Michigan Civil Service Commission

Civil Service

Rules

as of December 8, 2010

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Michigan Civil Service Commission

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This book contains all civil service rules approved by the civil service commission as of December 10, 2010.

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Michigan Constitution of 1963

(selected excerpts)

ARTICLE 11 – PUBLIC OFFICERS AND EMPLOYMENT

* * *

ARTICLE 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,

[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.

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

Michigan Constitution of 1963

(selected excerpts)

ARTICLE 11, §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 moneys 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.

Editor's Notes: (A) The original Civil Service provision was added as Art 6, §22, to the Michigan Constitution of 1908, by initiative petition ratified on November 5, 1940, effective January 1, 1941. (B) That provision was modified and continued in Art 11, §5, of the Michigan Constitution of 1963, approved by the electors on April 1, 1963, effective January 1, 1964. (C) The fifth paragraph concerning state police troopers and sergeants was added by initiative petition ratified on November 7, 1978, effective December 23, 1978. (D) A constitutional amendment proposed by state employee unions regarding collective bargaining [Proposal 02-3] was rejected by the electors on November 5, 2002.

Michigan Constitution of 1963

(selected excerpts)

ARTICLE 1 – DECLARATION OF RIGHTS

* * *

ART. 1, §26. AFFIRMATIVE ACTION PROGRAMS

* * *

(2) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

* * *

(4) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(5) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

* * *

ARTICLE 4 – LEGISLATIVE BRANCH

* * *

ART. 4, §47. CHAPLAINS IN STATE INSTITUTIONS

The legislature may authorize the employment of chaplains in state institutions of detention or confinement.

ART. 4, §48. DISPUTES CONCERNING PUBLIC EMPLOYEES

The legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service.

ART. 4, §49. HOURS AND CONDITIONS OF EMPLOYMENT

The legislature may enact laws relative to the hours and conditions of employment.

* * *

ART. 4, §53. AUDITOR GENERAL

…The auditor general upon direction of the legislature may employ independent accounting firms or legal counsel and may make investigations pertinent to the conduct of audits. . . . The auditor general, his deputy and one other member of his staff shall be exempt from classified civil service. All other members of his staff shall have classified civil service status.

Michigan Constitution of 1963

(selected excerpts)

ARTICLE 6 — JUDICIAL BRANCH

* * *

ART. 6, §28. ADMINISTRATIVE ACTION, REVIEW

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. . . .

Chapter 1

BASIC PROVISIONS

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 if the notice of the proposed amendment provided an opportunity for comment and notification of the date and place of the meeting at which the proposed revision is first 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.

[Rule 1-1 last amended effective March 18, 2001]

1-2 Severability and Captions

1-2.1 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.

1-2.2 Captions

The captions are not part of a rule and cannot be used to construe the rule more broadly or narrowly than the text indicates.

[Rule 1-2 last amended effective March 18, 2001]

1-3 Regulations and Advisories

The state personnel director is authorized to issue regulations and advisories that the director deems to be necessary or useful. A regulation issued by the state personnel director is binding unless the commission finds that the regulation violates a rule. An advisory does not have the force and effect of law and is not binding. The state personnel director shall make all regulations and advisories available to employees through their personnel offices and the internet.

[Rule 1-3 last amended effective May 22, 2003]

1-4 Organization of Civil Service Commission

1-4.1 Civil Service Commission

(a) Authority. The civil service commission derives its powers from the constitution, which grants the commission plenary authority to perform its duties. The commission exercises its sovereign authority, including, but not limited to, its constitutional duties, budgeting, procurement, personnel, and management-related functions, independently of other executive branch entities, including any principal department in which the commission may be placed for organizational purposes.

(b) Assignment. Unless the commission has retained authority, the commission authorizes the state personnel director to exercise and administer the commission's powers, subject to the appeal procedures in these rules.

(c) Expenditures. All monies appropriated to the commission shall be expended only as authorized by the commission or the state personnel director.

1-4.2 State Personnel Director

(a) Appointment. The state personnel director is a member of the classified civil service selected by the commission after open competitive examination.

(b) Authority. The administration of the powers of the civil service commission is vested in the state personnel director, who is responsible to the commission. The director is the

appointing authority for the civil service commission. The director exercises any constitutional or delegated powers independently of other executive branch entities, including any principal department in which the commission may be placed for organizational purposes.

(c) Delegation. The state personnel director may delegate, in whole or in part, any power or authority granted by the constitution or the civil service commission, consistent with law.

(d) Communication. In addition to publishing rules, regulations, and advisories, the state personnel director shall periodically communicate directly with classified employees regarding matters of interest. The director may communicate jointly with others, such as the office of the state employer or the office of retirement services.

1-4.3 Civil Service Staff Organization

(a) Organization. The state personnel director shall organize the civil service staff to exercise and administer the powers of the civil service commission and otherwise implement the civil service rules and regulations.

(b) Human resource operations. In addition to its other functions, the civil service staff administers human resource operations for the principal departments. The human resource operations include, but are not limited to, human resource processes and programs, disbursements for personal services, personnel transactions, and employee benefits. The state personnel director shall create a human resources subdivision for civil service staff who administer the human resource operations of the principal departments.

(1) Management functions. Consistent with law, an appointing authority retains, and may exercise independently of the civil service commission, the management functions necessary to carry out the duties of the appointing authority's agency. These management functions include, but are not limited to, determining or exercising the rights of management set out in rule 6-4.1(a)-(j) [Management Rights].

(2) Assignment of management functions.

(A) Types of assigned functions. An appointing authority may assign management functions in writing to civil service human resources staff and permit that staff to act on behalf of the appointing authority. Management functions related to human resources that may be assigned include, but are not limited to, the following:

(1) Labor relations, including collective bargaining, discipline, and grievance processing.

(2) Disbursements for personal services outside the classified service.

(4) Selection and appointment.

(5) Working out of class.

(6) Compensation.

(7) Establishment and abolishment of positions.

(8) Layoff and employment preference.

(9) Performance management.

(B) Status. Civil service human resources staff performing assigned management functions shall act as an agent of the appointing authority within the scope of the assignment and in accord with the direction, policies, and work rules of the appointing authority, unless the act is contrary to the constitution or civil service rules or regulations. An appointing authority is responsible for all decisions made by civil service human resources staff acting under an assignment of management functions.

(C) Conflict wall. Civil service human resources staff exercising assigned management functions or assisting in the performance of management functions shall not participate in any civil service evaluation of the exercise, except as a representative of the appointing authority.

(3) Applicable work rules. All civil service staff, including civil service human resources staff, are subject to the personnel policies and work rules established by the state personnel director. The director may establish separate or additional policies and work rules for civil service human services staff working in or with another appointing authority, including requiring civil service human resources staff to comply with personnel policies and work rules of that appointing authority.

1-4.4 Supplemental Duties

The civil service commission, state personnel director, and other civil service staff may perform supplemental duties authorized by statute or executive order only if such duties (1) do not conflict with the commission's constitutional authority and (2) are expressly authorized by the commission.

[Rule 1-4 last amended effective August 26, 2007]

1-5 Audit and Compliance

Civil service staff shall periodically audit an appointing authority to ensure that the appointing authority is complying with article 11, section 5, of the Michigan constitution and all civil service rules and regulations. If the state personnel director determines that an

appointing authority has not complied with the constitution, rules, or 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.

[Rule 1-5 last amended effective August 26, 2007]

1-6 Merit, Efficiency, and Fitness

All appointments and promotions to positions in the classified service, all measures for the control and regulation of employment in classified positions, and all separations from classified positions shall be based on merit, efficiency, and fitness, as provided in the civil service rules and regulations.

[Rule 1-6 last amended effective March 18, 2001]

1-7 Equal Employment Opportunity

Civil service staff and each appointing authority shall provide equal employment opportunity in the state classified service for all persons in accordance with the civil service rules and regulations.

[Rule 1-7 last amended effective August 26, 2007]

1-8 Prohibited Discrimination

1-8.1 Prohibited Discrimination

Neither civil service staff nor an appointing authority shall do any of the following:

(a) Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.

(b) Limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status,

partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.

1-8.2 Accommodation of Disabilities

Civil service staff and appointing authorities shall accommodate a person with a disability as provided in the civil service rules and regulations.

1-8.3 Discriminatory Harassment

(a) Discriminatory harassment prohibited. Discriminatory harassment is prohibited in the classified service. A classified employee who engages in discriminatory harassment may be disciplined by the appointing authority, up to and including dismissal.

(b) Requirement to report. A classified employee who is subjected to discriminatory harassment or who observes discriminatory harassment in the workplace shall report the discriminatory harassment to the appointing authority through reporting procedures established by the appointing authority.

(c) Regulations and action. The state personnel director shall issue regulations governing reporting and investigating discriminatory harassment. The regulations must require each appointing authority to make good faith efforts to eliminate and prevent discriminatory harassment in the workplace. The regulations must require the following minimum actions by each appointing authority:

(1) Each appointing authority shall assign one or more investigators to investigate reports of discriminatory harassment by employees.

(2) Each appointing authority shall investigate all reports of discriminatory harassment.

(3) If a report of discriminatory harassment is substantiated or there is reasonable cause to believe that an allegation of discriminatory harassment is true, the appointing authority shall take appropriate corrective and remedial action.

1-8.4 Bona Fide Occupational Qualification

An appointing authority may establish a bona fide occupational qualification based on religion, national origin, sex, sexual orientation, age, marital status, height, or weight, only if it is consistent with applicable law and is approved in advance by the state personnel director.

1-8.5 Elimination of Present Effects of Past Discrimination

An appointing authority may adopt and carry out a plan to eliminate the present effects of past discriminatory practices with respect to religion, race, color, national origin, sex, or

disability if the plan is approved in advance by the state personnel director and is otherwise consistent with applicable law.

1-8.6 Seniority and Merit System

Notwithstanding any other provision of these rules, civil service staff or an appointing authority may apply different standards for compensation or different terms, conditions, or privileges of employment under a bona fide seniority or merit system approved by the civil service commission or the state personnel director.

1-8.7 Agency Work Rules

This rule does not limit the authority of an appointing authority to issue an agency work rule that regulates verbal or physical conduct or communication that does not rise to the level of prohibited discrimination or discriminatory harassment as defined in these rules.

[Rule 1-8 last amended effective August 26, 2007]

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 the state personnel director 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 may 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.

(d) New appointment; reciprocal transfers of annual and sick leave accruals. If an appointing authority hires a person directly from an excepted or exempt position in the executive branch, the appointing authority may request that accrued annual and sick leave balances earned in the excepted or exempt executive branch position be transferred to the classified service. The state personnel director may authorize a transfer to the same extent that the department of technology, management, and budget permits classified employees appointed to an excepted or exempt executive branch position to transfer annual and sick leave balances accrued in the classified service into the unclassified service. Transfers for persons hired from elected positions, the judicial branch, the legislative branch, and state institutions of higher education are not permitted.

[Rule 1-9 last amended effective March 27, 2003]

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 may 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. This rule does not guarantee a moved employee reemployment in a home agency upon the dissolution of a temporary agency.

1-10.3 Approval of Procedures; Default

Each home agency may issue procedures to implement the right to return for moved employees, subject to review and final approval by the state personnel director. If a home agency does not have an approved procedure in effect at least 28 calendar days before a temporary agency is dissolved and a moved employee's position is abolished, the moved employee has the right to exercise employment preference in the home agency. The moved employee may exercise employment preference as if the employee had been employed in the home agency at the time of the abolition of the employee's position in the temporary agency.

[Rule 1-10 last amended effective May 22, 2003]

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.

[Rule 1-11 last amended effective March 18, 2001]

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 who is 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 who is 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 non-partisan 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 appointing authority.

1-12.9 Federal Law

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

[Rule 1-12 last amended effective August 26, 2007]

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.

[Rule 1-13 last amended effective March 18, 2001]

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.

[Rule 1-14 last amended effective March 18, 2001]

1-15 Employment Relations Board

1-15.1 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.

1-15.2 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.

1-15.3 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.

1-15.4 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.

1-15.5 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.

[Rule 1-15 last amended effective March 18, 2001]

[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

(a) Defined. An appointment expected to last less than the equivalent of 90 full-time workdays in a calendar year is a noncareer appointment.

(b) Student and special noncareer classifications authorized. 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.

(c) Limitations on noncareer appointments. An employee in a noncareer appointment is not entitled to any of the following:

(1) Sick or annual leave accruals.

(2) Holiday pay.

(3) Enrollment in state-sponsored group insurance plans.

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

(5) Employment exceeding the equivalent of 89 full-time workdays in any calendar year.

[Rule 2-1 last amended effective March 18, 2001]

2-2 Oath of Office

An employee hired into the classified service shall, as a condition of employment, take and subscribe to the following oath of office:

> "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state and that I will faithfully discharge the duties of my position according to the best of my ability."

[Rule 2-2 added effective August 22, 2002]

2-3 Performance Ratings

2-3.1 Rating System

(a) Regulations. The state personnel director shall issue regulations to establish a system of probationary ratings, annual ratings, interim ratings, and follow-up ratings for appointing authorities to evaluate and report employee performance and behavior.

(b) Ratings.

(1) Types of performance ratings. A rating issued under this rule is a single overall evaluation of the performance and behavior of the employee for the relevant rating period:

(A) Probationary rating. A probationary rating rates the overall performance and behavior of the employee as either *satisfactory* or *unsatisfactory*.

(B) Annual rating. An annual rating rates the overall performance and behavior of the employee as either *satisfactory* or *needs improvement*.

(C) Interim and follow-up ratings. An interim rating rates the performance or behavior of the employee as *unsatisfactory*. A follow-up rating rates the overall performance of the employee as either *satisfactory* or *unsatisfactory*.

(2) Methods. Unless provided otherwise in the regulations, an appointing authority may use any appropriate performance rating method developed or approved by the state personnel director to evaluate and rate employees. If an approved rating method yields overall performance evaluation categories different than those in subsection (b)(1), the categories must equate to the overall performance categories required in subsection (b)(1).

(3) Component parts. If an overall rating is *satisfactory*, a negative evaluation on an individual subpart of the performance evaluation, such as an individual objective, competency, or factor, is not grievable or reviewable in the agency review procedure.

(c) Review with employee. A supervisor must review each probationary, annual, interim, and follow-up rating with the employee. Both the supervisor and the employee must sign and date each rating as evidence of the review. The employee's signature on the rating does not indicate that the employee agrees with the rating. The employee may file an explanatory statement to accompany the rating.

(d) Use of ratings. A performance rating may be considered in making human resource decisions, including, for example, promotion, retention, assignment, and training.

(e) Report. If required by the civil service regulations, each appointing authority shall report or certify probationary, annual, interim, and follow-up ratings to civil service staff.

2-3.2 Probationary Ratings

(a) Probationary ratings. Unless a probationary appointment has been terminated or rescinded, an appointing authority shall evaluate the performance and behavior of each probationary employee and issue a probationary rating as required in the civil service rules and regulations.

(1) Full-time employment. At a minimum, an appointing authority shall issue a probationary rating for a full-time probationary employee after completion of 6 calendar months and again after completion of one calendar 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 calendar months of employment.

(2) Less than full-time employment. At a minimum, an appointing authority shall issue a probationary rating for a probationary employee working less than full-time after completion of 9 calendar months and again after completion of 18 calendar 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 calendar months of employment.

(3) Extension of probation. If a probationary period is extended beyond one calendar year (for full-time employees) or 18 calendar months (for less than full-time employees), as authorized in rule 3-6.2(b) [Extension of Probationary Period], the appointing authority shall also issue a final probationary rating no later than 28 calendar days after the end of the extension of the probationary period.

(b) Satisfactory probationary rating. A *satisfactory* probationary rating is not discipline and is not grievable.

(c) Unsatisfactory probationary rating. The following apply to *unsatisfactory* probationary ratings:

(1) Discipline. An *unsatisfactory* probationary rating is discipline and may be the basis for additional discipline, up to and including dismissal.

(2) Grievance. An employee may grieve an *unsatisfactory* probationary rating only as authorized in rule 3-6.5 [Grievance of Probationary Rating or Discipline], rule 8-1 [Grievances], and the applicable regulations.

(3) Effects.

(A) An employee who receives an *unsatisfactory* probationary rating is not eligible for a step increase, a performance-pay award, or reclassification until a later *satisfactory* rating is issued.

(B) The period beginning when the employee receives an *unsatisfactory* probationary rating is not counted as qualifying time for a step increase or reclassification. A step increase, performance-pay award, or reclassification action cannot be made retroactive to a date before a new *satisfactory* rating is issued.

(4) Record. The employee's employment record must reflect any *unsatisfactory* probationary rating.

2-3.3 Annual Ratings

(a) General. The following apply to all annual ratings for employees in compensation plans with fixed steps and in performance-pay programs.

(1) Annual rating required. An appointing authority shall evaluate the performance of each nonprobationary employee and issue an annual rating as required in the civil service rules and regulations.

(2) Number and timing. An appointing authority shall issue an annual rating at least once annually. In addition, the appointing authority may issue additional annual ratings at any time. If the employee has received an interim rating or an *unsatisfactory* follow-up rating, the appointing authority is not obligated to issue an annual rating for any period covered by the interim or follow-up rating.

(3) Performance improvement plan. If an employee receives a *needs improvement* annual rating, the appointing authority must establish a performance improvement plan to monitor the employee's performance. The performance improvement plan must establish a date by which the appointing authority will issue another annual rating to evaluate the employee's performance under the performance improvement plan.

(4) Agency review procedure. Each appointing authority shall establish an agency review procedure for employees to obtain a review of a *needs improvement* annual rating. The procedure must provide for a review by the appointing authority or the

appointing authority's designee. If the annual rating is not grievable or appealable to civil service staff, the review of the appointing authority is also not grievable or appealable.

(b) Compensation plans with fixed steps. The following apply to annual ratings for employees in compensation plans with fixed steps:

(1) ***Satisfactory* annual rating.** A *satisfactory* annual rating is not discipline and is not grievable or reviewable.

(2) ***Needs improvement* annual rating.** The following apply to *needs improvement* annual ratings:

(A) Discipline. A *needs improvement* annual rating is not discipline.

(B) Complaints. A *needs improvement* annual rating cannot be grieved unless the employee alleges that the annual rating was issued in violation of rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]. However, an employee may request a review of a *needs improvement* annual rating within the agency review procedure authorized in subsection (a)(4).

(C) Effects.

(1) Step. An employee who receives a *needs improvement* annual rating is eligible for a step increase.

(2) Reclassification. An employee who receives a *needs improvement* annual rating is not eligible for reclassification until a later *satisfactory* rating is issued. A reclassification action cannot be made retroactive to a date before a new *satisfactory* rating is issued.

(c) Performance-pay program ratings and actions. The following apply to annual ratings and performance-pay actions for employees in performance-pay programs in (1) the senior executive service, (2) the senior executive management assistant service, (3) equitable classification plan (ECP) Group 4, and (4) ECP Groups 1, 2, and 3 if the state personnel director has approved the employee's inclusion in a performance-pay program:

(1) Salary review. An appointing authority shall complete a salary review for each employee in a performance-pay program at the same time it completes the annual rating. The appointing authority shall use the annual rating as one factor in determining the employee's eligibility for an increase in base salary or a lump sum award authorized in rule 5-3.4 [Operation of Compensation Schedules].

(2) ***Satisfactory* annual rating.** A *satisfactory* annual rating is not discipline and is not grievable or reviewable.

(3) ***Needs improvement* annual rating.** The following apply to *needs improvement* annual ratings:

(A) Discipline. A *needs improvement* annual rating is not discipline.

(B) Complaints. A *needs improvement* annual rating cannot be grieved unless the employee alleges that the annual rating was issued in violation of rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]. However, an employee may request a review of a *needs improvement* annual rating within the agency review procedure authorized in subsection (a)(4).

(C) Effects.

(1) Performance-pay award. An employee who receives a *needs improvement* annual rating is not eligible for a performance-pay award until a later *satisfactory* rating is issued. A performance-pay award cannot be made retroactive to a date before a new *satisfactory* rating is issued.

(2) Reclassification. An employee who receives a *needs improvement* annual rating is not eligible for a reclassification until a later *satisfactory* rating is issued. A reclassification action cannot be made retroactive to a date before a new *satisfactory* rating is issued.

(4) Grievances regarding other performance-pay actions. Performance-pay awards are discretionary. An employee is not authorized to grieve or appeal a performance-pay action unless a grievance or an appeal is specifically permitted in this rule or the applicable regulations.

(A) Grievance permitted. An employee aggrieved by any of the following performance-pay actions may file a grievance as authorized in rule 8-1 [Grievances] and the applicable regulations:

(1) The employee's pay is reduced.

(2) The appointing authority does not rate the performance of the employee at least once annually.

(3) The performance-pay action is alleged to violate rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(B) Grievance prohibited. Except as expressly authorized in subsection (c)(4)(A), the employee cannot grieve a final performance-pay decision of the appointing authority. By way of example only, the following performance-pay actions cannot be grieved:

(1) The amount of a performance-pay award.

(2) The failure to receive a performance-pay award.

(3) The distribution of a performance-pay award between a base salary adjustment and a lump sum award.

(4) The performance evaluation or performance-pay award of another employee.

(5) The decision to include a position in, or exclude a position from, a performance-pay program.

