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# When Do Substitutes Get “Substandard” Rights and Benefits?

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# Disclaimer

- This is a slide show
- Don't rely on a slide show for legal advice
- The law changes quickly and often
- For legal advice, contact a lawyer



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## Phrase of the Day

- Left side of the room: “It only matters if someone files a grievance.”
- Right side of the room: “And someone always files a grievance.”



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## Plan for this session (8:00 to 10:00 a.m.)

- Highlighting some of the differences between regular employees and substitutes employees
  - Service
  - Professional
- **The legal time bomb**
  - An important concept for all school treasurers and administrators to appreciate

## ■ Answering your questions



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# Service Substitutes – the basics

- Pay
- Benefits (big topic)
- Selection
- Seniority
- Breaks in service
  - Voluntary vs. involuntary



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# Service Substitutes – Pay

- 18A-4-15
  - Per 18A-4-8a for regular employees (pay grades, add-ons, etc.)
  - Years of experience
    - They never go away
    - Retired service employees who return to work as subs
    - 133-day rule
      - Experience stays with the sub employee upon being hired by the same board as a regular employee
  - Local salary supplement





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# Service Substitutes – Benefits \*

## ■ Handout

- Paid leave (“sick leave” and “no cause days”)
  - Special situations 18A-4-15
    - W/C more than 30 days
    - Approved LOA more than 30 days
    - Suspension more than 30 days
- PEIA
  - Under certain circumstances
    - Special situations under 18A-4-15
    - “Long-term substitutes”
      - More on this later
- Duty-free lunch
- Overtime pay
- FMLA



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# Service Substitutes – Benefits \*

- Handout
  - Parental Leave Act
  - Regular seniority for bidding purposes
  - Experience credit for pay purposes (aka “years of experience”)
  - Leaves of absence



# Service Substitutes – Selection

- Service substitutes are hired and fired the same way as every other school employee
    - Hire: Postings & Board Action (may want to limit the number you will hire at one time)
    - Fire: Due Process & Board Action
      - But what does 18A-4-15(g) mean then?
        - A substitute service person who has worked thirty days for a school system has all rights pertaining to suspension, dismissal and contract renewal as are granted to regular service personnel in 18A-2-6, 18A-2-7, 18A-2-8, 18A-2-8a.
  - Rotating list in seniority order
  - Call-off policies with consequences for not accepting assignments
  - Special skills work
    - Secretaries who have been trained on special software
    - Bus operators who have CPI training
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- Lack of challenges at the Grievance Board



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# Service Substitutes – Seniority

- Seniority is a date
- What date?
- What if 10 subs were hired the same day? Who gets the first assignment?
  - Random process
    - Established by the subs and approved by the board
- Can a substitute employee have more than one seniority date?
- Effect of suspensions?
- Earn regular seniority?
- Never combine regular and substitute seniority
- Effective of resignation on seniority
  - All gone forever, including summer school right-to-return



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## Service Substitutes – Breaks in Service

- Right to remain in the assignment until the return of the regular employee
- Voluntary break in service: move on to the next sub in the rotation
- Involuntary break in service: right to return



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# Service Substitutes – advanced topics

- Using subs “to hold” a position
- The absent service employee who refuses to ask for a leave of absence
- Dock days (if you allow them, it is a benefit of employment)
- Multi-classified subs
  - How was the job posted?
- Regular service employees on the substitute service employee list
- Placement on the preferred recall list has nothing to do with being or not being a sub
- Evaluation of substitutes
- Replacing a sub currently in an assignment for cause
- Step-up (for absent employees ONLY)
- What about working the regular employee’s extracurricular runs?
- 15-minute breaks
- Status of special circumstance subs once the regular employee is fired (resigns, dies, etc.)
- Paid leave time?
- Paid while on suspension?



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# Professional Substitutes – the basics

- Pay
- Benefits (big topic)
- Selection
- Seniority
- Breaks in service
  - Voluntary vs. involuntary



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# Professional Substitutes – Pay

- Handout
  - 18A-4-7
    - 80% of state basic salary
    - 80% of state advanced salary
    - 100% of state advance salary
  - Local salary supplements apply?
  - Overtime pay?





