seniority:** the length of service as defined by the rules established for the calculation of years of service outlined in WVU BOG Tal. & Cult. R. 3.7 – Annual Increment.
- 2.7.4 If all factors appear to be equal, the Unit should retain the employee or employees with more seniority.
- 2.8 If the Classified Employee did not receive a written performance evaluation for any year within the relevant time period set forth in Section 2.7.1, then for any such year that employee shall be deemed to have received a valuable performer or an equivalent rating.
- 2.9 ***Commitment to Equal Opportunity and Affirmative Action.*** All decisions under this Rule shall be made without regard to race, color, national origin, religion, sex, age, sexual orientation, disability, or any other class protected under the University's non-discrimination policy (BOG Policy 44, or successor Rule), unless otherwise prohibited by applicable law. The Vice President for Talent and Culture shall undertake an adverse impact analysis to determine that all RIF Plans under this Rule comply with this Section.

SECTION 3: RIGHTS OF CLASSIFIED EMPLOYEES.

- 3.1 The University shall provide a Classified Employee at least 60 days written notice ("Notice Period") that his or her position is going to be eliminated, unless the financial circumstances of the University dictate a shorter notice period, as determined by the Vice President for Talent and Culture and the Review Committee.
- 3.1.1 In some situations, it is in the best interests of the Classified Employee or the department that during the Notice Period the employee receive an alternative assignment. The notice should indicate whether the employee will receive an alternative assignment or not during the Notice Period.
- 3.2 During the Notice Period, the Unit shall provide any Classified Employees subject to a job elimination reasonable time off without charge to accrued leave to attend job interviews, subject to the operational needs of the unit.
- 3.3 In accordance with W. Va. Code §6C-2-1, et seq., eligible employees may utilize the West Virginia Public Employees Grievance Procedure to seek resolution for their grievable issues involving a RIF.

3.4 *Right of Recall.*

- 3.4.1 A Unit shall not refill the specific position that has been eliminated by a RIF for a minimum of twelve calendar months, unless approved in writing by the Review Committee. If the position is refilled within twelve calendar months, the Classified Employee who was previously employed in that specific position shall be given the right of first refusal to return to the position, if the employee left in Good Standing.
- 3.4.2 Any Classified Employee impacted by a RIF is eligible for rehire if he/she exited employment in Good Standing.
- 3.4.3 An Classified Employee affected by a RIF who accepts a comparable benefits-eligible position within the University or any of its Affiliates (if the position is located in the same county in which the job was eliminated) is deemed to have waived eligibility for recall to the position from which the RIF occurred.

SECTION 4: SEVERANCE AGREEMENT.

- 4.1 The University may offer a severance package to a Classified Employee who is impacted by a RIF, if financially feasible. If the University offers a severance package, the University shall provide the employee forty-five days from the date of receipt to consider the terms and conditions of the agreement and to accept the severance package. Additionally, after an employee executes a severance agreement, that employee maintains the right to revoke that execution and void the severance agreement for seven days after execution. No severance benefits shall be paid to any employee that revokes execution of the severance agreement.
- 4.2 Generally, the value of the severance package should be a minimum of four weeks of pay, but no more than the Classified Employee's annual base pay. Any severance shall be paid in installments. The University may also subsidize health insurance for a predetermined period of time as determined by the Vice President for Talent and Culture or the Review Committee, as appropriate. Any severance payments shall be discontinued if the individual is rehired by the University or an Affiliate prior to the end of the severance payments.
- 4.3 Any severance agreement shall contain a statement indicating that the Classified Employee releases all claims against the University, including any claims that the employee could grieve pursuant to W. Va. Code §6C-2-1, et seq. and a statement of the employee's rights to benefits post-employment. Any severance agreement will not be effective, and severance pay shall not be paid, unless the employees agrees to the terms of and executes the severance agreement during the 45-day period.