(6) The performance-pay program itself, including, for example, the performance standards, agency evaluation methods, rating categories, and agency salary-range subdivisions.

2-3.4 Interim and Follow-up Ratings

(a) Interim ratings. An appointing authority may evaluate the performance and behavior of an employee, including a probationary employee, and issue an interim service rating at any time. An interim rating is an *unsatisfactory* rating.

(b) Follow-up ratings.

(1) Follow-up rating period. If the appointing authority issues an interim rating but does not dismiss the employee, the appointing authority shall establish in writing the length of a follow-up rating period. If, during the follow-up rating period, the employee is placed on a leave of absence without pay or extended sick leave, the follow-up rating period is automatically extended for an additional period equal to the period of the employee's absence.

(2) Follow-up rating. The appointing authority shall evaluate the performance and behavior of the employee during the follow-up rating period and issue a follow-up rating as required in the civil service rules and regulations. The appointing authority shall issue the follow-up rating before or within 28 calendar days after the end of the follow-up rating period. If the appointing authority fails to issue a follow-up 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 rating. If the appointing authority fails to issue the follow-up 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 interim rating or *unsatisfactory* follow-up rating or preclude the later use of any such rating.

(c) Discipline. Interim ratings and *unsatisfactory* follow-up ratings are discipline and may be the basis for additional discipline, up to and including dismissal.

(d) Grievance.

(1) Nonprobationary employee. A nonprobationary employee who receives an interim rating or an *unsatisfactory* follow-up rating may grieve the rating as provided in rule 8-1 [Grievances] and the applicable regulations.

(2) Probationary employee. A probationary employee who receives an interim rating or an *unsatisfactory* follow-up rating may grieve the rating as provided in rule 3-6.5 [Grievance of Probationary Rating or Discipline].

(e) Effects.

(1) An employee who receives an interim rating or an *unsatisfactory* follow-up rating is not eligible for a step increase, a performance-pay award, or reclassification until a later *satisfactory* rating is issued.

(2) The period during which the employee is rated as *unsatisfactory* is not counted as qualifying time for a step increase or reclassification. A step increase, performance-pay award, or reclassification action cannot be made retroactive to a date before a new *satisfactory* rating is issued.

(f) Commission action. If an employee receives an interim rating and a subsequent *unsatisfactory* follow-up rating and the appointing authority has taken no adverse action, the state personnel director may recommend to the civil service commission that the employee be separated from the classified service.

[Rule 2-3 last amended effective August 26, 2007]

2-4 Layoffs

2-4.1 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 agency mission, or reorganization of the work force.

2-4.2 Notification

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

2-4.3 Indefinite Layoffs

An appointing authority may place an employee on indefinite layoff in accordance with the civil service rules and regulations governing employment preference.

2-4.4 Temporary Layoffs

(a) Authorized. An appointing authority may place an employee on one or more temporary layoffs as provided in this rule and any applicable regulations.

(b) Limitations.

(1) A temporary layoff shall be for one or more full workdays specifically identified in prior written notice given to the employee.

(2) An employee cannot be placed on temporary layoff status for more than 20 cumulative workdays in a fiscal year.

(c) Relation to other rules and regulations.

(1) Employment preference and recall rules not applicable. The civil service rules and regulations governing employment preference and recall do not apply to temporary layoffs or return to work from temporary layoff.

(2) Insurance, leave accruals, and service credits. Notwithstanding any other civil service rule or regulation or the fact that an employee's work hours or pay is reduced by a temporary layoff, all temporary layoff time is considered creditable time for all purposes, including, but not limited to, the following:

(A) Satisfaction of the standard 80-hour biweekly work period for full-time employees [rule 5-2.1].

(B) Compliance with compensation schedules [rule 5-3].

(C) Computation of service hours for the following:

(1) Longevity [rule 5-8].

(2) Annual and personal leave [rule 5-10.2(a)(1)].

(3) School participation leave [rule 5-10.2(a)(2)].

(4) Sick leave [rule 5-10.2(a)(3)].

(5) Holiday pay for less than full-time appointments [rule 5-10.1].

(6) Completion of a probationary period [rule 3-6.2].

(D) Eligibility for group insurance plans and benefit levels [rules 5-2.2 and 5-11].

(E) Computation of total continuous service hours for all purposes, including, but not limited to, employment preference, layoff, recall, step increases, and, as authorized by statute, retirement.

(3) Not a break in service. An employee does not incur a break in service as a result of a temporary layoff.

(4) No substitution. An employee cannot substitute annual leave, personal leave, school and community participation leave, banked leave, compensatory leave, sick leave, deferred hours, or any other paid status for a temporary layoff.

(5) Leave balances. An employee is not entitled to have any leave balance paid off as a result of a temporary layoff.

(d) Return from temporary layoff. An employee, including a probationary employee, shall return to work on the employee's next regularly scheduled work period following the end of the temporary layoff. The employee returns to work in the same position from which the employee was temporarily laid off.

[Rule 2-4 last amended effective August 26, 2007]

2-5 Employment Preference

2-5.1 Application and Protection

(a) Application. Unless otherwise provided in an approved agency layoff plan, an employee can apply employment preference only within the employee's current (1) principal department or autonomous entity, (2) county of employment, and (3) employee status code. 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 who accepts or receives a job change to 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.

(d) Agency layoff plans. The state personnel director may approve an agency layoff plan that varies the application of employment preference within an agency. An approved agency 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, if agreed by each appointing authority.

(3) The application of employment preference into additional positions in class clusters approved by the appointing authority and the state personnel director.

(4) The application of employment preference between eligible employee status codes.

2-5.2 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 civil service commission unless the ranking violates rule 1-8 [Prohibited Discrimination].

(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.

2-5.3 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.

2-5.4 Employee Rights to Apply Preference

An employee may apply preference only against another position within the employee's current (1) principal department or autonomous entity, (2) county of employment, and (3) employee status code, unless otherwise permitted in an approved agency layoff plan. An employee can apply preference to the least senior position for which eligible in the following order:

(a) The least senior position in the employee's current classification.

(b) 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.

2-5.5 Application of Employment Preference between Employees Covered by a Collective Bargaining Agreement and Employees 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.

2-5.6 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.

2-5.7 No Application to Temporary Layoffs

This rule does not apply to temporary layoffs authorized in rule 2-4.4.

2-5.8 Application to Civil Service Commission Staff

Notwithstanding any other rule, regulation, or agency layoff plan, (1) civil service staff may apply employment preference only within the civil service commission and (2) employees of any other agency, including the principal department in which the civil service commission is placed for organizational purposes, cannot apply employment preference within the civil service commission.

[Rule 2-5 last amended effective August 26, 2007]

2-6 Discipline

2-6.1 Discipline

(a) Authorized. An appointing authority may discipline a classified employee for just cause.

(b) Just cause. Just cause includes, but is not limited to, the following:

(1) Failure to carry out the duties and obligations imposed by agency management, an agency work rule, or law, including the civil service rules and regulations.

(2) Conduct unbecoming a state employee.

(3) Unsatisfactory service or performance.

(c) Forms of discipline. Permissible discipline includes, but is not limited to, the following:

(1) An *unsatisfactory* probationary rating, an interim rating, or an *unsatisfactory* follow-up rating.

(2) A written reprimand.

(3) Reduction in pay.

(4) Suspension without pay.

(5) Demotion.

(6) Dismissal from the classified service.

(d) Imposing discipline. The appointing authority shall impose discipline in a manner consistent with the civil service rules and regulations and any applicable agency work rules. When appropriate, an appointing authority shall use corrective measures and progressive discipline. However, if an infraction is sufficiently serious, an appointing authority has the discretion to impose any penalty, up to and including dismissal, provided the penalty is not arbitrary and capricious.

(e) Notice of mandatory dismissal for first offense. If an appointing authority establishes a mandatory dismissal penalty for a first offense, it must give prior written notice of the mandatory penalty to its employees.

2-6.2 Disciplinary Conference

(a) Disciplinary conference required. If an appointing authority is contemplating imposing discipline, the appointing authority shall schedule a disciplinary conference. The appointing authority shall notify the employee in writing of the conference, charges,

and possible penalties. If the employee fails to attend the disciplinary conference, the employee waives the right to a conference.

(b) Disciplinary conference not required. An appointing authority is not required to hold a disciplinary conference in any of the following circumstances:

(1) The appointing authority suspends an employee for investigation, as provided in rule 2-6.4 [Suspension for Investigation].

(2) The appointing authority suspends an employee charged with a crime, as provided in rule 2-6.5 [Suspension for Criminal Charges].

(3) The employee is not on an approved leave of absence and has failed to report for work for 3 or more consecutive scheduled work days.

2-6.3 Representation

An employee who is scheduled for a disciplinary conference may be represented at the conference by a person authorized in rule 6-5 [Rights of Employees]. The charged employee is responsible for notifying the employee's representative of the conference. The conference will not be unreasonably delayed due to the representative's unavailability.

2-6.4 Suspension for Investigation

An appointing authority may suspend an employee with or without pay for up to 7 calendar days to conduct an investigation. On or before the end of the 7-day suspension, the appointing authority shall (1) reinstate the employee, (2) discipline the employee, or (3) extend the investigative suspension with pay. If the appointing authority extends the investigative suspension, a disciplinary conference is not required, but the appointing authority shall give the employee written notice of the reasons for the extension.

2-6.5 Suspension for Criminal Charges

(a) Suspension. If an employee is charged with a criminal offense, the appointing authority may suspend the charged employee with or without pay. The appointing authority is not required to hold a presuspension disciplinary conference before imposing the suspension, but shall give the employee written notice of the suspension. However, at the request of the employee, the appointing authority shall meet with the employee to review the suspension.

(b) End of suspension. The suspension may remain in effect until (1) the appointing authority imposes discipline or (2) the employee gives written notice to the appointing authority of the final resolution of the criminal charges, whichever occurs first. If the employee gives written notice before the appointing authority has imposed discipline, the appointing authority may continue the suspension for up to an additional 7 calendar days to conduct an investigation, as provided in rule 2-6.4.

[Rule 2-6 last amended effective August 26, 2007]

2-7 Drug and Alcohol Testing

2-7.1 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.

2-7.2 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.

2-7.3 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.

2-7.4 Penalties

(a) Classified employees.

(1) All employees. An appointing authority shall impose discipline, up to and including dismissal, for violation of this rule. An appointing authority shall prescribe in its agency work rules the range of penalties, including any mandatory penalties, for violating this rule.

(2) Employee selected for test-designated position. 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:

(A) The employee cannot be appointed, promoted, assigned, recalled, or otherwise placed in the test-designated position.

(B) 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.

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

(b) New hires.

(1) Rescission of conditional offer of employment. 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 appointing authority must rescind the conditional offer of employment in writing. The written rescission must include notice of the complaint procedure and the 14-day time limit provided in subsection (b)(2). A person whose conditional offer of employment is rescinded 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) Complaint by applicant. If a person claims that the rescission of the person's conditional appointment as authorized in subsection (b)(1) was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the person may file a written complaint with the state personnel director.

(A) A complaint must be received by the state personnel director within 14 calendar days after the appointing authority mailed the written notice of the rescission of the conditional offer of employment and this complaint procedure. The person must also file a copy of the complaint with the appointing authority.

(B) The director shall review the complaint and issue a decision under procedures authorized in the regulations.

(C) If the director determines that the rescission was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the director may order an appropriate remedy, including, but not limited to, reinstating the offer of employment, ordering another drug test, or requalifying the person for appointment to the classified service.

(D) Either the person or the appointing authority may appeal the director's final decision to the civil service commission.

2-7.5 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.

2-7.6 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.

2-7.7 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.

2-7.8 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.

2-7.9 Regulations

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

[Rule 2-7 last amended effective August 26, 2007]

2-8 Ethical Standards and Conduct

2-8.1 Ethical Conduct Required

Employment in the state classified service demands a high degree of loyalty and imposes high ethical standards on employees to ensure the integrity of state government and maintain effective services. All employees must meet these ethical standards and all appointing authorities are obligated to enforce these ethical standards.

2-8.2 Prohibitions

(a) All employees. A classified employee shall not do any of the following:

(1) Divulge or release, for financial gain for the employee or a member of the employee's immediate family, any confidential information that is not by law, rule, regulation, or court order available to members of the general public. However, this subsection does not prohibit an employee from disclosing to a public body a violation or suspected violation as authorized in rule 2-10 [Whistleblower Protection] unless otherwise prohibited by statute, court order, or professional ethics.

(2) Engage in or agree to engage in, for financial gain for the employee or a member of the employee's immediate family, any business transaction or private arrangement that accrues from or is based on the employee's official position or on confidential information gained by reason of the employee's position.

(3) Solicit, accept, or agree to accept anything of value (1) from any designated representative [as defined in rule 9-1] or (2) under any circumstances that could reasonably be expected to influence the manner in which the employee performs work or makes decisions.

(4) Make available any consideration, treatment, advantage, or favor beyond that which is generally granted or made available to others under similar circumstances.

(5) Represent or act as an 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.

(6) Exercise any decision-making authority of the state regarding any state regulation, enforcement, auditing, licensing, or purchasing with respect to any business or entity in which the employee or a member of the employee's immediate family has any financial interest.

(7) Engage in supplemental employment that conflicts with the satisfactory or impartial performance of the employee's state duties.

(8) Engage in supplemental employment without the express written consent of the employee's appointing authority.

(9) Engage in any supplemental employment during actual-duty time.

(10) Request or use sick leave to engage in supplemental employment.

(11) Use any state funds, property, or equipment in or for the benefit of any supplemental employment.

(12) Fail to timely, fully, and accurately report to the employee's appointing authority any of the following:

(A) Any interest of the employee or the employee's immediate family in any business or entity with which the employee has direct contact while performing official duties as a classified employee.

(B) Any supplemental employment or change in approved supplemental employment required by this rule, applicable regulations, or agency work rules.

(b) Attorneys. In addition to any other prohibition, an employee occupying a classified position that requires the employee to be a licensed attorney in the State of Michigan shall not do any of the following, whether for compensation or otherwise:

(1) Represent any person or entity with an interest adverse to the State of Michigan or any of its agencies or instrumentalities (1) in any criminal, civil, regulatory, or administrative matter or (2) before any court or administrative agency.

(2) Represent any private interest before any state administrative agency.

(3) Represent another state employee in any matter, including a personnel matter, against the State of Michigan or any of its agencies or instrumentalities.

(c) Excluded employees. In addition to any other prohibition, the following employees may not represent another employee in any matter or proceeding related to employment, including, but not limited to, investigations, disciplinary conferences, grievances, civil service technical matters, or civil service proceedings:

(1) An appointing authority who is a classified employee.

(2) An excluded employee occupying a position in human resources under the direction of an appointing authority.

2-8.3 Disclosure

(a) Personal and financial interests.

(1) Disclosure. At least annually, an employee shall disclose to the employee's appointing authority all personal or financial interests of the employee or members of the employee's immediate family in any business or entity with which the employee has direct contact while performing official duties as a classified employee.

(2) Action by appointing authority. If an appointing authority determines that the personal or financial interests of an employee or the employee's immediate family represent an unacceptable conflict of interest with the employee's state duties, the appointing authority may take any of the following actions to eliminate the conflict:

(A) Require appropriate actions by the employee or the employee's immediate family regarding the personal and financial interests.

(B) Change the employee's job, including, but not limited to, imposing a lateral job change, demoting the employee, changing reporting relationships, changing work locations, or reassigning specific tasks.

(C) Separate the employee from the classified service if the conflict cannot be eliminated.

(b) Supplemental employment.

(1) Disclosure and approval required. An employee must report all supplemental employment to the employee's appointing authority and must receive approval from the appointing authority to engage in supplemental employment.

(A) Employees. Before engaging in supplemental employment, an employee must disclose the nature and extent of the supplemental employment to the

employee's appointing authority. Thereafter, an employee must report all supplemental employment at least annually as required by this rule, applicable regulations, and the appointing authority.

(B) Newly-hired employees. A newly-hired employee who is already engaging in supplemental employment at the time of hire must disclose the nature and extent of the supplemental employment as required by an appointing authority.

(C) Changes. If there is a change in approved supplemental employment, the employee must disclose the nature and extent of the change to the employee's appointing authority within 14 calendar days.

(2) Action by appointing authority. If an appointing authority determines that supplemental employment (1) interferes with the employee's attendance or efficiency or otherwise conflicts with the satisfactory performance of the employee's state duties or (2) represents an unacceptable conflict of interest with the employee's state duties, the appointing authority may take any of the following actions:

(A) Withhold or withdraw approval to engage in supplemental employment.

(B) Require the employee to modify, limit, or terminate the supplemental employment.

(C) Change the employee's job, including, but not limited to, imposing a lateral job change, demoting the employee, changing reporting relationships, changing work locations, or reassigning specific tasks.

(D) Separate the employee from the classified service if the conflict cannot be eliminated.

(3) Service in the uniformed services; exception. An employee is not required to obtain approval to engage in supplemental employment in the uniformed services. However, unless precluded by military necessity, an employee must give advance written or verbal notice to the appointing authority of any absence from state duties for service in the uniformed services.

(4) Applicants. As part of the appraisal process, an appointing authority may require an applicant to disclose the nature and extent of all employment that the applicant intends to continue as supplemental employment after the applicant is hired into the classified service.

2-8.4 Compliance

As a condition of continued employment in the classified service, an employee must comply with the requirements of applicable rules, regulations, agency work rules, and individual requirements imposed by the employee's appointing authority.

2-8.5 Discipline

An employee who engages in conduct prohibited by rule 2-8, an applicable regulation, agency work rule, or individual requirement imposed by the employee's appointing authority, may be disciplined, up to and including dismissal from the classified service.

2-8.6 Reporting Alleged Violations

An employee who becomes aware of any alleged violation of a standard of ethical conduct in this rule, an applicable regulation, agency work rule, or individual requirement imposed by an appointing authority, must report the alleged violation to the employee's appointing authority.

2-8.7 Appointing Authority Guidance and Exemptions

(a) Agency work rules and directives. An appointing authority may issue agency work rules or other written directives to define, implement, and enforce ethical standards. An appointing authority may, for example, do any of the following:

(1) Establish ethical standards for employees that are more strict than the basic standards established in this rule and the regulations.

(2) Define specific prohibited acts and conflicts of interest.

(3) Identify specific employees or classes of employees required to file disclosure reports.

(4) Establish procedures, forms, and times for disclosure.

(5) Establish procedures for an employee to obtain a prior written determination from the employee's appointing authority as to whether specific future conduct is permitted or prohibited.

(b) *De minimis* exception. In an agency work rule or directive, an appointing authority may exempt from the prohibition in rule 2-8.2(a)(3) the receipt of anything of value that is so *de minimis* that the appointing authority has determined that its receipt by the employee could not reasonably be expected to influence how the employee performs work or makes decisions. However, any such *de minimis* exemption may not exceed the following limits:

(1) Any single tangible or intangible item with a fair market value exceeding $20.00.

(2) Any combination of tangible and intangible items during any 3-month period with an aggregate fair market value exceeding $80.00.

(3) Any amount of money, including a loan of money.

(c) Conferences, training, and meetings. Notwithstanding rule 2-8.2(a)(3), an appointing authority may authorize an employee to attend a conference, training session, or other meeting, the expenses of which are paid in whole or in part by a designated representative, if all of the following are met:

(1) The employee's attendance is primarily for the benefit of the state.

(2) The expenses paid are expenses, which if paid by the employee, would be reimbursable items under the standardized travel regulations or other policies of the employee's appointing authority.

(3) The employee's appointing authority determines that paid attendance by the employee would not reasonably be expected to improperly influence how the employee performs work or makes decisions.

[Rule 2-8 last amended effective August 26, 2007]

2-9 [Reserved]

2-10 Whistleblower Protection

2-10.1 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.

2-10.2 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.

2-10.3 Forms of Reprisal

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

[Rule 2-10 last amended effective March 18, 2001]

2-11 Leave of Absence with Pay

2-11.1 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.

2-11.2 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.

2-11.3 Disaster Response Leave with Pay

An appointing authority may grant a leave of absence with pay for up to 10 workdays in a 12-month period to an employee to provide volunteer specialized disaster relief services within or outside this state, if the following conditions have been met:

(a) The employee is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross.

(b) The president or governor has declared the disaster.

(c) The American Red Cross has requested the services of the employee.

(d) If the services are to be rendered outside the state by an employee of the executive branch, the governor has approved the paid leave of absence as provided in MCL 30.411a.

[Rule 2-11 last amended effective October 3, 2006]

2-12 Leave of Absence without Pay

2-12.1 Authorization

(a) Permissive leave.

(1) Nonmedical leave of absence. An appointing authority may grant an employee a nonmedical leave of absence without pay and without loss of employment status.

(2) 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.

(3) Disaster response leave of absence. An appointing authority may grant a leave of absence without pay to an employee who is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross to provide disaster or emergency relief assistance in this state.

(b) Mandatory leave. An appointing authority must grant a leave of absence without pay when specifically required by the civil service commission.

2-12.2 Expiration

A leave of absence without pay expires on the date established by the appointing authority, unless extended by the appointing authority. If an employee on a leave of absence without pay does not return to work on or before the end of the leave, the employee is separated.

