

# Michigan Civil Service Commission

## Regulation 1.01

Subject: <b>Issuance of Civil Service Regulations</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 1.01 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes a procedure for issuing Civil Service regulations.

### 2. CSC Rule References

#### 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.*

### 3. Definitions

#### A. CSC Rule Definitions.

1. **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.
2. **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 the civil service staff.
3. **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.

**B. Definition in This Regulation.**

1. **Contested case** means a proceeding in which a determination of the legal rights, duties, or privileges of a named party is required by the constitution or rule to be made by the Civil Service Commission, State Personnel Director, or Civil Service staff after an opportunity for an evidentiary hearing. Contested case includes the following:
  - (a) A grievance by a classified employee alleging a violation of a rule or regulation by an appointing authority that has been timely filed with the employer and timely appealed to Civil Service.
  - (b) An unfair labor practice charge that has been timely filed.

**4. Standards**

- A. Notice of Proposed Regulation.** The State Personnel Director shall give public notice of any proposed regulation or material amendment to a regulation to the Civil Service Commission, the Office of the State Employer, appointing authorities, and recognized employee organizations, at least 14 days before the proposed effective date. Any interested person may request a copy of the proposed regulation and may comment in writing on the proposal.
- B. Issuance of Regulation: Effective Date.** After review of any comments, the State Personnel Director may issue the regulation as proposed or as revised. A regulation is issued when the regulation has been approved by the State Personnel Director and published by Civil Service. The regulation is effective on the date issued or any later date authorized by the State Personnel Director.
- C. Emergency Regulation.** If the State Personnel Director determines that the efficient and orderly administration of the classified service requires issuance of a regulation without the notice required in §4.A, the State Personnel Director may immediately issue such regulation without prior public notice or opportunity for comment.
- D. Notice to Commission.** The State Personnel Director shall place on the agenda of the Civil Service Commission a notice of each regulation issued since the last meeting. Commission action is not required. However, the Commission may act to amend or repeal a regulation at any time without notice.
- E. Publication of Regulations.** The State Personnel Director shall number, organize, compile, certify, and publish all regulations. The regulations must be provided to the Office of the State Employer, all appointing authorities, and all employee organizations. Appointing authorities shall make all Civil Service rules and regulations available to classified employees. The regulations must be available to the public and may be published in electronic form.

**F. Severability.** Each provision of these regulations is severable. Therefore, if a court of competent jurisdiction or the Civil Service Commission finds that any provision of a regulation is invalid or unenforceable, every other provision not found invalid or unenforceable remains valid and enforceable.

### **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 1.02

Subject: <b>Coding American Indian Racial Designation</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 1.02 (SPDOC 07-17, October 7, 2007)

### 1. Purpose

This regulation provides the process for documenting and verifying the racial designation of all persons identifying themselves as American Indian. It also includes standards for the required documentation and procedures for coding applicants and new employees as an American Indian or for changing the racial designation of current employees to American Indian.

### 2. CSC Rule References

#### **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.*

#### **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.*

#### **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.*



### 3. Definition

#### A. CSC Rule Definition.

*The Civil Service Commission uses the following definition promulgated by federal agencies, including the Equal Employment Opportunity Commission (EEOC), for an American Indian:*

1. **American Indian** means all persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.

### 4. Standards

- A. Any individual wishing American Indian designation on applicant pool records, in the Human Resources Management Network (HRMN) and other applicable records must provide one of the following forms of documentation as evidence to substantiate the American Indian heritage:
  1. Birth certificate showing either parent is an American Indian.
  2. Tribal identification card.
  3. Certification by a tribal officer that an individual appears on tribal rolls.
  4. Fishing rights card.
  5. Bureau of Indian Affairs documents, such as tuition eligibility.
- B. Civil Service staff shall change the racial code on the applicant pool record to American Indian upon submission and approval of the required documentation.
- C. Civil Service staff or appointing authorities may change the racial designation of a state employee to American Indian in HRMN and other applicable records after the individual provides one of the above documents. The appointing authority may confirm the applicability of the code with Civil Service staff.
- D. For appointment purposes, if the code for the American Indian designation appears on the applicant pool record, Civil Service staff or the appointing authority may enter it in HRMN upon appointment.
- E. Some individuals may have difficulty in obtaining the documentation listed above. Other forms of documentation, supported by affidavits from other official sources, may be adequate. Civil Service staff shall review and determine the acceptability of this documentation.
- F. Civil Service staff shall maintain a file of all documentation submitted as verification of status as an American Indian in accordance with the established application retention schedule (6 months). Appointing authorities shall maintain the documentation as provided in their personnel record retention schedule.

## 5. Procedures

### A. Request Submitted to Civil Service.

Responsibility	Action
Applicant	1. Submits a Classified Civil Service Application form (CS-102) marking American Indian as the racial designation.
Civil Service	2. Receives the CS-102 from the applicant requesting the American Indian racial designation on the applicant pool record. 3. Sends a letter to the applicant requesting the necessary documentation as described in this regulation. Until documentation is received the applicant is coded as "Other" on the applicant pool record.
Applicant	4. Submits requested documentation.
Civil Service	5. Receives the documentation from the applicant and determines if the documentation meets Civil Service standards. 6. If acceptable, sends a letter to the applicant that the documentation was accepted and changes the racial designation on the applicant pool record to American Indian. If the documentation is not accepted, writes a letter to the applicant stating why and what documentation is needed for acceptance.

### B. Request Submitted to the Appointing Authority.

Responsibility	Action
Employee	1. Submits documentation requesting American Indian racial designation for personnel records.
Appointing Authority	2. Receives documentation and determines if it meets Civil Service standards. 3. If acceptable, changes HRMN and other applicable records to indicate the American Indian racial designation and informs employee. 4. Sends a copy of the documents to Civil Service.
Civil Service	5. Reviews the information, and if acceptable, changes the Civil Service records to indicate the American Indian racial designation and informs employee. If unacceptable, informs appointing authority and employee of the necessary resolutions.

**CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 1.03

Subject: <b>Investigating Reports of Discriminatory Harassment</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 1.03 (SPDOC 07-14, October 7, 2007)

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## 1. Purpose

This regulation outlines a procedure for appointing authorities to investigate reports of discriminatory harassment. Improper discrimination may take a number of forms, including **discriminatory harassment**. The state has an obligation to investigate reports of discriminatory harassment and to take prompt and appropriate remedial action, if necessary. State classified employees are protected from improper discrimination based on religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan consideration disability, or genetic information.

## 2. CSC Rule References

### 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.*

**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.*

**3. Definitions****A. CSC Rule Definitions.**

- 1. Appointing authority** means each of the following:

- (a) A single executive heading a principal department.*

- (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.*

## **2. 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.*

**3. 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.*

4. **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.
5. **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.
6. **Sexual orientation** means actual or imputed heterosexuality, homosexuality, or bisexuality.
7. **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.

## 4. Standards

### A. Reporting Process.

#### 1. Obligation to Report Discriminatory Harassment.

- a. **All employees.** A classified employee is obligated to report to management in writing in either of the following circumstances:
  - (1) If the employee is subjected to unwanted discriminatory harassment in the workplace by a supervisor, manager, coworker, or other person.
  - (2) If the employee witnesses a supervisor, manager, coworker, or other person in the workplace engaging in discriminatory harassment of another person.
- b. **Supervisors and managers.** A supervisor or manager who witnesses a subordinate employee engaged in discriminatory harassment of another person is obligated to report the behavior and to take prompt and appropriate remedial action.

#### 2. To Whom to Report Discriminatory Harassment.

- a. If an employee is harassed or witnesses discriminatory harassment of someone else, the employee shall report the discriminatory harassment in writing to a supervisor or an investigator designated by the appointing authority.
- b. If an employee is harassed or witnesses discriminatory harassment by the employee's own supervisor, the employee is not required to report unwelcome conduct to that supervisor. The employee shall report the unwelcome conduct in writing directly to a higher level supervisor or an investigator.



- c. If an employee is harassed or witnesses discriminatory harassment by an investigator, the employee is not required to report unwelcome conduct to that investigator. The employee shall report the unwelcome conduct in writing directly to a supervisor, another investigator, or the appointing authority.
3. **When to Report Discriminatory Harassment.** The employee is encouraged to report any discriminatory harassment immediately. However, in any event, the employee must report any discriminatory harassment within **180 calendar days** after the alleged harassment.
4. **Confidentiality.** To protect the interests of all involved, the appointing authority shall maintain confidentiality to the extent practicable and appropriate under the circumstances.
5. **Use of Grievance Procedure.** Although an employee who is subjected to unwanted discriminatory harassment is obligated to report the harassment as provided in this regulation, the employee may also file a grievance regarding the harassment as authorized in the rules and regulations governing grievances or an applicable collective bargaining agreement.
6. **Reporting Other Types of Discrimination.** If an employee becomes aware of improper discrimination other than discriminatory harassment, the employee may use the procedures provided in this regulation to report the discrimination.

**B. Investigative Procedures.**

1. Each appointing authority shall make a good faith effort to eliminate and prevent discriminatory harassment in the workplace.
2. Each appointing authority shall investigate **all** reports of discriminatory harassment, regardless of the source of the report. If a report of discriminatory harassment is substantiated or there is reasonable cause to believe the allegations are true, the appointing authority shall take prompt and appropriate remedial action.
3. If, at the time of the alleged harassment, the alleged harasser was an employee of an agency other than the one receiving the report, the report must be referred to the agency employing the alleged harasser for investigation.
4. Each appointing authority shall appoint one or more investigators with the authority to investigate any report of discriminatory harassment. The appointing authority shall assure the availability of sufficient investigators, considering the location and hours of the agency's operation. If more than two investigators are appointed, the appointing authority shall designate a coordinator of investigators.
5. Each appointing authority shall notify all employees under its authority of the prohibitions against discriminatory harassment. The notice must identify the persons

to whom employees may file a report of discriminatory harassment. The notice must also describe the process for filing such a report.

6. Each appointing authority shall implement an education and training program for all new and continuing employees on the definitions of discriminatory harassment and the need to make good faith efforts to eliminate and prevent discriminatory harassment in the workplace.
7. Each appointing authority shall provide additional training for each investigator, coordinator of investigators, manager, and supervisor on techniques and procedures for investigating reports of discriminatory harassment and recognizing and remedying discriminatory harassment.
8. Each appointing authority shall keep adequate records of reports and investigations regarding discriminatory harassment. The records must include the following, if available:
  - a. Any statements of the person making the report, the alleged harasser, or any witnesses.
  - b. Other documents supporting conclusions reached by investigators.
  - c. Relevant disciplinary reports and performance evaluations.
  - d. The final investigatory report.

### **C. Guidelines for Investigating Reports.**

#### **1. Receiving the Report and Beginning the Investigation.**

- a. **Notice to Person Making Report.** Before taking a statement, the investigator shall advise the person making the report of the following:
  - (1) The employer has a duty to investigate all allegations of discriminatory harassment, even if the person making the report does not want the investigation to go forward.
  - (2) The identity of the person making the report and charges may be disclosed as part of the investigation, even if the person does not want the identity or charges disclosed.
  - (3) The person making the report will be protected from retaliation for filing a report in good faith.
- b. **Signed Statement.** The investigator shall require the person making the report to sign a statement describing the specific acts of discriminatory harassment that occurred. The investigator shall document any refusal to provide a signed statement. If a person reports the harassment of another person, the investigator shall also ask the person allegedly harassed to sign a statement.

## 2. **The Investigation.**

- a. **Report.** After receiving a report, the investigator shall detail in writing the unwelcome conduct that is alleged to constitute discriminatory harassment. The report must include each of the following, if available:
  - (1) The signed statement provided by the reporting employee and any person allegedly harassed (or notation of any refusal to submit such a statement).
  - (2) The types of conduct alleged.
  - (3) The frequency of occurrence.
  - (4) The names of witnesses.
  - (5) The dates on which the alleged harassment occurred.
- b. **Details.** The investigator shall ascertain the specific context in which the alleged conduct occurred, including, but not limited to, the following:
  - (1) The nature and general description of the workplace and the specific location and circumstances in which the alleged harassment occurred.
  - (2) Any physical evidence of the alleged harassment.
  - (3) What action was taken by the person allegedly harassed.
  - (4) Whether the person allegedly harassed told the alleged harasser by word or behavior that the alleged harasser's conduct was unwelcome.
- c. **Action to Stop Harassment.** If the harassment is alleged to be continuing or the person allegedly harassed needs protection, the appointing authority shall consider taking immediate action to ensure that the alleged harassment does not continue. Possible actions include, but are not limited to, (1) change of location of the work station of the alleged harasser or the person allegedly harassed, (2) "no contact" orders to both parties, (3) temporary reassignment of the alleged harasser or the person allegedly harassed, or (4) suspension of the alleged harasser during the pendency of the investigation.
- d. **Statement of Alleged Harasser.** The investigator shall interview the alleged harasser and require the alleged harasser to sign a statement regarding the allegation. The investigator shall document any refusal to submit a signed statement. The investigator shall advise the alleged harasser that (1) the interview is for investigating a claim of discriminatory harassment, (2) the alleged harasser is required to keep confidential any information regarding the investigation, (3) no person may retaliate against the person reporting the alleged harassment or any witness, and (4) any retaliation is a separate basis for investigation and, if substantiated, potential discipline.

- e. **Statements of Other Witnesses.** The investigator may obtain signed statements from witnesses who can refute, corroborate, or support any of the allegations of the person making the report or the alleged harasser. If a signed statement is requested, the investigator shall document any refusal to provide a statement. The investigator shall warn witnesses that (1) the witness is required to keep confidential any information regarding the investigation, (2) no person may retaliate against the person making the report or other witnesses, and (3) any retaliation is a separate basis for investigation and, if substantiated, potential discipline.
  - f. **Confidentiality.** To the extent practicable, the investigator shall distribute and collect any signed statements or other documents in a manner that will protect confidentiality of the information.
  - g. **Preservation of Records.** The investigator shall preserve all records of all investigative steps for 3 years after the final decision.
3. **Final Investigative Report.** After completing the investigation, the investigator shall transmit a final investigative report to the appointing authority or other designated authority.

**D. Further Action.**

- 1. **Action by Appointing Authority.** The appointing authority shall review the final investigative report submitted by an investigator. If the appointing authority substantiates the report of discriminatory harassment or determines that there is reasonable cause to believe that the allegations reported are true, the appointing authority shall take prompt and appropriate remedial action.
- 2. **Notice.** After the investigation, the appointing authority shall advise the person making the report and the alleged harasser whether the investigation substantiated the report, did not substantiate the report, or was inconclusive.
- 3. **Discipline.** The appointing authority or other approved manager may discipline a classified employee for engaging in discriminatory harassment, as provided in the Civil Service rules and regulations and agency work rules governing discipline.
- 4. **Supplemental Investigation.** If, during the course of an investigation, credible information indicates that a manager or supervisor with responsibility for taking remedial action in a harassment situation failed to take prompt and appropriate remedial action, the appointing authority shall separately investigate the behavior of that manager or supervisor.

**CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 1.04

Subject: <b>Reasonable Accommodations</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 1.04 (SPDOC 14-01, January 5, 2014)

### 1. Purpose

This regulation establishes procedures for requesting and providing reasonable accommodations for qualified employees and applicants with disabilities.

### 2. CSC Rule References

#### **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.*

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#### **3-1 Examinations**

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**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. Definitions****A. CSC Rule Definitions.**

1. ***Applicant*** means a person who requests to participate in an appraisal process.

2. ***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.

3. ***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.

**B. Definitions in This Regulation.**

1. **Accommodation coordinator** means the (1) appointing authority, (2) person designated by an appointing authority to administer the processing of reasonable accommodation requests, or (3) accommodation coordinator's designee.
2. **Qualified employee** means an employee with a disability who can perform the essential functions of a position, with or without reasonable accommodation.
3. **Reasonable accommodation** means a modification or adjustment of the work environment for a qualified employee. An accommodation that would cause undue hardship to an appointing authority is not a reasonable accommodation.
4. **Undue hardship** means significant difficulty or expense. Undue hardship includes, but is not limited to, the following:
  - a. The person poses a direct threat to the health or safety of the person or others in the workplace that cannot be removed by accommodating the person.
  - b. The accommodation would require the alteration of a program or position.

**4. Standards****A. Submitting Accommodation Requests for Employees.**

1. Each appointing authority shall designate an accommodation coordinator to process accommodation requests. Employees or their designees should submit accommodation requests directly to the accommodation coordinator. If a request is made to someone else, such as a supervisor or manager, the recipient must promptly notify the accommodation coordinator of the request.
2. To facilitate the interactive process and ensure understanding of relevant facts, an employee seeking an accommodation should submit a completed Disability Accommodation Request and Medical Statement Form (CS-1668) to the accommodation coordinator.
3. The employee has the burden of demonstrating that he or she (1) has a disability and (2) can perform the essential functions of the job, with or without accommodation.

**B. Submitting Accommodation Requests for Applicants.** An applicant needing an accommodation for any portion of an application, appraisal, or selection process may follow the procedures for requesting an accommodation found in Regulation 3.11.

**C. Processing Accommodation Requests.**

1. After receiving notice of an employee's accommodation request, the accommodation coordinator shall promptly:



- a. Ensure that Section I of a CS-1688 form describing the request is either (1) provided by the employee or a designee or (2) completed by the accommodation coordinator.
    - b. Verify that the employee has a disability, as defined in the Civil Service rules and regulations.
    - c. Verify the essential functions of the relevant position.
    - d. Review the information provided and consult with the employee to ascertain the precise limitations, possible accommodations, and their potential effectiveness.
    - e. If necessary, require the employee to provide (1) a completed Section II of a CS-1668 form or (2) other sufficient medical certification of the disability and functional limitations.
    - f. If necessary, consult with external resources and request additional medical documentation of limitations requiring accommodations.
    - g. Provide a final, written decision on the Response to Disability Accommodation Request Form (CS-1669). The response must describe the recommended accommodation or provide an explanation for the denial of the request.
  2. Civil Service and appointing authorities shall accommodate a person with a disability, unless the accommodation would cause an undue hardship.
  3. After a final decision is issued, the accommodation coordinator shall:
    - a. Provide a copy of the CS-1669 to the employee.
    - b. Have the employee complete and sign the relevant portions of the CS-1669.
    - c. If applicable, arrange implementation of the approved accommodation.
  4. Completed Civil Service forms and medical documentation related to the accommodation request must be maintained consistent with state retention schedules.
- D. Evaluating a Reasonable Accommodation.** The accommodation coordinator or designee may use the Evaluation of Disability Accommodation Form (CS-1670) or another effective process to evaluate the effectiveness of implemented accommodations thereafter.
- E. Appeal of Final Decision.** If the employee is dissatisfied with the response of the accommodation coordinator or the accommodation coordinator fails to issue a final response within 8 weeks, the employee may appeal the final decision of the accommodation coordinator through the appropriate grievance procedure.
- F. Approved Alternative Forms.** An appointing authority may use alternative forms approved by the State Personnel Director.

**CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024, or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 1.05

Subject: <b>Patents, Inventions, and Copyrights</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 1.05 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation (1) defines the property rights for patents and inventions and copyrights, and (2) defines agency responsibility.

### 2. CSC Rule References

#### **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.*

\* \* \*

#### **1-14 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.*

\* \* \*

### 3. Standards

- A. The property rights of a classified employee in a patent on an invention that the employee created are subject to contract entered into by the state administrative board as provided by law.

- B. The property rights of a classified employee in a copyright which subsists in a work created by the 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.
- C. The primary responsibility for patent and copyright activities is assumed by agency management.
- D. Civil Service staff shall offer guidance, advice, and coordinating service to agencies and serve as a liaison with the State Administrative Board on patents, inventions, and copyrights.

### **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024, or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 1.06

Subject: <b>Audit and Correction of Personnel Actions</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 1.06 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation sets forth the standards for audit and correction of personnel actions processed by appointing authorities or Civil Service staff.

### 2. CSC Rule References

#### **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.*

#### **5-3    *Compensation Schedules***

\* \* \*

#### **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.*

### 3. Standards

- A. All personnel actions must be processed in accordance with Civil Service rules and regulations and agency procedures (for example: agency SES/Group 4 evaluation plans).
- B. Civil Service Compliance staff shall review personnel actions to ensure compliance with applicable rules and regulations.

1. Review is conducted utilizing information entered into the Human Resources Management Network (HRMN) and other available data as actions are processed.
2. On-site reviews at agency offices are conducted to ensure agency compliance with documentation requirements.
- C. Compliance shall notify appointing authorities of actions requiring additional documentation with specific timeframes for response.
- D. Compliance shall notify appointing authorities when corrective action is necessary with specific timeframes for the action to be taken.
- E. Compliance will follow up to ensure appropriate action is taken.
- F. Compliance may notify the State Personnel Director if the appointing authority fails to take appropriate action.
- G. The State Personnel Director may direct Civil Service staff to proceed with corrective action and provide notification to the appointing authority and Compliance of the action taken.

#### 4. Procedures

Responsibility	Action
Compliance	<ol style="list-style-type: none"> <li>1. Reviews personnel actions to ensure compliance.</li> <li>2. Provides notification to the appointing authority requesting additional information, corrective action, or an on-site visit.</li> </ol>
Appointing Authority	<ol style="list-style-type: none"> <li>3. Responds to Compliance notification by providing requested documentation, certifying the corrective action, or scheduling the on-site review.</li> </ol>
Compliance	<ol style="list-style-type: none"> <li>4. Reviews information received and proceeds to clear the action, if appropriate, or follows up to verify the corrective action was properly processed. If an on-site review is conducted, notifies the appointing authority of results and issues a request for corrective action, if necessary.</li> </ol>
Appointing Authority	<ol style="list-style-type: none"> <li>5. Takes additional appropriate action if directed by Compliance.</li> </ol>
Compliance	<ol style="list-style-type: none"> <li>6. May notify the State Personnel Director if corrective action is not forthcoming.</li> </ol>
State Personnel Director	<ol style="list-style-type: none"> <li>7. Determines if corrective action is to be taken and directs action to be processed in HRMN by Civil Service staff.</li> </ol>

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<b>Responsibility</b>	<b>Action</b>
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Civil Service	8. Provides notification to appointing authority and Compliance of action taken.
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Compliance	9. Clears audit issue.
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### **CONTACT**

Questions on this regulation may be directed to Compliance, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-335-0856; or to [MCSC-Compliance@mi.gov](mailto:MCSC-Compliance@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.01

<b>Subject:</b>		
<b>Implementing a Reduction in Force</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 2.01 (SPDOC 09-10, November 29, 2009)

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## 1. Purpose

This regulation establishes standards, guidelines, and procedures for implementing staff reductions of nonexclusively represented employees (NEREs).

## 2. CSC Rule References

### 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.*

### 2-5 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.*

*\* \* \**

### **3. Definitions**

#### **A. CSC Rule Definitions.**

- 1. 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.*
- 2. 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.*
3. ***Class series*** means a series of classifications with similar but progressively more responsible job duties.
  4. ***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.
  5. ***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.
  6. ***Employment preference*** means a process for determining an employee's rights when a reduction in force occurs.
  7. ***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.
  8. ***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.
  9. ***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.

**10. 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.

**11. Nonexclusively represented position** means (1) an excluded position or (2) an eligible position in a unit that has not elected an exclusive representative.

**12. Principal department** means one of not more than 20 executive branch departments provided for by article 5, section 2, of the constitution.

**13. 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.

**14. Subclass** means additional specialized experience, specialized training, licensure, or other specialized qualification that is required for appointment to a specific subgroup of positions.

**15. 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.

**B. Definitions in This Regulation.**

1. **Bumping** means the process by which an employee displaces another, or is placed in a vacant position, through application of employment preference.
2. **Agency layoff plan** means a layoff plan that varies the application of employment preference in any of the following areas: County preference based on organizational or geographic limits; employment preference between recognized agencies; employment preference into additional positions in class clusters approved by the appointing authority and Civil Service; or employment preference between employee status codes.
3. **Minimizing loss of pay** means allowing application to the least senior position in a classification, which provides the least loss of pay. Other compensation factors (i.e.,

overtime, shift differential, special pay premiums) are not considered in this application.

4. **Protected position** means a position that is protected from application of employment preference, including positions in Senior Executive Service (SES) and SES-eligible classifications; positions in Group 4 classifications of the Equitable Classification Plan; positions in Senior Executive Management Assistant Service (SEMAS) classifications; and any other position designated as protected in any other Civil Service rule or regulation.
5. **Reduction in force (RIF)** means an action taken by an appointing authority to layoff, demote, or otherwise displace an employee for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in mission, or reorganization of the work force.
6. **Seniority** means “total continuous service,” as described in rule 2-5.5(c).

## 4. Standards

### A. Application of Preference.

1. Preference must be applied in accordance with rule 2-5.
2. Agencies that have an approved agency layoff plan must apply preference in accordance with that plan.
3. Agencies are encouraged to review their agency layoff plans for compliance with regulation 2.02. Any agency layoff plans or changes to existing agency layoff plans must be approved by Civil Service at least 28 calendar days prior to implementation of a RIF.

### B. Management Rights and Responsibilities.

1. Management will determine where positions will be eliminated in an organization for reasons of administrative efficiency including, for example, lack of work, lack of adequate funding, change in agency mission, or reorganization of the workforce. The time frames for the freeze of information used in the determination of employment preference are as follows:
  - a. Selective position requirements and subclass code assignments are those that are in effect 28 calendar days before implementing the RIF.
  - b. The appointing authority shall establish the effective freeze date for information about continuous service hours (seniority), classification actions (reclassifications, establishments, frozen positions, etc.), and selection actions (appointments, job changes, etc.). This date must be uniformly applied for this information and may not be more than 28 calendar days before implementing the RIF.

2. Agencies may offer the opportunity for voluntary layoffs to satisfy their reduction needs. Such employees are entitled to recall in accordance with Civil Service rules and regulations.
3. Agencies may reassign the more senior employees in a classification, county, or work shift, whenever practical, before application of employment preference so that the effects of layoff, relocation, or reduction in classification level are applied to the least senior employees, unless modified by an approved agency layoff plan.
4. Once employment preference rights have been determined and notices of the RIF action have been provided to the affected employees, the agency does not need to revise or change its bump chain based on changes in employees' decisions regarding the exercise of preference.
5. Factors used must be equitably and consistently applied by the appointing authority.

**C. Employee Rights to Apply Preference.**

1. The application of employment preference is within the county of employment, unless otherwise modified in an approved agency layoff plan.
2. An employee can only bump within the current employee status code, unless otherwise modified in an approved agency layoff plan.
3. An employee in an indefinite appointment who accepts a limited-term appointment may apply preference upon expiration of the limited-term appointment at the former indefinite classification and classification level.
4. All entry through experienced classification levels within a series are grouped as though they are one. The least senior employee within the class series is bumped first, regardless of the specific classification level.
5. A probationary employee without status who is laid off cannot exercise employment preference.

**D. Employment Preference for Departmental Trainee, Transitional Professional, and Transitional Business and Administrative Technician Positions.**

1. When determining the application of employment preference into Departmental Trainee, Transitional Professional, and Transitional Business and Administrative Technician positions, the standards below are followed:
  - a. Identified Transitional Professional and Departmental Trainee positions are converted to the appropriate professional classification series. Identified Transitional Business and Administrative Technician positions are converted to the appropriate technician classification series. All entry through experienced classification levels within a series are grouped as though they are one. The least



senior employees within the class series would be bumped first, regardless of classification level.

- b. Regardless of the classification level of the employee being bumped, the employee applying preference is immediately classified at the classification level for which eligible.
  - c. The pay protection applied to the employee in a Transitional Professional, Departmental Trainee, or a Transitional Business and Administrative Technician position is not available to the employee bumping into the position.
2. When determining the application of employment preference from Transitional Professional, Departmental Trainee, or Transitional Business and Administrative Technician positions, the standards below are followed:
- a. An employee bumped from a Transitional Professional, Departmental Trainee, or Transitional Business and Administrative Technician position first applies preference to positions in the classification level held before appointment to the transitional or trainee position (if a non-bargaining unit classification). Then, preference is applied to other classifications at that level and below in which the employee previously attained status.
  - b. The pay protection previously afforded the employee in the Transitional Professional, Departmental Trainee, Transitional Business and Administrative Technician position is not carried to the new position.

**E. Transitional Manager Position.**

A Transitional Manager position that appears in a bump chain must be converted to the new professional managerial classification to which the employee is moving and employment preference must then be applied to the correctly classified vacant position. The employee in the Transitional Manager position first applies employment preference to positions in the classification level held before the lateral job change to the transitional managerial position.

**F. Frozen Positions.**

Frozen positions must be considered in the application of preference. A frozen position that appears in a bump chain must be identified as to its proper classification level before implementation of the bumping. Simultaneously with the bumping, the frozen position must be converted to its proper classification level and employment preference must be applied to the correctly classified vacant position. The employee in the frozen position exercises employment preference beginning at the classification level of the frozen position. If the employee currently in the frozen position meets the minimum qualifications of the position when properly classified, that employee may exercise employment preference at that classification level or in accordance with § H.2(2),

whichever minimizes loss of pay. See Attachment A for an example of applying this standard.

**G. Group 4, Senior Executive Service (SES), and Senior Executive Management Assistant Service (SEMAS).**

Employees in affected Group 4, SES, or SEMAS positions apply preference to positions in the classification level held before appointment to the Group 4, SES, or SEMAS position or to positions in a classification level in a former class series for which the employee previously attained status, whichever minimizes loss of pay.