- 4.4 Nothing in this section shall prohibit a Unit from moving forward with a RIF if a Classified Employee declines to execute a severance agreement.

SECTION 5: EXCLUSIONS.

- 5.1 This Rule and the rights, duties, and responsibilities contained herein are only applicable to the proposed elimination of positions that are held by a Full-Time Regular Classified Employee. Any position eliminations under the following circumstances are excluded from this Rule:
- 5.1.1 Temporary positions;
 - 5.1.2 Grant funded or contract positions hired on or after July 1, 2017;
 - 5.1.3 A Reduction in FTE that reduces the position by twenty percent or less but does not eliminate benefits eligibility;
 - 5.1.4 Any instance in which the University has contracted with an outside vendor for services and a Classified Employee is offered employment by that vendor with comparable wages; or
 - 5.1.5 Internal transfers or the employee accepting a position at an Affiliate.

SECTION 6: DEFINITIONS.

- 6.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1, unless the text clearly indicates a different meaning.

SECTION 7: DELEGATION.

- 7.1 The Board of Governors delegates to the Vice President for Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.

SECTION 8: AUTHORITY.

- 8.1 W. Va. Code §6C-2-1, et seq., §18B-1-6, §18B-1-2; §18B-2A-4, §18B-7-2, §18B-7-3, §18B-9A-2 and §18B-9B-1
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SECTION 9: SUPERSEDING PROVISIONS.

- 9.1 This Rule supersedes and replaces Higher Education Policy Commission (“HEPC”) Series 8 (W. Va. Code R. §§ 133-8-1 to -19), which was approved November 22, 2001 and any other Rule of the HEPC which relates to the subject matter contained within this Rule. This Rule also supersedes and replaces any internal University policy or procedure which relates to the subject matter contained within this Rule.

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS
Policy 13**

RULE ON PART-TIME CLASSIFIED EMPLOYEES

SECTION 1. GENERAL.

- 1.1. The Board of Governors of West Virginia University (the “Board”) recognizes the importance of an appropriate cadre of full-time classified and non-classified employees to fulfill the institution’s mission.
- 1.2. The Board also recognizes that significant contributions to the mission of West Virginia University and its regional campuses can be made by highly qualified staff members who may fill part-time roles for a variety of reasons.
- 1.3. This policy defines the role of part-time, temporary and casual employees at all campuses of West Virginia University, and, when appropriate, the conditions of their employment.
- 1.4. **AUTHORITY** – W. Va. Code § 18B-1-6 and § 18B-7-6. Also, HEPC Series 39, Series 8 and Series 4.
- 1.5. **Effective Date:** October 3, 2003

SECTION 2. DEFINITIONS.

- 2.1 The following terms shall have the meanings ascribed to them herein:
 - 2.1.1. “Part-Time Employee” shall mean an employee in a position created to last less than 1,040 hours during a twelve-month period. An employee in a part-time position is not eligible for benefits, but is covered under the classification program as set out in HEPC Series 8.
 - 2.1.2. “Temporary Employee” or “Temp Employee” shall mean an employee hired into a position expected to last fewer than nine months of a twelve-month period regardless of hours worked per week. A temporary or temp employee is not eligible for benefits, but is covered by the classification program as set out in HEPC Series 8.
 - 2.1.3. “Casual Employee” shall mean an employee in a position created to meet the specific operational needs at the institution for no more than 225 hours in a twelve-month period. Individuals in casual employee positions are not eligible for benefits and are not covered by the classification program as set out in HEPC Series 8.
 - 2.1.4. “Classified Employee” shall mean an employee who is covered by the classification program as set out in HEPC Series 8.

SECTION 3. LIMITATIONS ON THE HIRING OF PART-TIME EMPLOYEES.