2-12.3 Restoration to Position

When an authorized leave of absence without pay expires or the appointing authority authorizes a return to work before the end of the leave, the employee is returned to work as follows:

(a) Unless subsection (b) or (c) apply, the employee is returned to the position formerly occupied or an equivalent position.

(b) If the appointing authority has demoted the employee since the beginning of the leave under rule 2-6 [Discipline] or rule 3-3 [Appointments and Job Changes], the employee is returned to a position at the classification level to which demoted and is compensated within the range of rates approved for that classification level.

(c) If the employee's position was abolished during the leave, the employee is returned to the classified service in accordance with rule 2-5 [Employment Preference].

(d) At the expiration of a medical leave of absence, if the employee is medically qualified to return to work, the employee is returned to a position as provided in subsection (a), (b), or (c), as appropriate. If the employee is not medically qualified to return to work, the employee is separated.

2-12.4 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

[Rule 2-12 last amended effective October 3, 2006]

2-13 Waived Rights Leave of Absence

(a) **Approval and extension.** 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.

(b) **Ineligible employees.** An employee in a limited-term appointment who has not achieved status in an indefinite appointment is not eligible for a waived rights leave of absence, unless authorized in writing by the state personnel director.

(c) **Operation.** 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.

(d) **Separation.** If the employee does not return to the classified service before or upon the expiration of the leave, the employee is separated.

[Rule 2-13 last amended effective March 18, 2001]

2-14 Rights of Employees Absent Due to Service in the Uniformed Services

2-14.1 Basic Employment and Return-to-work Rights and Benefits

(a) Regulations. The state personnel director shall issue regulations to provide employment and return-to-work rights and benefits for employees who are absent from a classified position due to service in the uniformed services. The regulations shall provide rights and benefits that are consistent with rights and benefits provided under applicable federal law, except where this rule provides supplemental or enhanced rights and benefits that exceed the minimum requirements of applicable federal law.

(b) Military leave of absence. The regulations shall authorize a military leave of absence for an employee absent from a classified position due to service in the uniformed services, subject to the requirements of the regulation.

(c) Effect on federal rights and benefits. The civil service rules and regulations shall not be applied or interpreted to limit, reduce, or eliminate any right or benefit under applicable federal law.

(d) Character of rights and benefits in the rules and regulations. The rights and benefits granted in this rule and the regulations are granted solely under the authority of the civil service commission and the state personnel director and are not rights or benefits under federal law.

2-14.2 Eligibility for Supplemental Pay

An employee in a career appointment who is a member of a reserve or national guard unit and who is granted a military leave of absence under the applicable regulations is eligible for supplemental pay, as provided in this rule and the applicable regulations.

(a) Supplemental pay for training duty.

(1) Eligibility. An employee in a career appointment who is a member of a reserve or national guard unit and is ordered to active or inactive duty training is entitled to supplemental pay for each day of absence from scheduled employment in the classified service, unless prohibited in subsection (c).

(2) Limits. Supplemental pay for training duty is payable for up to the equivalent of 15 scheduled workdays in any fiscal year.

(b) Supplemental pay for emergency active duty.

(1) Eligibility. An employee in a career appointment who is a member of a reserve or national guard unit and who, after September 11, 2001, (1) is ordered to emergency

active duty by the governor or president or (2) volunteers for emergency active duty is entitled to supplemental pay, unless prohibited in subsection (c).

(2) Limits. Supplemental pay is payable for any period of eligible emergency active duty in the uniformed services, except as further limited below:

(A) Limited-term appointment without prior status. If the employee has a limited-term appointment but does not have continuing status from a prior indefinite appointment, the supplemental pay expires on the earliest of (1) the employee's release from active duty in the uniformed services, (2) the expiration of return-to-work rights under this rule, or (3) the expiration of the limited-term appointment in the classified service.

(B) Indefinite appointment or limited-term appointment with prior status. If the employee has an indefinite appointment or a limited-term appointment with continuing status from a prior indefinite appointment, the supplemental pay expires on the earliest of (1) the employee's release from active duty in the uniformed services or (2) the expiration of return-to-work rights under this rule.

(c) Disqualification. Notwithstanding any other rule or regulation, an employee is not eligible for supplemental pay during any of the following periods:

(1) Any period of unpaid service in a uniformed service.

(2) Any period following discharge from a uniformed service and before returning to work in the classified service.

(3) Any period of initial training in a uniformed service.

2-14.3 Types of Supplemental Pay

(a) Pay differential. An employee eligible for supplemental pay is paid a pay differential for each day of absence from scheduled employment in the classified service.

(1) Computation of pay differential. A pay differential equals the difference between the employee's (1) gross basic pay in the uniformed service and (2) gross base wage in the classified service on the employee's last day of work. No pay differential is paid for any period where the employee's gross basic pay in the uniformed service exceeds the employee's gross base wage in the classified service.

(2) Base wage. The employee's base wage in the classified service includes only the employee's base rate of pay. The following pay and premiums are not included in the employee's base rate of pay when computing a pay differential:

(A) Overtime pay [rule 5-4.2].

(B) On-call pay [rule 5-4.3].

(C) Callback pay [rule 5-4.4].

(D) Shift differential premium [rule 5-4.5].

(E) Prison duty premiums [rule 5-5].

(F) Hazardous duty premium [rule 5-6.1].

(G) Explosives duty premium [rule 5-6.2].

(H) Out-of-state location premiums [rules 5-6.3, 5-6.4, and 5-6.5].

(I) Emergency response compensation [rule 5-6.6].

(J) Expense reimbursements [rule 5-7].

(3) **Increase in base wage.** During a military leave of absence, the employee's base wage is increased as if the employee had remained continuously employed in the classified service, including (1) any general wage increase approved by the civil service commission and (2) any step increase for which the employee would have been eligible.

(b) **Supplemental holiday pay.** An employee eligible for supplemental pay is paid the employee's base wage for a designated state holiday that occurs or is observed during a period of eligibility. Holiday pay is paid in full and is in addition to any pay differential.

(c) **Supplemental longevity payment.** An employee eligible for supplemental pay is paid the longevity payment authorized under rule 5-8 [Longevity Payment] if the pay date occurs during a period of eligibility.

(d) **Supplemental leave accruals.** An employee eligible for supplemental pay is credited with annual, personal, and sick leave accruals as if the employee had remained continuously employed in the classified service, subject to the following limitations:

(1) Accruals are credited only for the first 15 days of eligible training duty under rule 2-14.2(a).

(2) Accruals are credited only for the first 30 consecutive calendar days of eligible emergency active duty under rule 2-14.2(b).

(3) Notwithstanding the limitation in subsection (d)(2), an employee eligible for extended supplemental pay under rule 2-14.2(b) on October 1 accrues 16 hours of personal leave.

2-14.4 Payment of Supplemental Pay

(a) **Payment and documentation.** An appointing authority shall not pay any supplemental pay until an eligible employee submits official documentation indicating (1) the period

during which the employee was paid for service in the uniformed services and (2) the amount of the employee's gross basic pay for that service.

(b) Deductions. Supplemental pay is subject to deductions required by law.

(c) Uniform method. The state personnel director shall provide a uniform method of computing supplemental pay and recovering overpayments.

(d) Centralized review. The state personnel director may require employees to submit requests for supplemental pay directly to civil service staff for centralized review and approval. In such case, civil service staff may exercise any of the powers or responsibilities granted in this rule or the regulations to an appointing authority.

(e) Prospective amendments. An employee who becomes eligible for a benefit under this rule or the applicable regulations as a result of an amendment to the rules or regulations is entitled to the benefits prospectively from the effective date of the amendment and not retroactively.

2-14.5 Supplemental Continuation of Group Health, Dental, and Vision Insurance

If an employee or eligible dependent is participating in a group medical, dental, or vision plan when the employee's absence due to service in a uniformed service begins, the employee may elect to continue coverage under the plan as provided in this rule and the regulations.

(a) 30 or fewer calendar days of service. If the employee is absent for 30 or fewer calendar days of service during a fiscal year, the employee may elect to continue coverage by paying the employee's portion of the cost (if any) of continuing coverage.

(b) 31 or more days of service. If the employee is absent for 31 or more days, the employee may elect to continue coverage by paying the following share of the cost of continuing coverage, as appropriate:

(1) Eligible for supplemental pay. If an employee is eligible for supplemental pay, the employee pays only the employee's portion of the cost.

(2) Not eligible for supplemental pay. If the employee is not eligible for supplemental pay or is disqualified under rule 2-14.2(c), the employee may continue coverage by paying 102 percent of the full cost of the coverage. Such coverage expires on the earlier of the following:

(A) 24-months after the date that the employee's absence from the classified service began.

(B) The day after the last date for the employee to return to work or give notice of readiness to return to work, as determined under the regulations.

(c) Exclusions and waiting periods.

(1) No exclusions or waiting period on returning to work. Except as provided in subsection (c)(2), an employee whose coverage under a group health plan was terminated by reason of service in the uniformed services cannot have an exclusion or waiting period imposed in connection with the reinstatement of the coverage upon returning to work under this rule. This subsection applies to the employee who returns to work and to any dependent who is covered by the health plan by reason of the reinstatement of the coverage of the employee.

(2) Exception for service-connected injuries. The prohibition in subsection (c)(1) does not apply to the coverage of any illness or injury incurred in or aggravated during a period of service in the uniformed services.

2-14.6 Supplemental Coverage for State National Guard Duty

An employee who is a member of a national guard unit and is ordered to emergency active duty by the governor or volunteers for such state duty is entitled to the employment and return-to-work rights and benefits provided in this rule and the applicable regulations even if the employee is not entitled to similar rights or benefits under federal law.

2-14.7 Enforcement

(a) Complaints.

(1) Grievance. Except as provided in subsection (a)(2), an employee who is entitled under this rule or the regulations to return-to-work rights or benefits and who claims that an appointing authority has failed or refused, or is about to fail or refuse, to comply with the provisions of this rule or the regulations, may file a grievance and grievance appeal as authorized in the rules and applicable regulations.

(2) Technical complaint. A person, whether or not a classified employee, who is entitled to employment or return-to-work rights or benefits under the regulations and has a complaint regarding a technical decision may file a technical complaint as authorized in the rules and the regulations.

(b) Stay of proceedings. A grievance or technical complaint under this rule or the regulations concerning employment or return-to-work rights or benefits due to service in the uniformed services is automatically stayed if any of the following proceedings are initiated under applicable federal law concerning any of the same period of service in the uniformed services alleged in the grievance or technical complaint:

(1) An investigation by the United States Secretary of Labor in response to a complaint filed by the employee.

(2) A state or federal civil action filed by the employee against the State of Michigan or any of its agencies.

(3) A state or federal civil action filed by the United States on behalf of the employee against the State of Michigan or any of its agencies.

(c) **Summary dismissal of grievance.** If an employee receives a final judgment on a claim in a civil action brought against the State of Michigan or any of its agencies under applicable federal law concerning employment or return-to-work rights or benefits due to service in the uniformed services, a grievance or technical complaint under this rule or the regulations by the employee regarding any of the same period of service in the uniformed services may be summarily dismissed in whole or in part on the basis of claim preclusion or issue preclusion, as appropriate.

(d) **No waiver.** This rule does not constitute a waiver of the sovereign immunity of the State of Michigan under the United States Constitution.

[Rule 2-14 last amended August 26, 2007]

2-15 [Reserved]

2-16 Assumption into Classified Service

2-16.1 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.

2-16.2 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.

2-16.3 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 and receive a final *satisfactory* probationary rating as provided in rule 2-3 [Performance Ratings]. 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, civil service staff shall examine the employee on a noncompetitive basis. The employee must also satisfactorily complete a probationary period as a classified employee and receive a final *satisfactory* probationary rating as provided in rule 2-3 [Performance Ratings]. If the employee does not satisfactorily complete the examination or initial probationary period, the appointing authority shall separate the employee from the classified service.

2-16.4 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.

2-16.5 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 classification 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) Retirement. The employee is eligible for retirement credit only as provided by law.

2-16.6 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.

2-16.7 Relation to Collective Bargaining

All determinations and actions by the state personnel director or civil service commission under this rule, including, but not limited to, an assumption of a position, classification of an assumed position, initial appointment to an assumed position, initial treatment of an assumed employee, and initial pay and benefits of an assumed employee are prohibited subjects of bargaining and are not subject to the provisions of a collective bargaining agreement. However, if the director approves the transfer of seniority earned outside the classified service, the application of those seniority rights for purposes of reassignment, transfer, layoff, or recall within a unit is a mandatory subject of bargaining.

2-16.8 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.

[Rule 2-16 last amended effective August 26, 2007]

2-17 Retirement

2-17.1 Cooperation with Board

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

2-17.2 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.

(d) Exception, deferred retirement option plan for state police command officers. A state police command officer participating in the deferred retirement option plan authorized in section 24a of Public Act 182 of 1986, as added in Public Act 83 of 2004, continues as an active employee as provided in Rule 5-17 [Deferred Retirement Option Plan for State Police Command Officers].

[Rule 2-17 last amended effective April 29, 2004]

2-18 Training

2-18.1 Responsibility

Each appointing authority is responsible for in-service training. However, the civil service commission may direct the establishment of any training program it considers necessary.

2-18.2 Training Needs

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

2-18.3 Continuing Education

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

2-18.4 Interagency Training

Civil service staff may provide needed interagency training.

[Rule 2-18 last amended effective August 26, 2007]

2-19 Legal Representation

If an employee is named in any civil claim or action alleging negligence or other actionable conduct arising out of employment in the classified service, the employee may request that the appointing authority provide the services of an attorney at state expense to represent the employee. If the appointing authority determines either (1) that the conduct alleged occurred during the course of the employee's employment and within the scope of the authority delegated to the employee or (2) that the employee's conduct occurred during the course of the employee's employment and the employee had a reasonable belief that the employee's conduct was within the scope of authority delegated to the employee, the employee is entitled to legal representation at state expense, subject to the following conditions:

(a) If the appointing authority authorizes legal representation at state expense, the appointing authority shall first request that the attorney general represent the employee. If the attorney general declines to represent the employee, the appointing authority may, at its option, either hire an attorney to represent the employee or authorize the employee to hire an attorney. If the employee hires an attorney, the appointing authority shall reimburse the employee for all necessary and reasonable attorney fees and costs incurred.

(b) The appointing authority is not required to provide legal services at state expense in connection with prosecution of a criminal suit against an employee.

(c) Nothing in this rule requires an appointing authority to reimburse an employee or insurer for legal services to which the employee is entitled under a policy of insurance.

[Rule 2-19 last amended effective January 1, 2002]

2-20 Workplace Safety: Violence, Firearms, and Explosives

2-20.1 Acts of Violence and Threats of Violence

(a) Prohibited Acts. An employee shall not commit an act of violence or a threat of violence.

(b) Requirement to Report. If an employee becomes aware of an act of violence or a threat of violence, the employee shall immediately report the act or threat to the appointing authority or the appointing authority's designee.

(c) Action by Appointing Authority. An appointing authority or designee who receives a credible report of an act of violence or a threat of violence shall take reasonable actions to protect employees.

2-20.2 Firearms and Explosives

(a) Carrying and Possession Prohibited; Exceptions. An employee shall not carry or possess a firearm or explosive at a state workplace or during actual-duty time, except as authorized below:

(1) Firearm. An employee may carry or possess a firearm at a state workplace or during actual-duty time only under one of the following circumstances:

(A) The employee is (1) employed in a law enforcement, correctional, investigative, security, or military capacity and (2) permitted or required by agency work rules to carry or possess a firearm at a state workplace or during actual-duty time.

(B) The appointing authority has specifically authorized the employee in writing to carry or possess a firearm at a state workplace or during actual-duty time.

(C) Except when prohibited by law or an agency work rule, the employee carries or possesses a firearm inside a personal vehicle while the firearm is completely unloaded and enclosed in a case in the vehicle or carried in the trunk of the vehicle.

(2) Explosives. An employee may carry or possess an explosive at a state workplace or during actual-duty time if the employee is authorized by the appointing authority to carry or possess the explosive as part of the employee's official duties.

(3) Requirements. An employee authorized to carry or possess a firearm or explosive under subsection (a)(1) or (a)(2) must carry or possess the firearm or explosive in a reasonable manner and in compliance with (1) all applicable laws, including the

civil service rules and regulations, (2) all agency work rules, and (3) any instructions or limitations imposed by the appointing authority.

(b) Requirement to Report Violations. An employee who becomes aware that any person possesses or is carrying a firearm or explosive in violation of this rule shall immediately report the matter to the appointing authority or the appointing authority's designee.

(c) Action by Appointing Authority. An appointing authority or designee who receives a credible report of a violation of this rule shall take reasonable actions to protect the safety of employees.

2-20.3 Effect of Other Laws

This rule regulates the ability of employees to carry or possess firearms and explosives (1) at any state workplace at any time and (2) in any place during actual-duty time. Except as specifically authorized in this rule, a constitutional or statutory provision that otherwise permits a person to carry or possess a firearm or an explosive does not authorize an employee to carry or possess a firearm or explosive during actual-duty time or at a state workplace.

2-20.4 Penalty

If an employee violates this rule, an appointing authority may discipline the employee, up to and including dismissal.

2-20.5 Agency Work Rules

An appointing authority may issue agency work rules related to firearms, explosives, and workplace safety that are not inconsistent with this rule.

[Rule 2-20 last amended effective August 26, 2007]

[End of Chapter 2]

Chapter 3

SELECTION

3-1 Examinations

3-1.1 Authority

Civil service staff 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 state personnel director may authorize the use of another organization's appraisal results.

3-1.3 Application

The state personnel director shall establish procedures for persons seeking positions in the classified service.

3-1.4 Reasonable Accommodations

Civil service staff 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. Civil service staff may offer an alternative evaluation method for a person with a disability if the person is unable to participate in the regular appraisal process. Civil service staff 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 statement or omission 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 2-7 [Drug and Alcohol Testing].

(b) Sanctions. If civil service staff finds that an applicant has engaged in any prohibited act, the state personnel director 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.

[Rule 3-1 last amended effective August 26, 2007]

3-2 Applicant Pools and Recall Lists

3-2.1 Applicant Pool

Civil service staff may establish and maintain applicant pools. Applicant pools may be divided 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 employee's name is referred to an appointing authority.

3-2.2 Removal from Applicant Pool

Civil service staff may remove a person from an applicant pool for any of the following reasons:

(a) Appointment.

(b) Separation or retirement from state service.

(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.

3-2.3 Recall Lists

An employee is eligible to be placed on a recall list only if the employee (1) gained status from an indefinite appointment 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 2-5 [Employment Preference] or applicable regulations.

3-2.4 Removal from Recall Lists

Civil service staff 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.

[Rule 3-2 last amended effective August 26, 2007]

3-3 Appointments and Job Changes

3-3.1 Process

All appointments, promotions, and job changes in the classified service must be made in accordance with the civil service rules and regulations. Any person appointed or promoted must be certified as qualified in accordance with and subject to the civil service rules and regulations. The state personnel director shall administer the certification of all appointments and promotions.

3-3.2 Demotion

(a) Notice. If an appointing authority intends to involuntarily 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) The employee is not performing satisfactorily.

(2) The employee's position is reclassified downward.

(3) The demotion is requested by the employee and approved by the appointing authority.

(4) The position occupied by the employee is abolished.

(5) The employee is displaced by the return to duty of another employee entitled to the position.

(6) The employee is displaced by another employee with more seniority during a reduction in force.

(7) The employee does not receive a satisfactory probationary service rating, as authorized in rule 3-6.3(b) [Unsatisfactory Service: Employee with Status].

3-3.3 Emergency Appointment

When emergency conditions require immediate action, an appointing authority is authorized to make an emergency appointment for 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 agency. 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. 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 civil service staff.

3-3.5 Lateral Job Change or Voluntary Demotion between Agencies

Any two appointing authorities may authorize a lateral job change or voluntary demotion for an employee between agencies. 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 or voluntary demotion between agencies requires the agreement of the employee and the approval of the state personnel director.

3-3.6 Lateral Job Change or Voluntary Demotion within an Agency

An appointing authority may authorize a lateral job change or voluntary demotion for an employee within the employee's current agency. 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 an agency does not require the agreement of the employee. However, an employee may request a lateral job change. A voluntary demotion requires the written agreement of the employee.

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 civil service staff.

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.

3-3.10 Qualification

An employee or appointing authority that does not agree with a staff qualification decision may file a written request for reconsideration with the state personnel director as provided in the regulations. The state personnel director or the director's designee shall reconsider the staff qualification decision in writing. If an employee's appointment is revoked as provide in rule 3-7 due to a staff qualification decision, the employee or appointing authority may file a technical appointment complaint as provided in the rules and regulations in lieu of requesting reconsideration.

[Rule 3-3 last amended effective December 8, 2010]

3-4 Class Clusters

(a) Approval of class clusters. If jointly requested by parties engaged in secondary negotiations, the state employer may request that the state personnel director approve a class cluster for use in an agency. The state personnel director has the discretion to approve, deny, or limit a request to create a class cluster. A decision by the state personnel director to approve, deny, or limit a request to create a class cluster is final and cannot be appealed.

(b) Class clusters for nonexclusively represented employees. An appointing authority may use an approved class cluster for authorized transactions involving nonexclusively represented employees as provided in the civil service rules and regulations.

