

# REGULATION

**DRAFT** REVISION A (May 3, 2005)

<b>Appointing Authority Letter Reference:</b>	<b>Effective Date:</b> May 17, 2005	<b>Index Reference:</b> Errors in Compensation	<b>Regulation Number:</b> <b>5.16</b>
<b>Issuing Bureau:</b>	<b>Rule References:</b> Rule 5-1 (Compensation Plan) Rule 5-3 (Compensation Schedules)		<b>Replaces:</b> Reg. 5.16 (CS-6940, March 18, 2001)
<b>Subject:</b> <b><u>RECOVERY OF OVERCOMPENSATION</u></b> <b><u>CORRECTING ERRORS IN COMPENSATION</u></b>			

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- 1   **1. PURPOSE**
- 2       This regulation establishes standards and guidelines ~~for the recovery of money~~
- 3       ~~when an employee has been overcompensated.~~ for correcting errors in
- 4       compensation.
- 5   **2. CIVIL SERVICE COMMISSION RULE REFERENCE**
- 6       *Rule 5-1 Civil Service Compensation Plan*
- 7       *5-1.1 Application*
- 8       *(a) General application. All eligible employees in the classified service receive*
- 9       *compensation and fringe benefits in accordance with the compensation plan,*
- 10       *except as provided in subsection (b).*

1       **(b) Collective bargaining agreement.** *All employees in the classified service are*  
2       *covered by these rules, except that employees covered by an approved*  
3       *collective bargaining agreement differing from the compensation plan are*  
4       *governed by the collective bargaining agreement, where different.*

5       \* \* \*

## 6       **Rule 5-3       Compensation Schedules**

7       \* \* \*

### 8       **5-3.3    Individual Compensation**

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

17      \* \* \*

### 18      **5-3.4    Operation of Compensation Schedules**

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

22      \* \* \*

### 23      **5-3.9    Approval and Disapproval of Disbursements for the Classified Payroll**

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

32      \* \* \*

### 3. DEFINITIONS

#### A. Civil Service Commission Rule Definitions

1. **Compensation plan** means the civil service rules and regulations (including pay schedules) for administration of pay in the classified service.
2. **Grievance** means a complaint, authorized in rule 8-1[Grievances], filed by a classified employee regarding an action by an appointing authority.

### 4. STANDARDS

#### ~~A. Over-compensation of a classified employee may result from the following:~~

- ~~1. Processing or Rule or Regulation Interpretation Error. If an employee has been over-compensated as a result of an error, the agency must recover, or may be ordered by the Department of Civil Service to recover, the over-compensation within the following provisions:~~
  - ~~a. All necessary action must be taken to recover improperly paid wages.~~
  - ~~b. The appointing authority must notify the employee of the error and the actions required for correction.~~
  - ~~c. Employees must immediately notify the employer of any over-payment.~~
  - ~~d. The liability of the employee to repay is limited to 26 pay periods (before the date of notice to the employee).~~
  - ~~e. The appointing authority must provide repayment plans that avoid undue financial hardship for the employee when appropriate by allowing repayment over a reasonable period of time but not more than one year.~~
  - ~~f. If it is not cost effective to recover the overcompensation, the appointing authority may request a waiver from the Compensation Division, Department of Civil Service.~~
  - ~~g. Documentation must be retained for three years by the appointing authority and the Department of Civil Service.~~

~~2. Employee Misrepresentation. If an employee has been improperly compensated as a result of misrepresentation or fraud on the part of the employee, the enforcement action will be directed to correction of the transaction and full recovery of the over-compensation. Examples of this are false credentials or manipulation of the payroll system for personal gain. When preliminary review indicates the suspicion of fraud or misrepresentation, the agency is advised to request an investigation by the Department of Attorney General and Office of the Auditor General. Action taken under this section must be based on the results of the investigation.~~

~~B. If the employee has left state service, the appointing authority should take any steps practicable to recover overcompensation.~~

~~C. This regulation does not apply to situations of under-compensation in which action must be taken to make necessary corrective payment to the employee under civil service regulations and any contractual provisions for compensation.~~

#### A. Requirements.

1. Authorized. All employee compensation must be authorized by and administered in accordance with the compensation plan and any applicable collective bargaining agreement.

2. Review, audit, and correction. All compensation is subject to review, audit, and correction by the appointing authority and the Department of Civil Service.

3. Report errors. An employee is required to report all errors in the administration of the compensation plan to the employee's appointing authority or the Department of Civil Service.

4. Correction required. Any compensation errors, including both overpayment and underpayment, shall be corrected as provided in this regulation.

5. Withholding. All payments to employees to correct errors are subject to withholding as required by law.

6. Prospective recovery and repayments. Except where retroactive recovery or payment is expressly authorized, compensation errors are corrected prospectively only, beginning the first day of the pay period in which the appointing authority or the Department of Civil Service learned of the error.

