

**ARTICLE 151**  
**Employment Provisions**

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**CROSS REFERENCES**

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Reimbursement of employment applicant - see W.Va. Code 8-12-5(53)  
Employee benefit fund - see W.Va. Code 8-12-5(55)  
Insurance and indemnification - see W.Va. Code 8-12-7 et seq.  
Retirement benefits - see W.Va. Code Art. 8-22

**151.01 AT-WILL EMPLOYMENT.**

The Town of Nutter Fort is an “at-will employment” employer. Employees may be terminated at any time for any reason or no reason at all at the discretion of the Mayor and on the approval of Town Council. Employees are considered employees at will.

**151.02 EQUAL OPPORTUNITY EMPLOYER.**

The Town of Nutter Fort is an equal opportunity employer. The Town does not discriminate in employment hiring, policies or practices on the basis of creed, color, race, religion, ancestry, marital status, national origin, age, sex, sexual preference, disability, or political affiliation.

**151.03 RECRUITMENT, HIRING AND EMPLOYMENT.**

(a) Applications. Employment applications will be accepted at Town Hall. Applications received at times other than when direct solicitations are made for a particular position, will be kept on file in the office of city clerk for a period of six months to be accessed by any Town department seeking an employee. Placement of a completed application in the clerk's file will not constitute application for any specifically advertised position and will not require further action by any elected official or Town administrative person.

(b) Notice of vacancies. All vacancies in Town will be announced in the following manner: Advertisement in local newspaper.

(c) Ethics and Employment. No person will be employed by the Town when that employment would result in a violation of the ethics in government provisions. Any such appointment may be voided by the Town Council if not done voluntarily by the hiring department.

No hiring authority may appoint or vote for the appointment of his/her father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law to any position within the same department.

No person will be hired to any position within a department when that individual's spouse is already serving in any position within the same department, as an employee of the Town.

No person will be hired if such hiring would result in a direct or indirect supervision conflict due to a relationship between the prospective employee and a supervisor which falls within any relationships described.

(d) Employment Testing. Test for job applicants will be limited to skills or performance testing, to determine the level of competence or ability to perform certain tasks associated with the job being sought. An applicant will be disqualified from consideration for employment in a position if he or she does not meet the job qualifications for that position.

For employees required to drive or operate equipment, which requires a driver's license, driving records and license validity will be checked.

(e) Verification of Work Eligibility. The employing department is responsible for verifying the applicant's employment experience, education, and skills before extending a job offer to the applicant.

By federal law, each new employee must, within the first three days of employment, complete and sign an INS form I-9, and show proof of identity and eligibility. The new applicant must have also completed a W-4 form, insurance forms, insurance information about dependents, the employee acknowledgement from Employee Handbook and any other necessary employee benefit forms.

If the applicant knowingly makes a false statement on the application form; cannot legally hold the position; offers money, service, or anything of value to win favor during the application process he or she may be disqualified. Finally, if the prospective employees do not meet the physical requirements when tested, or has not provided proof of citizenship or legal work status within the first three days of employment, they may be disqualified.

If the applicant knowingly makes a false statement on the application form; cannot legally hold the position; offers money, service, or anything of value to win favor during the application process he or she may be disqualified. Finally, if the prospective employees do not meet the physical requirements when tested, or has not provided proof of citizenship or legal work status within the first three days of employment, they may be disqualified.

(f) **Orientation.** The Town administrator's office provides general orientation about Town and the benefits of employment. Each employee will receive a copy of the Employee Handbook and any applicable workplace rules. It is the responsibility of the employee to read and gain an understanding of the handbook and work rules. The employee will acknowledge receipt of the handbook; periodic updates will also be acknowledged.

In most cases, actual job duty orientation and training will be given within the specific department he or she will work.

(g) **Physical Qualifications.** Certain jobs require physical skills. An employee may be required to have a physical examination during the course of employment if the Town Council has determined that one is needed. If an employee becomes unable to perform his/her normal duties due to a non work-related injury, he/she will be placed on sick leave until his/her return to active duty. If no sick leave has been accumulated by the employee, he/she shall receive no pay until returning to active duty.

(Passed 5-11-2010)

#### **151.04 PUBLIC EMPLOYEE CONDUCT.**

Employees of the Town are public employees and have a duty to conduct themselves politely to the public. Caustic, demeaning or abusive language or conduct will not be permitted.

