

Michigan
Civil Service Commission

Rules

Approved by the Civil Service Commission
May 18, 2000

Effective
August 20, 2000

Michigan Civil Service Commission

Term Expires

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State Personnel Director

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This book contains civil service rules approved by the civil service commission on May 18, 2000, to become **effective** on August 20, 2000. Any later amendments may be found on the Civil Service Web Site, which always has up-to-date versions of the Civil Service rules and regulations:

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These rules are published by the Office of the General Counsel, Department of Civil Service. Paper copies of the rules and amendments are distributed by subscription only.

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Article 11, Section 5, of the Michigan Constitution of 1963

ARTICLE 11, SECTION 5

ART 11, §5. Classified state civil service;...

The classified state civil service shall consist of all positions in the state service except

- [1]* those filled by popular election,
- [2] heads of principal departments, and
- [3] members of boards and commissions,
- [4] the principal executive officer of boards and commissions heading principal departments,
- [5] employees of courts of record,
- [6] employees of the legislature,
- [7] employees of the state institutions of higher education,
- [8] all persons in the armed forces of the state,
- [9] eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making.
- [10] The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

The civil service commission shall be non-salaried and shall consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for terms of eight years, no two of which shall expire in the same year.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the classified service and who shall be responsible to and selected by the commission after open competitive examination.

The commission shall

- [1]* classify all positions in the classified service according to their respective duties and responsibilities,
- [2] fix rates of compensation for all classes of positions,
- [3] approve or disapprove disbursements for all personal services,
- [4] determine by competitive examination and performance exclusively on the basis of merit, efficiency, and fitness the qualifications of all candidates for positions in the classified service,
- [5] make rules and regulations covering all personnel transactions, and
- [6] regulate all conditions of employment in the classified service.

* Numbering is an editorial addition for the convenience of the reader.

Article 11, Section 5 (concluded)

State police troopers and sergeants shall, through their elected representative designated by 50 percent of such troopers and sergeants, have the right to bargain collectively with their employer concerning conditions of their employment, compensation, hours, working conditions, retirement, pensions, and other aspects of employment except promotions which will be determined by competitive examination and performance on the basis of merit, efficiency and fitness; and they shall have the right 30 days after commencement of such bargaining to submit any unresolved disputes to binding arbitration for the resolution thereof the same as now provided by law for public police and fire departments.

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, demotions, or removals in the classified service shall be made for religious, racial or partisan considerations.

Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget. The legislature may, by a majority vote of the members elected to, and serving in each house, waive the notice and permit increases in rates of compensation to be effective at a time other than the start of a fiscal year. Within 60 calendar days following such transmission, the legislature may, by a two-thirds vote of the members elected to and serving in each house, reject or reduce increases in rates of compensation authorized by the commission. Any reduction ordered by the legislature shall apply uniformly to all classes of employees affected by the increases and shall not adjust pay differentials already established by the civil service commission. The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission.

The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition or creation of a position shall have a right of appeal to the commission through established grievance procedures.

The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service.

To enable the commission to exercise its powers, the legislature shall appropriate to the commission for the ensuing fiscal year a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year, as certified by the commission. Within six months after the conclusion of each fiscal year the commission shall return to the state treasury all money unexpended for that fiscal year.

The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by law.

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

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Chapter 1

Basic

1-1 *RULES AND AMENDMENTS*

1-1.1 **Circulation of Proposed Amendments for Comment**

The state personnel director shall give written notice to all appointing authorities and recognized employee organizations of any proposed amendments to these rules at least 28 calendar days before final action by the civil service commission. If the written notice has been given at least 14 calendar days at the time action is to be taken, the commission may waive the 28-day notice requirement by the affirmative vote of a majority of a quorum, provided that, in all cases, the notice of the proposed amendment provides an opportunity for comment and notification of the date and place of the meeting at which the proposed revision will first be considered. The commission may further modify a proposed amendment or defer final action to a subsequent meeting without further written notice.

1-1.2 **Effective Date**

An amendment to these rules becomes effective upon approval by the civil service commission, unless the commission orders otherwise.

- (a) **Recirculation.** If, during consideration, the commission substantially modifies a

proposed amendment as circulated, the commission may order that the rule be recirculated as approved to appointing authorities and recognized employee organizations. A person may file an objection to the rule within 14 calendar days after the date of publication. The rule becomes effective 21 calendar days after publication, unless the commission establishes a later effective date or unless the state personnel director authorizes a delay in the effective date, as provided in subsection (b).

- (b) **Delay of effective date.** If the state personnel director, after review of any objections, finds in the director's sole discretion that the objections are so substantial that they merit further consideration by the commission, the director is authorized to delay the effective date of such rule until the next meeting of the commission. The revision becomes effective immediately upon the adjournment of the first commission meeting following action by the state personnel director delaying the effective date unless the commission orders otherwise.

1-1.3 **Emergency Rule Action by Commission**

In situations requiring immediate action or when a proposed amendment has been circulated for less than 14 calendar days, the civil

service commission may waive the requirements of notice and approve an amendment to these rules upon unanimous vote of a quorum. The commission's determination that a situation requires immediate action is conclusive.

1-1.4 Interim Rule Action by Director and Chair

If the state personnel director determines that the efficient and orderly administration of the classified service requires that a rule be waived or modified, the director, with the consent of the chair of the civil service commission, may temporarily waive or modify any rule. The modification or waiver is effective immediately upon written authorization by the director and is in effect only until the next meeting of the commission. The director shall place the waiver or modification on the agenda for the next meeting of the commission. If a majority of a quorum of the commission does not approve the waiver or modification before the adjournment of that meeting, the waiver or modification expires. Failure of the commission to approve the waiver or modification does not void actions taken in reliance on the interim rule action while the waiver or modification was effective. Rules 1-1.1 and 1-1.3 do not apply to commission action related to interim rule action by the state personnel director.

1-1.5 Rule-making through Adjudicative Proceedings

In addition to the legislative process provided in this rule, the civil service commission may also amend the rules by order in an individual adjudicative proceeding. An order amending the rules becomes effective upon issuance by the commission, unless the order provides otherwise.

1-2 SEVERABILITY

If a court of competent jurisdiction finds that any rule or the application of any rule to any person or circumstances is invalid, such invalidity does not affect the remaining rules or applications of the rules that can be given lawful effect. These rules are declared to be severable.

1-3 REGULATIONS

The state personnel director is authorized to issue regulations that the director deems to be necessary or useful. A regulation issued by the state personnel director shall be binding on the department of civil service unless the commission finds that the regulation violates a rule. The state personnel director shall make all regulations available to employees through their personnel offices and the internet.

1-4 DELEGATION BY STATE PERSONNEL DIRECTOR

The state personnel director may delegate, in whole or in part, any power or authority granted by the constitution or the civil service commission, unless expressly prohibited by the constitution or rule.

1-5 COMPLIANCE

The department of civil service shall periodically audit an appointing authority to ensure that the appointing authority is complying with civil service rules and regulations governing personnel transactions. If the state personnel director determines that an appointing authority has not complied with the rules and regulations, the state personnel director is authorized to direct the appointing authority to take necessary corrective action.

If the appointing authority fails to take corrective action, the state personnel director is authorized to proceed with the recommended corrective action.

1-6 *MERIT, EFFICIENCY, AND FITNESS*

All appointments and promotions to positions in the classified service, and all measures for the control and regulation of employment in such positions, and separation therefrom, shall be based on merit, efficiency, and fitness.

1-7 *NO DISCRIMINATION*

1-7.1 **Conditions**

No person shall be discriminated against in seeking employment, in being appointed or promoted, or in any condition of employment in the classified service, or any separation therefrom, because of race, color, religion, national origin, ancestry, disability, partisan considerations, age, or sex. Age or sex may be determined to be a bona fide occupational qualification

1-7.2 **Sexual Harassment**

Sexual harassment is a form of discrimination that is expressly prohibited. No classified employee shall engage in or be subject to sexual harassment during the course of employment in the classified service.

1-8 *EQUAL OPPORTUNITY*

In order to ensure equal employment opportunity based exclusively upon merit, efficiency, and fitness, the state personnel director may recommend to the commission, as an alternative to current means of evaluating

applicants, methods for selection of persons qualified for classified employment or for promotional opportunity, which are designed to eliminate any discrimination based upon sex, age, disability, race, national origin, religion, or political partisanship, and which eliminate all irrelevant factors for evaluation of applicants.

1-9 *EXCEPTED AND EXEMPT POSITIONS*

1-9.1 **Excepted Positions**

Positions excepted from the state classified service are those specified in article 11, section 5, of the constitution.

1-9.2 **Exempt Positions**

- (a) **Limitations.** The head of each principal department may request that civil service exempt up to five positions from the classified service, as provided in article 11, section 5, of the constitution. Four of the five positions must be policy-making positions.
- (b) **Method of establishing.** The state personnel director is authorized to exempt up to five positions within each principal department upon request. The director shall report to the civil service commission each exemption granted and shall maintain a record of all exempt positions.

1-9.3 **Appointment to Excepted or Exempt Positions**

- (a) **Leave of absence to accept appointment.** With the prior approval of the appointing authority, a classified employee may receive a leave of absence without pay from the employee's current

classified position to accept an appointment to an excepted or exempt position.

- (b) **Return to the classified service.** At the conclusion of a leave of absence to accept an appointment to an excepted or exempt position, the appointing authority shall return the employee to the classified position formerly occupied or an equivalent position. If the position was abolished during the leave of absence, the appointing authority shall return the employee in accordance with the civil service rules and regulations governing employment preference in effect when the former classified employee seeks to return to the classified service.
- (c) **State service credit.** An employee returning from a leave of absence granted to accept appointment to an excepted or exempt position is allowed state service credit for all purposes for the period of the leave. Credit is allowed as service in the classification from which the employee was granted the leave of absence.

1-10 *TEMPORARY AGENCIES*

1-10.1 **Application of Civil Service Rules to Temporary Agencies**

All civil service rules and regulations apply to all personnel actions of a temporary agency, except as modified by this rule or regulations issued under this rule.

1-10.2 **Limited Right To Return upon Dissolution of Temporary Agency**

Each home agency shall grant a limited and defined right to return to the home agency to its employees who become moved employees. A moved employee's right to return to a home agency is effective only upon (1) the dissolution of the temporary agency and (2) the abolition of the classified position occupied by the moved employee. The right to return authorized by this rule does not entitle a moved employee to a classified position within a home agency upon the dissolution of a temporary agency.

1-10.3 **Approval of Procedures**

Each home agency shall issue procedures to implement the right to return for moved employees, subject to review and final approval by the state personnel director.

1-11 *CITIZENSHIP AND WORK AUTHORIZATION*

An applicant or employee must be a citizen of the United States or an alien authorized to work in the United States. The state personnel director may designate positions for which United States citizenship is required.

1-12 *POLITICAL ACTIVITIES*

1-12.1 **Candidates for Public Office**

- (a) **Local office.** A classified employee may become a candidate for nomination and

election to a local elective office, partisan or nonpartisan, without first obtaining a leave of absence.

- (b) **State office.** A classified employee may become a candidate for nomination and election to state office if the employee requests a leave of absence without pay. The request must be made at the time of compliance with the candidacy filing requirements or 60 calendar days before the election in question, whichever is closer to the election. An appointing authority shall grant a request for a leave of absence to become a candidate for state office.

1-12.2 Leave of Absence for Primary Election

- (a) **Employee not nominated.** An employee on required leave of absence for a primary election who is not nominated in that election shall return from leave of absence immediately after the official canvass of votes.
- (b) **Employee nominated.** An employee nominated in a primary election shall remain on leave of absence until the special or general election.
- (c) **Employee nominated but withdraws.** An employee nominated in a primary election who withdraws from the general or special election in accordance with applicable election law shall return from leave of absence immediately upon such withdrawal.

1-12.3 Leave of Absence for General or Special Election

- (a) **Employee not elected.** An employee on required leave of absence for a general or special election but not elected in that

election shall return from leave of absence immediately after the official canvass of votes.

- (b) **Employee elected.** An employee on required leave elected in a general or special election shall leave state classified employment by resignation, retirement, or appropriate separation immediately upon assumption of the office.

1-12.4 Political Party Activities

An employee in the classified service may:

- (a) Become a member or an officer of a political party committee formed or permitted under the election laws of Michigan or the United States.
- (b) Be a delegate to any convention held by a political party.
- (c) Engage in political activities on behalf of a candidate or issue in a partisan or nonpartisan election.

1-12.5 Political Assessments

The levying, solicitation, collection, or payment of any type of political assessment and the authorizing or ordering of such activity in the classified service are prohibited.

1-12.6 Prohibited during Actual-Duty Time

A classified employee shall not engage in any activity permitted under rules 1-12.1 or 1-12.4 during actual-duty time.

1-12.7 Conflict of Interest

- (a) **No conflict permitted.** Political activity, including election to or the holding of public office by a state classified employee, must not conflict with the

satisfactory and impartial performance of duties required in the employee's classified position.

- (b) **Compensated employee.** An employee compensated for serving in a staff, advisory, or advocacy capacity in any partisan or nonpartisan election is subject to the requirements of these rules regarding outside employment.

1-12.8 Notice

An employee seeking or holding public office that may be in conflict of interest as specified in rule 1-12.7 shall inform the appointing authority when becoming a candidate or, if appointed, when assuming the office. A request for leave of absence required by rule 1-12.1(b) to seek state office constitutes notice to the employer.

1-12.9 Federal Law

Political activities, including candidacy for public office permitted by this rule, may be prohibited by preemptive federal law.

1-13 PATENTS AND INVENTIONS

1-13.1 Employee Rights

The property rights in a patent on an invention created by a classified employee are subject to contract entered into by the state administrative board as provided by law. The employee's compensation is 15 percent of the net royalties that may result from the invention. The compensation provisions of this rule are not negotiable. However, any dispute concerning the employee's property rights relative to the state's property rights in such an invention is grievable.

1-13.2 Grants and Contracts

This rule does not preclude the acceptance of grants or contracts under provisions of applicable federal laws or regulations that require a different disposition of patents or rights to obtain patents.

1-14 COPYRIGHTS

1-14.1 Employee Rights

The property rights in a copyright that subsists in a work created by a classified employee as an author-employee belong to the state and are subject to contract entered into by the state administrative board as provided by law. The author-employee's compensation is 15 percent of the net royalties from written licenses or transfers to third parties by the state of Michigan that may result from a work, but only when the state or agency has obtained a certificate of copyright. The compensation provisions of this rule are not negotiable. However, any dispute concerning the author-employee's property rights relative to the state's property rights in such a copyright is grievable.

1-14.2 Grants and Contracts

This rule does not preclude the acceptance of grants or contracts under provisions of applicable federal laws or regulations that require a different disposition of the copyright in works.

[End of Chapter 1]

Chapter 2

Employment

Provisions

2-1 *TERMS OF EMPLOYMENT*

2-1.1 **Career Appointment**

An indefinite appointment expected to last the equivalent of 90 full-time workdays or more in a calendar year is career employment. A limited-term appointment expected to last the equivalent of 90 full-time workdays or more in a calendar year is considered as career employment for all benefit purposes except as otherwise provided in the rules or regulations.

2-1.2 **Noncareer Appointment**

An appointment expected to last less than the equivalent of 90 full-time workdays in a calendar year is a noncareer appointment. An employee in a noncareer appointment is not entitled to any of the following:

- (a) Sick or annual leave accruals.
- (b) Holiday pay.
- (c) Enrollment in state-sponsored group insurance plans.

(d) Service credit for any purpose, such as longevity compensation, salary step increase, employment preference, or status.

(e) Noncareer employment exceeding the equivalent of 89 workdays in any calendar year.

2-1.3 **Student and Special Classifications**

The state personnel director may issue regulations to permit noncareer employment exceeding the equivalent of 89 full-time workdays in a calendar year, without fringe benefits, for designated student and special classifications.

2-2 *SERVICE RATINGS*

2-2.1 **Rating System**

The state personnel director shall issue regulations to establish a system of service ratings to report the quality of service rendered by each employee in the classified service.

2-2.2 Submission

- (a) **Probationary ratings.** An appointing authority shall evaluate and rate the performance of each probationary employee during and at the end of the probationary period. The appointing authority shall certify each probationary service rating to the department of civil service as directed by the department.
- (1) **Full-time employees.** At a minimum, an appointing authority shall rate a full-time probationary employee after completion of 6 months and again after completion of one year of employment. In addition, if the probationary employee is a new hire without status in the classified service, the appointing authority shall rate the employee after completion of 3 months of employment.
- (2) **Less than full-time employees.** At a minimum, an appointing authority shall rate a probationary employee working less than full-time after completion of 9 months and again after completion of 18 months of employment. In addition, if the probationary employee is a new hire without status in the classified service, the appointing authority shall rate the employee after completion of 3 months of employment.
- (3) **Extension of probation.** If a probationary period is extended beyond one year (for full-time employees) or 18 months (for less than full-time employees), the appointing authority shall also issue a service rating at the end of the extension of the probationary period.
- (b) **Annual ratings.** An appointing authority shall rate the performance of each nonprobationary employee at least

annually. The appointing authority may use any appropriate rating method, including performance management plan ratings, unless the regulations require a particular method. The appointing authority shall certify each annual rating to the department of civil service as directed by the department.

- (c) **Interim ratings.** An appointing authority may issue an interim service rating for an employee at any time.
- (d) **Follow-up ratings.** If an employee's performance rating is less than satisfactory but the employee is not dismissed, the appointing authority shall establish in writing the length of a follow-up rating period. The appointing authority shall issue a follow-up service rating before or within 14 calendar days after the end of the follow-up rating period. If the appointing authority fails to issue a follow-up service rating within the time allowed, the employee may, within 14 calendar days after the end of the period allowed for issuance of the follow-up rating, request in writing that the appointing authority issue the follow-up service rating. If the authority fails to issue the follow-up service rating within 14 calendar days after the employee's written request, the employee is returned to satisfactory standing, effective the end of the follow-up rating period. However, the return to satisfactory standing does not nullify any prior unsatisfactory performance rating or preclude the later use of any such rating.

2-2.3 Unsatisfactory Service Rating

If an employee receives a service rating that is less than satisfactory, the appointing authority may discipline the employee, up to and including dismissal. If an employee's last two

service ratings are less than satisfactory and the appointing authority has taken no adverse action, the state personnel director may recommend to the civil service commission that the employee be removed from the position. An employee who receives a service rating that is less than satisfactory is not eligible to receive a performance-pay award or a higher salary step.

2-2.4 Employee Review

Agency management shall report each employee's service rating to the employee. If the employee receives a service rating that is less than satisfactory, agency management shall review the rating with the employee. The employee shall sign and date the service rating as evidence of the review. The employee's signature on a service rating does not indicate that the employee agrees with the service rating. The employee may file an explanatory statement to accompany the service rating.

2-2.5 Performance-Pay Program Evaluation System

- (a) **Performance measures.** An appointing authority shall establish performance objectives or competencies against which to measure the performance of each employee in the following:
- (1) The senior executive service (SES).
 - (2) The senior executive management assistant service (SEMAS).
 - (3) Equitable classification plan (ECP) Group 4.
 - (4) ECP Groups 1, 2, or 3, when the state personnel director has approved the employee's inclusion in the performance-pay program.

(b) **Annual review.** An appointing authority shall complete a performance appraisal and a salary review for each employee in the performance-pay program at least annually.

(c) **Use of appraisal.** An appointing authority shall use the performance appraisal as one factor in determining an employee's eligibility for an increase in base salary or a lump sum award. A performance appraisal may also be used in other human resource decisions, including promotion, retention, assignment, and need for training.

2-3 LAYOFFS

2-3.1 Reasons for Layoff

An employee may be laid off for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in departmental mission, or reorganization of the work force.

2-3.2 Notification

An appointing authority shall give prior written notice to an employee who is laid off.

2-3.3 Procedure for Making Layoffs

An appointing authority shall lay off employees in accordance with the civil service rules and regulations governing employment preference.

2-4 EMPLOYMENT PREFERENCE

2-4.1 Application and Protection

- (a) **Application.** Unless otherwise provided in an approved departmental layoff plan, an employee can apply employment preference only within the employee's current principal department or autonomous entity. However, an employee cannot apply preference against a position or classification that is protected from the application of employment preference.
- (b) **Limited-term appointments.** An employee is not eligible to exercise employment preference or to be placed on a recall list at the end of a limited-term appointment, unless the employee meets one of the following criteria:
- (1) An employee with status gained from an indefinite appointment to a permanent position who transfers or accepts a limited-term appointment may exercise employment preference at the end of the limited-term appointment. Employment preference begins at the last classification level at which the employee achieved status in an indefinite appointment before accepting the limited-term appointment. Employment preference may be exercised only within the principal department or autonomous agency that appointed the employee to the limited-term appointment.
 - (2) A person who is recalled on a limited-term basis is not eligible to exercise employment preference at the end of the limited-term appointment but shall be returned to all

recall lists for which the employee is eligible.

- (c) **Protected positions.** An employee occupying a protected position cannot be displaced from the employee's current position by another employee exercising employment preference. An employee in a protected position does not lose the right to apply employment preference to an unprotected position if the employee's protected position is abolished. The following positions are protected positions:
- (1) All positions in senior executive service (SES) classifications, including positions in SES-eligible classifications.
 - (2) All positions in ECP Group 4 classifications.
 - (3) All positions in senior executive management assistant service (SEMAS) classifications.
 - (4) Any other position designated as protected in any other civil service rule or regulation.

2-4.2 Determination

Employment preference is determined by an employee's total continuous service.

- (a) **Ranking employees with identical service.** If two or more employees have equal total continuous service, the appointing authority shall rank each employee by evaluating factors such as fitness for the position, education, experience, behavior, and performance. An employee receiving a higher ranking is considered to have greater employment preference. An employee cannot appeal a ranking to the department of civil service or the civil service commission unless the ranking violates rule 1-7.

- (b) **Loss of employment preference.** An employee who separates from the state classified service by methods other than a leave of absence, suspension, or layoff, loses any total continuous service accumulated before that separation.
- (c) **Effect of status.** An employee with status from current employment, regardless of the classification at which status was attained, has greater employment preference than an employee without status.
- (d) **Affirmative action exemption.** In order to preserve affirmative action gains made in a program approved by the Michigan civil rights commission and the department of civil service, the state personnel director may exempt an appointing authority from using a strict application of total continuous service, in accordance with regulations issued by the director.

2-4.3 Qualification

An employee may apply preference against a least senior position if all of the following eligibility criteria are met:

- (a) **Position and eligibility.** An employee may apply preference (1) to a least senior position in a classification or class series in which the employee is serving or (2) to a least senior position in a classification or class series at or below the classification in which the employee previously attained status.
- (b) **Subclasses.** If subclass codes have been assigned to the least-senior position, the employee may apply preference only if the employee has been assigned one or more of the same subclass codes in the same classification or class series at or above the classification of the least senior position.

- (c) **Selective position requirements.** If selective position requirements have been established for the least senior position, the employee is eligible to apply preference only if the employee meets the selective position requirements.

2-4.4 Employee Rights to Apply Preference

- (a) **Application of preference.** An employee may apply preference only against another position within the employee's county of employment, unless otherwise permitted in an approved departmental layoff plan. An employee can apply preference to the least senior position for which eligible in the following order:
 - (1) The least senior position in the employee's current classification.
 - (2) The least senior position at a lower classification in the current class series or, alternatively, to the same or lower classification in a former class series in which the employee attained status, at the level that will minimize loss of pay.
- (b) **Departmental layoff plans.** The department of civil service may approve a departmental layoff plan that varies the application of employment preference within a department or autonomous agency. An approved departmental layoff plan may vary the application of employment preference in the following areas only:
 - (1) The application of county preference based on organizational or geographic limits.
 - (2) The application of employment preference between recognized autonomous entities of a principal department.

- (3) The application of employment preference into additional positions in class clusters approved by the appointing authority and the department of civil service.
- (4) The application of employment preference between employment types.

2-4.5 Application of Employment Preference between Employees Covered by a Collective Bargaining Agreement and those not Covered by a Collective Bargaining Agreement

Application of employment preference between employees covered by a collective bargaining agreement and employees not covered by a collective bargaining agreement is subject to the following additional conditions:

- (a) **Qualification.** An employee may only displace a less senior employee in a position for which qualified in a classification in which the employee has previously attained status.
- (b) **Application; exhaustion.** An employee not covered by a collective bargaining agreement must first exhaust all bumping rights to other positions held by employees not covered by a collective bargaining agreement. After exhausting all such rights, the employee not covered by a collective bargaining agreement may then bump into the position covered by a collective bargaining agreement that minimizes loss of pay, subject to the terms and conditions of the collective bargaining agreement. If a collective bargaining agreement expressly provides for exclusively represented employees covered by the agreement to bump into positions not covered by an agreement, they may do

so only after exhausting all bumping rights under the agreement, and then in accordance with this rule. When more than one employee covered by a collective bargaining agreement is eligible to bump into a position not covered by a collective bargaining agreement, the most senior employee receives bumping rights.

- (c) **Total continuous service.** Employment preference is determined by an employee's total continuous service.
- (d) **Limitation on seniority.** A collective bargaining agreement cannot prohibit an employee who accepts a supervisory position or any other employee who is not covered by a collective bargaining agreement from exercising employment preference into a position covered by the agreement. In such bumping situations, seniority earned outside the unit applies, except as limited by any collective bargaining agreement provisions in effect on January 23, 1983. This subsection only applies after the employee exhausts rights to displace other employees not covered by a collective bargaining agreement.
- (e) **Grievances.** A grievance based on the application and adverse effects of this rule is filed, processed, and resolved under the grievance procedure provisions that are applicable to the position into which the exercise of employment preference has occurred or is scheduled to occur. This rule does not preclude a nonexclusively represented employee from filing a standard grievance, even after bumping into an exclusively represented position, if the employee contends a denial of the right to displace another nonexclusively represented employee.

2-4.6 Effective Date

The employment preference rights of an employee laid off or displaced before the effective date of any amendment to the rules or regulations are determined by the civil service rules and regulations in effect at the time of layoff or displacement.

**2-5 DISMISSAL,
DEMOTION, OR
SUSPENSION****2-5.1 Disciplinary Conference**

When an appointing authority considers it necessary to dismiss, demote, or suspend an employee, the appointing authority shall provide written notice of any claimed violations and possible penalties. The appointing authority shall schedule a disciplinary conference, subject to the employee's availability. The appointing authority may withhold a penalty determination until after the disciplinary conference. If the employee fails to attend the disciplinary conference, the employee has waived the right to the conference.