**H. Employee Qualification to Apply Preference.**

1. An employee applies employment preference only within the employee's current agency unless otherwise permitted in an approved agency layoff plan. An employee cannot apply preference against a protected position.
2. An employee may apply preference (1) to a least senior position in a classification or classification series in which the employee is serving or (2) to a 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 for which the employee previously attained status during the current employment period. Regardless of whether the employee previously attained status at a higher classification level, employment preference can only be applied to positions that result in placement at the employee's current or lower classification level.
3. Once all employee preference rights to NERE classifications have been exhausted, the employee may be eligible to apply preference to a position covered by a collective bargaining agreement, in accordance with rule 2-5.5.

**I. Determining Employee Qualifications.**

1. Information that assists agencies in making determinations of qualifications consists of, but is not limited to:
  - a. The employee's state employment history record.
  - b. Position information, such as approved selective position requirements and position subclass code assignments.
2. The appointing authority may contact Civil Service staff at any time for assistance in determining employee qualifications.

**J. Determining Application of Employment Preference (Seniority).**

1. The determination of preference must be based on continuous state service as recorded in the Human Resources Management Network (HRMN), adjusted to deduct noncreditable time.

2. If two or more employees have equal total continuous service, the appointing authority shall rank each employee by evaluating such factors 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 Civil Service unless the ranking violates rule 1-8.
3. An employee having status from current employment, regardless of the classification level at which status was obtained, has greater employment preference than an employee who does not have status.
4. A probationary employee without status who is laid off is considered to have zero hours of total continuous service and cannot exercise employment preference.

**K. Effects of Decisions from Grievance, Technical Appeal, etc.**

Grievance, technical appeal, court, or other decisions may require application of preference to be reconstructed for certain affected employees. Retroactive reclassifications are not justification for reapplication of preference.

**L. Pay.**

Application of preference to a classification level other than the current classification level must minimize loss of pay. The maximum pay rate for each classification is used to determine which classification provides the least loss of pay. An employee bumping into a different classification cannot earn more upon entry than the rate earned in the classification from which the employee bumped, unless the minimum rate of the new classification exceeds that of the existing classification.

**M. Notice.**

Affected employees must be issued written notice of the RIF no less than 15 calendar days prior to the effective date. The employee must be given at least 7 calendar days to indicate acceptance of an available bump or preference for layoff. If a layoff is delayed due to a court order that is subsequently rescinded or overruled, a second 15-day notice is not required.

**N. Guidelines for Determining Eligibility to Apply Employment Preference.**

1. **Step 1:** If the agency has an approved layoff plan on file at Civil Service, determine if the steps contained in these guidelines need to be altered to conform to the provisions of the plan.
2. **Step 2:** The appointing authority identifies the classifications and classification levels of the positions that are to be abolished.
3. **Step 3:** The appointing authority determines the seniority of individuals who will be affected by position abolishments.

- a. A seniority listing of nonexclusively represented employees is needed to accomplish this step. Such a listing can be obtained by requesting a MIDB report from the State Budget Office, Office of Financial Management. This list should contain: Name; Employee Number; Classification and Classification Level; Position Code; County; and Continuous, Unclassified, Military, County, and College/University Service Hours.
- b. The appointing authority should determine if any seniority rankings need to be recalculated due to noncreditable time and recalculate any seniority hours, as necessary, and adjust employment preference ranking as required. A probationary employee without status is considered to have zero hours of total continuous service.
- c. The following steps are required to calculate seniority:
  - (1) Obtain an employment history printout.
  - (2) Subtract the starting date of the current employment period from the effective freeze date (no more than 28 calendar days prior to the notice of layoff) to obtain years, months, and days of employment. If necessary, use the following formulas to convert total continuous service hours:  
  
1 year = 2,080 hours  
1 month = 174 hours  
1 day = 5.8 hours
  - (3) Subtract any noncreditable time from the total continuous service hours.
4. **Step 4:** Determine the preference right of the most senior affected employee first, then proceed to the next most senior, etc., as follows:
  - a. Convert any identified frozen positions to their proper classification and classification level. Refer to Attachment A for an example of how to properly include frozen positions in a bump chain.
  - b. Convert any identified Transitional Manager positions to the appropriate new professional managerial classification to which the employee is moving. The employee first applies preference to positions in the classification level held prior to transfer to the transitional managerial position.
  - c. If any of the identified positions are entry through experienced level professional positions, convert any Departmental Trainee or Transitional Professional positions to the appropriate professional classification. Group all entry through experienced classification levels within a series as though they are one. The least senior employee within the class series is bumped first. See Attachment B for an

example of the correct application of employment preference into entry-through journey-level professional positions.

- d. If any of the identified positions are entry through experienced level business and administrative technician positions, convert Transitional Business and Administrative Technician positions to the appropriate technician class series. Group all entry through experienced classification levels within a series as though they are one. The least senior employee within the class series is bumped first.
  - e. If any of the identified positions are in (1) Equitable Classification Plan, Group 4; (2) Senior Executive Service (SES); or (3) Senior Executive Management Assistant Service (SEMAS) classifications, the employee applies preference to positions in the classification level held before appointment to the Group 4, SES, or SEMAS position or to positions in a classification level in a former class series for which the employee previously attained status, whichever minimizes loss of pay.
  - f. If necessary, determine which subclass code requirements the affected employee meets. An employee may apply preference only if the employee has been assigned one or more of the same subclass codes at or above the classification level of the position to which the employee is bumping.
  - g. Eliminate from consideration any positions for which the employee does not meet the selective position requirement or subclass code requirements.
  - h. If necessary, contact Civil Service staff for assistance in determining employee qualifications.
  - i. Using the seniority listing, identify the least senior position in the classification or classification series, at the current or lower level, that will minimize loss of pay. Employment preference cannot be applied to a higher classification level regardless of whether the employee previously attained status. All probationary employees without status are considered to have zero hours of total continuous service.
  - j. Using the seniority listing, determine if the affected employee can bump into the current classification level within the county or as designated in an approved agency layoff plan. If no bump is available, repeat Step 4 at § 4.N.4.
5. **Step 5:** Once all employee preference rights to NERE classifications have been exhausted, the employee may be eligible to apply preference to positions covered by a collective bargaining agreement.

## 5. Procedures

### A. Probationary Ratings.

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>1. Identifies the positions that will be abolished for reasons of administrative efficiency.</li> <li>2. Converts all affected frozen and Departmental Trainee, Transitional Manager, Transitional Professional, and Transitional Business and Administrative Technician positions to their proper classification level.</li> <li>3. Explores lateral job change possibilities of the more senior employees occupying the identified positions.</li> <li>4. Determines the employees who will be affected by the RIF (see the guidelines for determining eligibility to apply employment preference above).</li> <li>5. Issues written notice to affected employees no less than 15 calendar days prior to the effective date.</li> <li>6. Prepares a listing of all affected employees and attachments, which includes the following information:               <ol style="list-style-type: none"> <li>a. Name of employee.</li> <li>b. Employee ID number.</li> <li>c. Continuous service hours.</li> <li>d. Current classification level.</li> <li>e. County location of current position.</li> <li>f. Action to occur (i.e., layoff or involuntary transfer).</li> <li>g. Effective date of action.</li> <li>h. New classification level, and county, if applicable.</li> <li>i. Current employment history.</li> </ol> </li> <li>7. Processes the actions in HRMN for layoff or job change.</li> <li>8. Prepares documentation to add employees to recall lists in accordance with Civil Service rules and regulations.</li> </ol>

Attachments A & B

### CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or by email to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

## ATTACHMENT A

### CONVERSION OF FROZEN POSITIONS WHEN APPLYING PREFERENCE

NOTE: Employment preference can only be applied to the (A) employee's current classification level then to the (B) proper classification level of the current frozen position if the employee meets the minimum qualifications or (C) to a lower classification in the current class series or (D) to the same or lower classification in a former class series for which the employee previously attained status, whichever minimizes the loss of pay.

#### BEFORE THE RIF

##### Position A

Position Code – DEPTMGR4A01N  
Classification Level – Departmental Manager 15  
Smith-20 years

##### Position B

Position Code: DEPMGR3FA02N  
Classification Level – Departmental Manager 14  
Frozen  
Jones-15 years

##### Position C

Position Code: DEPTMGR3A03N  
Classification Level – Departmental Manager 14  
Gomez-10 years

##### Position D

Position Code: DEPMGR3FA04N  
Classification Level – Departmental Manager 14  
Frozen  
Baker-9 years

##### Position E

Position Code: DEPTMGR2A05N  
Classification Level – Departmental Manager 13  
Goldstein-5 years

1. Position A is to be abolished. Smith has 20 years of employment preference credit but is the least senior Departmental Manager 15 employee. Smith must bump down to a Departmental Manager 14 position.
2. The least senior Departmental Manager 14 is Baker. Baker occupies Position D, a frozen position. Because Position D would otherwise be in Smith's bumping chain, Position D must be reclassified to its proper classification level (Departmental Manager 13).
3. Smith does not bump into Position D because it is now a vacant Departmental Manager 13 position. Instead, Smith bumps the now least senior Departmental Manager 14 employee, Gomez, who occupies Position C.

4. Gomez exercises employment preference beginning at the Departmental Manager 14 level. Assuming no available bump at the 14 level, Gomez becomes eligible to bump to the vacant Position D, formerly occupied by Baker, which has been properly classified at a Departmental Manager 13.
5. Baker will exercise preference beginning at the Departmental Manager 14 level. Assuming no available bump at the 14 level, Baker becomes eligible for Position E, whose employee has only five years of seniority.
6. Position B is also a frozen Departmental Manager 14 position. However, due to seniority, Jones does not appear in any bumping chain. Therefore, Position B remains frozen at a Departmental Manager 14.

#### AFTER THE RIF

**Position A** is abolished

#### **Position B**

Position Code: DEPMGR3FA02N  
 Classification Level – Departmental Manager 14  
 Frozen  
 Jones–15 years

#### **Position C**

Position Code: DEPTMGR3A03N  
 Classification Level – Departmental Manager 14  
 Smith–20 years

#### **Position D**

Position Code: DEPTMGR2A04N  
 Classification Level – Departmental Manager 13  
 Gomez–10 years

#### **Position E**

Position Code: DEPTMGR2A05N  
 Classification Level – Departmental Manager 13  
 Baker–9 years

The former employee in Position E, Goldstein, has bumped to a position at a lower level or was laid off.

NOTE: These are examples that could occur and are not inclusive of all situations. Questions regarding employment preference of specific frozen positions should be referred to Human Resource Services.



## ATTACHMENT B

### BUMPING INTO PROFESSIONAL ENTRY THROUGH EXPERIENCED LEVEL PROFESSIONAL POSITIONS

NOTE: Employment preference can only be applied to the employee's current classification level then to a lower classification in the current class series or to the same or lower classification in a former class series for which the employee previously attained status, whichever minimizes the loss of pay.

#### BEFORE THE RIF

<u><b>Position A</b></u>	<u><b>Position B</b></u>
Position Code: PERMALTA01N	Position Code: PERMALTA02N
Classification Level – Personnel	Classification Level: Personnel
Management Analyst 12	Management Analyst 12
Miller-11 years	Roberts-8 years

<u><b>Position C</b></u>	<u><b>Position D</b></u>
Position Code: PERMALTEA03N	Position Code: PERMATREA04N
Classification Level – Personnel Management	Classification Level - Personnel Management
Analyst 11	Analyst Trainee 9
Carter-8 years	Davis-6 years
Position Code: PERMALTEA03N	
Classification Level – Personnel Management	
Analyst P11	
Chan-7 years	
Position Code: PERMALTEA03N	
Classification Level – Personnel Management	
Analyst 10	
Thelen-18 months	

- Positions A and B are to be abolished and are the least senior Departmental Analyst 12 positions. Miller and Roberts must both bump to lower level positions. Employees in positions C and D, are the lowest seniority employees in the 9 through P11 class series. Position D must be converted to its proper class series, Personnel Management Analyst, and Positions C and D must be considered as though they are all at equal levels.

2. Miller, the employee in Position A, would bump the least senior employee in the Personnel Management Analyst class series—Thelen with 18 months of experience. Since Miller meets the experience qualification, would immediately be classified at the P11 level.
3. Roberts, the employee in Position B, would bump the next least senior employee in the Personnel Management Analyst series—Davis, with six years of experience. Roberts would be placed in Position C and would immediately be classified at the P11 level.
4. Thelen has no bump available in the Personnel Management Analyst class series and is laid off.

#### AFTER THE RIF

<p style="text-align: center;"><b><u>Position A</u></b></p> <p>Position Code: PERMALTAA01N is abolished</p>	<p style="text-align: center;"><b><u>Position B</u></b></p> <p>Position Code: PERMALTAA02N is abolished</p>
<p style="text-align: center;"><b><u>Position C</u></b></p> <p>Position Code: PERMALTEA03N  Classification Level – Personnel Management  Analyst P11  Carter--8 years</p> <p>Position Code: PERMALTEAN03N  Classification Level – Personnel Management  Analyst P11  Miller-11 years</p> <p>Position Code: PERMALTEA03N  Classification Level – Personnel Management  Analyst P11  Roberts--8 years</p> <p>Position Code: PERMALTEA03N  Classification Level – Personnel Management  Analyst P11  Chan--7 years</p>	<p style="text-align: center;"><b><u>Position D</u></b></p> <p>Position Code: PERMATREA04N is abolished</p>

Davis, the former employee of Position D was able to apply preference to a position in the classification that he held before appointment to the trainee position.

# Michigan Civil Service Commission

## Regulation 2.02

Subject: <b>Agency Layoff Plans</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.02 (SPDOC 07-14; October 7, 2007)

### 1. Purpose

This regulation provides agencies with standards and methods of developing agency layoff plans and establishes the criteria Civil Service staff uses in the review process.

### 2. CSC Rule References

#### 2-5 *Employment Preference*

##### 2-5.1 *Application and Protection*

\* \* \*

*(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.*

\* \* \*

### 3. Standards

- A. No agency layoff plan will be approved that does not conform to civil service rules, particularly rule 2-5. A statement must be included to specify that the layoff plan is applicable only to employees not covered by a collective bargaining agreement.
- B. The following provisions regarding application of employment preference cannot be modified by an agency plan:
  1. Determinations of preference by total continuous state service.
  2. Qualification determinations, as specified in the current rules.

3. Applications of preference between employees with a collective bargaining agreement and those without such an agreement.
  4. Any terminology definitions included in the current rules.
  5. Employment preference, as defined in the current rules.
- C. The State Personnel Director must approve agency layoff plans at least 28 calendar days before their implementation.
  - D. Notice to all affected employees must be published and issued at least 14 calendar days before implementation of an agency layoff plan.
  - E. Agencies that want to apply employment preference into additional positions in class clusters must identify the proposed classifications to be clustered.
  - F. Every classification in the proposed cluster must meet the minimum requirements of the job specifications for every other classification in that proposed cluster.
  - G. Agencies that wish to apply employment preference between employee status codes must include this in their plans.
  - H. Agency layoff plans must include a clear and understandable explanation of the procedures to be used to implement the plan.
  - I. Civil Service staff will review agency layoff plans within 14 calendar days following receipt of all relevant information.

#### 4. Procedures

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>1. Prepares an agency layoff plan in accordance with the standards identified in this regulation.</li> <li>2. Sends the drafted plan to Civil Service.</li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>3. Reviews the plan for conformance with rule 2-5 and the standards established by this regulation.</li> <li>4. Sends letter to appointing authority approving or recommending necessary modifications to the agency layoff plan.</li> </ol>
Appointing Authority	<ol style="list-style-type: none"> <li>5. Upon receipt of letter approving or recommending modifications to the agency layoff plan:               <ol style="list-style-type: none"> <li>a. Issues notice of the approved agency layoff plan to all affected employees.</li> </ol> <p><b>OR</b></p> <li>b. Makes necessary modifications to the plan and returns to Civil Service, (Step 2 in this procedure) for approval.</li> </li></ol>

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### **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or by email to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.03

Subject: <b>Leaves of Absence</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.03 (SPDOC 10-01, January 10, 2010)

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## 1. Purpose

This regulation sets forth standards for approval and administration of FMLA leaves, leaves of absence with and without pay, and waived rights leaves of absence.

## 2. CSC Rule References

### *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*

**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.*

#### **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.*



### 3. Definitions

#### A. Definitions in This Regulation.

1. **Covered active duty** means duty during deployment with the Armed Forces to a foreign country for (1) a member of a reserve component of the Armed Forces who is under a call or order to active duty under a provision of law referred to in 10 USC 101(a)(13)(B) or (2) a member of a regular component of the Armed Forces.
2. **Covered servicemember** means (1) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retirement list for a serious injury or illness incurred in or aggravated by service in the line of duty on active duty or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness incurred in or aggravated by service in the line of duty on active duty at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
3. **FMLA** means the federal Family and Medical Leave Act, 29 USC § 2601, et seq.
4. **FMLA leave of absence** means an approved leave of up to 12 workweeks during a 12-month period for (1) a serious health condition that makes the employee unable to perform the functions of the employee's position, (2) care for the employee's spouse, parent, or child with a serious health condition, (3) birth of a child and care for the newborn child, (4) placement with the employee of a child for adoption or foster care, or (5) any qualifying exigency arising out of the fact that a spouse, child, or parent of the employee is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces.
5. **Medical leave of absence** means an approved absence, without pay, because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
6. **Military caregiver leave of absence** means an approved leave of up to 26 workweeks during a 12-month period to care for a covered servicemember for whom the employee is the spouse, child, parent, or next of kin.
7. **Next of kin** means either (1) the nearest blood relative other than a spouse, parent, or child or (2) another blood relative specifically designated by the covered servicemember in writing as next of kin for military caregiver purposes under the FMLA.
8. **Parental leave of absence** means an approved leave of up to 6 months for the birth or adoption of the employee's child and care of the new child.

9. **Veteran** means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

## 4. Standards

### A. Leave of Absence With Pay.

1. An appointing authority may grant a leave of absence with pay for training and development, visits to other governmental agencies, and other authorized short-term absences from regular duties to improve systematically the knowledge or skills required in the employee's work.
2. A leave of absence with pay may be granted as administrative leave for necessary absences from duty when other leaves with pay are not applicable. An employee shall receive paid administrative leave in the following circumstances:
  - a. An employee summoned to jury service or subpoenaed as a witness for the people to testify related to regular job functions is granted leave. During the leave, the employee is entitled to the difference between the employee's pay for providing the service and the employee's regular rate of pay (excluding any travel allowance paid by the court) for the dates of absence. If the employee uses annual leave, the employee is not required to reimburse monies received from the courts.
  - b. An employee absent from work because of closure or declared inaccessibility of the employee's work station is granted leave. The employee is paid and receives service and fringe benefit credits in accordance with regulation 5.06.
  - c. An employee engaging in qualifying labor relations activities is granted leave and may be eligible for pay, service, or fringe benefit credits as authorized in chapters 6 and 8 of the civil service rules and regulations.
  - d. An employee is granted leave for any remaining regularly scheduled hours on the date of a work-incurred injury, if necessary.
  - e. An employee is granted leave for disaster relief services, consistent with the requirements of rule 2-11.3, if authorized.
3. **Payment and Leave Accruals During a Leave of Absence With Pay.**
  - a. An employee is paid for standard hours of work at the base rate of pay. The employee is not paid any premium, unless eligible for the premium while on approved annual or sick leave normally. Any compensation received as a result of service from another entity necessitating a leave of absence with pay is subtracted from any state payment due.

- b. An employee receives full service credit for the number of hours the employee would have been scheduled to work.
  - c. An employee receives full fringe benefit coverage as if regularly employed.
  - d. Annual and sick leave are accrued as if the employee is working. The employee cannot accumulate annual leave in excess of the maximum allowed under rule 5-10.2.
4. **No Waiver of Immunity.** This regulation is not a waiver of immunity of the State of Michigan under the Eleventh Amendment to the U.S. Constitution.

**B. FMLA Leave of Absence.**

1. **Purpose.** An FMLA leave may be taken for (1) a serious health condition that makes the employee unable to perform the functions of the employee's position, (2) care for the employee's spouse, parent, or child with a serious health condition, (3) birth of a child and care for the newborn child, (4) placement with the employee of a child for adoption or foster care, or (5) any qualifying exigency arising out of the fact that a spouse, child, or parent of the employee, who is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces.
2. **Eligibility.** Employees who (1) have been employed by the State of Michigan for at least 12 months and (2) have worked at least 1,250 hours in the previous 12-month period are eligible for an FMLA leave. Time on a military leave of absence during these periods counts toward meeting the eligibility requirements.
3. **Entitlement.** An eligible employee is entitled to a total of 12 workweeks of FMLA leave during a 12-month FMLA entitlement period. The initial 12-month FMLA entitlement period begins when FMLA leave is first taken. Subsequent 12-month FMLA entitlement periods begin when FMLA leave is taken after completing the previous 12-month FMLA entitlement period.
4. **Use of Paid Leave.**
  - a. An eligible employee who is placed on an FMLA leave based on the employee's serious health condition must exhaust any sick leave before continuing on any unpaid FMLA leave.
  - b. An eligible employee who is placed on an FMLA leave to care for a spouse, parent, or child must reduce any sick leave balance to 80 or fewer hours before continuing on any unpaid FMLA leave.
  - c. An eligible employee who is placed on an FMLA leave may elect to use any other accumulated paid leave credits for the leave, consistent with the normal requirements for receiving approval for such leave.

- d. A period when an employee uses annual, sick, or other accumulated paid leave credits for the leave counts toward the employee's 12-workweek FMLA entitlement.

**5. Pay Status.**

- a. If paid leave is used, the FMLA leave is paid with the employee receiving pay, service credit, and fringe benefits.
- b. If paid leave is not used, the FMLA leave is unpaid, but the employee may continue current medical, dental, and vision plan benefits during the leave if the employee continues to pay the employee's share of premiums. No leave or service credit is accrued during an unpaid FMLA leave.

**6. Scheduling.**

- a. **Consecutive.** A single FMLA leave cannot exceed 12 consecutive workweeks.
- b. **Cumulative.** During any 12-month FMLA entitlement period, an eligible employee's cumulative FMLA leaves cannot exceed 12 workweeks.
- c. **Intermittent.**
  - (1) An eligible employee may request an intermittent FMLA leave in writing. An appointing authority must grant intermittent leave or a reduced work schedule (1) when medically necessary for a serious health condition of the employee or employee's spouse, parent, or child or (2) for a qualifying exigency arising out of the current active duty status or call to duty of a spouse, child, or parent. The appointing authority may grant intermittent leaves or reduced work schedules after the birth or qualifying placement of a child.
  - (2) An intermittent FMLA leave cannot exceed a total of 12 workweeks during a 12-month FMLA entitlement period.
  - (3) Only the amount of leave actually taken, when compared to the employee's normal work schedule, counts toward the 12-workweek entitlement. The intermittent leave entitlement for employees who normally work less than full time is prorated.
  - (4) If an eligible employee requests an intermittent leave or a reduced work schedule based on (1) foreseeable planned medical treatment for the employee or for a spouse, child, or parent or (2) for a qualifying exigency arising out of the current active duty status or impending call or order to current active duty of a spouse, child, or parent, the appointing authority may require the employee to transfer temporarily to an alternative position for which the employee is qualified and that (1) has equivalent pay and benefits and (2) better accommodates recurring leaves.

7. **Requesting.** When foreseeable, employees should use the FMLA Notice of Eligibility, Rights, and Designation Form (CS-1810) to request an FMLA leave. Employees should give advance notice for foreseeable FMLA leave requests based upon qualifying military exigencies as soon as practicable. For other types of foreseeable FMLA leave requests, employees should give notice at least 30 days before the leave is to begin. If 30 days is not practicable or if the need for FMLA leave is unforeseeable, notice should be given as soon as practicable. After learning of the need to take FMLA leave for a qualifying purpose, the appointing authority shall provide the employee with the appropriate certification form, which the employee must return within 15 calendar days.
8. **Return.** If able to perform the essential functions of the position, an employee returning from an FMLA leave is returned to the same or an equivalent position at the same step of the salary range and resumes accumulating continuous service hours, hours toward the next salary step, and any other accumulations with no break in continuous service.
9. **Exhaustion.** After exhausting the FMLA leave entitlement, an employee may be eligible for a medical or parental leave of absence, as provided in this regulation.

#### C. Military Caregiver Leave of Absence.

1. **Purpose.** A military caregiver leave (MCL) may be taken to care for a covered servicemember for whom an employee is a spouse, child, parent, or next of kin.
2. **Eligibility.** Employees who have been employed by the State of Michigan for at least 12 months and have worked at least 1,250 hours in the previous 12-month period are eligible for a military caregiver leave. Time on a military leave of absence during these periods counts toward meeting the eligibility requirements.
3. **Entitlement.** An eligible employee is entitled to a total of 26 workweeks of military caregiver leave during a 12-month MCL entitlement period. The 12-month MCL entitlement period begins when military caregiver leave is first taken. Any leave for any other FMLA qualifying purpose that is taken during the 12-month MCL entitlement period also counts toward the 26-workweek military caregiver leave entitlement. The 12-month MCL entitlement period and 12-month FMLA entitlement period are different periods.
4. **Use of Paid Leave.**
  - a. An eligible employee on a military caregiver leave must reduce any sick leave balance to 80 or fewer hours before continuing on any unpaid military caregiver leave.
  - b. An eligible employee on a military caregiver leave may elect to use any other accumulated paid leave credits for the leave.

- c. Time when an employee uses annual, sick, or other accumulated paid leave credits for the leave counts toward the employee's 26-workweek entitlement.

**5. Pay Status.**

- a. If paid leave is used, the leave is paid with the employee receiving pay, service credit, and fringe benefits.
- b. If paid leave is not used, the leave is unpaid, but the employee may continue current medical, dental, and vision plan benefits during the leave if the employee continues to pay the employee's share of premiums. No leave or service credit is accrued during an unpaid military caregiver leave.

**6. Scheduling.**

- a. **Consecutive.** The military caregiver leave cannot exceed 26 consecutive workweeks.
- b. **Cumulative.** During any 12-month MCL entitlement period, an eligible employee's cumulative military caregiver leaves cannot exceed 26 workweeks.
- c. **Intermittent.**

- (1) An employee may request an intermittent military caregiver leave in writing. An appointing authority must grant intermittent leave or a reduced work schedule when medically necessary to care for a covered servicemember.
- (2) Intermittent military caregiver leave cannot exceed a total of 26 workweeks during the 12-month MCL entitlement period.
- (3) Only the amount of leave actually taken, when compared to the employee's normal work schedule, counts toward the 26-workweek entitlement. The intermittent leave entitlement for employees who normally work less than full time is prorated.
- (4) If an eligible employee requests an intermittent leave or a reduced work schedule based on foreseeable planned medical treatment, the appointing authority may require the employee to transfer temporarily to an alternative position for which the employee is qualified that (1) has equivalent pay and benefits and (2) better accommodates recurring leaves.

- 7. Requesting.** When foreseeable, employees should use the FMLA Notice of Eligibility, Rights, and Designation Form (CS-1810) to request a military caregiver leave. Employees should give advance notice for foreseeable military caregiver leave requests at least 30 days before the leave is to begin. If 30 days is not practicable or if the need for leave is unforeseeable, notice should be given as soon as practicable. After learning of the need to take FMLA leave for a qualifying purpose, the appointing authority shall provide the employee with the Certification of Serious

Illness or Injury of Covered Servicemember Form (CS-1809), which the employee must return within 15 calendar days.

8. **Return.** If able to perform the essential functions of the position, an employee returning from a military caregiver leave is returned to the same or an equivalent position at the same step of the salary range and resumes accumulating continuous service hours, hours toward the next salary step, and any other accumulations with no break in continuous service.

#### **D. Leave of Absence Without Pay.**

##### **1. Criteria for Granting.**

- a. **Medical leave of absence.** An appointing authority may grant a medical leave of up to 6 months to an eligible employee with the equivalent of at least 6 months of full-time employment whose sick leave is exhausted. If an employee requests an extension before the leave expires, an appointing authority may extend the leave to a maximum of one year. An appointing authority may establish in agency work rules the frequency with which medical leaves of absence may be granted. If no such work rule is adopted, an appointing authority may grant medical leaves totaling no more than 12 months during any five-year period. An appointing authority must receive written approval from the State Personnel Director for any extension of a medical leave beyond one year. Any unpaid portion of an FMLA leave resulting from the employee's serious health condition counts as part of the medical leave.
  - b. **Parental leave of absence.** An appointing authority must grant an employee with status a parental leave for up to 6 months for the birth or adoption and care for a new child during the 12 months following the birth or adoption. Any absence or leave with or without pay, including FMLA leave, used for care of a new child counts as part of the 6-month parental leave entitlement.
  - c. **Unclassified appointment.** An employee appointed to an unclassified position may be granted a leave of absence for the period of service in the unclassified position, as authorized in rule 1-9. The employee receives service credit for serving in an unclassified position upon return to the classified service.
  - d. **Disaster relief.** An employee may be granted a leave of absence to perform disaster relief services, as authorized in rule 2-12.1(a)(3).
  - e. **Other.** An employee may be granted a leave of absence for further education or other appropriate nonmedical reasons.
2. **Duration.** Subject to the limitations in this section, the appointing authority has discretion to grant a leave of absence and determine its length. An employee on a leave of absence may request early termination or an extension before the leave's

expiration. The granting of such requests is at the discretion of the appointing authority.

**3. Leave Accruals.**

- a. An employee does not receive pay, service credit, fringe benefits, or leave accruals during the leave.
- b. An employee may elect to be paid off for part or all of the unused annual leave balance before entering the leave. An employee may retain up to 80 hours of annual leave during the leave. The appointing authority may approve retention of any annual leave balance in excess of 80 hours. Retained annual leave accruals are available upon return from the leave, consistent with regulation 5.09.
- c. The employee's sick leave balance is frozen during the leave. Sick leave credits must be exhausted before any unpaid medical leave.
- d. The employee's banked leave and deferred hours are frozen during the leave and are available upon return from the leave.