#### **151.05 PROBATIONARY PERIOD.**

All newly hired employees automatically serve a six (6) month probationary period; however, a supervisor may, for just cause, extend the original probationary period by three (3) additional months with the permission of the Mayor and Town Council. The probationary period is not to exceed nine (9) months. If at any time during the probationary period the probationer's performance is unsatisfactory, he/she will be terminated.

Police Department personnel are required to serve their full one (1) year probationary period as stated under the Civil Service Code.

#### **151.06 POSITION TYPES.**

There shall be two types of positions:

(a) **Permanent, Full time** - work week equal to 40 hours per week or equal to or exceeding 2080 hours per year.

(b) **Temporary, Part-time** - work week less than 40 hours per week. All part-time positions are considered temporary.

**151.07 PAYMENT OF SALARIES AND WAGES.**

All employees shall be paid bi-weekly. The pay period shall end every two weeks on Sunday at midnight. Paychecks shall be made available the following Wednesday at 3:00 PM unless the payroll office notifies the supervisors and/or employees that checks may be distributed earlier.

The scheduled pay dates for all employees may be changed by the Mayor and/or Town Council.

Employees shall be compensated only for designated work periods. Clocking in early and/or clocking out late shall not result in overtime compensation and should be avoided unless scheduled by the supervisor.

Employees who have been laid off, discharged, retired or separated from employment with the Town will be compensated by check for any unused vacation time earned and accumulated at the time of separation.

A shift differential, originally adopted by the Council of the Town of Nutter Fort on April 15, 2003, and effective April 21, 2003, has been established as an incentive for those police officers assigned to shifts other than day shift. The increase in pay will occur at the following rates:

- \$0.25 per hour for the 4-12 shift.
- \$0.50 per hour for the 12-8 shift.

The shift differential will not be paid for overtime shifts.

(Passed 2-27-07, Orig. passed 7-25-06)

Part-time temporary wages shall increase by the same amount and at the same time as the federal minimum wage.

(Passed 2-12-08)

**151.08 PAYROLL DEDUCTIONS.**

The payroll office makes several deductions from an employee's bi-weekly paycheck. Some deductions are required by State or Federal laws. Other deductions, at the request of the individual employee, are taken out upon approval by the Mayor or his/her designee and availability of space in the software program.

(a) Deductions required by state and federal laws include:

- (1) Federal income tax withheld
- (2) State income tax withheld
- (3) Social Security Payroll tax
- (4) Medicare Payroll tax
- (5) West Virginia Public Employees Retirement Fund Contributions
- (6) Wage garnishments and child support payments as required by law

(b) Deductions taken out at the request of the employee and with the approval of the Mayor:

- (1) Life insurance
- (2) Health insurance
- (3) Deferred compensation plan contributions
- (4) Harrison County Federal Credit Union loans or savings deposits
- (5) Other types of withholdings as authorized through payroll deduction

**151.09 SUBSTANCE ABUSE.**

Employees who use, or are under the influence of drugs and/or alcohol at work or on the Town's premises present a hazard to themselves and other employees. In addition to the potential criminal consequences of their conduct, these employees reduce productivity and hurt morale. Therefore, the following policy shall be enforced:

(a) The use, sale, attempt to sell, possession or distribution of illegal drugs, alcohol, or controlled substances (unless prescribed by a licensed physician for medical reasons), and the paraphernalia associated with such, on Town premises or while on Town business is prohibited and shall result in discharge.

(b) If an employee appears to be under the influence of drugs or alcohol, the Town will require that employee to take a medical test, at the Town's expense and at an independent testing facility, to determine alcohol and/or drug levels. If the employee refuses to take the test, the Town may impose discipline up to and including discharge.

(c) Employees testing positive for illegal drugs, alcohol, or controlled substances while at work will be subject to disciplinary action, including discharge.

(d) If an employee is required to take a legal drug for medical reasons, and that drug may impair the employee's ability to safely perform his or her job duties, then the employee will be required to advise the supervisor of that fact prior to commencing work and provide an appropriate doctor's note.

The supervisor may do an evaluation to assess the employee's fitness for performing all work duties safely.

(e) Employees consent to and recognize the right of the Town and its authorized agents to search them, their automobiles and other property, when entering or leaving Town property. The Town may conduct random drug and/or alcohol testing of employees.