2-5.2 Representation

The employee for whom the disciplinary conference is held is entitled to representation of the employee's choice, except as otherwise limited by the civil service rules or regulations. A fellow employee representative employed by the same principal department and the same subagency is entitled to administrative leave to attend the disciplinary conference. It is the responsibility of the employee to notify the employee's representative of the conference. The conference will not be unreasonably delayed because of the representative's unavailability.

2-5.3 Causes

An employee in the classified service may be dismissed, demoted, or suspended for any of the following reasons:

- (a) Failure to carry out the duties and obligations imposed by these rules and by agency management.
- (b) Conduct unbecoming a state employee.
- (c) Unsatisfactory service.

2-5.4 Suspension During Investigation

An appointing authority may suspend an employee during an investigation. The suspension must be superseded by a disciplinary suspension, dismissal, or reinstatement within 7 calendar days unless extended by the appointing authority. The appointing authority shall give the employee written notice of the extension and the reasons for the extension. Any extension shall be with pay.

2-5.5 Suspension for Criminal Charges

An appointing authority may suspend an employee who has been charged with a criminal offense. The suspension may be with or without pay. The appointing authority may continue the suspension until the criminal charges are resolved. The appointing authority is not required to hold a presuspension disciplinary conference, but shall give the employee written notice of the suspension.

2-6 DRUG AND ALCOHOL TESTING

2-6.1 Prohibited Activities

A classified employee shall not do any of the following:

- (a) Consume alcohol or use drugs while on duty.
- (b) Report to duty or be on duty with a prohibited level of alcohol or drugs present in the employee's bodily fluids.
- (c) Refuse to submit to a required drug test or alcohol test.
- (d) Interfere with any testing procedure or tamper with any test sample.

2-6.2 Testing Classified Employees

An appointing authority shall require an employee, as a condition of continued employment, to submit to a drug test or an alcohol test, as provided in this rule.

- (a) **Tests Authorized.** The following tests are authorized:
 - (1) **Reasonable suspicion testing.** An employee shall submit to a drug test or an alcohol test if there is reasonable suspicion that the employee has violated this rule.
 - (2) **Preappointment testing.** An employee not occupying a test-designated position shall submit to a drug test if the employee is selected for a test-designated position.
 - (3) **Follow-up testing.** An employee shall submit to an unscheduled follow-up drug test or alcohol test if, within the previous 24 months, the

employee has done any of the following:

- (A) Voluntarily disclosed drug or alcohol problems.
 - (B) Entered into or completed a rehabilitation program for drug or alcohol abuse.
 - (C) Failed or refused a preappointment drug test.
 - (D) Been disciplined for violating this rule.
- (4) **Random selection testing.** A test-designated employee shall submit to a drug test and an alcohol test if the employee is selected for testing on a random selection basis.
 - (5) **Post-accident testing.** A test-designated employee shall submit to a drug test or an alcohol test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.
- (b) **Limitations on certain tests.** An employee subject to testing under this rule may be required to submit only to a drug test, only to an alcohol test, or to both tests, subject to the following limitations.
 - (1) **Preappointment testing.** Preappointment testing is limited to drug testing.
 - (2) **Follow-up testing.** The appointing authority may require an employee who is subject to follow-up testing to submit to no more than six unscheduled drug tests or alcohol tests within any 12-month period.
 - (3) **Random selection testing.** The number of drug tests conducted in any one year on a random selection basis cannot exceed 15 percent of the

number of all test-designated positions. The number of alcohol tests conducted in any one year on a random selection basis cannot exceed 15 percent of the number of all test-designated positions.

2-6.3 Testing New Hires; Conditional Offer of Employment

Any offer of employment to a person who is not currently employed in the classified service is a conditional offer of employment. The offer of employment is conditioned upon the person submitting to and passing a preemployment drug test. A person given a conditional offer of employment is prohibited from performing any duties until the person has submitted to and passed the preemployment drug test.

2-6.4 Penalties

(a) **Classified employees.** An appointing authority shall impose discipline, up to and including dismissal, for violation of this rule. An appointing authority shall prescribe in its work rules the range of penalties, including any mandatory penalties, for violating this rule. An employee selected for a test-designated position is prohibited from serving in the test-designated position until the employee has submitted to and passed a preappointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following occurs:

- (1) The employee cannot be appointed, promoted, assigned, recalled, or otherwise placed in the test-designated position.
- (2) The employee is removed from all applicant pools for test-designated positions and is disqualified from any

test-designated position for a period of 3 years.

(3) If the employee interferes with a test procedure or tampers with a test sample, the employee may also be disciplined as provided in subsection (1).

(b) **New Hires.** If a person given a conditional offer of employment fails or refuses to submit to the preemployment drug test, interferes with a test procedure, or tampers with a test sample, the conditional offer of employment must be rescinded and the person must not be appointed to the position in the classified service. The person also is removed from all applicant pools and is disqualified from appointment to the classified service for a period of 3 years.

2-6.5 Self-reporting

(a) **Reporting.** An employee who voluntarily discloses to the appointing authority a problem with controlled substances or alcohol cannot be disciplined for such disclosure if, and only if, the problem is disclosed before the occurrence of any of the following:

- (1) For reasonable suspicion testing, before the occurrence of an event that gives rise to reasonable suspicion that the employee has violated this rule.
- (2) For preappointment testing, follow-up testing, and random selection testing, before the employee is selected to submit to a drug or alcohol test.
- (3) For post-accident testing, before the occurrence of any accident that results in post-accident testing.

(b) Employer action. After receiving notice, the appointing authority shall permit the employee an immediate leave of absence to obtain medical treatment or to participate in a rehabilitation program. In addition, the appointing authority shall remove the employee from the duties of a test-designated position until the employee submits to and passes a follow-up drug test or alcohol test. The appointing authority may require the employee to submit to further follow-up testing as a condition of continuing or returning to work.

(c) Limitation. An employee may take advantage of subsection (a) no more often than two times while employed in the classified service. An employee making a report is not excused from any subsequent drug test or alcohol test or from otherwise complying in full with this rule. An employee making a report remains subject to all drug and alcohol testing requirements after making a report and may be disciplined as the result of any subsequent drug test or alcohol test, including a follow-up test.

2-6.6 Identification of Test-designated Positions

Each appointing authority shall first nominate classes of positions, subclasses of positions, or individual positions to be test-designated. The state employer shall review the nominations and shall recommend to the state personnel director the positions to be test-designated positions. The director shall review the recommendations and shall designate as test-designated positions all the classifications, subclasses, or individual positions that meet the definition of a test-designated position. The designation is not limited by or to the nominations or recommendations. The appointing authority shall give written notice of designation to each test-designated employee at

least 14 days before implementing the testing provisions of this rule.

2-6.7 Continuation of Existing Programs

Until the state personnel director issues regulations to the contrary, nothing in this rule prohibits an appointing authority from continuing to use an existing drug or alcohol testing program. Nothing in this rule or the regulations prohibits an appointing authority from implementing a drug or alcohol testing program required by federal law or approved by the commission in a collective bargaining agreement.

2-6.8 Coordination of Rule and Federal Regulations

This rule also applies to an employee subject to mandatory federal regulations governing drug or alcohol testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which (1) it is not possible to comply with both this rule and the federal regulation or (2) compliance with this rule is an obstacle to the accomplishment and execution of any requirement of the federal regulation.

2-6.9 Regulations

The state personnel director shall establish the prohibited levels of drugs and alcohol in the regulations.

2-7 CONFLICT OF INTEREST

2-7.1 Prohibitions

A classified employee shall not do any of the following:

- (a) Divulge or release, for the purpose of fostering personal financial gain or financial gain for a member of the employee's immediate family, any confidential information which is not by law, rule, regulation or court order available to members of the general public. However, this provision does not prevent an employee from divulging or releasing confidential information regarding violations of rules, regulations, or applicable law except where otherwise prohibited by statute, court order, or professional ethics.
- (b) Engage in any business transaction or private arrangement for personal financial gain or financial gain for a member of the employee's immediate family, that accrues from or is based on the employee's official position or on confidential information gained by reason of the employee's position.
- (c) Solicit, accept, or agree to accept anything of value under any circumstances that could reasonably be expected to influence the manner in which the employee performs work or makes decisions.
- (d) Grant or make available to any person any consideration, treatment, advantage, or favor beyond that which is generally granted or made available to others under similar circumstances.
- (e) Represent or act as agent for any private interests, whether for compensation or otherwise, in any transaction in which the state has a direct and substantial interest and which could reasonably be expected to result in a conflict between the employee's private interests and official state responsibilities.
- (f) Have any substantial interest in, nor can a member of the employee's immediate family have such interest in, any business or industry concerning which the

employee directly, in a significant decision-making capacity, participates on behalf of the state in the regulation, enforcement, auditing, licensing, or purchasing of any goods or services.

2-7.2 Departmental Procedures

An appointing authority may issue departmental procedures that define with particularity acts prohibited by this rule. A departmental procedure is effective after approval by the state personnel director.

2-8 DISCLOSURE OF INTEREST AND CONTACTS

2-8.1 Disclosure of Interest

- (a) **Affected employees.** The following employees shall disclose to their appointing authority (1) all personal or financial interests and (2) the personal and financial interests of members of their immediate families, in any business or entity with which they have direct contact while performing official duties as a classified employee:
 - (1) An employee who has authority to purchase or award contracts.
 - (2) An employee whose official duties include (1) developing or approving specifications for contracts or (2) recommending the purchase or award of contracts.
 - (3) An employee who has substantial regulatory or enforcement responsibilities.
 - (4) An employee who inspects or approves work performed by busi-

nesses or persons who are not state employees.

- (5) An employee who audits financial records of businesses or individuals.
- (6) An employee who supervises any employee listed in subsections (a)(1) through (a)(5).

(b) **Notice.** Each employee determined by the appointing authority to be subject to this rule must be given written notice of that determination. Disclosure is not required under this rule in the absence of such notice. The appointing authority shall maintain a list of employees who have been given notice and shall make that list available to the state personnel director and the public.

2-8.2 Disclosure of Contacts

An employee who is given notice as provided in this rule shall report in writing to the employee's appointing authority each contact between the employee and any person doing business with the state in which the employee receives anything of value.

- (a) **Supervisors included.** An employee who supervises another classified employee governed by this rule shall report any contact between the supervisor and any individual in which the supervisor receives anything of value in the same manner as if the supervisor was the classified employee required to report by this rule.
- (b) **De minimis contacts; exception.** An appointing authority may exempt from the reporting requirements of this rule any contact resulting in the receipt of anything of value which is so *de minimis* that the appointing authority has determined that its receipt by the classified employee could not reasonably be expected to influence the manner in which the

employee performs work or makes decisions. However, any such *de minimis* exemption may not exceed the following limits:

- (1) Receipt of any single tangible or intangible item with a fair market value exceeding \$10.00.
- (2) Receipt of any combination of tangible and intangible items during any 3-month period with an aggregate fair market value exceeding \$40.00. All items received from persons employed by, or directly or indirectly representing, the same business, entity, or person are aggregated and, if the aggregate value exceeds \$40.00, all contacts must be reported.
- (3) Receipt of any amount of money, including a loan of money.

- (c) **Time limit for disclosure.** An employee shall file with the appointing authority any written report required by this rule within 14 calendar days after the reportable contact. An appointing authority may establish different time limits in its departmental procedures.

2-8.3 Departmental Procedures; Approval

Each appointing authority shall issue departmental procedures to implement disclosure and reporting requirements and shall inform all employees and prospective employees of those procedures and the regulations governing conflict of interest. An appointing authority shall submit the departmental procedure to the state personnel director. Upon review to determine that the procedures are reasonable and consistent with the requirements of this rule, the state personnel director shall issue formal approval. A departmental procedure is not effective until

the state personnel director has approved the departmental procedure. A disclosure report filed with an appointing authority is a public record.

2-9 ***DISCLOSURE OF VIOLATIONS***

2-9.1 **Reprisal Prohibited**

An appointing authority shall not engage in reprisal against an employee for disclosing a violation or suspected violation of any of the following:

- (a) A state or federal law.
- (b) A lawful regulation or rule promulgated by a political subdivision of the State of Michigan.
- (c) A civil service rule or regulation.

2-9.2 **Application**

An employee who reports, or who is known by the appointing authority to have indicated an intent to report, violations or suspected violations is protected by this rule, unless the employee knew the report was false. This protection extends to an employee who participates in, or who was known by the appointing authority to have indicated an intent to participate in, a court proceeding or an investigation, hearing, or inquiry conducted by a public body.

2-9.3 **Forms of Reprisal**

Reprisal includes actions such as discharge, threats of discipline, or arbitrary and capricious changes in the conditions of employment.

2-10 ***LEAVE OF ABSENCE WITH PAY***

2-10.1 **Authorization**

An appointing authority may authorize salary payments to an employee to attend school, visit other governmental agencies, or undertake any other systematic improvement of the knowledge or skills required in the employee's work. Salary payments may be in whole or in part.

2-10.2 **Administrative Leave**

An appointing authority may grant administrative leave with pay for necessary absence from duty, for which annual, sick, or other leave with pay is not applicable. Additionally, the appointing authority must grant administrative leave when specifically required by the civil service commission.

2-11 ***LEAVE OF ABSENCE WITHOUT PAY***

2-11.1 **Authorization**

An appointing authority may grant an employee a leave of absence without pay and without loss of employment status. Additionally, the appointing authority must grant a leave of absence without pay when specifically prescribed by the commission.

2-11.2 **Restoration to Position**

When an authorized leave of absence expires, the employee must be restored to the position formerly occupied or an equivalent position. The appointing authority may approve restoration before the expiration of the leave.

2-11.3 Abolishment of Position

If the position of an employee is abolished during a leave of absence without pay, the employee is returned to the classified service in accordance with rule 2-4.

2-11.4 Annual Leave Balance

- (a) **Retention during leave.** An employee may choose to retain an annual leave balance during a leave of absence in accordance with the official compensation plan.
- (b) **Limitation and exception.** Payment for annual leave due an employee who does not return from a leave of absence is at the employee's last rate of pay

2-11.5 Medical Leave of Absence

An appointing authority may grant a medical leave of absence without pay for up to 6 months to an eligible employee whose sick leave is exhausted. An employee is eligible for a medical leave of absence only if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. If an employee on medical leave requests an extension before the leave expires, an appointing authority is authorized to extend the leave to a maximum of one year. Any extension of a medical leave beyond one year requires the written approval of the state personnel director.

2-12 WAIVED RIGHTS LEAVE OF ABSENCE

An appointing authority may grant a waived rights leave of absence without pay for up to one year to an employee if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted.

Any extension beyond one year requires the written approval of the state personnel director. An employee granted a waived rights leave of absence cannot carry any annual leave balance during the leave. An employee on a waived rights leave has no right to return to the position formerly occupied or to an equivalent position upon expiration of the leave. If the employee returns to the classified service before the expiration of the waived rights leave through normal selection processes, the employee is not considered to have had a break in service. If the employee does not return to the classified service before or upon the expiration of the leave, the employee is separated.

2-13 VETERANS' PREFERENCE AND MILITARY LEAVE

2-13.1 Definition: Veterans; Disabled Veterans

A *veteran* is a person with 90 or more calendar days of active service in the armed forces of the United States during any period covered by a selective service law and who has received an honorable discharge or other suitable evidence of honorable active service. A person, other than a disabled veteran, who has retired from any branch of the armed forces is ineligible for veterans' preference. A *disabled veteran* is one who the Veterans Administration or a branch of the military service has determined to be eligible for disability compensation.

2-13.2 Preference Credit Points

Preference credit will be applied as follows:

- (a) Within 5 years after a veteran's release from active duty, 5 preference credit points are added, upon request, to the final

passing score in any eligible examination taken by the veteran.

- (b) Without regard to time limitations, 5 preference credit points are added, upon request, to the final passing score in any eligible examination taken by surviving spouses of veterans.
- (c) Without regard to time limitations, ten 10 preference credit points are added, upon request, to the final passing score in any eligible examination taken by disabled veterans, spouses of disabled veterans having greater than 50 percent disability, surviving spouses of veterans having children under 18 years of age, or surviving spouses of veterans with continued parental care of a disabled child.

2-13.3 Regular Military Leave of Absence

A classified employee in an indefinite appointment who enters military service in the armed forces of the United States under the provisions of the selective service law, by call to duty, or by voluntary entrance in lieu of being called to duty, is entitled to a military leave of absence without pay for the period of time required to fulfill the military obligation. If the employee voluntarily remains in military service beyond the time required by selective service law, the leave and right to restoration to the position formerly occupied or an equivalent position automatically terminates. Continuous state service credit is allowed for the period of the military leave of absence.

2-13.4 Return from Regular Military Leave of Absence

To return to the classified service, the veteran must apply in writing to the appointing authority within 6 months after release from active duty in the armed forces or discharge

from veterans' hospital. The appointing authority shall restore the veteran to the position formerly occupied or an equivalent position within 30 calendar days of the filing of such application.

2-13.5 Temporary Military Leave of Absence

An appointing authority shall grant a temporary military leave of absence to a classified employee occupying an indefinite position who is in a reserve component of the United States armed forces when ordered to active or inactive duty training. A temporary military leave of absence for active duty training is with pay if the military pay is less than the employee's regular state salary. The pay is equivalent to the difference between the employee's military pay and the regular state salary for each day of absence from scheduled state employment for those same days. The leave cannot exceed 15 regularly scheduled workdays in any fiscal year. Continuous state service credit is allowed for the period of temporary military leave of absence.

- (a) If active duty training exceeds 15 regularly scheduled work days in a fiscal year, the employee may choose to be placed on regular military leave of absence without pay or use annual or compensatory time accruals for the remainder of the period of training. The leave and the right to restoration to the position formerly occupied or an equivalent position terminates if the employee fails to return to the classified position within 15 calendar days after release from training duty or after discharge from hospitalization incident to that training. State service credit is allowed for the period of the military leave of absence without pay.
- (b) **Holidays occurring during temporary military leave.** An employee in full pay

status is entitled to holiday pay for a designated holiday that occurs or is observed during the period of a temporary military leave of absence. Military pay earned on a holiday is not considered in determining the amount of state salary for the holiday.

2-13.6 Emergency Military Leave of Absence

An appointing authority shall grant an emergency military leave of absence to a classified employee in an indefinite appointment who is a member of a reserve component of the armed forces and is ordered to perform emergency duty, by compulsory call of the governor or the president. The leave is with pay if the military pay is less than the employee's regular state salary, for each day of absence from scheduled state employment. The pay is equivalent to the difference between the employee's military pay and regular state salary. Pay is limited to 30 calendar days. Holiday pay is handled as prescribed in rule 2-13.4(b). If the emergency duty exceeds 30 calendar days, the employee may choose to be placed on regular military leave of absence without pay or use annual leave or compensatory time accruals for the remainder of the duty period. After release from emergency duty, the employee is restored immediately to the position formerly occupied. Continuous state service credit is allowed for the period of emergency military leave of absence.

2-13.7 Educational Leave

An appointing authority may grant a leave of absence without pay to a veteran who has completed 6 months in the classified service to take advantage of the educational grants made available by federal funds for veterans' education.

2-13.8 Abolishment of Positions

If the former position has been abolished, the veteran is entitled to another position in accordance with the civil service rules and regulations governing employment preference.

2-13.9 Reclassification

If the former position has been reclassified either higher or lower, the veteran has the same rights with respect to the reclassified position as would have applied had there been no interruption of state service.

2-13.10 Combining of Positions

If the former position has been combined with another position, the veteran's right to the combined position with respect to its present incumbent is determined in accordance with the civil service rules and regulations governing employment preference.

2-13.11 Examination upon Return

A veteran returning from military leave has the right to take any examination given during that leave for which the veteran would have been eligible had there been no interruption of state service. The request for examination must be made within 6 months after return to state service.

2-13.12 State Service

For employment preference purposes, a regular military leave of absence is considered as state service in the same position and department where the veteran was employed when inducted in the armed forces.

2-13.13 Salary Step Increase

If the last service rating of a veteran returning from military leave was satisfactory, the veteran is placed at the salary step that would have applied had there been no interruption of state service.

2-14 SUPPLEMENTAL EMPLOYMENT OUTSIDE THE CLASSIFIED SERVICE

Supplemental employment outside the classified service is permitted if all of the following conditions are met:

- (a) The supplemental outside employment must not conflict with the employee's hours of state employment and must not conflict in quantity or interest with the satisfactory and impartial performance of state duties.
- (b) The employee must secure the written approval of the appointing authority before engaging in supplemental outside employment.
- (c) The employee must inform the appointing authority of contemplated changes in supplemental outside employment.

2-15 ASSUMPTION INTO CLASSIFIED SERVICE**2-15.1 Assumption Authorized**

If the legislature, the governor, a court, or the state personnel director determines that an existing position outside the classified service is or will become a position in the state service, the director shall assume the position into the classified service. The assumption must be

completed in accordance with civil service rules and regulations. The assumption must also be completed in accordance with any applicable law, executive order, or court order, to the extent the law or order is not inconsistent with the civil service commission's constitutional authority or the civil service rules and regulations.

2-15.2 Classification of Assumed Positions

The state personnel director shall evaluate the position to be assumed and shall establish and classify the position within the classified service in the same manner as a newly established position. Only the appointing authority may appeal the classification of an assumed position.

2-15.3 Appointment

The appointing authority shall make an appointment to an assumed position in the same manner as an appointment to a newly established position. However, the state personnel director may authorize the appointment of the employee occupying the same position outside the classified service in accordance with the following standards:

- (a) **Merit selection and 3 years of service.** The director may authorize an appointment without further testing of an employee with at least 3 years satisfactory service at assumption if the employee's original selection was substantially based on merit. The employee must satisfactorily complete a probationary period as a classified employee. If the employee does not satisfactorily complete the initial probationary period, the appointing authority shall separate the employee from the classified service.
- (b) **No merit selection or less than 3 years of service.** The director may authorize a

temporary appointment for a period not to exceed 6 months for an employee with less than 3 years service at assumption or whose original selection was not substantially based on merit. During the 6 months, the department shall examine the employee on a noncompetitive basis. The employee must also satisfactorily complete a probationary period as a classified employee. If the employee does not satisfactorily complete the examination or initial probationary period, the appointing authority shall separate the employee from the classified service.

2-15.4 Treatment of Employees

An employee who is appointed to a position assumed into the classified service is considered as a new hire without status as of the assumption, except as authorized by rule, regulation, or the state personnel director. Unless prohibited by these rules, the director may approve in writing the transfer to the classified service of some or all of a benefit, credit, status, seniority, or contract right accrued by an employee under a previous employer.

2-15.5 Pay and Benefits

The state personnel director shall establish the pay and benefits for an employee appointed to a position after consultation with the state employer and the appointing authority in accordance with the following standards:

- (a) **Pay.** The initial rate of pay for an employee whose position is assumed is established at the state pay level closest to, but not less than, the employee's rate of pay before assumption. The state personnel director may, at the request of the state employer or the appointing authority, approve continuation of a rate of pay that exceeds the maximum for the classi-

fication if the employee's pay is red-circled.

- (b) **Transfer of annual leave and sick leave balances.** If the employee has not been compensated for annual and sick leave balances outstanding on the date of assumption, the state personnel director may approve the transfer of all or a portion of the balances to the classified service. The number of hours transferred cannot exceed the maximum number permitted in the compensation plan. The state of Michigan is not liable for the value of any excess balance that is not transferred.
- (c) **Longevity.** If the previous employer had a longevity pay plan, the state personnel director may authorize longevity credit for employment before the date of assumption. If the previous employer had no longevity pay plan, the employee is not eligible for longevity credit.
- (d) **Retirement.** The employee is eligible for retirement credit only as provided by law.

2-15.6 Prior Employment Contracts

Unless expressly agreed to in a writing signed by the state employer and the state personnel director, an employment contract between an employee assumed into the classified service and the previous employer, including a collective bargaining agreement, cannot be assumed by the state of Michigan and is void.

2-15.7 Special or Unique Circumstances

If special or unique circumstances require treatment of an employee assumed into the classified service that is prohibited by these rules, the state personnel director, with the consent of the civil service commission, is

authorized to approve in writing such special or unique treatment as may be required for the good of the classified service.

2-16 RETIREMENT

2-16.1 Cooperation with Board

The state personnel director shall cooperate with the state employees retirement board in maintaining a comprehensive retirement system for classified employees.

2-16.2 Return to Work from Retirement

Regardless of any other provision of these rules, a state classified employee retired or retiring under any state of Michigan retirement system who applies for and obtains employment in a classified position is considered, in all respects, as a new employee, subject to the following conditions:

- (a) **Exception, reinstatement.** A retired employee may be reinstated, but cannot receive any other employment benefits based upon previous classified service.
- (b) **Exception, disability retirement.** A classified employee who retires under a duty or nonduty disability provision of any state of Michigan retirement system and returns directly to a classified position after the disability ends is considered a continuing employee, but cannot receive state service credit for any purpose for the period of the disability retirement.
- (c) **Exception, deferred retirement.** A classified employee who has taken a deferred retirement and is reinstated or rehired before receiving a retirement benefit payment must requalify to receive prior service credit for longevity and annual leave.

2-17 TRAINING

2-17.1 Responsibility

Agency management is primarily responsible for agency in-service training. However, the commission may direct the establishment of any training program it considers necessary.

2-17.2 Training Needs

The state personnel director shall assist agencies in determining their needs and devising and establishing programs to meet those needs.

2-17.3 Continuing Education

The state personnel director shall provide agencies with continuing education information and shall work with agencies and continuing education providers to establish programs that meet the occupational needs of state employees.

2-17.4 Advisory Services

The state personnel director shall provide agency trainers with materials and manuals and offer advisory help requested by the agency.

2-17.5 Interagency Training

The state personnel director shall initiate and encourage needed interagency training programs and shall assist individual state agencies, professional and employee organizations, and state educational institutions in providing interagency training.

2-18 APPEALS

2-18.1 Civil Service Appeals Procedures

The state personnel director shall issue regulations governing procedures for grievances, technical appeals, labor relations appeals, and the employment relations board.

