

# Frequently Asked Questions

## House Bill 2542 (Same as Senate Bill (SB) 274)

House Bill (HB) 2542, relating to higher education personnel, is currently pending in the W. Va. Legislature, subject to amendment. Given the potential impact of this bill, the Division of Human Resources has compiled a list of frequently asked questions, many of which were submitted after consultation with the WVU Classified Staff Council. While we anticipate the majority of the information below will remain consistent, the information is subject to change as the bill moves through the legislative process.

### 1. WHAT IS THE GENERAL PURPOSE OF THE BILL?

- A. The bill proposes changes that are designed to empower institutions with more authority and flexibility relating to personnel decisions on their campuses. It also will help to implement contemporary programs and practices to reward and incentivize performance and enhance employee engagement.

### 2. WHY IS THE BILL IMPORTANT TO THE FUTURE OF WEST VIRGINIA?

- A. As the State faces significant budget challenges, we have a responsibility to the citizens of West Virginia — and to our students — to explore and implement any opportunity to maximize efficiency. We also want to retain our high levels of productivity and service. Managing personnel decisions at the local, institutional level is one way to significantly reduce operating expenses at the State level, while also recognizing the important role that higher education employees will play in solving the challenges that face our State.

### 3. WHAT ARE THE BENEFITS OF MANAGING HUMAN RESOURCE FUNCTIONS AT THE LOCAL, INSTITUTIONAL LEVEL?

- A. The citizens of West Virginia are served by a number of higher education institutions that have vastly different missions and goals. Given these differences, it has

been impossible to develop a state-wide, human resource (HR) system that truly meets the needs of each institution. The flexibility granted by this bill will allow WVU to develop personnel policies and procedures that directly support the important work performed every day by our faculty and staff. In a number of areas, the bill requires consultation with our Faculty Senate and/or Classified Staff Council, which will empower our employees with the ability to express their views directly to those developing and approving these policies and procedures.

### 4. WHAT ARE SOME OF THE MAJOR COMPONENTS OF THE BILL?

- A. In addition to transitioning personnel policy development to the local, institutional level, the bill also will give WVU the authority to modernize key personnel practices related to layoffs, hiring, classification and compensation for classified staff. The overall goal is to create a human resource function that maximizes the use of our resources to attract highly qualified personnel, while also retaining and rewarding the extraordinary talent that we already have here today.

## Frequently Asked Questions

### House Bill 2542 (Same as Senate Bill (SB) 274)

#### 5. WHAT PROCESS WILL BE FOLLOWED TO DEVELOP THE NEW PERSONNEL POLICIES?

- A. Until the WVU Board of Governors (BoG) implements a policy on personnel matters, we would still following current policies and regulations. The process to develop a BoG policy already includes public comment periods, as well as review and approval by the Board. This bill further protects the voice of our employees by requiring that we develop the personnel policies in consultation with Faculty Senate and Classified Staff Council, where applicable.

#### 6. THIS BILL COVERS A NUMBER OF BROAD TOPICS, WITHOUT GIVING SPECIFIC DETAILS. HOW WILL THE DETAILS BE ESTABLISHED?

- A. Having specific details in the law makes it very difficult to respond to the changing needs of our institution. In order to be efficient, dynamic and proactive, we must have the flexibility to work on the details at the institutional level. Details regarding promotions, the process for classifications, raises, etc. would be determined after we are granted the flexibility to proceed. If the bill passes, we will work to implement new personnel policies and procedures as quickly and efficiently as possible, while consulting with Faculty Senate and Classified Staff Council, where applicable.

#### 7. WILL HR DEVELOP A NEW HANDBOOK?

- A. If the bill passes, we will consider all of the best ways to communicate new personnel policies and procedures, and updating the current Classified Employee Handbook will certainly be a part of this review.

#### 8. WILL TRAINING BE PROVIDED TO SUPERVISORS REGARDING THE NEW POLICIES AND PROCEDURES?

- A. Supervisors will be provided with information and training regarding any new personnel policies and procedures.

#### 9. DOES THE LEGISLATION AFFECT SICK AND ANNUAL LEAVE?

- A. No. HB 2542 does not impact sick and annual leave benefits. Although there has been significant discussion about paid time off (PTO) days for new employees, that legislation has not been introduced, and there is no effort to impact sick and annual leave for current WVU employees.