(f) Definitions:

(1) Illegal drugs include:

- A. Drugs that are not legally obtainable; or
- B. Drugs that are only obtainable with a physician's prescription, but are acquired or used when the individual is not under a physician's care or direction

(2) Legal drugs include:

- A. Alcohol
- B. Drugs prescribed by a physician
- C. All other legally obtainable drugs which impair an individual's physical state or mental awareness.

Employees who enter a Town approved substance abuse center on their own accord shall be permitted to take an uncompensated leave of absence for program attendance as long as the individual abstains from the use of the problem substance. Employees attending such a center shall be permitted to return to their job, provided they refrain from using the problem substance.

The employee may use earned sick leave for time off to attend such a facility after all vacation leave and compensatory time has been utilized. If attendance at a Town approved program requires more time than the employee has in accumulated leave and compensatory time, the employee shall be uncompensated for the remainder of his/her absence. The employee shall continue to accrue vacation and sick leave while attending an approved treatment center.

The Town shall only provide rehabilitation treatment support for employees who approach the Mayor prior to the inception of any disciplinary measures which would result in the employee's termination. The Town shall only assist an employee for one (1) treatment program. Employees who find themselves in need of a substance abuse treatment program on an additional occasion shall participate without any financial assistance from the Town. This policy is subject to change at the will and pleasure of the Town Officials.

A written record on all discussions, decisions and actions will be kept in the employee's personnel file.

#### **151.10 SEXUAL HARASSMENT.**

The Town of Nutter Fort believes that all employees have the right to be treated with equal dignity in the work place. Town Officials recognize that a hostile work environment reduces the effectiveness of business operations and usually results in lower productivity. The Town considers the respectful treatment of all employees to include the absence of sexual harassment from the work place. These realizations provide the basis for the Town's policy against sexual harassment in the daily operations of the Town.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made, either explicitly or implicitly, a term or a condition of an individual's employment or successful score on a performance evaluation;
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment affecting such individuals; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with all individual's work performance or creating an intimidating, hostile or offensive working environment.

Town employees and Officials are prohibited from engaging in any of the conduct described above.

The Town's continuing policy is to provide employees with a work place free from any form of sexual harassment. Sexual harassment in any manner or form is expressly prohibited.

All claims of sexual harassment shall be promptly and thoroughly investigated and corrective action taken if warranted by the results of the investigation. Such action may include disciplinary measures up to and including immediate discharge.

Any employee who feels that he/she has been subjected to sexual harassment by his/her supervisor, fellow employees, citizens, and/or guests of the Town, should report the incident in writing to his/her immediate supervisor or the Mayor directly. If the complaint involves the supervisor, the incident shall be reported to the Mayor. If the complaint involves the Mayor, the complaint should be reported to Council.

Investigations shall be designed to protect the reasonable privacy interests of all parties involved. Appropriate disciplinary and corrective actions shall be taken, dependent upon the circumstances. A written record on all discussions, decisions and actions will be kept in the employee's personnel file.

#### **151.11 ADA GRIEVANCES.**

The following guidelines are established for dealing with complaints arising under the Americans with Disabilities Act of 1990.

Any employee or visitor of the Town of Nutter Fort granted rights under the Americans with Disabilities Act may file a grievance or complaint with the Town of Nutter Fort at any time without fear of penalty or retribution. The Town has instituted the following procedural guidelines for the filing of grievances in regard to the Town of Nutter Fort's compliance with the Americans with Disabilities Act. The Town Treasurer shall serve as the Town of Nutter Fort's ADA compliance officer.

- (a) Step 1. The grievant must file a complaint in writing to the Town of Nutter Fort's ADA compliance officer. This staff member shall investigate the complaint and render a decision in writing within fifteen (15) working days of the filing of the complaint. A copy of this outcome shall be mailed to the grievant.
- (b) Step 2. If the grievant is not satisfied with the decision of the Town's ADA compliance officer, the grievant may file a written complaint with the Mayor. The Mayor shall investigate the complaint and render a decision within fifteen (15) working days. The decision shall be made in writing if requested by the grievant. The decision of the Mayor is final.
- (c) Step 3. If the grievant is not satisfied with the decision of the Mayor, the grievant may file a written complaint with the Department of Justice's Coordination and Review Section of the Civil Rights Division. A complaint must be filed within 180 days of the alleged ADA violation.

