



*State of West Virginia*  
Joe Manchin III, Governor

WV Office of Miners' Health, Safety & Training  
Ronald L. Wooten, Director  
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January 13, 2009

Eric L. Silkwood, Esquire  
Flaherty, Sensabaugh & Bonasso, P.L.L.C.  
P. O. Box 3843  
Charleston, WV 25338-3843

**RE: WVOMHST Interpretation of W. Va. Code § 22A2-12**

Dear Mr. Silkwood:

I am in receipt of your letter of January 9, 2009, in which you, pursuant to W. Va. Code § 29A-4-1, *et seq.*, request an interpretation of 90 day requirement language contained in W. Va. Code § 22A-2-12. Specifically, your question is:

*Q: Does the phrase "During the first ninety days of employment in a mine" contained in West Virginia Code § 22A-2-12, require that the employee be employed by an underground mine for 90 calendar days, or, alternatively, require that the apprentice work 90 shifts underground?*

W. Va. Code § 22A-2-12 states in pertinent part that,

During the first ninety days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or a experienced miner, and in such a location that the mine foreman, assistant mine foreman or experienced miner can effectively respond to cries for help of the apprentice. Such location shall be on the same side of any belt, conveyor or mining equipment.

The language in the statute is quite clear to WVOMHST: the apprentice must be within sight and sound of a supervising miner for the first 90 days of employment – not the first 90 shifts worked. However, the statute must be read in conjunction with the Code

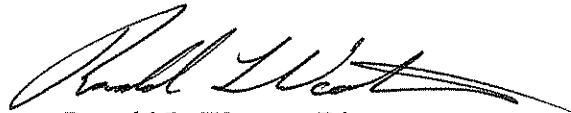
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of State Rules [§ 48-2-2.9(a) and § 48-3-2.10(a)] which finds 108 shifts being equal to six months' experience. Therefore, it is the position of WVOMST that 54 shifts is the minimum amount to work during the 90 day period before being authorized to be out of sight and sound.

I presume that this information answers the question posed. If I can be of further assistance, please do not hesitate to contact my office.

Very truly yours,



Ronald L. Wooten, Director

pc: C.A. Phillips, Deputy Director  
Inspectors-at-Large