2-18.2 Subpoena

The following conditions regulate the appearance of witnesses and production of documents for civil service hearings and, when subpoenas are deemed essential to a fair hearing, govern the issuance, service, revocation, and compliance with subpoenas:

- (a) **Classified employees.** A classified employee, as a part of the employee's duties, shall appear as directed by a civil service adjudicating officer, without issuance of a subpoena.
- (b) **Requirements.** Upon a showing of necessity, an adjudicating officer, upon the officer's own motion or on the written petition of a party, may issue a subpoena for relevant and material evidence. The subpoena may require the attendance and testimony of a person and the production of evidence, including books, records, papers, correspondence, or documents possessed by or under a person's control.
- (c) **Applications and review.** When a hearing is not in session, an application for a subpoena is acted on by the adjudicating officer assigned to the case. In the absence of the assigned adjudicating officer, an application for a subpoena when a hearing is not in session may be acted on by the assigned scheduling officer or by the director of the hearings division. The assigned adjudicating officer may review the grant or denial of a subpoena at the hearing. During a hearing, an application for a subpoena is filed with the assigned adjudicating officer.
- (d) **Service, proof.** A subpoena may be served at any place within Michigan. A subpoena commands the person to whom it is directed to attend and give testimony, to produce the things designated, or to give a deposition. The party requesting the subpoena is responsible for service of the subpoena. An individual of suitable age and discretion who is not a party to the grievance or other dispute must personally serve the subpoena. Verified proof of service must be filed with the adjudicating officer.
- (e) **Time limits.** Within 24 hours after service of the subpoena on the person to whom it is directed, the requesting party must mail a copy of the subpoena to each named party to the grievance a copy of the subpoena.
- (f) **Costs.** The cost of service, witness, and mileage fees is borne by the party who requests the subpoena. However, when a subpoena is issued upon motion of the adjudicating officer, the cost is borne by the department of civil service. Witness and mileage fees are the same as are paid to witnesses in the Michigan circuit court.
- (g) **Revocation.** A person served with a subpoena who does not intend to comply shall, within 5 workdays after the date of service of the subpoena, petition in writing to revoke the subpoena. A petition to revoke, if made before the hearing, must be filed with the director of the hearings division, who shall refer the petition to the adjudicating officer for ruling. A petition to revoke filed during a hearing must be filed with the adjudicating officer. A copy of the petition to revoke must be served upon the party at whose request the subpoena was issued. The adjudicating

officer or the director of the hearings division shall give prompt notice of the filing of a petition to revoke to the party at whose request the subpoena was issued. The adjudicating officer shall revoke a subpoena if (1) the evidence required to be produced does not relate to the matter in issue, (2) the subpoena does not describe the evidence with sufficient particularity, or (3) the subpoena is invalid for any other legally sufficient reason.

- (h) **Compliance.** If a person does not comply with a subpoena, the party who requested the subpoena may file a petition for an order requiring compliance in the circuit court for Ingham County or the county in which the hearing is held. Pending or in lieu of court enforcement action, the adjudicating officer may adjourn the hearing or take whatever other action deemed appropriate, including, but not limited to, presuming that the evidence or testimony of a witness would be adverse to any party who is responsible for the failure or refusal of a witness to testify. However, a party who requests a subpoena is not required to call that witness or present the witness for cross-examination.

2-18.3 Appeal to Board and Commission

- (a) **Appeal.** An employee dismissed for cause from the classified service may appeal as of right to the civil service commission from a final decision of a civil service hearing officer upholding the dismissal. In all other cases, including grievance arbitration, an appeal may be taken to the commission by a party only upon application and leave granted.
- (b) **Bases for granting leave.** In the discretion of the civil service commission, leave may be granted in any matter that

involves (1) a violation of article 11, section 5, of the constitution, (2) a violation of a civil service rule or regulation, or (3) an abuse of discretion. An appeal from arbitration is governed by the commission policy on deferral to arbitration.

- (c) **Final judgment by commission.** The employment relations board shall hear all appeals on behalf of the civil service commission and shall file a final recommendation with the civil service commission. A final recommendation of the board becomes effective as the judgment or decision of the commission if approved by the commission. If the commission does not approve the recommendation, the commission (1) may remand the matter to the board or other tribunal for further action, (2) may issue a final judgment or decision of the commission that modifies or vacates the judgment or decision of the board, or (3) may take any other action within the power of the commission.

2-18.4 Commission May Assume Jurisdiction

The commission reserves the authority to assume jurisdiction of any proceeding at any time before final action by the board and to take appropriate action.

2-18.5 Attorney Fees and Interest

The following provisions apply to all civil service grievance and technical appeal proceedings:

- (a) **Attorney fees.** A monetary award cannot be made for attorney fees, witness fees, costs, or other expenses attributable to the grievance or technical appeal.
- (b) **Interest on award.** An employee may be awarded interest on a back pay award

only if the employee proves by clear and convincing evidence that the damages resulted from intentional, malicious, or unconscionable prolongation of the proceedings by the appointing authority. Interest is calculated from the earliest filing of the grievance or technical appeal at the rates for interest on a money judgment in a civil action in the revised judiciary act, Michigan Compiled Laws (MCL) §600.6013(6), as amended.

- (c) **Offer of settlement.** If an appointing authority makes a bona fide, reasonable written offer of settlement in a grievance or technical appeal, no interest is allowed beyond the date the written offer of settlement is rejected by the grievant. An offer of settlement that is not accepted within 21 calendar days after the offer is made is considered rejected. A bona fide, reasonable written offer of settlement is an offer of settlement that is at least 90 percent of the amount of back pay award, calculated as of the date the settlement offer is made.

2-19 TECHNICAL APPEAL PROCESS

2-19.1 Appeal of Technical Decision Authorized

A person directly affected and aggrieved by a technical decision may file a technical appeal within 14 calendar days after the date of mailing of the technical decision. The technical appeal must be filed with the department of civil service.

2-19.2 Administrative Denial of Appeal

The department of civil service may administratively dismiss a technical appeal without

prior notice or hearing for any of the following reasons:

- (a) The department of civil service lacks jurisdiction over a necessary party or over the subject matter of the technical appeal.
- (b) The technical appeal is untimely.
- (c) Another pending action involves the same parties and substantially the same or similar claims.
- (d) The technical complainant is not authorized to file a technical complaint.

2-19.3 Civil Service Technical Appeal Procedures

If the technical appeal is not administratively dismissed, it is referred to a technical appeal officer for disposition. The technical appeal officer shall conduct an expeditious review in accordance with civil service rules and regulations. The technical appeal officer shall decide the matter based on the departmental records and the written submissions of interested persons. The technical appeal officer is not authorized to conduct a hearing, but may meet with the technical complainant and other interested persons to review and discuss the appeal. The technical appeal officer shall issue a written technical appeal decision.

2-19.4 Further Appeal

A person who participated in the technical appeal and is directly affected and aggrieved by the decision of a technical appeal officer may file an application for leave to appeal with the employment relations board.

2-20 *LEGAL SERVICES*

2-20.1 **Provision of Legal Services; Conditions**

An appointing authority, in cooperation with the attorney general, shall pay for or engage the services of an attorney to advise and appear for a classified employee in any claim or action against the employee alleging negligence or other actionable conduct, subject to the following conditions:

- (a) The employee must have been acting in the course of employment when the alleged conduct occurred and had a reasonable basis for believing that the conduct was within the scope of the authority delegated to the employee.
- (b) No legal services are permitted in connection with prosecution of a criminal suit against an employee.
- (c) Nothing in this rule requires the reimbursement of an employee or insurer for legal services to which the employee is entitled under a policy of insurance.

[End of Chapter 2]

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Chapter 3

Selection

3-1 EXAMINATIONS

3-1.1 Authority

The state personnel director is authorized to certify as qualified each person appointed or promoted in the classified service. The department of civil service shall prepare or approve examinations for all classified positions. Examinations are referred to as *appraisal methods* in these rules.

3-1.2 Content and Method

Appraisal methods must assess relevant, job-related knowledge, skills, abilities, and other qualifications necessary for successful job performance. The department of civil service may use another organization's appraisal results.

3-1.3 Application

The department of civil service shall establish procedures for persons seeking positions in the classified service.

3-1.4 Reasonable Accommodations

The department of civil service shall make reasonable accommodations in its application and appraisal process for a person with a disability who makes a reasonable request for

accommodation in advance. The department of civil service may offer an alternative evaluation method for a person with a disability if the person is unable to participate in the regular appraisal process. The department of civil service is not required to make an accommodation that would cause undue hardship.

3-1.5 Integrity of Process

To be considered for appraisal or appointment, an applicant shall comply with the established procedures and processes.

(a) **Prohibited practices.** During the application, appraisal, or appointment process, a person shall not do any of the following:

- (1) Make any false statements or omissions of a material fact.
- (2) Misrepresent education or experience.
- (3) Engage in deception or fraud.
- (4) Cheat.
- (5) Compromise the integrity of the appraisal process.
- (6) Violate rule 2-6, Drug and Alcohol Testing

- (b) **Sanctions.** If the department of civil service finds that an applicant has engaged in any prohibited act, the department may do any of the following:
- (1) Cancel or limit the applicant's eligibility for state employment.
 - (2) Require the separation of the applicant from state employment.
 - (3) Impose any other or additional sanction that is appropriate.
- (c) Evidence that the person is unable to perform satisfactorily, with or without reasonable accommodations, the essential duties of the job.
- (d) Evidence of conduct that indicates that the person is unfit or unsuitable for appointment.
- (e) Conduct that violates rule 3-1.5, Integrity of Process.
- (f) Expiration of an applicant pool or eligibility.

3-2 *APPLICANT POOLS AND RECALL LISTS*

3-2.1 **Applicant Pool**

The department of civil service may establish and maintain applicant pools. The department of civil service may divide applicant pools by geographic area, organizational unit, occupational specialty, type of appointment, or other criteria. The state personnel director shall issue regulations for the duration and use of applicant pools. A person's eligibility to remain in an applicant pool or to be referred for a position is determined under the civil service rules and regulations in effect at the time the department of civil service refers names of qualified applicants to an appointing authority.

3-2.2 **Removal from Applicant Pool**

The department of civil service may remove a person from an applicant pool for any of the following reasons:

- (a) Appointment.
- (b) Separation or retirement from state service.

3-2.3 **Recall Lists**

An employee is eligible to be placed on a recall list only if the employee (1) gained status from an indefinite appointment to a permanent classified position, and (2) is laid off, demoted, or otherwise displaced for reasons of administrative efficiency. Recall lists are not created or maintained for classifications that are protected from the application of employment preference in rule 2-4 or applicable regulations.

3-2.4 **Removal from Recall Lists**

The department of civil service may remove a person from a recall list for any of the following reasons:

- (a) Appointment.
- (b) Failure to respond to an inquiry regarding possible employment.
- (c) An indication of lack of interest in an employment opportunity.
- (d) Failure to accept employment.
- (e) Separation or retirement from state service.

- (f) Evidence that the person is unable to perform satisfactorily, with or without reasonable accommodations, the essential duties of the job.
- (g) Evidence of conduct that indicates that the person is unfit or unsuitable for appointment.
- (h) Conduct that violates rule 3-1.5, Integrity of Process.
- (i) Expiration of recall rights.
- (5) If the employee is displaced by the return to duty of another employee entitled to the position.
- (6) If the employee is displaced by another employee with more seniority during a reduction in force.
- (7) If the employee does not satisfactorily complete a probationary period.

3-3 APPOINTMENTS AND JOB CHANGES

3-3.1 Process

All appointments and job changes in the classified service must be made in accordance with the civil service rules and regulations.

3-3.2 Demotion

- (a) **Notice.** If an appointing authority intends to demote an employee, the appointing authority shall give prior written notice of the specific reasons for the demotion to the employee.
- (b) **Conditions.** An appointing authority may demote an employee under any of the following circumstances:
 - (1) If an employee is not performing satisfactorily.
 - (2) If an employee's position is reclassified downward.
 - (3) If the demotion is requested by the employee and approved by the appointing authority.
 - (4) If the position occupied by the employee is abolished.

3-3.3 Emergency Appointment

When emergency conditions require immediate action, an appointing authority is authorized to make an emergency appointment up to 28 calendar days. The state personnel director may approve an extension of an emergency appointment up to an additional 28 calendar days. An appointing authority cannot reappoint a person to a second consecutive emergency appointment within the same principal department, autonomous entity, or agency of convenience. An emergency appointment is authorized only when made in conformity with the civil service regulations governing emergency appointments.

3-3.4 Hire

An appointing authority may appoint a qualified candidate to a position in the classified service as authorized by and in accordance with the civil service rules and regulations. The state personnel director shall certify as qualified each person appointed and promoted in the classified service. A candidate may be qualified for appointment in one or more of the following ways:

- (a) The candidate is listed in an appropriate civil service applicant pool.

- (b) The candidate meets the civil service qualifications for appointment to a designated classification.
- (c) The candidate is qualified after review by the department of civil service.

3-3.5 Lateral Job Change Between Departments

Any two appointing authorities may authorize a lateral job change for an employee between departments or autonomous entities. The employee may be moved to a different classification only if (1) the employee previously attained status in the classification, (2) the job change is based on the civil service preauthorized lateral job change list, or (3) the employee meets the civil service qualification requirements. A lateral job change between departments or autonomous entities requires the agreement of the employee and the approval of the department of civil service.

3-3.6 Lateral Job Change within a Department

An appointing authority may authorize a lateral job change for an employee within the employee's current department or autonomous entity. The employee may be moved to a different classification only if (1) the employee previously attained status in the classification, (2) the job change is based on the civil service preauthorized lateral job change list, or (3) the employee meets the civil service qualification requirements. A lateral job change within a department or autonomous entity does not require the agreement of the employee. However, an employee may request a lateral job change. A lateral job change within the employee's current department or autonomous entity is not an appointment.

3-3.7 Promotion

An appointing authority may appoint a qualified employee candidate to another position at a higher classification level as authorized by and in accordance with the civil service rules and regulations. A candidate may be qualified for appointment in one or more of the following ways:

- (a) The candidate is listed in an appropriate civil service applicant pool.
- (b) The candidate meets the civil service qualifications for appointment to a designated classification.
- (c) The candidate is qualified after review by the department of civil service.

3-3.8 Recall

A person is recalled in accordance with the civil service rules and regulations in effect at the time of the recall. Unless the rules or regulations provide otherwise, appointment is first limited to persons on recall lists.

3-3.9 Reinstatement

A classified employee who achieved status and who is demoted or separated while in satisfactory standing is eligible for reinstatement. An appointing authority may reinstate an eligible person to (1) the classification in which the person last achieved status before the separation or demotion or (2) to a classification at the same or lower classification level for which the person is qualified. A person's eligibility for reinstatement is limited to 3 years after separation or demotion. However, the state personnel director may extend eligibility in the regulations to meet work force needs.

3-4 *RELATION TO COLLECTIVE BARGAINING*

An appointing authority shall make all appointments in accordance with the civil service rules and regulations, unless a provision in a collective bargaining agreement regarding reassignment, transfer, layoff, or recall permitted by rule 6-3 provides otherwise.

3-5 *PROBATION AND STATUS*

3-5.1 Probationary Period

- (a) **New employee without status.** A newly appointed classified employee who does not have status in the classified service when appointed must satisfactorily complete a working test period, called a probationary period, as a condition of continued employment.
- (b) **Employee with status.** An employee with status who is appointed to a new classification must satisfactorily complete a working test period, called a probationary period, as a condition of continued appointment in that position.
- (c) **SES and SEMAS exceptions.** This rule does not apply to persons appointed to positions in the senior executive service (SES) and the senior executive management assistant service (SEMAS).

3-5.2 Length of Probationary Period

- (a) **Minimum length.** The minimum length of a probationary period is 12 months of full-time employment or 18 months of less than full-time employment.

- (b) **Extension of probationary period.** If the department of civil service or the appointing authority determines that (1) the probationary period has been insufficient to adequately test the performance of a probationary employee or (2) the performance of a probationary employee has been less than satisfactory, the department or the appointing authority may extend the probationary period for an employee. Any extension beyond an additional 6 months requires the approval of the state personnel director. The department or appointing authority shall give written notice of the extension of the probationary period to the employee.

3-5.3 Unsatisfactory Service

- (a) **Employee without status.** If an employee without status does not perform satisfactorily during the probationary period, the appointing authority may dismiss the employee during the probationary period or within 28 calendar days after the probationary period ends. The appointing authority shall give notice of a dismissal to the employee and the department of civil service no later than 28 calendar days after the probationary period ends.
- (b) **Employee with status.** If an employee with status is appointed to a new classification and does not perform satisfactorily during the probationary period, the appointing authority may, during the probationary period or within 28 calendar days after the probationary period ends, (1) dismiss the employee from the classified service or (2) rescind the appointment and demote the employee.

3-5.4 Satisfactory Service; Notice

If an employee performs satisfactorily during the probationary period, the appointing authority shall give notice to the employee and the department of civil service within 28 calendar days after the probationary period ends.

3-5.5 Grievance of Probationary Dismissal or Demotion

- (a) **Probationary employee without status.** A probationary employee without status who is dismissed may grieve the dismissal only within the departmental steps of the civil service grievance procedure. The employee cannot appeal a final determination of the appointing authority to the department of civil service or the civil service commission unless the employee was dismissed in violation of rule 1-7.
- (b) **Employee with status; rescision of appointment and demotion.** A probationary employee with status whose appointment is rescinded and who is demoted to a classification level not less than the level occupied at the time of the appointment may grieve the rescision and demotion. In any grievance hearing, the appointing authority must first articulate the reasons for rescinding the appointment. However, the employee has the burden of proving by a preponderance of the evidence that the rescision and demotion were arbitrary and capricious or violated of rule 1-6 or 1-7.
- (c) **Dismissal of employee with status.** A probationary employee with status who is dismissed from the classified service may grieve the dismissal. In any grievance hearing, the employer has the burden of

proving by a preponderance of the evidence that it had just cause to dismiss the employee.

3-5.6 Status

An employee who has been appraised, qualified, properly appointed on an indefinite or limited-term basis, and who has satisfactorily completed the probationary period has status while the employee remains continuously employed in the classified service. An employee who has attained status and later accepts an appointment to a position at a different classification level continues to have status at the former classification level while the employee remains continuously employed in the classified service.

[End of Chapter 3]

Chapter 4

Classification

4-1 *POSITION ESTABLISHMENT AND CLASSIFICATION*

4-1.1 Requirement

All positions must be established in the classified service unless specifically exempted or excepted by article 11, section 5, of the constitution, or these rules.

4-1.2 Classification

A position established in the classified service must be reviewed to classify the position properly.

4-1.3 Authority to Establish

The appointing authority may establish a position for reasons of administrative efficiency. An appointment cannot be made to a position until it has been established and classified.

4-1.4 Classification Plan

The commission shall authorize an official classification plan for all positions in the classified service. The department of civil service shall administer the official classification plan.

(a) **Classification.** Every position established must be classified in accordance with the official classification plan.

(b) **Reclassification.** The department of civil service may reclassify an employee if the employee's position has experienced gradual growth and accretion of higher level duties and responsibilities. The appointing authority must certify that the employee is satisfactorily performing the duties of the position.

(c) **Predetermined classification and classification levels.** An appointing authority may establish positions in predetermined classifications and classification levels in accordance with the regulations.

(d) **Selective Position Requirements.** If the department of civil service has established selective position requirements for a position, the appointing authority shall appoint only a candidate who meets the selective position requirements.

4-1.5 Effective Date of Establishment

Positions are established and classified on a current basis.

4-2 POSITION CLASSIFICATION REVIEW

The department of civil service shall provide for both a periodic and ongoing review of positions in the classified service to ensure positions continue to be properly classified.

- (a) **Position review.** An appointing authority shall give notice to the department of civil service of material changes in the duties and responsibilities that may impact the proper classification of a position. If the appointing authority does not notify the department of civil service of material changes, the employee occupying the position may initiate a position review by filing an updated position description and a written request with the department of civil service.
- (b) **Frequency of review.** The classification of an occupied position may be reviewed once in any 12-month period, unless otherwise approved by the state personnel director. When a significant, substantial, or material change has occurred in the duties and responsibilities, the department of civil service may require the appointing authority to establish a new position that is properly classified. The classification of a position or appointment of an employee to a position constitutes a position review for the purposes of this rule.
- (c) **Effective date of change.** A change in the classification of a position based on a review under this rule is on a current basis, except as otherwise approved by the state personnel director.
- (d) **Preauthorized review.** An appointing authority may reclassify a position in accordance with regulations governing preauthorized positions.

4-3 APPEALS

Only the appointing authority may appeal the classification of a newly established position. Either the appointing authority or an adversely affected employee may appeal a change in the classification or classification level of a previously established position through authorized technical appeal procedures.

4-4 POSITION ABOLISHMENT

4-4.1 Authority to Abolish

The appointing authority may abolish a position for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in departmental mission, or reorganization of the work force.

4-4.2 Rescinding of Classification

A position that remains vacant for 6 months may have its approved classification rescinded.

4-4.3 Notice

The department of civil service shall notify each appointing authority of any rescinded classification.

4-5 WORKING OUT OF CLASS

In accordance with civil service rules and regulations, an appointing authority may temporarily assign an employee to perform duties and responsibilities of another classification appropriately classified by the department of civil service. Benefits accrue to an employee in

a temporary assignment in accordance with such classification.

- (a) **Exception.** Provisions of this rule do not apply to the following employees:
- (1) An employee working in a preauthorized position.
 - (2) An employee in a position downgraded for training.
 - (3) An employee occupying a position that is reclassifiable.
 - (4) An overall assistant who normally substitutes for the employee's supervisor.
- (b) **Filing claims.** A claim for working out of class must be presented no later than 20 workdays after the working-out-of-class assignment has been discontinued. Retroactivity of any claim is governed by the time limits set forth in these rules and applicable regulations.

4-6 SENIOR EXECUTIVE SERVICE (SES)

4-6.1 Defined

The senior executive service (SES) consists of the highest level classified positions in which the employees typically (1) report directly to state department directors or boards and commissions heading principal departments, (2) formulate and implement major policy, or (3) influence major programs and policies relating to the critical mission of each state department.

4-6.2 Conditions of Employment

- (a) **Performance pay.** All positions in the senior executive service are included in a performance-pay program.
- (b) **Qualifications; limited appointment.** A position in the senior executive service must be filled by a qualified person under a senior executive service agreement approved by the state personnel director. The agreement must provide for a limited-term appointment, the duration of which cannot exceed 2 years.
- (c) **Lateral job changes.** An employee in a senior executive service position may receive a lateral job change to another senior executive service position. A lateral job change within the employee's own department or autonomous entity cannot be grieved unless it violates rule 1-7.
- (d) **Removal during term.** During the term of an appointment and before the expiration of the term of appointment, an employee may be removed only (1) for cause, including unsatisfactory performance, or (2) if the position is abolished. A senior executive dismissed before the expiration of the term of appointment may appeal the dismissal through the civil service grievance and appeal procedure. However, no damages may be awarded for any period after the date of expiration of the term of appointment.
- (e) **Reappointment.**
- (1) **No right to reappointment.** An appointee to the senior executive service has no expectation in, or right to, a reappointment at the expiration of an appointment. There is no requirement that a department provide any reason or justification for not reappointing a person to a

further term in the senior executive service. Reappointment is solely within the discretion of the appointing authority. No action by an appointing authority may create an expectation in, or right to, reappointment.

- (2) **Time limits.** If an appointing authority reappoints a senior executive, the appointing authority and the senior executive shall execute a new senior executive agreement to take effect at the expiration of the original appointment, subject to the approval of the state personnel director. A senior executive agreement cannot be executed more than 6 months before the earliest effective date of the appointment. Any senior executive agreement executed more than 6 months before the effective date of the appointment is void and cannot be enforced. Any senior executive agreement that purports to be effective for more than 2 years is void and cannot be enforced.
- (3) **Continuation in position not effective.** A person cannot continue in a senior executive service position without a valid appointment agreement. Continuation in a senior executive service position without a valid appointment agreement approved by the state personnel director, with or without the consent of the appointing authority, cannot create an enforceable appointment.
- (f) **Exemptions.** An employee occupying a senior executive service position cannot be displaced by another employee exercising employment preference.
- (g) **Termination of appointment.** When
- (1) the parties mutually agree to terminate a senior executive service agreement,
 - (2) an SES position is abolished, or
 - (3) the term of appointment expires, the employee's future status is established according to the following provisions:
 - (1) **Employee with prior status.** If the employee had continuing status at the time of appointment to the senior executive service, the following options are available:
 - (A) **Employment preference.** The employee may return to a position in accordance with and subject to the civil service rules and regulations governing employment preference in effect at the time the employment preference is exercised. If the employee is required to return to a position at a lower classification than held at the time of appointment to the senior executive service, the employee may later receive a lateral job change to any position in the classified service, not exceeding the classification held at the time of appointment to the senior executive service, for which the employee is otherwise qualified. Such a lateral job change requires the approval of the employee, the appointing authority, and the state personnel director.
 - (B) **Approved placement.** The employee and the appointing authority may, with the consent of the state personnel director, mutually agree upon an appropriate placement.
 - (2) **Pay protection.** If an option in subsection (g)(1) is exercised, the employee shall return to a position with a base salary not less than the

base salary of the employee immediately before entry into the senior executive service. The state personnel director shall approve a base salary for the employee which is equal to the base salary of the employee before appointment to the senior executive service, adjusted for any general salary increases approved during the period of appointment to the senior executive service. This pay protection expires when the employee accepts a position with a base salary exceeding the protected base salary received upon return from the senior executive service or at such other time as provided in the regulations.

- (3) **Employee with no prior status.** If the employee had no continuous status in the classified service at the time of appointment to the senior executive service, the appointing authority shall separate the employee from the classified service, unless otherwise properly appointed to another position.
- (4) **Termination for cause.** Notwithstanding any other provision to the contrary, if an appointee to senior executive service is terminated for cause during the term of appointment, the appointing authority shall separate the employee from the classified service, irrespective of any status at the time of appointment or fall-back agreement.

4-6.3 Senior Executive Service Agreement

- (a) **Agreement.** No person can be appointed to a senior executive position except as provided by this rule and the regulations and unless the person executes a senior

executive service agreement in a form authorized by the state personnel director. An appointing authority is not authorized to vary the fixed provisions on any senior executive service agreement form approved by the state personnel director.