Coordination and Review Section,  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 6618  
Washington, D.C. 20035-6118

**151.12 GRIEVANCE PROCEDURES.**

Grievances shall be reported and managed in the following manner:

- (a) Supervisor. In order to minimize the possibility of misunderstandings, an employee is required to discuss any problems or complaints with his/her immediate supervisor within five (5) days of the occurrence of the problem creating the grievance. The supervisor will investigate and obtain all pertinent information and provide a solution or explanation and reason for the decision to the employee. A written record on all discussions, decisions and actions will be kept in the employee's personnel file.
- (b) Mayor. If the employee is not satisfied with the answer in Step 1, he/she may submit the grievance in writing to the Mayor and request a meeting of the employee, the supervisor and the Mayor within five (5) working days after the grievance is received. The Mayor and supervisor will review all facts involved in the grievance and the Mayor will reply in writing within five (5) working days.
- (c) Council. If an employee is not satisfied in Step 2, he/she may bring the same grievance in writing with the written reply of the Mayor enclosed to the attention of the Town Council. Council will investigate, coordinate, and review all facts involved with the supervisor and Mayor and send the employee a written reply to the grievance within five (5) days after receipt of the grievance. An employee has the right to appeal any decision to the Circuit Court.

**151.13 DISCIPLINARY ACTION POLICY.**

In order to assure fair and equitable treatment of all employees of the Town of Nutter Fort, it may become necessary to impose disciplinary action to safeguard fellow employees and uphold Town policies. The Town has the duty and responsibility to take disciplinary action against employees who violate Federal, State, and Town laws as well as Town policies, rules, and procedures or when it is in the best interest of the Town.

A supervisor shall have the right to discipline for just cause. Disciplinary action shall be taken immediately whenever the conduct of any employee interferes with the operation of the unit or department.

The Police and Fire Departments have separate rules and regulations pertaining to Disciplinary Action Policies.

If any employee has been placed on probation, suspended, or discharged and the employee believes that they have been dealt with unjustly, the employee must begin the steps to file a grievance within five (5) days of notification of the disciplinary action to be taken.

**151.14 JURY DUTY.**

Employees who are called to serve on jury duty will be allowed paid leave for those times during the workday in which they are required to report for service.

**151.15 SEATBELTS.**

All persons who are either operating a city vehicle, or are passengers in a city vehicle owned by the Town of Nutter Fort must wear a seatbelt.



**151.16 CONFERENCES, SCHOOLS, WORKSHOPS AND SEMINARS.**

The Mayor or supervisor may approve attendance at programs which may benefit the Town by furthering the efficiency, training, expertise or knowledge in their jobs with the Town.

(a) Travel - Expenses must get prior approval by the Supervisor and be certified by the Mayor. Necessary costs for which an employee may be reimbursed include the following: public transportation, private transportation excluding spouses, and taxi, or bus service.

If a personal vehicle is used, you will be reimbursed at the same rate used by Harrison County and the State of West Virginia in connection with Town business. Additionally, the cost for toll bridges, turnpike charges and parking will be reimbursed when receipts are submitted to the Treasurer. If a Town owned vehicle is used, reimbursement is for gasoline instead of mileage when gasoline receipts are submitted to the Treasurer. Under no circumstances may unauthorized persons ride in a Town vehicle without the approval of the Supervisor or Mayor.

(b) Lodging - Reimbursement will be made for the cost of your room. Prior approval by the Mayor is necessary before reservations are made. Reimbursement will not cover extra charges, such as long distance phone calls not related to Town business, lodging and food for spouses, valet or laundry service, or pay TV.

(c) Meals - Meals for the employee only will be reimbursed. A receipt for all expenses must be submitted to the Treasurer within ten (10) days for reimbursement.

**151.17 SMOKING.**

No person shall smoke or carry a lighted cigarette, cigar or pipe in any building owned or operated by the Town of Nutter Fort.

**151.18 INCLEMENT WEATHER OR UNIQUE SITUATIONS.**

The Mayor shall have the authority to close the Town municipal building and/or other Town department offices on days when, in the Mayor's opinion, inclement weather or unique situations create a need for changing normal patterns of operation. The determination of such a situation shall always be at the discretion of the Mayor or his/her designee and shall never be up to the employee for determination. Employees with workstations in buildings which are closed shall not attend work unless the employee is classified as an essential employee. Essential employees shall include police officers and maintenance workers.

**151.19 SEVERABILITY.**

The Provisions of this Ordinance are severable, and if any provision or part thereof shall be declared invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this Ordinance.