**4. Return.**

- a. **Generally.** Except as provided in § 4.D.4.b, an employee returning to duty after a leave of absence without pay is returned to the classified position last occupied or an equivalent position. The employee is returned at the same salary or step of the salary range and starts to accumulate continuous service hours, hours towards the next salary step, and any other accumulations with no break in continuous service. If the employee's position was abolished during the leave, the employee is returned in accordance with rule 2-5.
  - b. **SES or SEMAS from Unclassified Appointment.** The senior executive service (SES) or senior executive management assistant service (SEMAS) contract of an employee who occupied an SES or SEMAS position is terminated at the beginning of a leave to accept an appointment to an unclassified position. On return to the classified service, the employee is not entitled to return to the former SES or SEMAS position and the employee's future status is determined as provided in rule 4-6.2(g) or 4-7.2(g).
5. **Leave Payoffs.** An employee who separates from the state service directly from a leave is paid for unused leave balances in accordance with applicable rules and regulations, including rule 5-10 and regulations 5.02, 5.09, and 5.10.

**E. Military Leave of Absence.**

A career classified employee shall receive a military leave of absence for service in the uniformed services, consistent with federal law, rule 2-14, and regulation 2.04. Detailed information on supplemental pay, insurance coverage, seniority, and return to work rights are in rule 2-14 and regulation 2.04.



**F. Waived Rights Leave of Absence.**

1. An employee who terminates state employment may be granted a waived rights leave of absence by the appointing authority of up to one year to protect the employee's continuous service, seniority, and any benefits connected with length of service. An appointing authority may extend a waived rights leave up to one additional year upon providing written notice to the State Personnel Director. The State Personnel Director must approve any further extension in writing.
2. An employee on a waived rights leave does not accrue annual, sick, or other leave.
3. An employee cannot carry any annual leave balance or deferred hour credits forward and is paid off for any annual leave balance and deferred hour credits at the start of the leave at the last received rate of pay.
4. The employee's sick and banked leave balances are frozen during the waived rights leave.
5. The agency is not required to return the employee to a position in the classified service during or upon expiration of the waived rights leave.
6. At any time during the waived rights leave, the employee may seek reemployment with the original agency or another agency. If successful, the employee is treated as if returning from a regular leave of absence without pay.
7. If an employee is not returned to the classified service by the end of the leave, the employee is separated and any sick and banked leave balances are liquidated in accordance with regulation 5.10 and rule 5-10.3.

**CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.04

Subject: <b>Military Leaves of Absence and Return to Work</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.04 (SPDOC 07-14, October 7, 2007)

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### 1. Purpose

This regulation establishes the basic employment and return-to-work rights and benefits for classified employees who are absent due to service in the uniformed services.

### 2. CSC Rule References

#### *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.*

\* \* \*

## **2-14.7 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. CSC Rule Definitions.

1. **Seniority** means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.
2. **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].
3. **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. Definitions in This Regulation.

1. **Decompression time** means the period beginning on the date an employee on military leave is discharged from active duty in a uniformed service and ending on the date the employee returns to work in the classified service.

2. **Service-connected disability** means a disability resulting from an illness or injury incurred in, or aggravated during, service in a uniformed service.

## 4. Standards

### A. Military Leaves of Absence.

1. **Eligibility for military leave of absence.** If an employee is absent from a classified position due to service in the uniformed services, an appointing authority shall place the employee on a military leave of absence if both of the following criteria are satisfied:
  - a. **Notice.** The employee or an appropriate officer of the uniformed service gives the appointing authority advance oral or written notice that the employee will be absent due to service in a uniformed service. This requirement is waived if notice is prevented by military necessity or is otherwise impossible or unreasonable under all of the circumstances.
  - b. **Five year limit.** The cumulative length of the employee's previous absences from the employing agency due to service in the uniformed services does not exceed 5 years. The exclusions in § 4.B.2 do not count toward the 5-year limit.
2. **Deemed to be on a military leave.** If an employee is absent from a classified position due to service in the uniformed services but has not been placed on a military leave of absence, the employee is nonetheless deemed to be on a military leave of absence if the employee is qualified under rule 2-14 and this regulation. If an employee is deemed to be on a military leave of absence, the employee is entitled to all rights and benefits as though the employee had been granted a military leave of absence.
3. **Applicable rules and regulations.** A military leave of absence is governed exclusively by rule 2-14 and this regulation. Rule 2-11 and rule 2-12 do not apply to a military leave of absence. An appointing authority shall not grant any other paid or unpaid leave of absence, right, or benefit to an employee absent due to service in a uniformed service except as expressly authorized in the civil service rules and regulations.
4. **Unpaid leave.** Unless otherwise expressly authorized in the rules or regulations, a military leave of absence is without pay.
5. **Use of accrued leave.** An employee is permitted to use any annual, personal, compensatory, or banked leave time accrued before beginning service in the uniformed services. An appointing authority cannot require an employee to use annual, personal, compensatory, or banked leave time during such period.
6. **Funeral honors duty.** An appointing authority shall grant an employee who is a member of a reserve component a military leave of absence to allow the employee to perform funeral honors duty as authorized by 10 USC § 2503 or 32 USC § 115.

**B. Requirements for Returning to Work and Other Benefits.**

1. **Entitlement.** An employee on a military leave of absence is entitled to return to work and to the other rights and benefits of rule 2-14 and this regulation if all of the following occur:
  - a. **Notice.** The employee or an appropriate officer of the uniformed service gave advance written or verbal notice of the service to the employee's appointing authority. This requirement is waived if notice was prevented by military necessity or was otherwise impossible or unreasonable under all of the circumstances.
  - b. **Five year limit.** The cumulative length of the absence and all previous absences from a position with the employee's agency due to service in the uniformed services does not exceed 5 years. The exclusions in § 4.B.2 do not count toward the 5-year limit.
  - c. **Return to work.** The employee returns to work or gives written or oral notice of readiness to return to work before the military leave of absence expires.
2. **Five year limit; exclusions.** The following service is not counted toward the 5-year limitation in §§ 4.A.1.b and 4.B.1.b:
  - a. Service that is required, beyond 5 years, to complete an initial period of obligated service.
  - b. Service during which the employee was unable to obtain orders releasing the employee from a period of service in the uniformed services before the expiration of the 5-year period and such inability was through no fault of the employee.
  - c. Service performed as required pursuant to 10 USC § 10147 or § 502(a), 32 USC § 503, or to fulfill additional training requirements determined and certified in writing by the Secretary of the uniformed service concerned, to be necessary for professional development, or for completion of skill training or retraining.
  - d. Service performed by a member of a uniformed service who is ordered as follows:
    - (1) Ordered to or retained on active duty under 10 USC § 688, § 12301(a), § 12301(g), § 12302, § 12304, or § 12305, or under 14 USC § 331, § 332, § 359, § 360, § 367, or § 712.
    - (2) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary of the uniformed service concerned.

- (3) Ordered to active duty (other than for training) in support, as determined by the Secretary of the uniformed service concerned, of an operational mission for which personnel have been ordered to active duty under 10 USC § 12304.
- (4) Ordered to active duty in support, as determined by the Secretary of the uniformed service concerned, of a critical mission or requirement of the uniformed services.
- (5) Called into federal service as a member of the national guard under 10 USC § 331, et seq., or § 12406.

e. Decompression time.

3. **Documentation for Returning to Work.**

a. **Required documentation.** An employee returning to work after a period of service in a uniformed service that exceed 30 days shall, upon request, provide documentation to establish each of the following:

- (1) The employee's return to work is timely under § 4.C.
- (2) The employee has not exceeded the 5-year service limitation (subject to the exclusions in § 4.B.2).
- (3) The employee's entitlement to the benefits has not been terminated pursuant to § 4.G.

b. **Lack of documentation.** The failure of an employee to provide documentation that satisfies § 4.B.3.a is not a basis for denying return to work if the failure occurs because the documentation does not exist or is not readily available at the time of the request of the appointing authority. If, after the employee returns to work, documentation becomes available that establishes that the employee does not meet one or more of the requirements referred to in § 4.B.3.a, the appointing authority may terminate the employment of the employee and the provision of any rights or benefits afforded the employee under this regulation.

c. **Limit on demand for documents.** An appointing authority may not delay an employee's return to work by demanding documentation that does not then exist or is not then readily available.

4. **Return to work not required; standards.** An appointing authority is not required to return an employee to work under this regulation if any of the following occur.

- a. The employer's circumstances have so changed as to make such return to work impossible or unreasonable.
- b. The employee has a service-connected disability and the employee's return to work would impose an undue hardship on the employer.

- c. The state position which the employee left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that state employment would continue indefinitely or for a significant period. Typically, this includes a non-career position or a limited-term position that was not expected to be renewed.
- 5. **Timing, frequency, and duration of service not to be considered.** In any determination of an employee's rights to protection under this regulation, the timing, frequency, and duration of the employee's training or service, or the nature of such training or service in the uniformed services (including voluntary service), cannot be a basis for denying protection of this regulation so long as the military service does not exceed the 5-year limit in § 4.B.2, the employee gave the advance notice required in § 4.A.1.a, and the employee gave the return-to-work notice required in § 4.C.

### C. Time Limits for Returning to Work.

- 1. **Time limits for returning to work.** After completion of a period of service in the uniformed services, an employee must report to work or give notice of readiness to return to work with the appointing authority, as follows:
  - a. **Less than 31 days' service or fitness exam.** If the period of service was less than 31 days or was for a service fitness examination, the employee must report to work not later than the beginning of the first full regularly scheduled work period on the first full calendar day following:
    - (1) the completion of the period of service (or fitness examination), plus
    - (2) a period allowing for the safe transportation from the place of the service (or examination) to the employee's residence, plus
    - (3) eight hours.

If reporting within the required period is impossible or unreasonable through no fault of the employee, then the employee must report as soon as possible after the expiration of the 8-hour period.
  - b. **31 to 180 days' service.** If the period of service was more than 30 days but less than 181 days, the employee must report for work or give notice not later than **14 days** after the completion of the period of service. If reporting for work or giving notice within the 14-day period is impossible or unreasonable through no fault of the employee, the employee must report or give notice no later than the first full calendar day when it becomes possible.
  - c. **181 or more days' service.** If the period of service was for more than 180 days, the employee must report for duty or give notice not later than **6 months** after the completion of the period of service.



**2. Time limits extended for medical reasons.**

- a. **Extension of time limits.** An employee who is hospitalized for, or convalescing from, an illness or injury incurred in or aggravated during service in the uniformed services shall, at the end of the period that is necessary for the person to recover from the illness or injury, return to work or give notice of readiness to return to work. Except as provided in § 4.C.2.b, the period of recovery may not exceed **2 years**.
  - b. **Further extension of period.** The 2-year period in § 4.C.2.a shall be extended by the minimum time required to accommodate the circumstances beyond the employee's control which make reporting or giving notice within the 2-year period impossible or unreasonable.
3. **No automatic forfeit.** An employee who fails to return to work or give notice of readiness to return to work within the appropriate period specified in this § 4.C shall not automatically forfeit the employee's entitlement to the rights and benefits provided in rule 2-14 or this regulation but shall be subject to civil service rules and regulations and the agency's rules, policy, and general practices pertaining to explanations and discipline for absence from scheduled work.

**D. Rights, Benefits, and Obligations.**

An employee who returns to work under this regulation is entitled to the rights and benefits determined by seniority that the employee had on the day the employee began the military leave plus any additional seniority-based rights and benefits that the employee would have attained if the employee's continuous service with the state had not been interrupted by the military leave.

1. **Seniority-based rights.** On returning to work, the following service and work hour counters (if not previously adjusted during the military leave of absence) are adjusted to include an employee's time on a military leave of absence, including any decompression time.
  - a. Continuous service hours.
  - b. Employment preference.
  - c. Eligibility for annual leave accruals.
  - d. Eligibility for severance pay.
  - e. Eligibility for longevity payment.
  - f. Eligibility for family and medical leave.
  - g. Eligibility for parental leave.

- h. Step in a pay range with steps (if in satisfactory status at the beginning of the military leave).
- 2. **Nonseniority-based rights; examples.** By way of example only, the following are not seniority-based and are not adjusted as a result of an employee's service in the uniformed services:
  - a. Eligibility for lump sum or base salary increase (if in a performance pay plan). Performance pay awards are based on evaluations of actual job performance, not on seniority.
  - b. Eligibility for reclassification. Eligibility for reclassification is based on actual job performance, not on seniority.
  - c. Length of a follow-up rating period (rule 2-3.4). A follow-up rating period is suspended during a military leave of absence. When the employee returns to work, the follow-up rating period picks up at the point where the military leave of absence began.
  - d. Length of a probationary period (rule 3-6.2). A probationary period is a part of the merit selection process and is suspended during a military leave of absence. When the employee returns to work, the probationary period picks up at the point where the military leave of absence began.

#### **E. Position on Returning to Work.**

An eligible employee who returns to work after a military leave of absence is returned to work in the classified service as follows:

- 1. **Less than 91 days' service.** An employee whose period of service in the uniformed services was less than 91 days is returned to work in the position the employee occupied before beginning service in the uniformed services.
- 2. **More than 90 days' service.** An employee whose period of service in the uniformed services was more than 90 days is returned to work in either (1) the position the employee occupied before beginning service in the uniformed services or (2) a position in the same classification level.
- 3. **Abolishment of position or RIF.**
  - a. If, while an employee is on a military leave of absence, the employee's position is abolished or affected by a reduction in force (RIF), the employee is treated as though the employee is at work on the day of the abolishment or RIF. For example, the employee may be demoted, laid off, placed on recall, or otherwise affected by the application of employment preference in the same manner as if the employee was present.

- b. When the employee returns to work from the military leave of absence, the employee is placed in the same circumstance the employee would have been in if the employee's continuous employment with the state had not been interrupted by a military leave of absence, including, for example, a demotion, layoff, recall, or other personnel action.
4. **Effect of disability.**
- a. **Service-connected disability.** If an employee, due to a service-connected disability, is not qualified to return to work in the position required under §§ 4.E.1 or 4.E.2, after reasonable efforts by the appointing authority to accommodate the disability, the employee is returned to work in the following order of priority:
- (1) In any other position with equivalent seniority, status, and pay, the duties of which the employee is qualified to perform or would become qualified to perform (as determined by Civil Service) with reasonable efforts by the appointing authority.
  - (2) If the employee cannot be returned to work under § 4.E.4.a(1), then in a position which is the nearest approximation to a position referred to in § 4.E.4.a(1) in terms of seniority, status, and pay, consistent with circumstances of the employee's case.
- b. **Nonservice-connected disability.** If an employee, due to a nonservice-connected disability, is not qualified to return to work in the position required under §§ 4.E.1 or 4.E.2 and cannot become qualified with reasonable efforts by the employer, then the employee is returned to work in any other position that the employee is qualified to perform.
- c. **Failure to qualify.** If an employee, due to any disability, is not qualified to return to work in any position after reasonable efforts by the appointing authority to accommodate the disability, the employee is separated.
- d. **Status of employee.** An employee who is discharged from active duty and whose return to work is delayed by a service-connected disability remains on an unpaid military leave of absence until the employee is returned to work or the employee is separated after failing to qualify to return to work.
5. **Ties.** If two or more employees are entitled to return to work to the same position, the employee who left the position first has the prior right to return to that position.

**F. Prohibited Discrimination and Retaliation.**

1. **Discrimination.** An appointing authority shall not deny initial employment, retention in employment, promotion, the right to return to work after a military leave of absence, or any benefit of employment to a person who (1) is or applies to be

a member of a uniformed service or (2) performs, has performed, applies to perform, or is obligated to perform service in a uniformed service, based on that person's actual or potential membership or service.

2. **Retaliation prohibited.** An appointing authority shall not discriminate in employment against or take any tangible adverse employment action against any person because the person has (1) acted to enforce a protection afforded any person under this rule, (2) testified or otherwise made a statement in connection with any proceeding under this rule, (3) assisted or otherwise participated in an investigation under this rule, or (4) exercised a right provided in this rule. The prohibition in this standard applies with respect to a person regardless of whether that person has performed service in the uniformed services.

#### **G. Termination of Entitlements.**

An employee's entitlement to the benefits under rule 2-14 or this regulation terminates if any of the following occur:

1. The employee is separated from a uniformed service (1) with a dishonorable discharge, (2) with a bad conduct discharge, or (3) under other than honorable conditions, as characterized by regulations of the uniformed service.
2. The employee is a commissioned officer dismissed (1) by sentence of a general court-martial, (2) in commutation of a sentence of general court-martial, or (3) by order of the President in time of war, as permitted under 10 USC § 1161(a).
3. The employee is a commissioned officer dropped from the rolls pursuant 10 USC § 1161(b), due to (1) absence without authority for at least 3 months, (2) separation by reason of a sentence to confinement adjudged by a court-martial, or (3) a sentence to confinement in a federal or state penitentiary or correctional institution.
4. The employee fails to return to work in the classified service within the appropriate period specified in § 4.C.

#### **H. State National Guard Duty.**

An employee who is a member of a national guard unit and is ordered to active state duty by the governor or volunteers for such duty is entitled to the employment and return-to-work rights and benefits provided in rule 2-14 and this regulation even if the employee is not entitled to similar rights or benefits under federal law.

#### **I. Discharge for Just Cause.**

Notwithstanding any other rule or regulation that may permit discharge for reasons other than just cause, an employee in an indefinite position who returns to work under this regulation is subject to the following:

1. **31 to 180 days' service.** If the employee's period of service in the uniformed services before returning to work was more than 30 days but less than 181 days, the employee may not be discharged within 180 days after returning to work except for just cause.
2. **More than 180 days' service.** If the employee's period of service in the uniformed services before returning to work was more than 180 days, the employee may not be discharged within one year after returning to work except for just cause.

**J. Enforcement of Employment and Return-to-Work Rights.**

1. **Complaints.** As authorized in rule 2-14.7, an employee who is entitled to employment or 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 rule 2-14 or this regulation may file a grievance or technical complaint, as appropriate.
2. **Grievance and Grievance Appeal; Procedures and Burdens of Proof.** A grievance or grievance appeal under rule 2-14 and this regulation is conducted as provided in rule 8-1, rule 8-2, and regulation 8.01, except that the burden of proof shall be as follows:
  - a. **General.** Except as provided below in §§ 4.J.2.b through f, the employee has the burden of proving by a preponderance of the evidence that the appointing authority discriminated against the employee or otherwise failed to comply with a rule or applicable regulation and, as a result, the employee has suffered or will suffer a tangible adverse employment action.
  - b. **Discrimination.** In a grievance alleging discrimination under § 4.F.1:
    - (1) The grievant first has the burden of proving by a preponderance of the evidence that one of the following was a motivating factor in the appointing authority's action:
      - (a) The grievant's membership in the uniformed services.
      - (b) The grievant's application for membership in the uniformed services.
      - (c) The grievant's service in the uniformed services.
      - (d) The grievant's application for service in the uniformed services.
      - (e) The grievant's obligation for service in the uniformed services.
    - (2) If so, the appointing authority then has the burden of proving by a preponderance of the evidence that the challenged action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service.
  - c. **Retaliation.** In a grievance alleging retaliation under § 4.F.2:

- (1) The grievant first has the burden of proving by a preponderance of the evidence that one of the following was a motivating factor in the appointing authority's action.
    - (a) The grievant's action to enforce a protection afforded any person under this regulation.
    - (b) The grievant's testimony or making of a statement in or in connection with any proceeding under this regulation.
    - (c) The grievant's assistance or other participation in an investigation under this regulation.
    - (d) The grievant's exercise of a right provided for in this regulation.
  - (2) If so, the appointing authority then has the burden of proving by a preponderance of the evidence that the challenged action would have been taken in the absence of the grievant's enforcement action, testimony, statement, assistance, participation, or exercise of a right.
- d. **Impossibility of returning to work.** In a grievance involving return to work in which the appointing authority claims under § B.4.a that circumstances have so changed as to make returning to work unreasonable or impossible, the appointing authority has the burden of proving such impossibility or unreasonableness by a preponderance of the evidence.
  - e. **Undue hardship.** In a grievance involving return to work in which the appointing authority claims under § 4.B.4.b that a required accommodation, training, or effort is an undue hardship, the appointing authority has the burden of proving such undue hardship by a preponderance of the evidence.
  - f. **Brief employment.** In a grievance involving return to work in which the appointing authority claims under § 4.B.4.c that the employment from which the employee left was for a brief, non-recurrent period and there was no reasonable expectation that such employment will continue indefinitely or for a significant period, the appointing authority has the burden of proving by a preponderance of the evidence the brief or non-recurrent nature of the employment and that there was no reasonable expectation of the employment continuing indefinitely or for a significant period.

## **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.05

Subject: <b>Workplace Safety</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.05 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation provides direction on workplace safety and reporting violations involving acts or threats of violence or possessing or carrying firearms or explosives.

### 2. CSC Rule References

#### ***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.*

## **3. Definitions**

### **A. CSC Rule Definitions.**

1. **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.
2. **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.



3. **Explosive** means any bomb, grenade, missile, or other dangerous device designed to expand suddenly and release internal energy resulting in an explosion.
4. **Firearm** means a weapon from which a dangerous projectile may be expelled by an explosive, gas, or air.
5. **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.
6. **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.

#### 4. Standards

- A. **Agency Work Rules.** An appointing authority may promulgate work rules not inconsistent with rule 2-20.
- B. **Imminent Risk.** An employee who observes or learns of an imminent risk of serious physical injury or death due to (1) an act of violence or a threat of violence or (2) the carrying or possession of a firearm or explosive at a state workplace or during actual-duty time shall immediately take the following actions:
  1. Take measures to ensure his or her personal safety.
  2. Report the matter to law enforcement.
  3. Notify the immediate supervisor, manager, or appointing authority of the incident as soon as possible.
- C. **Reporting Obligation.**
  1. **What to Report.**
    - a. **All Employees.** An employee is obligated to report to management or to the appointing authority any of the following circumstances:
      - (1) If the employee is subjected to acts or threats of violence.
      - (2) If the employee witnesses acts or threats of violence.
      - (3) If the employee becomes aware of acts or threats of violence.
      - (4) If the employee observes or is made aware that an employee possesses or is carrying a firearm or explosive at a state workplace or during actual-duty time, unless the reporting employee knows that the appointing authority has authorized the employee to carry the firearm or explosive.

- (5) If the employee receives a protective or restraining order that lists a state workplace as a protected area, the employee must provide a copy of the order to the appointing authority responsible for the state workplace.
- b. **Supervisors and managers.** A supervisor or manager who observes or learns of
  - (1) an act of violence or a threat of violence by or to a subordinate employee or
  - (2) the carrying or possession of a firearm or explosive at a state workplace or during actual-duty time by a subordinate employee, shall take prompt and appropriate remedial action and shall report the observation or information to the appointing authority.
2. **To Whom to Report.** An employee who is obligated to report under this regulation shall report the incident to any available supervisor or the appointing authority.
3. **When to Report.** An employee who is obligated to make a report must make the required report immediately upon learning of or observing the reportable incident or as soon thereafter as it is reasonably possible to make the report.
4. **Confidentiality.** To protect the interests of all involved, the appointing authority shall maintain confidentiality to the extent practicable and appropriate under the circumstances.

#### **D. Action to Stop Violations.**

1. **Acts or Threats of Violence.** If an act or threat of violence is alleged to be continuing or the target of the act or threat needs protection, the appointing authority shall take appropriate immediate action it deems reasonably necessary to stop the alleged acts or threats of violence. Possible actions include, but are not limited to, (1) notice to law enforcement, (2) change of location of the work station of the alleged violator or person affected, (3) "no contact" orders to both parties, (4) temporary reassignment of the alleged violator or the person affected, and (5) suspension of the alleged violator with or without pay to conduct an investigation, as authorized in rule 2-6.4.
  2. **Possession of Firearms or Explosives.** If an appointing authority learns that an employee is carrying or in possession of a firearm or explosive at a state workplace or during actual-duty time in violation of rule 2-20, this regulation, or an agency work rule, the appointing authority may notify law enforcement or take other appropriate action.
- E. **Discipline.** The appointing authority may discipline an employee for (1) engaging in an act or threat of violence or (2) carrying or possessing a firearm or explosives at a state workplace or while on actual-duty time in violation of rule 2-20, this regulation, or an agency work rule.
- F. **Education and Training.** Each appointing authority is encouraged to provide to all current and newly appointed employees information regarding an employee's duties

and responsibilities under rule 2-20, this regulation, and any applicable agency work rules.

## 5. Procedures

Responsibility	Action
Employee who observes or learns of (1) an act or a threat of violence or (2) carrying or possession of a firearm or explosives.	<ol style="list-style-type: none"> <li>1. <u>Imminent Risk of Danger.</u> <ol style="list-style-type: none"> <li>a. Immediately takes appropriate measures to ensure his or her personal safety.</li> <li>b. Contacts law enforcement official to report incident, if appropriate.</li> <li>c. Notifies immediate supervisor, manager, or appointing authority of incident.</li> </ol> </li> <li>2. <u>No Imminent Risk of Danger.</u> Notifies immediate supervisor, manager, appointing authority of incident.</li> </ol>
Supervisor or Manager	<ol style="list-style-type: none"> <li>3. Conducts any necessary interviews or investigations to obtain specific facts regarding the reported incident.</li> <li>4. Forwards a report to the appointing authority.</li> </ol>
Appointing Authority	<ol style="list-style-type: none"> <li>5. Reviews information to substantiate or dismiss reported incident.</li> <li>6. Takes appropriate remedial or disciplinary action.</li> <li>7. Consults with law enforcement or other appropriate agencies.</li> </ol>

## CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.06

Subject: <b>Conducting Employee Ratings</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.06 (SPDOC 07-14, October 7, 2007)

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## 1. Purpose

This regulation establishes procedures approved by the director to conduct employee ratings.

## 2. CSC Rule References

### 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.*

## **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.*

\* \* \*

## **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.*

\* \* \*

## **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. Definitions**

### **A. CSC Rule Definitions.**

1. **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.

2. **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.

### **B. Definitions in This Regulation.**

1. **Competency** means the ability, skill, knowledge, and motivation needed for success on the job.

2. **Equitable Classification Plan (ECP) Group 1** means 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.
3. **Equitable Classification Plan (ECP) Group 2** means nonsupervisory classifications that typically require a bachelor's degree or higher, or an equivalent combination of education and experience, for entry.
4. **Equitable Classification Plan (ECP) Group 3** means managerial and supervisory classifications that typically direct programs within a state agency and play an integral role in the management and supervision of state services. These positions are typically section heads, unit heads, and other positions that are organizationally or functionally equivalent.
5. **Equitable Classification Plan (ECP) Group 4** means the second highest tier of classified management positions that administer programs within an agency. These positions are typically division directors, office directors, bureau directors, their deputies, and other positions that are organizationally or functionally equivalent.
6. **Probationary period** means a working test period that every person appointed to a new classification must satisfactorily complete as a condition of continued employment.
7. **Senior Executive Management Assistant Service (SEMAS)** means 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.
8. **Senior Executive Service (SES)** means 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.
9. **Supervisor**, for the purpose of this regulation, means the person who has formal authority for enforcing directives and ensuring satisfactory performance of subordinates. A supervisor may be immediately superior in the employee's chain of command or may be removed, but directly in the employee's chain of command.

## 4. Standards

### A. General Standards.

1. Performance management plans and performance ratings are required for all career employees in the classified service.

2. All supervisory, managerial, administrative, and executive employees must have included in their performance management plan a factor or competency to establish a performance expectation for conducting timely and effective employee ratings.

#### **B. Rating Forms.**

1. Performance Management and Competency Rating forms used for (1) probationary ratings; (2) annual ratings for nonprobationary employees; and (3) progress reviews are listed below:

Group 1 Employees: CS-1750

Group 2 Employees: CS-1751

Group 3 Managers: CS-1761

Group 3 Supervisors: CS-1752

Group 4/SES Employees: CS-1719

An appointing authority may use an alternative rating form approved by the State Personnel Director until the agency begins using the on-line forms as provided in § B.2 below.

2. An on-line performance management form accessible through MI HR Self-Service is to be used instead of the above listed rating forms for all annual and probationary ratings. Each agency must have a plan approved by the State Personnel Director that addresses the timing of the transition of the agency's employees to the automated performance management system. Any exceptions must be approved by the State Personnel Director.
3. For purposes of this regulation, ratings of "Meets Expectations" and "High Performing" are equivalent to a satisfactory rating.
4. A separate interim rating form, Interim Employee Rating (CS-375), must be used for interim and follow-up ratings.

#### **C. Probationary Ratings.**

##### **1. General Requirements.**

- a. New probationary periods are required in any one of the following circumstances: (1) hire; (2) promotion; (3) lateral job change between agencies to a different classification; (4) lateral job change of a probationary employee to the same classification in a different agency; or (5) lateral job change of a probationary employee to a different classification within the same agency. A probationary period is not required for Senior Executive Service (SES) and Senior Executive Management Assistant Service (SEMAS) employees.

- b. A new probationary period is not required but may be established under any one of the following circumstances: (1) reinstatement; (2) lateral job change to a different classification in the same agency; (3) demotion of an employee with status; or (4) lateral job change of a probationary employee to the same classification within the same agency.
- c. Full-time probationary employees shall be reviewed upon completion of 6 months and 12 months of service. Less than full-time probationary employees shall be reviewed upon completion of 9 months and 18 months of service. New hires without status shall also be reviewed upon completion of 3 months of service.
- d. An employee's probationary period will continue upon reclassification upward in a series only if the employee has not completed the probationary period before the effective date of the reclassification.
- e. Probationary ratings should be completed by the supervisor within 28 calendar days of the end of the rating period.
- f. The appointing authority must sign and date, or electronically certify, all probationary ratings.
- g. An employee who disagrees with a rating may prepare and submit to the appointing authority a written statement taking exception to the rating. Using the on-line form, an employee may enter an exception to the rating in the Employee Progress Review/Comments section.
- h. Satisfactory ratings are not considered discipline and are not grievable.