(c) Class clusters for exclusively represented employees.

(1) Relation to collective bargaining.

(A) The creation of a class cluster is a classification and appointment issue and is a prohibited subject of bargaining. A class cluster cannot be created or included in a secondary collective bargaining agreement unless approved in advance by the state personnel director.

(B) After a class cluster has been approved by the state personnel director, the use of an approved class cluster for job changes, layoff, or recall is a mandatory subject of bargaining in secondary negotiations.

(2) Use of class cluster. An appointing authority may use the approved class cluster for job change, layoff, or recall transactions authorized in an approved secondary collective bargaining agreement.

[Rule 3-4 last amended effective August 26, 2007]

3-5 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 3-4 [Class Clusters] or rule 6-3 [Commission Authority] provides otherwise.

[Rule 3-5 last amended effective January 1, 2002]

3-6 Probation and Status

3-6.1 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, and receive a final satisfactory probationary rating as provided in rule 2-3 [Performance Ratings] 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, and receive a final satisfactory probationary rating as provided in rule 2-3 [Performance Ratings] 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).

3-6.2 Length of Probationary Period

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

(b) Extension of probationary period. If 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 unsatisfactory, the appointing authority may extend the probationary period for an

employee. Any extension beyond an additional 6 calendar months requires the approval of the state personnel director. The appointing authority shall give written notice of the extension of the probationary period to the employee.

(c) Leave without pay during probationary period. If a probationary employee is placed on a leave of absence without pay or on extended sick leave, the period of the leave of absence does not count toward completing the probationary period and the length of the probationary period is automatically extended for an additional period equal to the length of the employee's absence.

3-6.3 Unsatisfactory Service

(a) Employee without status. If an employee without status does not perform satisfactorily during the probationary period, as provided in rule 2-3 [Performance Ratings], the appointing authority may dismiss or otherwise discipline the employee at any time during the probationary period or within 28 calendar days after the probationary period ends. The appointing authority shall give notice of a dismissal or other discipline to the employee 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, as provided in rule 2-3 [Performance Ratings], the appointing authority may, at any time during the probationary period or within 28 calendar days after the probationary period ends, (1) dismiss or otherwise discipline the employee or (2) rescind the appointment and demote the employee.

3-6.4 Satisfactory Service; Notice

If an employee's service during the probationary period is satisfactory, the appointing authority shall give notice to the employee and the civil service staff within 28 calendar days after the probationary period ends.

3-6.5 Grievance of Probationary Rating or Discipline

(a) Probationary employee without status. A probationary employee without status who is dismissed or otherwise disciplined may grieve the discipline only within the agency steps of the civil service grievance procedure. The employee cannot appeal a final determination of the appointing authority to civil service staff or the civil service commission unless the employee alleges that the discipline violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(b) Probationary Employee with status.

(1) Rescission of appointment and demotion. A probationary employee with status (1) who receives an interim rating or *unsatisfactory* probationary or follow-up

rating or (2) whose appointment is rescinded for any reason and who is demoted to a classification level not less than the level occupied at the time of the appointment, may grieve the rating or the rescission and demotion as provided in rule 8-1 [Grievances] and the applicable regulations. In any appeal of its final grievance decision, the appointing authority need only establish a rational basis for the rating or the rescission and demotion. This subsection does not apply to the revocation of an appointment authorized in rule 3-7 [Revocation of Appointment].

(2) Other discipline. A probationary employee with status who is dismissed or disciplined other than as provided in subsection (b)(1) may grieve the rating or discipline as provided in rule 8-1 [Grievances] and the applicable regulations.

3-6.6 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. An employee whose appointment is revoked under rule 3-7 [Revocation of Appointment] cannot earn status at that classification and classification level or credit for qualification purposes.

[Rule 3-6 last amended effective August 26, 2007]

3-7 Revocation of Appointment

3-7.1 Review of Appointments

Every appointment in the classified service is expressly subject to review by civil service staff. If the state personnel director determines that an appointment violated a civil service rule or regulation, the director may order corrective action, including revocation of the appointment.

3-7.2 Methods of Review

Civil service staff may review any appointment as part of the civil service audit function or as the result of a technical appointment complaint.

(a) Audit review.

(1) Revocation of appointment. If civil service staff audits an appointment and determines that the selection, appointment, or certification violated a civil service rule or regulation, the state personnel director may order corrective action,

including revocation of the appointment. The director shall give written notice of the revocation to the appointing authority and the employee whose appointment is revoked.

(2) Subsequent technical complaint. An employee whose appointment is revoked, or the employee's appointing authority, may file a technical appointment complaint regarding a revocation order within 14 calendar days after the date the revocation order was issued. If a timely technical appointment complaint is filed, the revocation order is automatically stayed pending a decision or further order of the technical review officer.

(b) Technical appointment complaint by candidate.

(1) Technical appointment complaint authorized. If an unsuccessful candidate files a timely technical appointment complaint under rule 8-3 [Technical Complaints] and the technical review officer determines that the challenged appointment violated a civil service rule or regulation, the officer may order corrective action, including revocation of the challenged appointment.

(2) Notice to incumbent. If a technical appointment complaint is filed, the incumbent employee whose appointment is being challenged in the complaint is entitled to notice of the complaint and an opportunity to defend the appointment. If the technical review officer revokes an incumbent employee's appointment, that incumbent employee is bound by the determination of the technical review officer, including revocation of the incumbent employee's appointment.

3-7.3 Effect of Revocation of Appointment

When the state personnel director or a technical review officer revokes an appointment, the employment status of the employee whose appointment is revoked is determined as follows:

(a) Employee with continuing status. If the employee had continuing status at the time of the appointment, the employee is to be retained in a position within the agency that appointed the employee at a classification and level in which the employee had continuing status at the time of the appointment. If no such position is available within the agency at the time of the revocation, the employee may exercise employment preference.

(b) Employee without continuing status. If the employee had no continuing status in the classified service at the time of the appointment, the appointing authority shall separate the employee from state employment, unless the employee has otherwise been properly appointed to another position.

[Rule 3-7 last amended effective August 26, 2007]

3-8 Veterans' Preference

3-8.1 Veterans' Preference Authorized

An applicant who is qualified for initial appointment in the classified service is eligible for a preference in consideration during the selection process. A qualified applicant who is granted a preference is not guaranteed appointment in the classified service.

3-8.2 Qualifications

(a) Veteran. A ***veteran*** is a person who (1) has 90 or more calendar days of active duty service in the armed forces of the United States, (2) was honorably discharged from active duty, and (3) has not retired from any uniformed service.

(b) Disabled veteran. A ***disabled veteran*** is a veteran who has been determined to be eligible for disability compensation by the U.S. Department of Veterans Affairs or a branch of the armed forces of the United States as the result of a service-connected disability.

(c) Spouse. A ***spouse*** is a spouse of a veteran.

(d) Surviving spouse. A ***surviving spouse*** is a surviving spouse of a veteran.

3-8.3 Types and Order of Veterans' Preference

During a selection process, a qualified eligible applicant who requests a preference in consideration when applying is given one of the following preferences:

(a) Civil service preference points. If the selection process is based in whole or in part on a numerical score on a written civil service examination, civil service staff shall add the following preference points to an applicant's final passing score:

(1) 5 points. Add 5 points to the final passing score of a veteran or surviving spouse.

(2) 10 points. Add 10 points to the final passing score of the following applicants:

(A) A disabled veteran.

(B) A spouse of a disabled veteran with greater than 50 percent service-connected disability.

(C) A surviving spouse who has a child under 18 years of age.

(D) A surviving spouse with continuing parental care of a disabled child.

(b) Agency preference points. If a qualified eligible applicant is not given preference points under subsection (a) and the appointing authority uses a preliminary applicant

screening process based in whole or in part on a numerical score, the appointing authority shall add the following preference points to the applicant's screening score:

(1) **5 percent.** Add preference points equal to 5 percent of the highest attained screening score to the screening score of a veteran or a surviving spouse.

(2) **10 percent.** Add preference points equal to 10 percent of the highest attained screening score to the screening score of the following applicants:

(A) A disabled veteran.

(B) A spouse of a disabled veteran with greater than 50 percent service-connected disability.

(C) A surviving spouse who has a child under 18 years of age.

(D) A surviving spouse with continuing parental care of a disabled child.

(c) **Preferential consideration by appointing authority.** If a qualified eligible applicant is not given preference points under either subsection (a) or (b), the appointing authority shall give preferential consideration to the qualified eligible applicant as follows:

(1) If the appointing authority uses a mechanical or random screening process to reduce the number of applicants placed in the candidate pool, the qualified eligible applicant must be retained and placed in the candidate pool.

(2) A qualified eligible candidate retained in the candidate pool must be evaluated by the appointing authority using the same merit appraisal methods used for other candidates in the candidate pool.

3-8.4 Technical Complaint

An eligible applicant who timely requested and was not granted preferential consideration as required by this rule and the regulations may file a technical appointment complaint, as authorized in Rule 3-7.2(b) [Technical Appointment Complaint by Applicant].

[Rule 3-8 last amended effective March 19, 2008]

[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 civil service commission shall authorize an official classification plan for all positions in the classified service. The state personnel director shall administer the official classification plan.

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

(b) Reclassification. Civil service staff 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 civil service staff 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.

[Rule 4-1 last amended effective August 26, 2007]

4-2 Position Classification Review

Civil service staff 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 civil service staff 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 civil service staff 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 civil service staff.

(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, civil service staff 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.

[Rule 4-2 last amended effective August 26, 2007]

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.

[Rule 4-3 last amended effective March 18, 2001]

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 agency mission, or reorganization of the work force.

4-4.2 Rescinding of Classification

Civil service staff may rescind the classification of a position that remains vacant for 6 months.

4-4.3 Notice

Civil service staff shall notify each appointing authority of any rescinded classification.

[Rule 4-4 last amended effective August 26, 2007]

4-5 Working out of Class

(a) Working-out-of-class assignment. An appointing authority may temporarily assign an employee to work out of class only if (1) the employee is performing the duties and responsibilities of an existing position or (2) civil service staff has approved in advance a request for the employee to work out of class. A working-out-of class assignment cannot exceed one year.

(b) Working-out-of-class pay. If an employee is assigned to work out of class for more than 10 consecutive work days, the employee is entitled to supplemental pay and benefits for the temporary assignment in accordance with the civil service rules and regulations.

(1) Claims for working-out-of-class pay. If an employee is assigned to work out of class and does not receive authorized supplemental working-out-of-class pay and benefits, the employee may request a technical working-out-of-class determination.

(A) Time limit. A request for a technical working-out-of-class determination must be filed during the working-out-of-class assignment or, after the end of the assignment, within the time specified in the regulations.

(B) Back pay. In a technical working-out-of-class determination, the civil service review officer may award back pay and benefits for working out of class for a maximum of one year before the end of the working-out-of-class assignment. No supplemental working-out-of-class pay or benefits are payable for any

period longer than one year even if the employee worked out of class for more than one year.

(2) Relation to collective bargaining. Working out of class is a prohibited subject of bargaining. The exclusive procedure for any employee, including an exclusively represented employee, to bring a claim for working-out-of-class pay or benefits is to file a request for a technical working-out-of-class determination.

(c) Exclusions. An employee in any of the following circumstances is not considered to be working out of class:

(1) The employee is working in a preauthorized position.

(2) The employee is occupying a position downgraded for training.

(3) The employee is occupying a position that is reclassifiable.

(4) The employee is an overall assistant who normally substitutes for the employee's supervisor.

[Rule 4-5 last amended effective August 26, 2007]

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 employee typically (1) reports directly to a director, board, or commission heading an agency, or deputy director of an agency, (2) formulates and implements major policy, or (3) influences major programs and policies relating to the critical mission of an agency.

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 agency is not grievable except as authorized in rule 8-1 [Grievances]. In the event of a lateral job change, the parties may agree to a new senior executive service contract.

(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, except when required to implement subsections (g)(1) and (g)(2), 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 an appointing authority 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.

(4) Improper classification. If civil service staff determines that a senior executive service position is not properly classified, an appointing authority cannot appoint or reappoint any person to the position or execute a senior executive service position agreement for the position until civil service staff has approved an updated position description and properly classified the position.

(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 returns 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 1-8 [Prohibited Discrimination].

(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 occupying the position executes an agreement converting the position to the senior executive service and accepts the position.

(d) Automatic conversion of SES-eligible positions. 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.

[Rule 4-6 last amended effective August 26, 2007]

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 or commissions, agency 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 manage-

ment 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 is not grievable except as authorized in rule 8-1 [Grievances]. In the event of a lateral job change, the parties may agree to a new SEMAS agreement.

(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, except when required to implement subsections (g)(1) and (g)(2), 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 an appointing authority 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.

(4) Improper classification. If civil service staff determines that a senior executive management assistant service position is not properly classified, an appointing authority cannot appoint or reappoint any person to the position or execute a SEMAS agreement for the position until civil service staff has approved an updated position description and properly classified the position.

(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 receive a lateral job change 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 1-8 [Prohibited Discrimination].

(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) Automatic 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. A position converting to the senior executive management assistant service cannot be reclassified outside the senior executive management assistant service except upon approval of the state personnel director.

(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.

[Rule 4-7 last amended effective August 26, 2007]

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 an 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 agency. A lateral job change is not grievable except as authorized in rule 8-1 [Grievances].

(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 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 agency with a base salary rate lower than the protected base salary rate.

(B) The employee receives a lateral job change to another position in the employee's agency.

(C) The employee is involuntarily demoted under any of the circumstances authorized in rule 3-3.2(b)(2), (4), (5), or (6) [Appointments and Job Changes: Demotion].

[Rule 4-8 last amended effective August 26, 2007]

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, paraprofessional, 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 ECP 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 an agency 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.

[Rule 4-9 last amended effective August 26, 2007]

[End of Chapter 4]

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.

5-1.3 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.

[Rule 5-1 last amended effective January 1, 2002]

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.

5-2.3 Voluntary Work Schedule Adjustment Plans

An employee may volunteer to participate in any voluntary work schedule adjustment plan authorized in this rule. The employee's appointing authority has the discretion to approve or disapprove an employee's participation in a plan. If an appointing authority approves an employee's participation, the appointing authority may later rescind or modify its approval, effective at the end of any pay period, by giving advance written notice to the employee. An employee cannot grieve a decision of an appointing authority to disapprove participation in a program or to rescind or modify previous approval.

(a) Plan A: Biweekly scheduled hours reduction.

(1) Eligibility. Only full-time employees who have satisfactorily completed 720 hours of state service are eligible to participate in Plan A.

(2) Operation of Plan A. Under Plan A, an employee may reduce the number of scheduled work hours by 1 to 16 hours per pay period. In addition, for one pay period in a fiscal year, an employee may reduce the number of scheduled work hours by up to 40 hours. Time off under Plan A counts against leave entitlement under the federal Family and Medical Leave Act (FMLA) if the time off is for a qualifying purpose under the FMLA.

(3) Group insurance continuation. An employee's enrollment in state sponsored group insurance plans is unaffected by participation in Plan A.

(4) Leave accruals and service credits. While an employee participates in Plan A:

(A) The employee does not incur a break in service as a result of the reduction in hours worked.

(B) The employee continues to accrue annual leave and sick leave as though the employee was in approved paid status for 80 hours per pay period.

(C) The employee is given state service credit of 80 hours per pay period for purposes of retirement service credit, longevity pay, pay step increases, employment preference, and holiday pay.

(b) Plan C: Leave of absence.

(1) Eligibility. Only full-time and part-time employees who have satisfactorily completed their initial probationary period are eligible for Plan C. Permanent-intermittent employees are not eligible.

(2) Operation of Plan C. Under Plan C, an employee may elect to take one unpaid leave of absence during a fiscal year. The length of a Plan C leave of absence must be at least 2 weeks and at most 3 months. Time off under Plan C counts against leave entitlement under the federal Family and Medical Leave Act (FMLA) if the leave is for a qualifying purpose under the FMLA.

(3) Insurance. Except for the long-term disability income protection plan, an employee's enrollment in state sponsored group insurance plans is unaffected by participation in Plan C so long as the employee prepays the employee's share of the premiums for the entire Plan C leave of absence. Long-term disability income protection coverage is not in effect during the leave of absence, but is reinstated after the leave of absence, as provided in the regulations.

(4) Leave accruals and service credits. While an employee is on a Plan C leave of absence:

(A) The employee does not incur a break in service as a result of the Plan C leave of absence but no state service is granted for any purpose for the period of the leave.

(B) The employee's accumulated annual leave and sick leave balances are frozen during a Plan C leave of absence. The employee does not accrue any further leave credits during the period of the leave of absence.

[Rule 5-2 last amended effective July 24, 2003]

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 Agency Salary-range Subdivisions

An appointing authority, with the prior written approval of the state personnel director, may implement agency 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 agency 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 agency 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. An employee under an

unsatisfactory probationary, interim, or follow-up rating is not eligible for a step 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.

(A) Awards authorized. 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. The director may set limits on the amount of performance pay that may be awarded in a fiscal year.

(B) Performance ratings.

(1) If the employee receives a *needs improvement* annual rating or an *unsatisfactory* interim or follow-up rating, the employee is not eligible for a base salary or lump sum award.

(2) If the employee receives an *unsatisfactory* interim or follow-up rating, the appointing authority may reduce the employee's base salary in accordance with the compensation plan.

(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, civil service staff 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 civil service staff before the employee is assigned to the project. Temporary project pay may not exceed two years without the written authorization of the state personnel director.

(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 agency on the basis of time actually worked for each agency.

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 agencies 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.

[Rule 5-3 last amended effective August 26, 2007]

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, excluding sick leave, in excess of 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. Notwithstanding the exclusion in subsection (a), a state police command officer participating in the high visibility patrol program and a state police lieutenant-14 or -15 (enlisted) is eligible to accrue compensatory time up to a maximum of 80 hours. The compensatory time will be paid at the employee's current rate at retirement.

(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.

[Rule 5-4 last amended effective March 19, 2008]

5-5 Additional Compensation: Prison Employees

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 and leave time.

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.

[Rule 5-5 last amended effective May 24, 2001]

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 $103.85 per biweekly pay period.

5-6.3 Premium for Department of Energy, Labor, and Economic Growth Insurance Examiners Working out of State

(a) Eligibility. An employee who (1) is employed as an Insurance Examiner in the department of energy, labor, and economic growth, (2) is classified as an Auditor 9-12 or Auditor Manager 13, 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 out-of-state premium is $10.00 per day.

5-6.4 Premium for Department of Treasury Auditors

(a) Eligibility. An auditor employed in the department of treasury who audits out-of-state taxpayers is paid an out-of-state location premium.

(1) If the auditor's principal work location and residence are outside of the state of Michigan, the premium is paid for all hours in pay status.

(2) If the auditor's principal work location or residence is in the state of Michigan, the auditor is paid the premium for all hours in pay status while performing audits out of state.

(b) Rate. The out-of-state location premium is 20 percent of employee's base pay.

5-6.5 Other Employees Residing out of State

(a) 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.

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

5-6.6 Emergency Response Compensation

(a) State Police.

(1) Eligibility. A state police command officer is paid an emergency response compensation.

(2) Rate. The emergency response compensation is $4.00 per day.

(b) Conservation Officer–Law Supervisors 13-16.

(1) Eligibility. A Conservation Officer–Law Supervisor 13-16 is paid an emergency response compensation.

(2) Rate. The emergency response compensation is $3.00 per day.

5-6.7 Conservation Officer 13 Premium

An employee classified as a Conservation Officer–Law Supervisor 13 who is identified by the department of natural resources and approved as eligible by civil service staff may be credited with an additional 1.2 hours of straight time compensation for each biweekly pay period.

5-6.8 Premium for Department of Education Schools for the Deaf and Blind Employees Providing Extracurricular Program Services

(a) Eligibility. An employee of the Schools for the Deaf and Blind who provides coaching or other extracurricular program services is paid an extracurricular activities premium.

(b) Rate. The civil service commission shall approve the payment of premiums for the extracurricular program services.

5-6.9 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.

5-6.10 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.

5-6.11 Signing Bonus

(a) Eligibility.

(1) Authorization. If an appointing authority is experiencing serious recruitment and retention problems, the appointing authority may agree to pay an optional one-time signing bonus to an employee who is newly hired into one of the following classes:

(A) Pharmacist Manager.

(B) An excluded Dentist class.

(2) Current employees ineligible. An employee who is a classified employee immediately before appointment is not eligible for a signing bonus.

(3) Repayment agreement. An employee may only be paid a signing bonus if the employee agrees in writing to repay the entire signing bonus, including tax withholding amounts, if the employee leaves the agency within one year after the effective date of the appointment.

(b) Rate.

(1) Pharmacist. An eligible Pharmacist Manager may be paid a signing bonus not to exceed $2,500.

(2) Dentist. An eligible Dentist may be paid a signing bonus not to exceed $5,000.

5-6.12 Retention Bonus

(a) Eligibility.

(1) Authorization. If an appointing authority is experiencing serious recruitment and retention problems, the appointing authority may agree to pay an optional one-time retention bonus to a current employee in an excluded Dentist position.

(2) Eligibility. An employee who has been employed in the classified service for at least 2,080 hours as of February 25, 2006, is eligible for a retention bonus.

(b) Rate. An eligible Dentist may be paid a retention bonus not to exceed $5,000.