- (b) **Minimum provisions.** The senior executive service agreement must include the following minimum provisions:
 - (1) The term of the appointment cannot exceed 2 years.
 - (2) The agreement automatically expires at the end of the term.
 - (3) The employee agrees that the appointing authority is under no obligation, implicit or explicit, to offer the employee a new senior executive service agreement at the expiration of the term. The appointing authority may decline to offer the employee a new senior executive service agreement for any reason or for no reason. However, an appointing authority is prohibited from discriminating against any candidate or employee regarding appointment or compensation, as provided in rule 1-7.
 - (4) Appointment to the senior executive service does not result in any employment preference or other right to continued employment with the state. A person appointed to the senior executive service who did not have continuing status in the state classified service at the time of appointment to the senior executive service does not acquire any employment preference rights, fall-back rights, or other rights to continued employment with the state at the expiration of the term of appointment.

- (5) If the person appointed to the senior executive service has continuing status in the classified service at the time of appointment to the senior executive service, the employee has the rights and options to retain a position in the classified service in accordance with, and subject to, the civil service rules and regulations in effect at the time of the expiration of the appointment.
- (6) Any other provisions required by the state personnel director.

4-6.4 Transitional Provisions

- (a) **Abolition of classified executive service.** Effective January 31, 1994, the civil service commission abolished the classified executive service and regulations. Effective on that same date, all positions in the classified executive service were reclassified as provided in the amendments to the compensation plan.
- (b) **Protection of contractual rights.** All rights that accrued to any member of the classified executive service prior to November 28, 1993, as a result of a specifically negotiated and written contractual provision which established particular fall-back rights for the employee, are enforceable by the employee in the classified position to which the employee's classified executive position is reclassified. Any rights are not enforceable if the employee takes another position in or out of the senior executive service.
- (c) **Frozen SES-eligible position.** A position that meets the criteria for inclusion in the senior executive service is designated as an *SES-eligible position*. An SES-eligible position remains a frozen position until (1) it becomes vacant or (2) the employee in the position executes an agreement converting the position to the senior executive service and accepts the position.
- (d) **Automatic conversion to SES.** Upon an occurrence provided in subsection (c), the SES-eligible position automatically ceases to be a frozen classified position and becomes a classified position in the senior executive service. Any appointment to the position thereafter must be made in conformity with the rules and the regulations. A position converting to the senior executive service cannot be reclassified outside the senior executive service except upon approval of the state personnel director.
- (e) **Treatment of incumbent employees.** Employees in SES-eligible positions as of the effective date of the abolition of the classified executive service continue in their status during any continuous appointment in a frozen, SES-eligible position, subject to all civil service rules and regulations. An SES-eligible position, and the employee occupying an SES-eligible position, are subject to this rule only insofar as the rule (1) applies to conversion of the SES-eligible position to the senior executive service or (2) modifies any other civil service rule or regulation applicable to the classified service. An employee may, but is not required to, execute a senior executive service agreement for the SES-eligible position that the employee occupies.

4-7 SENIOR EXECUTIVE MANAGEMENT ASSISTANT SERVICE (SEMAS)

4-7.1 Defined

The senior executive management assistant service (SEMAS) consists of senior executive management assistant positions that report to members of policy-making boards and commissions, department directors, members of the senior executive service, and other equivalent unclassified positions. Employees in these positions perform administrative support, management assistant, and related executive support activities.

4-7.2 Conditions of Employment

- (a) **Performance pay.** All positions in the senior executive management assistant service are included in a performance-pay program.
- (b) **Qualifications; limited appointment.** A position in the senior executive management assistant service must be filled by a qualified person under a senior executive management assistant service agreement (SEMAS agreement) approved by the state personnel director. The agreement must provide for a limited-term appointment, the duration of which cannot exceed 2 years.
- (c) **Lateral job changes.** An employee in a senior executive management assistant position may receive a lateral job change to another senior executive management assistant position. A lateral job change within the employee's own department or autonomous entity cannot be grieved unless it violates rule 1-7.

(d) **Removal during term.** During the term of appointment and before the expiration of the term of appointment, an incumbent employee may be removed only (1) for cause, including unsatisfactory performance, or (2) if the position is abolished. A senior executive management assistant dismissed before the expiration of the term of appointment may appeal the dismissal through the civil service grievance and appeal procedure. However, no damages may be awarded for any period after the date of expiration of the term of appointment.

(e) **Reappointment.**

- (1) **No right to reappointment.** An appointee to the senior executive management assistant service has no expectation in, or right to, a reappointment at the expiration of an appointment. There is no requirement that a department provide any reason or justification for not reappointing a person to a further term in the senior executive management assistant service. Reappointment is solely within the discretion of the appointing authority. No action by an appointing authority may create an expectation of, or right to, reappointment.
- (2) **Time limits.** If an appointing authority reappoints a senior executive management assistant, the appointing authority and the senior executive management assistant shall execute a new senior executive management assistant service agreement to take effect at the expiration of the original appointment, subject to the approval of the state personnel director. A senior executive management assistant service agreement cannot be executed more than 6 months before the earliest

effective date of the appointment.

Any senior executive management assistant service agreement executed more than 6 months before the effective date of the appointment is void and cannot be enforced. Any senior executive management assistant service agreement which purports to be effective for more than 2 years is void and cannot be enforced.

- (3) **Continuation in position not effective.** A person cannot continue in a senior executive management assistant position without a valid appointment agreement. Continuation in a senior executive management assistant position without a valid appointment agreement approved by the state personnel director, with or without the consent of the appointing authority, cannot create an enforceable appointment.
- (f) **Exemptions.** An employee occupying a senior executive management assistant service position cannot be displaced by another employee exercising employment preference.
- (g) **Termination of appointment.** When (1) the parties mutually agree to terminate a senior executive management assistant service agreement, (2) the position is abolished, or (3) the term of appointment expires, the employee's future status is established according to the following provisions:
- (1) **Employee with prior status.** If the employee had continuing status at the time of appointment to the senior executive management assistant service, the following options are available:
- (A) **Employment preference.** The employee may return to a position in accordance with and subject to the civil service rules and regulations governing employment preference in effect at the time the employment preference is exercised. If the employee is required to return to a position at a lower classification than held at the time of appointment to the senior executive management assistant service, the employee may later be reassigned to any position in the state classified service, not exceeding the classification held at the time of appointment to the senior executive management assistant service, for which the employee is otherwise qualified. Such a lateral job change requires the approval of the employee, the appointing authority, and the state personnel director.
- (B) **Approved placement.** The employee and the appointing authority may, with the consent of the state personnel director, mutually agree upon an appropriate placement.
- (2) **Pay protection.** If an option in subsection (g)(1) is exercised, the employee returns to a position with a base salary not less than the base salary of the employee immediately before entry into the senior executive management assistant service. The state personnel director shall approve a base salary for the employee which is equal to the base salary of the employee before appointment to the senior executive management assistant service, adjusted for any general

salary increases approved during the period of appointment to the senior executive management assistant service. This pay protection expires when the employee accepts a position with a base salary exceeding the protected base salary received upon return from the senior executive management assistant service or at such other time as provided in the regulations.

- (3) **Employee with no prior status.** If the employee had no continuous status in the classified service at the time of appointment to the senior executive management assistant service, the appointing authority shall separate the employee from the classified service, unless otherwise properly appointed to another position.
- (4) **Termination for cause.** Notwithstanding any other provision to the contrary, if an appointee to the senior executive management assistant service is terminated for cause during the term of appointment, the employee shall be terminated from state employment, irrespective of any status at the time of appointment or fall-back agreement.

4-7.3 SEMAS Agreement

- (a) **Agreement.** No person shall be appointed to a senior executive management assistant position unless the person executes a senior executive management assistant service agreement in a form authorized by the state personnel director. An appointing authority is not authorized to vary the fixed provisions of any senior executive management assistant service agreement form.

(b) **Minimum Provisions.** The senior executive management assistant service agreement must include the following minimum provisions.

- (1) The term of the appointment cannot exceed 2 years.
- (2) The agreement automatically expires at the end of the term.
- (3) The employee agrees that the appointing authority is under no obligation, implicit or explicit, to offer the employee a new senior executive management assistant service agreement at the expiration of the term. The appointing authority may decline to offer the employee a new senior executive management assistant service agreement for any reason or for no reason. However, an appointing authority is prohibited from discriminating against any candidate or employee regarding appointment or compensation, as provided in rule 1-7.
- (4) Appointment to the senior executive management assistant service does not result in any employment preference or other right to continued employment with the state. A person appointed to the senior executive management assistant service who did not have continuing status in the state classified service at the time of appointment to the senior executive management assistant service does not acquire any employment preference rights, fall-back rights, or other rights to continued employment with the state at the expiration of the term of appointment.
- (5) If the person appointed to the senior executive management assistant service has continuing status in the

classified service at the time of appointment to the senior executive management assistant service, the employee has the rights and options to retain a position in the classified service in accordance with, and subject to, the civil service rules and regulations in effect at the time of the expiration of the appointment.

- (6) Any other provisions required by the state personnel director.

4-7.4 Transitional Provisions

- (a) **Frozen SEMAS-eligible position.** A position that meets the criteria for inclusion in the senior executive management assistant service is designated as an *SEMAS-eligible position*. A SEMAS-eligible position remains a frozen position until (1) it becomes vacant or (2) the employee occupying the position executes an agreement converting the position to the senior executive management assistant service and accepts the position.
- (b) **Conversion of SEMAS-eligible positions.** Upon an occurrence provided in subsection (a), the SEMAS-eligible position automatically ceases to be a frozen classified position and becomes a classified position in the senior executive management assistant service. Any appointment to the position thereafter shall only be made in conformity with the civil service rules and regulations. No position converting to the senior executive management assistant service shall be reclassified outside the senior executive management assistant service.
- (c) **Treatment of incumbent employees.** Employees in SEMAS-eligible positions as of the effective date of the creation of the classified executive management assistant service continue in their status

during any continuous appointment in a frozen, SEMAS-eligible position, subject to all the applicable civil service rules and regulations. A SEMAS-eligible position and the employee occupying a SEMAS-eligible position are subject to this rule only insofar as this rule (1) applies to conversion of the SEMAS-eligible position to the senior executive management assistant service or (2) modifies any other applicable rule, regulation, or procedure applicable to the classified service. An employee may, but is not required to, execute a senior executive management assistant service agreement for the SEMAS-eligible position that the employee occupies.

4-8 *EQUITABLE CLASSIFICATION PLAN (ECP) GROUP 4*

4-8.1 **ECP Group 4 Defined**

Group 4 of the Equitable Classification Plan (ECP) is that part of the classified service which includes the second highest tier of classified management positions that administer programs within a state agency. Employees in these positions play an integral role in the management of state services. These employees typically (1) report directly to senior executive service positions or other higher level Group-4 executives; (2) recommend, develop, or implement agency policies governing high-level programs; (3) define program objectives, staffing, and organization at the division, office, or bureau levels; (4) coordinate the efforts of designated organizational components; and (5) evaluate the performance of subordinates who manage or directly work under their control. These positions are typically restricted to division directors, office directors, bureau directors, their deputies, and

to other positions that are organizationally or functionally equivalent.

4-8.2 Conditions of Employment in Group 4

- (a) **Performance pay.** All positions in ECP Group 4 are included in a performance-pay program.
- (b) **General.** Positions in Group 4 are subject to the civil service rules and regulations applicable to nonexclusively represented employees, except as specifically modified for Group-4 positions.
- (c) **Lateral job changes.** An employee in a Group-4 position may receive a lateral job change to any other Group-4 position within the employee's principal department. A lateral job change is grievable only if it violates civil service rule 1-7.
- (d) **Protection from employment preference.** An employee occupying a position in Group 4 cannot be displaced by another employee exercising employment preference.
- (e) **Abolishment.** When a Group-4 position is abolished, the employee may exercise employment preference in accordance with and subject to the civil service rules and regulations governing employment preference in effect at the time the employment preference is exercised.
- (f) **Base salary and pay protection.** The base salary rate after an employee exercises employment preference is determined in accordance with the compensation plan, unless the employee is eligible for pay protection as provided in this subsection.

- (1) **Eligibility for pay protection.**
When an employee in Group 4

exercises employment preference rights and the employee's new base salary rate would be less than the base salary rate the employee received immediately prior to the employee's initial Group-4 appointment, adjusted for any general salary increases during the period of appointment in Group 4, the employee is eligible for pay protection. If the employee had no continuous status in the classified service at the time of appointment to Group 4, the employee is not eligible for pay protection.

- (2) **Pay protection plan.** An eligible employee's protected base salary rate is equal to the employee's base salary rate immediately prior to entry into Group 4, adjusted for any general salary increases approved during the period of appointment in Group 4.
- (3) **Expiration of pay protection.** The pay protection received by an eligible employee expires on the first occurrence of any of the following:
 - (A) The employee accepts a position with a base salary rate equal to or exceeding the protected base salary rate.
 - (B) The employee accepts a lateral job change to another position, unless the appointing authority agrees to continuation of the pay protection in the new position.
 - (C) The employee accepts a lateral job change to a position in another principal department or autonomous agency, unless the appointing authority agrees to continuation of the pay protection in the new position.

- (D) The employee is demoted for unsatisfactory performance.
 - (E) The employee is demoted at the request of the employee.
 - (F) The employee is separated from the classified service for any reason, including, but not limited to, dismissal, voluntary quit, retirement, lay-off, or waived rights leave of absence.
 - (G) The employee accepts an appointment to an exempt or excepted position.
- (4) **Continuation of pay protection.** An employee with pay protection may continue to receive pay protection in a new position in any of the following circumstances:
- (A) The employee accepts a promotion to a position within any department with a base salary rate lower than the protected base salary rate.
 - (B) The employee is reassigned to another position in the employee's principal department or autonomous agency.
 - (C) The employee is involuntarily demoted under any of the circumstances authorized in rule 3-3.2(b)(2), (4), (5), or (6).

4-9 *EQUITABLE CLASSIFICATION PLAN (ECP) GROUPS 1, 2, AND 3*

4-9.1 **ECP Group 1 Defined**

Group 1 of the Equitable Classification Plan (ECP) is that part of the classified service which includes nonsupervisory classifications that typically require less than a bachelor's degree for entry. Employees in these positions typically provide technical, office, para-professional, and other services that do not require a four-year degree. They are accountable for attaining program objectives and have responsibility for assigned functions, duties, and processes. They typically report directly to Group-3 supervisors but may report to Group-4 executives and other top-level officials. These positions are usually located within a program, section, or unit.

4-9.2 **ECP Group 2 Defined**

Group 2 of the Equitable Classification Plan (ECP) is that part of the classified service which includes nonsupervisory classifications that typically require a bachelor's degree or higher, or an equivalent combination of education and experience, for entry. Employees in these positions are accountable for attaining program objectives and typically provide professional services, with responsibility for assigned functions, duties, and processes. They typically report directly to Group-3 managers but may report to Group-4 executives and other top-level officials. These positions are usually located within a program, section, or unit.

4-9.3 **ECP Group 3 Defined**

Group 3 of the Equitable Classification Plan (ECP) is that part of the classified service

which includes the managerial and supervisory classifications that direct programs within a state agency and play an integral role in the management and supervision of state services. Employees in these positions are responsible for planning, directing, and administering a section or unit and are accountable for attaining program objectives by: (1) recommending, developing, or directing agency programs; (2) defining section or unit program objectives, staffing, and organization; (3) coordinating the efforts of designated organizational components; and (4) evaluating the performance of subordinates who work directly under their control. They typically report to higher level Group-3 employees or to Group-4 executives. These positions are typically limited to section heads, unit heads, and to other positions that are organizationally or functionally equivalent.

4-9.4 Conditions of Employment in Groups 1, 2, and 3

- (a) **General.** Employees occupying positions in ECP Groups 1, 2, and 3 are subject to the civil service rules and regulations applicable to nonexclusively represented employees, except where a rule or regulation specifically provides otherwise.
- (b) **Lateral job changes.** Employees occupying positions in ECP Groups 1, 2, or 3 may receive a lateral job change subject to the civil service rules and regulations governing lateral job changes.
- (c) **Abolishment.** When a position in Group 1, 2, or 3 is abolished, the employee occupying the position may exercise employment preference in accordance with the civil service rules and regulations governing employment preference in effect at the time the employment preference is exercised.

- (d) **Base salary upon reduction-in-force.** The base salary rate after an employee exercises employment preference is determined in accordance with the compensation plan.

- (e) **Inclusion in a performance-pay program.**

- (1) Employees occupying positions in ECP Groups 1, 2, or 3 may be included in a performance-pay program. Only the state personnel director is authorized to designate positions or classifications for inclusion in a departmental performance-pay program.
- (2) The appointing authority shall notify employees occupying positions in ECP Groups 1, 2, or 3 who are eligible for conversion to an approved performance management system of the details of the plan and their individual performance standards.
- (3) Conversion to an approved performance management system is not a classification review and is not grievable or appealable.

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Chapter 5

Compensation and Fringe Benefits

5-1 *CIVIL SERVICE COMPENSATION PLAN*

5-1.1 **Application**

- (a) **General application.** All eligible employees in the classified service receive compensation and fringe benefits in accordance with the compensation plan, except as provided in subsection (b).
- (b) **Collective bargaining agreement.** All employees in the classified service are covered by these rules, except that employees covered by an approved collective bargaining agreement differing from the compensation plan are governed by the collective bargaining agreement, where different.

5-1.2 **Amendments to Compensation Plan**

The civil service commission may amend the compensation plan at any time, consistent with article 11, section 5, of the constitution. The state personnel director may submit to the commission recommended amendments to the

compensation rules at any time. The director shall also submit to the commission for its review (1) any proposed collective bargaining agreement or amendment agreed to by the state employer and an exclusive representative, (2) any recommendation of the impasse panel, and (3) any recommendation of the coordinated compensation panel.

5-2 *HOURS OF SERVICE*

5-2.1 **Work Period**

- (a) **Standard work period.** The standard biweekly work period for a full-time employee in the classified service is the equivalent of 80 hours of work.
- (b) **Alternative work periods.** The state personnel director may issue regulations that establish alternative work periods and measures of equivalent full-time service. The regulations may conform the compensation plan to the alternative periods and measures.

5-2.2 Service Hours toward Benefits

A career employee in the classified service earns credit for hours paid in a biweekly work period for accruing fringe benefits. An employee cannot receive credit for paid service in excess of 80 hours in a biweekly work period. A noncareer employee is not eligible for fringe benefits and cannot accrue credit hours toward benefits.

5-3 COMPENSATION SCHEDULES

5-3.1 Compensation Schedules

The civil service commission shall approve compensation schedules that establish the rates of compensation for each class of positions in the classified service. The rates of compensation authorized are for full-time employment. Payment for part-time service is proportionate to the time actually worked. If a new classification is added to the classification plan, the state personnel director shall initially establish the rates of compensation for the classification.

5-3.2 Departmental Salary-range Subdivisions

An appointing authority, with the prior written approval of the state personnel director, may implement departmental salary-range subdivisions within a salary range. A salary-range subdivision must fall within the range of rates of compensation approved by the civil service commission for the classification. The salary-range subdivision must be based on relevant, job-related departmental considerations, such as job complexity, level of responsibility, market conditions, or reporting relationships. The appointing authority shall publish all

approved salary-range subdivisions for its affected employees.

5-3.3 Individual Compensation

The appointing authority shall assign the individual level of compensation for each classified employee as provided in the compensation plan. The individual level of compensation must fall within the range of rates of compensation approved by the civil service commission for the employee's classification level. If the appointing authority implements an approved salary-range subdivision, the individual level of compensation of an employee subject to the subdivision must also fall within the approved departmental range of rates for the subdivision. Any exception must be approved by the state personnel director.

5-3.4 Operation of Compensation Schedules

An employee in the classified service cannot be paid less than the minimum nor more than the maximum authorized in the compensation plan, unless authorized by the state personnel director.

- (a) **Initial appointment.** On initial appointment, an employee is paid the minimum salary step in the salary range unless the appointing authority chooses to pay a higher initial salary as authorized in the compensation plan.
- (b) **Schedules with steps.** If the compensation plan creates steps in the pay range, an employee receives pay increases in the amounts and at the intervals provided for in the compensation schedule for the employee's classification level. A pay increase may be granted only if the employee has a current satisfactory

service rating and otherwise qualifies for the increase.

- (1) **Effective date.** Any pay increase is effective at the beginning of the first pay period after the employee becomes eligible.
 - (2) **Advancement.** An employee advances in pay by successive steps of the pay range for the employee's classification level, as provided in the compensation plan, unless a special increase is granted in accordance with the compensation plan.
 - (3) **Reduction of pay.** An appointing authority may, for cause, reduce the pay of an employee receiving more than the minimum step for the classification level.
 - (4) **General schedule revision.** If the compensation schedule is amended, an employee is paid at the salary step corresponding in length of service to the step at which that employee was being paid in the previous salary range for the classification level.
- (c) **Performance-pay programs.**
- (1) **Salary range.** For each class of positions in a performance-pay program, the civil service commission shall approve a salary range that includes (1) a minimum point, (2) one or more control points, and (3) a maximum point.
 - (A) **Minimum point.** The minimum point is the lowest base salary payable to an employee in the classification.
 - (B) **Control point.** The control point is the highest base salary payable to an employee in the classification.
 - (C) **Maximum point.** The maximum point is the maximum total salary, including both base salary and any lump sum awards, payable to an employee in the classification during a fiscal year.
 - (2) **Performance-pay awards.** If an employee's position is included in a performance-pay program, the appointing authority, with the approval of the state personnel director, may award the employee an increase in base salary or a lump sum award, or both, in accordance with the compensation plan. If the employee's job performance is rated less than satisfactory, the appointing authority may reduce the employee's base salary in accordance with the compensation plan. The director may set limits on the amount of performance pay that may be awarded in a fiscal year.
 - (3) **Grievances regarding performance-pay programs.** Performance-pay awards are discretionary. An employee is not authorized to appeal a final performance-pay grievance determination unless an appeal is specifically permitted in this rule or the applicable regulations.
 - (A) **Grievance and appeal permitted.** An employee aggrieved by any of the following performance-pay actions may file a grievance and appeal the final determination of the appointing authority to the department of civil service:
 - (1) The employee receives a performance rating of less than "meets expectations,"

- “fully competent,” or other equivalent satisfactory rating.
- (2) The employee’s pay is reduced.
 - (3) The appointing authority does not rate the performance of the employee at least once annually.
 - (4) The performance-pay action violates article 11, section 5, of the constitution or rule 1-7.
- (B) Grievance appeal prohibited.**
In all other cases, an appointing authority is permitted, but not required, to authorize an employee aggrieved by a performance-pay action to file a grievance within the department’s grievance procedure. However, unless expressly authorized in subsection (c)(3)(A), the employee cannot appeal a final performance-pay grievance determination of the appointing authority to the department of civil service. By way of example only, the following performance-pay actions cannot be appealed to the department of civil service:
- (1) The amount of a performance-pay award.
 - (2) The failure to be awarded a performance-pay award.
 - (3) The distribution of a performance-pay award between a base salary adjustment and a lump sum award.
- (4) A performance evaluation rating at or above “meets expectations,” “fully competent,” or other equivalent satisfactory rating.
 - (5) The performance evaluation or performance-pay award of another employee.
 - (6) The decision to include a position into, or exclude a position from, a performance-pay program.
 - (7) The performance-pay program itself, including, for example, the performance standards, departmental evaluation methods, rating categories, and departmental salary-range subdivisions.
- (d) Conversion of performance-pay schedule to step schedule.** If a classification is converted from a performance-pay schedule to a schedule with steps, an employee whose position is converted must be placed at a step at least equal to the employee’s base salary under the performance-pay plan at the time of conversion in accordance with the regulations.
- (e) Salary rate for temporary projects.**
Upon request of an appointing authority, the state personnel director may approve alternative or supplemental compensation that exceeds the scheduled maximum rate of pay for an employee assigned to a temporary project. The appointing authority must receive written authorization for the project pay from the department of civil service before the employee is assigned to the project.

- (f) **Red-circled pay treatment.** The state personnel director may authorize an employee's salary to be red-circled. An employee whose pay is red-circled continues to be paid at the employee's red-circled salary rate until the scheduled maximum salary of the employee's classification or classification level equals or exceeds the red-circled salary rate. An employee whose salary is red-circled is not eligible for any portion of a general wage adjustment that exceeds the maximum of the employee's classification or classification level.

5-3.5 Salary Rate Upon Change in Classification, Return from Layoff, or Reinstatement

An employee who moves from one classification to another and who returns from layoff or is reinstated after separation is paid in the new classification at the appropriate salary step in accordance with the compensation plan.

5-3.6 Payment at Death of an Employee

The appointing authority shall pay the final wages due a deceased employee in accordance with a primary and secondary beneficiary designation filed by the employee under regulations issued by the state personnel director. In the absence of a valid beneficiary designation, payment is made only in accordance with the instructions of a court.

5-3.7 Compensation from Other State Sources

A classified employee who concurrently occupies more than one position in the state service cannot be credited with more than 80 hours in pay status for any purpose, except

salary. Salary is prorated and paid by each department on the basis of time actually worked for each department.

5-3.8 Pilot Compensation Plans

The civil service commission may approve pilot compensation plans for individual classifications. A pilot compensation plan may be limited to a classification or group of classifications in one or more departments or programs, upon approval of the state personnel director.

5-3.9 Approval and Disapproval of Disbursements for the Classified Payroll

The state personnel director shall certify each payroll for the classified service. Payroll certification is based on computerized payroll system edits of payroll calculations and personnel transactions and the audit of personnel transactions for compliance with civil service rules and regulations. The director shall establish edit requirements and audit procedures. The director may delete from the payroll any item that cannot be certified under this rule and shall give notice of the action, together with the reason for the action, to the appointing authority concerned.

5-4 *ADDITIONAL COMPENSATION: OVERTIME, ETC.*

5-4.1 Additional Compensation

An appointing authority may require an employee to work under special conditions. An eligible employee working under the following special conditions is paid the pay premiums

provided in this rule in accordance with the regulations.

5-4.2 Overtime

- (a) **Eligibility.** The compensation schedules must identify each classification that is eligible for overtime pay. Overtime pay is paid to eligible employees for time in pay status in excess of 8 hours in a day and 40 hours in a week or as otherwise provided in the regulations.
- (b) **Rate.** The overtime rate of pay is one and one-half times the employee's regular rate of pay, as defined in the regulations. The regulations may provide for accrual of compensatory time at the premium rate instead of a cash payment.

