

REGULATION

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Authority: Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules.			
Subject: UNFAIR LABOR PRACTICE CHARGES			

TABLE OF CONTENTS

1. PURPOSE	1
2. CIVIL SERVICE COMMISSION RULE REFERENCE	1
3. STANDARDS	3
A. Filing.....	3
B. Answering.....	4
C. Hearings.....	4
D. Appeals.....	5
E. Authorized Representation in ULP Charges.....	5

1. PURPOSE

This regulation provides procedures for filing an unfair labor practice (ULP) charges ~~s-with Civil Service staff.~~

2. CIVIL SERVICE COMMISSION RULE REFERENCE

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at www.michigan.gov/mdcs.

Rule 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.

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Rule 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 6-12 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, 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 6-13 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.

3. STANDARDS

A. Filing.

1. **Delegation.** The State Personnel Director delegates administration of unfair labor practice (ULP) charges to the Civil Service Hearings Office, Employee Relations, and Mediation (HERMCSHO).
2. **Time Limits.** An employee, employee organization, or employer may file a written unfair labor practice charge with HERM the CSHO within six weeks of becoming aware of the cause of the charge. ~~An unfair labor practice ULP~~ charge can be filed up to six months after the ~~unfair labor practice ULP~~ occurred, if good cause for the untimely filing is demonstrated. No charge can be filed for an ~~unfair labor practice ULP~~ that occurred more than six months before the filing date. If an administrative officer finds good cause and accepts a late appeal, any party may request the assigned hearing officer to review the finding *de novo*.
3. **Charges.** ~~An unfair labor practice ULP~~ charge filing must include the following:
 - a. The name and signature of the charging party; and the name of any representative filing the charge.
 - b. ~~and~~ the name of the charged party (i.e., respondent).
 - bc. A citation of the specific ~~unfair labor practices ULP~~, as defined in rules 6-8, 6-11 and 6-12, that are alleged to have occurred.
 - ed. A clear, concise, and complete statement of facts supporting each alleged ~~unfair labor practice ULP~~, including dates, ~~times, and~~ locations, and context of each alleged act.
 - de. A pP proof of service of the charge upon the ~~charged party~~ respondent.
4. **Service.** When submitting a ULP charge to the CSHO, ~~the~~ charging party must simultaneously serve a complete copy of the charge upon the ~~charged party~~ respondent.
5. **Administrative Review.** If a charging party does not meet the filing requirements in this regulation, HERM the CSHO shall issue a notice of deficiency and allow the party 14 calendar days to correct the deficiency.
6. **Administrative Dismissal.** An adjudicating officer may administratively dismiss a ~~an unfair labor practice ULP~~ charge for any of the following reasons:
 - a. **Not authorized.** The charging party is not authorized to file the charge against the respondent. This includes attempts to file ULP charges based on the rights of other parties, such as ULP claims filed by an employee based on Rules 6-11.2, 6-11.4, and 6-12.3 or claims filed by the employer based on Rules 6-8.1, 6-12.1 and 6-12.2.

- b. **Failure to state a claim.** The charging party has not ~~addressed an~~ alleged a violation of a right specifically enumerated in rules 6-8, 6-11, or 6-12.
- c. **Lack of jurisdiction.** Civil Service lacks jurisdiction over a necessary party or the subject matter of the charge.
- d. **Untimeliness.** The charging party has not filed in a timely manner.
- e. **Barred by prior claim.** Substantially the same charge was adjudicated to finality in another action between the same parties.
- f. **Noncompliance.** The charging party has failed to timely correct a deficient filing.

B. Answering.

Each ~~charged party~~respondent may file a signed, written answer to the charge with ~~HERM~~the CSHO within 28 calendar days of the mailing date of the charge. A copy of the answer must be simultaneously served upon the charging party and a proof of service submitted to ~~HERM~~the CSHO. A non-party wishing to participate in the consideration of a ULP charge must file a motion to intervene with the CSHO. If assigned for hearing, the hearing officer shall rule on the motion to intervene. Failure to intervene will preclude a non-party from involvement in any further appeals.