- 3.1 West Virginia University and its regional campuses shall not hire part-time employees solely to avoid the payment of benefits, or in lieu of full-time employees.
- 3.2 Before new employees are hired for part-time or full-time summer employment, classified employees, who are employed in nine-month or ten-month positions and who meet the minimum qualifications of a position, including availability to assume and fulfill the position, will be given an opportunity to accept part-time or full-time summer employment positions.

SECTION 4. ACQUISITION OF TEMPORARY OR CASUAL EMPLOYEES.

- 4.1. In circumstances where operational need requires supplemental or substitute staff for short periods of time to accomplish specific tasks, requests for temporary or casual employees will be routed through the Mountaineer Temps Program (hereinafter "Mountaineer Temps") in the Department of Human Resources.
- 4.2. Attempts will be made to fill the staffing needs via Mountaineer Temps. If Mountaineer Temps is unable to fill the staffing need, then Mountaineer Temps will coordinate filling the position through an external vendor. No other department, division or unit may contact external vendors directly for such purpose.
- 4.3. Payment Services will audit invoices for services provided by external vendors pursuant to 4.2 above, and reject payment for invoices not bearing specific approval of the Mountaineer Temps Program.
- 4.4 The Assistant Vice President of the Department of Human Resources shall be responsible for developing procedures to implement the requirements of this Rule.

SECTION 5. REPORTING OF DATA.

- 5.1 West Virginia University will report to the Higher Education Policy Commission (the "Commission") by November 1, 2003, the number of part-time and temporary employees on each campus. Subsequent reports to the Commission will occur periodically, as requested.

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS
POLICY 26**

**EMPLOYEE DEVELOPMENT
West Virginia University and Regional Campuses**

Section 1. General.

- 1.1. Scope. -- West Virginia University and its regional campuses (each a “campus”) shall maintain programs appropriate to the needs and resources of the campus to develop the knowledge, skill, and abilities of their employees.
- 1.2. Authority. -- W.Va. Code §§18B-1-6 and 18B-7-5
- 1.3. Effective Date. – April 8, 2005

Section 2. Purposes of Training and Development.

- 2.1. Development programs should enhance the professionalism, effectiveness, and general job performance of the employee in his/her assigned duties and broaden the individual's knowledge and skills for future job assignments, where appropriate.

Section 3. Eligibility and Participation.

- 3.1. Subject to appropriate supervisory approval, any employee of West Virginia University or its regional campuses is eligible to participate in training and development programs appropriate to his/her position.

Section 4. Procedure

- 4.1 The president of each campus, or his/her designee, shall establish an employee training and development program appropriate to the needs and resources of the campus as determined by the campus in its sole discretion.
- 4.2. Each campus’s program shall include a method for identifying training and development needs taking into account campus resources.
- 4.3. The president, or his/her designee, shall establish appropriate organizational structure, procedures, standards, and criteria for the on-going operation and assessment of the employee training and development program. Each such program shall be available on a nonpartisan basis, using fair and meaningful

criteria for participation, to afford all employees appropriate opportunities to enhance their skills under the terms of the program.

- 4.4. At the discretion of each campus, a training and development program may but need not include (a) on-campus educational and training sessions developed and provided by the institution or by outside consultants, and (b) leave time and/or expense reimbursement for off-campus educational and training programs offered by third parties.
- 4.5. Each campus has the responsibility for providing financial and logistical support to operate its employee training and development program.

Recommendation: Repeal & Relocate

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS
POLICY 27**

**WORK SCHEDULING
West Virginia University and Regional Campuses**

Section 1. General

- 1.1 Scope - This rule establishes guidelines related to work scheduling for classified, non-classified, faculty equivalent and academic professional employees at institutions governed by the West Virginia University Board of Governors.
- 1.2 Authority - West Virginia Code 18B-7-5§18B-1-6 & 18B-7-9.
- 1.3 Effective Date – April 8, 2005

Section 2. Definitions

- 2.1 Flextime Work Schedules – Work schedules which do not comply with the University's normal work schedule of 7.5 hours worked per day and a 5 day work week. Flextime work schedules may include, but are not limited to, job sharing, and four-day work weeks.