5-6.13 Lottery Sales Incentive Payments

(a) Eligibility.

(1) Authorization. The bureau of state lottery may implement a lottery sales incentive program for employees in the following classifications:

(A) Lottery Sales Representative 10, 11, and 12.

(B) Lottery Sales Regional Manager 13, 14, and 15.

(C) Promotional Specialist 14 and 15.

(2) Eligibility. An employee is eligible for an incentive payment if retailers in the employee's area of account responsibility achieve required quarterly sales increases, as established by the bureau of state lottery in the lottery sales incentive program.

(3) Award brackets. The bureau of state lottery shall establish objective eligibility criteria and bonus amounts for any incentive program before each quarter.

(b) Rate. An eligible employee may be paid an incentive bonus not to exceed $900 per quarter.

(c) Change or discontinuance. The bureau of state lottery may alter or discontinue the lottery sales incentive plan before any quarter.

[Rule 5-6 last amended effective May 20, 2009]

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 technology, 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 technology, management, and budget and the state personnel director may jointly recommend to the commission changes in the travel reimbursement rates.

(2) Comments. Before submitting the recommendation, the director of the department of technology, 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 technology, 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.

(c) Private motor vehicle reimbursement rates. The standardized travel regulations may establish state premium and state standard reimbursement rates for approved private motor vehicle use. The state premium reimbursement rate shall be the standard mileage rate established by the Internal Revenue Service, unless otherwise ordered by the civil service commission. The state standard reimbursement rate shall be the rate approved by the commission.

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.

5-7.3 Miscellaneous Reimbursements

(a) Safety Shoes.

(1) Eligibility. Employees who are required by their appointing authority to wear safety shoes or boots while performing their job duties are eligible for reimbursement of the actual cost of the safety shoes.

(2) Limits. An employee may be reimbursed, at the employee's option, a maximum of either (1) $80 annually or (2) $160 every two years.

(b) Uniform cleaning allowance—Motor Carrier (Sergeant) 13, Motor Carrier (Lieutenant) 14, and State Properties Security Supervisor 10.

(1) Eligibility. An employee classified as a Motor Carrier (Sergeant) 13, Motor Carrier (Lieutenant) 14, or State Properties Security Supervisor 10, is eligible for a uniform cleaning allowance.

(2) Rate. The uniform cleaning allowance is a maximum of $450 per year. The appointing authority may pay the allowance on a prorated periodic basis.

(c) Uniform cleaning allowance—Corrections Shift Supervisors 11, 12, and 13, and Corrections Security Inspectors 13.

(1) Eligibility. An employee classified as a Corrections Shift Supervisor 11, 12, or 13, or a Corrections Security Inspector 13 who is required by the appointing authority to wear a uniform in eligible for a uniform cleaning allowance.

(2) Rate. The uniform cleaning allowance is a maximum of $575 per year. The appointing authority may pay the allowance on a prorated periodic basis.

(d) Uniform or cleaning allowance—State Police.

(1) Eligibility. An enlisted employee the department of state police at or above the Lieutenant level is eligible for either a uniform cleaning allowance (if uniformed) or a clothing allowance (if not uniformed), as authorized by the appointing authority.

(2) Rate. The uniform cleaning allowance is a maximum of $525 per year. The clothing allowance is a maximum of $900 per year. The appointing authority may pay the allowance on a prorated periodic basis.

(e) Physical fitness awards. The department of state police may implement a physical fitness awards program for nonexclusively represented employees that is substantially equivalent to the program applicable to exclusively represented troopers and sergeants. Awards are limited to sick leave credits deposited into and dispersed from a sick leave bank.

[Rule 5-7 last amended effective August 26, 2007]

5-8 Longevity Payment

An employee who is expected to complete or has completed the equivalent of 6 years of full-time currently continuous employment in a fiscal year is eligible for an annual longevity payment on October 1 of that fiscal year in the amount provided below:

Years of Full-time Service Expected to be Completed During the Fiscal Year	Annual Longevity Payment Due on October 1 of the Fiscal Year
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 at the time and in the manner provided in the regulations.

[Rule 5-8 last amended effective March 18, 2001]

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.

5-9.2 General Supplement up to Two-thirds

(a) 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.

(b) 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.

5-9.3 Special Supplement up to Full Weekly Net Wage

(a) Eligibility.

(1) Employees. The following employees are eligible:

(A) 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.

(B) 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.

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

(D) An employee of the department of human services 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 department of human services established or funded by the state.

(E) 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.

(2) Limitations.

(A) 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.

(B) The supplement cannot exceed 100-weeks.

(C) 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.

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

[Rule 5-9 last amended effective August 26, 2007]

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 in odd numbered years and 13 approved state holidays in even numbered years. 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) Initial annual leave grant. 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) Annual leave accrual and accumulation. 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)	Maximum Accumulation that may be paid off
Less than 1	4.0	296	256
1 – 5	4.7	296	256
5 – 10	5.3	311	271
10 – 15	5.9	326	286
15 – 20	6.5	341	301
20 – 25	7.1	346	306
25 – 30	7.7	356	316
30 – 35	8.4	356	316
35 – 40	9.0	356	316
40 – 45	9.6	356	316
45 and above	10.2	356	316

(C) Prorated annual leave. 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) Personal leave. 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) Maximum accrual. An employee may accumulate credited annual and personal leave hours up to the combined maximum authorized in column 3 of 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.

(F) Maximum payoff. If any employee receives a payoff of all accumulated annual and personal leave hours, the maximum amount that may be paid off is the amount authorized in column 4 of the leave table in subsection (a)(1)(B). Any annual or personal leave hours accumulated above the maximum amount authorized in column 4 are lost if not used before payoff.

(2) School and community participation leave. An eligible employee who has completed 1,040 hours of satisfactory service is credited with 8 hours of school and community participation leave each October 1. School and community 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 and community participation leave credits. An employee is credited with annual, personal, and school and community participation leave in accordance with the compensation plan. An employee may use annual, personal, and school and community 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 and community 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.

5-10.3 Banked Leave Time Program[1]

(a) Eligibility. Notwithstanding any other civil service rule or regulation, all employees in career appointments shall participate in the banked leave time program provided in this rule.

(b) Operation.

[1] Editor's Note: The banked leave time program is also referred to as "Part B of the Annual and Sick Leave Program."

(1) Work schedule and hours in pay status. This rule does not alter an employee's work period, work schedule, or the requirement that each employee report all hours in pay status.

(2) Reduction in pay.

(A) October 12, 2003, to October 9, 2004. Notwithstanding the number of hours in pay status, between October 12, 2003, and October 9, 2004, each employee's gross biweekly pay is reduced by an amount equal to one of the following:

(1) Reduction for full-time employees. For employees in full-time appointments, the gross pay reduction is equal to 4 hours of pay, computed at the employee's base rate of pay.

(2) Reduction for less than full-time employees. For employees in less than full-time appointments, the gross pay reduction is equal to 5 percent of the hours in pay status, but not exceeding 4 hours, at the employee's base rate of pay.

(B) January 2, 2005, to October 22, 2005. Notwithstanding the number of hours in pay status, between January 2, 2005, and October 22, 2005, each employee's gross biweekly pay is reduced by an amount equal to one of the following:

(1) Reduction for full-time employees. For employees in full-time appointments, the gross pay reduction is equal to 4 hours of pay, computed at the employee's base rate of pay.

(2) Reduction for less than full-time employees. For employees in less than full-time appointments, the gross pay reduction is equal to 5 percent of the hours in pay status, but not exceeding 4 hours, at the employee's base rate of pay.

(C) February 21, 2010, to September 4, 2010. Notwithstanding the number of hours in pay status, between February 21, 2010, and September 4, 2010, each employee's gross biweekly pay is reduced by an amount equal to one of the following:

(1) Reduction for full-time employees. For employees in full-time appointments, the gross pay reduction is equal to 2 hours of pay, computed at the employee's base rate of pay.

(2) Reduction for less than full-time employees. For employees in less than full-time appointments, the gross pay reduction is equal to 2.5 percent of the hours in pay status, but not exceeding 2 hours, at the employee's base rate of pay.

(3) Conversion of unpaid time to banked leave time. For each hour or partial hour in pay status that is unpaid as provided in subsection (b)(2), the employee is credited with an equal amount of banked leave time. An employee may accumulate a maximum of 216 banked leave hours.

(4) Use of banked leave time. When approved by the appointing authority, an employee may use accumulated banked leave time in the same manner as provided in rule 5-10.2(b)(1) and the applicable regulations for the use of annual leave.

(5) Conversion of unused banked leave time. If an employee separates or retires from the classified service or dies while employed in the classified service, the value of any unused banked leave time shall be contributed as a non-elective employer contribution to the employee's State of Michigan 401(k) plan account and, if applicable, to the State of Michigan 457 plan account.

(A) Value of contribution. The amount of a contribution is the product of (1) the number of unused banked leave hours and (2) the employee's last rate of pay for annual leave at the time of separation, retirement, or death.

(B) Location of contribution. A contribution is first made to the employee's State of Michigan 401(k) plan account. If a contribution, when combined with other projected contributions, would exceed the maximum allowed under §415 of the Internal Revenue Code, any excess is deposited in the employee's State of Michigan 457 plan account.

(6) Relation to other rules and regulations.

(A) Insurance, leave accruals, and service credits. Notwithstanding any other civil service rule or regulation or the fact that an employee's pay is reduced under subsection (b)(2), all time in pay status for which an employee receives banked leave time instead of pay is considered creditable time for all purposes, including, but not limited to, the following:

(1) Satisfaction of the standard 80-hour biweekly work period for full-time employees [rule 5-2.1].

(2) Compliance with compensation schedules [rule 5-3].

(3) Eligibility for overtime compensation [rule 5-4.2].

(4) Computation of service hours for the following:

(a) Longevity [rule 5-8].

(b) Annual and personal leave [rule 5-10.2(a)(1)].

(c) School participation leave [rule 5-10.2(a)(2)].

(d) Sick leave [rule 5-10.2(a)(3)].

(e) Holiday pay for less than full-time appointments [rule 5-10.1].

(f) Completion of a probationary period [rule 3-6.2].

(5) Eligibility for group insurance plans and benefit levels [rules 5-2.2 and 5-11].

(6) Computation of total continuous service hours for all purposes, including, but not limited to, employment preference, layoff, recall, step increases, and, if authorized by statute, retirement.[2]

(B) Not a break in service. An employee does not incur a break in service as a result of participation in the banked leave time program.

(C) Voluntary work schedule adjustment plans. An employee must use all banked leave time before incurring unpaid Plan A or Plan C hours under the voluntary work schedule adjustment plans [rule 5-2.3].

(D) Annual leave cap. Banked leave time does not apply to the annual and personal leave maximum provided in rule 5-10.2(a)(1)(B).

(c) Effective dates. The banked leave time program is in effect from October 12, 2003, to September 4, 2010, except that any banked leave time unused as of September 4, 2010, does not expire. After September 4, 2010, an employee may continue to use banked leave time as provided in subsection (b)(4). If, after October 12, 2003, an employee separates or retires from the classified service or dies with unused banked leave hours, the hours shall be treated as provided in subsection (b)(5).

[Rule 5-10 last amended effective February 10, 2010]

5-11 Group Insurance Plans

5-11.1 Types of Group Insurance Plans

(a) Types of group insurance plans. The civil service commission has approved the following group insurance plans for eligible employees:

(1) [A] One medical benefit plan for employees hired before April 1, 2010, and [B] a separate medical plan for employees hired on or after April 1, 2010.

(2) A dental benefit plan.

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[2] **EDITOR'S NOTE:** The following text was added to the State Employees' Retirement Act, MCL §38.1e, by Public Act 33 of 2004, effective March 22, 2004: "Beginning October 1, 2003, the compensation used to compute the final average compensation for a period during which a member is participating in the banked leave time program shall include the value of any unpaid furlough hours and the value of any unpaid hours exchanged for part B annual leave hours calculated at the member's then current hourly rate or rates of pay."

(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 state personnel director or plan provider shall make available to employees documentation describing each group insurance plan approved by the civil service commission.

(e) Administration. The state personnel director is responsible for implementing and administering the group insurance plans approved by the civil service commission.

(1) Complaints. The state personnel director shall provide an expedited administrative review of employee complaints regarding group insurance benefits. The director's administrative review process is the exclusive procedure for reviewing employee complaints regarding group insurance plan benefits. An employee aggrieved by a final administrative decision may appeal the decision to the civil service commission as provided in the civil service rules and regulations.

(2) Agreements with other public entities. The state personnel director may approve agreements with other public entities to permit their employees to participate in group insurance plans authorized by the civil service commission if 100 percent of any additional total cost of participation is paid by the participating public entities or their employees.

(f) Other benefits.

(1) The state personnel director may establish and administer flexible spending accounts authorized under federal law.

(2) The state personnel director 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:

	EMPLOYEE STATUS				
	CAREER APPOINTMENTS (INDEFINITE AND LIMITED-TERM):				NONCAREER APPOINTMENTS
BENEFIT PLAN ↓	FULL-TIME	PART-TIME	INTERMITTENT	SEASONAL	
HEALTH PLAN A: [Hired before 4-1-10]	Eligible	Eligible	Eligible	Eligible	Not Eligible
HEALTH PLAN B: [Hired after 3-31-10]	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 state personnel director 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.

[Rule 5-11 last amended effective February 10, 2010]

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.

[Rule 5-12 last amended effective March 18, 2001]

5-13 Retirement

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

[Rule 5-13 last amended effective March 18, 2001]

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.

[Rule 5-14 last amended effective March 18, 2001]

5-15 Electronic Funds Transfer

The salary or wages of an employee hired after October 1, 2002, shall be paid by means of an electronic funds transfer (EFT) into an account at a financial institution designated by the employee. The appointing authority may waive the requirement of payment by an EFT if payment by an EFT causes an undue hardship for the employee.

[Rule 5-15 added effective October 1, 2002]

5-16 [Reserved]

5-17 Deferred Retirement Option Plan for State Police Command Officers

5-17.1 General

A state police command officer electing to participate in the deferred retirement option plan authorized in section 24a of Public Act 182 of 1986, as added in Public Act 83 of 2004, may continue as an active classified employee while participating in the deferred retirement option plan. Until the participating employee terminates participation in the deferred retirement option plan and retires, the participating employee remains subject to (1) all civil service rules and regulations, including this rule, and (2) all policies, procedures, and work rules of the department of state police applicable to other active state police command officers.

5-17.2 Special Provisions

Notwithstanding any other civil service rule or regulation, the following special provisions apply to all state police command officers participating in the deferred retirement option plan:

(a) Sick leave.

(1) Sick leave balance.

(A) Hired before October 1, 1980. As of the effective date of participation in the deferred retirement option plan, a participating employee hired before October 1, 1980, may elect to retain up to 240 hours of unused sick leave for use while continuing on active duty. An employee will be paid for 50 percent of any unused sick leave not retained. Payment is made as provided in subsection (f).

(B) Hired on or after October 1, 1980. As of the effective date of participation in the deferred retirement option plan, a participating employee hired on or after October 1, 1980, may elect to retain up to 240 hours of unused sick leave for use while continuing on active duty. Any unused sick leave exceeding 240 hours is lost.

(2) No further sick leave earned. As of the effective date of participation in the deferred retirement option plan, a participating employee does not accrue any further sick leave. A participating employee is not paid for any unused sick leave remaining at retirement.

(b) Annual and personal leave.

(1) Annual and personal leave balance. As of the effective date of participation in the deferred retirement option plan, a participating employee may elect to be paid

for some or all accrued annual and personal leave. Payment is made as provided in subsection (f). The employee may retain up to 76 hours of unused and unpaid annual and personal leave for use while continuing on active duty.

(2) Further leave earned.

(A) Annual leave. As of the effective date of participation in the deferred retirement option plan, a participating employee is credited with 7.7 hours of annual leave for each 80 hours of creditable time in a biweekly pay period. If a participating employee has fewer than 80 hours of creditable time in a biweekly pay period, the participant is entitled to a prorated amount of annual leave for that pay period.

(B) Personal leave. On October 1 of each year, a participating employee is credited with 16 hours of personal leave.

(C) Maximum accrual. A participating employee may accumulate up to 200 hours of annual and personal leave, including any hours carried over. Any annual or personal leave hours earned above 200 hours cannot be credited and the hours are lost.

(D) At retirement, a participating employee will be paid for up to 76 hours of unused annual and personal leave.

(3) Banked leave time program. All employees participating in the deferred retirement option plan shall participate in the banked leave time program provided in rule 5-10.3.

(c) Longevity pay. A participating employee is not eligible for, and cannot receive, any longevity pay under rule 5-8 [Longevity Payment].

(d) Compensatory time.

(1) Compensatory time balance. As of the effective date of participation in the deferred retirement option plan, a participating employee is paid for all accrued compensatory time. Payment is made as provided in subsection (f).

(2) Further compensatory time for lieutenants. As of the effective date of participation in the deferred retirement option plan, a participating employee classified at the state police lieutenant 14 or 15 level and the employee's supervisor may agree to allow the employee to accrue up to 48 hours of compensatory time. A participating employee is paid for up to 48 hours of unused compensatory time at retirement.

(e) Group insurance plan premiums.

(1) Eligibility. An employee participating in the deferred retirement option plan is eligible for group insurance as a career employee as provided in rule 5-11.2 [Eligibility for Group Insurance Plans].

(2) Participating employee costs.

(A) Health, dental, and vision plans. Notwithstanding rule 5-11.3 [Costs of Group Insurance Plans], a participating employee enrolled in a group health, dental, or vision insurance plan shall pay an amount equal to the amount the employee would have paid for the plan if the employee had retired on the day before becoming a participant in the deferred retirement plan option.

(B) Long-term disability income protection plan. A participating employee enrolled in the long-term disability income protection plan shall pay the amount required under rule 5-11.3 [Costs of Group Insurance Plans].

(f) Payments. Payments due to a participating employee for accrued sick leave, annual leave, and compensatory time may be paid, at the sole discretion of the appointing authority, either (1) in a lump sum or (2) at the rate of 17 percent of the outstanding balance per year. Any lump sum payment is due in the first full pay period beginning after the employee becomes a participant in the deferred retirement option plan. If paid at the rate of 17 percent per year, any balance remaining when the employee retires is paid in a lump sum.

(g) Effective date of participation. An employee, for purposes of this rule, becomes a participant in the deferred retirement option plan on the day established as the effective date by the office of retirement services under section 24a of Public Act 182 of 1986, as added by Public Act 83 of 2004.

(h) Severability. If the United States internal revenue service gives notice that any portion of this rule would cause the deferred retirement option plan to be disqualified for tax purposes under the internal revenue code, 26 USC §1, et seq., then that portion of the rule may be severed and does not apply.

[Rule 5-17 added effective April 29, 2004]

[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.

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* EDITOR'S HISTORICAL NOTES:

1. The Civil Service Commission first approved the Employee Relations Policy (ERP) on August 20, 1976 [CS-6154]. This first ERP created a "meet and confer" system.
2. The Commission approved a motion in which it "adopted the concept of collective bargaining" on December 17, 1979 [CS-6287].
3. The Commission adopted a revised ERP on April 25, 1980, effective immediately [CS-6305]. The revised ERP created the first Commission-approved collective bargaining system for classified employees.
4. The Commission converted the ERP to rule status on December 18, 1981 [CS-6373].
5. The Commission substantially amended Chapter 6 on December 18, 1998, effective immediately [CS-6905].

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).

[Rule 6-1 last amended effective March 18, 2001]

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) 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.

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.

[Rule 6-2 last amended effective December 19, 2007]

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 and 6-3.8(c).

(d) Effect of agreement on civil service commission. The civil service commission (including civil service staff) (1) is not a party to a collective bargaining agreement approved by the commission; (2) does not become a party to the collective bargaining agreement by virtue of the commission's review, approval, or modification; (3) is not subject to any of the provisions of a collective bargaining agreement; and (4) is 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

(a) Prohibitions.

(1) Interpretation or application. A collective bargaining agreement, impasse panel recommendation, settlement agreement, or arbitrator's decision under a collective bargaining agreement cannot be interpreted or applied to violate, rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.

(2) Settlement. An appointing authority or labor organization cannot approve or implement a settlement of any claim or grievance or take any other action that violates, rescinds, limits, or modifies a civil service rule or regulation governing a prohibited subject of bargaining.

(b) Prohibited subjects of bargaining. The civil service authority, policy, rules, regulations, procedures, and practices governing or regulating any of the following are prohibited subjects of bargaining:

(1) Classification. The determination of the classification and grade assignment of a new or existing position in the classified service. Although the rates of compensation for an existing class of positions is a mandatory subject of bargaining, the state personnel director 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.

(2) Selection. The determination of the qualifications of candidates for positions in the classified service, including, but not limited to, appraisal, probation, and appointment.

(3) Class clusters. The determination of classification equivalency or eligibility, including, but not limited to, the creation of class clusters and preauthorized lateral job change lists.

(4) Working out of class. The determination of working out of class, including, but not limited to, (1) whether an employee has worked out of class, (2) the duration of any working-out-of-class assignment, (3) the classification and level of the duties and responsibilities performed while working out of class, (4) the amount of any

working-out-of-class pay or benefits due an employee, and (5) the rights of an employee seeking review of a working-out-of-class claim.