## **2. Unsatisfactory Ratings.**

- a. An unsatisfactory probationary rating is considered discipline and shall be conducted in accordance with rule 2-6.
- b. 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.
- c. If an employee has received an unsatisfactory probationary rating, the effective date of a step increase, performance-pay award, or reclassification action cannot be made retroactive to a date before a new satisfactory rating is issued, nor is the time the employee is under an unsatisfactory probationary rating creditable toward the time required for reclassification.
- d. An appointing authority may demote or dismiss an employee receiving an unsatisfactory rating. If an unsatisfactory rating is issued at the 12-month point but the employee is not dismissed, the appointing authority must extend the



probationary period and issue a final probationary rating no later than 28 calendar days after the end of the extended probationary period.

- e. If an employee with status is appointed to a new classification level and does not perform satisfactorily at the new level, the appointing authority may demote the employee to the former level at which the employee gained status or dismiss the employee. In the event that the appointing authority chooses demotion and there is no vacant position at the former level, the employee may exercise employment preference in accordance with rule 2-5.
- f. The appointing authority must enter any unsatisfactory probationary rating in the employee's HRMN record (ZP26.1) if the rating was not completed through the on-line system. Any subsequent satisfactory rating must also be entered on the ZP26.1.
- g. The appointing authority must notify Civil Service of all unsatisfactory probationary ratings within 28 calendar days of the rating.
- h. An unsatisfactory probationary rating may be grieved in accordance with the provisions of regulation 8.01 or applicable collective bargaining agreements.

#### **D. Annual Ratings and Progress Reviews (Nonprobationary Employees).**

##### **1. General Requirements.**

- a. An annual rating of an employee's performance shall be conducted. The appointing authority shall determine whether employees will be rated on their anniversary date, or if a common annual review date will be established. The supervisor shall review the employee's performance and behavior in relation to the established performance factors, objectives, and competencies.
- b. Modifications to performance factors, objectives, or competencies may be made at any time to reflect a change of assignments or expectations. When changes are made, the employee and supervisor must sign and date, or electronically certify, the revised rating form.
- c. Progress reviews should be conducted and regular feedback should be provided during the course of the annual rating period. Employees in performance-pay plan classifications may receive an annual rating and pay review 6 months after appointment or conversion to a performance-pay classification.
- d. Annual ratings should be completed by the supervisor within 28 calendar days after the end of the rating period.
- e. 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.

**2. Needs Improvement Rating.**

- a. The appointing authority must sign and date, or electronically certify, a “Needs Improvement” rating.
- b. The appointing authority shall establish an agency review procedure or plan to address ratings of “Needs Improvement”.
- c. If a “Needs Improvement” rating is issued and other corrective action has not been taken, the appointing authority must establish a plan (in HRMN, if possible) for improving the employee’s performance or behavior. The plan should be established within 28 calendar days of the rating. Another annual rating to evaluate the employee’s performance under the improvement plan must be conducted within 3 months from the date the improvement plan is issued.
- d. During the period of the improvement plan, regular progress reviews should be provided.
- e. If the employee is performing satisfactorily at the end of the improvement plan period, a satisfactory annual rating shall be issued.
- f. If the annual rating does not reflect satisfactory performance, regular progress reviews should continue. If the employee’s performance continues to be less than satisfactory, an interim service rating should be issued.
- g. The period of reviews following the original “Needs Improvement” annual rating and established improvement plan should typically be no longer than 6 months before the employee either receives a satisfactory rating or is issued an interim service rating.
- h. A “Needs Improvement” rating has no impact on an employee’s eligibility for a step increase.
- i. An employee who is under a “Needs Improvement” 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, nor is the time the employee is under a “Needs Improvement” rating creditable toward the time required for reclassification.
- j. An employee who disagrees with a rating may prepare and submit to the appointing authority a written statement taking exception to the rating. Using the on-line form, an employee may enter an exception to the rating in the Progress Review/Comments section.
- k. Annual ratings and progress reviews are not discipline and are not grievable. However, an employee may request a review of the rating as provided in the agency review procedure.

**E. Interim and Follow-up Ratings.**

1. Interim ratings may be conducted, using form CS-375, at any time to document and rate an employee's unsatisfactory performance or behavior.
2. An interim rating shall address specific performance or behavior problems, identify specific expectations for improvement, and establish a timeframe for improvement during a follow-up rating period.
3. An unsatisfactory interim rating is typically preceded by counseling, reprimands, or other forms of corrective action regarding the employee's performance or behavior.
4. An unsatisfactory interim or follow-up rating is considered discipline and shall be conducted in accordance with rule 2-6.
5. The appointing authority must sign and date an unsatisfactory interim or follow-up rating (form CS-375).
6. The appointing authority must enter any unsatisfactory interim or follow-up rating in the employee's HRMN record (ZP26.1). Any subsequent satisfactory rating must also be entered on the ZP26.1.
7. An employee who disagrees with a rating may prepare and submit to the appointing authority a written statement taking exception to the rating.
8. The appointing authority must notify Civil Service of an unsatisfactory interim or follow-up rating within 28 calendar days of the rating.
9. A follow-up rating period must be established whenever an unsatisfactory interim rating is issued and the employee is not dismissed. Unless a different duration rating period is established, the duration of a follow-up rating period is 3 months.
10. The follow-up rating is due within 28 calendar days after the end of the follow-up rating period. If the appointing authority does not issue a follow-up rating before or within 28 calendar days after the end of the rating period, the employee may request in writing that one be issued. If the appointing authority does not issue a follow-up rating within 14 calendar days after the employee's request, the employee shall be returned to satisfactory standing effective at the end of the rating period.
11. If the employee goes on a leave of absence or extended use of sick leave, the follow-up rating period is automatically extended for that period of time.
12. The employee should be provided feedback regarding his/her performance and behavior during the follow-up rating period.
13. If an employee performs satisfactorily during the follow-up rating period, the employee shall receive a satisfactory rating to be effective at the end of the rating period.

14. If an employee's performance is unsatisfactory during the follow-up rating period, counseling memos, reprimands, or other forms of corrective action are typically taken, followed by an unsatisfactory follow-up rating.
15. If an employee's last two service ratings have been unsatisfactory and the appointing authority has taken no adverse action, the State Personnel Director may recommend to the Civil Service Commission that the employee be removed from the position.
16. An employee under an unsatisfactory interim or follow-up rating is not eligible for a step increase, a performance-pay award, or reclassification until a later satisfactory rating is issued.
17. A step increase, performance-pay award, or reclassification action cannot be made retroactive to a date before a new satisfactory rating is issued, nor is the time an employee is under an unsatisfactory interim or follow-up rating creditable toward the time required for reclassification.
18. An unsatisfactory interim or follow-up rating may be grieved in accordance with the provisions of regulation 8.01 or an applicable collective bargaining agreement.

#### **F. Audit and Compliance.**

1. All ratings are subject to audit by Civil Service.
2. Probationary, interim, and unsatisfactory ratings must be maintained in the employee's official personnel file for a period of four years.
3. Annual ratings must be maintained for a period of four years from the date of issuance. Annual ratings completed on-line will be stored in HRMN for a minimum of four years from the end of the rating period.

## **5. Procedures**

### **A. Probationary Ratings.**

<b>Responsibility</b>	<b>Action</b>
Supervisor or Supervisor and Employee	1. Identifies performance factors that are measurable and specific to establish expectations for the rating period. Selects appropriate competencies to be rated. For Group 1 employees, only competencies are required. Performance factors are optional.
Supervisor	2. At the beginning of each rating period, reviews the performance factors, objectives, and competencies with the employee. Explains the established expectations and criteria for the employee's performance rating to be conducted at the end of that review period.  3. Signs and dates the paper form and provides the employee with a copy of the signed rating form, or certifies on-line.

Responsibility	Action
Employee	4. Signs and dates the paper form or certifies on-line, verifying review of factors, objectives, or competencies, and that the supervisor explained expectations and criteria.
Supervisor	5. At the time of rating, provides a review of the employee's performance for the period covered. The evaluation must address what the employee accomplished in relation to established expectations and how the employee met, exceeded, or did not meet the objectives of the rating period as identified in the performance factors, objectives, or competencies.
Supervisor	<p>6. If an unsatisfactory rating is to be given, informs employee of the provisions of rule 2-6.3.</p> <p>NOTE: Unsatisfactory ratings can be recorded online, but should then be printed by the supervisor. The employee and supervisor will then use the printed form for the remainder of the steps in this procedure. Once the appointing authority certifies the unsatisfactory rating online, the system will generate the next review record.</p> <p>7. Discusses the rating with the employee. Obtains the employee's signature or on-line certification. The employee's signature or certification does not necessarily mean that the employee agrees with the rating and rating assigned.</p> <p>8. If necessary, indicates an employee's refusal to sign the form. The form will be processed as if the employee had signed. This is done on-line using the Refusal Override certification.</p> <p>9. Signs and retains a copy of the paper form, gives the employee a copy and forwards the original to the appointing authority, or certifies the rating on-line.</p> <p>10. At the end of the rating period, the supervisor must identify performance factors, objectives, or competencies for the next rating period.</p>
Employee	<p>11. An employee who disagrees with a rating may prepare and submit to the appointing authority a written statement taking exception to the rating. Using the on-line form, an employee may enter exception to the rating in the Progress Review/Comments section.</p> <p>12. An employee who receives an unsatisfactory rating may grieve the rating in accordance with rule 8-1.</p>
Appointing	13. Signs and dates probationary ratings or certifies the ratings on line.

Responsibility	Action
Authority	<p>Unless certified on-line, files the employee's written statement with the rating. Retains a copy in the employee's official personnel file.</p> <p>14. Notifies Civil Service of any unsatisfactory probationary rating.</p> <p>15. Enters unsatisfactory rating in the employee's HRMN record (ZP26.1). Enters end date for the Since Step time accrual plan on TA60.1 when applicable.</p> <p>16. Enters subsequent satisfactory rating on the ZP26.1. Deletes the end date for the Since Step time accrual plan and enters the first day of the pay period in which the satisfactory rating is effective in the Plan Entry date field.</p>

#### **B. Annual Ratings and Progress Reviews.**

Responsibility	Action
Supervisor	<p>1. Identifies performance factors that are measurable and specific to establish expectations for the rating period. Selects appropriate competencies to be rated. For Group 1 employees, only competencies are required. Performance factors are optional.</p> <p>2. At the beginning of each rating period, reviews the performance factors, objectives, or competencies with the employee. Explains the established expectations and criteria for the employee's performance rating to be conducted at the end of that review period.</p> <p>3. Signs and dates the paper form and provides the employee with a copy of the signed rating form, or certifies on-line.</p>
Employee	<p>4. Signs and dates the paper form or certifies on-line, verifying the review of factors, objectives, or competencies.</p>
Supervisor	<p>5. Conduct progress reviews and provide regular feedback during the rating period.</p> <p>6. At the time of rating, provides a review of the employee's performance for the period covered. The rating must address the employee's accomplishments in relation to established expectations and how the employee met, exceeded, or did not meet the objectives of the rating period as identified in the performance factors, objectives, or competencies.</p> <p>7. Discusses the rating with the employee. Obtains the employee's signature or on-line certification. The employee's signature or certification does not necessarily mean that the employee agrees with the rating and rating assigned.</p>

Responsibility	Action
	<p>8. If necessary, indicates an employee's refusal to sign the form. The form will be processed as if the employee had signed. This is done on-line using the Refusal Override certification.</p> <p>9. For annual ratings not completed on line, retains the paper form, gives the employee a copy, and provides certification to the appointing authority. For a "Needs Improvement" rating not completed on-line, retains a copy of the form, gives the employee a copy and forwards the original form to the appointing authority.</p> <p>10. At the end of the rating period, the supervisor must identify performance factors, objectives, or competencies for the next rating period.</p>
Employee	<p>11. An employee disagreeing with a rating may prepare and submit to the appointing authority a written statement taking exception to the rating or appeal the rating through the agency review procedure. Using the on-line form, an employee may enter exception to the rating in the Progress Review/Comments section.</p>
Appointing Authority	<p>12. If a "Needs Improvement" rating is issued, establish a plan for improving the employee's performance or behavior.</p> <p>13. Signs and dates, or electronically certifies, "Needs Improvement" ratings.</p>
Supervisor	<p>14. For a "Needs Improvement" rating, conducts another annual rating within 3 months.</p> <p>15. If an employee is not performing satisfactorily, continue regular progress reviews. Issue satisfactory annual rating when employee is performing satisfactorily.</p> <p>16. Typically, if the employee is not performing satisfactorily within 6 months from the date of the original "Needs Improvement" rating, an interim rating should be issued.</p>

### C. Interim and Follow-up Ratings.

Responsibility	Action
Supervisor	<p>1. If an unsatisfactory rating is to be given, provides for appropriate notice and requested representation to employee as required in rule 2-6.</p> <p>2. At the time of rating, provides a written review to the employee using form CS-375. The rating shall address specific performance or behavior problems and identify expectations for improvement.</p>

Responsibility	Action
	<p>3. Discusses the rating with the employee. Obtains the employee's signature. The employee's signature does not necessarily mean that the employee agrees with the rating.</p> <p>4. If necessary, indicates an employee's refusal to sign the form. The form will be processed as if the employee had signed.</p> <p>5. Retains a copy of the form, gives the employee a copy and forwards the original to the appointing authority.</p> <p>6. Establish follow-up rating period if the employee is not dismissed.</p> <p>7. Provide feedback to the employee regarding performance and behavior during the follow-up rating period.</p> <p>8. If an employee performs satisfactorily during the follow-up rating period, issue a satisfactory follow-up rating using form CS-375.</p> <p>9. If an employee performs unsatisfactorily during the follow-up rating period, proceed with counseling memos, reprimands, or other corrective action.</p>
Employee	<p>10. If a follow-up rating is not issued, the employee may request that one be issued.</p> <p>11. An employee who disagrees with a rating may prepare and submit to the appointing authority a written statement taking exception to the rating or grieve the rating in accordance with regulation 8.01.</p>
Appointing Authority	<p>12. Signs and dates unsatisfactory interim or follow-up ratings. Files the statement with the rating.</p> <p>13. The appointing authority shall forward a copy of any unsatisfactory rating to Civil Service. The rating shall be reflected on the employee's employment record.</p> <p>14. Enters unsatisfactory rating in the employee's HRMN record (ZP26.1). Enters end date for the Since Step time accrual plan on TA60.1 when applicable.</p> <p>15. Enters subsequent satisfactory rating on the ZP26.1. Deletes the end date for the Since Step time accrual plan and enters the first day of the pay period in which the satisfactory rating is effective in the Plan Entry date field.</p>
State Personnel Director	<p>16. May recommend to the Civil Service Commission removal of an employee if the last two service ratings have been unsatisfactory and the appointing authority has not taken adverse action.</p>



**CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.07

Subject: <b>Drug Testing</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.07 (SPDOC 10-05, April 4, 2010)

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## 1. Purpose

This regulation establishes standards for conducting drug testing authorized in civil service commission rule 2-7.

## 2. CSC Rule References

### *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.*

\* \* \*

#### **2-7.6 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.*

### 3. Definitions

#### A. Definitions in This Regulation.

1. **Donor** means the individual from whom a urine specimen is collected.
2. **Medical Review Officer (MRO)** means a licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a donor's positive test result together with the donor's medical history and any other relevant biomedical information.
3. **On duty** means being engaged in, or on-call to be engaged in, the performance of work responsibilities for the employer.
4. **Reason to believe** means a reason to believe that a particular individual may alter or substitute the urine specimen.
5. **Refusal to submit** means any of the following:
  - a. Failing to provide an adequate urine sample without an adequate medical explanation.
  - b. Engaging in conduct that obstructs the testing process.
  - c. Refusing to be tested.
6. **Serious work accident** means an on-duty accident or incident resulting in death, or serious personal injury requiring immediate medical treatment, that arises out of any of the following:
  - a. The operation of a motor vehicle.
  - b. The discharge of a firearm.
  - c. A physical altercation.
  - d. The provision of direct health care services.
  - e. The handling of dangerous or hazardous materials.

### 4. Standards

#### A. Applicability.

1. **Executive Agencies.** This regulation applies to all executive agencies of the State of Michigan.
2. **Civil Service Rules.** This regulation applies to drug testing conducted under rule 2-7. This regulation also applies to employees subject to mandatory Federal drug testing, as provided in rule 2-7.8.

3. **Collective Bargaining.** This regulation does not apply to drug testing conducted under the provisions of a collective bargaining agreement approved by the Civil Service Commission, unless otherwise provided in the agreement.
4. **Deviations.** Appointing authorities may not deviate from the provisions of this regulation without the written approval of the State Personnel Director. In requesting approval for a deviation, an appointing authority must petition the director in writing and describe the specific provision or provisions for which a deviation is sought and the rationale for the proposed deviation. The director may approve the request upon a finding of good cause.
5. **Preappointment Drug Testing of Current Employees.** Under rules 2-7.2(a)(2) and 2-7.4(b), a current employee who is not in a test-designated position and is selected for a test-designated position must pass a preappointment drug test before starting in the test-designated position. If there is no history of actual or suspected drug or alcohol problems during the employee's tenure as a state employee, an appointing authority may rely on the following to satisfy the preappointment drug testing requirement:
  - a. **Use of prior drug test.** The preappointment testing requirement may be satisfied if the employee passed another state drug test (e.g., preemployment or random drug test) any time during the previous five-year period of continuous employment with the state.
  - b. **Temporary assignment to test-designated position.** If an employee is assigned to perform temporarily the duties of a test-designated position and has not passed a state drug test as provided in § 5.a, the employee shall submit to a drug test no later than 11 work days after the employee begins performing the test-designated duties. In addition, the employee shall be placed in the pool for random testing while the employee is temporarily performing duties of a test-designated position.

#### **B. Drugs Included.**

1. **Drugs Included.** Rule 9-1 defines "drugs" as those included in Schedule 1 or 2 of controlled substances at MCL 333.7201, et seq. Hundreds of drugs are covered under Schedules 1 and 2, but it is not feasible to test routinely for all of them. When a drug test is required, an appointing authority shall require testing for marijuana, cocaine, opiates, amphetamines, and phencyclidine. When conducting reasonable suspicion or post-accident drug testing, an agency may require testing for any drug listed in Schedule 1 or 2 of the MCSA. Before an agency requires testing for other drugs, however, it must obtain approval from the State Personnel Director. An agency requesting approval shall submit to the State Personnel Director the agency's proposed initial test methods, testing levels, and proposed performance test program.

2. **Other Laws.** This regulation is not intended to limit any agency that is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees.

**C. Testing Protocols.**

1. **Drug Testing.** The state drug testing program will operate under the standards and protocols established under the Mandatory Guidelines for Federal Workplace Drug Testing promulgated by the U.S. Department of Health and Human Services, as amended, except as otherwise provided in Civil Service rules or regulations. This shall include procedures for specimen collection, laboratory analysis, and reporting and review of results.
2. **Disclosure of Drug Testing Information about Individual Employees.**
  - a. Appointing authorities shall maintain records in a secure manner to prevent the disclosure of information to unauthorized persons.
  - b. Except as required by law or expressly authorized or required in this section, no appointing authority shall release employee information that is contained in the records required to be maintained by rule 2-7 or this regulation.
  - c. An employee subject to testing is entitled, upon written request, to obtain copies of any records pertaining to the employee's drug tests. The appointing authority shall promptly provide records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
  - d. When requested by the State Personnel Director, each appointing authority shall make available copies of all results for appointing authority drug testing conducted under this regulation and any other information pertaining to the agency's drug prevention program. The information shall include name-specific drug test results, records, and reports.
  - e. An appointing authority shall make records available to a subsequent appointing authority upon receipt of a written request from an employee. Disclosure by the subsequent appointing authority is permitted only as expressly authorized by the terms of the employee's written request.
  - f. An appointing authority may disclose information pertaining to an employee that is required to be maintained under this regulation to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under this regulation, or from the appointing authority's determination that the employee engaged in prohibited conduct (including, but not limited to, a



worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

- g. An appointing authority shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.

#### **D. Prohibited Levels of Drugs and Penalties.**

1. **Prohibited Levels of Drugs.** A positive test result reported by the MRO shall constitute a violation of rule 2-7.1(b) and shall constitute just cause for the appointing authority to discipline the donor and for Civil Service to disqualify the donor from future state employment.
2. **Discipline.** The appointing authority shall specify, in writing, the penalty or penalties that may be imposed for a violation of rule 2-7. However, an appointing authority shall immediately remove a test-designated employee from the employee's duties if the employee tests positive for drugs or otherwise violates rule 2-7.1. In addition, Civil Service shall immediately disqualify the donor from future state employment as provided in rule 2-7.4.

#### **E. Education and Training.**

1. **Required Employee Education and Training.** All employees subject to rule 2-7 shall be provided with educational materials that explain the state's policies and procedures with respect to meeting these requirements. This information is to be distributed to each covered employee before the start of testing under rule 2-7. The required content of this material must include:
  - a. The identity of the person designated by the employer to answer questions about the educational materials.
  - b. Which employees are subject to this regulation.
  - c. Sufficient information to explain what the term "test-designated position" means.
  - d. Specific information to explain what is prohibited by this regulation.
  - e. The circumstances under which employees will be tested for controlled substances.
  - f. The penalties or other consequences for an employee found to have violated provisions of rule 2-7.
  - g. The procedures used to test employees for controlled substances and the procedures in place to protect employees and ensure the integrity of the testing

process, safeguard the validity of test results, and ensure that those test results are attributed to the correct employee.

- h. An explanation of the requirement that employees must submit to testing in accordance with this regulation.
  - i. An explanation of what constitutes a refusal to submit and what penalties may be incurred for failure to submit to testing.
  - j. Information concerning the effects of controlled substance use on an employee's health, work, and personal life; signs and symptoms of a controlled substance problem; and methods for an employee to obtain assistance if a substance abuse problem is suspected.
2. **Required Supervisory Training.** In addition to the information provided to covered employees, supervisors shall be provided with training on controlled substance use to enable them to determine when an employee should be required to submit to a controlled substance reasonable suspicion test. Such training shall include the physical, behavioral, speech, and performance indicators of probable use of controlled substances.

## **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.08

Subject: <b>Alcohol Testing</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.08 (SPDOC 10-05, April 4, 2010)

### 1. Purpose

This regulation establishes standards to conduct alcohol testing authorized in rule 2-7.

### 2. CSC Rule References

#### *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.*

*\* \* \**

- (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.*

\* \* \*

#### **2-7.4 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.*

\* \* \*

#### **2-7.7 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.*

## **3. Definitions**

### **B. Definitions in This Regulation.**

1. **Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
2. **Alcohol concentration** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.
3. **Confirmatory test** means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.
4. **On duty** means engaged in or on-call to be engaged in work responsibilities for the employer.
5. **Refusal to submit** means any of the following:
  - a. Failing to provide an adequate sample without an adequate medical explanation.
  - b. Engaging in conduct that obstructs the testing process.
  - c. Refusing to be tested.
6. **Serious work accident** means an on-duty accident or incident resulting in death or serious personal injury requiring immediate medical treatment arising out of: operation of a motor vehicle; discharge of a firearm; a physical altercation; provision of direct health care services; or handling dangerous or hazardous materials.

## **4. Standards**

### **A. Applicability.**

1. **Executive Agencies.** This regulation applies to all executive agencies of the State of Michigan.
2. **Civil Service Rules.** This regulation applies to alcohol testing under rule 2-7 and to employees subject to mandatory federal alcohol testing, as provided in rule 2-7.8.
3. **Collective Bargaining.** This regulation does not apply to alcohol testing conducted under a collective bargaining agreement approved by the commission, unless otherwise provided in the agreement.
4. **Deviations.** An appointing authority cannot deviate from this regulation without the director's written approval. In requesting approval for a deviation, an appointing

authority must petition the director in writing and describe the specific provisions where a deviation is sought and the rationale. The director may approve a request upon a finding of good cause.

**B. Testing Procedures.**

The state alcohol testing program operates under the standards and protocols established under the Procedures for Transportation Workplace Drug and Alcohol Testing promulgated by the U.S. Department of Transportation, except as otherwise provided in the rules or regulations.

**C. Prohibited Levels of Alcohol and Penalties.**

1. **Prohibited Levels.** It is a violation of rule 2-7.1(b) to report to or be on duty with a breath alcohol concentration equal to or greater than 0.02. A confirmatory-test result equal to or greater than 0.02 constitutes just cause to discipline an employee. Refusal to submit to an alcohol test shall also constitute a violation of rule 2-7.1(b).
2. **Discipline.** The appointing authority shall specify, in writing, the penalties that may be imposed for violating rule 2-7. An appointing authority shall immediately remove a test-designated employee from the employee's duties if a test reveals a prohibited level of alcohol or the employee otherwise violates rule 2-7.1.

**D. Disclosure of Alcohol Testing Information.**

1. Appointing authorities shall maintain records in a secure manner to prevent disclosure of information to unauthorized persons.
2. Except as required by law or expressly authorized or required in this section, an appointing authority shall not release employee information contained in records required to be maintained by rule 2-7 or this regulation.
3. An employee subject to testing is entitled, upon written request, to copies of any records pertaining to the employee's use of alcohol, including any records pertaining to alcohol tests. The appointing authority shall promptly provide requested records. Access cannot be contingent upon payment for records other than those specifically requested.
4. When requested by the director, each appointing authority shall make available copies of all results for alcohol testing under this regulation and any other information pertaining to the agency's alcohol-misuse-prevention program, including name-specific alcohol test results, records, and reports.
5. An appointing authority shall make records available to a subsequent appointing authority upon receipt of a written request from an employee. Disclosure by the subsequent appointing authority is permitted only as expressly authorized by the terms of the employee's written request.

6. An appointing authority may disclose information required to be maintained under this regulation on an employee to the decisionmaker in a lawsuit, grievance, or proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this regulation, or from the appointing authority's determination that the employee engaged in prohibited conduct (including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
7. An appointing authority shall release information on an employee's records as directed by the specific, written consent of the employee authorizing release to an identified person. Release is permitted only in accordance with the terms of the employee's consent.

#### **E. Education and Training.**

1. **Employees.** All employees subject to rule 2-7 must be provided at hire with educational materials explaining the state's testing policies. The materials must include:
  - a. The identity of the person designated to answer questions on the materials.
  - b. Which employees are subject to this regulation, including which employees are in test-designated positions.
  - c. Explanation of the term test-designated position.
  - d. Specific information explaining what is prohibited by this regulation.
  - e. The circumstances when employees will be tested for alcohol.
  - f. The penalties for an employee found to have violated rule 2-7.
  - g. The procedures to test employees for alcohol, protect employees, ensure the integrity of the testing process, safeguard the validity of test results, and ensure that test results are attributed to the correct employee.
  - h. Explanation of the requirement that employees submit to testing under rule 2-7.
  - i. Explanation of what constitutes a refusal to submit and penalties for failure to submit to testing.
  - j. Information on the effects of alcohol use on an employee's health, work, and personal life; signs and symptoms of an alcohol-abuse problem; and how to obtain assistance if an alcohol-abuse problem is suspected.
2. **Supervisors.** In addition to information provided to covered employees, supervisors must receive training on alcohol abuse to determine when an employee should be required to submit to reasonable-suspicion testing. The training must include the physical, behavioral, speech, and performance indicators of probable use of alcohol.

**CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).



# Michigan Civil Service Commission

## Regulation 2.09

Subject: <b>Drug and Alcohol Testing Self-Reporting</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.09 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation provides procedures for notifying civil service when an employee voluntarily discloses a drug or alcohol problem to the appointing authority under rule 2-7.5.

### 2. CSC Rule References

#### *2-7 Drug and Alcohol Testing*

\* \* \*

#### *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.*

### **3. Definitions**

#### **A. CSC Rule Definitions.**

- 1. **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 a 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.*
- 2. **Rehabilitation program** means an established program to identify, assess, treat, and resolve employee drug or alcohol abuse.*
- 3. **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.*

## 4. Standards

- A. Civil Service will maintain a central, confidential repository of self-reports.
- B. Within 14 calendar days after an employee self-reports a drug or alcohol problem, an appointing authority must provide civil service with the following:
  - 1. Employee name.
  - 2. Employee ID number.
  - 3. Agency.
  - 4. Whether the report was for drugs or alcohol.
  - 5. Verification that the employee was removed from a test-designated position, if applicable.
  - 6. Dates of leave of absence.
- C. Within seven calendar days, civil service will notify the appointing authority if an employee has had two or more previous disclosures.
- D. An employee who self reports a third time is not entitled to a leave under rule 2-7.5(b).
- E. If an employee self reports a third time, the appointing authority shall do the following:
  - 1. Rescind a leave granted under rule 2-7.5(b) and take other appropriate action.
  - 2. Require the employee, if on duty, to immediately submit to a reasonable-suspicion test under rule 2-7.2(a)(1).
  - 3. Institute follow-up testing in accordance with rule 2-7.2(a)(3).
  - 4. Take appropriate disciplinary action in accordance with agency work rules.
- F. Within seven calendar days of notification, civil service will follow up to ensure the appointing authority took action.
- G. Civil service staff will immediately notify the director if an employee had two or more previous disclosures and the appointing authority took no follow-up action.
- H. The director may direct the appointing authority to take necessary action.