Sections 3. Flextime Work Schedules

- 3.1 Each unit may establish flextime work schedules for its employees in cooperation with the respective dean or director.
 - (a.) An employee may initiate a request for a flextime schedule; the immediate supervisor must authorize or deny the request based upon the operational needs of the unit.
 - (b.) Employees on flextime schedules are required to work the proper number of hours during the week, consistent with their position full time equivalency (FTE).

Section 4. Changes to Employee Work Schedules

- 4.1 WVU is committed to maintaining reasonable continuity in working schedules and conditions for its employees. Temporary changes to an employee's work schedule not based upon strong operational need shall be discouraged.
- 4.2 Changes in employee work schedules due to operational need must be communicated directly to the affected employees. When possible the institution shall provide the employee with a fifteen (15) day notice of such changes.

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS
POLICY 29**

SALARY POLICY

Section 1. General

- 1.1 This rule delineates the procedures to be followed by the West Virginia University Board of Governors in determining annual salary increases for its employees.
- 1.2 Authority. – West Virginia Code: §18B-8-3 (2001); §18B-8-3a (2001); and §18B-9-4 (2012); Higher Education Policy Commission Salary Guidelines.
- 1.3 Effective Date. – October 5, 2001; amended November 16, 2012

Section 2. Background

In its approved Compact and Master Plan, WVU restated its commitment to a compensation program that will support the retention of quality faculty, staff and administrators so as to accomplish the institutional goals of Senate Bill 653. The realization of this plan is based upon continued increases in state support and the ability to raise tuition and fees. Continued internal reallocation, as done under Senate Bill 547, was not an option under Senate Bill 653. All salary increases needed to come from new funds. It was noted that a new classified employee schedule was being proposed.

Section 3. WVU Salary Policy

Faculty and Faculty Equivalent Personnel: At WVU, a salary pool will be created annually from new revenues generated by state resources and student fees. In FY2003, 75% of the pool will be dedicated to merit increases. In FY2004 and each year thereafter, 100% of the pool will be dedicated to merit increases. In a 100% merit system, salary increases will be tied totally to performance. The divisional campuses will follow a similar model, however, achieving 100% merit no later than FY2005, thus bringing all campuses in compliance with the Higher Education Policy Commission guidelines.

Classified Employees: The Board of Governors recognizes that WVU, including its divisional campuses, have moved classified staff who were below their respective salary on the Temporary Higher Education Classified Employee Annual Salary Schedule into full compliance on the said Schedule as defined in the West Virginia Code. As such, the Board hereby authorizes and approves implementation of a new Classified Salary Plan as contemplated in the West Virginia Code. The new Classified Salary Plan is designed as a market based structure comprised of a series of pay grades subject to adjustments as appropriate. Each pay grade is divided into a minimum, 25th percentile, midpoint, and maximum salary point as exemplified by the attached Classification Staff Compensation Structure and is subject to periodic review and may be adjusted in accordance with changes in the labor market, subject to institutional budgetary parameters. The Board hereby authorizes the President or the President's designee (i) to create procedures deemed necessary to affect this new Classified Salary Plan; and (ii) to make adjustments to the Classified Salary Plan, subject to Board approval, on a going forward basis based upon future labor market changes, institutional budgetary parameters, Higher Education Policy Commission and Board of Governors guidelines.

Non-Classified Employees: A pool of funds will be created annually on each campus and awarded totally upon performance beginning in FY2003, thus bringing each campus in compliance with the Higher Education Policy Commission guidelines.

