

REGULATION

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Issuing Bureau: Executive	Rule Reference: Rule: 2-14 (Rights of Employees Absent Due to Uniformed Service)		Replaces: Reg. 8.07 (SPDOC 08-0412, February 21 November 16, 2008)
Authority: The State Personnel Director issues regulations under authority granted in the Michigan Constitution and Michigan Civil Service Commission Rules. Regulations are subordinate to the Rules.			
Subject: TECHNICAL MILITARY BENEFIT COMPLAINTS			

TABLE OF CONTENTS

1. PURPOSE.....	1
2. CIVIL SERVICE COMMISSION RULE REFERENCE	1
3. DEFINITIONS	7
4. STANDARDS.....	7
5. PROCEDURE	10

1. PURPOSE

This regulation establishes procedures for processing complaints challenging Civil Service staff technical decisions regarding employment rights and benefits arising out of service in the uniformed services.

2. CIVIL SERVICE COMMISSION RULE REFERENCE

Note: This section reprints only selected Civil Service 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.mi.gov/mdcs.

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.*

3. DEFINITIONS

A. Civil Service Commission Rule Definition

1. *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.*

B. Additional Definition as used in this Regulation

1. **Technical military benefit decision** means a Civil Service staff decision regarding ~~(1) calculating military service credit for honorable service in the armed forces before entering the classified service or~~ (2) rights and benefits authorized under Rule 2-14 [Rights of Employees Absent due to Service in the Uniformed Services] or Regulation 2.04 [Military Leaves of Absence and Return to Work: Basic Rights]. Examples of technical military benefit decisions include determinations of eligibility for supplemental pay and corrections under compliance audits conducted by Civil Service staff.

4. STANDARDS

A. Filing Complaints.

1. **Complaint Authorized.** A person directly affected by a technical military benefit decision may file a written complaint with the Civil Service Office of Technical Complaints. The complainant must simultaneously file a copy of the complaint with the ~~Office~~ office of ~~Compliance~~ the Civil Service staff that issued the disputed technical military benefits decision.
2. **Complaint Contents.** The technical complaint is the final opportunity for the complainant to offer new evidence into the administrative record without

needing to demonstrate a legal basis to add the evidence. The complaint must include the following:

- a. A copy of the technical military benefit decision being questioned.
- b. A complete statement of why the technical military benefit decision violated Article 11, Section 5 of the Michigan Constitution; violated a Civil Service rule or regulation; or was arbitrary and capricious.
- c. ~~For employees seeking military service credit time before being hired, a DD-214, NGB Form 22, or NGB Form 23~~Documentary evidence establishing performance of uniformed service during the relevant time period, which shall consist of:-
- ~~d. For complaints over benefits during a military leave of absence, documentary evidence establishing performance of uniformed service during the absence from regularly scheduled state employment, which must be:~~
 - (1) A military leave and earnings statement demonstrating service; on the days
 - (2) A military transaction log history, military attendance schedule, or master military pay account form demonstrating service; on the days, or
 - (3) ~~orders~~ Orders accompanied by a document on military letterhead signed by a superior officer of competent authority indicating training or active duty in the uniformed service led to absences; ~~or~~ on the days.
 - ~~(4) a DD-214, NGB Form 22, or NGB Form 23.~~
- d. A copy of any DD-214 issued upon completion of the period of uniformed service or a statement that no DD-214 was issued for the period.
- e. ~~For complaints over~~lf supplemental pay is sought, copies of official military leave and earning statements demonstrating the employee's name, grade, and years of service; basic pay and dollar amount; and remarks indicating what type of duty was performed and all dates that the pay covers.
- f. A clear statement of the desired outcome of the complaint. The ~~desired~~ outcome must be within the authority of Civil Service staff to grant.
- g. The signature, address, phone number, and any e-mail address of the complainant and any representative.

3. **Time Limitations for Filing Technical Complaints.** A complaint must be received by the Civil Service Office of Technical Complaints within 28 calendar days after the mailing date of the technical military benefits

decision. If the complainant is unavailable due to uniformed service during the 28-day period, the deadline for filing is extended until 28 calendar days after the later of the date the complainant (1) is discharged from service in the uniformed service if not returning to work in the classified service or (2) returns to work in the classified service, ~~whichever is later~~.

4. **Extension for Filing.** The technical review officer may also grant an extension if, before the required time for filing expires, the technical complainant shows sufficient justification for an extension.

B. Complaint Investigation.

1. In addition to and in accordance with rule 8-4, a technical military benefit complaint may be administratively dismissed without prior notice for any of the following reasons:
 - a. The complaint fails to set forth allegations with sufficient particularity to permit review.
 - b. The complaint fails to allege a violation of a Civil Service rule or regulation or Article 11, Section 5, of the Michigan Constitution or to allege other relevant error in the decision.
 - c. The complaint fails for other good and sufficient reason to warrant further review.
2. The technical review officer shall obtain the record related to the underlying technical decision from the Office of Compliance. The Office of Compliance may file a written response to the technical complaint. The Office of Compliance must send a copy of any such response to the complainant.
3. A technical review officer is not authorized to conduct a hearing, but may contact or meet with the complainant or other interested parties to discuss the complaint.

C. Technical Review Decision.

1. The technical review officer shall review the record and decide the matter based on the submissions, agency records, Civil Service rules and regulations, and technical expertise. At the conclusion of the technical review, the technical review officer shall issue a final written technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any.
2. The decision of a technical review officer shall contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission, as provided in regulation 8.05 [Employment Relations Board Appeal Procedures].

5. PROCEDURE

Responsibility	Action
Employee	1. Files technical complaint and all necessary supporting documentation with Office of Technical Complaints and also sends copy to Office of Compliance.
Office of Technical Complaints	2. Obtains record for technical decision from Office of Compliance. 3. Reviews complaint, record, and any other filings and conducts any investigation deemed necessary. 4. Issues written decision to employee.

CONTACT

Questions regarding this regulation should be directed to the Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-373-3024.