## 5. Procedures

Responsibility	Action
Appointing Authority	1. Notifies civil service that an employee self-reported.

Responsibility	Action
Civil Service	2. Enters the information into the central registry.
	3. Notifies appointing authority if the employee has two or more previous disclosures.
Appointing Authority	4. Takes appropriate action in accordance with civil service and agency work rules.
Civil Service	5. Follows up with appointing authority to determine if action was taken.
	6. Notifies the director if the employee has had two or more previous disclosures without action by the appointing authority.
State Personnel Director	7. Determines if further action is needed and notifies appointing authority.
Civil Service	8. Follows up with appointing authority to ensure appropriate action was taken.

## **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.10

Subject: <b>Drug Testing Complaints by Non-Employees</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.10 (SPDOC 15-15, October 1, 2015)

### 1. Purpose

This regulation establishes the procedure for a non-employee to challenge the rescission of a conditional offer of employment after failing to pass a preemployment drug test.

### 2. CSC Rule References

#### 2-7 *Drug and Alcohol Testing*

\* \* \*

#### 2-7.4 *Penalties*

\* \* \*

#### *(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.*

### **3. Standards**

**A. Rescission.** Under rule 2-7.4(b)(1), an appointing authority must rescind a conditional offer of employment to any person not currently employed in the classified service who (1) fails or refuses to submit to a preemployment drug test, (2) interferes with a drug-testing procedure, or (3) tampers with a drug-testing sample. This includes inability to produce an acceptable sample. A rescission must be written and include notice of the right to file a written complaint with the director within 14 calendar days after the date the rescission notice is mailed.

#### **B. Complaint.**

1. **Filing requirements.** A person whose conditional offer of employment is rescinded under rule 2-7.4(b)(1) may file a complaint with the director. The complainant or an attorney must file any complaint at [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov). The complainant shall also serve a copy of the complaint on the appointing authority.
2. **Time limit.** A complaint must be filed within 14 calendar days of the date the appointing authority mailed its written rescission to the complainant. A late complaint will be denied, unless good cause or special extenuating circumstances are shown.
3. **Contents.** A complaint must contain the complainant's name, address, phone number, email address, and signature. If an attorney represents the complainant, the same information must be provided for the attorney. A complaint must include (1) a copy of the rescission letter, (2) a concise factual summary, and (3) an explanation of how the rescission violated Article 11, § 5, of the Michigan Constitution or a civil service rule or regulation.

#### **C. Review of Complaint.**

1. **Administrative dismissal.** The director or a designee may administratively dismiss a complaint for any reason in rule 8-4 or if the complaint does not allege a violation of Article 11, § 5, of the Michigan Constitution or a rule or regulation.
2. **Assignment.** If a complaint is not administratively dismissed, the director shall designate an adjudicating officer to investigate the complaint and issue a decision on the director's behalf.

3. **Interested Parties.** The appointing authority that rescinded the conditional offer and any employee subsequently appointed to the position to which the complainant received a conditional offer may file an appearance in writing and participate as an interested party.
  4. **Consideration.**
    - a. **Summary Disposition.** If no genuine issue exists on any material fact, the adjudicating officer may issue a written decision based on the complaint and any written submissions or arguments of the parties deemed necessary.
    - b. **Investigation.** If a genuine issue exists on any material fact, the adjudicating officer shall further investigate the complaint. All interested parties must have a reasonable opportunity to present documentary evidence, sworn affidavits, and written arguments and respond to other parties' submissions. The adjudicating officer may hold conferences with the parties and independently investigate the claim. The adjudicating officer shall maintain an official record of the review.
    - c. **Decision.** The adjudicating officer shall examine the record and issue a written decision detailing findings of facts and conclusions of law. The decision must be based on the rules and regulations, the adjudicating officer's technical expertise, and the record created during any investigation. If the adjudicating officer finds that the rescission substantively violated Article 11, § 5, of the Michigan Constitution or a rule or regulation, the officer may order an appropriate remedy, including reinstating an offer of employment, ordering another drug test, or requalifying a person for appointment to the classified service.
- D. Appeal.** Any interested party who participated in the review proceeding may appeal to the commission by filing an application for leave to appeal within 28 calendar days after the date the final decision is issued.

## **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.01

Subject: <b>Alternative Assessment and Selection Process</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 3.01 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes standards and procedures for use of an approved alternative assessment and selection process that may be used in lieu of Civil Service written, electronic, or other appraisal methods. The alternative process offers an option to the exclusive use of applicant pools maintained by Civil Service.

### 2. CSC Rule References

#### *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. Standards

- A. An appointing authority may submit an alternative plan for the recruitment, assessment, and selection of employees to fill position vacancies. The plan can be designed to fill a specific position, all positions in a particular classification, or positions in an identified group of similar classifications.
- B. Civil Service staff shall provide technical guidance upon request. Staff shall provide assistance in the development or use of appropriate assessment methods, if requested.
- C. The plan submitted for Civil Service approval must include all of the following:
  - 1. The position description, if position-specific.
  - 2. Any applicable selective position requirements criteria.
  - 3. A description of the recruitment, posting, or other applicant identification efforts to be undertaken.
  - 4. A plan to complete any necessary credential reviews to identify applicants meeting the minimum qualification requirements for the classification.



5. A description of the essential applicant characteristics and identification of assessment and selection criteria used to evaluate them.
- D. The appointing authority must receive Civil Service approval of the alternative plan before its initial use.
  - E. The job-related assessment and selection criteria to be used may include assessment of training, education, and experience; evaluation of work samples; test performance; structured interview; or other appropriate methods or combinations of methods.
  - F. The process must include mandatory practices outlined in regulation 3.04.
  - G. The process cannot be used until all recall names have been appropriately cleared.
  - H. The appointing authority must administer the alternative process in accordance with the methods specified in the approved plan. Civil Service approval must be secured on plan modifications.
  - I. Preauthorized plan approval may be granted by Civil Service for use of an alternative process for filling vacancies in an entire classification or group of classifications if the positions are similar and have similar qualifications.
  - J. Civil Service has preauthorized to all appointing authorities the following universal alternative to selection from the Administrative Support Exam applicant pool at the 5 level:  
  
A person who has provided temporary administrative support services for an agency for 14 weeks or more (full time) within the previous 12-month period as a temporary services agency employee, a special personal services employee, or as a noncareer employee, may be included as a candidate in a pool to fill a position in the same work unit doing the same work. If selected, the appointing authority must document that the candidate's work during the working test period was satisfactory.
  - K. The appointing authority must document the process, including verification of the lack of recall names and must certify the appointment in accordance with regulation 3.04, § 4.H.
  - L. Appointments made following the use of alternative processes are subject to audit for compliance with these standards. Documentation must be retained for 3 years from the appointment date.

#### 4. Procedures

Responsibility	Action
Appointing Authority	1. Develops plan in accordance with § 3.C. The plan may be for a specific identified position, for an entire classification (e.g., all entry-level data entry operators), or for positions in similar classifications (e.g., all

Responsibility	Action
	technical collective bargaining agreement entry level technicians). Requests assistance from Civil Service staff, as needed.
	2. Submits plan to Civil Service for approval.
Civil Service	3. Reviews the plan. Works with the appointing authority to revise it, if necessary. Documents its approval of the plan.
	4. Retains file copy of the request and approval documentation for the duration of the approval.
Appointing Authority	5. Identifies any recall names for the classification of the position being filled. Properly clears any recall names before proceeding.
	6. Administers selection process in accordance with the approved plan and regulation 3.04.
	7. Appoints the selected candidate.

## **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.02

Subject: <b>Student Assistants and Other Noncareer Employees</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 3.02 (SPDOC 15-13, October 1, 2015)

### 1. Purpose

This regulation establishes standards and conditions governing the employment of noncareer employees, including Student Assistants, in the classified service.

### 2. CSC Rule References

#### *2-1 Terms of Employment*

\* \* \*

#### *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.*

### 3. Definitions

#### **A. CSC Rule Definition.**

1. **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.*

**B. Definitions in This Regulation.**

1. **Hours of Service** means hours that an employee is paid, or entitled to payment by the employer.
2. **State Employment** means any employment in Michigan's state government, including positions in the classified state civil service, unclassified service, legislative branch, and state-level judicial branch, under a common federal Employment Identification Number.
3. **Student Assistant** means a noncareer employee in the Student Assistant and Information Technology Student Assistant classifications and any other designated student classifications.

**4. Standards****A. Limits on Hours of Service.**

1. Noncareer employees, including Student Assistants, cannot exceed 129 hours of service in any calendar month. This includes prior state employment during the month in another position.
2. Unless otherwise approved in a collective bargaining agreement or by the State Personnel Director, noncareer employees other than Student Assistants cannot exceed 720 hours of service per appointment.
3. The State Personnel Director may approve an appointing authority's request to allow a noncareer employee to exceed the above limits on hours of service.
4. A person with prior state employment can be appointed to a noncareer position only if (1) the person has no hours of service in any state employment in the immediately preceding 13 weeks or (2) the State Personnel Director approves the appointment in writing.

**B.** Student Assistants must be continually enrolled in and attending a high school, vocational school, or post-secondary educational institution. Summer attendance is not required.

**C.** Students must provide proof to the appointing authority of enrollment and updated information whenever changes to their status occurs, such as: (a) change in degree program, (b) change in class status (freshman to sophomore), (c) school transfer, (d) granting of a degree, or (e) leaving school.

**D.** Students accepted by, but not yet enrolled in, a post-secondary educational institution must provide proof of acceptance to that institution.

**E.** Student Assistants should be employed in a work area that is relevant to the student's academic and career goals.

- F. Student Assistants may be eligible to receive course credit for work performed in conjunction with an internship program.
- G. The appointing authority shall assign a pay rate within the pay range that reflects the student's level of academic attainment and contribution to the organization within the following guidelines:

Academic Attainment	Pay Concept
<b>High School:</b> Student is enrolled in or has completed high school and been accepted by a post-secondary educational institution.	A
<b>College:</b> Student is enrolled in a post-secondary educational program related to the work assigned.	B
<b>Post-bachelor's:</b> Student is enrolled in an advanced degree program related to the work assigned and has completed a bachelor's degree.	C

The pay schedule for these concepts is published annually in the Civil Service Compensation Plan.

- H. The appointing authority shall retain and make available for audit all documents related to the selection and evaluation process, in accordance with regulation 3.04.
- I. The appointing authority shall provide the student with orientation, supervision, and an evaluation of the student's performance.
- J. Student Assistant work time is credited toward meeting the requirements for related future employment.
- K. A Student Assistant is a state employee for examination and employment consideration purposes.
- L. A Student Assistant who receives a degree before completing an assignment or project in an appointment may continue employment until the assignment or project is completed. Only experience gained after attaining a bachelor's degree is considered qualifying for professional positions.
- M. Reclassifying a Student Assistant to an appropriate career classification requires Civil Service review and approval.
1. A Student Assistant may be eligible for reclassification if all the following conditions are met:
    - a. The appointing authority selected the Student Assistant after conducting a full evaluation and selection process.
    - b. The Student Assistant satisfactorily completed a performance review period of 1,040 hours.

- c. The Student Assistant meets the minimum qualifications for the new classification.
  - d. The duties and responsibilities for the new classification are similar to those assigned to the employee's Student Assistant position.
  - e. Any applicable collective bargaining agreement provisions are met.
  - f. No agency recall names exist for the new classification.
  - g. No statewide recall names exist for the new classification, unless a hiring freeze (as described in regulation 3.10) is in effect on the effective date of reclassification, in which case reclassification may be approved for only limited-term employment.
  - h. The appointing authority requests and certifies that the Student Assistant meets the minimum qualifications of the new classification, is satisfactorily performing the duties and responsibilities of the requested classification, has satisfactorily completed a performance review period of 1,040 hours, and has a current satisfactory performance rating.
2. The effective date of the reclassification is the beginning of the pay period in which a fully documented position action request is approved by Civil Service staff in accordance with regulation 4.04. Retroactivity is not permitted under any circumstances.
  3. Upon reclassification, the employee must satisfactorily complete a probationary period to gain status in the classified service.
    - a. Full-time employees must be reviewed upon completing 3, 6, and 12 months of service.
    - b. Less than full-time employees must be reviewed upon completing 3, 9, and 18 months of service.
- N. This regulation does not apply to students hired as unclassified Special Personal Services (SPS) employees.
- O. The State Personnel Director may approve, with or without modification, an agency's request to establish a special noncareer classification under rule 2-1.2.

## 5. Procedures

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>1. Establishes a student position based on work functions.</li> <li>2. Solicits applications through a web posting, advertisement, contacts with educational institutions, or other means.</li> </ol>

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3. Selects a student in accordance with Civil Service rules and regulations.
4. Verifies that the applicant is a student in good standing with an accredited educational institution.
5. Assigns pay rate in accordance with the Student Assistant compensation schedule and the student's amount and type of job-related education.
6. For position reclassification, submits a Position Action Request (CS-129) and Position Description (CS-214) to Civil Service. Certifies on the CS-129 that the employee meets the minimum qualifications, is satisfactorily performing the duties and responsibilities of the requested classification, has satisfactorily completed a performance review period of 1,040 hours, and has a current satisfactory performance rating.
- Civil Service 7. Reviews the request.
8. If approved, enters the necessary position information in the Human Resources Management Network (HRMN).
9. Releases the CS-129 to the appointing authority.
- Appointing Authority 10. Receives the completed CS-129 and enters applicable employee information in HRMN.
- Civil Service 11. May audit for compliance with Civil Service rules and regulations.

## **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.04

<b>Subject:</b> <b>Selection of Employees for Position Vacancies</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 3.04 (SPDOC 12-08, May 13, 2012)

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### 1. Purpose

This regulation establishes standards and practices to be used when considering and selecting candidates for vacant positions. This regulation provides a foundation for establishing sound personnel practices that result in a meritorious, job-related selection process.



## **2. CSC Rule References**

### **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.*

\* \* \*

### **3-2 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.*

\* \* \*

#### **3-2.3 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.*

\* \* \*

### **3-3 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. Definitions

#### A. CSC Rule Definitions.

1. **Applicant** means a person who requests to participate in an appraisal process.
2. **Applicant pool** means a group of applicants whom civil service staff has determined to be qualified.
3. **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.
4. **Candidate pool** means qualified persons considered for a position.

#### B. Definitions in This Regulation.

1. **Agency-created applicant pool** means a group of applicants who have been recruited by an agency using appropriate methods to ensure equal employment opportunity.
2. **Considered by the appointing authority** means a qualified candidate who (1) met the screening criteria established by the appointing authority and (2) was interviewed or otherwise comparably evaluated by the appointing authority.
3. **NEOGOV** means the automated selection and hiring system used by the Civil Service Commission.

### 4. Standards

#### A. Recall.

1. The appointing authority must obtain a recall list report (ZP106) from the Human Resources Management Network (HRMN).
2. All recall names must be cleared in accordance with regulation 3.07.

#### B. Contractual Provisions.

The appointing authority must comply with any provision of a collective bargaining agreement pertaining to posting, transfer lists, etc., applicable to the selection process for the position.

#### C. Availability of Applicant Pools.

Civil Service shall establish and maintain applicant pools from the results of appraisal and recruitment methods for pre-identified classifications. Applicant pools are available in HRMN for creating candidate pools.

**D. Recruitment.**

1. An appointing authority may use any appropriate method to recruit and contact applicants for a position vacancy that ensures equal employment opportunity for a qualified applicant pool.
  - a. The Civil Service vacancy posting website is the primary recruiting method when filling a position from an agency-created applicant pool.
  - b. Civil Service shall develop and maintain an overall recruitment strategy and plan to assist agencies in obtaining applicants. In addition to the vacancy posting website, other recruitment activities may be used, such as partnerships with schools, community service agencies, trade and vocational organizations, and community organizations (e.g., Urban League, NAACP, minority and women's professional or fraternal associations, etc.); premium job boards; and recruitment firms.
2. Appointing authorities shall ensure equal employment opportunity consistent with Civil Service rules and regulations.
3. In the recruitment process, consistent job-related information must be provided. Information may include, for example, the following:
  - a. Proper Civil Service position title, classification level, and working title, if different.
  - b. A brief description of the job duties, responsibilities, and working conditions.
  - c. Qualifications or special requirements needed for the position.
  - d. Salary.
  - e. Employee status code.
  - f. Job location.
4. A minimum of 7 calendar days from the date of posting or contact is recommended for applicants to respond.

**E. Applicant Screening.**

1. An agency should reduce the size of the applicant pool to an acceptable number of candidates. The size of the pool may be reduced on a random basis or by applying screening criteria (e.g., supplemental questions in NEOGOV).
2. The screening criteria must be job-related and ensure equal employment opportunity.
3. An applicant who has been disqualified from the selection process for any reason specified in Civil Service Commission rules cannot be considered as a viable candidate in any applicant pool (e.g., sanctioned applicants).

**F. Candidate Credential Reviews.**

1. Civil Service shall conduct credential reviews in the following circumstances:
  - a. To evaluate any experience gained outside the classified service (i.e., any experience not recorded on official employee history records).
  - b. To evaluate degree majors not specifically listed on the job specification.
  - c. To evaluate recognized alternatives identified on the job specification.
  - d. To evaluate potential equivalent combinations of education or experience.
  - e. To evaluate experience gained while working out of class.
  - f. When the appointing authority requests assistance for conducting credential reviews for classifications for which they have preauthorized authority.
  - g. When the appointing authority does not have approval by Civil Service to conduct preauthorized credential reviews.
2. When requesting that Civil Service conduct credential reviews under § 4.F.1, the appointing authority must remit, via NEOGOV, credential information (résumés, transcripts, etc.) to Civil Service for applicants who have been pre-screened by the agency and are considered potential candidates. These are individuals the agency intends to include in the candidate pool for further consideration if Civil Service determines they meet the minimum qualification requirements. Denial letters will be sent to applicants whose credentials do not satisfy the requirements. Civil Service approval signifies only that an individual candidate meets the minimum qualification requirements for the classification.
3. Civil Service authorizes appointing authorities and approved designated staff to conduct credential reviews provided they have received Civil Service credential review training and certification, except in the circumstances noted in § 4.F.1.
  - a. The appointing authority may nominate one or more persons to act as agency credential reviewers.
  - b. Civil Service must provide training for agency staff assigned to conduct credential reviews.
  - c. Agency staff cannot conduct credential reviews until Civil Service has certified that the person has been adequately trained. Additional periodic training may be provided to ensure quality and accuracy.
  - d. The appointing authority shall document their candidate credential reviews.
  - e. Failure to comply with established standards may result in cancellation of the credential review authorization.

4. To properly evaluate degree majors, the required education must be obtained from an institution accredited by an accrediting body of the Council on Higher Education Accreditation, unless otherwise indicated on the job specification.
5. If after conducting a credential review, an appointing authority does not believe an applicant or candidate qualifies for a classification, and the issue is raised by the applicant or candidate, it shall be submitted to Civil Service for an official determination. That official determination may be appealed in accordance with regulation 8.02.
6. Credential review determinations on documented applicant qualifications must be completed before the agency makes a job offer.

**G. Evaluation of Candidates.**

1. An appointing authority may evaluate and verify the qualifications of candidates using any appropriate selection methods, as permitted by law. Examples of appropriate methods include, but are not limited to, the following:
  - a. Job/person fit measures.
  - b. Background investigations.
  - c. Assessment of applicants' education, training, and experience.
  - d. Formal job performance evaluations from current and previous jobs.
  - e. Structured interviews.
  - f. Job simulations.
  - g. Performance tests.
  - h. Physical agility tests.
  - i. Reference checks.
  - j. Supplemental written or electronic tests.
2. Evaluation methods and criteria must be job-related. To the extent practical, an agency shall utilize the same, or substantially similar, selection methods and criteria, and elicit the same, or substantially similar, pertinent, job-related information for all candidates. Civil Service staff shall provide assistance in the development or use of any additional evaluation methods, if requested.
3. At the conclusion of the selection process, the appointing authority must give notice to any non-selected qualified candidates considered by the appointing authority that they are not selected or that a particular vacancy will not be filled.

**H. Participation in Selection Process by Current Students.**

A student who has not yet received an academic degree necessary for appointment to a classified position, may be treated as qualified to participate in a selection process, subject to the following conditions:

1. The position must be an entry-level position.
2. The applicant must be enrolled and scheduled to receive the required degree by the end of the current academic term.
3. A conditional offer may be extended to the applicant before receipt of the required degree to allow pre-employment drug testing and any other background checks.
4. Any selection of the applicant is contingent upon receiving on schedule the required degree. The applicant cannot fill the vacancy until the educational requirement is obtained. Failure to receive the required degree on schedule will result in the revocation of any conditional offer.

**I. Selection of Noncareer Employees.**

The selection of noncareer employees does not require a full evaluation process. Documentation for the selection of noncareer employees should include a current, approved position description, documentation that recall records were checked, and the evaluation of the selected candidate compared to the rating criteria used.

**J. Certification of Appointment.**

A requisition using PA42.1 in HRMN must be created when NEOGOV is not the selection process used.

**K. Documentation.**

1. An appointing authority shall maintain accurate documentation for all steps of the selection process for at least 3 years from the completion of the selection process. Documentation to be retained must include, if used:
  - a. A current, approved position description, including any approved special requirements (e.g., current selective position requirements).
  - b. Methods used to notify applicants of a vacancy, a selection, or a decision not to fill a vacancy.
  - c. Verification that recall obligations have been met.
  - d. Verification that the selected candidate is not a sanctioned applicant.
  - e. Applications or résumés of candidates evaluated.
  - f. Interview questions, final completed rating forms, if used, or other selection documentation.

- g. Results of other selection methods used (e.g., performance tests, reference checks, job simulations).
- h. Evaluation of the selected candidate compared to the selection criteria used.
- i. Documentation verifying that the candidate selected for the position meets the educational and experience qualifications and any special requirements for the job. Verification must be completed before the appointment. Appointing authorities shall notify Civil Service if it appears that candidates may have misrepresented their credentials.
- j. Documentation verifying that all non-selected candidates who were contacted for any evaluation were notified that they were not selected or that the vacancy was not filled.

#### **L. Compliance.**

- 1. The 3-year documentation retention period begins once all candidates who were contacted for an interview or other assessment are notified of the outcome of the selection process.
- 2. The selection process is subject to audit.
- 3. Appointing authorities shall cooperate in the investigation and participate in the defense of their selection methods.

### **5. Procedures**

<b>Responsibility</b>	<b>Action</b>
Appointing Authority	<ul style="list-style-type: none"> <li>1. Determines if there are any recall, posting, or transfer obligations required by collective bargaining agreements.</li> <li>2. Requests recall list.</li> <li>3. Determines if there are any EEO considerations or requirements to be met. Conducts additional recruitment, as necessary, using tools available (see § 4.D).</li> <li>4. Receives résumés and applications from interested applicants.</li> <li>5. Screens applicants in accordance with § 4.E.</li> <li>6. Determines, in HRMN, if non-state employee applicants have an existing record (PA31.1) with an “active” status (A1) code or if state employee applicants have been sanctioned, either by going to Employee Self-Service, HR Statewide, Employee History (STWDE), Sanctions field or contacting Classifications and Selections, Civil Service. <b>NOTE:</b> Non-state employee applicants having a status code of S1 (complete sanction) may not be considered for any vacancy, in accordance with § 4.E.3.</li> </ul>

Responsibility	Action
	<ul style="list-style-type: none"> <li>7. For non-preauthorized credential reviews, remits documentation via NEOGOV to Civil Service.</li> <li>8. If preauthorized to do so, conducts credential reviews for candidates the agency wants to consider in order to determine candidates' eligibility based on the minimum requirements. <b>NOTE:</b> Applicants appearing on the ZP-22 for tested classifications require no further Civil Service credential review</li> <li>9. Schedules and conducts job-related assessment of the candidates in accordance with § 4.G.</li> <li>10. Makes selection in accordance with agency procedures.</li> <li>11. Contacts selected candidate and makes contingency offer of employment, pending acceptance of offer and passing of drug test, if a drug test is required.</li> <li>12. Appoints the selected candidate in accordance with regulation 3.07.</li> <li>13. If NEOGOV is not the selection tool used, certifies the appointment of the selected candidate in HRMN.</li> <li>14. Notifies the non-selected candidates. (See § 4.G.3).</li> <li>15. Retains documentation in accordance with § 4.K.</li> </ul>
Civil Service	<ul style="list-style-type: none"> <li>16. May conduct an audit of selection activities for compliance with Civil Service rules and regulations.</li> </ul>

## **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).



# Michigan Civil Service Commission

## Regulation 3.05

<b>Subject:</b> <b>Twelve-Month Trial Appointment Process for Persons With Disabilities</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 3.05 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

The twelve-month trial appointment process permits Civil Service to include individuals with disabilities in applicant pools, under certain conditions, without participating in the appraisal process administered for the classification by Civil Service. This process is designed for persons, whose disabilities prevent them from competing in a standard written, electronic, or other appraisal process, even when reasonable accommodations are provided. This regulation contains the conditions and standards that apply to such inclusion in applicant pools.

### 2. CSC Rule References

#### **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.*

#### **3-1 Examinations**

\* \* \*

##### **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.*

\* \* \*

#### **3-6 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.*

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*(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.*

\* \* \*

### **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.*

\* \* \*

## **3. Standards**

- A.** Applicants for the twelve-month trial appointment process must be referred and certified from one of the following authorized certifying agencies: (1) Michigan Rehabilitation Services, (2) Michigan Commission for the Blind, or (3) Veterans' Administration. Individuals who submit applications directly to Civil Service, or who are referred by other rehabilitation agencies, will be referred to authorized certifying agencies, to verify their eligibility for this process.
- B.** The applicant must be self-designated as a person with a disability, as defined by applicable state and federal laws, and by completing Civil Service Form CS-944 (Application for Persons with Disabilities and Request for Reasonable Accommodation in the Appraisal Process).
- C.** Applications are reviewed to determine if reasonable accommodation can assist the applicant in the written, electronic, or other appraisal process, in accordance with regulation 3.11.
- D.** Applicants certified for the process must possess the required education and experience for the requested classifications listed on the Classified Civil Service Application (CS-102) and Application for Twelve-month Trial Appointment Program for Persons with Disabilities (CS-630) forms.
- E.** Applicants must be able to perform the essential functions of the classification for which they are certified, with or without reasonable accommodations. Requests for reasonable

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accommodations on the job may be necessary and provided by the employer, as described in regulation 1.04.

- F. The requested appraisal method must be open in accordance with regulation 3.11.
- G. Applicants approved for this process are included in applicant pools in accordance with the time period established by Civil Service.
- H. Applicants in this process may be removed from the referral process for the reasons defined in rule 3-2.2.
- I. Once an applicant is appointed from the applicant pool, the 12-month probation period will serve in lieu of the written, electronic, or other appraisal process to evaluate candidates for positions in state service. Upon satisfactory completion of the probation period, permanent status may be granted. The same probationary rating methods and time periods are observed as in regular appointments. Persons with a disability who receive less than satisfactory ratings are subject to the same conditions as other employees, including separation from employment. Any appeals are in accordance with rule 3-6.5.
- J. Appraisal methods that consist of an assessment of an applicant's education and experience are exempted from this process.
- K. To enable successful job performance, whenever possible, sponsoring rehabilitation agencies may provide supportive services to persons with disabilities appointed under this process and to employing agencies.

#### 4. Procedures

Responsibility	Action
Authorized Agency [Michigan Rehabilitation Services, Michigan Commission for the Blind, or Veterans' Administration]	<ol style="list-style-type: none"> <li>1. Submits Form CS-944 (Application for Persons with Disabilities and Request for Reasonable Accommodation in the Written, Electronic, and Other Appraisal Process), Form CS-630 (Application for Twelve-month Trial Appointment Program for Persons with Disabilities), and Form CS-102 (Application). The forms must include the: <ol style="list-style-type: none"> <li>a. Classification and appraisal method.</li> <li>b. Identification of the disability and the rationale for the certification.</li> <li>c. Signature of the counselor.</li> </ol> </li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>2. Reviews the applications to determine if the applicant is eligible for the program.</li> <li>3. If the applicant is eligible for the program: <ol style="list-style-type: none"> <li>a. Includes applicant in applicant pools for which qualified.</li> <li>b. Sends notification letter to the applicant.</li> </ol> </li> </ol>

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- c. Sends copy of approved Form CS-630 application to the authorized certifying agency counselor.
4. If the applicant is not eligible for the program:
  - a. Indicates rejection and the rationale for rejection on the CS-630 application.
  - b. Sends copy of disapproved CS-630 application to the authorized certifying agency counselor.
5. Files the CS-102, CS-630, and CS-944 applications for 6 months.

## **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.06

Subject: <b>Employment Sanctions</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 3.06 (SPDOC 14-07, July 20, 2014)

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## 1. Purpose

This regulation implements rules authorizing employment sanctions and establishes procedures for applying and challenging sanctions.

## 2. CSC Rule References

### 3-1 Examinations

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### 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.*

### **3-2 Applicant Pools and Recall Lists**

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#### **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. Definitions**

### **A. CSC Rule Definitions.**

1. **Applicant** *means a person who requests to participate in an appraisal process.*

2. **Applicant pool** *means a group of applicants whom civil service staff has determined to be qualified.*

3. **Appointment** *means an authorized act of an appointing authority employing a properly qualified person in a specific position in the classified service.*

4. **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.
5. **Classified service** means the Michigan state classified civil service.

