

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and
COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

2010-034 LR

ORR rule set title:

Employment Relations Commission General Rules

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Bureau of Employment Relations

Name and title of person completing this form; telephone number:

Sidney McBride (313) 456-3417

Reviewed by Department Regulatory Affairs Officer:

Liz Arasim
Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The current and proposed rules are required to assist in administering the Public Employment Relations Act (PERA), 1947 PA 336 et seq. and the Labor Mediation Act (LMA), 1939 PA 176, in light of recent legislative changes and to clarify otherwise ambiguous, obsolete or missing provisions in the current rules and statutes. The current rules were last revised in 2002. The federal agency that governs most areas of private sector labor relations, the National Labor Relations Board (NLRB), functions with its set of administrative rules that are very similar. Since the NLRB and its rules do not apply to public sector employers, there are no parallel rules to those being proposed. The current and proposed revisions do not exceed those used by the NLRB that apply to public sector employment areas that impact interstate commerce.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

The current and proposed rules are exclusively applicable to the administration of PERA and LMA. Other states have similar laws and rules which are comparable, but not identical (e.g., California, Wisconsin, Ohio, etc). Where comparable functions exist, these rules do not exceed the standards used in those states where the governing laws are similar.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

Both PERA and the LMA are referenced in the current and proposed rules. Both statutes authorize the Michigan Employment Relations Commission (MERC) to administer various functions and duties associated with labor and management employment relations in certain public and private sectors. The rules exist to provide orderly and efficient operations, and to ensure fairness and notice of proceedings and practices involving MERC. The rules comply with applicable federal, state and local laws. The proposed rules seek to avoid duplication and reduce undue burden on parties seeking to use MERC's processes. The current and proposed rules do not conflict or duplicate any known state or federal requirements. The changes proposed here are necessary to comply with amended state laws that impact collective bargaining in Michigan.

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

Recent PERA amendments and other non-statutory changes have impacted MERC procedures and processes in several ways. Overall, the changes seek to curtail behavior that can be burdensome and cause unnecessary delay in parties being able to obtain prompt resolution to workplace disputes. The proposed rules provide guidance and clarification on processes involving PERA/ LMA and MERC.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

The likely harm to result from not adopting the proposed rules would include: lack of clarity, greater confusion, prolonged delays, and lack of notice to constituents regarding MERC and PERA related processes. The outcome would increase the number of unresolved labor disputes, increase apprehension toward using MERC processes, and allow parties to abuse MERC's processes due to collateral motives. The proposed revisions are needed to comply with new legislation and to clarify other areas of the rules that are ambiguous, confusing or poorly stated.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The current and proposed rules are required to effectively administer PERA and the LMA. The proposed rules will lead to greater efficiency by helping to promptly resolve labor-management disputes, which in turn will promote enhanced protections in the health, safety and general welfare of Michigan citizens who receive and rely on the services of the parties.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

Rule 174 is rescinded as it is obsolete in light of the reassignment of the work functions of the Administrative Law Judges (ALJs) from MERC to another state agency, the Michigan Administrative Hearing System (MAHS).

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

The proposed rules provide added efficiency and compliance with new laws, as well as enhanced clarity and less duplication when compared to the current rules. The fiscal impact would be cost reductions stemming from less redundant case processing methods and faster case dispositions.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

No added or special appropriation has been sought or made to develop or implement these revisions.

Impact on Other State or Local Governmental Units:

(10) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules do not impose any costs or fees on other state and local governmental units. They will shorten the timeline for parties to obtain final resolution on disputes filed with MERC. Faster case processing with less complex requirements will reduce the amount spent by local units that use MERC's services (e.g., attorney fees, staff hours handling MERC matters). It is difficult to reasonably project the magnitude of any savings.

(11) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules, like the current rules, do not impose any program, service, duty or responsibility on any local unit of government. No changes in recordkeeping, reporting requirements or operational practices by a local unit of government are required due to the proposed or existing rules.