**151.20 HEALTH INSURANCE.**

After one (1) year of full-time employment, the Town of Nutter Fort provides and pays for a hospitalization policy. During the first twelve (12) months of insurance coverage the employee must pay 30% of the cost of the premium which is automatically withheld from his/her paycheck.

All employees having Health Insurance coverage will be mandated to comply with all premium discounts offered by PEIA. If compliance is not met, the employee will be responsible for these charges, and they will be automatically deducted from their first paycheck of the month.

Effective October 25, 2011, any new employee from this date forth who uses tobacco products will be responsible for any additional charges as stated in the most current PEIA Shopper's Guide. Depending on the coverage the employee has, charges may be for either Single or Family coverage. These charges will be automatically deducted from the employee's first paycheck of the month.  
(Passed October 25, 2011)

### **151.205 PAYMENT IN LIEU OF HEALTH INSURANCE.**

Effective November 1, 2009, employees have the option of opting out of a portion of the health insurance program or opting out entirely. The two (2) methods by which an employee may elect to opt out of the program are as follows:

(a) **OPTION I:** An employee may elect to drop his/her insurance coverage with the Town of Nutter Fort entirely. If an employee has family or single coverage and also has health insurance by another private major medical health insurance provider, he/she can elect to opt out of the Town's insurance coverage and will receive a monthly incentive of \$250.00 divided equally between the first and second paycheck of each month, less payroll deductions. In order to qualify for this program, the employee must provide a certificate of insurance stating that he/she has other private major medical health insurance coverage. Medical cards offered through state agencies such as the Department of Human Services will not qualify an employee for this program. If at any time the employee loses his/her other coverage, he/she will be required to notify the payroll department in writing within thirty (30) days, and renew at least single coverage with the Town.

(b) **OPTION II:** An employee eligible for family coverage may elect to reduce his/her insurance coverage from family to single. Employees who select this option will receive a monthly incentive of \$150.00 divided equally between the first and second paycheck of the month. The employee will remain eligible to receive this monthly incentive bonus as long as he/she continues to qualify for family coverage. Therefore, if at any time the employee's family status changes, i.e. death, divorce or children reaching the maximum age, he/she would be required to notify the Town that he/she is no longer eligible for family coverage and would therefore lose this monthly incentive. Employees may elect Option II at this time and later may elect to opt out of the insurance program entirely and receive the additional \$100.00 if he/she meets the qualifications as outlined in Option I.

If an employee participating in the optional insurance program loses eligibility for any reason and fails to notify the payroll department, he/she will be required to refund any payments received while ineligible. This program may be amended or terminated at the discretion of Council.

An employee who elects to return to the Town's program for single or family coverage will be required to meet the eligibility requirements in effect at that time.  
(Passed 3-10-2010)

**151.21 LIFE INSURANCE.**

After one year of employment, the Town of Nutter Fort provides and pays for a group life insurance policy for all permanent, full-time employees, in the amount of \$10,000.00. Throughout the first year of employment, the employee must pay 30% of the premium.

Optional and dependent life insurances are available under this policy. This additional insurance is the employee's responsibility and will be a payroll deduction.

**151.22 PENSION.**

The West Virginia State Code, currently known as Section 13, Article 16, Chapter 5, the Public Employees Retirement Act, or "PERS" is hereby adopted by reference as though it were copied herein fully.

Any additions, changes or adaptations to said Code, further incorporated by the State of West Virginia, shall be incorporated by the Town of Nutter Fort accordingly.

This Ordinance shall take effect and be in force from and after its passage.  
(Orig. passed 2-14-06; 7-25-06)

**151.23 HOLIDAYS.**

Permanent, full-time employees are entitled to the following paid holidays. If a holiday would fall on either Saturday or Sunday, the holiday would be taken on either Friday or Monday.

Paid holidays are as follows:

New Year's Day	Columbus Day
Martin Luther King Jr. Day	Veteran's Day
Lincoln's Birthday	Thanksgiving Day
President's Day	Day after Thanksgiving
Memorial Day	Last working day before Christmas
West Virginia Day	Christmas Day
Independence Day	Any state, national or other election
Labor Day	day.