5-4.3 On-call

- (a) **Eligibility.** The compensation schedules must identify each classification that is eligible for on-call pay. On-call pay is paid to an eligible employee who is scheduled to be available to return to duty, work-ready, within a specific time.
- (b) **Rate.** The on-call rate of pay is one hour of straight time pay for each 5 hours of on-call time.

5-4.4 Callback

- (a) **Eligibility.** The compensation schedules must identify each classification that is eligible for callback pay. Callback pay is paid to an eligible employee who is not on scheduled on-call status but is called back to duty outside of normal working hours.
- (b) **Rate.** Callback pay is paid at the overtime rate of pay. An eligible employee is paid for a minimum of 3 hours unless called back within 3 hours of the employee's regular starting time.

5-4.5 Shift Differential

- (a) **Eligibility.** The compensation schedules must identify each classification that is eligible for shift differential premium. The shift differential premium is payable to an eligible employee for each shift in which more than 50 percent of the employee's regularly scheduled shift falls between 4:00 p.m. and 5:00 a.m.
- (b) **Rate.** The shift differential premium is 5 percent of an employee's regular rate.

5-4.6 Exclusions and Exceptions

- (a) **Exclusions for SES and ECP Group 4.** An employee in the senior executive service or ECP Group 4 is not eligible to accrue compensatory time or to receive additional compensation for (1) overtime, (2) on-call time, (3) special shift, or (4) callback. However, if an employee otherwise qualifies, the employee is eligible for other premium pay provided in the compensation plan.
- (b) **State police high visibility patrol.** Notwithstanding the exclusion in subsection (a), a state police command officer participating in the high visibility patrol program is eligible to accrue compensatory time up to a maximum of 80 hours.
- (c) **Exceptions for ECP Groups 1, 2, and 3.** The state personnel director is authorized to grant eligibility for (1) overtime, (2) on-call time, (3) special shift, or (4) callback pay to employees in ECP Groups 1, 2, and 3 who are otherwise ineligible for these special pay premiums.

5-5 *ADDITIONAL COMPENSATION: PRISON EMPLOYEES*

and leave time used but excluding administrative leave.

5-5.1 **Prison Employee Premium**

- (a) **Eligibility.** An employee who meets any of the following eligibility criteria is paid a special prison premium rate:
- (1) An employee assigned regular and recurring responsibility for custody or supervision of prisoners in the department of corrections.
 - (2) An employee in a position located at a correctional or a mental health facility who handles, on a regular and recurring basis, the personal, financial, or other matters affecting the well-being of prisoners of the department of corrections.
 - (3) An employee whose work location is within the security perimeter of a correctional facility or within a facility of the department of community health housing corrections prisoners, thereby placing the employee in an environment where physical confrontation could occur.
- (b) **Exception.** An employee is not eligible for prison rate if the employee's classification or a predecessor classification was granted a special 5 percent increase in Part 1B of the minutes of the civil service commission meeting on December 14, 1978. The state personnel director shall list the current ineligible classifications in the regulations.
- (c) **Rate.** The prison premium rate is \$0.40 an hour. The prison rate is paid for all hours in pay status, including holidays

5-5.2 **High Security Retention Premium**

- (a) **Eligibility.** An employee who meets the following eligibility criteria is paid a high security retention premium.
- (1) An employee who is classified as a Forensic Security Supervisor 11 - 14 at the department of community health center for forensic psychiatry.
 - (2) An employee in an eligible classification who works in an eligible facility:
 - (A) **Eligible classifications.** An employee in the following classifications is eligible:
 - (1) Corrections Security Inspector 13.
 - (2) Corrections Shift Supervisor 11, 12, or 13.
 - (3) Deputy Prison Warden 14.
 - (4) Assistant Resident Unit Supervisor 11.
 - (5) Resident Unit Manager 13, if the employee's office is in a housing unit considered a high security work unit.
 - (B) **Eligible facilities.** An employee in the following facilities is eligible:
 - (1) A correctional facility designated as level 4, 5, or 6 by the department of corrections. A level 4, 5, or 6 work unit or an

administrative segregation work unit at another facility (i.e., regional, multiple, levels 3, 2, and 1) is **not** eligible.

(2) Huron Valley Center.

(3) An employee who receives the prison employee premium of \$0.40 an hour who has 2 years of continuous service, and is employed at one of the facilities listed in subsection (a)(2)(B).

(b) **Rate.** The high security retention premium is \$0.50 an hour. The high security retention premium of \$0.50 an hour and the prison employee premium of \$0.40 an hour cannot be paid simultaneously.

5-6 *ADDITIONAL COMPENSATION: MISCELLANEOUS*

5-6.1 **High Structures and Tunnels Premium**

- (a) **Eligibility.** An employee who works (1) on a structure over 40 feet in height that requires scaffolding or safety harnesses or (2) in a pressurized tunnel (new construction or reconstruction) is paid a hazard premium.
- (b) **Exclusions.** Work performed from safety buckets (aerial equipment) is not eligible for hazard premium pay. Work performed in caissons is not eligible for hazard premium pay.
- (c) **Rate.** The hazard premium is \$1.00 an hour for each hour of exposure. A minimum of 4 hours of hazard premium is paid for each day of exposure. The

hazard premium is not paid for holidays or leave time used.

5-6.2 **Explosive Materials Premium**

- (a) **Eligibility.** An employee of the department of state police assigned to handle and dispose of explosives is paid an explosives premium.
- (b) **Rate.** The explosives premium is 5 percent of base salary.

5-6.3 **Premium for Department of Consumer and Industry Services Insurance Examiners Working out of State**

- (a) **Eligibility.** An employees who (1) is employed as Insurance Examiner in the department of consumer and industry services, (2) is classified as Auditor 9-12, and (3) is required to work outside of the state of Michigan for extensive periods, is paid an out-of-state location premium.
- (b) **Rate.** The civil service commission shall annually determine the amount of the out-of-state premium.

5-6.4 **Premium for Department Of Treasury Auditors Working and Residing out of State**

- (d) **Eligibility.** An auditor employed in the department of treasury whose principal work location and residence are outside of the state of Michigan is paid an out-of-state location premium.

- (e) **Rate.** The civil service commission shall annually determine the amount of the out-of-state location premium.

5-6.5 Other Employees Residing out of State

- (f) **Eligibility.** Any other classified employee whose primary work location and residence are outside of the state of Michigan may be paid an out-of-state location premium.
- (g) **Rate.** The civil service commission shall annually determine the amount of the out-of-state location premium.

5-6.6 State Police Emergency Response Compensation.

- (a) **Eligibility.** A state police command officer is paid an emergency response compensation.
- (b) **Rate.** The emergency response compensation is \$3.75 a day.
- (c) **Effective date.** The emergency response compensation is effective October 1, 2000.

5-6.7 Conservation Officer 13 Premium

An employee classified as a Conservation Officer 13 is credited with an additional 1.2 hours of straight time compensation for each biweekly pay period.

5-6.8 Jury Duty

An employee summoned to jury duty or subpoenaed as a witness for the people to give testimony related to state employment is paid the difference between any jury or subpoena

fee received and the employee's regular pay during the period of required attendance.

5-6.9 Severance Pay

(a) Eligibility.

- (1) **Employees.** The following employees are eligible for severance pay if they meet the criteria in subsection (a)(2) and are not disqualified by the criteria in subsection (a)(3):

(A) An "agency based" employee of the department of community health laid off because of deinstitutionalization of the department of community health resident population after October 1, 1996.

(B) A nonexclusively represented employee who is indefinitely laid off on or after October 1, 1995.

- (2) **Criteria.** An employee is eligible if the employee was (1) laid off for at least 6 months, (2) was laid off in satisfactory employment status, and (3) was not separated from a temporary or limited-term appointment.

- (3) **Disqualification.** An otherwise eligible employee is disqualified from receiving severance pay for any of the following reasons:

(A) The employee dies before accepting payment.

(B) The employee is hired in any position in the classified service.

(C) The employee refuses recall to state employment located within a 75-mile radius of the agency from which the employee was laid off.

- (D) The employee is recalled to an indefinite appointment in a position covered by a collective bargaining agreement, in which case the agreement controls.
- (E) The employee is hired for any position outside of the classified service and the initial base hourly rate for the position is 75 percent or more of the employee's final base hourly rate in the position from which the employee was laid off.

(b) **Time limits.** The appointing authority shall notify an employee of the employee's severance pay option 6 months and 12 months after the layoff.

(1) The employee may accept in writing the lump sum severance payment at any time after the first notice until 14 calendar days after the second notice. The employee is deemed to have rejected severance pay if the employee does not timely accept the severance pay in writing.

(2) If the employee accepts severance pay, the appointing authority shall pay the employee within 60 calendar days and remove the employee's name from all recall and layoff lists.

(3) Acceptance of severance pay constitutes a break in service and terminates any rights to continuous service credits for any purpose, including annual leave accrual and longevity.

(c) **Severance pay rates.** The severance payment for an eligible employee who accepts severance pay is determined by the regulations and the following table:

Years of Service	Weeks of Severance Pay
1	1
2	2
3	3
4	4
5	5
6	7
7	9
8	11
9	13
10	15
11	18
12	21
13	24
14	27
15	30
16	33
17	36
18	39
19	42
20	45
21	48
22	51
23 or more	52

(d) If an employee receives a severance payment, the employee may be rehired in the classified service only under the conditions provided in the regulations.

5-7 EXPENSE REIMBURSEMENT

5-7.1 Travel Expense Reimbursement

(a) **Eligibility.** An employee who incurs expenses for official travel is eligible for reimbursement in accordance with the standardized travel regulations issued by the department of management and budget and the state personnel director.

- (b) **Rates.** An employee is reimbursed at the rates approved by the civil service commission.
- (1) **Recommendation.** The director of the department of management and budget and the state personnel director shall jointly recommend to the commission the travel reimbursement rates. The joint recommendation must be submitted no later than April 30 of each year, for the fiscal year beginning October 1 of the same year.
- (2) **Comments.** Before submitting the recommendation, the director of the department of management and budget shall solicit comments from employees and limited recognition organizations regarding travel reimbursement rates, methods, indices, and the rate-setting process.
- (3) **Action by the commission.** The civil service commission shall review the recommendation and shall approve, reject, or modify the recommendation.
- (4) **Exceptions.** For reasons of business necessity, the director of the department of management and budget and the state personnel director are authorized to approve individual exceptions that vary from the approved travel reimbursement rates or the standardized travel regulations.

5-7.2 Moving Expense Reimbursement

(a) **Eligibility.**

- (1) **Employees.** An employee who receives a lateral job change for the convenience and benefit of the state

is eligible for reimbursement of moving expenses in accordance with the standardized travel regulations. An employee who is displaced because of a reduction in force and exercises employment preference is not eligible for reimbursement of moving expenses.

- (2) **New employees.** An appointing authority may pay the moving expenses of a new employee not previously on the state payroll, in accordance with the standardized travel regulations.

- (b) **Rates.** The rates for reimbursement of moving expenses are established in the standardized travel regulations.

5-8 LONGEVITY PAYMENT

An employee who completes the equivalent of 6 years of full-time currently continuous employment is eligible for an annual longevity payment in the amount provided below:

Years of Full-time Service Completed	Annual Longevity Payment
6 – 9	\$260
10 – 13	\$300
14 – 17	\$370
18 – 21	\$480
22 – 25	\$610
26 – 29	\$790
30 & over	\$1,040

An employee with a break in continuous service but more than 6 years total employment is eligible for a longevity payment based on total years of service after completing the equivalent of 5 years of full-time currently continuous employment. The longevity payment is paid as provided in the regulations.

5-9 SUPPLEMENT TO WORKERS' DISABILITY COMPENSATION

5-9.1 Duty-Incurred Disability Payment

Eligibility for workers' disability compensation is established under the Michigan Workers' Disability Compensation Act. In addition, an appointing authority shall pay a supplemental payment authorized in this rule to an eligible injured employee.

(a) General supplement up to two-thirds.

- (1) **Eligibility.** A classified employee who is disabled by injury or illness for which the employee is eligible for state workers' disability compensation payments is eligible for this supplement.
- (2) **Rate.** The appointing authority may allow a supplemental wage payment that, together with the workers' disability compensation payment, equals two-thirds of the regular salary or wage, subject to the limitations authorized in the regulations.

(b) Special Supplement up to Full Weekly Net Wage.

- (1) **Eligibility.**
 - (A) **Employees.** The following employees are eligible:
 - (1) An employee of the department of corrections in a correctional facility who is injured during a riot or as a result of an assault by a prisoner housed in the correctional facility.

- (2) An employee of the department of state who is injured as a result of an assault while performing employment duties, rendering direct services to the public.

- (3) An employee of the department of community health who is injured as a result of an assault by a recipient of mental health services.

- (4) An employee of the family independence agency who is injured during the course of employment as a result of an assault by a recipient of social services at the W. J. Maxey Training School campus in Whitmore Lake or any of its affiliated facilities, the Adrian training school in Adrian, the Arbor Heights Center in Ann Arbor, Camp Nokomis in Prudenville, Camp Shawano in Grayling, or a similar facility under the jurisdiction of the family independence agency established or funded by the state.

- (5) A person employed by the department of military and veterans affairs who is injured during the course of employment as a result of an assault by a recipient of social services at the Grand Rapids veterans facility at Grand Rapids, the D. J. Jacobetti veterans facility at Marquette, or

any other veterans facility operated by the department of military and veterans affairs.

benefits normally received by an employee remain in effect while the employee receives this supplement.

(B) Limitations.

- (1) The supplement is payable to an employee who is injured as the result of
 - (1) a direct assault,
 - (2) aiding another employee who is assaulted, or
 - (3) responding, when officially obligated, to an alarm signaling an assault.
- (2) The supplement cannot exceed 100 weeks.
- (3) The supplement cannot be paid if the employee receives any similar workers' disability compensation supplement authorized by statute including supplements authorized in Michigan Compiled Laws (MCL) §791.263a, MCL §38.1181, MCL §330.1113, MCL §400.1c, and MCL §333.2229.

- (2) **Rate.** An eligible employee receives full wages from the employing department until workers' compensation benefits begin. After benefits begin, the employee receives a supplement that, when added to the workers' compensation benefits, equals the weekly net wage of the employee at the time of the injury. This supplement is paid only while the person is on the department's payroll and receiving workers' compensation benefits. Fringe

5-10 PAID HOLIDAYS AND LEAVE

5-10.1 Paid Holidays

A full-time career employee is allowed 8 hours paid absence from work on 12 approved state holidays. A less than full-time career employee is allowed paid holiday absence in proportion to the time actually in pay status, in accordance with the regulations.

- (a) **Procedure.** The state personnel director shall establish the appropriate dates for holiday observances and additional standards for determining employee eligibility.
- (b) **Work on a holiday.** An appointing authority may require an employee to work on a paid holiday. Such an employee is compensated in accordance with any applicable provisions governing compensation for overtime and shift differential.

5-10.2 Paid Leave

(a) Leave accrual and accumulation.

(1) Annual and Personal Leave.

- (A) Upon entry into the classified service, an eligible employee is credited with an initial annual leave grant of 16 hours, which is immediately available for use, upon approval of the appointing authority. The 16 hours of annual leave cannot be credited to an employee more than once in a calendar year.

(B) After completion of 720 hours of paid service in the initial appointment, an eligible employee has annual leave credited in accordance with the following leave table:

Years of Service	Hours of Annual Leave Accrued (for 80 hours of service)	Maximum Accumulation (total hours of annual and personal leave)
Less than 1	4.0	256
1 – 5	4.7	256
5 – 10	5.3	271
10 – 15	5.9	286
15 – 20	6.5	301
20 – 25	7.1	306
25 – 30	7.7	316
30 – 35	8.4	316
35 – 40	9.0	316
40 – 45	9.6	316
45 and above	10.2	316

(C) An employee paid for less than 80 hours in a biweekly pay period is entitled to a prorated amount of annual leave. Paid service in excess of 80 hours in a biweekly pay period is not counted.

(D) In addition to annual leave, an eligible employee with at least 6 months of continuous satisfactory service on October 1 of each year is credited with 16 hours of personal leave.

(E) An employee may accumulate credited annual and personal leave hours up to the combined

maximum authorized in the leave table in subsection (a)(1)(B). Any annual or personal leave hours earned above the maximum accrual cannot be credited and the hours are lost.

(2) **School participation leave.** An eligible employee who has completed 1,040 hours of satisfactory service is credited with 8 hours of school participation leave each October 1. School participation leave credits not used by the last pay period of the fiscal year are lost.

(3) **Sick leave.** A career employee in the classified service is credited with 4 hours of sick leave with pay for each completed 80 hours of service. An employee paid for less than 80 hours in a biweekly pay period is entitled to a prorated amount of sick leave. Paid service in excess of 80 hours in a biweekly pay period is not counted.

(b) **Leave use and limitations.**

(1) **Crediting and use of annual, personal, and school participation leave credits.** An employee is credited with annual, personal, and school participation leave in accordance with the compensation plan. An employee may use annual, personal, and school participation leave when approved by the appointing authority in accordance with the compensation plan.

(2) **Crediting and use of sick leave.** An employee is credited with sick leave in accordance with the compensation plan. An employee may use sick leave in accordance with the compensation plan. An appointing authority may require an employee to

present medical certification of physical or mental fitness to continue working. The appointing authority may require an employee to be examined at state expense by a physician selected by the appointing authority.

- (3) **Other limitations.** Annual, personal, school participation, and sick leave cannot be authorized, accumulated, or credited in excess of limits established in the compensation plan.
- (4) **Special credit for annual leave and longevity.** Solely for the purpose of annual leave and longevity credit, a career employee is allowed state service credit for the following:
 - (A) Service in a nonelective excepted or exempted position in a principal department, the legislature, or the supreme court, that immediately precedes entry or return to the classified service.
 - (B) Up to five years of honorable service in the armed forces of the United States completed before entry into the classified service. When an employee who has received additional annual leave and longevity separates from the classified service and subsequently returns, military service previously credited is recognized as prior service, subject to requalification for the benefits of this rule.

5-11 *GROUP INSURANCE PLANS*

5-11.1 **Types of Group Insurance Plans**

- (a) **Types of group insurance plans.** The employer may provide eligible employees with the following group insurance plans as approved by the civil service commission:
 - (1) A medical benefit plan.
 - (2) A dental benefit plan.
 - (3) A vision benefit plan.
 - (4) A life insurance plan.
 - (5) An accidental death benefit plan.
 - (6) A long-term disability income protection plan.
- (b) **Recommendations.** The employer, limited recognition organizations, and nonexclusively represented employees may annually recommend changes in the group insurance plans in the coordinated compensation process. The coordinated compensation panel shall make a final recommendation to the civil service commission.
- (c) **Action by the commission.** The civil service commission shall review the final recommendation of the coordinated compensation panel and may approve, reject, or modify the recommendation of the coordinated compensation panel.
- (d) **Publication.** The employer or plan provider shall make available to employees documentation describing each group insurance plan approved by the civil service commission.

- (e) **Administration.** The employer is responsible for implementing and administering the group insurance plans approved by the civil service commission. The employer shall provide an expedited administrative review of employee complaints regarding group insurance plan coverages, exclusions, and costs. The employer's administrative review process is the exclusive procedure for reviewing employee complaints regarding group insurance plan coverages, exclusions, and costs.
- (f) **Other benefits.**
- (1) The employer may establish and administer flexible spending accounts authorized under federal law.
 - (2) The employer may authorize payroll deduction of premiums for other insurance or benefit programs if the employee pays 100 percent of the total cost.

5-11.2 Eligibility for Group Insurance Plans

Classified employees are eligible for group insurance benefits approved by the civil service commission in accordance with the following eligibility table:

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APPOINTMENT TYPE	CAREER APPOINTMENTS (INDEFINITE AND LIMITED-TERM):				NONCAREER APPOINTMENTS
	FULL-TIME	PART-TIME	PERMANENT-INTERMITTENT	SEASONAL	ALL TYPES
HEALTH PLAN	Eligible	Eligible	Eligible	Eligible	Not Eligible
DENTAL PLAN	Eligible	Eligible (if working > 40% of full-time)	Eligible (if working > 40% of full-time)	Eligible if working full-time at least 8 months per year	Not Eligible
VISION PLAN	Eligible	Eligible (if working > 40% of full-time)	Eligible (if working > 40% of full-time)	Eligible if working full-time at least 8 months per year	Not Eligible
LIFE INSURANCE PLAN	Eligible	Eligible (if working > 40% of full-time)	Eligible (if working > 40% of full-time)	Eligible (if working > 40% of full-time)	Not Eligible
ACCIDENTAL DUTY DEATH	Eligible	Eligible	Eligible	Eligible	Not Eligible
LONG-TERM DISABILITY PLAN	Eligible	Eligible (if working > 40% of full-time)	Eligible (if working > 40% of full-time)	Eligible if working full-time	Not Eligible

5-11.3 Costs of Group Insurance Plans

- (a) **Costs.** The employer shall annually determine the total cost per employee to provide each group insurance plan benefit approved by the civil service commission. During the coordinated compensation process, the employer may propose that the cost of each group insurance plan be paid in part or in whole by an employee.
- (b) **Costs for part-time employees hired after December 31, 1999.** Notwithstanding any apportionment of costs approved by the civil service commission,

an eligible part-time career employee is required to pay one-half of the total cost of the medical, dental, vision, and life insurance plans if (1) the employee has a regular work schedule of less than 50 percent of full-time and (2) the employee was hired into the classified service after December 31, 1999.

5-12 MAINTENANCE ALLOWANCE

When allowances are made for maintenance or other purposes, they are considered as part of compensation, unless specifically excepted by the civil service commission. A payment of

allowance for maintenance, such as meals, lodging, domestic or other personal services, medical care or treatment, laundry, or other services is made in accordance with the compensation plan.

5-13 *RETIREMENT*

A classified employee is eligible for retirement benefits as provided by law.

5-14 *COORDINATION OF BENEFITS*

The state personnel director, in consultation with the employer, shall coordinate the civil service compensation plan with statutory benefit plans such as workers' disability compensation, duty and nonduty disability retirement, and social security disability.

[End of Chapter 5]

Chapter 6

Employee-Employer

Relations

6-1 *PURPOSE*

6-1.1 **Purpose**

This chapter provides classified employees with a voice in determining their compensation and other conditions of employment. This chapter permits (1) employees in eligible positions to engage in a form of collective bargaining with the employer and (2) employees in nonexclusively represented positions to meet and confer with the employer.

6-1.2 **Constitutional Authority**

The civil service commission recognizes that there are fundamental economic, political, and legal differences between employer-employee relations in the state service and those in the private sector and other public sector employment. It is the view of the commission that constitutional provisions do not prohibit the commission from establishing a form of collective bargaining analogous to that in other public sector employment, so long as the collective bargaining agreements are subject to review, modification, and approval by the commission.

The constitution requires the commission to perform a combination of quasi-legislative, quasi-judicial, and administrative functions. This chapter integrates the constitutional responsibilities of the commission (article 11, section 5) with that of the legislature (article 4 and article 11, section 5) and the executive branch of government (article 5).

6-2 *EMPLOYEE-EMPLOYER RELATIONS SYSTEMS*

6-2.1 **Collective Bargaining Authorized**

The civil service commission authorizes classified employees in eligible positions to organize, elect an exclusive representative, and negotiate with the employer over proper subjects of bargaining.

- (a) **Rights and obligations.** The employer, employees, and exclusive representatives have the rights and obligations provided in the civil service rules and regulations.
- (b) **Subjects of bargaining.** The employer and the exclusive representative are required to bargain in good faith over mandatory subjects of bargaining. The

employer may, but is not required to, negotiate over permissive subjects of bargaining. A party cannot bargain over prohibited subjects of bargaining.

- (c) **Intent; retention of authority.** The civil service commission intends to defer to and approve collective bargaining agreements negotiated in good faith between the employer and an exclusive representative when permitted by this chapter. However, the commission is obligated to retain and exercise its constitutional authority in all matters. The commission expressly retains the authority to do all of the following:
- (1) Review, modify, or reject, in whole or in part, each proposed collective bargaining agreement.
 - (2) Approve rules of general applicability during the term of a collective bargaining agreement.
 - (3) Determine, during the term of a collective bargaining agreement, if a provision previously approved has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining, notwithstanding any contrary provision of the agreement.
- (d) **Collective bargaining agreement as substitute rules.** Each collective bargaining agreement approved by the civil service commission is expressly subject to and governed by the civil service rules and regulations. The approval of a collective bargaining agreement by the commission is a quasi-legislative act. The provisions of a collective bargaining agreement, when approved by the commission, become a subset of the civil service rules governing

rates of compensation and other conditions of employment for the eligible employees in the applicable unit.

- (e) **Collective bargaining agreement as a binding agreement.** An approved collective bargaining agreement is binding only between the employer and the exclusive representative. A collective bargaining agreement is not binding on the civil service commission or the department of civil service.

6-2.2 Limited-Recognition Organizations Authorized

The civil service commission authorizes classified employees in nonexclusively represented positions to designate limited-recognition organizations to meet and confer with the employer over rates of compensation and other conditions of employment and to represent members in civil service grievance proceedings. The employer, employees, and the limited-recognition organizations shall have the rights and obligations provided in the civil service rules and regulations.

6-3 COMMISSION AUTHORITY

6-3.1 Commission Relationship to Collective Bargaining

The ability of eligible employees to elect an exclusive representative and engage in collective bargaining is a privilege granted by the civil service commission under its exclusive constitutional authority. However, the commission cannot delegate its constitutional responsibilities to the collective bargaining parties and the privilege to engage in collective

bargaining remains subject to the commission's sovereign authority and the rules of the commission.

- (a) **Review and approval required.** A collective bargaining agreement or any provision of a collective bargaining agreement cannot take effect or be enforceable between the parties unless the civil service commission has reviewed and approved the agreement or provision.
- (b) **Commission authority.** The civil service commission retains the authority to (1) approve, modify, or reject, in whole or in part, a proposed collective bargaining agreement presented to it for review and (2) to impose on the parties and eligible employees a collective bargaining agreement as modified by the commission.
- (c) **Modification of agreement during term.** Notwithstanding that the civil service commission previously approved the provisions of a collective bargaining agreement, the commission retains the authority, during the term of a collective bargaining agreement, to modify the agreement without the approval of the parties, as provided in rules 6-3.5, 6-3.6, and 6-3.9(c).
- (d) **Effect of agreement on commission and department.** The civil service commission and the department of civil service (1) are not parties to a collective bargaining agreement approved by the commission; (2) do not become parties to the collective bargaining agreement by virtue of the commission's review, approval, or modification; (3) are not subject to any of the provisions of a collective bargaining agreement; and (4) are not subject to the jurisdiction of an arbitrator or other fact-finder acting under authority of a collective bargaining agreement approved by the commission.

