



West Virginia Division of Personnel

An agency under the Department of Administration

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MEMORANDUM

TO: All Cabinet Secretaries, Bureau Chiefs and Agency Heads
Human Resource Advisory Committee
Local Health Departments

FROM: Sara P. Walker, Director of Personnel *Sara P. Walker*

DATE: December 10, 2015

RE: Settlement Agreements

Agencies entering into settlement agreements with classified employees must only do so with the Division of Personnel's (DOP) review and approval. The DOP should be contacted and included in negotiations even if no back wages are paid, since the settlement must still be reviewed and approved by the DOP. Pursuant to W. Va. Code R. § 143-1-21.1, all settlements affecting classified employees must be forwarded to DOP for review and signature. This ensures that the terms of the settlement agreement comply with DOP law, rules, and policies. This also allows the DOP to maintain current and accurate personnel transaction records. The Director of the DOP must review the agreement for compliance before it can be effective.

The following guidelines apply to the review and approval of settlement agreements. These guidelines do not apply to court orders or Level 3 grievance decisions.

Grievance Mediation:

Any settlement considered at a grievance mediation or hearing should include language stating that the agreement is a preliminary document and requires the review and approval of the DOP. Sample settlement agreements may be viewed and downloaded from the DOP's web site at www.personnel.wv.gov/agencies/Pages/SettlementSamples.aspx. While the samples contain all required elements, they may not fit every situation. I recommend that the templates be used as a preliminary draft to be amended by your legal counsel to ensure it meets your needs and contains all relevant information. It is highly recommended that electronic draft versions of settlement agreements pertaining to classified employees be submitted to the DOP for review prior to obtaining signatures on the document. Please ensure all interested persons in your agencies are aware of the templates.

Discretionary Increases:

Retroactive wages will not be authorized for discretionary increases without a court order or Level 3 grievance decision.

Reallocations:

Retroactive wages will not be authorized for reallocations if a classification determination is communicated to the appointing authority by the DOP Classification and Compensation Section within sixty (60) calendar days of receipt of the signed position description form (PDF) and the agency processes the corresponding personnel transaction within the following thirty (30) calendar days. Retroactive wages may only be authorized for the period of time the process was delayed beyond this ninety (90) calendar day period.

From this date forward, "automatic reallocations" will no longer be permitted. When an employee transitions from entry level or trainee duties to full-performance resulting in a reallocation to a higher classification in a series, if there is a PDF on file for that position, the supervisor must submit with the reallocation personnel transaction a letter explaining the requested reallocation of the position. If there is no PDF on file for the position, a PDF must be submitted with the personnel transaction.

Temporary Upgrades:

DOP may authorize retroactive wages to the date an employee was assigned duties causing him or her to be eligible for a temporary upgrade as provided in the DOP Temporary Classification Upgrades policy (DOP-P13). Temporary upgrade transactions should be processed as soon as the agency becomes aware of the need for the upgrade.

The request for a temporary upgrade is made in writing to the Director of Personnel stating the reason for the upgrade and expected duration. Upon approval of the Director of Personnel, the agency may enter a WV-11 or wvOASIS ESMT(s) for the candidate. The transaction **must** be accompanied by the following documentation for DOP review:

- a record of the temporary duties to be assigned
- a memorandum signed by the employee stating the reason for the upgrade
- the expected duration of the upgrade
- pay changes for both the temporary upgrade and for reverting back to the previous classification
- DOP Application for Employment form establishing that the employee meets minimum qualifications for the upgraded classification

The temporary upgrade takes effect only after DOP has reviewed and verified all documentation.

Appointments/Promotions:

Retroactive wages will not be authorized when an individual is permitted to perform work prior to receipt of all necessary approvals to employ the individual in the position.

Should you have questions, please feel free to contact me at 558-3950, extension 57210. For assistance in developing and drafting an appropriate settlement agreement, you may contact the Employee Relations Section at 558-3950, extension 57209.