**151.24 VACATION.**

Permanent, full-time employees are eligible for the following vacation benefits:

- (a) Five (5) paid vacation days after the completion of six months of continuous service.
- (b) Ten (10) paid vacation days after the completion of one year of continuous service.
  - (1) Any employee existing as of the effective date of this Ordinance 151.24 shall be eligible for twelve (12) paid vacation days after the completion of two years of continuous service.
- (c) Fifteen (15) paid vacation days after the completion of five years of continuous service.
- (d) Twenty (20) paid vacation days after the completion of ten years of continuous service.
- (e) Twenty-five (25) paid vacation days after the completion of twenty years of continuous service.
- (f) Thirty (30) paid vacation days after the completion of thirty years of continuous service.

Permanent, full-time employees are eligible to use their vacation after six months of employment with the Town. Vacation days must either be taken by the end of the calendar year for which they are earned or may be purchased by the Town in accordance with this ordinance. Vacation days will not be carried over unless special circumstances warrant approval by the Mayor. Carried-over vacation days must be taken within the next calendar year.

Unused vacation days at end of calendar year

Employees who have vacation time remaining at the end of a calendar year shall be compensated by check for the unused time.

Unused vacation days at time of termination

Employees who have been laid off, discharged, retired or separated from employment with the Town will be compensated by check for any unused vacation time earned and accumulated at the time of separation.

Vacation policy – Maintenance Department

Prior to April 1<sup>st</sup>, vacations will be scheduled on the basis of seniority. After this date, scheduling will be on a “first come first serve” basis.

(Passed 2-12-08)

For all vacation time to be taken, a written 48 hour notice will be required and must be approved by the Maintenance Supervisor. Vacation may be denied in an emergency.

This ordinance shall be in effect as of December 1, 2007.

(Passed 12-11-07)

**151.25 OVERTIME COMPENSATION.**

Compensation time for permanent, full-time employees for overtime hours worked shall be made in cash or by giving the employee compensatory time off. Overtime compensation shall be given to employees who work more than forty (40) hours in the work week.

Overtime compensation for permanent, full-time employees shall be granted based on (1½) hours compensation for each one (1) hour worked. Each employee shall have the option to receive either a cash payment equal to one and one half times the employee's gross hourly rate or compensatory time equal to one and one half hours off for each one hour worked. Compensatory time off for all employees will be made by an agreement between the employee and the supervisor and will be on a voluntary basis.

Employees shall not work overtime without prior approval from their supervisor or the supervisor's designee. If overtime hours are worked without prior approval, the employee shall not be compensated for those hours.

Employees shall be compensated only for designated work periods. Clocking in early and/or clocking out late shall not result in overtime compensation and should be avoided unless scheduled by the supervisor.

**151.26 LONGEVITY PAY.**

The Town of Nutter Fort has implemented a longevity program under which permanent, full-time employees who are compensated 2080 hours or more per year shall receive additional compensation for tenure of service.

The pay rate will be \$5.00 per month for each year of service and will be divided among each paycheck during the month. For example, after one (1) year of employment an employee would receive \$5.00 per month. After two (2) years of employment, an employee would receive \$10.00 per month. This will create a pay differential between long-time employees and those employees just starting.

Fifteen (15) will be the maximum number of years that may be accumulated for this program. For example, an employee that has worked for fifteen (15) years would receive \$75.00 dollars in longevity pay per month.

**151.27 LEAVES.**

All leaves are to be granted upon the employees understanding that if he/she does not return to active employment for a period of at least six (6) months at the end of the leave period he/she will be required to reimburse the Town for any health care premiums paid by the Town while the employee was on leave.

(a) Sick Leave – Permanent, full-time employees only.

Accrued sick leave with pay may be taken by permanent, full-time employees when they are unable to perform their duties due to sickness, injury, or confinement due to contagious disease. Sick leave will not be paid at the same time as Workers' Compensation benefits.

An employee must report his/her absence to the department supervisor or the supervisor's designee prior to the start of the workday or within the first thirty (30) minutes of the employee's starting time.

Sick leave shall be cumulative at the rate of one and one-fourth ( $1\frac{1}{4}$ ) days per month of service, or major portion thereof. An employee who has not worked the equivalent of eighty (80) hours per each month's service shall not be entitled to earn sick leave, unless the employee is scheduled off and receiving paid benefits. Paid benefits shall be counted as hours worked.

An employee may be required to furnish a certificate from an attending physician for all consecutive days of sick leave beyond three (3) days. Employees shall be allowed to use no more than ten (10) sick days in any one (1) calendar year without the support of a medical excuse.