6-3.2 Prohibited Subjects of Bargaining

No provision of a collective bargaining agreement, impasse panel recommendation, or arbitrator's decision under a collective bargaining agreement may be interpreted or applied to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.

6-3.3 Incorporation by Reference

The incorporation by reference of a civil service rule or regulation regarding a proper subject of bargaining in an approved collective bargaining agreement cannot diminish the authority of the civil service commission or state personnel director to amend or repeal the rule or regulation with respect to nonexclusively represented employees.

6-3.4 Modification after Approval

A collective bargaining agreement approved by the civil service commission remains in force between the parties during its approved term, unless otherwise amended by the commission during its term as provided in rules 6-3.5, 6-3.6, or 6-3.9(c). An amendment to an existing collective bargaining agreement is a quasi-legislative act.

6-3.5 Modification of Agreement or Arbitrator's Decision

Notwithstanding any contrary rule or provision of a collective bargaining agreement, the civil service commission reserves the exclusive authority to determine during the term of a collective bargaining agreement if a provision previously approved has been applied or

interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.

- (a) **Complaint.** Any person may file a complaint with the state personnel director that a collective bargaining agreement or arbitrator's decision under a collective bargaining agreement has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining. The director shall investigate the complaint. After providing notice to the parties and an opportunity to be heard, the director shall determine if a violation has occurred. The definition of prohibited subjects of bargaining shall be liberally construed to enforce the constitutional authority of the civil service commission.
- (b) **Remedy.** If the state personnel director determines that a violation has occurred, the director shall issue a report of findings to the civil service commission. The director may also take any one or more of the following actions:
- (1) Issue an order to cure or correct the violation.
 - (2) Issue an order to enjoin future violations.
 - (3) Recommend to the civil service commission that it amend the existing collective bargaining agreement to cure or correct the violation.
 - (4) In the case of an arbitrator's decision, the state personnel director may also exercise superintending authority to vacate or modify the decision of the arbitrator or remand the matter to the arbitrator for further consideration.

- (c) **Appeal.** A party to the collective bargaining agreement who is aggrieved by a final decision of the state personnel director may file an application for leave to appeal to the civil service commission within 14 calendar days after the decision is issued.
- (d) **Exclusive jurisdiction.** The procedures provided in this rule and in the regulations are the exclusive procedures for determining if a collective bargaining agreement or arbitrator's decision has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining. A provision of a collective bargaining agreement, including a grievance procedure permitted by rule 6-9.6, cannot replace, interfere with, or limit this exclusive jurisdiction or the superintending authority of the state personnel director or the civil service commission.

6-3.6 Rules of General Applicability During Term of Agreement

The civil service commission retains the authority to approve rules of general applicability during the term of any collective bargaining agreement and to apply the rule immediately to all classified employees, including employees covered by the agreement and parties to the agreement, notwithstanding any contrary provision of the agreement.

- (a) **Rule effective during term of agreement.** During the term of a collective bargaining agreement, a rule of general applicability may become immediately effective as to the employees covered by the agreement and the parties to the agreement if the following procedures are complied with:

(1) **Notice of pending rule.** The state personnel director shall issue a prior written notice to the state employer and the exclusive representatives. The notice must state that the proposed rule of general applicability, if approved by the civil service commission, may become immediately effective as to all employees covered by the agreement and parties to the agreement, notwithstanding any contrary provision of the agreement. The notice must provide at least 14 calendar days advance notice, as provided in rule 2-1.1.

(2) **Meet and discuss.** The parties to a collective bargaining agreement potentially affected by a proposed rule of general applicability may meet and discuss the proposed rule and may jointly or separately advise the civil service commission regarding the proposed rule.

(3) **Approval of rule.** When the civil service commission approves a rule of general applicability, the commission shall approve a separate resolution that the rule is immediately effective as to all employees covered by a collective bargaining agreement and parties to the agreement, notwithstanding any contrary provision of the agreement. The rule preempts, modifies, and voids any provision of an agreement previously approved by the commission that is inconsistent with the rule.

(b) **Amendment effective at end of term of agreement.** If a rule is approved without complying with the procedures required in subsection (a), the rule becomes effective immediately for all nonexclusively represented employees, but becomes effective for employees covered by a

collective bargaining agreement and parties to the agreement only when the current approved term of the agreement expires.

6-3.7 Application of Civil Service Rules and Regulations

(a) **Nonexclusively represented employees.** The rates of compensation for all classifications and other conditions of employment for nonexclusively represented employees are established in the civil service rules and regulations. An appointing authority may establish (1) individual levels of compensation within the rates fixed by the civil service commission for each classification and grade and (2) individual work rules that are not inconsistent with the constitution, applicable law, and the civil service rules and regulations.

(b) **Exclusively represented employees.** The rates of compensation for all existing grades within a classification of positions and other conditions of employment for exclusively represented positions may be established in a collective bargaining agreement approved by the civil service commission and in the civil service rules and regulations governing prohibited subjects of bargaining. An approved collective bargaining agreement supersedes civil service rules and regulations governing proper subjects of bargaining that would otherwise apply in the absence of the collective bargaining agreement. However, a collective bargaining agreement cannot contravene the civil service rules and regulations governing prohibited subjects of bargaining.

6-3.8 Civil Service Staff Neutrality

The state personnel director and staff of the department of civil service shall not participate as advocates on behalf of either management or employees in the collective bargaining process.

6-3.9 Limitations on Term of Collective Bargaining Agreements

- (a) **Division of agreement.** A collective bargaining agreement may be undivided or may be subdivided into two sections. If the agreement is divided, the parties shall divide it, to the extent practicable, into one subsection with only economic provisions and one subsection with only noneconomic provisions. When a provision is submitted to the civil service commission or an impasse panel for review, each provision must be clearly marked to indicate whether it is included in the economic subsection or the noneconomic subsection.
- (b) **Limitation on term.** Each collective bargaining agreement must contain an effective date and a termination date. If the agreement is subdivided into economic and noneconomic sections, the subsections may have different effective and termination dates. However, the maximum term of a unitary agreement, section of a subdivided agreement, or provision in an agreement cannot exceed 3 years.
- (c) **Rates of compensation; legislative.** After the civil service commission approves a collective bargaining agreement, the state personnel director shall give annual notice of approved increases in the rates of compensation to the governor for transmittal to the legislature as part of the governor's budget. If the leg-

islature rejects or reduces the increases in rates of compensation approved by the commission, the commission shall amend the collective bargaining agreement to conform to the legislative action.

- (d) **Evergreen provisions prohibited.** A provision of a collective bargaining agreement cannot authorize a provision of that agreement to be automatically extended beyond 3 years or beyond the approved expiration date of the agreement, whichever occurs earlier. If the parties agree that a provision of the agreement should continue in effect beyond the earlier of 3 years or the approved expiration date without further negotiation, the parties must resubmit the entire agreement to the civil service commission for review as provided in rule 6-12.

6-3.10 Union Leave

A classified employee shall not engage in union activities during actual-duty time. A classified employee may engage in union activities only while on approved union leave or on off-duty time.

- (a) **Exclusively represented employees.** An appointing authority may approve union leave for an exclusively represented employee only to the extent authorized in the collective bargaining agreement.
- (b) **Nonexclusively represented employees.** An appointing authority may approve union leave for a nonexclusively represented employee only to the extent authorized in the civil service rules and regulations.
- (c) **Limitations and reporting requirements.** The grant of authority for union leave is expressly conditioned on compliance with the following:

- (1) A classified employee is prohibited from engaging in union activities or political activities during actual-duty time. An appointing authority shall discipline any employee who engages in union activities or political activities during actual-duty time.
- (2) A manager or supervisor is prohibited from permitting a classified employee to engage in union activities or political activities during actual-duty time. The appointing authority shall discipline a manager or supervisor who permits an employee to engage in union activities or political activities during actual-duty time.
- (3) A classified employee shall accurately report on a biweekly basis the amount and type of union leave taken.
- (4) An appointing authority shall accurately enter on a biweekly basis the amount of union leave reported by employees.
- (5) The state employer shall report annually to the civil service commission on the state subsidy for union activities. The report must include the amount, type, and value of all state-paid union leave, administrative leave banks, administrative union officer leave, and any other arrangement by which an employee receives any compensation, benefit, or benefit accrual paid in whole or in part by the state for union activities.
- (6) The state employer or an appointing authority are prohibited from entering into any formal or informal written or unwritten agreements

permitting classified employees to engage in union activities on actual-duty time or to receive any compensation, benefit, or benefit accrual paid in whole or in part by the state for union activities, unless expressly included in a collective bargaining agreement approved by the civil service commission.

6-4 *RIGHTS OF EMPLOYER*

6-4.1 **Management Rights**

The employer may determine or exercise the following without engaging in collective bargaining:

- (a) Matters of managerial policy.
- (b) Mission of the agency.
- (c) Budget.
- (d) The method, means, and personnel by which government operations are to be conducted.
- (e) Organizational structure.
- (f) Standards of service and maintenance of efficiency.
- (g) The right to select, direct, or assign, employees and to initiate lateral job changes.
- (h) The right to discipline employees for just cause.
- (i) The right to relieve employees from duty and abolish positions for reasons of administrative efficiency including, for example, lack of work, lack of adequate funding, change in departmental mission, or reorganization of the work force.

- (j) In case of emergency, the right to take whatever action may be necessary to carry out the agency's mission.

6-4.2 Substantial Adverse Impact

If a determination or exercise of rights by the employer produces substantial adverse impact on employees covered by a collective bargaining agreement, the modification and remedy of any resulting impact is subject to collective bargaining unless the parties have already bargained such matters.

6-4.3 Duty to Bargain

The employer shall not bargain over management rights that are prohibited subjects of bargaining. The employer may, but is not required to, bargain over management rights that are permissive subjects of bargaining.

6-4.4 Authority of Governor

The civil service commission recognizes that the governor has the following responsibilities and authority:

- (a) To develop, direct, and coordinate the employer's employment relations policy.
- (b) To negotiate with exclusive representatives.
- (c) To recommend to the civil service commission, in consultation with principal departments and elected department heads, a comprehensive plan for rates of compensation and other conditions of employment for nonexclusively represented employees.

6-5 RIGHTS OF EMPLOYEES

6-5.1 Participation by Employees

Employees may organize, form, assist, join, or refrain from joining labor organizations. Eligible employees may also engage in concerted activities for collective bargaining with the employer.

6-5.2 Resignation

No eligible employee is required to become or remain a member of a labor organization. An employee has the right to resign from a labor organization at any time. A resignation is effective no later than 28 calendar days after the employee gives written notice to the labor organization. A provision of a collective bargaining agreement or labor organization constitution or bylaws cannot limit or condition the right of an eligible employee to resign at any time.

6-5.3 Exclusively Represented Employees

Eligible employees have the right to exclusive representation as provided in these rules. When the state personnel director has certified an exclusive representative, employees in the unit have the following rights to be represented:

- (a) **Bargaining.** With respect to proper subjects of bargaining, exclusively represented employees may be represented only through their exclusive representative.
- (b) **Grievances.** With respect to grievances, an employee may be represented only by the exclusive representative. However, an employee or group of employees has the right at any time to present grievances to the employer and to have the grievances

adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect. The employer shall give the exclusive representative an opportunity to be present at any such adjustment.

6-5.4 Nonexclusively Represented Employees

Nonexclusively represented employees have a right to be represented through a limited-recognition organization regarding grievances, rates of compensation, and other conditions of employment. In addition, nonexclusively represented employees have the right to represent themselves or to be represented by another person in a grievance proceeding, as provided in the regulations.

6-6 DETERMINATION OF REPRESENTATION

6-6.1 Unit Determination and Redetermination

The state personnel director shall legislatively establish the most appropriate units of eligible employees organized along broad occupational lines with a community of interest. The director, upon request of the state employer or a labor organization, may abolish, redefine, realign, or merge, in whole or in part, recognized units, if the director determines that the existing units are no longer the most appropriate units. The state employer and all labor organizations that may be affected by a change in the existing units shall meet and discuss the proposed changes before a request is filed with the director. Any abolition, redefinition, realignment, or merger of a unit takes effect only at the end of the term of an affected collective bargaining agreement, unless the state

employer and the exclusive representative agree to an earlier date. The state employer or a labor organization may file with the civil service commission an application for leave to appeal a unit determination by the director. The application must be filed within 14 calendar days after the director's decision is released. The director's decision is stayed if a timely application is received by the commission or employment relations board.

6-6.2 Petition for Election; Showing of Interest

- (a) **Petition for election.** An eligible employee, or any individual or labor organization acting on behalf of an eligible employee, may petition for a unit election. The petition must be accompanied by suitable evidence that at least 30 percent of the eligible employees in the unit either want to be represented by another identified organization or no longer want to be represented by an exclusive representative.
- (b) **Showing of interest.** The state personnel director shall order an election if the director finds a bona fide question of representation exists and the petitioner shows the interest of 30 percent or more of the eligible employees actively at work in the unit. Otherwise, the director shall dismiss the petition as insufficient. Although the director shall consider any irregularity that might otherwise preclude the existence of a bona fide question of representation, the sufficiency of showings of interest is a matter for administrative determination. The director's decision is not subject to collateral attack by the parties. When a petition is dismissed, the petitioning party must be informed of the reason for the dismissal. The petitioning party may file an application for leave to

appeal the director's decision to the civil service commission.

- (c) **Intervenors.** When the state personnel director authorizes an election, another organization may intervene and be placed on the ballot if the organization submits suitable evidence that at least 10 percent of the eligible employees actively at work in the unit wish to be represented by the intervening organization.
- (d) **Certification elections.** Certification elections are conducted and supervised by the state personnel director upon determination of the eligible voters by agreement or hearing. The ballots for a certification election must contain an appropriate space for employees to indicate that no representation is desired.

6-6.3 Certification; Run-off Election

The state personnel director shall certify a labor organization as the exclusive representative of all eligible employees in a unit if the organization receives a majority of valid ballots cast in the certification election. If none of the choices on the ballot receives a majority of the votes cast, the state personnel director shall conduct a run-off election. The run-off ballot contains only the two choices receiving the most and the second most votes in the original election.

- (a) **Election bar.** If the members choose "no representation," the state personnel director shall not conduct an election in the unit for 24 months after the election results are certified. If an exclusive representative is certified, the state personnel director shall not accept a new petition in the unit for 24 months after the certification.

- (b) **Contract bar.** Notwithstanding subsection (a), if the civil service commission has approved a collective bargaining agreement for a unit, the state personnel director shall not consider any new petitions during the term of the agreement except during the window period.
- (c) **Window period.** If the collective bargaining agreement is a unitary agreement, election petitions may be accepted only during a 2-month window period ending 6 months before the expiration of the agreement that would otherwise constitute a bar to an election. If the agreement is divided into economic and noneconomic subsections, election petitions may be accepted only during a 2-month window period ending 6 months before the expiration of the noneconomic section of the agreement.
- (d) **Post-election provisions; certification.** When a newly elected exclusive representative is certified in a unit after an election and replaces an exclusive representative, the following conditions will be observed:
- (1) The former exclusive representative shall immediately cease to represent the employees in the unit.
 - (2) The newly elected exclusive representative may either assume and administer the existing contract until its expiration or repudiate the existing contract.
 - (3) In either case, the newly elected exclusive representative shall negotiate a new contract with the office of state employer.
 - (4) No dues or service fees may be paid to the former exclusive representative beyond those deducted for the pay

period in which the certification is issued.

- (5) Dues and service fees cannot be deducted and paid to the new exclusive representative until the requirements of the regulations on dues deductions are fulfilled.
- (e) **Post-election provisions; decertification.** When an exclusive representative is decertified in a unit after an election, the following conditions will be observed:
- (1) The former exclusive representative shall immediately cease to represent the employees in the unit.
 - (2) Any primary or secondary collective bargaining agreements are immediately void and the unit members are subject to the rates of compensation and other conditions of employment applicable to other nonexclusively represented employees.
 - (3) After the end of the pay period in which the decertification is issued, the state shall not deduct dues or service fees from any classified employee or pay dues or service fees to the former exclusive representative, except dues and service fees deducted through the pay period in which the decertification is issued.

6-6.4 Excluded Positions

The state employer, in consultation with the appointing authorities, shall designate the excluded positions outside the department of civil service. If an exclusive representative disagrees with a designation of the state employer, the exclusive representative may petition the state personnel director to resolve the dispute. The director shall administratively determine whether a position is an excluded

position. The decision of the director is final unless the state employer, the attorney general, the secretary of state, or an exclusive representative aggrieved by the decision files an application for leave to appeal with the civil service commission within 14 calendar days after the decision. The procedure authorized in this rule is the exclusive procedure for resolving disputes concerning excluded positions.

6-7 DUES AND FEES

6-7.1 Membership Dues for Exclusive Representatives

If agreed to in a collective bargaining agreement, the state may deduct the dues of a member of an exclusive representative through payroll deduction. Notwithstanding any contrary provision of a collective bargaining agreement, an appointing authority shall not deduct membership dues unless the employee has filed a prior, voluntary, written authorization

6-7.2 Service Fee Authorized

Nothing in this rule precludes the employer from making an agreement with an exclusive representative to require, as a condition of continued employment, that each eligible employee in the unit who chooses not to become a member of the exclusive representative shall pay a service fee to the exclusive representative. If agreed to in a collective bargaining agreement, the state may deduct the service fee by payroll deduction. An appointing authority shall not deduct a service fee unless the employee has filed a prior written authorization or as otherwise authorized in a collective bargaining agreement.

6-7.3 Limitations on Service Fee

The amount of a service fee cannot exceed the employee's proportionate share of the costs of the activities that are necessary to perform its duties as the exclusive representative in dealing with the employer on labor-management issues. The service fee may include only the costs germane to collective bargaining, contract administration, grievance adjustment, and any other cost necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.

6-7.4 Right of Fee-Payer to Object

An employee required to pay a service fee has the right to object to the amount of the service fee and obtain a reduction of the service fee to exclude all expenses not germane to collective bargaining, contract administration, and grievance adjustment, or otherwise necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Each collective bargaining agreement must provide a procedure that provides an objector with the following rights:

- (a) The right to financial information sufficient to determine how the service fee is calculated.
- (b) The right to challenge the amount of the service fee before an impartial decision-maker.
- (c) The right to have any disputed amount of the service fee placed in escrow by the exclusive representative pending a final decision.

6-7.5 Annual Notice of Rights

The state personnel director shall annually give written notice of each of the following rights and obligations to each classified employee:

- (a) The right of an eligible classified employee to join or not join an exclusive representative without affecting the employment status of the employee.
- (b) If the employee chooses to join the exclusive representative, the right not to maintain membership in an exclusive representative to retain a job.
- (c) If the employee chooses not to be a member of the exclusive representative, the obligation to pay a service fee as provided in rule 6-7.2.
- (d) If the employee chooses not to be a member of the exclusive representative and is obligated to pay a service fee, the rights guaranteed under federal and state law.
- (e) The prohibitions against political activities and union activities during actual-duty time.

6-7.6 Additional Posted Notice

Each appointing authority shall post in conspicuous places a notice, in the form prescribed by the state personnel director, informing employees of the rights and obligations set forth in this rule.

6-7.7 Accounting

An exclusive representative shall account for and report fees and expenses in such detail as necessary to allow employees to determine the proportionate costs of expenditures necessarily

or reasonably incurred for the purposes of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Each exclusive representative shall provide three copies of an audited report accounting for its fees and expenses to the state personnel director annually.

6-8 RECOGNITION RIGHTS FOR LABOR ORGANIZATIONS

6-8.1 Rights of Exclusive Representatives

An exclusive representative (1) has the duty of fair representation of all employees in the unit, (2) may engage in collective bargaining with the employer, and (3), when mutual agreement is reached, may submit to the civil service commission for approval a written collective bargaining agreement regarding proper subjects of bargaining.

6-8.2 Limitation on Representation

A labor organization certified as an exclusive representative in a unit is prohibited from representing (1) any employee in an eligible position prior to being certified as the exclusive representative in the employee's unit and (2) any employee occupying an excluded position.

6-8.3 Limited-Recognition Organizations

Employees in excluded positions are not eligible for exclusive recognition but may join and be represented by limited-recognition organizations. Employees in eligible positions in units that have not yet elected an exclusive

representative may join and be represented by limited-recognition organizations. However, a limited-recognition organization shall not represent nor seek to represent an employee in an eligible position after an exclusive representative has been certified in the employee's unit.

(a) Limited-recognition status and payroll deduction of dues.

The state personnel director shall recognize as a limited-recognition organization an organization that registers with the director and provides (1) a copy of its constitution, bylaws, or other governing documents; (2) the names and addresses of its officers; (3) proof of registration as a non-profit corporation in the state of Michigan; and (4) proof of membership of 50 or more excluded employees. Proof of membership must be in the form of signed membership application forms. Upon submission to the office of the state employer of 50 or more appropriate dues deduction cards, such an organization has the privilege of payroll deduction of dues for members who are excluded. An employee cannot have the privilege of payroll deduction of dues to more than one organization.

(b) Limited recognition rights.

An organization granted limited recognition under this rule also has the following rights:

- (1) The right to express the interests of its members.
- (2) The right to represent its members in civil service grievance hearings and technical appeals, when requested by the member.
- (3) The right to be heard by the employer, the employment relations

board, and the civil service commission.

- (4) The right to union leave for union activities as may be provided in the regulations.

6-9 *NEGOTIATIONS AND IMPASSE*

6-9.1 **Primary Negotiations**

The state employer, acting in consultation with principal departments, the attorney general, and the secretary of state, shall direct primary negotiations on behalf of the employer. The state employer shall coordinate all negotiations and administration of collective bargaining agreements with the appointing authorities. Upon request of the attorney general or the secretary of state, the state employer shall reserve all noneconomic issues in the office of attorney general or department of state for secondary negotiations. The parties may coordinate bargaining between the state employer and more than one exclusive representative.

6-9.2 **Timing of Primary Negotiations**

The state personnel director shall annually establish a time frame for the conduct of primary negotiations and impasse resolution. The time frame must coordinate with the legislative budget cycle and the constitutional provisions governing the timing of increases in rates of compensation for classified employees. If the collective bargaining parties cannot reach agreement by the date established by the director, the parties may refer the matter to the impasse panel for resolution. If a newly-certified exclusively representative cannot complete bargaining for a new agreement

before a new fiscal year begins, the rates of compensation for its members are determined in the same manner as nonexclusively represented employees.

6-9.3 **Failure to Request Impasse**

If the parties have not reached a voluntary agreement or timely requested impasse panel assistance by the date an existing collective bargaining agreement expires, the civil service commission may require the parties to refer unresolved issues to the impasse panel. The commission shall provide the parties written notice of its intention to consider a mandatory referral at least 28 calendar days in advance of its consideration.

6-9.4 **Impasse Resolution**

If either party files a timely request for impasse panel assistance, the parties are eligible for impasse panel assistance. If neither party files a timely application, the parties are ineligible for impasse panel assistance, except as provided in rule 6-9.3. If the parties are ineligible for impasse panel assistance, the state personnel director may require the use of mediation, advisory arbitration, or fact-finding provided in the regulations. If the civil service commission approves increases in the rates of compensation too late to be included in the governor's budget, the increases must be submitted under the waiver of notice provisions of article 11, section 5, of the constitution.

- (a) **Impasse panel procedures.** The impasse panel is governed by the civil service rules and regulations.
- (1) **Notice of impasse.** The state personnel director shall notify the employment relations board if a party submits a request for impasse panel assistance.

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- (2) **Required submissions by the parties.** The state personnel director shall establish a date by which the parties must submit the following to the impasse panel:
- (A) A joint certification of the text of all contract provisions to which the parties have tentatively agreed.
 - (B) A joint certification of the provisions over which the parties have negotiated in good faith but have failed to reach a proposed agreement.
 - (C) A submission by each party of proposed contract language for those provisions certified at impasse in subsection (B).
- (3) **Date of recommendation.** The state personnel director shall establish the date by which the impasse panel must submit its recommendation to the civil service commission.
- (4) **Establish impasse panel.** Upon notice by the state personnel director, the employment relations board shall designate the members of the impasse panel. The panel shall consider the submissions of the parties and shall make a recommendation to the civil service commission.
- (5) **Coordination.** The impasse panel shall simultaneously consider all unresolved contract disputes certified at impasse on a coordinated basis in all bargaining units as prescribed in the regulations.
- (6) **Recommendation.** The impasse panel shall send its recommendation to the civil service commission on or before the date established by the state personnel director.
- (7) **Voluntary agreement.** The parties may resolve their impasse by voluntary agreement at any time before the civil service commission takes final action on the recommendation of the impasse panel.
- (b) **Impasse panel criteria.** The parties shall address, and the impasse panel shall consider, the following criteria, if relevant:
- (1) Stipulations and agreements.
 - (2) The interests and welfare of the public.
 - (3) The financial condition and ability of the state.
 - (4) Comparison of the rates of compensation and other conditions of employment of classified employees with other governmental and private sector employees.
 - (5) Appropriate economic indicators and forecasts.
 - (6) Total compensation, including fringe benefits, presently received by employees.
 - (7) Such other factors that are normally taken into consideration in determining rates of compensation and other conditions of employment.

6-9.5 No Disclosure

A mediator cannot be required to disclose information relating to a particular dispute acquired while mediating the dispute under this rule.