For example, a more modern approach to employee leave is to have a paid time off (PTO) system. However, given the additional benefits associated with our current annual/sick leave system, it may make sense to “grandfather in” our current employees, and start a PTO system for all employees hired as of July 1, 2017. Whereas, any new policies and procedures on a classification/compensation plan would need to be applied to all employees across the board.

## Frequently Asked Questions

# House Bill 2542 (Same as Senate Bill (SB) 274)

### 10. WHAT PROTECTIONS STILL REMAIN FOR THE CLASSIFIED STAFF?

**A.** Classified employees are not at-will employees, and this bill does not change that fact. Classified employees will remain State employees and will continue to have all rights associated with the public employees' grievance procedure. The bill continues the establishment and recognition of the Classified Staff Council, and the right to have a classified employee as a member of the WVU Board of Governors

The bill has language regarding the use of performance reviews, and WVU will continue to use the progressive discipline process as appropriate. Furthermore, this bill does not impact any of the protections afforded to employees by various laws such as Title VII of the Civil Rights Act of 1964 (Title VII); Age Discrimination in Employment Act of 1967 (ADEA); Title I of the Americans with Disabilities Act of 1990 (ADA); the West Virginia Human Rights Act, etc.

In addition, it should be noted that this bill requires that the new WVU BoG policy shall provide for an external review of human resource practices at least once every five (5) years, and that this external review shall include an opportunity for Classified Staff Council to speak to the external auditors.

### 11. HOW WILL THE BILL CHANGE THE DEFINITIONS FOR “CLASSIFIED EMPLOYEE” AND “NON-CLASSIFIED EMPLOYEE”?

**A.** Here are the new definitions from the bill:

**/** “Classified employee” or “employee” means a regular full-time or regular part-time employee of an organization who: (i) does not meet the duties test for exempt status under the provisions of the Fair Labor Standards Act; and (ii) is not otherwise a nonclassi-

fied employee designated pursuant to subdivision (11) of this section: Provided, That any employee of an organization who was a classified employee as of January 1, 2017, retains that status unless otherwise deemed a nonclassified employee pursuant to the provisions of subparts (A) through (D) of subdivision (11) of this section.

- /** “Nonclassified employee” means, an employee of an organization who meets one or more of the following criteria:
- (A) Holds a direct policy-making position at the department or organization level;
  - (B) Reports directly to the president or chief executive officer of the organization;
  - (C) 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;
  - (D) Is in an information technology-related position;
  - (E) 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
  - (F) Was in a nonclassified position as of January 1, 2017.
- /** Unless otherwise established by action of the institution where employed, a nonclassified employee serves at the will and pleasure of the organization, which authority may be delegated by act of the board.

### 12. WILL THE BILL CHANGE OUR LONGEVITY PAY?

**A.** This bill does not change the law that establishes the rules for annual increment (longevity) pay.

## Frequently Asked Questions

### House Bill 2542 (Same as Senate Bill (SB) 274)

#### 13. WILL THIS BILL MAKE ANY CHANGES TO THE EFFORT TO MOVE TO TWENTY-SIX (26) PAYS?

- A. The wvOASIS system contemplates that all state employees, including from WVU, will move to 26 pays a year. This legislation has no impact on that issue.

#### 14. WILL THIS BILL REQUIRE UPDATES TO ALL POSITION INFORMATION QUESTIONNAIRES (PIQS)?

- A. The bill requires that any new institutional rule establish an objective standard to be used in determining when a job description or a position description is up-to-date.

#### 15. WHY IS IT IMPORTANT TO CHANGE THE CURRENT PRACTICES RELATED TO CLASSIFIED STAFF LAYOFFS?

- A. Under the current law, seniority is the sole determining factor that must be used in the event of a layoff of a member of the Classified Staff. If layoffs were to occur, we would be required to initiate a practice commonly referred to as bumping. The bumping process would create a domino effect of employee displacement throughout the Classified Staff, which would negatively impact employee morale and productivity.

Historically, we have absorbed additional costs by retaining displaced individuals in order to avoid this situation. However, State funding for higher education institutions continues to decrease year by year, which forces all of the institutions in the State to rely more heavily on tuition increases and external funds. Given this reality, we can no longer continue to absorb the costs associated with the loss of funding or the need to reorganize to maximize the use of our limited resources.