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Note 1: Implementation strategy for faculty pay raises can be found at

<http://www.wvu.edu/~acadaff/fac/policies/performance.pdf>

Note 2: *Salary Enhancement for Academic Achievement Policy* can be found as BOG Policy 30 at

<http://www.wvu.edu/~bog/policies/policy30.pdf>

Classified Staff Compensation Structure
Effective October 1, 2012

Pay Grade	Min	25th	Midpt	Max
4	\$15,877	\$17,862	\$19,846	\$23,816
5	\$16,716	\$18,806	\$20,895	\$25,074
6	\$17,632	\$19,836	\$22,040	\$26,448
7	\$18,626	\$20,954	\$23,283	\$27,939
8	\$19,697	\$22,159	\$24,621	\$29,546
9	\$20,830	\$23,434	\$26,038	\$31,245
10	\$21,211	\$23,862	\$26,514	\$31,817
11	\$22,479	\$25,289	\$28,099	\$33,719
12	\$23,894	\$26,881	\$29,868	\$35,841
13	\$25,386	\$28,559	\$31,733	\$38,079
14	\$27,012	\$30,389	\$33,765	\$40,518
15	\$28,771	\$32,367	\$35,964	\$43,157
16	\$30,694	\$34,914	\$39,135	\$47,576
17	\$32,767	\$37,272	\$41,778	\$50,789
18	\$35,004	\$39,817	\$44,630	\$54,256
19	\$40,058	\$45,566	\$51,074	\$62,090
20	\$42,882	\$49,314	\$55,747	\$68,611
21	\$45,977	\$52,874	\$59,770	\$73,563
22	\$49,344	\$56,746	\$64,147	\$78,950
23	\$53,013	\$62,290	\$71,568	\$90,122
24	\$57,033	\$67,014	\$76,995	\$96,956
25	\$61,197	\$71,906	\$82,616	\$104,035

Classified Staff Compensation Structure (Hourly)
Effective October 1, 2012

Pay Grade	Minimum	25th Percentile	Midpoint	Maximum
4	\$8.14	\$9.16	\$10.18	\$12.21
5	\$8.57	\$9.64	\$10.72	\$12.86
6	\$9.04	\$10.17	\$11.30	\$13.56
7	\$9.55	\$10.75	\$11.94	\$14.33
8	\$10.10	\$11.36	\$12.63	\$15.15
9	\$10.68	\$12.02	\$13.35	\$16.02
10	\$10.88	\$12.24	\$13.60	\$16.32
11	\$11.53	\$12.97	\$14.41	\$17.29
12	\$12.25	\$13.79	\$15.32	\$18.38
13	\$13.02	\$14.65	\$16.27	\$19.53
14	\$13.85	\$15.58	\$17.32	\$20.78
15	\$14.75	\$16.60	\$18.44	\$22.13
16	\$15.74	\$17.90	\$20.07	\$24.40
17	\$16.80	\$19.11	\$21.42	\$26.05
18	\$17.95	\$20.42	\$22.89	\$27.82
19	\$20.54	\$23.37	\$26.19	\$31.84
20	\$21.99	\$25.29	\$28.59	\$35.19
21	\$23.58	\$27.11	\$30.65	\$37.72
22	\$25.30	\$29.10	\$32.90	\$40.49
23	\$27.19	\$31.94	\$36.70	\$46.22
24	\$29.25	\$34.37	\$39.48	\$49.72
25	\$31.38	\$36.88	\$42.37	\$53.35

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS
POLICY 50**

MEAL BREAKS

West Virginia University and Regional/Divisional Campuses

Section 1. General

- 1.1 Purpose. - To outline the circumstances under which meal breaks must be offered, and when a break requires that the employee be compensated for time worked.
- 1.2 Authority. – 29 USCS §§201 to 219 (Fair Labor Standards Act of 1938); 29 CFR 785.19; 29 CFR 785.47; W. Va. Code §12-3-13; § 21-3-10; § 21-3-10a; § 21-6-7.
- 1.3 Scope. – This policy applies to all employees of the West Virginia University Board of Governors.
- 1.4 Effective Date. – April 4, 2008
- 1.5 Revision History. – This is the first meal break policy implemented by the West Virginia University Board of Governors.