6-9.6 Negotiated Grievance Procedures

- (a) **Negotiated grievance procedure.** An exclusive representative and the employer may agree upon a procedure for the resolution of grievances of exclusively represented employees against the departmental employer, subject to the limitations established in law, including the civil service rules and regulations.
- (b) **Jurisdictional limitations on arbitrators.**
- (1) Notwithstanding any provision of a collective bargaining agreement, the authority of an arbitrator or other fact-finder under a procedure authorized in a collective bargaining agreement is subject to and subordinate to the limitations and restrictions on subject matter and personal jurisdiction imposed by the civil service rules and regulations.
 - (2) Notwithstanding any provision of a collective bargaining agreement, an arbitrator or other fact-finder acting under a procedure authorized in a collective bargaining agreement is subject to the superintending control of the state personnel director, subject to appeal to the civil service commission, when the director is exercising the authority granted in rule 6-3.5.
 - (3) None of the following disputes can be adjudicated in a grievance procedure authorized in a collective bargaining agreement, but can only be adjudicated in a civil service forum under the exclusive procedures provided for in the civil service rules and regulations:

- (A) A grievance by an employee who is aggrieved by the abolition or creation of a position.
 - (B) A grievance by an employee disciplined or denied the use of sick or annual leave for striking.
 - (C) A complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, against the civil service commission, the department of civil service, or an employee of the department of civil service.
 - (D) A complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, arising out of or related to a prohibited subject of bargaining.
 - (E) Any matter or dispute in which civil service rules or regulations provide an exclusive procedure or forum for the resolution of the matter or dispute.
- (4) Rule 6-9.6 does not create grievance or appeal rights.

6-9.7 Secondary Negotiations

If secondary negotiations are authorized in a primary agreement, the secondary negotiations must be concluded no later than 3 months after the date the civil service commission approved the primary agreement. The secondary agreement must be submitted to the commission for review as provided in rule 6-12. If the parties do not submit timely a complete proposed secondary agreement to the commission for review, the negotiations are considered at impasse and all matters related to mandatory subjects of bargaining are referred

to an impasse panel. The impasse panel shall recommend to the commission a binding secondary agreement to regulate conditions of employment for employees in the department.

6-9.8 Regulations

The state personnel director may issue regulations not inconsistent with these rules to establish impasse, conference, mediation, and advisory arbitration procedures for the resolution of disputes.

6-10 EMPLOYMENT RELATIONS BOARD

6-10.1 Employment Relations Board

The civil service commission shall appoint an employment relations board consisting of three unclassified members who are compensated on a *per diem* basis, as determined by the commission. The commission shall designate one of the members as the chair of the board.

6-10.2 Term of Office

The members are appointed to staggered terms of 3 years and serve at the pleasure of the civil service commission. A person appointed to fill a vacancy on the board is appointed only for the unexpired term. All terms of office expire May 1 in the year of expiration. A member may be reappointed.

6-10.3 Quorum and Action

Two members of the board constitute a quorum. The board acts by a vote of a majority of a quorum. If a quorum consists of only two members and they cannot agree, the board shall not act but shall forward the matter to the

civil service commission with the separate recommendation of each member.

6-10.4 Duties

The employment relations board has the following duties:

- (a) Review all appeals of right to the civil service commission and recommend final action to the commission.
- (b) Review all applications for leave to appeal to the civil service commission and recommend the grant or denial of leave to appeal. If the board recommends granting the application, the board shall not refer that recommendation to the commission until after the board has considered the appeal on its merits and has issued a final recommendation on the merits of the appeal.
- (c) Serve as the members of any impasse panel or coordinated compensation panel. However, the board instead may appoint one or more of its own members or other persons to serve as the panel.
- (d) Review all other matters referred to it by the civil service commission or the state personnel director.
- (e) Recommend regulations governing board procedures to the state personnel director.

6-10.5 Final Action by the Commission

The employment relations board shall file its final recommendations with the civil service commission. After reviewing the board's recommendations, the commission shall issue a final decision in the matter. The commission may approve, reject, or modify, in whole or in part, the board's recommendations. If the commission rejects, in whole or in part, the

board's recommendations, the commission may (1) remand the matter to the board or other officer for further action, (2) issue a final judgment or decision that rejects or modifies the recommendation of the board, or (3) exercise any other power of the board or commission.

6-11 *COORDINATED COMPENSATION PLAN*

The coordinated compensation panel shall send a recommended coordinated compensation plan for all nonexclusively represented classified employees to the civil service commission. The panel shall consider negotiated collective bargaining agreements, any impasse panel recommendations, and any recommendations of the employer or employees. The panel shall send its recommendation on or before the date set by the state personnel director.

6-12 *COMMISSION REVIEW AND ACTION*

6-12.1 **Commission Review of Agreements, Impasse Panel Recommendations, and Coordinated Compensation Recommendations**

It is the policy of the civil service commission to encourage agreement between the parties. However, the commission retains the final authority to approve, modify, or reject, in whole or in part, all collective bargaining agreements, impasse panel recommendations, and coordinated compensation recommendations submitted to the commission. There-

fore, if the parties reach a proposed collective bargaining agreement, the parties shall submit a copy of the proposed agreement to the commission for review. If the parties are at impasse, the impasse panel shall submit its recommendations for impasse resolution to the commission. The commission shall review each proposed agreement, impasse panel recommendation, and coordinated compensation recommendation. The commission shall approve, modify, or reject, in whole or in part, each agreement and recommendation.

6-12.2 **Permissive Rejection or Modification of Agreements**

The civil service commission may reject or modify, in whole or in part, any provision of a proposed collective bargaining agreement, including a provision previously approved by the commission.

6-12.3 **Mandatory Rejection or Modification**

The civil service commission shall reject or modify, in whole or in part, an agreement or recommendation that contains one or more of the following provisions:

- (a) A provision that is contrary to law, including article 11, section 5, of the constitution.
- (b) A provision of an impasse panel recommendation that includes an award involving permissive subjects of bargaining, unless the state employer voluntarily submitted the matter to the impasse panel.
- (c) A provision that supersedes or violates a civil service rule or regulation governing a prohibited subject of bargaining.

- (d) A provision that is arbitrary, capricious, or contrary to the public interest.

6-12.4 Intent to Reject or Modify; Referral to Parties

If the civil service commission proposes to reject or materially modify a provision of a proposed collective bargaining agreement, the commission shall exercise its authority as provided in this rule.

- (a) **Mandatory subject of bargaining.** If the civil service commission proposes to reject or materially modify a provision regarding a mandatory subject of bargaining, the commission, before taking final action, shall first refer the agreement back to the parties for further consideration as provided in this subsection.
- (1) **Notice.** The state personnel director shall give written notice to the parties of the proposed rejection or modification and the reasons for the proposed rejection or modification.
 - (2) **Referral.** The proposed agreement must be returned to the parties to consider the proposed civil service commission action for 28 calendar days.
 - (3) **Response.** Within 28 calendar days after the notice by the state personnel director, the parties may jointly or separately respond to the civil service commission in writing. The director, with the consent of the chair of the commission, may extend the response deadline.
 - (4) **Action by commission.** After receiving responses from the parties or, if the parties do not respond, after the expiration of the response period,

the civil service commission shall take action as provided below:

- (A) **Negotiations reopened and the parties agree.** If the parties jointly reopen negotiations and again reach a voluntary agreement, the new proposed agreement is submitted to the civil service commission for final action. The commission (1) may approve, reject, or modify, in whole or in part, the proposed agreement or (2) the commission may, in its sole discretion, again refer the proposed agreement to the parties for further consideration.
- (B) **Negotiations reopened and the parties at impasse.** If the parties jointly reopen negotiations and, after bargaining in good faith, do not reach an agreement, either party may request the assistance of the impasse panel as provided in rule 6-9. The deadline for requesting impasse panel assistance is the last day of the response period. Upon receipt of the recommendation of the impasse panel, the civil service commission shall approve, reject, or modify, in whole or in part, the recommendation.
- (C) **No new agreement or no impasse.** If the parties (1) do not agree to reopen negotiations or (2) do not request impasse panel assistance, the civil service commission, at its next meeting, shall approve, reject, or modify, in whole or in part, the original proposed agreement submitted for review.

(b) **Prohibited subjects of bargaining.** If the civil service commission proposes to reject or materially modify a provision regarding a prohibited subject of bargaining, the commission, before taking final action to reject or modify the provision, may, in its sole discretion, first refer the agreement to the parties for further consideration as provided in subsection (a). If the commission does not refer the proposed agreement back to the parties, the commission shall reject or modify the provision.

(c) **Not applicable to impasse.** This rule does not apply to the civil service commission's consideration and action on recommendations by the impasse panel.

6-13 *UNFAIR LABOR PRACTICES FOR THE EMPLOYER*

6-13.1 **Coercion**

It is an unfair labor practice for the employer to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of rights granted by these rules.

6-13.2 **Interference**

It is an unfair labor practice for the employer to dominate, interfere with, or assist in the formation, existence, or administration of a labor organization.

6-13.3 **Discrimination**

It is an unfair labor practice for the employer to discriminate or retaliate against an employee because that employee has (1) filed an affidavit, petition, or complaint; (2) given information or testimony; (3) formed, joined, or chosen

to be represented by a labor organization; or (4) participated in a campaign or election to certify, change, or decertify an exclusive representative.

6-13.4 **Refusal to Bargain in Good Faith**

It is an unfair labor practice for the employer to refuse to bargain in good faith over mandatory subjects of bargaining as required by these rules.

6-14 *UNFAIR LABOR PRACTICES FOR EMPLOYEES OR LABOR ORGANIZATIONS*

6-14.1 **Coercion**

It is an unfair labor practice for employees or labor organizations to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of their rights as granted in these rules.

6-14.2 **Interference**

It is an unfair labor practice for employees or labor organizations to interfere with, restrain, or coerce the employer with respect to rights protected in this policy or with respect to the orderly selection of a representative to carry out its obligations under these rules.

6-14.3 **Refusal to Bargain in Good Faith**

It is an unfair labor practice for employees or labor organizations to refuse to bargain in good faith with the employer over mandatory

subjects of bargaining as required by these rules.

6-14.4 Striking

It is an unfair labor practice for employees or labor organizations to call, institute, manage, or conduct, or participate in a strike for any purpose.

6-15 UNFAIR LABOR PRACTICE PROCEDURES

An employer, employee, or labor organization may file an unfair labor practice complaint with the state personnel director. The director has the authority to investigate, obtain facts, statements, or affidavits, make determinations of violations, and assess appropriate penalties.

6-16 ADMINISTRATION

6-16.1 Authority of Director

In addition to the powers specifically delegated to the state personnel director in these rules, the director has the general authority to request and receive data, hold hearings, resolve jurisdictional disputes, issue orders, including cease and desist orders, and issue other orders and regulations not inconsistent with the rules. The director may further delegate any of the director's authority, in whole or in part, unless prohibited by these rules.

6-16.2 Emergency Rules

The state personnel director may issue emergency rules without action by the civil service commission if the director deems it necessary to preserve peaceful labor relations.

An emergency rule is effective when issued and remains in effect until the next commission meeting. The director shall place the emergency rule on the agenda for the next commission meeting. If a majority of a quorum of the commission does not approve the emergency rule before the adjournment of that meeting, the emergency rule expires. Failure of the commission to approve the emergency rule does not void actions taken in reliance on the emergency rule action while the emergency rule was effective.

6-16.3 Appeals

A party adversely affected by a decision of the state personnel director under this rule may file an application for leave to appeal to the civil service commission.

6-17 STRIKES

6-17.1 Striking Activity

A classified employee shall not engage in a strike against the state of Michigan or any of its departments, commissions, agencies, or subdivisions. A labor organization shall not promote, encourage, or support a strike by its members.

6-17.2 Discipline of Employee

A classified employee who participates in a strike may be disciplined by the appointing authority, up to and including dismissal. An employee who engages in a strike cannot receive payment of any kind, including retroactive authorization for use of sick or annual leave, for time lost due to engaging in a strike.

6-17.3 Employee Grievance Procedures

- (a) **Exclusive procedure.** The grievance procedure authorized in the civil service rules and regulations is the exclusive grievance procedure available to an employee disciplined under this rule for striking or denied the use of sick or annual leave for lost time. A grievance procedure provided in a collective bargaining agreement is not applicable.
- (b) **Presumption.** A employee who is absent from work without permission or who abstains wholly or in part from the full, faithful performance of his or her duties in the normal manner on the date or dates when a strike occurs, and who did not have advance approval for leave or produce evidence of illness for each day of absence certified by a person licensed as a doctor of medicine, osteopathic medicine or surgery, or dental science or surgery, is presumed to have engaged in such strike on such date or dates.
- (c) **Determination.** If it appears that a violation of this rule may have occurred, the appointing authority or the state employer shall investigate and determine (1) whether a violation has occurred, (2) the date or dates of such violation, and (3) the names of employees participating and the dates of participation.
- (d) **Penalties; objection.** If an employee is determined to have violated this rule, the employee must be notified of the determination and any penalty by personal service or certified mail at the last address filed by the employee with the employer. An employee determined to have violated this rule who claims not to have violated this rule may file a grievance with the appointing authority as prescribed in the regulations.

- (e) **Review of objections; appeal.** The appointing authority shall review the grievance and may reaffirm or modify the initial determination. If the appointing authority denies the use of sick leave or annual leave for time lost due to engaging in a strike, the decision is final and not appealable. If the appointing authority dismisses, suspends, or demotes the employee for striking, the employee may appeal the grievance decision as prescribed in the regulations.

6-17.4 Employee Fines for Striking

In addition to discipline imposed under this rule, the state personnel director may fine an employee an amount equal to one day of pay for that employee for each full or partial day the employee engaged in the strike.

- (a) **Hearing.** If a person alleges that one or more classified employees engaged in a strike in violation of these rules, the state personnel director shall conduct a hearing to determine if there has been a violation and shall issue a decision and order.
- (b) **Fine.** If the state personnel director determines that one or more classified employees engaged in a strike, the director shall fine each employee an amount equal to one day of pay for that employee for each full or partial day the employee engaged in a strike.
- (c) **Appeal by employee.** The decision of the state personnel director is final unless an employee aggrieved by a decision files a timely application for leave to appeal to the civil service commission.
- (d) **Payment of fine.** If the state personnel director imposes a fine and the employee continues to be employed by the state, the

director shall order the amount of the fine deducted from the employee's salary.

- (e) **Additional penalty.** A fine imposed under this rule is in addition to all other penalties imposed under any other rule.
- (f) **Limitations.** An employer shall not provide an employee any compensation or additional work assignment that is intended to reimburse the employee for a monetary penalty imposed under this rule or that is intended to allow the employee to recover a monetary penalty imposed under this rule.

6-17.5 Action against Labor Organization

If a labor organization (1) promotes or encourages a strike by one or more of its members through its publications or actions of its officers or agents or (2) financially supports a strike by one or more of its members, the state personnel director shall fine the labor organization \$5,000 for each full or partial day one or more of its members engage in a strike.

- (a) **Hearing.** If a person files a complaint accompanied by a sworn affidavit containing particularized facts that, if true, demonstrate that a labor organization has violated this rule, the state personnel director may conduct a hearing to determine if a violation has occurred and shall issue a decision and order. The director may dismiss the complaint without a hearing.
- (b) **Fine.** If, after a hearing, the state personnel director determines that a labor organization has violated this rule, the director shall fine the labor organization \$5,000 for each full or partial day one or more classified employee members of the labor organization engaged in the strike.

- (c) **Appeal.** The decision of the state personnel director is final unless the labor organization files a timely application for leave to appeal to the civil service commission.
- (d) **Failure to pay fine; suspension of payroll deduction.** If the labor organization does not pay a fine imposed under this rule within 28 calendar days after the fine is imposed, the state personnel director shall order that the amount of the unpaid fine be deducted from monies withheld by payroll deduction that would otherwise be paid to the labor organization.

[End of Chapter 6]

Chapter 7

Disbursements for Personal Services

7-1 *DISBURSEMENTS OF PERSONAL SERVICES*

7-1.1 Requirements

An appointing authority shall not make or authorize disbursements under a contract for personal services until the provisions of article 11, section 5, of the constitution, these rules, and regulations issued by the state personnel director have been complied with in every particular.

7-1.2 Disapproval by State Personnel Director

If an appointing authority makes or authorizes disbursements for personal services in violation of article 11, section 5, of the constitution or an applicable civil service rule or regulation, the state personnel director may disapprove any further disbursements by written order. If an appointing authority fails or refuses to comply with an order of the director, the director is authorized to take all appropriate action, including filing a civil action, to compel compliance with the disapproval order.

7-2 *STANDARDS FOR CONTRACTING FOR PERSONAL SERVICES*

7-2.1 Requirements

An appointing authority may make or authorize disbursements for personal services under a contract for personal services only if the personal services meet one or more of the following standards:

- (a) **Standard A.** The personal services are so temporary, intermittent, or irregular in nature that they cannot be provided efficiently through the classified service.
- (b) **Standard B.** The personal services are uncommon to the state classified service because they are so specialized, technical, peculiar, or unique in character that the talent, experience, or expertise required to accomplish the duties and responsibilities cannot be recognized as normal to the state service and cannot be efficiently included in the classification plan.
- (c) **Standard C.** The personal services involve (1) the use of equipment, materials, or facilities not reasonably available

to the agency at the time and place required and (2) the estimated cost to the agency in procuring such equipment or materials and establishing the needed positions would be disproportionate to the contract cost.

- (d) **Standard D.** The personal services would be obtained at substantial savings over the life of the contract when compared with having the same personal services performed by the classified work force. The personal services do not meet this standard if, despite the savings over the life of the contract, substantial savings would not likely be realized over the long term. Savings are “substantial” if the contract for personal services results in average annual savings equal to or greater than the minimum required savings computed using the table below:

Col. 1 Average Annual Contract Cost:		Col. 2 Minimum Required Average Annual Savings Must Equal:
From:	To:	
\$ 1	\$ 25,000	25 % of avg. annual cost
25,001	50,000	20 % (minimum \$6,250)
50,001	100,000	15 % (minimum \$10,000)
100,001	200,000	12.5% (minimum \$15,000)
200,001	500,000	10 % (minimum \$25,000)
500,001	1,000,000	Minimum \$50,000
1,000,001	and above	5 % of avg. annual cost

- (e) **Standard E.** The personal services are included in a mixed contract that meets each of the following tests:
 - (1) The mixed contract is predominantly for things other than the performance of personal services.
 - (2) The personal services included are logically or practically related to the predominant nature of the contract.

7-3 DISBURSEMENTS TO SPECIAL PERSONAL SERVICE EMPLOYEES

An appointing authority may make disbursements for personal services to a special personal services employee under the following conditions:

- (a) **Standards.** The personal services meet either Standard A or Standard B in rule 7-2.
- (b) **Procedures.** The disbursements for personal services have been (1) approved under the request procedures in rule 7-5 or (2) preauthorized under rule 7-7.

7-4 DISBURSEMENTS TO INDEPENDENT CONTRACTORS

An appointing authority may make disbursements for personal services to an independent contractor under the following conditions:

- (a) **Standards.** The personal services meet one or more of the standards in rule 7-2.
- (b) **Procedures.** The disbursements for personal services have been (1) approved under the request procedures in rule 7-5, (2) authorized under the decentralized review and approval procedures in rule 7-6, or (3) preauthorized under rule 7-7.

7-5 ***PROCEDURE: PRIOR
WRITTEN APPROVAL
BY CIVIL SERVICE
STAFF***

7-5.1 **Procedure**

An appointing authority may submit a request for approval to the department of civil service. Civil service staff shall (1) receive and evaluate the request, (2) receive and evaluate information submitted by other interested parties, and (3) issue a written technical decision. The staff shall approve the request, with or without conditions, or shall deny the request.

7-5.2 **Effective Date of Staff
Decision.**

- (a) **One interested party.** If the appointing authority is the only interested party participating in the staff review, the technical decision is effective upon its issuance, unless a later date is specified in the technical decision.
- (b) **Two or more interested parties.** If more than one interested party participates in the staff review, the technical decision is effective 14 calendar days after the date the technical decision is issued, unless a different date is specified in the technical decision. An interested party intending to appeal the technical decision may file a request that the state personnel director stay the effective date of the decision pending appeal. The director may stay the effective date of the technical decision pending a technical appeal if the director determines that (1) it is unlikely that the request meets one or more of the standards for approval and (2) a stay is in the best interest of the classified service.

7-5.3 **Appeal of Technical
Decision**

An interested party who participated at the staff review may file a technical appeal as provided in rule 2-19. The appeal must be received by the department of civil service and all other interested parties within 14 calendar days after the date the technical decision is mailed.

7-6 ***PROCEDURE:
DECENTRALIZED
APPROVAL WITHOUT
PRIOR CIVIL SERVICE
REVIEW***

7-6.1 **Document Compliance**

An appointing authority may make or authorize disbursements for personal services if the appointing authority documents its compliance with civil service rules and regulations prior to making any disbursements and the appointing authority gives notice of the contract or disbursements to the department of civil service, to employees, and to exclusive representatives of employees.

7-6.2 **Training Required**

An appointing authority shall not use the decentralized approval procedure until the department of civil service certifies in writing that the staff of the appointing authority has received adequate training in the required procedures. The department may also require additional periodic training at any later date to ensure continued compliance with the civil service rules and regulations as a condition of the use of the decentralized approval procedure.

7-6.3 Documentation Required

The appointing authority shall document each of the following prior to making any disbursements:

- (a) The standard or standards in rule 7-2 that the personal services meet.
- (b) Details of the proposed contract that are sufficient to demonstrate clearly how the personal services meet one or more of the standards in rule 7-2.
- (c) Any further documentation required in the regulations.
- (d) A copy of each contract executed or effective as a result of this approval.

7-6.4 Maintenance of Records

The appointing authority shall maintain the documents required by this rule for a period not less than 2 years after the end of the contract. The documents must be made available to the department of civil service for purposes of auditing compliance.

7-6.5 Notice

As a condition of the use of the decentralized approval procedure, the appointing authority shall complete a form prescribed by the department of civil service and send a copy of the completed form to the department of civil service at least 14 calendar days before the contract is executed. At the same time, the appointing authority shall also post notice of the proposed contract in a central public location.

7-6.6 Limitations

Notwithstanding any other civil service rule or regulation to the contrary, an appointing

authority shall file a request and obtain prior civil service approval as required in rule 7-5 before making or authorizing disbursements for personal services in any of the following circumstances:

- (a) **Layoff of classified employee.** One or more classified employees will be laid off or demoted as a result of the contract for personal services.
- (b) **Contract amount.** The disbursements for personal services may exceed \$500,000 in a fiscal year or \$2,000,000 during the life of the contract.
- (c) **Number of contracts.** The appointing authority has or will enter into six or more separate contracts for substantially the same personal services in a fiscal year.

7-6.7 Complaints

Any complaint regarding the use of the decentralized review and approval process by an appointing authority may be brought only under the complaint procedures in rule 7-9.

7-7 PROCEDURE: PREAUTHORIZATION

7-7.1 Publication of List

The department of civil service may establish and publish a list of personal services deemed to meet one or more of the standards of rule 7-2 without further review.

7-7.2 Use of Preauthorized Approval

An appointing authority may make or authorize disbursements for any preauthorized personal services without submitting a request or

obtaining prior written approval of the department of civil service.

7-7.3 Reporting

As a condition of using the preauthorized list, the appointing authority shall report all disbursements for preauthorized personal services as required by statute and the civil service regulations.

7-7.4 Additions to Preauthorized List

An appointing authority seeking to add personal services to the list of preauthorized personal services may file a request under the procedures in rule 7-5.

7-7.5 Complaints or Appeals

Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process may be brought only under the procedures authorized in rule 7-9. Any complaint regarding a technical decision to add personal services to the preauthorized list may be brought only by an interested party under the technical appeal procedures in rule 2-19.

7-8 EMERGENCY DISBURSEMENTS

An appointing authority may authorize or make disbursements for personal services by persons who are not classified employees without prior approval when an emergency occurs. The services must not continue beyond 14 calendar days without approval of the department of civil service. The department may approve continuation of emergency services for an additional period not to exceed 28 calendar days.

7-9 COMPLAINTS AND INVESTIGATIONS

7-9.1 Investigation by State Personnel Director

Any person may file a written complaint with the state personnel director that a contract for personal services has been awarded by an appointing authority in violation of article 11, section 5, of the constitution or a civil service rule or regulation. The complainant shall also serve a copy of the complaint on the appointing authority and the office of the state employer. If the state personnel director determines that there is a meritorious basis for the complaint, the director shall appoint a person to conduct an inquiry and make a recommendation to the director.

7-9.2 Violations

If the state personnel director finds any of the following circumstances, the director may disapprove disbursements for personal services or take other appropriate action to ensure compliance with the constitution and the civil service rules and regulations:

- (a) The appointing authority has entered into a contract for personal services without obtaining required civil service approval.
- (b) The appointing authority obtained civil service approval by fraud, material misrepresentation, or failure to disclose material facts.
- (c) The appointing authority made or authorized improper disbursements for personal services under the decentralized review and approval procedure or the list of preauthorized personal services.
- (d) The appointing authority failed or neglected to report a contract or

disbursements as required by law or the civil service rules or regulations.

- (e) The appointing authority failed to create or maintain adequate records to properly document its compliance with these rules and the regulations.

7-9.3 Appeal of Director's Determination

A determination of the state personnel director under this rule is final unless the appointing authority files an application for leave to appeal to the employment relations board within 14 calendar days after the date of mailing of the director's determination. Thereafter, the appeal procedures of the employment relations board control.

7-10 AUDIT AND ENFORCEMENT

The department of civil service shall periodically audit an appointing authority to ensure that the appointing authority is complying with civil service rules and regulations governing disbursements for personal services. If the state personnel director determines that an appointing authority has not substantially complied with the rules and regulations, the state personnel director is authorized (1) to require the appointing authority to file a written request and to obtain prior written approval from the department of civil service for all disbursements for personal services and (2) to take such other action as will reasonably ensure that the appointing authority complies with the rules and regulations in the future.

7-11 CONTRACT REQUIREMENTS

Every contract for personal services must contain a provision that the state is obligated to comply with article 11, section 5, of the constitution and applicable civil service rules and regulations. The provision must also give notice that, notwithstanding any other provision of the contract to the contrary, the state personnel director is authorized to disapprove contractual disbursements for personal services if the state personnel director determines that the contract violates article 11, section 5, of the constitution or applicable rules and regulations. The failure of an appointing authority to require such a provision in a contract for personal services does not limit or restrict the authority of the civil service commission and the state personnel director to disapprove disbursements for personal services.

7-12 LIMITATIONS

Nothing in these rules relieves an appointing authority of obligations under any other law, rule, or regulation that may apply to a contract for personal services. Approval of the department of civil service required by these rules only authorizes the appointing authority to make disbursements for personal services to persons outside the classified service. Approval of the department of civil service under this rule does not, itself, constitute approval of any contract or any agreement by the state of Michigan to be bound by the terms of any contract.