1            7. Document retention. The appointing authority must retain  
2            documentation of any overpayment, underpayment, and collection effort  
3            for 3 years.

4            **B. Overpayments.**

5            1. Recovery required. If an employee is overpaid, the appointing authority  
6            or the Department of Civil Service shall recover the amount of  
7            overpayment from the employee, as provided in this regulation.

8            2. Limits of employee liability. If an employee is overpaid, the employee  
9            is liable to repay the amount of the overpayment, as follows:

10            a. No fraud; limit on recovery from employee. If an employee is  
11            overpaid for reasons other than fraud or misrepresentation by the  
12            employee, the employee must repay the amount of the overpayment  
13            received during the 26 biweekly pay periods before the pay period in  
14            which the appointing authority or the Department of Civil Service  
15            learned of the overpayment.

16            b. Fraud; no limit on recovery from employee. If an employee is  
17            overpaid as the result of fraud or misrepresentation by the employee,  
18            the employee must repay the entire amount of the overpayment. In  
19            addition, (1) the employee may be disciplined, up to and including  
20            dismissal, and (2) the matter may be referred to the Attorney  
21            General, State Police, or local law enforcement authorities for a  
22            criminal investigation and to the Attorney General for civil action.

23            3. Repayment Procedures. An employee must repay any overpayment in  
24            one of the following ways:

25            a. Voluntary repayment agreement. An employee obligated to make  
26            repayments may agree in writing to a repayment schedule  
27            acceptable to the appointing authority. Repayment shall be by  
28            voluntary deduction from the employee's biweekly wages. All  
29            repayment must be collected within one calendar year after the date  
30            of the agreement.

31            b. Involuntary payroll deduction. If an employee obligated to make  
32            repayments does not agree to a repayment schedule acceptable to  
33            the appointing authority, the amount of the overpayment may be  
34            deducted from the employee's biweekly wages without the  
35            employee's consent, subject to the following limitations:

1                   (1) The employee must be given advance written notice of the  
2                   deductions.

3                   (2) The biweekly deduction cannot exceed 15 percent of gross  
4                   wages earned in the pay period in which the deduction is made.

5                   (3) The deduction is made after all deductions expressly permitted  
6                   or required by law or a collective bargaining agreement and  
7                   before any net amount of the employee's wages is paid or  
8                   electronically deposited.

9                   (4) The deduction does not reduce the employee's regularly  
10                  scheduled gross wages otherwise due the employee below the  
11                  minimum wage requirement in federal law.

12                  **4. Waiver.** If it is not cost effective to recover overcompensation, the  
13                  Department of Civil Service may authorize the appointing authority to  
14                  waive recovery.

15                  **5. Employee left state service.** If an overcompensated employee has left  
16                  the classified service, the appointing authority should take any steps  
17                  practicable to recover the overcompensation.

#### 18                  **C. Underpayments.**

19                  **1. Payment required.** If an employee is underpaid, the appointing authority  
20                  must pay the employee the amount underpaid.

21                  **2. Limit on retroactivity.** An employee is entitled to retroactive payment of  
22                  any underpayment for up to 26 biweekly pay periods before the date the  
23                  appointing authority or the Department of Civil Service learned of the  
24                  underpayment. Retroactive payment of undercompensation beyond 26  
25                  biweekly pay periods is not permitted.

26                  **3. Payment schedule.** The employee shall be paid the total amount of the  
27                  underpayment in a single payment within 4 pay periods after the  
28                  underpayment was discovered. The employee and the appointing  
29                  authority may agree in writing to a different payment schedule.

#### 30                  **D. Employee Complaints.**

31                  An employee complaint regarding compensation or an involuntary deduction  
32                  to recover overpayment must be filed as authorized in Rule 8-1 [Grievances]

1 and Regulation 8.01 [Grievance and Grievance Appeal Procedures], unless the  
2 following rules or regulations require filing a technical complaint:

3 1. **Classification.** A complaint regarding classification must be filed in the  
4 technical complaint process, as authorized in Rule 8-3 [Technical  
5 Complaints] and Regulation 8.02 [Technical Classification and Qualification  
6 Complaints].

7 2. **Working out of class.** A complaint regarding working out of class must  
8 be filed in the technical working-out-of-class process, as authorized in  
9 Rule 4-5 [Working out of Class] and Regulation 4.08 [Working out of Class].

10  
11 **CONTACT**

12 Questions regarding this regulation should be directed to the Department of Civil Service,  
13 P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-  
14 373-3048 or 1-800-788-1766; or by e-mail to [MDCS-BHRS@michigan.gov](mailto:MDCS-BHRS@michigan.gov).  
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**NOTE:** Regulations are issued by the State Personnel Director, under authority granted in the *State of Michigan Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.