**B. Definitions in This Regulation.**

1. **Conviction** means any misdemeanor or felony charge to which a person pleaded guilty, pleaded nolo contendere, or was found guilty by a court of law, regardless of the sentence imposed.
2. **Employment sanction** means a limitation imposed by Civil Service on a person's eligibility for employment consideration or appointment in the classified service.
3. **Expunged conviction** means a conviction that has been set aside by the operation of law. An expunged conviction may still provide a legal basis for sanction from appointment to some appointing authorities, if authorized by law.

## **4. Standards**

**A. Authorized.**

If Civil Service determines that an employee or other person is ineligible, unfit, or unsuitable for employment in or appointment to the classified service, Civil Service may impose an appropriate employment sanction on any of the following:

1. An employee dismissed by an appointing authority.
2. An employee who engaged in conduct that could have resulted in dismissal who resigned or retired before disciplinary proceedings could be begun or completed by an appointing authority.
3. A person who engaged in any act prohibited by rule 3-1.5.
4. A person who consented in writing with an agent of the State of Michigan or an appointing authority to an employment sanction or other limitation on employment in the classified service.
5. A person for whom there is adequate evidence of conduct indicating that the person is ineligible, unfit, or unsuitable for appointment in the classified service.
6. A person convicted of a felony or misdemeanor crime, as disclosed by a criminal history check, court documents, or other trustworthy evidence.

**B. Limitation on Appointing Authorities.**

An appointing authority cannot take an action prohibited by an employment sanction. An appointing authority must reverse any action prohibited by sanction. If an appointing

authority fails to reverse an action prohibited by sanction, Civil Service may reverse the action.

### **C. Types and Duration.**

Civil Service may impose any sanctions authorized in the rules or regulations.

1. **Specific.** A specific employment sanction may include one or more of the following:
  - a. Removal from applicant pools and applicant referral mechanisms.
  - b. Prohibition from participating in appraisal processes.
  - c. Designation as ineligible for appointment to specified classified positions.
  - d. Designation as ineligible for appointment in specified agencies.
  - e. Revocation of an appointment.
  - f. Other appropriate limitations on the status of the person.
2. **Complete.** A complete employment sanction prohibits the person from being examined for any classified position, placed or continued in applicant or candidate pools, or appointed to any classified position. A complete sanction may be of limited or unlimited duration.
3. **Duration.** If an employment sanction is not expressly limited in duration, it does not expire unless the State Personnel Director's designee modifies the sanction after a 3-year review authorized under § 4.F. If the duration is limited, the sanction automatically expires at the end of the sanction period, unless modified.
4. **Mandatory Minimum Sanctions.**
  - a. **Test-designated positions.** A classified employee selected for a test-designated position who violates rule 2-7.4(a)(2) is prohibited for 3 years from being appointed, promoted, assigned, recalled, or otherwise placed in a test-designated position; removed from all applicant pools for test-designated positions; and disqualified from test-designated positions.
  - b. **New Hires.** An applicant whose conditional offer of employment is rescinded for violating rule 2-7.4(b)(1) is prohibited for 3 years from being appointed to the classified service.

### **D. Procedures for Imposing Employment Sanctions.**

1. **Initiated by Civil Service.** If Civil Service determines that an employment sanction should be imposed, the State Personnel Director's designee may issue a technical qualification decision imposing an employment sanction.
2. **Initiated by Appointing Authority.**



- a. **Request.** An appointing authority may request in writing that Civil Service impose an employment sanction for any reason authorized in the rules or regulations. The request must identify the basis under § 4.A under which the sanction is requested.
  - b. **Review.** Civil Service shall review the request and the State Personnel Director's designee shall issue a technical qualification decision granting or denying the request, in whole or in part.
3. **Service of Decision.** A technical qualification decision imposing an employment sanction must give the sanctioned person written notice of the employment sanction and the reasons for the sanction by delivering a copy of the decision by one of the following methods:
  - a. First class U.S. mail to the last known address of the sanctioned person.
  - b. Electronic delivery to the last known email address of the sanctioned person.
  - c. Interoffice mail to a sanctioned classified employee.

#### **E. Appeal of Employment Sanction.**

1. **General.** Except as provided in §§ 4.E.2 and 4.E.3, a requesting appointing authority or sanctioned person may appeal a technical qualification decision by filing a technical qualification complaint on a CS-212b form as provided in rule 3-3.10 and regulation 8.02. The complaint must be received within 14 calendar days after Civil Service issued the technical qualification decision. A final decision of a technical review officer in a technical qualification complaint is the final decision of the commission and cannot be further administratively appealed.
2. **Drug Testing of New Hire.** A person receiving a mandatory sanction for new-hire drug testing violations of rule 2-7.4(b)(1) cannot challenge the sanction through a technical qualification complaint. Instead, the underlying basis for the sanction must be challenged under the complaint process in regulation 2.10.
3. **Release or Agreement.** A person who has consented to an employment sanction from classified employment in a written release or agreement cannot appeal the sanction.
4. **No Collateral Challenge.** In the technical qualification complaint process, a person cannot collaterally challenge the factual basis for discipline or the discipline imposed by an appointing authority. Challenges to discipline must be raised in the appropriate grievance process.

#### **F. Later Modification of Employment Sanction.**

1. **Sanctions of 3 Years and Less.** If an employment sanction is for 3 years or less and no timely appeal of the technical qualification decision was filed as authorized in § 4.E.1, the sanction cannot be reduced or modified, except under § 4.F.3.

2. **Sanctions over 3 Years.** An employment sanction of longer than 3 years, including a sanction of unlimited duration, may be reviewed once by Civil Service after 3 years have passed, as follows:
  - a. **Request.** The sanctioned person must submit a written request to modify the sanction to Civil Service setting forth in detail why the sanction should be modified. Civil Service must receive the request no later than 28 calendar days after the third anniversary of the sanction's issuance.
  - b. **Civil Service Review.** Civil Service shall review the request and obtain any additional information necessary to evaluate it.
    - (1) If sufficient grounds to modify the sanction are not found, the State Personnel Director's designee shall issue a technical qualification decision denying the request.
    - (2) If sufficient grounds to modify the sanction are found, the director's designee shall issue a technical qualification decision removing or modifying the sanction.
3. **Request Based on Changed Circumstances.** If the basis for an employment sanction is subsequently vacated, a sanctioned person may request that a sanction be ended. This provision is intended for sanctions based on discharges from employment or criminal convictions that are subsequently overturned. This section cannot be used to seek (1) reconsideration based on failure to disclose a then-valid discipline or conviction during an application process, (2) a subsequently expunged conviction, or (3) general reconsideration of a previous sanction.
  - a. **Request.** The sanctioned person must submit a written request to modify the sanction to Civil Service setting forth in detail why the sanction should be ended. Civil Service must receive the request no later than 28 calendar days after the change in circumstances.
  - b. **Civil Service Review.** Civil Service shall review the request and obtain any additional information necessary or useful for evaluating it.
    - (1) If sufficient grounds to rescind the sanction are not found, the State Personnel Director's designee shall issue a technical qualification decision denying the request.
    - (2) If sufficient grounds to modify the sanction are found, the director's designee shall issue a technical qualification decision ending the sanction.
4. **Notice of Decision.** Civil Service shall send a copy of the technical qualification decision to the requesting party and any other interested party.
5. **Final.** If an interested party disagrees with a technical qualification decision under § 4.F, the party may file a technical qualification complaint as provided in rule 3-3.10

and regulation 8.02. The complaint must be received within 14 calendar days after Civil Service issued the technical qualification decision on the request. The final decision of the technical review officer is the final decision of the commission and cannot be further administratively appealed.

## 5. Procedures

Responsibility	Action
Appointing Authority (if originator)	1. Files request for sanction with Civil Service.
Civil Service	2. Investigates suspected violations and requests. 3. Reviews documentation provided by appointing authority or complainant and investigates further, if necessary. 4. Determines if the person is ineligible, unfit, or unsuitable for future employment, appointment, etc. 5. Determines any appropriate sanction. 6. Creates sanction record in HRMN identifying the sanctioned person on the ZP22.1. Removes sanctioned person from all appropriate applicant pools and employment lists. 7. Issues sanction decision to give notice to the sanctioned person and appointing authority, if applicable. Maintains documentation of the sanction.
Appointing Authority	8. Before hiring a person or moving an employee to a test-designated position, checks HRMN ZP22.1 for sanction. For state employees, appointing authorities can also check HRMN Self Service: HR Statewide, Employee History (STWDE), Sanction Field. 9. Contacts Civil Service with questions regarding sanctions. NOTE: Applicants with a sanction code of S1 (complete sanction) cannot be considered for any vacancy.

## CONTACT

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.07

Subject: <b>Appointments and Job Changes</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 3.07, (SPDOC 07-14, October 7, 2007)

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## 1. Purpose

This regulation defines various types of transactions used to make appointments and job changes and provides standards and procedures governing their use.

## 2. CSC Rule References

### 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.*

## **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.*

\* \* \*

### **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.*

### **3. Definitions**

#### **A. CSC Rule Definitions.**

- 1. Applicant** *means person who requests to participate in an appraisal process.*
- 2. Applicant pool** *means a group of applicants whom civil service staff has determined to be qualified.*
- 3. Appointing authority** *means each of the following:*
  - (a)** *A single executive heading a principal department or autonomous entity.*
  - (b)** *The 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.*
- 4. Appointment** *means an authorized act of an appointing authority employing a properly qualified person in a specific position in the classified service.*
- 5. 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.*
- 6. Class series** *means a series of classifications with similar but progressively more responsible job duties.*
- 7. Demotion** *means an authorized movement of an employee with status from a position in one classification level to a lower classification level.*
- 8. 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.*
9. *Hire means the initial appointment to the state classified service authorized by civil service staff.*
  10. ***Indefinite appointment** means a career appointment with no fixed ending date at the time of appointment.*
  11. ***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.*
  12. ***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.*
  13. ***Limited-term appointment** means a career appointment that has a fixed ending date at the time of appointment.*
  14. ***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.*
  15. ***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.*
  16. ***Principal department** means one of not more than 20 executive branch departments provided for by article 5, section 2, of the constitution.*
  17. ***Promotion** means the appointment of an employee to a different position at a higher classification level.*
  18. ***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.*
  19. ***Reinstatement** means the appointment of a person who was previously separated from, or demoted in, the classified service while in satisfactory standing.*
  20. ***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.*
  21. ***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.*

**B. Definitions in This Regulation.**

1. **Emergency appointment** means an appointment based upon a short-term, urgent need. An employee in an emergency appointment is not entitled to (1) sick or annual leave accruals, (2) holiday pay, (3) enrollment in state-sponsored insurance plans, (4) service credit for any purpose, (5) continued employment, (6) status, or (7) employment preference rights.
2. **HRMN EEO category** means one of eight broad occupational groupings contained in HRMN. Every classification is assigned to a "HRMN EEO category" by Civil Service. Descriptions of each of the HRMN EEO categories are contained in the Compensation Plan.
3. **Preauthorized lateral job change list** means a compilation of current classifications showing, for each classification, a listing of all the classifications at the same classification level to which a lateral job change may occur without prior review of qualifications by Civil Service.
4. **Recall** means the return of a former or current employee to a position in which status was achieved and whose previous employment was modified by a reduction in force.

**4. Standards****A. Recall Appointments and Job Changes.**

1. Contractual obligations must be fulfilled when filling a position covered by a collective bargaining agreement.
2. Recall names prevent the movement of an exclusively represented employee to a nonexclusively represented position.
3. Recall names for a classification normally prevent the hire, promotion, reinstatement, demotion or lateral job change between agencies of an individual to that classification. Exceptions may occur if a hiring freeze or hiring restriction is in effect. Regulation 3.10 establishes the standards that must be fulfilled.
4. Recall names prevent a lateral job change from a limited-term appointment type to an indefinite appointment type except as authorized in regulation 3.10.
5. When names appear on the recall list within the same agency, an employee may be laterally job changed by the appointing authority to a position in the same classification and classification level, to a different classification at the same classification level within the same HRMN EEO category, or to a position where the movement is identified as a lateral job change in the Preauthorized Lateral Job Change List (see the Civil Service web site for listing). An employee may be demoted to a position at a lower classification level in the same class series or to a position at a lower classification level within the same HRMN EEO category.

6. Appointments from a recall list must be made as follows:
  - a. Agency Recall: The most senior available candidate, based on total continuous service hours, is appointed.
  - b. Statewide Recall: In the absence of agency recall names, an appointment is made from among any names appearing as statewide recall candidates. All recall list names must be properly removed in accordance with regulation 3.09 before additional candidates can be considered.
7. Appointments to Transitional Manager, Transitional Professional, or Transitional Business and Administrative Technician, or Departmental Trainee positions when names appear on the recall list must be made as follows:
  - a. Appointments or job changes to these positions are only processed when there are no recall names for the specific corresponding professional classification.
  - b. Following appointment from a recall list, immediate reclassification to Transitional Manager, Transitional Professional, Transitional Business and Administrative Technician or Departmental Trainee positions is prohibited. (Changes in classification or reclassification of the position are subject to the standards in regulation 4.05).

**B. All Other Appointments and Job Changes.**

1. Applicants must possess the qualifications for the classification to which an appointment or job change is being made; at least one of the assigned sub-classes, if any; and any selective position requirement criteria that have been approved by Civil Service.
2. All appointments and job changes must be made in accordance with the standards and conditions of this regulation. Misapplication of these standards and conditions that create an improper appointment or job change may result in revocation of the appointment or job change or other corrective action.
3. Civil Service shall review qualifications of applicants for all classifications covered in applicant pools maintained by Civil Service.
4. Civil Service staff shall review the qualifications of applicants for classifications that have not been preauthorized for credential review. Regulation 3.04 § 4.D, specifies other conditions under which Civil Service shall conduct credential reviews.
5. Appointing authorities may review qualifications of applicants for predetermined classifications in accordance with regulation 3.04. (See State of Michigan Applicant Recruitment Strategies for a listing of the statewide preauthorized classifications. Other classifications may be preauthorized to agencies on an individual basis).

6. All appointments and job changes must be made in compliance with Civil Service rules, regulations, and procedures, as certified by the appointing authority to Civil Service.

**C. Limited-term Appointments.**

1. A limited-term appointment means a career appointment that has a fixed ending date at the time of the appointment.
2. A limited-term appointment expires at the fixed end of the term, unless terminated earlier by the appointing authority or extended by Civil Service.
3. An appointing authority is authorized to make a limited-term appointment for up to, but not to exceed, 2 years from the date of appointment.
4. An appointing authority may request Civil Service approval for extension of the limited-term appointment for up to an additional 2 years. The request for extension beyond 2 years must be submitted to Civil Service for approval, with rationale for extending, prior to the appointment expiration date.
5. Limited-term appointments shall not exceed 4 years from the date of the initial appointment. Any continuation beyond 4 years must be submitted to the State Personnel Director by the appointing authority, with rationale for extending.
6. The appointing authority must enter the appointment date and appointment expiration date to the employee record (HR11) when making a limited-term appointment.
7. An employee in limited-term status may not be extended beyond 4 years by appointment or job change to another limited-term position in the same class series and work unit unless approved by the State Personnel Director.
8. An individual appointed on a limited-term basis has the same rights as employees in indefinite appointments, except as those benefits and rights are otherwise limited elsewhere in Civil Service rules or regulations.
9. A limited-term appointment may be full-time or less than full-time.
10. Employment preference or recall rights can only be applied as defined in rule 2-5.1.
11. Limited-term appointments are subject to Civil Service audit.

**D. Lateral Job Changes, Reinstatements, and Demotions.**

1. A lateral job change, reinstatement, or demotion does not require Civil Service review of applicants' qualifications when any of the following conditions are met:
  - a. The movement is to a different position in the same classification (with the same subclass code, if applicable) or to a position at a lower classification level in the same class series.

- b. The movement between classifications is listed in the Preauthorized Lateral Job Change Listing (see the Civil Service web site for listing).
  - c. The employee's name is in the Civil Service applicant pool for the classification (with subclass code, if applicable) to which lateral job changing, reinstating, or demoting.
  - d. There is documentation that Civil Service has reviewed and approved the employee's qualifications for the proposed movement and the qualifications for the classification have not changed.
  - e. The appointing authority has reviewed and approved the employee's qualifications for the preauthorized classification and the qualifications have not changed.
2. Lateral job changes, reinstatements, or demotions that do not satisfy a condition in § 4.D.1 require review and approval of the candidate's qualifications by Civil Service before the action is taken. A request for qualification review must be submitted for this purpose.
3. During the probationary period, an employee may be laterally job changed or demoted to a position in the same classification or class series, with the same employee status code.
4. Lateral job changes between agencies may occur in accordance with rule 3-3.5, as follows:
  - a. The sending and receiving appointing authorities must certify in writing to the State Personnel Director that they mutually agreed to the job change.
  - b. An employee has the right to refuse a lateral job change between agencies and, when necessary, to exercise employment preference within the sending agency.
  - c. An employee cannot be laterally job changed between agencies if there is an employee currently working for the receiving agency who has agency recall rights to the classification level.
  - d. An employee must receive written notice at least 28 calendar days before the effective date of the lateral job change, unless agreed otherwise.
  - e. A lateral job change of a nonexclusively represented employee to a position covered by a collective bargaining agreement is governed by the terms and conditions of the collective bargaining agreement.
5. Reinstatement must take place within 3 years of the employee's separation, demotion, or departure on a waived rights leave of absence from an indefinite or limited-term appointment in which status was attained. The reinstatement period for employees who have been laid off or demoted because of a reduction in force begins when their

recall rights expire. An employee must have separated in satisfactory standing to be eligible for reinstatement.

### **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.08

<b>Subject:</b> <b>Applicant Pools Maintained by Civil Service</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 3.08 (SPDOC 10-08, August 22, 2010)

### 1. Purpose

This regulation provides information and standards for the establishment, maintenance, and duration of applicant pools maintained by Civil Service.

### 2. CSC Rule References

#### **3-1 Examinations**

\* \* \*

#### **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.*

### **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.*

*\* \* \**

### **3-3 Appointments and Job Changes**

*\* \* \**

#### **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.*

\* \* \*

### **3-3.9 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. Definitions**

### **A. CSC Rule Definitions.**

1. ***Applicant** means a person who requests to participate in an appraisal process.*
2. ***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.*

### **B. Definition in This Regulation.**

1. **State employee applicant** means any of the following individuals who are considered state employees for written, electronic, and other appraisal methods:
  - a. Those presently employed on a career or non-career basis.
  - b. Employees on layoff from a classified position.

- c. Employees on a leave of absence whose rights to return to active employment are guaranteed.
- d. Individuals currently in the disability retirement program or Return to Work Program.
- e. Individuals appointed to executive branch unclassified positions.
- f. Employees and members of the state legislature and judiciary.
- g. Special personal services employees.

## **4. Standards**

### **A. Applicant Pools Maintained by Civil Service.**

1. Civil Service establishes and maintains applicant pools for selected classifications comprised of the names of qualified applicants seeking employment in the state classified service. Applicants are typically placed in these pools after passing the Civil Service appraisal.
2. An employee may request to have his or her name placed in an applicant pool maintained by Civil Service for the classification in which the employee most recently attained status in order to be considered for a lateral job change.
3. An employee who has been demoted after having attained status is eligible for placement in an applicant pool maintained by Civil Service for the classification from which the employee was demoted.
4. An employee who has separated or departed on a waived rights leave of absence within the last 3 years is eligible for placement in an applicant pool maintained by Civil Service for the classification in which the employee most recently attained status.
5. Individuals who are eligible under §§ 4.A.2, 3, or 4 may request to have their names placed in an applicant pool by contacting Civil Service.
6. In the absence of recall names, as provided in regulation 3.04, all applicants in the applicant pool are eligible for consideration by an appointing authority.

### **B. Maintenance of Civil Service Applicant Pools.**

1. Names may be removed from an applicant pool for any of the reasons specified in rules 2-7.4, 3-1.5, or 3-2.2, or as agreed upon by the employer and employee, such as Workers Compensation redemptions, grievance settlement agreements, etc. Employment sanctions shall be imposed in accordance with regulation 3.06.
2. It is the applicant's responsibility to inform Civil Service of name or address changes. State employee applicants may update this information using the HRMN website or by contacting the MI HR Service Center for participating agencies or their appointing

authority for non-participating agencies. All other applicants may do so by contacting Civil Service. An applicant's name may also be removed at the applicant's request.

### **C. Duration of Applicant Pool Records Maintained by Civil Service.**

1. State employee applicants who pass a Civil Service appraisal or who seek a promotion in accordance with this regulation may have their names placed in the applicant pool for the period as determined by the specific appraisal method.
2. Employees seeking a lateral job change, in accordance with Civil Service rules and regulations, may have their names placed in applicant pools for 1 year. Extensions may be given, 1 year at a time, upon written request.
3. An individual who separates from state employment in good standing may request to have his or her name returned to an applicant pool by contacting Civil Service. The names of separated individuals are placed in applicant pools for the period as determined by the specific appraisal method, provided the appraisal method has not changed. Extensions may be given, one year at a time, upon written request.
4. Individuals who are not state employee applicants at the time they pass a Civil Service appraisal have their names placed in an applicant pool for the period as determined by the specific appraisal method. If the appraisal content or method has not changed, extensions may be given, one year at a time, upon written request.
5. Individuals seeking reinstatement in accordance with § 4.A.4 may have their names placed in the applicant pool for up to 3 years from the date of separation, demotion, or departure on a waived rights leave of absence. The reinstatement period for employees who have been laid off or demoted because of a reduction-in-force begins when their recall rights expire. Requests for extensions may be given, one year at a time, upon written request, unless the appraisal method has changed.
6. If the appraisal method changes such that the results of a new appraisal replace the previous results, applicants in the applicant pool are notified of the change and offered an opportunity to participate in the new appraisal.

## **5. Procedures**

<b>Responsibility</b>	<b>Action</b>
Appointing Authority or Civil Service	1. Identifies applicants to be removed from Civil Service applicant pools for reasons specified in § 4.C(1) or rules 2-7.1, 3-1.5, or 3-2.2(c) or (d).
Appointing Authority	2. Requests removal of applicant from an applicant pool and provides documentation for the removal.
Applicant	3. Requests to be removed from Civil Service applicant pools.

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Responsibility	Action
Civil Service	<ol style="list-style-type: none"> <li>4. Reviews documentation provided and investigates further, if necessary.</li> <li>5. Determines appropriate action in accordance with rules 2-7.4, 3-1.5, or 3-2.2 (c), (d), or (e).</li> <li>6. Enters the action on the applicant record in HRMN.</li> </ol>

## **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.09

<b>Subject:</b> <b>Recall Lists For Nonexclusively Represented Employees</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 3.09 (SPDOC 07-14, October 7, 2007)

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## 1. Purpose

This regulation provides information and standards relative to the placement of names onto recall lists, removal of names from recall lists, and duration of recall lists for nonexclusively represented employees (NEREs).

## 2. CSC Rule References

### 2-5 *Employment Preference*

#### 2-5.1 *Application and Protection*

\* \* \*

*(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:*

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- (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.*

\* \* \*

## **3-2 Applicant Pools and Recall Lists**

\* \* \*

### **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.*

## **3-6 Probation and Status**

\* \* \*

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### 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.*

## 3. Definitions

### A. CSC Rule Definitions.

1. **Applicant pool** means a group of applicants whom civil service staff has determined to be qualified.
2. **Candidate pool** means qualified persons considered for a position.
3. **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.
4. **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.
5. **Classification level** means the placement of a classification within a series based on the duties and responsibilities of the position.
6. **Employee** means a classified employee of the state of Michigan over which the civil service commission has jurisdiction under the constitution.
7. **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-time career appointment (full-time and part-time).
  - (d) Intermittent career appointment.
  - (e) Seasonal career appointment.
  - (f) Noncareer appointment.
8. **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.

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9. *Grade means classification level.*

10. ***Indefinite appointment** means a career appointment with no fixed ending date at the time of appointment.*

11. ***Job title** is a HRMN term that represents class series.*

12. ***Limited-recognition organization** means a labor organization recognized by the state personnel director to represent employees in nonexclusively represented positions.*

13. ***Limited-term appointment** means a career appointment that has a fixed ending date at the time of appointment.*

14. ***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.*

15. ***Nonexclusively represented position** means (1) an excluded position or (2) an eligible position in a unit that has not elected an exclusive representative.*

16. ***Position** means a classified job identified by its respective duties and responsibilities.*

17. ***Position title** is a HRMN term that represents classification.*

18. ***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.*

19. ***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.*

#### **B. Definitions in This Regulation.**

1. **Reduction in force (RIF)** means an action taken by an appointing authority to lay off, demote, or otherwise displace an employee for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in mission, or reorganization of the work force.

### **4. Information**

- A. Recall lists are comprised of the names of employees who have gained status from an indefinite appointment and have been laid off, demoted, or otherwise displaced from the state classified service. The agency is responsible for creating and maintaining recall records for their employees affected by the reduction in force (RIF). In the event of an appeal, the agency that implemented the RIF is responsible for defending its actions under this regulation.
- B. It is the responsibility of the employee to notify the agency that implemented the RIF of name or address changes. An employee may update this information using the Human



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Resources Management Network (HRMN) website or by contacting their appointing authority.

- C. An employee may update recall records, including changes to location or employment status availability, by submitting written notification to the agency from which the RIF occurred.

## 5. Standards

### A. Employee Eligibility for Recall.

1. An employee who has gained status from an indefinite appointment to a permanent classified position who is laid off, demoted, or otherwise displaced for reasons of administrative efficiency due to a RIF is eligible to be placed on the recall list for the class series at and below the classification level at which the employee was serving at the time of the RIF. In addition, an employee is eligible to be placed on the recall list for the class series at and below the classification level in which the employee attained status during the current employment period.
2. Employees have agency recall rights to the agency that implemented the RIF. Employees are ranked by total continuous service hours, with selection limited to the most senior employee.
3. Employees have statewide recall rights to other agencies. Employees are not ranked; selection may be made from among any available names.

### B. Employee Rights for Placement on Recall Lists.

1. Names are placed on the recall list for the class series at the same and lower classification levels in which the employee served at the time of the RIF.
2. Names are placed on additional recall lists for the class series at the same and lower classification levels in a class series in which the employee attained status during the current employment period.
3. Determinations for placement on recall lists are based on the following criteria:
  - a. If displaced to a position in a different classification at the same classification level, pay rate, and county, placement is limited to the class series of layoff for the county of layoff only. (See Attachment A, Example 4.) The employee has recall rights only to the classification level at which the employee served at the time of the RIF.
  - b. If displaced to a position in the same classification and classification level, different county, placement is limited to all class series at the classification level for which the employee has attained status, county of layoff only. (See Attachment A, Example 2.)

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- c. If displaced to a position at a lower classification level, placement on additional recall lists is dependent upon the location and pay rate of the position to which bumped. Placement is limited to the class series at or below the level of the classification from which displaced and at or above the classification level of the position to which bumped. (See Attachment A, Examples 1 and 3.)
4. When class clusters are included in an approved agency layoff plan, an employee is eligible for placement on the recall list for the class series identified within the class clusters at or below the employee's current classification level. Agency class clusters can only be used within the agency that implemented the RIF.
5. Employees are placed on the recall list for the county and employee status at the time of the RIF. If laid off, placement on recall lists for nonexclusively represented classifications includes all counties of interest. Exceptions occur under the following circumstances:
  - a. If the employee does not have status gained from an indefinite appointment in the layoff classification, placement is on the recall list for the class series at the same and lower classification levels and county in which the employee last attained status, provided the classification is not covered by a collective bargaining agreement.
  - b. Employees having status gained from an indefinite appointment who lateral job change or who are promoted on a limited-term basis are eligible at the end of the limited-term appointment for placement on the recall list for the class series at the same and lower classification levels and county of the indefinite appointment, provided the classification is not covered by a collective bargaining agreement.
  - c. Recall lists are not maintained for:
    - (1) Equitable Classification Plan Group 4 classifications, including the Senior Executive Service (SES).
    - (2) Senior Executive Management Assistant Service (SEMAS) classifications.
    - (3) Noncareer (e.g., Student Assistant) classifications.
    - (4) Frozen classifications.
    - (5) Any other classification designated as protected in any other Civil Service rule or regulation.
  - d. Employees in pay protection status from positions in Group 4, the SES, or the SEMAS have recall rights only to the agency that implemented the RIF.
  - e. Employees displaced from Transitional Manager, Transitional Professional, or Transitional Business and Administrative Technician positions are placed on the

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recall list for the appropriate manager, professional, or technician class series at the same or lower classification levels in accordance with regulation 2.01.

- f. Employees displaced from a Departmental Trainee position are placed on the recall list for the appropriate professional class series at the same or lower classification levels as follows:
  - (1) Employees who have satisfactorily completed the equivalent of 2 years of full-time service have recall rights at the experienced classification level and below for the classification series of layoff.
  - (2) Employees who have satisfactorily completed at least the equivalent of 1 year of full-time service, but less than the equivalent of 2 years of full-time service, have recall rights at the intermediate classification level and below for the classification series of layoff.
- g. Employees displaced from a frozen position are placed on the recall list for the appropriate class series of the position. Employees have recall rights at and below the classification level of the frozen position.
- h. If a reclassification request is retroactively approved for a position from which the employee was previously displaced due to a RIF, the employee's name is placed on the recall list for the class series for which the reclassification was approved. The employee has recall rights to the approved classification level and below.
6. Employees' names are placed on recall lists according to the employees' continuous service hours at the time of layoff or displacement.
  - a. If an employee is subject to a subsequent RIF, continuous service hours are updated on the recall list for the class series in which the employee served when the second RIF occurred at the same and lower classification levels. The employee has recall rights to the same and lower classification levels of the position held when the second RIF occurred.
  - b. For employees who accept displacement on a limited-term basis or who are recalled to a limited-term appointment, continuous service hours are not updated on recall lists at the end of the limited-term appointment.