Sick leave shall not be taken before it is earned, and shall not be granted to part-time, temporary, emergency, or probationary employees.

The minimum charge against sick leave shall be one-half ( $1/2$ ) day. Sick leave is to be used as protection against unexpected illness and is not to be used as a substitute for vacation time. When employment is terminated, no compensation of any sort will be granted for unused sick leave time.

Employees who have completed their probationary period and are off due to sickness or compensable injury will be permitted to accrue seniority for a period up to three (3) years and have insurance premiums paid for by the Town until their return to work on an active basis or until they are judged disabled and not competent to return to work by a proper medical authority.

As a means of rewarding those employees who have used only a small amount of sick time, any permanent, full-time employee who uses less than six (6) days sick leave will be paid  $2/3$  of a day's wages for each day under six days used in a calendar year.

(b) Parental/Family Leave.

An employee shall be entitled to a maximum of twelve (12) weeks of unpaid parental leave, following the exhaustion of all his/her sick and vacation leave, during any twelve-month period. The unpaid leave shall be granted to an employee for any of the following reasons:

- (1) Because of the birth of a son or daughter of the employee;
- (2) Because of the placement of a son or daughter with the employee for adoption;
- (3) In order to care for the employee's son, daughter, spouse, parent or dependent who has a serious health condition;
- (4) Because of a serious health condition that makes the employee unable to perform the essential functions of his or her job.

In the case of a son, daughter, spouse, parent or dependent that has a serious health condition, such family leave may be taken intermittently when medically necessary.

An employee may take family leave on a part-time basis and on a part-time leave schedule, but the period during which the number of workweeks of leave may be taken may not exceed twelve (12) consecutive months, and such leave shall be scheduled so as not to unduly disrupt the operations of the employer.

If a leave because of birth or adoption is foreseeable, the employee shall provide the Town with two weeks written notice. If a leave under this section is foreseeable because of planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the leave so as not to disrupt the operations of the employer, subject to the approval of the health care provider.

If an employee requests family leave to care for a family member with a serious health condition as authorized in this article, the Town may require the employee to provide certification by a health care provider of the health condition.

The certification shall be sufficient if it contains the following:

- (1) That the child, dependent, parent or employee has a serious health condition;
- (2) The date the serious health condition commenced and its probable duration;
- (3) The medical facts regarding the serious health condition.

The position held by the employee immediately before the leave is commenced shall be held upon a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position, provided, that the Town may employ a temporary employee or temporary employees to fill said position for the period of the parental leave.

(c) Medical Disability Leave.

A permanent, full-time employee with at least one (1) year of Town service will be allowed to take up to twelve (12) months of unpaid leave for recovery from a medical disability, if the disability prohibits the employee from performing the necessary tasks and functions of the position. An employee taking such leave must first exhaust all sick leave days.

The employee will be required to submit a letter in writing from a certified physician to support the need for medical disability leave. The Town has the option of requesting a second medical opinion on the situation. Requests for leaves of this nature must be made in writing to the Mayor for his/her approval. Requests must include the employee's name, department of employment, job title, nature of medical disability, anticipated length of leave needed, and the certification of a physician. Leave of this type is excluded from workers' compensation cases.

An employee on medical disability leave will not accumulate sick leave unless he/she works the required number of hours or shifts. The employee will continue to receive coverage under the Town's health care insurance plan. He/she may not receive sick leave pay during the leave period if the disability resulted from a job related injury covered by worker's compensation. An employee planning to return to work after a medical leave must provide the Town with a letter from his/her physician certifying that the employee is capable of performing the tasks and functions of the position.

An employee taking unpaid leave beyond a twelve (12) month period will automatically become classified as an inactive employee. An inactive employee will not receive any Town benefits or health insurance. Inactive employees shall automatically be terminated after the sixth (6<sup>th</sup>) month of inactive status.

(d) Bereavement Leave.

Upon the death of an immediate family member, a permanent, full-time employee will be allowed up to three (3) days off from work with pay. The following are considered immediate family: spouse, mother, father, stepfather, stepmother, sister, stepsister, brother, stepbrother, son, stepson, daughter, stepdaughter, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, employee's grandparents and grandchildren. If an aunt or uncle resides with the employee, such relative is also considered a part of the employee's immediate family.

The leave will not be charged against the employee's sick or vacation leave. Employees must contact their supervisor or the supervisor's designee before the commencement of the first day on which the employee needs to be absent.