(5) Disbursements for personal services. 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:

(A) Notice to the exclusive representative of a request for permission by the appointing authority to make disbursements for personal services outside the classified service.

(B) The obligations to meet and confer regarding the impact of a decision to make disbursements for personal services outside the classified service.

(C) 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.

(6) Political or union activity. Political activity or union activity by classified employees during actual-duty time.

(7) Civil service authority. The authority of the civil service commission, the state personnel director, or civil service staff established by law, including the civil service rules and regulations.

(8) System of collective bargaining. The system of collective bargaining created in the civil service rules, the bargaining 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.

(9) Outside the bargaining unit. Conditions of employment outside the bargaining unit.

(10) Patents and copyrights. Compensation related to patents and copyrights.

(11) Union leave. The requirements and limitations on union leave in rule 6-3.9(c).

(12) Strikes. The requirements and limitations on strikes and strike-related grievances.

(13) Excluded positions. The requirements, limitations, and procedures regarding excluded positions in rule 6-6.4.

(14) Abolition or creation of positions. The constitutional authority of an appointing authority to create or abolish positions for reasons of administrative efficiency and the grievance and appeal rights of classified employees aggrieved by the abolition or creation of a position.

(15) Assumptions. The determinations by the state personnel director or the civil service commission authorized in rule 2-16 [Assumptions], including, but not limited to, an assumption of a position, classification of an assumed position, initial appointment to an assumed position, initial treatment of an assumed employee, and initial pay and benefits of an assumed employee.

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 primary or secondary collective bargaining agreement approved by the civil service commission remains in effect between the parties during its approved term, unless otherwise amended by the commission during its term as provided in rules 6-3.5 or 6-3.8(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, arbitrator’s decision, or settlement agreement 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 28 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, arbitrator's decision, or settlement 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. A provision of a collective bargaining agreement, including a grievance procedure permitted by rule 6-9.6 [Negotiated Grievance Procedures], 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 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) agency work rules that are not inconsistent with the constitution or applicable law, including 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.

6-3.7 Civil Service Staff Neutrality

(a) General. Except as provided in subsection (b), the state personnel director and other civil service staff shall not participate as advocates on behalf of either management or employees in the collective bargaining process.

(b) Exception for civil service human resources staff. Civil service human resources staff may provide assistance to management in labor relations, including collective bargaining, discipline, and grievance processing. In providing such assistance, civil service human resources staff may act only at the direction of the appointing authority and may not disclose confidential matters related to the collective bargaining process except as authorized by the appointing authority or as required by the civil service commission.

6-3.8 Limitations on Term of Collective Bargaining Agreements

(a) Division of agreement. A primary 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 section with only economic provisions and one section 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 section or the noneconomic section.

(b) Limitation on term. Each collective bargaining agreement must contain an effective date and a termination date. If the agreement is divided into economic and noneconomic sections, the sections may have different effective and termination dates. However, the maximum term of a unitary agreement, section of a divided primary 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 legislature 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 primary or secondary 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 primary agreement, whichever occurs earlier. If the parties agree that a provision of an 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 6-10 [Commission Review and Action].

6-3.9 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.

[Rule 6-3 last amended effective December 19, 2007]

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 agency 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.

[Rule 6-4 last amended effective August 26, 2007]

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 under collective bargaining agreement.** With respect to grievances brought under the provisions of the collective bargaining agreement, 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.

(c) **Technical complaints and civil service grievances.** With respect to technical complaints and grievances brought under exclusive civil service procedures, an exclusively represented employee may represent himself or herself or may choose to be represented by one of the following:

(1) An employee or agent of the employee's exclusive representative.

(2) An attorney.

(3) Another exclusively represented classified employee who is a member of the same bargaining unit.

6-5.4 Nonexclusively Represented Employees

A nonexclusively represented employee who is scheduled for a disciplinary conference or who appears as a party in a civil service proceeding may represent himself or herself or may choose to be represented by one of the following:

(a) An employee or agent of a limited-recognition organization.

(b) An attorney, except as limited in rule 2-8.2(c) [Ethical Standards and Conduct: Prohibitions].

(c) Another nonexclusively-represented classified employee, except as limited in rule 2-8.2(c) [Ethical Standards and Conduct: Prohibitions].

(1) If the representative is an employee of the same agency as the charged employee, the appointing authority shall release the representative from regularly scheduled work without loss of pay or leave credits to attend the disciplinary conference or civil service proceeding.

(2) If the representative is an employee of a different agency than the charged employee, the representative may be absent from the workplace to attend the disciplinary conference or the civil service proceeding only if the representative's appointing authority has approved annual or personal leave.

[Rule 6-5 last amended effective August 26, 2007]

6-6 Determination of Representation

6-6.1 Unit Determination and Redetermination

(a) Unit determination. The state personnel director shall legislatively establish the most appropriate units of eligible employees organized along broad occupational lines with a community of interest.

(b) Unit redetermination. 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.

(1) 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.

(2) 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 28 calendar days after the director's decision is released. The director's decision is stayed if a timely application is received by the commission.

(c) Exceptions. This rule applies only to the actions to redefine recognized units. This rule does not apply to actions that result from (1) the creation or abolition of one or more classifications, (2) the merger of two or more existing classifications into a single classification, or (3) the designation of an eligible position as an excluded position.

(d) Transfer of recognition rights. Two or more existing exclusive representatives may agree to combine some or all of their existing business operations and staff. Any such combination that results in a transfer of recognition rights is subject to the review and approval of the state personnel director and requires the prior affirmative vote of a majority of the members voting.

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. A petitioner whose petition is dismissed cannot file another petition in the same unit within the 12-month period following the date of the dismissal.

(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 sections, 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

(a) Designation. The state employer, in consultation with the appointing authorities, shall designate the confidential, managerial, and supervisory excluded positions. If the state employer intends to change the designation of an eligible position to an excluded position, the state employer shall give written notice to any affected exclusive representative at least 29 calendar days before the designation becomes effective.

(b) Review of designation. If an exclusive representative disagrees with an intended designation of the state employer, the exclusive representative may petition the state

personnel director to review the designation. The exclusive representative must file its petition with the director no later than 28 calendar days after the date of the notice of intent.

(c) Procedure. If a petition is filed, the director may solicit additional information from interested persons and may hold an informal conference to discuss the intended designation. The director shall administratively determine whether a position is an excluded position.

(d) Appeal to commission. 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 28 calendar days after the decision.

(e) Exclusive procedure. The procedure authorized in this rule is the exclusive procedure for resolving disputes concerning the designation of an eligible position as an excluded position.

[Rule 6-6 last amended effective August 26, 2007]

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 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.

6-7.6 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.

[Rule 6-7 last amended effective April 29, 2004]

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, unless otherwise prohibited by this rule. 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 nonprofit 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.

(c) Limitations for certain excluded employees.

(1) Limited membership permitted. The following employees may join a limited-recognition organization but are prohibited from serving in any official capacity, including, but not limited to, serving as an officer, agent, or representative of the limited recognition organization:

(A) An appointing authority who is a classified employee.

(B) An excluded employee occupying a position in human resources under the direction of an appointing authority, other than the state personnel director.

(2) Membership prohibited. Notwithstanding subsection (c)(1), the following employees are prohibited from joining or being represented by a limited-recognition organization:

(A) An employee of the civil service commission.

(B) An employee of the office of the state employer.

[Rule 6-8 last amended effective August 26, 2007]

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.

(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 [Modification of Agreement or Arbitrator's Decision].

(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 or civil service staff.

(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 and Agreements

(a) Approval of secondary agreement. If secondary negotiations are authorized in a primary agreement, any secondary collective bargaining agreement must be submitted to the civil service commission for review as provided in rule 6-10. If the parties cannot reach agreement in secondary negotiations, either party may file a request for impasse panel assistance under the provisions of rule 6-9.4.

(b) Expiration and continuation of secondary agreement. A secondary agreement shall automatically expire on the date of expiration of the primary agreement under which the secondary agreement was approved, unless the civil service commission has approved an extension of the secondary agreement. The commission may modify a secondary agreement before approving an extension.

(1) Automatic extension with extension of primary agreement. If the civil service commission authorizes the extension of a primary agreement, any secondary agreement approved under that primary agreement is automatically extended for the same period, unless the commission expressly provides otherwise.

(2) Extension of secondary agreement under new primary agreement.

(A) If the civil service commission considers a new primary agreement or primary impasse recommendation, the parties may jointly request that the commission extend an existing secondary agreement during secondary negotiations under a new primary agreement. An approved extension cannot exceed 12 months.

(1) If, by the end of the approved extension period, the parties have not reached agreement on a new secondary agreement and neither of the parties has requested impasse panel assistance, the existing secondary agreement expires.

(2) If, by the end of the approved extension period, the parties have submitted a new secondary agreement to the civil service commission or one of the parties has requested impasse panel assistance, the existing secondary agreement shall continue in effect until the commission takes final action on the secondary agreement or the impasse panel recommendation.

(B) If the civil service commission approves a new primary agreement and, by the effective date of the new primary agreement, the commission has not approved an extension of an existing secondary agreement, the secondary agreement expires on the effective date of a new primary agreement.

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.

[Rule 6-9 last amended effective August 26, 2007]

6-10 Commission Review and Action

6-10.1 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 primary and secondary collective bargaining agreements, impasse panel recommendations, and coordinated compensation recommendations submitted to the commission. Therefore, 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.

6-10.2 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.

6-10.3 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.

6-10.4 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 [Negotiations and Impasse]. 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.

[Rule 6-10 last amended effective January 1, 2002]

6-11 Unfair Labor Practices for the Employer

6-11.1 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.

6-11.2 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.

6-11.3 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.

6-11.4 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.

[Rule 6-11 last amended effective March 18, 2001]

6-12 Unfair Labor Practices for Employees or Labor Organizations

6-12.1 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.

6-12.2 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.

6-12.3 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.

6-12.4 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.

[Rule 6-12 last amended effective March 18, 2001]

6-13 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.

[Rule 6-13 last amended effective March 18, 2001]

6-14 Administration

6-14.1 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.

6-14.2 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.

6-14.3 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.

[Rule 6-14 last amended effective March 18, 2001]

6-15 Strikes

6-15.1 Striking Activity

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

6-15.2 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.

6-15.3 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. An 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.

6-15.4 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.

6-15.5 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.

[Rule 6-15 last amended effective August 26, 2007]

6-16 Payroll Deduction of Contributions to Separate Segregated Funds

6-16.1 Payroll Deduction of SSF Contributions Authorized

The parties to a collective bargaining agreement may agree to payroll deduction of contributions by members of the exclusive representative to a separate segregated fund (SSF) established by the exclusive representative. The civil service commission may approve such payroll deduction if the agreement of the parties complies with this rule and is consistent with all applicable state and federal laws regulating employee contributions to SSFs.

6-16.2 Requirements and Procedures

A provision of a collective bargaining agreement authorizing payroll deduction for employee contributions to an SSF must require the following:

(a) The exclusive representative shall reimburse the state for 100 percent of the cost of funds, personnel costs, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources used in (i) establishing the payroll deduction system, (ii) authorizing, approving, and collecting payroll deductions, and (iii) transmitting contributions to the SSF. The state personnel

director shall determine the amount and timing of required reimbursement, subject to the direction and approval of the commission.

(b) The payroll deduction procedures shall be established by the state personnel director, in consultation with the office of the state employer, the exclusive representative, and the department of technology, management, and budget, subject to the direction and approval of the commission.

[Rule 6-16 approved December 19, 2007, effective immediately]

[End of Chapter 6]

Chapter 7

Disbursements for Personal Services outside the Classified Service

7-1 Disbursements for Personal Services outside the Classified Service

7-1.1 Requirements

An appointing authority shall not make or authorize disbursements for personal services outside the classified service until the provisions of article 11, section 5, of the constitution and the civil service rules and regulations 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 outside the classified service 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.

[Rule 7-1 last amended effective October 1, 2001]

7-2 Jurisdiction

7-2.1 Civil Service Review or Approval not Required

An appointing authority is not required to seek or obtain civil service approval for any of the following disbursements outside the classified service:

(a) Not personal services. Disbursements that are not for personal services.

(b) Exempt and excepted employees. Disbursements to persons occupying positions excepted from the classified service by article 11, section 5, of the constitution, or exempted by the state personnel director under rule 1-9.2 [Exempt Positions].

(c) Mixed disbursements. Disbursements for personal services that are included with other disbursements if (1) the predominant purpose of the mixed disbursements is not for personal services and (2) the personal services are logically or practically related to the predominant purpose of the mixed disbursements.

(d) Grants. Disbursements of grants.

(e) Federal law. Disbursements under federal law if the use of the classified service is not an option.

(f) Intergovernmental disbursements. Disbursements to any of the following governments or their political subdivisions:

(1) One or more of the states of the United States.

(2) The United States.

(3) Canada.

(g) Intragovernmental disbursements. Disbursements to any of the following public bodies:

(1) An agency of the executive, judicial, or legislative branch of the state of Michigan.

(2) A political subdivision of the state of Michigan, including, but not limited to, a county, township, city, village, or district.

(3) Any governmental body created by agreement of any two or more counties, townships, cities, villages, or districts, as authorized by law.

(4) A nonprofit community board, agency, or corporation created under local, state, or federal law to exercise a governmental function.

(5) A public university, public college, public community college, or other public school.

(h) Court ordered disbursements. Disbursements made pursuant to a court order requiring disbursements for personal services, if the court retains jurisdiction of the matter or the matter is subject to further court review.

7-2.2 Complaints

A complaint that an appointing authority has made or authorized disbursements for personal services in violation of article 11, section 5, of the constitution or a civil service rule or regulation must be filed with the state personnel director under the procedures authorized in rule 7-9 [Complaints and Investigations].

[Rule 7-2 last amended effective October 1, 2001]

7-3 Standards for Disbursements for Personal Services

Except as provided in rule 7-2 [Jurisdiction], an appointing authority may make or authorize disbursements for personal services outside the classified service only if the personal services meet one or more of the following standards:

(a) Standard A. The personal services are temporary, intermittent, or irregular.

(b) Standard B. The personal services are (1) so specialized, technical, peculiar, or unique that they are not recognized as normal to the classified service or (2) the appointing authority is unable to recruit enough qualified candidates willing to accept a classified position.

(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 proposed period of disbursements 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 proposed period of disbursements, substantial savings would not likely be realized over the long term. Savings are "substantial" if the average annual savings over the proposed period of disbursements are equal to or greater than the minimum required savings computed using the table below:

Projected Average Annual Disbursements: *From:*	*To:*	Minimum Required Average Annual Savings Must Equal:
$ 1	$ 25,000	25% of average 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 average annual cost

[Rule 7-3 last amended effective October 1, 2001]

7-4 Disbursements to Special Personal Services 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 Standard A or Standard B in rule 7-3.

(b) Procedures. The disbursements for personal services have been approved under the request procedures in rule 7-6 or preauthorized under rule 7-7.

[Rule 7-4 last amended effective October 1, 2001]

7-5 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 7-3.

(b) Procedures. The disbursements for personal services have been approved under the request procedures in rule 7-6 or preauthorized under rule 7-7.

[Rule 7-5 last amended effective October 1, 2001]

7-6 Prior Written Approval by Civil Service Staff

7-6.1 Procedure

An appointing authority may submit to civil service staff a request for approval to make disbursements for personal services outside the classified 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.

7-6.2 Approval

Civil service staff approval of a request to make disbursements for personal services outside the classified service must include the following:

(a) The maximum aggregate dollar amount the appointing authority is authorized to disburse for the requested personal services during the approved period.

(b) The specific personal services that the appointing authority is authorized to purchase outside the classified service with approved disbursements.

(c) The period during which the appointing authority is authorized to make approved disbursements.

(d) Any other requirement, condition, or restriction on the disbursements necessary to ensure that the appointing authority complies with article 11, section 5, of the constitution and the civil service rules and regulations.

7-6.3 Effective Date of Staff Decision

(a) One interested party. If the appointing authority is the only interested party participating in the civil service 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.

(1) Effective date. 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 or the state personnel director issues a stay.

(2) Request for stay. 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 request for a stay must be received by the director

within 10 calendar days after the date the technical decision is issued. 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 any of the standards for approval and (2) a stay is in the best interest of the classified service.

7-6.4 Complaint Regarding Technical Decision

An interested party who participated at the civil service staff review may file a technical disbursement complaint as provided in rule 8-3 [Technical Complaints]. The technical complaint must be received by the civil service technical review staff and all other interested parties within 14 calendar days after the date the technical disbursement decision is issued.

7-6.5 Compliance

An appointing authority shall comply with all requirements, conditions, and restrictions established in the civil service approval of a request to make or authorize disbursements for personal services outside the classified service. By way of example only, an appointing authority is prohibited from doing any of the following:

(a) Disbursing funds in excess of the approved maximum aggregate dollar amount.

(b) Disbursing funds for personal services other than approved personal services.

(c) Disbursing funds for personal services performed outside the period approved for the disbursements.

(d) Failing to comply with any requirement, condition, or restriction established in the civil service approval.

[Rule 7-6 last amended effective August 26, 2007]

7-7 Preauthorized Approval

7-7.1 Publication of List

Civil service staff shall establish and publish a list of personal services deemed to meet one or more of the standards of rule 7-3 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 civil

service staff under rule 7-6. When making or authorizing disbursements for preauthorized personal services, the appointing authority shall comply with all requirements, conditions, and restrictions established by civil service staff for the use of the list of preauthorized personal services.

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 with civil service staff under the procedures authorized in rule 7-6. Civil service staff approval of a request to add personal services to the list of preauthorized personal services must include the following:

(a) A description of the particular type of personal services being added to the list of preauthorized personal services.

(b) The standard in rule 7-3 that the added personal services is deemed to satisfy.

(c) Any other requirement, condition, or restriction on the use of the preauthorization necessary to ensure that the appointing authority complies with article 11, section 5, of the constitution and the civil service rules and regulations.

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 must be brought under the procedures authorized in rule 7-9. Any complaint regarding a technical decision to add personal services to the preauthorized list must be brought by an interested party under the technical appeal procedures in rule 8-3 [Technical Complaints].

[Rule 7-7 last amended effective August 26, 2007]

7-8 Emergency Disbursements

An appointing authority may authorize or make disbursements for personal services outside the classified service without prior civil service approval when an emergency occurs. The emergency personal services must not continue beyond 28 calendar days without approval of civil service staff. Civil service staff may approve continuation of emergency services for an additional period not to exceed 28 calendar days.

[Rule 7-8 last amended effective August 26, 2007]

7-9 Complaints and Investigations

7-9.1 Investigation by State Personnel Director

(a) Complaint required. Any person who alleges that an appointing authority has made or authorized disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution or a civil service rule or regulation must file a complaint with the state personnel director and serve a copy on the appointing authority and the state employer.

(b) Examples of violations. Alleged violations for which a complaint must be filed include, but are not limited to, the following:

(1) The appointing authority has made or authorized disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution.

(2) The appointing authority has made or authorized disbursements for personal services outside the classified service without obtaining approval required by the civil service rules or regulations.

(3) The appointing authority has made or authorized any of the following disbursements for personal services outside the classified service:

(A) Disbursements in excess of the maximum aggregate dollar amount approved by civil service.

(B) Disbursements for personal services other than those approved by civil service.

(C) Disbursements for personal services performed outside the period approved by civil service.

(D) Disbursements that do not comply with a requirement, condition, or restriction established in the civil service approval.

(4) The appointing authority obtained civil service approval by fraud, material misrepresentation, or failure to disclose material facts.

(5) The appointing authority made or authorized improper preauthorized disbursements for personal services.

(6) The appointing authority failed to report disbursements for personal services as required by law, including the civil service rules and regulations.

(7) The appointing authority failed to document adequately its compliance with the civil service rules and regulations.

7-9.2 Action by State Personnel Director

After reviewing the complaint, the state personnel director may act on the complaint or may appoint a person to conduct an inquiry and make a recommendation for action to the director. If the director finds that an appointing authority has made or authorized disbursements for personal services outside the classified service contrary to article 11, section 5, of the constitution or a civil service rule or regulation, 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.

7-9.3 Appeal of Director's Determination

A determination of the state personnel director under this rule 7-9 is final unless a party to the inquiry files an application for leave to appeal to the civil service commission under rule 8-7 [Appeal to Civil Service Commission] within 28 calendar days after the date the director's determination is issued.

[Rule 7-9 last amended effective October 1, 2001]

7-10 Audit and Enforcement

Civil service staff shall periodically audit appointing authorities to ensure that they are complying with article 11, section 5, of the constitution and the civil service rules and regulations governing disbursements for personal services outside the classified service. If the state personnel director determines that an appointing authority has not substantially complied with article 11, section 5, of the constitution or the rules and regulations, the state personnel director may (1) require the appointing authority to file a written request and obtain prior written approval from civil service staff for all disbursements for personal services outside the classified service and (2) take such other action as will reasonably ensure that the appointing authority complies with article 11, section 5, of the constitution and the rules and regulations in the future.

[Rule 7-10 last amended effective August 26, 2007]

7-11 Contract Requirements

Every contract by a state agency that authorizes disbursements for personal services outside the classified service 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 director determines that the contract or the disbursements violate article 11, section 5, of the constitution or applicable civil service rules and regulations. The failure of an appointing authority to require such a provision in a contract does not limit or restrict the authority of the civil service commission and the director to disapprove disbursements for personal services outside the classified service.