### **C. Removal of Names from Recall Lists.**

Employees' names are removed from recall lists for any of the reasons specified in rule 3-2.4 and in accordance with the following guidelines: (See Attachment B for examples.)

1. The employee's name is removed from all recall lists because of lack of interest in, or return to, full-time indefinite employment in the county of the original RIF, in the same classification and classification level of layoff, or in any classification having a higher classification level and pay rate.

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2. The employee's name is removed from all recall lists if the employee was displaced from a position having a less than full-time work schedule and is returned to employment in the same or full-time work schedule, in the same classification and classification level and county of the original RIF.
3. The employee's name is removed from all recall lists because of lack of interest in, or return to full-time indefinite employment in a different classification at the same pay rate, classification level, and county of the original RIF action, except for the recall list for the class series, at the same classification level and county of the original RIF.
4. The employee's name is removed from all recall lists because of lack of interest in, or return to full-time indefinite employment in a classification at the same pay rate and classification level, different county, as the original RIF, except for the recall list for the class series at the same classification level and county of the original RIF.
5. If the employee returns to employment or indicates lack of interest in a classification at a lower classification level than the classification of layoff, in the county of layoff, the employee's name is removed from all recall lists for all class series at the same and lower classification levels. If the employment opportunity was in a different county than the county of layoff, the employee remains eligible for the recall list for classifications at the classification level for the county of layoff only, and is removed from all lower classification levels.
6. The employee's name is removed from all recall lists for classifications having a maximum pay rate equal to or below the maximum pay rate of the classification to which any return to full-time, indefinite employment occurs, except as otherwise stipulated in these standards.
7. The employee's name is removed from all recall lists because of departure on a waived rights leave of absence.
8. The employee's name is removed from recall lists because of expiration of recall list records.

NOTE: An employee displaced from an SES, SEMAS, or Group 4 classification receiving pay protection in accordance with rule 4-6.2 (g)(2) who declines recall to a higher classification level where the pay rate exceeds the maximum rate of pay in their current classification level will have the pay protection rate terminated. The employee's rate of pay will then be placed at the appropriate pay step at their current classification level in accordance with regulation 5.01, § 4.F.

#### **D. Maintenance of Recall List Records.**

1. An appointing authority who recalls an employee who was displaced or laid off from a different agency must enter a comment on the Recall Rights Employee Inquiry form (ZP24.2), in HRMN. The appointing authority must also notify the agency that

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implemented the RIF of the employee's current employment status. The agency that implemented the RIF must update the employee's recall records prior to a process level change.

2. If an appointing authority determines that an employee's name must be removed as a result of lack of interest and the employee was displaced or laid off from a different agency, the appointing authority must enter a comment on the Recall Rights Employee Inquiry form (ZP24.2), in HRMN. The appointing authority must also notify the agency that implemented the RIF. The agency that implemented the RIF must update the employee's recall records.

#### **E. Duration of Recall List Records.**

1. Names are placed on recall lists for one year from the date of layoff or displacement.
2. At the end of the one-year period, the expiration date for recall lists is extended for an additional one-year period, upon written request from the employee. At the end of the one-year extension, the expiration date for recall lists is extended for another one-year period upon written request from the employee. Requests for extensions must be received by the agency from which the RIF occurred before the expiration date of the recall list. Requests should be submitted during the month before expiration. Requests received after the lists have expired are not honored.
3. Extensions beyond 3 years from the RIF action are not permitted.

See Attachments A and B

### **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

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## ATTACHMENT A—PLACEMENT OF NAMES ON RECALL LISTS

### Example 1

Current Position: Financial Manager 15 (FINANMGR), County 33

Bumped to: Financial Manager 13, County 33

The employee is eligible to be placed on recall lists for the class series in which the employee attained status. The employee has recall rights to 14 and 15 level classifications in all counties in which interested in working.

### Example 2

Current Position: Financial Manager 15 (FINANMGR), County 33

Bumped to: Financial Manager 15, County 82

The employee is eligible to be placed on recall lists for the class series in which the employee attained status. The employee has recall rights to 15 level classifications in County 33 only.

### Example 3

Current Position: Financial Manager 15 (FINANMGR), County 33

Bumped to: Financial Manager 13, County 82

The employee is eligible to be placed on recall lists for the class series in which the employee attained status. The employee has recall rights to 13 level classifications in County 33 only and to 14 and 15 level classifications for all counties of interest.

### Example 4

Current Position: Financial Manager 15 (FINANMGR), County 33

Bumped to: Departmental Manager 15 (DEPTLMGR), County 33

(If the employee has attained status in the Departmental Manager 15 classification level or above.)

The employee is eligible to be placed on the recall list for the Financial Manager class series. The employee is already at the classification level, pay rate, and county of layoff. The employee has recall rights to the Financial Manager 15 level classification in County 33 only.

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## ATTACHMENT B—REMOVAL OF NAMES FROM RECALL LISTS BECAUSE OF RETURN TO OR LACK OF INTEREST IN EMPLOYMENT

### Example 1

Layoff Classification: Departmental Analyst P11 (DEPTLALT), County 33

Returned to: Buyer P11 (BUYER), County 82

The employee is eligible to remain on recall lists for all previously determined class series. The employee has recall rights to the 9, 10, and P11 level Departmental Analyst classification and any other previously determined P11 level classifications in County 33 only.

### Example 2

Layoff Classification: Financial Manager 15 (FINANMGR), County 33

Returned to: Financial Manager 13, County 33

The employee is eligible to remain on recall lists for all previously determined class series. The employee has recall rights to 14 and 15 level classifications in all counties of interest.

### Example 3

Layoff Classification: Departmental Analyst P11 (DEPTLALT), County 33

Returned to: (A) Accountant 12 (ACCOUNTNT), County 33, or (B) Accountant 12, County 41

- (A) The employee has been appointed to a higher classification level, pay rate, in the same county. The employee's name is removed from all recall lists.
- (B) The employee has been appointed to a higher classification level and pay rate, but to a different county. The employee is eligible to remain on the recall list for all previously determined class series. The employee has recall rights to 9, 10, and P11 Departmental Analyst level classifications and any other previously determined P11 level classification in County 33 only.

### Example 4 — Two Reductions in Force (RIF)

RIF #1 4/5/97 Departmental Specialist 15 (DEPTLSPL), County 33, Maximum Pay =

Layoff Classification: \$32.05/hr.

RIF #2 11/12/98 Financial Specialist 14 (FINANCSPL), County 23, Maximum Pay =

Layoff Classification: \$28.79/hr.

Returned 3/13/00 to: Departmental Manager 15 (DEPTLMGR), County 23, Maximum Pay = \$32.05/hr.

The employee's name is removed from the recall list for the class series involved in the second RIF. The employee has been returned to a higher classification level and pay rate, in the same county as the second RIF. The employee remains on all previously determined class series in order to assist in return to the county of layoff of the first RIF. The employee has recall rights to 15 level classifications in county 33 only.

# Michigan Civil Service Commission

## Regulation 3.10

<b>Subject:</b> <b>Promotion or Lateral Job Change Within an Agency of Current Employees Under Hiring Restriction Conditions</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 3.10 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation provides information and standards for the establishment and use of hiring restriction conditions and the guidelines for the promotion or lateral job change within an agency of a current employee when hiring restriction or hiring freeze declarations are in force and recall names would normally prevent such an appointment.

### 2. CSC Rule References

#### **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.*



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

\* \* \*

### **3-3.6 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. Definitions**

### **A. CSC Rule Definitions.**

- 1. **Applicant pool** means a group of applicants whom civil service staff has determined to be qualified.*
- 2. **Appointment** means an authorized act of an appointing authority employing a properly qualified person in a specific position in the classified service.*
- 3. **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.*

## **4. Standards**

### **A. Establishment of an Authorized Hiring Restriction or Freeze.**

- 1. The agency must have a current, approved, and acknowledged hiring restriction declaration on file with Civil Service in accord with this regulation. [See Attachment A for an example of a Declaration of Statewide or Agency-Wide Hiring Freeze. See*

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also Attachment B for an example of a Declaration of Organizational Area Hiring Freeze.]

2. A bona fide hiring restriction or hiring freeze is established when a declaration is forwarded to the State Personnel Director by the Governor, or an agency director that describes the nature and scope of the hiring restriction or hiring freeze and includes a date and anticipated expiration date.
3. A hiring restriction declaration or hiring freeze declaration must identify the total staffing level (current filled positions) of each of the areas affected by the declaration.
4. A hiring restriction may be agency-wide, or it may be specific to an organizational area(s).
5. The organizational area(s) designated for hiring restrictions must be identified by major budgetary units or by definable and distinct programs (i.e., bureau, division, office, or district). The restriction conditions must be applicable to all classifications and classification levels used in the designated organizational area. Any exceptions must be approved by the State Personnel Director.

NOTE: Unit levels or section levels are considered organizationally too narrow for the application of this regulation.

6. The hiring restriction declaration or hiring freeze declaration will be considered null and void for any one of the following reasons:
  - a. The expiration date is reached, and it is not re-issued.
  - b. An individual from outside the agency is hired into a declared hiring restricted organizational area (as defined in the declaration).
  - c. The hiring freeze or hiring restriction declaration is rescinded.

**B. Lateral Job Change within an Agency and Promotional Appointment under Hiring Restriction Conditions.**

1. Appointments cannot be approved under this regulation before the appointing authority receives written approval of its hiring restriction condition declaration from Civil Service.
2. All agency recall names must be cleared prior to a promotional appointment.
3. The selected candidate must possess the qualifications for the classification to which the appointment is being made.
4. Recall names do not normally prevent the lateral job change or demotion of an employee to a different position within the agency. However, recall names prevent a lateral job change from a limited-term appointment type to an indefinite appointment type.

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5. Contractual obligations must be fulfilled when filling a position covered by a collective bargaining agreement.

## 5. Procedures

### A. Establishment of Hiring Restriction Conditions.

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>1. Sends a copy of a bona fide Hiring Restriction or Hiring Freeze declaration to the State Personnel Director attached to a letter of intention to apply for a promotion or lateral job change within an agency of current employees under hiring restriction conditions.</li> <li>2. The declaration must contain all of the following: <ol style="list-style-type: none"> <li>a. The identity of the authority issuing the declaration.</li> <li>b. A description of the hiring restriction conditions.</li> <li>c. An explanation of the need and rationale for the restriction conditions.</li> <li>d. An identification of the organizational areas that come under hiring restrictions.</li> <li>e. The effective date the declaration commences.</li> <li>f. The expiration date of the declaration.</li> <li>g. The current staffing level of the affected organizational areas.</li> </ol> </li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>3. Reviews the declaration for compliance with the standards of this regulation. <ol style="list-style-type: none"> <li>a. An explanation of the need and rationale for the restriction conditions.</li> <li>b. If the declaration is incomplete, or not in compliance, sends a letter to the appointing authority requesting additional information or denies request.</li> </ol> </li> </ol>

### B. Making Appointments under Hiring Restriction Conditions.

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>1. Submits the documentation identified in the standards of this regulation to Civil Service.</li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>2. Reviews the documentation for compliance with the standards of this regulation and approves or disapproves.</li> </ol>

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### **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

**ATTACHMENT A—EXAMPLE OF DECLARATION OF HIRING RESTRICTION (OR FREEZE)**

**DATE:** January 13, 2000  
**TO:** State Personnel Director  
**FROM:** Governor, or Agency Director  
**SUBJECT:** Declaration of Statewide or Agency-wide Hiring Freeze

Effective January 13, 2000, a hiring freeze has been declared for the Department of Administration, pursuant to Executive Order XXXX. This freeze will be in effect until April 30, 2000.

The current staffing level for the department is 1,630, and the projected level for the end of the fiscal year has been determined to be 1,600. It is our intent to achieve the required staffing reduction through normal attrition and the application of this freeze.

Effective immediately, all requests to fill positions must be approved by my office before any appointments can be made.

**ATTACHMENT B —EXAMPLE OF DECLARATION OF HIRING FREEZE**

**DATE:** January 8, 2000  
**TO:** State Personnel Director  
**FROM:** Agency Director  
**SUBJECT:** Declaration of Organizational Area Hiring Freeze

Effective February 8, 2000, a hiring freeze has been declared for the following organizational areas of the Department of Administration:

<u>Organizational Area</u>	<u>Current Staff Level</u>
Office of Personnel Services	55
Office of Management Services	62
Information Technology Division	79
Building Management	99
Accounting Division	23
Purchasing Division	35

It is our intent not to increase current staffing levels within these areas for the remainder of this fiscal year. As a result, all requests to fill positions in these organizational areas must be approved by my office before any appointment may be made. This freeze will be in effect until May 30, 2000.

# Michigan Civil Service Commission

## Regulation 3.11

<b>Subject:</b> <b>Written, Electronic, and Other Appraisal Method Administration</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 3.11 (SPDOC 14-01, January 5, 2014)

### 1. Purpose

This regulation defines the Civil Service standards governing the application, administration, and scoring of written, electronic and other appraisal methods.

### 2. CSC Rule References

#### **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:*

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- (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.*

### 3. Definitions

#### A. CSC Rule Definitions.

- 1. **Applicant** *means a person who requests to participate in an appraisal process.*
- 2. **Applicant pool** *means a group of applicants whom civil service staff has determined to be qualified.*
- 3. **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.*
- 4. **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.*
- 5. **Examination** *means an appraisal method.*

#### B. Definitions in This Regulation.

- 1. **Accommodation coordinator** *means the (1) appointing authority, (2) person designated by an appointing authority to administer the processing of reasonable accommodation requests, or (3) accommodation coordinator's designee.*
- 2. **State employee applicant** *means the following individuals, who are considered state employees for written, electronic, and other appraisal methods and applicant pool purposes:*
  - a. *Those presently employed on a career or noncareer basis.*
  - b. *Employees on layoff from a classified position.*

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- c. Employees on a leave of absence whose rights to return to active employment are guaranteed.
  - d. Individuals currently in the disability retirement program or Return to Work Program.
  - e. Individuals appointed to executive branch unclassified positions.
  - f. Employees and members of the state legislature and judiciary.
  - g. Special personal services employees.
3. **Qualified applicant** means an applicant with a disability who can perform the essential functions of an examination or interview with or without reasonable accommodation.

## 4. Standards

### A. Notice.

- 1. Civil Service shall establish procedures for persons seeking positions in the classified service.
  - a. The written, electronic, and other appraisal method procedures must include appraisal method numbers and titles, and anticipated appraisal dates.
  - b. Written, electronic, and other appraisals open to the general public are identified in the appraisal method procedures.
- 2. An appraisal method announcement must be published for each appraisal method listed in the procedures and contain information specific to the appraisal, including the application procedure and the retake policy.

### B. Eligibility.

- 1. Applications will be accepted consistent with workforce needs for all written, electronic, and other appraisal methods.
- 2. Applicants are not scheduled to take written, electronic, or other appraisals for classifications for which they already possess passing scores.

Note: If the applicant pools are being replaced as a result of modification to an existing written, electronic, or other appraisal method or a newly developed appraisal method, persons in the existing applicant pool must be notified of the need to participate in the new appraisal method.

- 3. Applicants must fulfill the requirements for at least one classification covered by the appraisal method on the date their credentials are reviewed by Civil Service staff in order to be scheduled for the written, electronic, or other appraisal methods.



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4. Applicants may take specific written or electronic appraisals as often as permitted for that appraisal method. Retake time frames for specific appraisals are addressed in the appraisal announcement.
5. Applicants who are determined to be ineligible for a written, electronic, or other appraisal may appeal that determination, as provided in regulation 8.02.

**C. Appraisal Administration.**

1. Application, administration, and scoring processes for all applicants must be in conformance with established procedures.
2. If scheduled for a written, electronic, or other appraisal, applicants may request an alternate appraisal date for reasons of emergency or unalterable prior commitments. Requests must be submitted in writing, to Civil Service.
3. Persons with disabilities needing an accommodation to participate in a written, electronic, or other appraisal process should submit a request indicating the type of accommodation needed. The request must be made before the appraisal process is administered. For an accommodation in an appraisal method administered by Civil Service, a qualified applicant should request the accommodation in their online application for an examination or using a CS-944 or CS-630 form. A qualified applicant who needs an accommodation in an appraisal process administered by a hiring agency should request the accommodation in writing from the hiring manager or the hiring agency's accommodation coordinator. Any accommodation requests received by someone other than the accommodation coordinator must be forwarded to the appropriate accommodation coordinator. The accommodation coordinator for Civil Service or the hiring agency shall review the accommodation request and may request additional information from the qualified applicant, if necessary. The accommodation coordinator shall approve the qualified applicant's accommodation request, unless the accommodation would cause undue hardship.
4. Some disabilities may preclude applicants' participation in written, electronic, or other appraisal methods, with or without reasonable accommodation. These applicants may be eligible for the twelve-month trial appointment process for persons with disabilities as provided in regulation 3.05.

**D. Workforce Need Testing.**

1. An appointing authority request for workforce need testing must identify at least one of the following needs:
  - a. Geographic need.
  - b. Change of program priorities or new program or service initiatives.
  - c. Specific skill sets needed.

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- d. Employee separations creating opportunities for internal promotions.
  - e. Reorganizations.
  - f. Applicant pool under-representation.
  - g. Any other reason approved by Civil Service.
2. An immediate workforce need must exist (i.e., one or more vacant positions are to be filled.)
  3. Special workforce need testing may not be approved if a regularly scheduled administration will take place within 28 calendar days. If it is feasible and appropriate, candidates may be added to the examination in process.
  4. Applicants will be placed on employment lists for all classifications in the examination component for which they qualify.
  5. The requesting appointing authority must provide Civil Service Application forms (CS 102) and any other required documents from candidates to Civil Service by an agreed-upon date.
  6. Civil Service will expedite the processing of workforce need testing (i.e., necessary credential reviews, exam administration, and scoring.)

**E. Removal from Appraisal Process.**

1. Applicants may be removed from the written, electronic, or other appraisal process for any of the reasons specified in rule 3-1.5 or as otherwise authorized in the Civil Service rules or regulations.
2. Civil Service shall enforce appraisal integrity and apply sanctions as a result of violations, in accordance with rule 3-1.5 and applicable rules and regulations.

**CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.12

<b>Subject:</b>  <b>Return-To-Work Appointments</b>		
<b>SPDOC No.:</b>  16-06	<b>Effective Date:</b>  January 1, 2017	<b>Replaces:</b>  Reg. 3.12 (SPDOC 10-08, August 22, 2010)

### 1. Purpose

The statewide return-to-work (RTW) program assists employees currently receiving Workers' Compensation or Long-term Disability (LTD) benefits in their return to active state employment. The Office of the State Employer coordinates the program and each state agency has a case manager who works with RTW employees to locate potential vacancies and seek placements.

Civil Service provides support to the program by assisting appointing authorities in determining RTW employees' qualifications, evaluating them via an appraisal process, placing their names in applicant pools maintained by Civil Service, and authorizing approved appointment transactions to facilitate their return.

This regulation provides the standards and procedures for the RTW appointment process.

### 2. CSC Rule References

#### *Rule 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.*

\* \* \*

#### *Rule 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. Definitions

#### A. Definitions in This Regulation.

1. **Trial Work Experience** means the period of time in which an employee is assigned the duties of a position, different from those performed before being placed on Workers' Compensation or LTD, and demonstrates the ability to perform the essential job functions. The Trial Work Experience is part of the program administered by the Office of the State Employer that assists appointing authorities in returning employees from Workers' Compensation or LTD.
2. **NEOGOV** means the automated selection and hiring system used by the Civil Service Commission.

### 4. Standards

- A. An employee must currently be receiving Workers' Compensation or LTD benefits to be eligible for an RTW appointment.
- B. Appointing authorities are to comply with any executive orders or directives in place that apply to their agency before creating a new position or filling a new or vacant position.
- C. Appointing authorities can request an RTW appointment only when recall lists are cleared and any applicable collective bargaining agreement obligations are satisfied.
- D. Trial Work Experience in a classification typically requiring a Civil Service examination may serve as an alternative appraisal process for an approved appointment. In this situation, the employee will not receive a HRMN ZP22 Certification Code for the classification nor be placed in an applicant pool.
- E. Request for an RTW appointment must be submitted along with a Request for Credential Review form (CS-153) and include the following:
  1. An indication that the request is for an RTW appointment.
  2. An authorization from the Disability Management Program that the employee has successfully completed a Trial Work Experience of at least six months.
  3. A current employment history.
  4. A completed application or résumé.
  5. Copies of relevant transcripts, certificates, or listings of training programs completed.
- F. Civil Service will review and determine the employee's qualifications before appointment to a position. Trial Work Experience may be considered to determine the qualifications.
- G. The appointing authority must receive approval from Civil Service before making an appointment.

- H. A requisition using PA42.1 in the Human Resources Management Network (HRMN) must be created when NEOGOV is not the selection process used.
- I. The employee must satisfactorily complete a probationary period, as a condition of continuing employment.
- J. If the employee's performance is determined to be unsatisfactory, the employee may then return to the benefit program, subject to the program's eligibility criteria, if no other viable position is available for placement of the employee.
- K. An employee affected by a reduction in force from an RTW appointment has bumping rights in accordance with applicable collective bargaining agreements or Civil Service rules. If there are no other positions into which the employee may bump, the employee may be returned to the benefit program, subject to the program's eligibility criteria.
- L. Employees eligible for the RTW appointment process must comply with the state's drug and alcohol testing policy in accordance with regulation 2.07, 2.08, and 2.09 if the appointment is to a test designated position, or any other applicable pre-employment requirements.
- M. Any appeal rights are in accordance with regulation 8.02.

## 5. Procedure

Responsibility	Action
Employee or Case Manager	1. Provides appointing authority with documentation of ability to work but not in the former position.
Appointing Authority or Case Manager	2. Identifies a potential position for an RTW appointment.
Appointing Authority	3. Submits a Request for Credential Review Form (CS-153) with required documentation to Civil Service.
Civil Service	4. Reviews the request and determines if it satisfies the standards for approval. Indicates approval or disapproval and returns the request. Retains a copy of the CS-153 and enters applicable information into Applicant Tracker.
Appointing Authority	5. Appoints the candidate in accordance with Civil Service rules and regulations.

**CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.14

<b>Subject:</b>  <b>State Transitional Positions</b>		
<b>SPDOC No.:</b>  16-06	<b>Effective Date:</b>  January 1, 2017	<b>Replaces:</b>  Reg. 3.14 (SPDOC 13-08, August 18, 2013)

### 1. Purpose

This regulation provides the standards and procedures for designating an existing position classified as a business and administrative technician, professional, or manager as transitional. These positions may be used to facilitate the movement of career state employees to new classifications while maintaining the employees' employment preference rights and current pay rates if the rate of pay is less than or equal to the maximum of the classification level to which the employee will be reclassified upon completion of the transition period. After the employee's successful completion of the transition period, the transitional designation is removed from the position.

### 2. CSC Rule References

#### **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.*

\* \* \*

##### **3-3.5    *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.*

\* \* \*

### **3-5 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.*

## **3. Definitions**

### **A. Definitions in This Regulation.**

1. **Promotion** means the appointment of an employee to a different position at a higher classification level wherein the maximum rate of pay of the new classification level is higher than the maximum rate of the former classification level, unless there is a *de minimus* difference between the maximum rates of pay.
2. **State Transitional Position (STP)** means a position that is designated as transitional to protect an employee's pay. All such positions are indicated in the Human Resources Management Network (HRMN) as "STP" in the position description. The designation is added to the position prior to appointment and removed after the employee's successful completion of the experience requirements.

## **4. Standards**

**A. General Requirements.** The transitional designation of an existing business and administrative technician, professional, or managerial position facilitates career movement of employees with status and specific education or experience to new careers.

1. Transitional designation of a position may be requested only if the movement of the employee does not result in a promotion.
2. Transitional designation of an existing business and administrative technician, professional, or managerial position may be requested only in the absence of recall names for the classification of the position intended to be filled.
3. Transitional designation of an existing business and administrative technician, professional, or managerial position may be requested when the appointment to the position would result in reduction of compensation because the prospective employee does not possess the required experience for the level in the classification series.



4. The appointing authority must submit a Position Action Request to Civil Service and identify the business and administrative technician, professional, or managerial position to be designated as transitional.
5. If the transitional designation is used to facilitate the movement of an employee to a position at the advanced level, position-specific or universal advanced classification standards must be approved at the time of the employee's appointment.
6. A credential review of the intended appointee shall be conducted in accordance with regulation 3.04, § 4.F.
7. At the discretion of the appointing authority, an employee with status who is appointed to a position designated as transitional at a new classification may be required to complete a probationary period as provided in regulation 2.06.
8. The transitional designation may be removed from the position after the employee's successful completion of the experience requirements in §§ 4.B, C, or D. This requires Civil Service review and approval and the appointing authority's certification that the employee (a) meets the minimum requirements, (b) is satisfactorily performing the duties and responsibilities of the classification or classification level, and (c) has a current satisfactory probationary, annual, or follow-up performance rating.
9. For purposes of qualification credit, employees who successfully complete the transition period are considered to have the years of aggregate experience required for the classification and level to which they transition.
10. Regulation 2.01 § 4.D provides guidance for treatment of transitional positions in the event of a reduction in force (RIF).
11. Regulation 3.07 § 4.A provides guidance for treatment of transitional positions in the event of recall.
12. Regulation 5.01 § 3.L establishes standards for salary upon appointment of the employee into a position designated as transitional. An employee's salary may be retained if the current rate of pay is less than or equal to the maximum of the classification level to which the employee will be classified upon completion of the transitional period.

**B. Transitional Business and Administrative Technician Position.**

1. To be eligible for appointment to a business and administrative technician position designated as transitional, an employee must meet the education and experience requirement for the entry level of the classification of the new job.
2. An employee appointed to a business and administrative technician position designated as transitional from a position classified at or above the 9 level in the Equitable Classification Plan (ECP) Group 1 may have the transitional designation

removed after successful completion of the equivalent of six months of full-time experience in the transitional period.

**C. Transitional Professional Position.**

1. To be eligible for appointment to a professional position designated as transitional, an employee must either (a) meet the education requirement for the new classification or (b) possess the alternate education and experience identified on the job specification. An employee classified in the Senior Executive Management Assistant Service (SEMAS) with the equivalent of six months full-time experience as a SEMA or an employee who attained status in a SEMAS-designated position qualifies for professional classifications in which the minimum education allows for a bachelor's degree in any major and no specific required experience. An employee not possessing a bachelor's degree who attained status in a professional classification qualifies for professional classifications in which the minimum education requires a bachelor's degree in any major and no specific required experience.
2. An employee appointed to a professional 10-level (intermediate) position designated as transitional from a professional 10 through 12-level; SEMA 11, 13 or 15-level; or a professional specialist or managerial 12 through 15-level job classification may have the transitional designation removed after successful completion of the equivalent of six months of full-time experience in the transitional period.
3. An employee appointed to a professional P11-level (experienced) position, 12-level (advanced) position, 13, 14, or 15-level specialist position designated as transitional from an equivalent or higher professional P11 or 12-level or a professional specialist or managerial 12 through 15-level job classification may have the transitional designation removed after successful completion of the equivalent of six months of full-time experience in the transitional period.
4. An employee appointed to a professional P11-level (experienced) position designated as transitional from a SEMA 11, 13 or 15-level job classification may have the transitional designation removed after successful completion of the equivalent of six months of full-time experience in the transitional period.
5. An employee appointed to a professional 12-level (advanced) position or a professional 13-level specialist position designated as transitional from a SEMA 15-level job classification may have the transitional designation removed after successful completion of the equivalent of six months of full-time experience in the transitional period.
6. An employee appointed to a professional position designated as transitional from a non-professional job classification may have the transitional designation removed after successful completion of the experience requirements for the classification. If the

removal of the transitional designation would result in a pay decrease, the employee remains in the transitional period for another year.

#### **D. Transitional Manager Position.**

1. To be eligible for appointment to a managerial position designated as transitional, an employee must be classified as a manager equal to the classification level and meet the education requirement of the new classification.
2. An employee appointed to a managerial position designated as transitional may have the transitional designation removed after successful completion of the equivalent of six months of full-time experience in the transitional period.

## **5. Procedures**

### **A. Transitional Position Designation Request.**

<b>Responsibility</b>	<b>Action</b>
Appointing Authority	1. Submits a Position Action Request to request designation of an existing business and administrative technician, professional, or managerial position as transitional. The request must include the position code, intended appointee name, identification number, necessary credential review information and Request for Credential Review form (CS-153), if necessary, proposed release date and any other information necessary to support the request.
Civil Service	2. Reviews request and verifies release date and credential review to ensure compliance with Civil Service regulations. 3. Enters necessary information in the Human Resources Management Network (HRMN), if approved. 4. Releases the Position Action Request with proposed STP release date and credential review decision to the appointing authority.
Appointing Authority	5. Receives the approved Position Action Request and verifies information in HRMN. 6. If § 4.C.2 is applied, must make note in the employee's HRMN record.

### **B. Removal of Transitional Position Designation.**

<b>Responsibility</b>	<b>Action</b>
Appointing Authority	1. After the employee has served the required transitional period, submits a Position Action Request requesting removal of the transitional designation. 2. Certifies that the conditions outlined in this regulation are met.

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Civil Service

3. Reviews request and assigns an effective STP release date.
4. Enters position information in HRMN.
5. Releases approval action to appointing authority. If request is disapproved, informs appointing authority of revised STP release date and notifies employee of appeal rights.

## **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 4.01

Subject: <b>Classification Actions Requiring Civil Service Review</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 4.01 (SPDOC 11-04, June 26, 2011)

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## 1. Purpose

This regulation establishes the standards and procedures for processing position classification actions that require Civil Service review. Refer to regulation 4.02 for the standards and procedures for processing preauthorized classification actions.