(12) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

No added or special appropriation has been made in association to these proposed rules.

Rural Impact:

(13) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The current and proposed rules have no impact on rural areas other than preventing work disruptions caused by collective bargaining disputes involving personnel working in public service areas like schools and jails.

Environmental Impact:

(14) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The current and proposed rules have no direct impact on the environment.

Small Business Impact Statement:

[Please refer to the discussion of “small business” on page 2 of this form.]

(15) Describe whether and how the agency considered exempting small businesses from the proposed rules.

No exemption was considered as these rules have little impact on small businesses, and only on those businesses where labor or management has sought MERC’s assistance to resolve a collective bargaining dispute(s). Between 2008- 2013, there were less than 5 matters filed with MERC involving private sector businesses.

(16) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

These rules do not apply to small businesses other than explained above in question 15.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

Since 2008, there have been less than 5 matters filed with MERC involving private sector businesses. These rules will enhance the understanding on how to obtain relief from MERC under the LMA on the minimal processes available to employers and employees in the private sector.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

These rules do not establish any reporting requirements, record keeping obligations or administrative costs to small businesses and the limited services available from MERC are at no cost to the parties.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

No reporting requirements exist for small businesses under MERC's processes or these rules.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

These rules do not establish any performance standards that apply to small businesses.

(17) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

These rules create no disproportionate impact on small businesses.

(18) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

These rules do not establish or enforce any reporting requirement that applies to small businesses.

(19) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

The LMA establishes certain rights to small business employers and their employees. Those small businesses that fall under the Act will likely experience reduced collateral expenses from complying with these proposed rules in light of legislative changes such as Freedom to Work and fewer unionized employees.

(20) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

These rules do not require that a party, including a small business, use legal, accounting or consulting service to participate in MERC's services.

(21) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

These rules have no impact on the economic condition or competitiveness of a small business.

(22) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Not applicable as no exemption or lesser standards have been established for small business.

(23) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Not applicable as no exemption or lesser standards have been established for small business.

(24) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

The agency established a small ad hoc committee to assist in the development of these proposed rules. One or more of those members was a representative of small businesses.

Cost-Benefit Analysis of Rules (independent of statutory impact):

(25) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed rules do not impose any additional costs on businesses or other groups. The rules only provide clarity as to the requirements under PERA and the LMA and do not add or expand any obligations or application.

(26) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

No change exists in the statewide compliance costs attributable to the proposed changes to these rules.

(27) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

Any cost reductions will likely stem from faster dispute resolutions and case dispositions.

(28) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

The benefits attained by adoption of the proposed rules include greater efficiency and clarity in MERC processes, compliance with statutory requirements, simpler processes and faster case dispositions.

(29) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

While not directly impacting businesses, the proposed rules include greater efficiency and clarity in many processes that govern labor- management relations in the public and private sector. This helps to prevent disruption in local services which strengthens our communities. While the benefit realized does not directly create new jobs, the enhanced level of services available to residents renders Michigan a preferred place to live for future and current residents.

(30) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

No known individuals or businesses will be disproportionately affected by these proposed rules.

(31) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

Various sources including research and analysis by staff and outside contacts.

Alternatives to Regulation:

(32) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

The proposed rules intend to bring the current rules into compliance with recent statutory changes, and clarify other identified areas that are somewhat confusion or ambiguous.

An alternative would be to rescind the rules and promulgate agency policies.

(33) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Not feasible given the adjudicative nature of many of the agency's processes.

(34) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Policy development was considered but viewed as problematic given the inherent conflict, and reduced appearance of neutrality by the agency.

Additional Information

(35) As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

No special instructions regarding compliance are needed aside from that contained within the rules.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

2-11-2014

Date RIS approved:	3-11-2014
ORR assigned rule set number:	2010-034 LR

Date of disapproval:	Explain:
More information needed:	Explain:

(ORR-RIS October 2012)