Section 2. Policy

- 2.1. During the course of a workday of six (6) or more hours, all supervisors shall allow employees to take at least a twenty (20) minute meal break. This provision shall be required in all situations where the employee is not afforded necessary breaks and/or permitted to eat lunch while working.
- 2.2. If the employee is under the age of eighteen (18), the supervisor shall require a meal break after five (5) continuous hours of work. The meal break must be at least thirty (30) minutes in duration.
- 2.3. Generally, there is not a requirement that supervisors allow employees to leave the premises or the work site for their meal break. However, supervisors shall not require or allow employees to take food or drink into areas where hazardous conditions or substances exist. In such situations, supervisors must require that meal breaks be taken elsewhere.

2.4. Compensation for Meal Breaks:

2.4.1. Meal breaks are not compensated if:

- the duration is at least thirty (30) minutes, or longer, although a shorter period may qualify under special conditions; and
- the employee is completely relieved of active and inactive duties for the purpose of eating regular meals.

2.4.2. If an employee is not excused from job duties, or if he/she is recalled to job duties, the employee is entitled to pay for compensable work, including work that is not *de minimis* in nature. (In the context of this policy, *de minimis* refers to insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes.) However, employees will not be compensated if they are simply placed on-call, or are required by their supervisor to carry a pager, radio, or cell phone during their meal breaks.

2.5. The supervisor shall schedule the meal break, in coordination with the operational needs of the University, and employees must seek approval from their supervisors if deviation from the scheduled meal break is necessary.

2.6. Meal breaks should occur at a scheduled time, or within a specified period of the day which, in light of the employee's working hours, is suitable for a normal meal break.

Section 3. Responsibility for Implementation

3.1 The employee's immediate supervisor is responsible for ensuring that the employee receives and takes meal breaks, and receives appropriate compensation, when applicable, in accordance with this policy.

Section 4. Responsibility for Interpretation

4.1 Responsibility for interpretation of this policy rests with the Vice President for the Division of Human Resources.

Recommendation: Repeal & Relocate

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS
POLICY 53**

EMERGENCY CALL-IN

Section 1. General

- 1.1 Purpose. – To establish that a regular, non-exempt employee will receive a guarantee of at least two and one-half (2.5) hours of compensation, in consideration of the inconvenience of returning to work outside of his/her regular work schedule for emergency call-in situations.
- 1.2 Authority. – W. Va. Code §18B-1-6 and §18B-2A-4; HEPC Series 4 (133 WVCSR 4); and WVU BOG Policy # 45
- 1.3 Scope. – The benefits of this policy apply to all regular, non-exempt employees of the West Virginia University Board of Governors.
- 1.4 Effective Date. – May 1, 2009
- 1.5 Revision History. – This is the first emergency call-in policy implemented by the West Virginia University Board of Governors.

Section 2. Policy

- 2.1 All regular, non-exempt employees of the West Virginia University Board of Governors who respond to a request for emergency call-in shall be guaranteed a minimum of two and one-half (2.5) hours of compensation, at the applicable rate of pay, for each occasion in which the employee responds in an emergency call-in situation, at the request of management.

Section 3. Responsibility for Interpretation

- 3.1 Responsibility for interpretation of this policy rests with the Office for Legal Affairs.

Section 4. Responsibility for Application/Development of Procedures

- 4.1 Responsibility for application of this policy and the development of procedures rests with the Division of Human Resources, in consultation with Legal Affairs. Any procedures developed by the Division of Human Resources or material changes thereto shall be posted for ten (10) working days before the procedures become effective.
- 4.2 For additional information regarding the application of this policy please refer to the **Emergency Call-In procedure** (set forth below.)