[Rule 7-11 last amended effective October 1, 2001]

7-12 Limitations

Approval by civil service staff under this chapter does not relieve an appointing authority of an obligation under any other law or non-civil service rule or regulation that may apply to a contract. Approval by civil service staff under this chapter does not constitute approval of any contract or agreement by the state of Michigan under which an appointing authority makes or authorizes approved disbursements for personal services outside the classified service.

[Rule 7-12 last amended effective August 26, 2007]

[End of Chapter 7]

Chapter 8

Grievances, Technical Complaints, and Appeals

8-1 Grievances

8-1.1 Grievance Authorized

An employee may file a grievance with an appointing authority, as authorized in the civil service rules and regulations.

8-1.2 Time Limits

A grievance must be filed in writing within 14 calendar days after the employee knew of or, in the exercise of reasonable diligence, should have known of the circumstances giving rise to the grievance.

8-1.3 Types of Grievances

(a) Types of grievances permitted. A grievance must allege that the employee is aggrieved by one or more of the following actions of the appointing authority:

(1) Discrimination prohibited by rule 1-8 [Prohibited Discrimination].

(2) Reprisal prohibited by rule 2-10 [Whistleblower Protection].

(3) Discipline without just cause.

(4) Written counseling issued without just cause.

(5) The abolition or creation of a position for reasons other than administrative efficiency.

(6) An arbitrary and capricious lateral job change resulting in substantial harm.

(7) Denial of compensation or supplemental military pay to which the grievant is entitled under the civil service rules and regulations.

(8) The actual or anticipated failure or refusal to comply with Rule 2-14 [Rights of Employees Absent Due to Service in the Uniformed Services] or applicable regulations.

(9) Retaliation for the employee's good faith exercise of grievance or technical complaint rights provided in the civil service rules or regulations.

(10) An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) an agency work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.

(11) Any other action for which the civil service rules or regulations specifically permit a grievance to be filed.

(b) Limitation on grievances.

(1) Grievance not permitted. In addition to any other limitations in the civil service rules and regulations, the following limitations on grievances apply unless the grievant alleges that the action violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(A) SES or SEMAS employee without prior status. A member of the senior executive service [SES] or the senior executive management assistant service [SEMAS] who is separated from state employment at the expiration of an appointment cannot grieve the separation if the employee did not have prior status at the time of appointment to the SES or the SEMAS.

(B) Employee in limited-term position. An employee in a limited-term position whose appointment is terminated at or before the end of the term of appointment due to lack of work or funding cannot grieve the termination.

(2) Management rights. Unless specifically authorized in the civil service rules or regulations, an employee cannot grieve the agency's exercise of any of the rights reserved to management in rule 6-4 [Rights of Employer].

(3) Lateral job change. A grievance regarding a nondisciplinary lateral job change may be grieved only under the provisions of subsection (a)(1), (a)(2), (a)(6), or (a)(7), as appropriate. In addition, a grievance regarding a disciplinary lateral job change may be grieved under the provisions of subsection (a)(3).

(4) Technical appointment complaints. The following complaints cannot be filed as a grievance but must be filed directly with civil service staff under the technical appointment complaint provisions in rule 8-3 [Technical Complaints]:

(A) Unsuccessful candidate. A complaint by an unsuccessful candidate regarding a technical appointment decision or arising out of the selection, appointment, or certification of a candidate.

(B) Employee whose appointment is revoked. A complaint by an employee whose appointment is revoked in compliance with rule 8-3 [Technical Complaints].

8-1.4 Grievance Decision by Appointing Authority

(a) Grievance review and decision. The appointing authority shall review the grievance and issue a written grievance decision, as provided in the regulations. If the appointing authority fails to answer the grievance within the time permitted in the regulations, the appointing authority is deemed to have denied the grievance.

(b) Appeal of grievance decision. The final grievance decision of the appointing authority is binding unless the grievant files a timely appeal of the decision, as authorized in rule 8-2 [Appeals of Grievance Decisions] and the civil service regulations.

[Rule 8-1 last amended effective August 26, 2007]

8-2 Appeals of Grievance Decisions

8-2.1 Appeal of Grievance Decision to Civil Service Authorized

A grievant may appeal a final grievance decision of an appointing authority to civil service staff, as authorized in the civil service rules and regulations.

8-2.2 Limitation on Grievance Appeals

A grievant is not authorized to file a grievance appeal unless the grievance alleges one or more of the following:

(a) A tangible adverse employment action resulting from discrimination prohibited in rule 1-8 [Prohibited Discrimination].

(b) A tangible adverse employment action resulting from reprisal prohibited by rule 2-10 [Whistleblower Protection].

(c) One or more of the following types of discipline imposed without just cause:

(1) Dismissal.

(2) Demotion.

(3) Suspension.

(4) Reduction in pay.

(5) Disciplinary lateral job change.

(6) Interim rating or *unsatisfactory* follow-up rating, as provided in rule 2-3.4(d) [Interim and Follow-up Ratings] and rule 3-6.5 [Grievance of Probationary Rating or Discipline].

(d) A tangible adverse employment action caused by the abolition or creation of a position.

(e) An arbitrary and capricious lateral job change resulting in substantial harm.

(f) Denial of compensation or supplemental military pay to which the grievant is entitled under the civil service rules and regulations.

(g) A tangible adverse employment action has occurred or will occur as the result of the actual or anticipated failure or refusal of the appointing authority to comply with Rule 2-14 [Rights of Employees Absent Due to Service in the Uniformed Services] or applicable regulations.

(h) A tangible adverse employment action taken in retaliation for the employee's good faith exercise of grievance or technical complaint rights provided in the civil service rules or regulations.

(i) An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) an agency work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.

(j) Any other action for which the civil service rules or regulations specifically permit a grievance appeal to be filed.

8-2.3 Further Limitations on Grievance Appeals

The following additional limitations apply to a grievance appeal unless the grievant alleges that a tangible adverse employment action resulted from an action of the appointing authority that violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]:

(a) **Probationary employee without status.** A probationary employee without status cannot appeal the final grievance decision of the appointing authority regarding any of the following:

(1) A probationary rating, an interim rating, or a follow-up rating.

(2) A decision to extend an employee's probationary term.

(3) A decision by the appointing authority to discipline the employee, including dismissal, during the probationary period or within 28 calendar days after the end of the probationary period.

(b) Probationary employee with status. A probationary employee with status cannot appeal the final grievance decision of the appointing authority regarding a decision to extend the employee's probationary term.

(c) Reprimand or counseling. An employee cannot appeal the final grievance decision of the appointing authority regarding a reprimand or counseling.

8-2.4 Civil Service Grievance Appeal Procedures

(a) Regulations. The state personnel director shall issue regulations governing the grievance appeal and arbitration procedures.

(b) Referral. If a grievance appeal is not administratively dismissed under rule 8-4 [Summary Dismissal], a hearing officer or arbitrator shall conduct an expeditious review in accordance with the civil service rules and regulations.

(1) Hearing officer. Unless the grievant elects arbitration under subsection (b)(2), the grievance appeal is referred to a hearing officer designated or appointed by the state personnel director.

(2) Arbitration alternative. As an alternative to the referral provided in subsection (b)(1), the grievant may elect to have a grievance appeal heard by an arbitrator.

(A) Cost. The grievant and the appointing authority shall share the cost of the arbitration equally.

(B) Applicable rules and regulations. An arbitrator shall decide a grievance appeal under the same civil service rules and regulations that would be applicable if the grievance appeal were heard by a hearing officer, except as otherwise specifically provided in the regulations governing arbitration.

(c) Decision. At the conclusion of the grievance appeal, the adjudicating officer shall issue a written decision setting forth findings of fact, conclusions of law, and any remedial orders.

(1) Attorney fees and costs prohibited. An adjudicating officer cannot award attorney fees, witness fees, costs, or other expenses.

(2) No interest on award. An adjudicating officer cannot award interest on any monetary award.

(3) Limitation on damages for limited-term appointments. An adjudicating officer cannot award to a grievant in a limited-term appointment, the senior

executive service, or the senior executive management assistant service, any damages for any period after the date of expiration of the grievant's term of appointment.

(4) Back-pay awards. Any back-pay award is limited to regularly scheduled hours and holidays for which the employee otherwise normally would have been paid. Back-pay may include only the employee's base rate of pay, shift differential authorized in rule 5-4.5 [Shift Differential], and prison employee premiums authorized in rule 5-5 [Additional Compensation: Prison Employees]. A back-pay award cannot include any other pay premium, including overtime, on-call, callback, explosives duty, out-of-state location, or emergency response premiums. All back-pay awards are subject to deduction of the following:

(A) Earnings in other employment or self-employment, except for previously-approved supplemental employment.

(B) Benefits from employer contributory income protection insurance.

(C) Benefits under workers' compensation, unemployment compensation, social security, and social welfare programs.

(5) Leave awards. An adjudicating officer may award sick and annual leave credits that would have normally accrued during a period of vacated discipline.

(6) Seniority awards. An adjudicating officer may award seniority credit and longevity compensation that would have normally accrued during a period of vacated discipline. Any such seniority credit does not count for classification or qualification purposes.

8-2.5 Further Appeal to Commission Authorized

A party that appeared and participated in a grievance appeal, including an arbitration, may file a further appeal of the final decision of the adjudicating officer to the civil service commission, as provided in the civil service rules and regulations.

8-2.6 Effective Date of Decision of Adjudicating Officer; Automatic Stay; Exception

(a) Effective date. A grievance appeal decision is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) a party files a further appeal to the civil service commission within 28 calendar days after the date the decision is issued. If a party files a timely appeal to the civil service commission within 28 calendar days after the date the decision was issued, the effective date of the decision is automatically stayed pending further order of the employment relations board or civil service commission.

(b) Exception; grievant's reinstatement ordered. If a final decision of an adjudicating officer orders an appointing authority to reinstate a grievant who had been dismissed for cause, the appointing authority, as a condition of further appeal to the civil service commission, shall either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision group insurance. The appointing authority shall continue the reinstatement or payment of base pay and benefits while the appeal to the commission is pending, as provided in the civil service regulations.

[Rule 8-2 last amended effective May 20, 2009]

8-3 Technical Complaints

8-3.1 Complaint Regarding Technical Decision Authorized

An authorized individual, appointing authority, or organization may file a technical complaint with civil service technical review staff, as provided in this rule and the regulations.

(a) Technical classification complaint. An employee directly affected by a technical classification decision, or the employee's appointing authority, may file a technical classification complaint.

(b) Technical disbursement complaint. An interested party authorized in rule 7-6.4 [Complaint Regarding Technical Decision] may file a technical disbursement complaint.

(c) Technical appointment complaint.

(1) After revocation of appointment. If, as the result of a civil service audit, a person's appointment is revoked, the person or the person's appointing authority may file a technical appointment complaint.

(2) After denial of appointment. An unsuccessful candidate who alleges that the selection, appointment, or certification process for the position violated a civil service rule or regulation may file a technical appointment complaint.

8-3.2 Time Limits

(a) Technical appointment complaint. An unsuccessful candidate who alleges that the selection, appointment, or certification process for a position violated a civil service rule or regulation must file a technical appointment complaint with civil service technical review staff within the following time limits:

(1) Notice mailed. If the appointing authority mailed or delivered notice to the candidate that the candidate was removed from the selection process or that another person was appointed to the position, the candidate must file the

technical appointment complaint no later than 14 calendar days after the later of (1) the effective date of the challenged appointment or (2) the date of the notice.

(2) No notice mailed. If the appointing authority does not mail or deliver notice to the candidate, the candidate must file the technical appointment complaint within 6 months after the effective date of the challenged appointment.

(b) Other technical complaints. A technical classification complaint or technical disbursement complaint must be filed within 14 calendar days after the date the civil service staff issued the original technical decision.

8-3.3 Civil Service Technical Review

(a) Referral to technical review officer. If the technical complaint is not administratively dismissed under rule 8-4 [Summary Dismissal], a technical review officer shall conduct an expeditious review in accordance with the civil service rules and regulations.

(b) Technical review procedures.

(1) Hearing not authorized. A technical review officer is not authorized to conduct a hearing.

(2) Technical appointment complaint; certified question. If the technical review officer determines that a technical appointment complaint raises a genuine issue as to any material fact that cannot be adequately determined under the technical complaint procedures, the technical review officer may certify one or more questions of fact to a hearing officer to conduct a hearing and issue a recommended decision to the technical review officer, as provided in the civil service regulations.

(3) Technical review decision. At the conclusion of the technical review, the technical review officer shall issue a final technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any. The final technical review decision shall be based on (1) the technical expertise of the review officer, (2) the civil service rules and regulations, (3) agency records, and (4) the documents and written submissions of the parties. In a review of a technical appointment complaint, the technical review officer shall also consider the written recommendation of the hearing officer on any certified question of fact.

8-3.4 Further Appeal to Commission Authorized

An interested party in a technical review proceeding may file an appeal of a final technical review decision, including a summary dismissal of the technical complaint, to the civil service commission, as provided in the civil service rules and regulations.

8-3.5 Effective Date of Decision of Technical Review Officer

(a) Technical classification review. A final technical review decision on a technical classification complaint is effective immediately upon issuance, unless a different effective date is specified in the decision.

(b) Technical disbursement review. A final technical review decision on a technical disbursement complaint is effective as follows:

(1) Request approved.

(A) If an initial civil service staff decision approving a request became effective under rule 7-6.3 [Effective Date of Staff Decision], a decision of a technical review officer also approving the request is effective immediately and the appointing authority may continue to make disbursements for the personal services until the civil service commission or a court of competent jurisdiction rules otherwise.

(B) If civil service staff initially denied a request, a technical review decision approving a request is effective 15 calendar days after the date the decision is issued, unless a later date is specified in the decision. An interested party intending to appeal the technical review decision to the civil service commission may file a request that the state personnel director order the effective date of the decision stayed pending appeal. The request for a stay must be filed within 14 calendar days after the date the technical review decision is issued. The director may stay the effective date of the technical review decision pending appeal to the commission if the director determines that (1) it is unlikely that the request meets any of the standards for approval and (2) a stay is in the best interests of the classified service.

(2) Request denied. If civil service staff initially approved a request, a technical review decision disapproving the request is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) an interested party files a timely application for leave to appeal to the civil service commission within 28 calendar days after the date the decision was issued. If an interested party files a timely application for leave to appeal, the effective date of the technical review decision is automatically stayed and the appointing authority may continue to make disbursements for the personal services until the civil service commission or a court of competent jurisdiction rules otherwise.

(c) Technical appointment complaint. A technical review decision on a technical appointment complaint is final and binding on the parties 29 calendar days after the date the decision was issued unless either (1) the decision provides for a later effective date or (2) an interested party files a further appeal to the civil service commission within 28 calendar days after the date of the decision. If a party files a timely application for leave to appeal, the effective date of the decision is

automatically stayed pending further order of the employment relations board or civil service commission.

8-3.6 Exclusive Technical Appointment Reviews

(a) Exclusive proceeding. The technical appointment review is the exclusive proceeding for any candidate or employee, including an exclusively represented employee, to bring a complaint that arises out of (1) the selection, appointment, or certification of a candidate for a position in the classified service or (2) the revocation of an appointment after a civil service audit. A candidate, employee, and appointing authority are prohibited from using either the civil service grievance process provided in rule 8-1 [Grievances] or a negotiated grievance process permitted by rule 6-9.6 [Negotiated Grievance Procedures]. This exclusive procedure is not applicable when a collective bargaining agreement permitted in rule 3-5 [Relation to Collective Bargaining] authorizes a different procedure regarding a reassignment, transfer, layoff, or recall.

(b) Incumbent employee. If a technical appointment complaint is filed, the technical appointment review is the exclusive proceeding in which an incumbent employee whose appointment is challenged may appear and defend the employee's own selection, appointment, or certification. An incumbent employee whose appointment is challenged and who is given notice of the technical appointment complaint and the opportunity to appear and defend the appointment in the technical appointment review is bound by the final technical appointment decision. The incumbent employee cannot later file a separate technical complaint or grievance regarding either (1) the incumbent employee's original selection, appointment, or certification or (2) the result of the technical appointment decision, including revocation of the incumbent employee's appointment.

[Rule 8-3 last amended effective December 8, 2010]

8-4 Summary Dismissal of Grievance Appeal or Technical Complaint

A civil service adjudicating officer may summarily dismiss a grievance appeal or technical complaint for any of the following reasons:

(a) Not authorized. The adjudicating officer lacks the authority to consider the grievance appeal or technical complaint under the civil service rules and regulations for either of the following reasons:

(1) The grievant or technical complainant is not authorized to file the grievance, grievance appeal, or technical complaint.

(2) The subject matter of the grievance, grievance appeal, or technical complaint is not reviewable in the forum selected.

(b) Lack of jurisdiction. Civil service staff or the civil service commission lacks jurisdiction over a necessary party or over the subject matter of the grievance appeal or technical complaint.

(c) Untimeliness. The grievance, grievance appeal, or technical complaint was not filed timely.

(d) Another action pending. Another civil service action has been initiated between the same parties involving substantially the same grievance or technical complaint.

(e) Barred by prior claim. Substantially the same grievance or technical complaint was adjudicated to finality in another action between the same parties.

(f) Failure to respond. A grievant or technical complainant fails to respond to a deficiency notice issued by civil service staff, as provided in the civil service rules and regulations.

[Rule 8-4 last amended effective August 26, 2007]

8-5 Superintending Control by State Personnel Director

Without prior notice to the parties or the adjudicating officer, the state personnel director may issue an order temporarily staying further action on any matter pending before an adjudicating officer. After notice to the parties and an opportunity to be heard, the state personnel director may exercise superintending control over any adjudicating officer on any pending matter, including, but not limited to, a grievance appeal or technical complaint.

[Rule 8-5 last amended effective March 18, 2001]

8-6 Enforcement of Decision of Adjudicating Officer

After a decision of an adjudicating officer becomes effective, every party shall promptly and fully comply with the decision and any remedial orders, unless otherwise ordered by the state personnel director, employment relations board, or civil service commission.

[Rule 8-6 last amended effective March 18, 2001]

8-7 Appeal to Civil Service Commission

8-7.1 Appeal to Civil Service Commission

When authorized in the civil service rules, a party aggrieved by the final decision of an adjudicating officer may appeal the decision to the civil service commission. An appeal to the commission must be filed with the employment relations board, as provided in the civil service rules and regulations. Unless an administrative officer recommends dismissal of the appeal as provided in rule 8-7.4 [Summary Dismissal of Claim or Application], the employment relations board shall make a recommendation to the commission as provided in rule 1-15.4 [Duties].

8-7.2 Claim and Application

(a) Further appeal as of right by employee. An employee with status who was dismissed for just cause may appeal as of right from a final decision of an adjudicating officer upholding the dismissal. The state personnel director shall provide for an expedited appeal procedure in the regulations.

(b) Further appeal as of right by appointing authority. An appointing authority that dismissed an employee for just cause may appeal as of right from a final decision of an adjudicating officer reinstating the employee. The state personnel director shall provide for an expedited appeal procedure in the regulations.

(c) Further appeal by application and leave granted. A party aggrieved by any other final decision of an adjudicating officer may appeal to the civil service commission upon application and leave granted.

8-7.3 Time Limits for Appeal to Commission

(a) Time limits for appeal to commission. Except where another rule or a regulation establishes a shorter period, a claim of appeal or an application for leave to appeal must be received by the employment relations board within 28 calendar days after the date the final decision of the adjudicating officer is issued.

(b) Proof of service. The party filing the appeal must serve a copy of the claim or application on all other parties and provide proof of the service within 3 calendar days after the claim or application is filed with the board.

(c) Late filing. If a claim or application is not filed timely, the claim or application must be accompanied by an affidavit setting forth either good cause or special extenuating circumstances for the delay.

(1) The administrative officer may accept a claim or application up to 28 calendar days late if the appellant demonstrates good cause for the delay that was not due to the appellant's own negligence.

(2) The administrative officer may accept a claim or application filed more than 28 calendar days but less than one year late if the appellant demonstrates special extenuating circumstances for the delay.

(3) A claim or application filed more than one year late cannot be accepted or considered under any circumstances.

8-7.4 Summary Dismissal of Claim or Application

A civil service administrative officer may recommend that the civil service commission summarily dismiss a claim or application for any of the following reasons:

(a) **Not authorized.** The appellant is not authorized to file the appeal or the claim or application is not subject to review by the commission.

(b) **Lack of jurisdiction.** Civil service staff or the civil service commission lacks jurisdiction over a necessary party or over the subject matter of the appeal.

(c) **Untimeliness.** The claim or application is untimely.

(d) **Another action pending.** Another civil service action has been initiated between the same parties involving substantially the same matter.

(e) **Barred by prior claim.** Substantially the same matter was adjudicated to finality in another action between the same parties.

(f) **Failure to respond.** A grievant or technical complainant fails to respond to a deficiency notice issued by civil service staff, as provided in the civil service rules and regulations.

8-7.5 Grounds for Granting an Application for Leave to Appeal

(a) **Procedure.** If an administrative officer does not recommend summary dismissal of the application for leave to appeal, the employment relations board shall consider the application as provided in rule 1-15.4(b) [Duties] and the applicable regulations.