(e) Educational Leave.

The Mayor may approve permanent, full-time employee leave without pay for a period not to exceed four (4) calendar months for purposes of an instructional or learning nature. Such leave might include the participation of the employee in course work, seminars, briefing seminars, briefing sessions, or conferences intended to improve the skills or professional abilities of the employee. The employee must submit a written request to the Mayor for the approval of such leave. The request must include the employee's name, department of employment, job title, nature of leave, anticipated length of leave needed, and any supporting literature.

Any employee permitted to utilize such leave shall not be allowed to accumulate sick leave for any month in which they do not work the necessary hours or shifts. Employees on such leave will still be covered by the Town's health insurance.

(f) Military Leave.

Any permanent, full-time employee of the Town who shall be a member of the National Guard or any military reserve unit of the United States Armed Service, shall be entitled to a leave of absence from his/her respective offices or employment without loss of pay, status or efficiency rating, on the days during which the employee shall be engaged in drills, parades or other duty, during business hours ordered by proper authority, or for field training or active service of the state for a maximum period of ten (10) days in any one calendar year. The term "without loss of pay" means that the employee shall continue to receive his/her normal salary or compensation, not withstanding the fact that such employee may have received other compensation from Federal or State sources during the same period. Benefits of this section shall not accrue for individuals ordered or called to active duty by the President. A copy of the employee's orders must be produced for extra duty.

Effective March 10, 2005, new regulations relating to USERRA are: Employees have a right to be reinstated under certain conditions. They have a right to continue their company health benefits while on military leave for up to 24 months and/or to be immediately reinstated upon return and that they have a right to be free from discrimination and retaliation in initial employment, reemployment, retention, promotion or "any benefit of employment."

(g) Uncompensated Leave of Absence.

Permanent, full-time employees are eligible for a leave of absence without pay after one year of employment with the Town. A request must be submitted in writing to the employee's immediate supervisor stating the reason for the request and the approximate amount of time needed. The leave of absence must be approved by Town Council.

All benefits shall be suspended until the employee's return to work.

Uncompensated leaves shall not exceed twelve (12) months in duration unless an extension is granted by Town Council. An employee who does not report to work within the maximum allowable time period awarded shall be terminated.

## 151.28 WORKERS' COMPENSATION.

Any employee, whether part-time, full-time, or temporary; injured while on the job is covered under the provisions of the Workers' Compensation law of West Virginia.

Any employee suffering an injury on the job must report the incident to his/her supervisor immediately. Such reporting shall occur for even the slightest of injuries. The supervisor or his/her designee shall complete an Employee Report of Injury form and submit the appropriate sections of the form within one workday of the occurrence to the Town Treasurer or his/her designee. Failure to immediately give notice may weigh against a finding of compensability.

As stipulated in WV Code 23-4-1, employees are not permitted to receive sick leave and workers' compensation benefits simultaneously.

In case of job-related accidents which result in the loss of work, an employee will use accumulated sick leave for the first three (3) days, provided that the employee has sufficient sick leave to cover this period, at which time Workers' Compensation begins payment, provided proper claims have been filed. If an employee does not have accumulated sick days, he/she shall be unpaid for the three (3) days before Workers' Compensation commences payment. The Town has five (5) days in which to report to Workers' Compensation after being notified by the employee.



Employees on Workers' Compensation shall be paid according to the following:

- (a) Employees missing less than four (4) days will be paid sick leave benefits.
- (b) Employees missing less than eight (8) days but more than four (4) days will be paid the first three (3) days as sick leave and the remaining days by Workers' Compensation.
- (c) Employees missing more than seven (7) days will be paid by Workers' Compensation from the date of injury.

Employees who receive Workers' Compensation benefits while off from work may only return to work if they provide the Town with a physician's letter stating that the employee may return to work and perform the essential functions of the position with or without a reasonable accommodation for the disability. Both the employee and physician must sign a copy of the employee's position description confirming that the employee is capable of performing the essential functions of the position. If the employee will need reasonable accommodations in performing the essential functions, then the physician must outline the necessary accommodations. The Mayor shall determine whether the accommodations are reasonable.

(Passed 2-14-06)

#### **151.29 VEHICLE ACCIDENT.**

In any accident involving a Town vehicle or a personal vehicle while conducting Town business, the accident must be reported immediately to the appropriate law enforcement agency and to the employee's supervisor.

(Passed 5-11-2010)