[End of Chapter 7]

Chapter 8

Definitions

8-1 DEFINITIONS

Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

8-1.1 Actual-duty Time

Actual-duty time means the time that an employee is scheduled to receive compensation, benefits, or benefit accruals for the performance of the employee's public duties as a member of the classified civil service. Actual-duty time includes all scheduled work time and overtime. Actual-duty time does not include the time an employee is on approved leave from the employee's public duties as a member of the classified civil service, even if the employee receives compensation, benefits, or benefit accruals for the time.

8-1.2 Agency of Convenience

Agency of convenience means a subdivision within a principal department for which a separate appointing authority has been designated.

8-1.3 Alcohol Test

Alcohol test means a chemical or breath test administered to determine the presence or absence of alcohol in a person's body.

8-1.4 Anything of Value

Anything of value means any tangible or intangible item, including, but not limited to, services, entertainment, recreation, travel, food, beverages, event tickets, gifts, loans, and money.

8-1.5 Applicant

Applicant means a person who requests to participate in an appraisal process.

8-1.6 Applicant Pool

Applicant pool means a group of applicants whom the department of civil service has determined to be qualified.

8-1.7 Appointing Authority

Appointing authority means each of the following:

- (a) A single executive heading a principal department.
- (b) A chief executive officer of a principal department headed by a board or commission.
- (c) A person designated by either of the preceding as responsible for administering the personnel functions of the department,

board, commission, or agency of convenience.

8-1.8 Appointment

Appointment means an authorized act of an appointing authority employing a properly qualified person in a specific position in the classified service.

8-1.9 Appointment Duration

Appointment duration means the expected length of an appointment. Appointment duration types include (1) indefinite, (2) limited-term, and (3) noncareer.

8-1.10 Appraisal Method

Appraisal method means a technique used to evaluate job-related knowledge, skills, abilities, competencies, and other qualifications to determine eligibility for a position in the classified service.

8-1.11 Appropriate Unit

Appropriate unit means the most appropriate unit, including all employees in broad groupings of related occupational classes exclusively represented and recognized under the terms and conditions provided in these rules.

8-1.12 Autonomous Entity

Autonomous entity means an executive branch organization or function established by law within a principal department, but specifically directed by law to be a separate independent unit, with the intent that its authority, powers, duties, and responsibilities, including personnel, budgeting, procurement, and management-related functions be exercised free from the direction and supervision of the principal department.

8-1.13 Base Salary

Base salary means the fixed, recurring portion of the employee's compensation.

8-1.14 Board

Board means the employment relations board.

8-1.15 Boards and Commissions

Boards and commissions means boards and commissions heading principal departments and created by the constitution, statute, or executive order as specified in the constitution.

8-1.16 Candidate pool

Candidate pool means qualified persons considered for a position.

8-1.17 Career Appointment

Career appointment means an appointment to a classified position that is expected to last the equivalent of 90 full-time workdays or more. A career appointment may be an indefinite appointment or a limited-term appointment.

8-1.18 Class Series

Class series means a series of classifications with similar but progressively more responsible job duties.

[HRMN REFERENCE NOTE: *class series* is represented in the HRMN as *job title*.]

8-1.19 Classified Service

Classified service means the Michigan state classified civil service.

8-1.20 Classification

Classification means a group of positions whose assigned duties and responsibilities are sufficiently alike to warrant assigning the same classification title and requiring the same qualifications.

[HRMN REFERENCE NOTE: *classification* is represented in the HRMN as *position title*.]

8-1.21 Classification Level

Classification level means the placement of a classification within a series based on the duties and responsibilities of the position.

[HRMN REFERENCE NOTE: *classification level* is represented in the HRMN by *position title* and *grade number*.]

8-1.22 Collective Bargaining

Collective bargaining means the mutual obligation of an exclusive representative and the employer to meet at reasonable times and to negotiate in good faith concerning mandatory subjects of bargaining and to execute a written agreement, subject to approval of the civil service commission. The obligation to negotiate does not compel either party to agree to a proposal or to make a concession.

8-1.23 Commission

Commission means the Michigan civil service commission.

8-1.24 Compensation Plan

Compensation plan means the civil service rules and regulations (including pay schedules) for administration of pay in the classified service.

8-1.25 Confidential Position

Confidential position means a position assigned responsibility for directly assisting a person occupying a managerial position.

8-1.26 Constitution

Constitution means the Michigan constitution of 1963.

8-1.27 Contract for Personal Services

Contract for personal services means a contract between a state agency and a contractor pursuant to which the state agency is obligated to make disbursements from appropriated funds for the personal services of a person who is not a classified employee of the state.

8-1.28 Contractor

Contractor means an independent contractor or special personal services employee who enters into a contract for personal services.

8-1.29 Creditable Time

Creditable time means each of the following:

- (a) Time in a career appointment. The following times are counted as creditable time:
 - (1) Time in an indefinite appointment that is interrupted by a layoff.
 - (2) Time in a career appointment that is interrupted by a leave of absence.
 - (3) Time in a career appointment that ends as a result of a voluntary, non-disciplinary, nonretirement separation that is immediately followed by appointment to another classified

position without a break in service (e.g., resign on Friday and start to work on the next Monday).

- (b) Time in a position in the unclassified service if the appointing authority granted a leave of absence for the unclassified appointment. The time is creditable to the classification level from which the leave was granted.
- (c) Time on a military leave of absence, including temporary and emergency military leave, if authorized by civil service rule or regulation or required by federal law.
- (d) Time for emergencies, transients, and expiration of limited appointments prior to January 1977, providing they are not followed by a separation.
- (e) Time on a paid leave of absence.

8-1.30 Current Employment Period

Current employment period means the period of state employment that began with service that is creditable for employment preference purposes and that has not been interrupted by a separation or break in service.

8-1.31 Demotion

Demotion means an authorized movement of an employee with status from a position in one classification level to a lower classification level.

[HRMN REFERENCE NOTE:
demotion may be represented in the HRMN as a *job change*.]

8-1.32 Department

Department means the department of civil service.

8-1.33 Departmental Employer

Departmental employer means the appointing authority responsible for conduct of collective bargaining obligations at the departmental level of state government. Such obligations are known as secondary negotiations.

8-1.34 Director

Director means the state personnel director.

8-1.35 Drug

Drug means a controlled substance or a controlled substance analogue listed in schedule 1 or schedule 2 of part 72 of the Michigan public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7201, et seq., of the Michigan Compiled Laws, as may be amended from time to time.

8-1.36 Drug Test

Drug test means a chemical test administered to determine the presence of a drug or metabolites in a person's bodily fluids.

8-1.37 Eligible Position

Eligible position means any position in the classified service except an excluded position.

8-1.38 Employee

Employee means a classified employee of the state of Michigan over which the civil service commission has jurisdiction under the constitution.

8-1.39 Employee Status Code

Employee status code means the status assigned to an employee for the purposes of determining pay and benefits.

8-1.40 Employer

Employer means each of the following:

- (a) The appointing authority responsible (1) for exercising the constitutional and statutory administrative and executive authority of a principal department or autonomous entity and (2) for implementing the employment relations policy of the governor.
- (b) In the context of primary collective bargaining negotiations and the administration of employee fringe benefit programs, the employer is the state employer, acting in consultation with elected department directors.

8-1.41 Employment Preference

Employment preference means a system or process for determining an employee's rights to retain present classification level, or to displace another employee, when a reduction in force occurs.

8-1.42 Employment Type

Employment type means the work status of the employee. Employment types include, for example, (1) full-time, (2) part-time, (3) intermittent, and (4) seasonal.

[HRMN REFERENCE NOTE:
Employment type is defined in the HRMN as an *employee status code* that is assigned at the time of appointment.]

8-1.43 Examination

Examination means an appraisal method.

8-1.44 Excluded Position

Excluded position means each of the following positions in the classified service:

- (a) A confidential position.
- (b) A managerial position.
- (c) A supervisory position.
- (d) A position in the department of civil service.
- (e) A position in the office of the state employer.

8-1.45 Exclusive Representative

Exclusive representative means a labor organization granted recognition and certified as the sole representative of all employees in an appropriate unit.

8-1.46 Frozen

Frozen means a classification or a position to which an appointing authority is prohibited from making an appointment without prior review and approval of the department of civil service.

8-1.47 Grade

Grade means classification level.

[HRMN REFERENCE NOTE: In the compensation schedules, a *grade* assignment is associated with the salary range assigned to a specific *classification level*.]

8-1.48 Hire

Hire means the initial appointment to the state classified service authorized by the department of civil service.

8-1.49 Home Agency

Home agency means the principal department or autonomous agency established under law from which an employee's classified position is moved by executive order to the authority of a temporary agency.

8-1.50 Human Resources Management Network (HRMN)

HRMN means the integrated network delivering payroll, personnel, and employee benefits functionality and data exchange among agencies and third parties.

8-1.51 Indefinite Appointment

Indefinite appointment means a career appointment with no fixed ending date at the time of appointment.

8-1.52 Independent Contractor

Independent contractor means an individual contractor or an employee of a contractor who provides personal services and who is not an employee of the state of Michigan.

8-1.53 Interested Party

Interested party means a party that files a request or a written appearance in the civil service staff review of a request.

[EDITOR'S NOTE: The definition of *interested party* applies only to Chapter 7, Disbursements for personal services.]

8-1.54 Job Change

Job change means an authorized movement of an employee from one position to another. Job change includes, for example, demotion, lateral

job change, promotion, reclassification, and reduction-in-force.

8-1.55 Job Title

Job title is a HRMN term that represents class series.

8-1.56 Labor Organization

Labor organization means an employee organization recognized by the state personnel director as (1) an exclusive representative of eligible employees or (2) a limited-recognition organization.

8-1.57 Labor Relations Appeal

Labor relations appeal means an appeal to the civil service commission of a decision of the state personnel director or other staff of the department of civil service.

8-1.58 Lateral Job Change

Lateral job change means the authorized movement of an employee to (1) a different position in the same classification or (2) a different position in a different classification at the same classification level.

8-1.59 Least Senior Position

Least senior position means (1) a vacancy that the appointing authority intends to fill or, (2) lacking a vacancy, the position occupied by the person with the least total continuous service.

8-1.60 Limited-recognition Organization

Limited-recognition organization means a labor organization recognized by the state personnel director to represent employees in nonexclusively represented positions.

8-1.61 Limited-term Appointment

Limited-term appointment means a career appointment that has a fixed ending date at the time of appointment.

8-1.62 Longevity

Longevity means a supplemental payment to eligible employees based upon total years of service.

8-1.63 Lump Sum Award

Lump sum award means a portion of an employee's compensation award under a performance-pay program that is (1) in addition to the employee's base salary, (2) paid in a single payment, and (3) not rolled into the employee's base salary.

8-1.64 Maintenance Allowance

Maintenance allowance means an amount by which an employee is reimbursed for expenses incurred in conjunction with the employee's job, such as meals, lodging, and mileage.

8-1.65 Managerial Position

Managerial position means a position in the classified service that is assigned responsibility for one or more of the following:

- (a) Establishing policy or directing the work of a principal department, an autonomous entity, or one of their subdivisions.
- (b) Administering the policies and programs of a principal department, an autonomous entity, or one of their subdivisions.
- (c) Managing, administering, or controlling a local branch office of a principal department or autonomous entity.

(d) Representing or advising the state in legal matters.

(e) Adjudicating disputes involving classified employees or mediating labor-management relations in the public or private sector.

(f) Assisting in the preparation for, or conduct of, primary or secondary negotiations on behalf of the employer.

(g) Administering personnel administration, labor relations, or the preparation and administration of a budget at the central level of state government or for a principal department or major subdivision.

8-1.66 Mandatory Subjects of Bargaining

Mandatory subjects of bargaining means subjects of bargaining that are neither prohibited nor permissive subjects of bargaining.

8-1.67 Meet and Confer

Meet and confer means the mutual obligation of employees or their representatives and the employer to meet at reasonable times and to confer in good faith regarding rates of compensation and other conditions of employment.

8-1.68 Mixed Contract

Mixed contract means a contract that authorizes disbursements both for personal services and for things that are not personal services.

8-1.69 Moved Employee

Moved employee means a career employee whose classified position has been moved from a home agency to the authority of a temporary agency solely as a result of either (1) the creation of a temporary agency or (2) an

executive order under article 5, section 2, of the constitution, moving functions or personnel to a temporary agency.

8-1.70 Noncareer Appointment

Noncareer appointment means an appointment to a classified position that is expected to last less than the equivalent of 90 workdays in a calendar year.

8-1.71 Noncreditable Time

Noncreditable time means each of the following:

- (a) Time preceding a separation, dismissal, retirement, or other break in service from state employment, unless expressly defined as creditable time.
- (b) Time on an unpaid leave of absence, including, for example, medical leave or educational leave.
- (c) Time on an unpaid suspension.
- (d) Overtime in excess of 80 hours in a biweekly pay period.
- (e) Time in a noncareer appointment.
- (f) Military service time that is creditable for retirement only.
- (g) Lost time.
- (h) Time in layoff status.

8-1.72 Nonexclusively Represented Position

Nonexclusively represented position means (1) an excluded position or (2) an eligible position in a unit that has not elected an exclusive representative.

8-1.73 Off-duty Time

Off-duty time means all time outside actual-duty time. Off-duty time includes the time an employee is on a leave of absence from the performance of the employee's public duties as a member of the classified service, including, but not limited to, time on annual leave, personal leave, school leave, sick leave, union leave, and lost time.

8-1.74 Party

Party means any of the following persons or organizations:

- (a) An appointing authority that files a request to contract for personal services.
- (b) An exclusive representative of a classified employee with a direct interest in the technical decision.
- (c) A nonexclusively represented classified employee with a direct interest in the technical decision.
- (d) A limited recognition organization appearing on behalf of a classified employee with a direct interest in the technical decision.
- (e) The office of the state employer.
- (f) Any other person or organization (1) with a demonstrable special interest in a technical decision, (2) who petitions to participate in the civil service staff review, and (3) who is authorized by the department of civil service to participate in the review.

8-1.75 Performance-pay Program

Performance-pay program means a compensation system in which the state personnel director, on request of an appointing

authority, adjusts individual compensation on the basis of individual and group performance evaluations, individual competencies, departmental objectives, departmental budget, and other job-related factors. The primary purpose of a performance-pay program is to recognize, reward, and encourage exceptional individual and group performance.

8-1.76 Permissive Subjects of Bargaining

Permissive subjects of bargaining means subjects of bargaining that are included in the rights reserved to management as a matter of law, including civil service rule 6-4, unless the management right is a prohibited subject of bargaining.

8-1.77 Person Doing Business with the State

Person doing business with the state means an individual employed by, or directly or indirectly representing, any of the following businesses or entities:

- (a) A business, entity, or person that has a contract with the state that the classified employee had or has the authority to award or recommend the award.
- (b) A business, entity, or person that is seeking a contract with the state for which the classified employee, as a part of the employee's official duties, had or has
 - (1) the authority to develop, recommend, or approve the contract specifications or
 - (2) the authority to recommend the purchase or award of the contract.
- (c) A business, entity, or person that is regulated by the agency employing the classified employee and for which the classified employee has any regulatory responsibility.

- (d) A business, entity, or person with an enforcement matter or contested case pending before an agency and for which the classified employee has any enforcement or adjudicatory responsibility.
- (e) A business, entity, or person that performs work for the state which the classified employee inspects or approves.
- (f) A business, entity, or person whose financial records are audited by the classified employee.
- (g) An employee or representative of a trade association if any member of the association is a business or entity described in subsections (a) through (f).
- (h) An attorney who represents any business, entity, or person described in subsections (a) through (f).
- (i) A lobbyist who represents any business, entity, or person described in subsections (a) through (f).

8-1.78 Personal Services

Personal services means work performed for the direct benefit of the state by an individual for compensation.

8-1.79 Position

Position means a classified job identified by its respective duties and responsibilities.

8-1.80 Position Title

Position title is a HRMN term that represents classification.

8-1.81 Preauthorized

Preauthorized means the specific authorization granted to an appointing authority to process a

transaction in accordance with civil service rules and regulations without prior civil service review.

8-1.82 Primary Negotiations

Primary negotiations means collective bargaining negotiations at the central level between the state employer and an exclusive representative.

8-1.83 Principal Department

Principal department means one of not more than 20 executive branch departments provided for by article 5, section 2, of the constitution.

[HRMN REFERENCE NOTE:
principal department is
represented in the HRMN as
process level.]

8-1.84 Process Level

Process level is a HRMN term that represents principal department, autonomous entity, or agency of convenience.

8-1.85 Prohibited Practices

Prohibited practices means unfair labor practices specified in the civil service rules or regulations.

8-1.86 Prohibited Subjects of Bargaining

Prohibited subjects of bargaining means civil service authority, policy, rules, regulations, procedures, and practices governing or regulating any of the following:

- (a) The classification and grade assignment of positions in the classified service. The rates of compensation for an existing class of positions is a mandatory subject of bargaining, except that civil service retains

the sole authority to establish the initial rate of compensation for a newly-created class of positions when the new classification is included in the official classification plan.

- (b) The determination of the qualifications of candidates for positions in the classified service, including, but not limited to, appraisal, probation, and appointment.
- (c) Review and approval or disapproval of requests by agencies to make disbursements for personal services outside the classified service. Notwithstanding this subsection, the following are proper subjects of bargaining:
 - (1) Notice to the exclusive representative of a request for permission by the appointing authority to make disbursements for personal services outside the classified service.
 - (2) The obligations to meet and confer regarding the impact of a decision to make disbursements for personal services outside the classified service.
 - (3) Reasonable efforts on the part of the employer, not involving a delay in implementation, to reduce the impact on current classified employees of a decision to make disbursements for personal services outside the classified service.
- (d) Political activity or union activity by classified employees during actual-duty time.
- (e) The authority of the civil service commission, the department of civil service, and the state personnel director, established by law including the civil service rules and regulations.
- (f) The system of collective bargaining created in the civil service rules, the bar-

gaining relationships authorized in the rules, and the limitations, restrictions, and obligations on the collective bargaining parties, collective bargaining agreements, and eligible employees established in the civil service rules and regulations.

- (g) Conditions of employment outside the bargaining unit.
- (h) Compensation related to patents and copy-rights.
- (i) The requirements and limitations on union leave in rule 6-3.10(c).
- (j) The requirements and limitations on strikes and strike-related grievances.
- (k) Grievance and appeal rights of classified employees aggrieved by the abolition or creation of a position.

8-1.87 Promotion

Promotion means the appointment of an employee to a different position at a higher classification level.

8-1.88 Proper Subjects of Bargaining

Proper subjects of bargaining means rates of compensation and other conditions of employment that are not prohibited subjects of bargaining. Proper subjects of bargaining include both mandatory and permissive subjects of bargaining.

8-1.89 Qualified

Qualified means that the job-related knowledge, skills, abilities, competencies, and other qualifications of an applicant or candidate meet or exceed the requirements for a position in the civil service job specifications.

8-1.90 Random Selection Basis

Random selection basis means a mechanism for selecting test-designated employees for drug tests and alcohol tests that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected and (2) does not give an appointing authority discretion to waive the selection of any employee selected under the mechanism.

8-1.91 Reasonable Suspicion

Reasonable suspicion means a belief, drawn from specific objective facts and reasonable inferences drawn from those facts in light of experience, that an employee is using or may have used drugs or alcohol in violation of a departmental work rule or a civil service rule or regulation. By way of example only, reasonable suspicion may be based upon any of the following:

- (a) Observable phenomena, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being impaired by, or under the influence of, a drug or alcohol.
- (b) A report of on-duty or sufficiently recent off-duty drug or alcohol use provided by a credible source.
- (c) Evidence that an individual has tampered with a drug or alcohol test during employment with the state of Michigan.
- (d) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs or alcohol while on duty, while on the employer's premises, or while operating the employer's vehicle, machinery, or equipment.

8-1.92 Recall List

Recall List means a list of persons who have been laid off, demoted, or otherwise displaced for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in mission, or reorganization of the work force.

8-1.93 Reclassification

Reclassification means an authorized classification action to change an employee's classification or grade based on the gradual growth and accretion of higher level duties.

[HRMN REFERENCE NOTE: A *reclassification* may or may not be a *job change*.]

8-1.94 Red-circled Pay Treatment

Red-circled pay treatment means fixing the current salary rate of an employee above the maximum salary rate authorized in the compensation plan for the employee's classification.

8-1.95 Rehabilitation Program

Rehabilitation program means an established program to identify, assess, treat, and resolve employee drug or alcohol abuse.

8-1.96 Reinstatement

Reinstatement means the appointment of a person who was previously separated from, or demoted in, the classified service while in satisfactory standing.

8-1.97 Regulation

Regulation means a formal, general written enactment issued by the state personnel director

that: (1) exercises, implements, or applies powers granted in article 11, section 5, of the constitution; (2) exercises, implements, or applies legislative powers granted by rule; or (3) prescribes the procedures or practices of the department of civil service. A regulation does not include the following:

- (a) A determination, decision, or order in a contested case, technical appeal, or individual labor relations matter.
- (b) A determination, declaratory ruling, order, or other disposition by the state personnel director of a particular matter as applied to a specific set of facts.
- (c) A personnel or administrative action by the state personnel director.
- (d) A form with instructions, an interpretive statement, an informational pamphlet, or other material that in itself does not have the force and effect of a regulation but is merely explanatory.
- (e) An advisory.

8-1.98 Request

Request means a request submitted by an appointing authority to the department of civil service under rule 7-5, for approval to acquire personal services from a person who is not a classified state employee, or under rule 7-7, to add personal services to the preauthorized list.

[EDITOR'S NOTE: The definition of *request* applies only to Chapter 7, Disbursements for Personal Services.]

8-1.99 Rule of General Applicability

Rule of general applicability means a civil service rule that applies equally to all similarly situated classified employees and without dis-

inction between eligible positions and nonexclusively represented positions.

8-1.100 Secondary Negotiations

Secondary negotiations means (1) collective bargaining negotiations authorized by a primary agreement to take place at the departmental level between the departmental employer, in consultation with the state employer, and exclusive representatives or (2) collective bargaining negotiations of noncompensation issues at the departmental level between departments with elected directors and the exclusive representatives.

8-1.101 Selective Position Requirements

Selective position requirements means specific qualifications that are narrower or more limited than those generally associated with a position and that are determined to be essential for performance of the duties of a specific position.

8-1.102 Shift Differential

Shift differential means a supplementary hourly payment made to an employee whose regularly scheduled shift falls between certain designated hours.

8-1.103 Special Personal Services (SPS) Employee

Special personal services employee means a contractor who is an employee of a state agency and who is not a classified employee, an exempt employee, or an excepted employee.

8-1.104 State Employer

State employer means the governor's designated representative for collective bargaining and for consultation with employees in nonexclusively represented positions.

8-1.105 State Office

State office in rule means (1) full-time elective office in the executive or legislative branch of state government, (2) justice of the Michigan supreme court, or (3) judge of the Michigan court of appeals.

8-1.106 Status

Status means the recognition of an employee who has been properly appraised, qualified, and appointed to the classified service and who has satisfactorily completed the probationary period in an indefinite or limited-term appointment.

8-1.107 Status Classification

Status classification means a particular classification in which an employee has obtained or held status.

8-1.108 Strike

Strike means the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions of employment, compensation, or the rights, privileges, or obligations of employment or for the purpose of protesting or responding to an act alleged or determined to be an unfair labor practice committed by an employer.

8-1.109 Subclass

Subclass means additional specialized experience, specialized training, licensure, or other specialized qualification that is required for appointment to a specific subgroup of positions.

8-1.110 Supervisory Position

Supervisory position means a position in the classified service that meets one or more of the following criteria:

- (a) A position assigned responsibility, in the interest of the employer, to hire, assign, discipline, lay off, recall, promote, reclassify, evaluate, or set the pay for another employee.
- (b) A position assigned responsibility to direct an employee or to adjust employee grievances.
- (c) A position assigned responsibility effectively to recommend any action referenced in subsection (a) or (b) if the exercise of such authority requires the use of independent judgment and is not merely a routine or clerical act.

8-1.111 Technical Complaint

Technical complaint means a written complaint that a technical decision (1) violates article 11, section 5, of the constitution, (2) violates a civil service rule or regulation, (3) lacks a rational basis, or (4) is an abuse of discretion.

8-1.112 Technical Complainant

Technical complainant means any of the following persons when directly affected and aggrieved by a technical decision:

- (a) An applicant for employment.
- (b) A classified employee.
- (c) An appointing authority.
- (d) The office of the state employer.
- (e) Any other person or organization authorized by civil service rule or regulation to file a technical complaint.

8-1.113 Technical Decision

Technical decision means an individual decision by staff of the department of civil service made under the civil service commission's constitutional power (1) to classify all positions in the classified service according to their respective duties and responsibilities, (2) to determine the qualifications and fitness of all candidates for positions in the classified service, or (3) to approve or disapprove disbursements for personal services.

8-1.114 Temporary Agency

Temporary agency means an autonomous commission or agency of the state of Michigan with a life of not more than 2 years, created under article 5, section 4, of the constitution.

8-1.115 Test-designated Employee

Test-designated employee means a classified employee who occupies a test-designated position.

8-1.116 Test-designated Position

Test-designated position means any of the following:

- (a) A safety-sensitive position in which the employee is required to possess a valid

commercial driver's license or to operate a commercial motor vehicle, an emergency vehicle, or dangerous equipment or machinery.

lobbying, labor relations training, and organizing.

- (b) A position in which the employee possesses law enforcement powers or is required or permitted to carry a firearm while on duty.
- (c) A position in which the employee, on a regular basis, provides direct health care services to persons in the care or custody of the state or one of its political subdivisions.
- (d) A position in which the employee has regular unsupervised access to and direct contact with prisoners, probationers, or parolees.
- (e) A position in which the employee has unsupervised access to controlled substances.
- (f) A position in which the employee is responsible for handling or using hazardous or explosive materials.

8-1.117 Total Continuous Service

Total continuous service means the number of paid hours of creditable time compiled during a current employment period. *Total continuous service* includes *creditable* time but does not include *noncreditable* time.

8-1.118 Union Activities

Union activities means activities undertaken on behalf of a labor organization, including, but not limited to, preparation for collective bargaining, collective bargaining, contract administration, grievance administration or adjustment, grievance hearings, meetings with the employer, organizational administration, attendance at union meetings, litigation,

8-1.119 Union Leave

Union leave means an absence from the performance of an employee's public duties as a member of the classified civil service to engage in union activities.

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Chapter 9

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