This bill does not remove seniority from the determination for classified staff layoffs, but rather makes

it one of a number of factors which would now also include documented quality of work performance, skills and other factors. While the bill does eliminate the bumping process, it gives institutions the authority to consider the feasibility of offering a severance package in the event of a layoff of a more senior employee.

#### 16. CAN AN EMPLOYEE REQUEST A SEVERANCE PACKAGE?

- A. Generally, severance packages will be a part of the consideration of a layoff situation. So, employees not impacted by layoffs will not be able to request a severance package.

#### 17. HOW WILL THIS BILL CHANGE CLASSIFIED STAFF HIRING?

- A. Although the internal hiring preference for non-exempt classified employees is eliminated, WVU will continue its efforts to recruit and hire the most qualified person for any hiring.

#### 18. WILL THIS BILL CHANGE THE STRUCTURE OF HUMAN RESOURCES?

- A. Across the University, the human resources function reports to the Vice President for Talent and Culture. We will continue to have a central HR office, with HR partners located throughout the University.

#### 19. HOW WILL THIS BILL IMPACT HOLIDAYS AND WILL WE FOLLOW THE STATE HOLIDAY SCHEDULE?

- A. The law that establishes State holidays is not covered in this bill. However, many years ago the institutions of higher education were given the flexibility to establish an alternative holiday schedule in order to meet the operational needs of an academic environment.

## Frequently Asked Questions

### House Bill 2542 (Same as Senate Bill (SB) 274)

#### 20. WILL THE INSTITUTION CONTINUE TO PAY OVERTIME AND COMPENSATORY TIME OFF (CTO)?

- A. The rules regarding overtime and CTO are covered by the Fair Labor Standards Act. This bill does not make any changes to these provisions.

#### 21. IS THE UNIVERSITY STILL CONSIDERING A FORTY (40) HOUR WORK WEEK?

- A. This is an on-going project and consideration. The University needs to work on the implementation of twenty-six (26) pays before we can consider moving to a forty (40) hour work week.

#### 22. WILL WVU CONTINUE TO RECEIVE ANY FINANCIAL SUPPORT FROM THE STATE?

- A. It is our hope that the Legislature will continue to see the value in financially supporting our University, and we fully expect to receive some funding from the State.

#### 23. HOW CAN WE KEEP UP-TO-DATE REGARDING THE DEVELOPMENT AND IMPLEMENTATION OF THIS BILL?

- A. We will continue to update employees as the bill progresses through the legislative process. If passed, the University will communicate frequently to share the various steps of the implementation process.

#### 24. WILL THIS BILL BE USED TO TARGET OLDER EMPLOYEES AND FORCE RETIREMENT? IS THE INSTITUTION CONCERNED ABOUT SUPERVISORS DISCRIMINATING AGAINST EMPLOYEES DUE TO THEIR AGE?

- A. No, the bill will not be used to target older employees and force retirement. Seniority has not been removed from the determination for layoffs, the bill just allows the University to also consider documented quality of work performance, skills, discipline and other factors. Decisions regarding layoffs will not be made by supervisors independently. Any discussions regarding job eliminations will be reviewed by Human Resources, Legal Affairs and senior administrators. This review will include all of the employee protections provided by federal and state laws, including but not limited to age discrimination.

#### 25. WILL THIS BILL AFFECT OUR RETIREMENT AND THE TIME WE HAVE ACCRUED? FOR LONG-TERM EMPLOYEES WHO HAVE BANKED SICK LEAVE, WILL WE STILL BE ABLE TO PURCHASE INSURANCE UPON RETIREMENT?

- A. No, this bill does not impact retirement or leave accruals for current employees. Current employees who are eligible for the sick leave conversion benefit will still be able to use accrued sick leave at retirement.

## Frequently Asked Questions

### House Bill 2542 (Same as Senate Bill (SB) 274)

#### 26. WHAT ACTIONS WILL THE UNIVERSITY TAKE TO BETTER TRAIN SUPERVISORS? HOW WILL THESE NEW SKILL SETS BE MONITORED? WHAT ACTIONS WILL THE UNIVERSITY TAKE IF THERE IS AN UNQUALIFIED SUPERVISOR IN PLACE?

- A. The University has already undertaken steps to enhance our supervisor training, and will continue to look for ways to improve these programs. Supervisors are also subject to performance evaluations. If it is determined that a supervisor is not doing his/her job, the University will define the expectations, provide training when appropriate, or remove the person from the supervisory role if necessary.

