



West Virginia Division of Personnel

Otis G. Cox, Director

STATE PERSONNEL BOARD
Robert W. Ferguson, Jr., Chairman
John A. Canfield ♦ Mark W. Carbone
Sharon Lynch ♦ Eugene Stump

MEMORANDUM

DATE: March 10, 2009
TO: All Cabinet Secretaries, Bureau Chiefs and Agency Heads
FROM: Otis G. Cox, Director of Personnel
RE: REVISED Settlement Agreement Template

Attached is a new settlement agreement template which should be used for all future agreements. While it contains all required elements, it may not fit every situation. I recommended that it be used as a preliminary draft to be amended by your legal counsel to ensure it meets your needs and contains all relevant information. An electronic version may be found on our website. Please ensure all interested persons in your agencies are aware of the new template.

In a related matter, it has come to my attention that some agencies have entered into settlement agreements without the Division of Personnel's review or approval. It is our belief that the reason we are not being contacted or included in negotiations is that back wages are not being paid. Although no money may be involved, it is the Division of Personnel's position that all settlements affecting classified employees must be forwarded to us for signature and review to ensure that the terms of the settlement agreement comply with our *Administrative Rule*, W. VA. CODE R. §143-1-1 *et seq.* (2007) and policies, and to allow the Division to maintain current and accurate records. Your cooperation in this matter will be greatly appreciated.

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

OGC:jft

Attachment

Cc: Agency Payroll Coordinators

REVISED TEMPLATE

DISCLAIMER

The provisions of this settlement agreement template are generic. The template must be customized to each particular situation. Therefore, it is always advisable to consult with legal counsel prior to finalization of any settlement agreement.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into by and between _____ (Grievant) and the _____ (Respondent). *[If the matter is being settled without a grievance, it would be more appropriate to refer to the parties as "Employer" and "Employee".]*

WHEREAS, the Grievant is *[or "was"]* employed by Respondent as a _____, Pay Grade _____, with a salary of \$ _____ per month, *[if applicable]* *[Set forth details of complaint or adverse personnel action here and, if applicable, that Grievant challenged the action through the grievance procedure. Should include enough information to make the details of the specific events readily apparent.]*

WHEREAS, Grievant and Respondent are desirous of entering into this Settlement Agreement and Release to resolve all matters relating to this grievance; and

NOW THEREFORE, for good and valuable consideration and the mutual covenants contained herein, Grievant and Respondent agree as follows:

1. Respondent agrees to _____.
2. *[If applicable]* Considering any applicable personnel transactions (*salary advancements, salary adjustments, leaves of absence, and/or overtime differences*) that may have occurred between _____ and _____, the Grievant will receive *[\$ _____]* back pay, plus *[\$ _____]* interest *[if applicable]*, for a total gross amount of *[\$ _____]*. Grievant agrees that any liability for federal or state tax payments upon the amount paid to Grievant pursuant to this Settlement Agreement and Release shall be the sole responsibility of Grievant.
3. Grievant shall dismiss with prejudice this grievance and does hereby waive, release, acquit and discharge Respondent from any and all liabilities, attorney fees, claims, demands, controversies, damages, actions and causes of action of every kind and character, arising from the facts and circumstances of this grievance, which he or she may now have or may have in the future concerning the subject matter of this grievance, including but not limited to, any rights brought under the West Virginia Human Rights Act, Americans with Disabilities Act, Workers' Compensation Act or Title VII of the Civil Rights Act as well as any complaints filed and/or proceedings pending with the Public Employees Grievance Board, West Virginia Human Rights Commission, West Virginia Equal Employment Opportunity Office, West Virginia Division of Labor, United States Equal Employment Opportunity Commission, and United States Department of Labor.
4. This Settlement Agreement and Release shall be binding on Grievant and Respondent hereto and their assigns.

Settlement Agreement and Release

[Grievant's name]

[Agency]

[Date]

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5. Grievant acknowledges that he or she has read this Settlement Agreement and Release and has had a reasonable period of time to consider this Settlement Agreement and Release and to consult an attorney, if desired. Grievant further acknowledges that he or she understands all the terms of the Settlement Agreement and Release and has knowingly and voluntarily agreed to those terms, which may not be changed.

6. Grievant and Respondent expressly acknowledge that the entire agreement is contained in this Settlement Agreement and Release and no representations, promises, or inducements have been made by or to Grievant other than as appear in this Settlement Agreement and Release. The parties understand and agree that this Settlement Agreement and Release may not be changed orally. This Settlement Agreement and Release supersedes all prior agreements and understandings concerning the subject matter hereof, including, but not limited to, Grievant's employment with Respondent.

7. [Use only if confidentiality is desired.] Grievant [and his or her legal counsel or his or her representative] agree[s] that he or she will keep the settlement negotiations and the terms of this Settlement Agreement and Release completely confidential. Although the Respondent will not unilaterally distribute, disseminate or otherwise release this Settlement Agreement and Release, the Grievant acknowledges and understands that the Respondent is a public agency of State government [or public college or university] and may be obligated to release this Settlement Agreement and Release pursuant to West Virginia Supreme Court case precedent, the West Virginia Freedom of Information Act, West Virginia Code §§ 29B-1-1 *et seq.*, or other applicable law.

THE PARTIES UNDERSTAND AND AGREE that this Settlement Agreement and Release and the settlement it represents are entered into solely for the purpose of avoiding further expenses of litigation. This Settlement Agreement and Release and the settlement it represents in no way constitutes an admission by Respondent of any violation of any federal, state or local law, whether statutory or common, and Respondent denies that a violation of any such law has occurred with respect to Grievant's employment with Respondent or the cessation of that employment with Respondent.

IT IS FURTHER UNDERSTOOD that this Settlement Agreement and Release is a preliminary document and requires the review and approval of the Division of Personnel. If the Division of Personnel determines that any of the terms are not compliant with the Division of Personnel's laws, rules and policies, then this Settlement Agreement and Release is null and void.

Settlement Agreement and Release

[Grievant's name]

[Agency]

[Date]

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IN WITNESS WHEREOF, Grievant and Respondent execute this Settlement Agreement and Release, effective the latest of dates set forth below.

Date [signature]
[Type name]
Grievant

Date [signature]
[Type name]
Grievant's Representative/attorney [if any]

Date [signature]
[Type name and Title]
[Type Agency Name]
Respondent

Date [signature]
[Type name]
[Type Title of Respondent's Legal Counsel]

**Approved as to compliance with the
Division of Personnel's law, rules and policies:**

Date [signature]
Otis G. Cox, Director
WV Division of Personnel