C. Hearings.

1. **Scheduling.** If the ~~unfair labor practice~~ULP charge meets the requirements of this procedure, ~~HERM~~the CSHO shall designate an impartial hearing officer and schedule a hearing to take evidence on the charge. The administrative officer may offer voluntary mediation to the parties.
2. **Testimony.** At the hearing the parties may call, examine, and cross-examine witnesses and may introduce into the record documentary and other evidence.
3. **Applicability of Regulation 8.01.** The following procedural sections of Regulation 8.01, *Grievance and Grievance Appeal Procedures*, shall apply to hearings under this regulation, except that references to "grievance," "grievances," and "grievance appeal" therein shall be replaced with "ULP charge," and "grievant" therein shall be replaced with "charging party":
 - a. § 4.B.4, *Mediation.*
 - b. § 4.B.6, *Limitation on Communications.*
 - c. § 4.B.7, *Disqualification of Hearing Officer.*
 - d. § 4.B.8, *Prehearing Conference.*
 - e. § 4.B.9, *Submissions to Hearing Officer; Proof of Service.*
 - f. § 4.B.10, *Summary Disposition without a Hearing.*
 - g. § 4.B.11, *Hearing Procedures.*
 - h. § 4.B.12, *Orders of Appearance, Subpoenas, and Discovery.*
34. **Decision.** The hearing officer shall issue a written decision. The hearing officer shall dismiss or sustain each charge in whole or part. The hearing officer shall order that the respondent (1) cease and desist any ~~unfair labor practices~~ULPs

found and (2) take action to remedy their effects. The hearing officer shall not award any attorney fees, witness fees, costs, or other expenses.

D. Appeals.

The decision of a hearing officer in an ~~unfair labor practice~~ ULP charge must contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission within 28 calendar days after the date the final decision of the hearing officer is issued, as provided in rule 6-14.3. A ULP decision becomes final and binding on the parties 29 calendar days after its issuance, unless the decision provides for a later effective date or a timely appeal is filed. A decision is automatically stayed pending resolution of a timely application for leave to appeal.

E. Authorized Representation in ~~Unfair Labor Practice~~ ULP Charges.

The provisions of § 4.D of Regulation 8.01, *Grievance and Grievance Appeal Procedures*, shall apply to representation and administrative leave under this regulation, except that references to "grievance" and "grievance appeal" therein shall be replaced with "ULP charge," and "grievant" therein shall be replaced with "charging party."

- ~~1. By nonexclusively represented employees. A nonexclusively represented employee who is a party in an unfair labor charge may represent himself or herself or may designate as an authorized representative (1) an employee or agent of a limited-recognition organization, (2) an attorney, or (3) another nonexclusively-represented classified employee.~~
- ~~a. Administrative leave. A charging party shall lose no normal pay or leave credits for necessary travel to and attendance at proceedings scheduled by Civil Service staff.~~
 - ~~(1) If a representative and charging party are employed by the same agency, the appointing authority shall release the representative from regularly scheduled work without loss of normal pay or leave credits to attend proceedings scheduled by Civil Service.~~
 - ~~(2) If the representative and charging party are not employed by the same agency, the representative may be absent from the workplace to attend the Civil Service proceedings only if the representative's appointing authority has approved annual or personal leave.~~
- ~~b. Limitations.~~
 - ~~(1) Administrative leave for investigations by employees or representatives is not authorized.~~
 - ~~(2) Overtime, consultation time over 15 minutes, and expenses, including travel expenses, are not authorized.~~
 - ~~(3) An appointing authority may limit the granting of administrative leave to three spokespeople from among a group of charging parties.~~
- ~~2. By exclusively represented employees. If an exclusively represented employee files an unfair labor charge, the employee may represent himself or herself or may designate as an authorized representative (1) an employee or agent of the employee's exclusive representative, (2) an attorney, or (3) another exclusively represented classified employee who is in the same bargaining unit. If the a charge is filed against the a exclusive representative labor organization, the charging party~~

employee cannot designate an employee or agent of the ~~exclusive-representative labor organization~~ as ~~the charging party's~~his or her authorized representative without the ~~express~~-written consent of the ~~exclusive-representative~~labor organization.

CONTACT

Questions regarding this regulation should be directed to the Civil Service Hearings Office, ~~Employee Relations, and Mediation~~, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, MI 48909; by telephone, at (517)-241-9096 or ~~4-(800)-788-1766~~; or by e-mail to MDCSC-Hearings@michigan.gov.