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# Professional Substitutes – Benefits

- Handout
  - Sick leave
  - PEIA coverage
    - “long-term substitute”
  - FMLA
  - Parental Leave Act
  - Leaves of Absence
  - Planning periods
    - 18A-4-14(b)(2) contains the rule for sub teachers
    - But as a practical matter . . .
  - Duty-free lunch
  - Experience credit for pay purposes
    - 133-day rule



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# Professional Substitutes – Selection

- Much looser than rules for service personnel
  - Lots of discretion in selecting subs
  - Arbitrary and capricious standard
- WV Code 18A-2-3
  - Sub teacher in the same classroom continuously for more than 50% of the grading period AND whose assignment remains in effect two weeks prior to the end of the grading period cannot be replaced (even by the regular teacher) until the end of that grading period
    - Unless, the principal certifies that regular teacher has communicated with and assisted the sub in prep of lesson plans and monitoring student progress, OR has been approved to return to work by her/his physician
      - This does not make a lot of sense
- First choice should always be a teacher who is certified in the subject matter, then others as available



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# Professional Substitutes – Seniority

- 133-day rule
  - Fractions of years
    - $133/200$  days =  $133/200$  of one year of seniority
    - $132/200$  days =  $0/200$  of one year of seniority
  - For regular job bidding purposes only
  - Now you see it, now you don't seniority
- When a regular teacher leaves the county and then later returns
  - Seniority returns



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# Professional Substitutes – Breaks in Service

- Voluntary break in service
- Involuntary break in service



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# Professional Substitutes – advanced topics

- “Do Not Call” lists
  - Legal?
- Preferred lists
  - Legal?
- Post long-term sub teacher jobs?
  - 20-day rule from 18A-4-7a(n)
    - Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and **give them an opportunity to apply**, but failure to apply shall not cause the employee to forfeit any right to recall.
- Evaluation of substitute teachers
  - Local policy



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## “Long-term substitutes”

- Definition for “long-term substitutes” was added to 18A-1-1 in 2008
- "Long-term substitute" means a substitute employee who fills a vacant position:
  - That the county superintendent expects to extend for at least thirty consecutive days, and is either:
    - (A) Listed in the job posting as a long-term substitute position of over thirty days; **or**
    - (B) Listed in a job posting as a regular, full-time position and:
      - (i) Is not filled by a regular, full-time employee; and
      - (ii) Is filled by a substitute employee.
- For the purposes of section two, article sixteen, chapter five of this code, long-term substitute does not include a retired employee hired to fill the vacant position.



# The legal time bomb

- Definition: an illegal practice that your school board/administration has gotten away with for years (even decades) leading to the widespread, but mistaken belief that the practice is not only legal, but a really great idea.
  - frequently explodes when an employee realizes that the practice is illegal and files a grievance
  - many tears are shed, many four letter words are screamed
  - sometimes heads roll
  - Example



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## Lots of employees, lots of time bombs

- .Over the years, deals are made. We get it
- .Systems are created to make everyone happy. We get it
- .Not all deals and systems comply with WV law





# The legal time bomb

- What you tell us in these situations:
  - “We have always done it this way. No one has ever said anything about it.”
  - “I know it’s legal because \_\_\_\_\_ County Schools does the same thing and has forever.”
  - “The head of the union personally approved this. I can show you the emails!”
  
- What we *have to* tell you in these situations:
  - None of that matters
  - If the grievance goes to Level Three, the house of cards will fall
  - You don’t want that to happen for lots of reasons
    - \$\$ of course
    - Loss of credibility with the ALJs at the Grievance Board



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# The legal time bomb

- What to do if you find a legal time bomb in your county:
  - Call your legal counsel and give them ALL of the details
  - Decide if it is worth diffusing the bomb
    - It might be better to leave it alone and hope for the best
    - It might be better to face the problem now and get it over with
  
- Don't hide your time bombs from legal counsel
  - We cannot help you if you don't tell us everything
  - Don't worry about how we will react
    - We are not the school law police
    - We are here to help you
    - We need to know everything you know



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Thanks for doing the hard work needed to  
make West Virginia's schools successful

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## Your remaining questions

Thank you for doing the hard work needed to make  
West Virginia's schools successful