#### 27. WHAT SHOULD AN EMPLOYEE DO IF HE/SHE HAS CONCERNS ABOUT HIS/HER SUPERVISOR'S PERFORMANCE?

- A. If an employee has specific concerns about his/her supervisor's performance, he/she can contact Employee Relations.

#### 28. WHAT ACTIONS WILL THE UNIVERSITY TAKE TO MAKE PERFORMANCE EVALUATIONS FAIR AND PURPOSEFUL?

- A. Last year, Human Resources (HR) implemented improvements to the performance management process, which included additional training for supervisors. HR is currently reviewing the form and the process in preparation for the upcoming review cycle.

#### 29. WILL CURRENT CLASSIFIED EMPLOYEES BE RECLASSIFIED UNDER THE NEW SYSTEM TO A LOWER PAY GRADE?

- A. If the bill passes, the University will have the flexibility to modernize our classification/compensation practices. While it is premature to discuss the specifics of any new classification/compensation plan, the bill does require consultation with Classified Staff Council regarding the development of any new classification/compensation policies.

#### 30. ARE FEAP POSITIONS INCLUDED IN THE 25% NON-CLASSIFIED POSITION LIMIT?

- A. No, FE/APS are not included in the 25% ratio for non-classified positions.

#### 31. WOULD AN EXISTING EMPLOYEE WHO TRANSFERS TO A NEW POSITION WITHIN THE WVU SYSTEM BE CONSIDERED A "NEW HIRE" AND BE SUBJECT TO THESE CHANGES?

- A. Any moves from classified to non-classified roles for existing employees would be handled the same way as they are today. Current practices would apply, and they would not be considered "new hires."

#### 32. WOULD EDUCATION TAKE PRECEDENCE OVER EXPERIENCE?

- A. No, attainment of a degree does not necessarily translate into superior performance. With this bill, the University will now have the ability to consider the performance of the hard-working individual who is doing a great job, along with other factors, such as seniority, skills and discipline.

## Frequently Asked Questions

### House Bill 2542 (Same as Senate Bill (SB) 274)

#### **33. HOW CAN THE UNIVERSITY ASSURE NEWLY HIRED NON-CLASSIFIED EMPLOYEES OF A REASONABLE WORKLOAD?**

- A.** The University strives to create a positive work environment, which includes a reasonable work/life balance. This is necessary for us to attract and retain top talent.

#### **34. HAS THE INSTITUTION CONSIDERED OTHER CHANGES TO HELP WITH THE BUDGET CRISIS? COULD THE UNIVERSITY GO TO A FOUR-DAY WORK WEEK?**

- A.** Yes, the University has reviewed and implemented a number of ideas to help with budget concerns, such as reducing travel, reducing utility expenses, carefully reviewing vacancies before they are filled, etc. Given the needs of the students, as well as the other services and programs on campus, it would be difficult to implement a four-day work week.

#### **35. IF THE UNIVERSITY IS ELIMINATING THE CLASSIFIED/NON-CLASSIFIED RATIO, WHAT MEASURES WILL THE INSTITUTION TAKE TO NOT BECOME TOO TOP HEAVY WITH MANAGERS? WE HAVE TOO MANY IN LEADERSHIP/MANAGER ROLES NOW AND NEED MORE WORKERS.**

- A.** The University has already started the process of re-viewing the supervisor hierarchy. In many instances, the restrictive rules of the classification and compensation system made it very difficult to reward and retain high performing workers, and adding leadership

responsibilities was the only way to work within that system. The flexibility to manage the classification and compensation system at the institutional level will allow the University to resolve many of the issues created by the restrictive rules of the past.

#### **36. IS THE UNIVERSITY CONSIDERING CONTRACTING SERVICES?**

- A.** Yes, the University continues to review any opportunities to streamline operations and reduce costs, where appropriate.

#### **37. WILL THERE BE LAYOFFS OR FURLOUGHS? IF THERE ARE, WHAT FACTORS WILL THE UNIVERSITY USE TO MAKE THOSE DECISIONS?**

- A.** This bill would allow the University to develop a WVU Board of Governors' policy to establish the process for layoffs at our institution, in consultation with Classified Staff Council. The factors used to determine layoffs will include seniority, documented quality of work performance, skills, discipline and other considerations. If layoffs become necessary in the future the WVU Board of Governors' policy will guide the University through the layoff process.