(b) **Grounds for granting leave to appeal.** In the discretion of the civil service commission, leave to appeal may be granted in any matter in which it is alleged that (1) the decision of the adjudicating officer is erroneous, (2) the decision violates article 11, section 5, of the Michigan constitution or is otherwise contrary to law, including the civil service rules and regulations, or (3) the question presented is of major significance to the classified service.

8-7.6 Decision by Civil Service Commission

The civil service commission shall review and act on the recommendation of the administrative officer or the employment relations board, as provided in rule 1-15.5 [Final Action by the Commission].

8-7.7 Effective Date of Decision of Commission

A decision of the civil service commission is effective when issued unless a different effective date is specified in the decision.

8-7.8 Commission May Assume Jurisdiction

The civil service commission reserves the authority to assume jurisdiction and to take appropriate action in any proceeding at any time before the employment relations board issues its final recommendation.

8-7.9 Appeal of Final Commission Decision to Circuit Court

(a) Service of complaints and petitions for review. If authorized by law, a party may file a petition for review of a final decision of the civil service commission in the Michigan circuit court. Any complaint or petition filed challenging any decision, rule, or regulation of the commission must name the commission as a party and must be served on the commission at the office of the state personnel director in Lansing, Michigan.

(b) Settlement of claims and lawsuits. Where a proposed agreement resolving a claim or lawsuit contains a provision pertaining to a decision, rule, or regulation of the commission, the appointing authority or its designee shall consult with the state personnel director or the director's designee before the agreement is finalized to insure that it is consistent with all civil service decisions, rules, and regulations. The commission is not bound by any provision pertaining to a civil service decision, rule, or regulation unless the director or the director's designee has approved the provision.

[Rule 8-7 last amended effective August 26, 2007]

[End of Chapter 8]

Chapter 9

DEFINITIONS

9-1 Definitions

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

Act of Violence

Act of violence means any intentional, reckless, or grossly negligent act that would reasonably be expected to cause physical injury or death to another person.

[Definition added effective September 1, 2001]

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.

[Definition last amended effective March 18, 2001]

Adjudicating Officer

Adjudicating officer means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.

[Definition last amended effective March 18, 2001]

Administrative Officer

Administrative officer means the state personnel director or a person authorized by the state personnel director to take administrative action on matters filed with civil service staff or the civil service commission.

[Definition last amended effective August 26, 2007]

Advisory

Advisory means a written statement issued by the civil service commission, state personnel director, or other civil service staff to provide direction, clarification, or other necessary or useful information.

[Definition last amended effective August 26, 2007]

Agency

Agency means an organizational subdivision of the state of Michigan for which a separate appointing authority has been designated, including, but not limited to, a principal department, autonomous entity, agency of convenience, board, or commission.

[Definition added effective August 26, 2007]

Agency of Convenience

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

[Definition last amended effective March 18, 2001]

Alcohol Test

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

[Definition last amended effective March 18, 2001]

Anything of Value

Anything of value means any tangible or intangible item, including, but not limited to, the following:

(a) Services.

(b) Entertainment.

(c) Recreation.

(d) Travel.

(e) Food and beverages.

(f) Event tickets.

(g) Gifts.

(h) Loans.

(i) Money.

(j) Special favors or privileges not available to the general public.

[Definition last amended effective March 27, 2003]

Applicant

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

[Definition last amended effective March 18, 2001]

Applicant Pool

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

[Definition last amended effective August 26, 2007]

Appointing Authority

Appointing authority means each of the following:

(a) A single executive heading a principal department or autonomous entity.

(b) A chief executive officer of a principal department or autonomous entity headed by a board or commission.

(c) The state personnel director.

(d) A person designated by any of the preceding as responsible for administering the personnel functions of the department, autonomous entity, or other agency.

[Definition last amended effective August 26, 2007]

Appointment

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Base Salary

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

[Definition last amended effective March 18, 2001]

Board

Board means the employment relations board.

[Definition last amended effective March 18, 2001]

Boards and Commissions

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

[Definition last amended effective August 26, 2007]

Candidate

Candidate means a qualified person who requested to be considered for appointment to a specific position in the classified service and who was considered by the appointing authority.

[Definition last amended effective March 18, 2001]

Candidate Pool

Candidate pool means qualified persons considered for a position.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Civil Service Staff

Civil service staff means the employees of the civil service commission, including the state personnel director.

[Definition added effective August 26, 2007]

Class Cluster

Class cluster means two or more classifications identified by the state personnel director as having substantially equivalent qualifications for the purposes of implementing a job change, layoff, or recall.

[Definition added effective January 1, 2002]

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.

[Definition last amended effective March 18, 2001]

Classification Level

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

[Definition last amended effective March 18, 2001]

Classified Service

Classified service means the Michigan state classified civil service.

[Definition last amended effective March 18, 2001]

Class Series

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Commission

Commission means the Michigan civil service commission.

[Definition last amended effective March 18, 2001]

Compensation Plan

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

[Definition last amended effective March 18, 2001]

Confidential Position

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

(a) A position assigned responsibility for directly assisting a person occupying a managerial position.

(b) A position assigned responsibility for investigating other employees.

(c) A position that is responsible for providing personal protection services to state elected officials.

[Definition last amended effective January 1, 2002]

Constitution

Constitution means the Michigan constitution of 1963, as amended.

[Definition last amended effective August 26, 2007]

Continuing Status

Continuing status means status achieved during the current continuous period of employment in the classified service.

[Definition last amended effective March 18, 2001]

Contractor

Contractor means an independent contractor or special personal services employee who enters into a contract with a state agency to provide personal services.

[Definition last amended effective October 1, 2001]

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, nondisciplinary, 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.

(f) Time on a temporary layoff authorized in rule 2-4.4

[Definition last amended effective May 2, 2007]

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.

[Definition last amended effective March 18, 2001]

Demotion

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Designated Representative

Designated representative 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 (1) award or recommend the award, extension, or renewal of the contract or (2) approve or authorize any payments under the contract.

(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 or court and for which the classified employee has any enforcement, adjudicatory, or representational responsibility.

(e) A business, entity, or person that performs work for the state that is inspected or approved by the classified employee.

(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).

[Definition last amended effective March 27, 2003]

Director

Director means the state personnel director.

[Definition last amended effective March 18, 2001]

Disability

(a) ***Disability*** means any of the following:

(1) A determinable physical or mental characteristic of a person, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

(A) substantially limits one or more of the major life activities of the person, and

(B) is unrelated to (1) the person's ability to perform the duties of a particular job or position or (2) the person's qualifications for employment or promotion.

(2) A history of a determinable physical or mental characteristic described in subsection (a)(1).

(3) Being regarded as having a determinable physical or mental characteristic described in subsection (a)(1).

(b) *Disability* does not include either of the following:

(1) A determinable physical or mental characteristic caused by the current illegal use of a controlled substance by the person.

(2) A determinable physical or mental characteristic caused by the use of alcohol by the person if that physical or mental characteristic prevents the person from performing the duties of the person's job.

[Definition last amended effective March 18, 2001]

Disbursements for Personal Services outside the Classified Service

Disbursements for personal services outside the classified service means disbursements of appropriated funds by a state agency for the personal services of a person who is not a classified employee of the state.

[Definition added effective October 1, 2001]

Discriminatory Harassment

Discriminatory harassment means unwelcome advances, requests for favors, and other verbal or physical conduct or communication based on religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, disability, or genetic information under any of the following conditions:

(a) Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment.

(b) Submission to or rejection of the conduct or communication by a person is used as a factor in decisions affecting the person's employment.

(c) The conduct or communication has the purpose or effect of substantially interfering with a person's employment or creating an intimidating, hostile, or offensive employment environment.

[Definition last amended effective February 20, 2004]

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.

[Definition last amended effective March 18, 2001]

Drug Test

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

[Definition last amended effective March 18, 2001]

Eligible Position

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

[Definition last amended effective March 18, 2001]

Emergency Active Duty

Emergency active duty means active duty in a uniformed service in support of emergency operations during a national emergency declared by the president, state emergency declared by the governor, or war declared by the United States Congress.

[Definition added effective May 17, 2005]

Employee

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

[Definition last amended effective March 18, 2001]

Employee Status Code

Employee status code means the following types of appointment status assigned to an employee for the purposes of determining pay, benefits, and employment preference:

(a) Full-time indefinite career appointment.

(b) Part-time indefinite career appointment.

(c) Limited-term career appointment (full-time and part-time).

(d) Intermittent career appointment.

(e) Seasonal career appointment.

(f) Noncareer appointment.

[Definition last amended effective July 24, 2003]

Employer

Employer means each of the following:

(a) The appointing authority responsible for (1) exercising the constitutional and statutory administrative and executive authority of a principal department or autonomous entity and (2) implementing the employment relations policy of the governor, the secretary of state, or the attorney general.

(b) In the context of primary collective bargaining negotiations, *employer* means the state employer, acting in consultation with elected department directors.

[Definition last amended effective August 26, 2007]

Employment Preference

Employment preference means a process for determining an employee's rights when a reduction in force occurs.

[Definition last amended effective March 18, 2001]

Examination

Examination means an appraisal method.

[Definition last amended effective March 18, 2001]

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 civil service staff position.

(e) A position in the office of the state employer.

[Definition last amended effective August 26, 2007]

Exclusive Representative

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

[Definition last amended effective March 18, 2001]

Explosive

Explosive means any bomb, grenade, missile, or other dangerous device designed to expand suddenly and release internal energy resulting in an explosion.

[Definition added effective September 1, 2001]

Firearm

Firearm means a weapon from which a dangerous projectile may be expelled by an explosive, gas, or air.

[Definition added effective September 1, 2001]

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 civil service staff.

[Definition last amended effective August 26, 2007]

Genetic Information

Genetic information means information about a gene, gene product, or inherited characteristic of an individual derived from the individual's family history or a genetic history.

[Definition last amended effective March 18, 2001]

Genetic Test

Genetic test means the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. *Genetic test* does not include a routine physical examination or a routine analysis including, but not limited to, a chemical analysis of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.

[Definition last amended effective March 18, 2001]

Good Cause

Good cause means an acceptable excuse for failing to file or take other required action timely. *Good cause* does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.

[Definition last amended effective March 18, 2001]

Grade

Grade means classification level.

[Definition last amended effective March 18, 2001]

Grant

Grant means a congressional or legislative appropriation that is passed through a state agency directly to, and for the benefit of, the recipient of the grant.

[Definition added effective October 1, 2001]

Grievance

Grievance means a complaint, authorized in rule 8-1 [Grievances], filed by a classified employee regarding an action by an appointing authority or civil service human resources staff acting pursuant to any assignment, authority, or direction of an appointing authority.

[Definition last amended effective August 26, 2007]

Group Insurance Benefits

Group insurance benefits means eligibility, enrollments, premiums, coverages, exclusions, costs, reimbursements, payments, copayments, deductibles, coordination of benefits, or other benefits authorized under the group insurance plans.

[Definition last amended effective May 17, 2005]

Hearing Officer

Hearing officer means a person authorized by the state personnel director to administer oaths and conduct hearings as provided in the civil service rules and regulations.

[Definition last amended effective March 18, 2001]

Hire

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

[Definition last amended effective August 26, 2007]

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.

[Definition last amended effective March 18, 2001]

Hours in Pay Status

Hours in pay status means the hours an employee reports that are counted in the pay class "HRS: Hours in Pay Status" as defined in the HRMN system.

[Definition added effective October 9, 2003]

Human Resources Management Network (HRMN)

Human Resources Management Network (HRMN) means the integrated network delivering payroll, personnel, and employee benefits functionality and data exchange among agencies and third parties.

[Definition last amended effective March 18, 2001]

Immediate Family

Immediate family in rule 2-8 [Ethical Standards and Conduct] means an employee's grandparent, parent, parent-in-law, stepparent, sibling, spouse, child, or stepchild.

[Definition added effective March 27, 2003]

Indefinite Appointment

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Interested Party

(a) ***Interested party,*** in a review of a technical disbursement decision, means a party that filed a request or a written appearance in the initial civil service staff review of the request.

(b) ***Interested party***, in any other technical review, means a party that filed a technical complaint or a written appearance in the technical complaint review proceeding.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Job Title

Job title is a HRMN term that represents class series.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Labor Relations Appeal

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

[Definition last amended effective August 26, 2007]

Lateral Job Change

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Limited-recognition Organization

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

[Definition last amended effective March 18, 2001]

Limited-term Appointment

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

[Definition last amended effective March 18, 2001]

Longevity

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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 an agency or one of its subdivisions.

(b) Administering the policies and programs of an agency or one of its subdivisions.

(c) Managing, administering, or controlling a local branch office of an agency.

(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, an agency, or one of its subdivisions.

[Definition last amended effective August 26, 2007]

Mandatory Subjects of Bargaining

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Noncareer Appointment

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

[Definition last amended effective March 18, 2001]

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, but excluding time on a temporary layoff authorized in rule 2-4.4.

[Definition last amended effective May 2, 2007]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Party

Party means any of the following persons or organizations:

(a) ***Party***, in a grievance appeal, means any of the following:

(1) The employee who filed the grievance.

(2) The appointing authority that issued the final grievance decision being appealed.

(b) ***Party***, in a technical classification review, means any of the following:

(1) An employee whose classification is directly affected by a technical classification decision.

(2) The appointing authority of an employee in subdivision (b)(1).

(3) Any other interested person with a demonstrable special interest in the technical classification decision that is granted permission to participate in the review.

(c) ***Party,*** in a review of a technical disbursement decision, means any of the following:

(1) The appointing authority that files a request under rule 7-6 [Prior Written Approval by Civil Service Staff] or rule 7-7 [Preauthorized Approval] regarding disbursements for personal services.

(2) An exclusive representative of a classified employee with a direct interest in the technical disbursement decision.

(3) A nonexclusively represented classified employee with a direct interest in the technical disbursement decision.

(4) A limited recognition organization appearing on behalf of a classified employee with a direct interest in the technical disbursement decision.

(5) The office of the state employer.

(6) Any other person or organization with a demonstrable special interest in the technical disbursement decision who (1) petitions to participate in the civil service staff review and (2) is authorized by civil service staff to participate in the review.

(d) ***Party***, in a review of a technical appointment decision, means any of the following:

(1) An unsuccessful candidate who files a technical appointment complaint.

(2) An employee whose appointment is revoked by civil service staff in an audit review.

(3) An employee whose appointment is challenged in a technical appointment complaint.

(4) The appointing authority of an employee whose appointment is revoked in an audit review or challenged in a technical appointment complaint.

(e) ***Party***, in an inquiry about a complaint filed with the state personnel director under rule 7-9 [Complaints and Investigations], means any of the following:

(1) The person filing the complaint.

(2) The appointing authority that made or authorized the questioned disbursements.

(3) The office of the state employer.

(4) Any other person or organization with a demonstrable special interest in the complaint who (1) petitions the state personnel director to participate in the inquiry and (2) is authorized by the director to participate in the inquiry.

[Definition last amended effective December 8, 2010]

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, agency objectives, agency 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.

[Definition last amended effective March 18, 2001]

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 [Rights of Employer], unless the management right is a prohibited subject of bargaining.

[Definition last amended effective March 18, 2001]

Personal Services

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

[Definition last amended effective March 18, 2001]

Position

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

[Definition last amended effective March 18, 2001]

Position Title

Position title is a HRMN term that represents classification.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Primary Negotiations

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

[Definition last amended effective March 18, 2001]

Principal Department

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

[Definition last amended effective March 18, 2001]

Process Level

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

[Definition last amended effective March 18, 2001]

Prohibited Practices

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

[Definition last amended effective March 18, 2001]

Promotion

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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 an agency 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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

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 or classification level.

[Definition last amended effective March 18, 2001]

Regulation

Regulation means a formal, general written enactment issued by the state personnel director that: (1) exercises, implements, or applies powers granted to the director in article 11, section 5, of the constitution; (2) exercises, implements, or applies powers granted to the director or civil service staff by civil service rule; or (3) prescribes the procedures or practices of civil service staff.

[Definition last amended effective August 26, 2007]

Rehabilitation Program

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

[Definition last amended effective March 18, 2001]

Reinstatement

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

[Definition last amended effective March 18, 2001]

Request

Request means a request submitted by an appointing authority to civil service staff under rule 7-6 [Prior Written Approval by Civil Service Staff], for approval to make disbursements for personal services to a person who is not a classified state employee, or under rule 7-7 [Preauthorized Approval], to add personal services to the preauthorized list.

[Definition last amended effective August 26, 2007]

Rule

Rule means a statement of general applicability approved by the civil service commission and published by the state personnel director that (1) exercises, implements, or applies powers granted in article 11, section 5, of the constitution or (2) prescribes the procedures or practices of the civil service commission or civil service staff. A rule has the force and effect of law unless a court of competent jurisdiction determines that the rule is unconstitutional or otherwise contrary to law.

[Definition last amended effective August 26, 2007]

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.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Seniority

Seniority means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

[Definition added effective May 17, 2005]

Service in the Uniformed Services

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, a period for which an employee is absent from employment for the purpose of an examination to determine the fitness of the employee to perform any such duty, and a period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized under applicable federal law [10 USC §12503 or 32 USC §115].

[Definition added effective May 17, 2005]

Sexual Orientation

Sexual orientation means actual or imputed heterosexuality, homosexuality, or bisexuality.

[Definition added effective February 20, 2004]

Shift Differential

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

[Definition last amended effective March 18, 2001]

Special Extenuating Circumstances

Special extenuating circumstances means a compelling excuse for the failure to file a matter timely that arises out of one of the following:

(a) An intentionally or fraudulently misleading action by an appointing authority or party that prevented the filing.

(b) Serious physical or mental incapacity of the person that prevented the filing.

(c) Extraordinary unforeseen circumstances outside the control of the person that prevented the filing.

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

State Employer

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

[Definition last amended effective March 18, 2001]

State Office

State office in rule 1-12 [Political Activities] 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.

[Definition last amended effective March 18, 2001]

State Workplace

State workplace means an office or building owned or leased by the state in which classified employees are assigned or work. *State workplace* includes any state-owned or leased common grounds or parking areas used by classified employees assigned to or working in the office or building.

[Definition added effective September 1, 2001]

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.

[Definition last amended effective March 18, 2001]

Status Classification

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

[Definition last amended effective March 18, 2001]

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.

[Definition last amended effective March 18, 2001]

Subclass

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

[Definition last amended effective March 18, 2001]

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 agency, 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.

[Definition last amended effective August 26, 2007]

Supplemental Employment

Supplemental employment means employment, including self-employment, outside the classified service with any business or entity.

[Definition added effective March 27, 2003]

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 specifically authorized by civil service rule or regulation to file a technical complaint.

[Definition last amended effective March 18, 2001]

Technical Complaint

Technical complaint means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.

[Definition last amended effective March 18, 2001]

Technical Decision

Technical decision includes each of the following individual decisions:

(a) ***Technical classification decision*** means a civil service staff decision (1) classifying a position in the classified service or (2) making a working-out-of-class determination.

(b) ***Technical disbursement decision*** means a civil service staff decision authorized under rule 7-6 [Prior Written Approval by Civil Service Staff] or rule 7-7 [Preauthorized Approval] regarding disbursements for personal services.

(c) ***Technical appointment decision*** means (1) a decision of an appointing authority appointing a candidate to a position in the classified service or (2) a decision of civil service staff certifying or revoking an appointment to a position in the classified service.

[Definition last amended effective December 8, 2010]

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.

[Definition last amended effective March 18, 2001]

Test-designated Employee

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

[Definition last amended effective March 18, 2001]

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.

(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.

[Definition last amended effective March 18, 2001]

Threat of Violence

Threat of violence means any intentional communication or other act that threatens an act of violence and would cause a reasonable person to feel terrorized, threatened, or fear physical injury or death to oneself or another person.

[Definition added effective September 1, 2001]

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.

[Definition last amended effective March 18, 2001]

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, lobbying, labor relations training, and organizing.

[Definition last amended effective March 18, 2001]

Uniformed Services

Uniformed services means all of the following:

(a) The armed forces of the United States, including the army, navy, marine corps, air force, coast guard, army reserve, naval reserve, marine corps reserve, air force reserve, and coast guard reserve.

(b) The army national guard and the air national guard when engaged in federal or state active duty for training, inactive duty training, or full-time national guard duty.

(c) The commissioned corps of the public health service.

(d) The National Disaster Medical Service (NDMS), for service performed as an intermittent disaster-response appointee upon activation of the NDMS or participation in a related training program, as authorized in 42 USC §300hh-11(e)(3)(A).

(e) Any other category of persons designated by the president in time of war or national emergency.

[Definition last amended effective August 26, 2007]

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.

[Definition last amended effective March 18, 2001]

Unrelated to the Person's Ability

Unrelated to the person's ability means, with or without accommodation, a person's disability does not prevent the person from performing the duties of a particular job or position.

[Definition last amended effective March 18, 2001]

Working out of Class

Working out of class means being temporarily assigned to and performing the duties and responsibilities of another classification, in accordance with the standards in rule 4-5 [Working out of Class].

[Definition added effective January 1, 2002]

[Rule 9-1 last amended effective December 19, 2007]

[End of Chapter 9]

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