**WEST VIRGINIA UNIVERSITY
DIVISION OF HUMAN RESOURCES**

EMERGENCY CALL-IN PROCEDURE

Section 1. General

- 1.1 Purpose. - To outline the circumstances under which an eligible employee will receive a guarantee of at least two and one-half (2.5) hours of compensation, in consideration of the inconvenience of returning to work outside of his/her regular work schedule.
- 1.2 Authority. – [WVU-BOG Policy # 53 – Emergency Call-In](#)
- 1.3 Scope. – The benefits of this policy apply to all regular, non-exempt employees of the West Virginia University Board of Governors.
- 1.4 Effective Date. – May 1, 2009
- 1.5 Revision History. – This is the first emergency call-in procedure implemented by the West Virginia University Division of Human Resources.

Section 2. Definitions

- 2.1 Eligible Employee – a regular employee who is designated as non-exempt under the Fair Labor Standards Act.
- 2.2 Emergency Call-In – is when an eligible employee has left the work site, and is requested to respond, on short notice, to an emergency work situation to:
 - protect or provide emergency services to people, property, facilities or equipment;
 - mitigate unsafe situations or conditions; and/or
 - avoid significant service disruption.
- 2.2.1 An emergency call-in may involve either going into work prior to the eligible employee's scheduled shift, coming back to work after the eligible employee's scheduled shift has ended, or coming into work on a scheduled day off.
- 2.2.2 An employee who is asked to report early for his/her regular shift, or stay late after his/her regular shift is not eligible for emergency call-in

compensation, because these hours are adjacent to his/her normal working hours. However, the employee will be compensated for all hours worked in accordance with University policies and procedures.

Section 3. Procedure

- 3.1 An eligible employee, who responds to a request for emergency call-in, shall be guaranteed a minimum of two and one-half (2.5) hours of compensation, at the applicable rate of pay, for each occasion in which the eligible employee responds in an emergency call-in situation.
- 3.2 An eligible employee, who responds to a request for emergency call-in on a University recognized holiday or emergency closure, shall be guaranteed a minimum of two and one-half (2.5) hours of holiday/emergency closure premium compensation, for each occasion in which the eligible employee responds in an emergency call-in situation.
- 3.3 Management will have the option to offer compensatory time off in lieu of monetary compensation. Supervisors should note that an eligible employee must also agree to be compensated with compensatory time off, and should refer to University policies and procedures for more information.
- 3.4 Emergency call-in hours will count toward any calculations of overtime pay, in accordance with University policies and procedures.
- 3.5 Emergency call-in opportunities will be offered to qualified, eligible employees in descending order of seniority. Qualifications for emergency call-in situations include the ability to report quickly as required by the specifics of the emergency situation.
 - 3.5.1 For the purpose of this procedure, seniority will be measured by the requirements for the payment of annual increment. For more information on years of service calculations for annual increment payments please see West Virginia University Board of Governors Policy # 32.
 - 3.5.2 Subsequent emergency call-in opportunities are offered to the next senior, qualified, eligible employee.
 - 3.5.3 If the emergency call-in offer is refused by all eligible employees, the assignment will be made to the least senior eligible employee, qualified to perform the work.
 - 3.5.4 Subsequent emergency call-in opportunities will be assigned in ascending order of seniority.

- 3.5.5 If an eligible employee refuses an emergency call-in opportunity he/she will not again be eligible for consideration until all eligible employees have been offered an emergency call-in opportunity.

Section 4. Responsibility for Interpretation

- 4.1 Responsibility for interpretation of this procedure rests with the Division of Human Resources. Any procedures developed by the Division of Human Resources or material changes thereto shall be posted for ten (10) working days before the procedures become effective.

Section 5. Responsibility for Implementation

- 5.1 Management is responsible for determining when an emergency call-in situation exists. Supervisors of eligible employee's are responsible for adhering to the requirements of this procedure, completing all required documentation and ensuring that an eligible employee receives appropriate compensation for emergency call-in situations. Failure by a supervisor to comply with the requirements of this procedure may result in disciplinary action.