## 2. CSC Rule References

### 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.*

\* \* \*

### **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.*

\* \* \*

## **3. Definitions**

### **A. CSC Rule Definitions.**

- 1. 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.*
- 2. Classification Level** *means the placement of a classification within a series based on the duties and responsibilities of the position.*
- 3. Class Series** *means a series of classifications with similar but progressively more responsible job duties.*
- 4. Position** *means a classified job identified by its respective duties and responsibilities.*
- 5. 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.*

6. **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.
7. **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.
8. **Subclass** means additional specialized experience, specialized training, licensure, or other specialized qualification that is required for appointment to a specific subgroup of positions.

#### **B. Definitions in This Regulation.**

1. **Establishment** means the creation of a new position by an appointing authority by defining the duties, responsibilities, and other relevant considerations on a position description. Civil Service shall classify every position established in accordance with the official classification plan.
2. **Conversion** means a change of positions from one classification to another when a classification is abolished, a new classification is created or a position is moved into or out of a performance pay program as authorized by Civil Service.

### **4. Standards**

#### **A. Establishment and Reclassification.**

1. A classification action that is not preauthorized must be reviewed and approved by Civil Service before it can be placed in the Human Resources Management Network (HRMN). Classification actions for Departmental Trainee, advanced, senior (advanced), lead worker, supervisory, managerial, specialist, administrative, or executive positions are not preauthorized.
2. For a classification action that requires Civil Service review and approval, the appointing authority must submit to Civil Service a Position Action Request (CS-129) and a completed Position Description (CS-214). Additional supporting documentation may be required to complete the classification review, such as an organizational chart for the work area, approved advanced level standards, the appropriate specialist or managerial ratings, or a Civil Service approved Request for a Credential Review (CS-153A). Positions in classifications in Groups 1, 2, and 3 of the Equitable Classification Plan (ECP) that are subclass eligible should have proposed subclasses entered on the CS-129. If any additional information is necessary, Civil Service will request further clarification.
3. A position classification review will be based on the application of the classification plan to the duties and responsibilities of the position as of the date the request is received. The effective date of the reclassification may be retroactive as provided under regulation 4.04 if the classification plan and the duties and responsibilities of the position are the same on both the date received and the retroactive date.

4. The effective date assigned to any classification action request that requires Civil Service review will be in accordance with regulation 4.04.

**B. Establishment.**

1. The classification of a new position requires approval by Civil Service, unless otherwise preauthorized to the agency.
2. A position establishment is necessary, and a position reclassification is not appropriate, when the primary function of the position undergoes a material and substantial change, requiring a new body of knowledge, skills, and abilities to perform the duties. Each request is evaluated on an individual basis. A new position establishment and appointment is typically necessary when the job changes in any of the following ways:
  - a. From a worker to a Departmental Trainee, supervisor, manager, administrator, or executive.
  - b. From a worker to an unrelated program or staff specialty.
  - c. From one program or staff specialty area to another unrelated program or staff specialty area.
  - d. From a supervisor to a manager, administrator, or executive.
  - e. From a nonprofessional to a professional.
  - f. When two or more work areas are combined and similarly situated positions exist where there should be competition for the new position.
  - g. From one kind of work to another; e.g., accounting assistant to carpenter or property analyst to personnel management analyst.
  - h. From a classification in one ECP Group to a classification in another ECP Group.
3. All professional administrative assistant positions must be established in the proper class series and at the proper classification level, as described in the job specification.
4. All secretaries and senior executive management assistants reporting to positions in the ECP Group 4 must be established at the appropriate classification level, as described in the job specification.
5. All multiple, limited, and overall assistant division director positions must be established in the proper class series and at the proper classification level.
6. Appointing authorities are to comply with any executive orders or directives in place that are applicable to their agency.
7. A supervisory, managerial, administrative, or executive-level position may be established with vacant subordinate positions to allow the future managerial employee to select the subordinates. The appointing authority has six months from



the date of the manager's appointment to fill the subordinate positions and submit verification to Civil Service. If the subordinate positions are not filled within this six-month time period, Civil Service will reclassify the position to the proper classification. Civil Service may grant extensions beyond the six-month period if an appointing authority demonstrates good cause.

8. A project manager position, a professional managerial position that has lead responsibility for major projects, may be established as a temporary or permanent position. A temporary project manager position can be established for up to 24 months. Extensions are permissible for demonstrated good cause. A permanent position can be established and must have continuous assigned projects, with certification as to the continuous nature of the projects. The project manager position must supervise two filled positions at all times. The subordinate positions can be permanently established, established on a temporary basis, or borrowed from other work areas.
9. A pattern position is a position that requires the possession of specific education, experience, skills, and knowledge that can only be gained through on-the-job-training at the lower levels in the classification. A pattern position must be filled at the lowest level in the approved pattern. The reclassification of a pattern position is not preauthorized to an appointing authority.

### **C. Reclassification.**

1. A reclassification requires appointing authority certification that the incumbent (a) meets the minimum requirements, (b) is satisfactorily performing the duties and responsibilities of the requested classification or classification level, and (c) has a current, satisfactory probationary, annual, or, follow-up performance rating.
2. A standard reclassification is one classification level higher, after the equivalent of one year (2080 hours in level) of full-time, documented, satisfactory service of compatible work assignments at the lower classification level.
3. If, during the qualifying period, the incumbent is on an extended paid absence of more than two consecutive pay periods, the appointing authority may delay the reclassification for a period equivalent to the length of the absence.
4. If, during the qualifying period, an employee is on an unpaid absence, the reclassification will be delayed for a period equivalent to the length of the absence.
5. A position may be reclassified in any of the following circumstances:
  - a. To the advanced level when the position is assigned the most complex duties and responsibilities beyond those assigned to an experienced-level position, as determined by Civil Service approved, advanced classification standards.

- b. From the experienced level or advanced level to a specialist level if the position's principal duties and responsibilities remain basically the same, but the job has evolved from a worker to a related and identifiable program or staff specialty that is recommended by the appointing authority and accepted by Civil Service.
  - c. From a student assistant to an appropriate career classification in accordance with regulation 3.02.
  - d. When there is no change in the assigned duties and responsibilities, but a change in the overall classification plan results in a change in the classification concept.
  - e. When a change in the classification of the supervisor's position impacts upon the subordinate position's classification.
  - f. When a change in the subordinate position's classification impacts upon the supervisory position's classification.
  - g. When the duties and responsibilities remain basically the same, but the position takes on greater importance and stature through a change in the organizational placement. For example, a division organizational entity is elevated to a bureau organizational entity in recognition of the agency's changing mission and program goals.
  - h. When there is continuity in the duties and responsibilities of a supervisory or managerial position and responsibility for additional program(s) and/or staff are added such that the position meets the concepts, examples of work, and requirements for a different classification.
  - i. When the duties and responsibilities remain basically the same, but the duties and responsibilities have gradually accrued over a long period of time (several years), to the extent that a reasonable argument can be made that a reclassification is warranted. Civil Service will review when and how the onset of these duties and responsibilities occurred.
  - j. When the appointing authority proposes and Civil Service accepts that the reclassification is warranted because the employee would be competing for his or her own position. This is a situation where no real competitive opportunity exists for the position.
6. The assignment and performance of working-out-of-class duties and responsibilities does not support a position reclassification. Working-out-of-class assignments and position reclassification are mutually exclusive situations. Working-out-of-class assignments will be reviewed and processed in accordance with regulation 4.08.

**D. Conversion.**

A position may be converted to a different classification or moved into or out of a performance pay program only when Civil Service determines conversion is warranted.

Regulation 5.07, §§ 4.E,G, and L establishes how salary is determined upon conversion of an occupied position.

#### **E. Departmental Trainee.**

The Departmental Trainee facilitates career movement of employees who do not possess a bachelor's degree into designated professional classifications, based on specific state classified experience that has provided the knowledge, skills, and abilities to perform professional tasks in a learning capacity.

1. The appointing authority must submit a Position Description (CS-214) and Position Action Request (CS-129) requesting that Civil Service classify the new position. Civil Service designates, on the CS-129, the classification to which the position will be reclassified upon completion of the transitional period.
2. If the Departmental Trainee is used to facilitate the movement of an employee to a position that will ultimately be classified at the advanced level, position-specific or universal, advanced classification standards must be approved prior to the employee's appointment.
3. The appointing authority must submit a request for credential review in accordance with regulation 3.07, § 4.B.4. Civil Service shall review the qualifications of the intended appointee prior to the appointment.
4. An employee may be reclassified to the new professional classification after successful completion of the experience requirements for the classification. A reclassification requires appointing authority certification that the employee (a) meets the minimum requirements, (b) is satisfactorily performing the duties and responsibilities of the requested classification or classification level, and (c) has a current, satisfactory probationary, annual, or follow-up performance rating. If the reclassification would result in a pay decrease, the employee continues in the transitional period for another year.
5. Regulation 5.01, § 3.L establishes standards for determining salary upon appointment of the employee to a Departmental Trainee.
6. Regulation 2.01, § 4.D provides guidance in determining employment preference for Departmental Trainees in the event of a reduction in force (RIF).

#### **F. Establishing and Assigning Selective Position Requirements.**

1. Selective position requirements for specific positions must be job related. The appointing authority must establish that the position is different from others in the classification, detail how it is different, and describe what unique qualifications are needed. A current, approved Position Description (CS-214) for an established position must be submitted with the request for selective position requirement approval.

2. Selective position requirements must be specific qualifications that are narrower or more limited than the classification requirements and are essential to the duties of the position. For example, an associate's degree in a particular area could be approved for a position in a classification with an associate's degree requirement or a master's degree could be approved for a general classification that typically requires a bachelor's degree.
3. The criteria must relate to entry requirements, not to knowledge, skills, abilities, or other characteristics acquired in the position.
4. Selective position requirements must be quantifiable, easily observable, and verifiable. For example, "possession of a teacher's certificate", "15 college credits in toxicology", "one year of experience in historic preservation."
5. Selective position requirements may be approved for positions in classifications with approved subclasses.
6. An approved selective position requirement must be applied whenever the position is to be filled. The approval remains in effect for the duration of the position unless there is a substantial change in the position's duties and responsibilities affecting the qualification requirements.
7. Selective position requirements must be approved and in place for 28 calendar days before the criteria can be applied in a RIF action affecting the position, the employee, or a person exercising employment preference to the position. When a RIF affects a position with an approved selective position requirement in place for 28 calendar days or more, the approved requirement must be applied to all persons in whose bump chain the position appears. Only employees who satisfy the selective position criteria may exercise employment preference into the position.

#### **G. Establishing and Assigning a Subclass.**

1. An identified position or a group of positions must exist and have duties and responsibilities that require more specialized qualifications (i.e., experience, training, or licensure) than those established on the class specification. The duties and responsibilities must be essential to the position at job entry. The subclass definition must describe qualifications for which there is a recognized applicant pool.
2. Civil Service establishes, abolishes, and revises subclasses and their definitions. Requests to establish, abolish, or revise subclasses may be initiated by appointing authorities or Civil Service staff. Appointing authorities have the opportunity to review and comment on subclasses to be established, abolished, and revised, including the definition, before implementation.

3. Subclasses may be assigned when a position is established or at any other time, except during a RIF. An appointing authority must provide supporting rationale for requesting addition or removal of a subclass from a specific position.
4. The approval of subclasses for a position does not preclude further narrowing of the requirements through selective position requirements, when appropriate.
5. Subclass additions, deletions, and revisions are published periodically in the "Established and Abolished Class Report." Subclasses are represented by subclass codes and defined in a list as maintained on the Civil Service web site.
6. To be found qualified for a subclass, a person must first meet the qualifications of the classification of the job to which the subclass is assigned.
7. If a position is assigned one subclass, the applicant selected to fill it must satisfy the subclass criteria. If a position is assigned more than one subclass, the applicant selected must satisfy at least one of the subclasses.
8. Subclass criteria must be approved and in place for 28 calendar days before the subclass criteria may be applied in a RIF action. Subclass qualification must be determined for all persons in whose bump chain the position appears. Only employees who satisfy the subclass criteria may exercise employment preference into the subclass assigned position.

#### **H. Downgrading Positions.**

1. An appointing authority may request reclassification between any of the lower classification levels within the non-supervisory/non-managerial class series; e.g., worker, specialist class series, except for professional administrative assistant positions.
2. Agency recall names preclude downgrading of a position.

## **5. Procedures**

### **A. Establishing and Reclassifying Positions.**

<b>Responsibility</b>	<b>Action</b>
Appointing Authority	<ol style="list-style-type: none"> <li>1. Submits a Position Action Request (CS-129), Position Description (CS-214), and any other necessary information to Civil Service for a position review.</li> <li>2. To reclassify a filled position, certifies on the CS-129 that the employee meets the minimum qualifications, is satisfactorily performing the duties and responsibilities of the requested classification, and has a current satisfactory performance rating.</li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>3. Reviews the establishment or reclassification request.</li> </ol>

Responsibility	Action
	<ol style="list-style-type: none"> <li>If approved or modified, classifies or reclassifies the position to the appropriate classification with the necessary documentation on the CS-129 and enters the necessary position information and/or employee information in HRMN.</li> <li>If an establishment is disapproved, documents the reason on the CS-129 and informs the appointing authority of their right to file a technical complaint.</li> <li>If a reclassification is disapproved, documents the reason on the CS-129 and informs the incumbent and appointing authority of their right to file a technical complaint.</li> <li>Releases the CS-129 to the appointing authority.</li> </ol>
Appointing Authority	<ol style="list-style-type: none"> <li>Receives the Position Action Request (CS-129) and, for any occupied position, enters any employee information in HRMN not entered centrally by Civil Service.</li> </ol>

**B. Establishing Selective Position Requirements.**

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>Submits a written request for approval that includes a copy of the current CS-214, a CS-129, any additional documentation, and a narrative that provides the rationale and linkage between the requested criterion and the CS-214, and any relevant supporting materials, such as pertinent legislation.</li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>Reviews the request and, if approved, enters the necessary position information in HRMN.</li> <li>If the request is disapproved, informs the appointing authority of their right to file a technical complaint.</li> <li>Releases the CS-129 to the appointing authority.</li> </ol>

**C. Establishing Subclasses.**

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>Submits a written request to establish a new subclass, or to revise or abolish an existing subclass, and provides supporting rationale.</li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>Reviews requests for subclass establishment, abolishment, or revision. Makes determination and notifies user agencies.</li> </ol>
All Appointing Authorities	<ol style="list-style-type: none"> <li>Reviews and comments on proposed subclass establishment, abolishment, or revision.</li> </ol>

- |               |   |
|---------------|---|
| Civil Service | <ol style="list-style-type: none"> <li>4. Reviews agency comments and makes appropriate adjustments to subclass.</li> <li>5. Includes subclass establishments, abolishments, and revisions in the "Established and Abolished Class Report."</li> <li>6. Updates subclass listing directly to the Civil Service web site to reflect subclass changes.</li> </ol> |
|---------------|---|

**D. Assigning and Removing Subclasses from Positions.**

Responsibility	Action
Appointing Authority	1. Completes a CS-129 requesting addition or removal of subclasses from a position, with supporting rationale
Civil Service	2. Reviews CS-129 and makes determination regarding appropriateness of adding or removing requested subclasses. If approved, enters the necessary position information. 3. Releases CS-129 to appointing authority.
Appointing Authority	4. Receives the CS-129 and, if approved, enters the employee information in HRMN for any occupied position.

**CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 4.02

<b>Subject:</b> <b>Preauthorized Position Classification Actions</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 4.02 (SPDOC 12-15, September 2, 2012)

### 1. Purpose

This regulation defines and establishes the standards and procedures governing the preauthorization of position classification actions and abolishment of positions.

### 2. CSC Rule References

#### ***Rule 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.*



\* \* \*

#### **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.*

\* \* \*

#### **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.*

\* \* \*

### **3. Definitions**

#### **A. CSC Rule Definitions.**

1. **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.
2. **Classification Level** means the placement of a classification within a series based on the duties and responsibilities of the position.
3. **Class Series** means a series of classifications with similar but progressively more responsible job duties.
4. **Position** means a classified job identified by its respective duties and responsibilities.
5. **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.
6. **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.

#### **B. Definitions in This Regulation.**

1. **Preauthorized classification establishment** means approved Equitable Classification Plan (ECP) Group 1 or 2 worker classifications (position descriptions with an "-E" designation) for which appointing authorities have submitted a composite position description and were granted Civil Service authorization to independently establish such positions without additional Civil Service review.
2. **Preauthorized reclassification actions** means the authorization granted by Civil Service for appointing authorities to independently reclassify either vacant or staffed

positions up through the experienced level within the class series of a Group 1 or 2 worker class, without prior Civil Service review.

## **4. Standards**

### **A. Establishment and Reclassification.**

1. Civil Service may approve preauthorization of a classification to an appointing authority.
2. Preauthorized position classification actions are subject to Civil Service audit review.
3. Revocation. Failure of an appointing authority to follow the standards in this regulation may result in revoking the appointing authority's preauthorization privilege. If preauthorization is revoked, the appointing authority must submit a Position Action Request (CS-129) for each classification action in accordance with regulation 4.01.
4. The appointing authority must maintain a signed Position Description (CS-214), either composite or position specific, on file for each preauthorized position.
5. A preauthorized position classification action constitutes a certification by the appointing authority that the assigned duties and responsibilities are compatible with the preauthorized action taken.
6. The effective date of a preauthorized position classification action is assigned in accordance with regulation 4.04. The appointing authority may assign retroactive effective dates to individual preauthorized actions in accordance with regulation 4.04.

### **B. Reclassification.**

1. Any ECP Group 1 or 2 classification with an "E" designation is preauthorized to the appointing authority to reclassify either vacant or staffed positions from the entry or beginning level through the experienced level within the class series, unless specific action is taken by Civil Service to terminate preauthorization.
2. The classification review of an occupied position through the experienced level in a class series typically can be conducted no more than once in any 12-month period, in accordance with regulation 4.05. An appointing authority may execute a reclassification before the 12-month period in accordance with regulation 4.05, § 3.E.1 and 2.
3. Reclassification of an occupied position through the experienced level in a class series is not automatic. A standard reclassification progression is one classification level, after the equivalent of one year (2080 hours in level) of full-time satisfactory service for employees classified at the entry/trainee levels through the experienced level. The appointing authority must certify that the employee (a) meets the minimum requirements for the higher classification level, (b) is satisfactorily performing the

- duties and responsibilities of the requested classification or classification level, and (c) has a current satisfactory probationary, annual, or follow-up performance rating. The appointing authority shall maintain a timely probationary or annual service/performance rating showing satisfactory performance as a prerequisite to a preauthorized reclassification of an occupied position. The appointing authority must also maintain the certifications in the agency's employee file, which is subject to audit review.
4. Reclassification of an occupied position between classification levels through the experienced level should be timely processed after the equivalent of one year (2080 hours in level) of full-time documented satisfactory performance and with assignment and performance of duties and responsibilities compatible with the higher level. The appointing authority must enter the necessary information in the Human Resources Management Network (HRMN) either by (1) indicating approval of the reclassification if the agency participates in centralized processing or (2) directly handling all aspects of the reclassification with any necessary pay adjustments.
  5. If, during the qualifying period, an employee is on an extended paid absence of more than two consecutive pay periods, the appointing authority may delay the reclassification for a period equivalent to the length of the absence.
  6. If, during the qualifying period, an employee is on an unpaid absence the reclassification will be delayed for a period equivalent to the length of the absence.
  7. A vacant position in a class series may be reclassified downward for an appointment only after the appointing authority has verified that no names are on the agency recall list for all levels between the original and downgraded level. The appointing authority should refer to collective bargaining agreements for any contractual obligations.
  8. The official Civil Service date for the reclassification or appointment transaction is the controlling standard for establishing the effective date of any future reclassification.
  9. Entry of preauthorized reclassification actions into HRMN serves as notice to Civil Service of the classification action, which is subject to audit review.
  10. If the appointing authority does not reclassify a position to the next classification level up to the experienced level in the class series, the incumbent may submit a position description and request a position review in accordance with regulation 4.03.
  11. An occupied, frozen position in any classification is not eligible for reclassification to any higher classification level in the class series (see regulation 4.06, § 4.G). The position remains frozen until vacated or the position duties and description are appropriate for the classification and classification level.
  12. A position cannot be reclassified if the position's assigned duties experience a substantial change where the primary function and purpose of the job changes,

requiring a different base of knowledge, skills, and abilities. In these cases, a new position must be established and an appointment made in accordance with Civil Service rules and regulations governing selection.

### C. Abolishing Positions.

1. The appointing authority may abolish positions as authorized by rules 4-4.1 and 6-4.1
2. Civil Service inactivates positions in HRMN at the request of the appointing authority.
3. If a position abolishment may impact the classification of other positions, the appointing authority should submit written notice of the affected positions to Civil Service for review.

## 5. Procedures

### A. Preauthorized Establishments.

Responsibility	Action
Appointing Authority	1. Submits a Position Description (CS-214) to Civil Service with a request and explanation of the need to add the classification to the <i>Preauthorized Classification Establishments Listing</i> .
Civil Service	2. Reviews the request for compliance with the standards. 3. If approved, adds the classification to the listing and notifies the appointing authority. If denied, notifies the appointing authority.
Appointing Authority	4. Establishes the position in conformance with previously identified standards.

### B. Preauthorized Standard Reclassifications.

Responsibility	Action
Appointing Authority	1. Receives a position description and a request from agency management to reclassify an employee's position up through the experienced level. 2. Reviews the request for compliance with the standards set forth in the Civil Service regulations. 3. If approved, enters information in HRMN. If the agency participates in centralized processing, indicates approval of the reclassification so that Civil Service can process the reclassification with any necessary pay adjustments. Otherwise, reclassifies the employee to the appropriate classification level. Maintains necessary documentation in the employee file.
Civil Service	4. For agencies participating in centralized processing, effectuates the reclassification in HRMN.

**C. Abolishing Positions.**

<b>Responsibility</b>	<b>Action</b>
Appointing Authority	1. Submits request to Civil Service identifying position code to be inactivated.
Civil Service	2. Processes abolishment in HRMN by inactivating the position code. 3. Informs the appointing authority of the abolishment.
Appointing Authority	4. Verifies the information in HRMN.

**CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 4.03

<b>Subject:</b> <b>Employee Generated Position Reviews</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 4.03 (SPDOC 15-01, January 4, 2015)

### 1. Purpose

This regulation establishes the standards and procedures that an employee can use to request a position review from Civil Service.

### 2. CSC Rule References

#### **4-1 Position Establishment and Classification**

\* \* \*

##### **4-1.2 Classification**

*A position established in the classified service must be reviewed to classify the position properly.*

\* \* \*

#### **4-2 Position Classification Review**

\* \* \*

*(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.*

\* \* \*

*(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.*

\* \* \*

#### **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.*

### **3. Standards**

- A.** If the appointing authority does not notify Civil Service of material changes in the duties and responsibilities assigned to a position, the employee occupying the position may initiate a position review under regulation 4.03 or a working out of class determination under regulation 4.08 by electronically submitting an updated position description using PARIS at: <https://csintranet.state.mi.us/PARIS/Login/Login.aspx?RequestType=EGR>.
- B.** A group of employees, in the same classification and performing similar duties and responsibilities, may submit a composite position description for a position review. The employee originating the request must enter the additional proposed employees' ID numbers. Once the request is submitted, all included employees will receive notification and must electronically verify their joint request.

- C. Civil Service determines if the position is eligible for review under regulation 4.05. If the position is not eligible, Civil Service notifies the employee and appointing authority.
- D. Civil Service staff forwards the request and proposed position description to the appointing authority for review. A copy is also sent to the employee informing them that Civil Service has received the request and requested a response from the appointing authority.
- E. The appointing authority is allowed 20 workdays to complete the Supervisor Information and Appointing Authority Information sections of the position description after receipt from Civil Service. The appointing authority is allowed an additional 10 workdays for professional managerial and specialist positions that require evaluation system rating reviews. Civil Service may authorize extensions for good cause.
- F. The appointing authority shall respond to the Position Action Request, stating whether the employee meets the minimum requirements for the requested classification and is performing the duties and responsibilities of that classification satisfactorily.
- G. The appointing authority may submit any other necessary information for Civil Service staff to make a classification decision.
- H. Civil Service staff may conduct an on-site position review to gather additional information.
- I. If the requested information is not received from the appointing authority within the above specified time frame, Civil Service staff may review the position based on the information provided by the employee and the information obtained at an on-site position review.
- J. The effective date assigned to a classification action from an employee-generated request is the beginning date of the pay period Civil Service receives the employee's request and electronically signed position description, except for the following:
  - 1. The effective date assigned to a reclassification from an experienced-level worker classification to an advanced-level worker classification cannot precede the approved effective date of the agency-specific senior standards used to reclassify the position.
  - 2. The effective date assigned to a reclassification from an experienced-level or advanced-level worker classification to a specialist classification is the beginning date of the pay period the appointing authority certifies the employee began performing specialist duties. However, the effective date cannot precede the beginning of the pay period when Civil Service receives the employee's request and electronically signed position description.



#### 4. Procedures

Responsibility	Action
Employee	1. Completes Employee Information section of the position description and electronically submits it to Civil Service using <a href="#">PARIS</a> .
Civil Service	2. Administratively reviews the request for position review for eligibility under Civil Service regulations and classification guidelines. 3. Sends the employee's request and completed position description to the appointing authority. A copy is also sent to the employee.
Appointing Authority	4. Directs the employee's immediate supervisor to complete the Supervisor Information section of the position description. 5. Completes the Appointing Authority Information section of the position description and provides any other information necessary to review the position and render a proper classification decision. 6. Submits the completed position description and a Position Action Request to Civil Service.
Civil Service	7. If the necessary information is not received from the appointing authority within the specified time frame, reviews the position based on the information provided by the employee and information obtained at any on-site position review. 8. Reviews the request, renders a decision, assigns an effective date, and signs off on the request. 9. The Human Resources Management Network (HRMN) automatically makes appropriate changes and notifies the employee and appointing authority. 10. If the classification action is disapproved, informs the employee of appeal rights.
Appointing Authority	11. Receives the final Position Action Request and informs agency management of the classification decision.

#### **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 4.04

Subject: <b>Effective Dates For Classification Actions</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 4.04 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes the standards and procedures for determining an effective date for all classification actions.

### 2. CSC Rule References

#### *4-1 Position Establishment and Classification*

\* \* \*

#### *4-1.5 Effective Date of Establishment*

*Positions are established and classified on a current basis.*

#### *4-2 Position Classification Review*

\* \* \*

*(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.*

\* \* \*

### 3. Standards

#### **A. Classification Actions that Require Civil Service Approval.**

1. The classification of all position establishments requires approval by Civil Service. The effective date of an establishment action is the beginning of the pay period in which a fully documented Position Action Request (CS-129) is received by Civil Service.
2. The effective date of a reclassification action for a position in a classification that is not preauthorized is the beginning of the pay period in which a fully documented position action request is received by Civil Service, except as provided in 3 and 4 below.

3. The effective date of a Student Assistant reclassification is the beginning of the pay period in which a fully documented position action request is approved by Civil Service. In accordance with regulation 3.02 retroactivity is not permitted.
4. The effective date of a retroactive reclassification action for a position in a classification that is not preauthorized will be determined based upon Civil Service's receipt of a fully documented position action request and one of the following conditions:
  - a. When reclassification is between an entry, intermediate, experienced, or advanced level in a class series and reasonable justification is provided by the appointing authority, Civil Service may grant retroactivity of up to a maximum of 26 pay periods preceding the beginning of the pay period in which the reclassification request is received by Civil Service.
  - b. When reclassification is from an experienced-level or advanced-level worker classification to a specialist classification and reasonable justification is provided by the appointing authority, Civil Service may grant retroactivity up to a maximum of seven pay periods preceding the beginning of the pay period in which the reclassification request is received by Civil Service. The appointing authority must certify that the position's incumbent was performing specialist duties as of the effective date requested.
  - c. For all other reclassifications, Civil Service may grant retroactivity of up to a maximum of seven pay periods preceding the beginning of the pay period in which the reclassification request is received by Civil Service, when reasonable justification is provided by the appointing authority.
  - d. Exceptional mitigating occurrences may provide a basis for granting retroactivity beyond the seven pay periods authorized in 4.b. and c. above. Exceptional mitigating occurrences are one of the following:
    - (1) Any inappropriate action by the agency that prevented the employee from filing an employee generated position review request directly with Civil Service.
    - (2) Serious physical or mental incapacity of the employee that prevented them from filing an employee generated position review request directly with Civil Service.
    - (3) Extraordinary unforeseen circumstances outside the control of the employee that prevented the employee from filing an employee generated position review request directly with Civil Service.

- e. The maximum retroactivity permitted is 26 pay periods preceding the beginning of the pay period in which the reclassification request is received, even with a showing of exceptional mitigating occurrences.
  - f. A reclassification may be retroactive according to these standards only if the classification plan and the duties and responsibilities of the position are the same on both the date received and the retroactive effective date.
- 5. Civil Service reviews and approves P-rate assignment for Nonexclusively Represented Employees (NEREs) only. The effective date of P-rate assignment is the beginning of the pay period in which a fully documented position action request is received by Civil Service, except as provided in 6 below.
  - 6. The maximum retroactivity for P-rate assignment is 26 pay periods preceding the beginning of the pay period in which the request is received. The approval for P-rate may be retroactive according to this standard only if the classification plan and the duties and responsibilities of the position are the same on both the date the request is received and the retroactive effective date.
  - 7. The effective date assigned to agency-specific senior standards, Group 3 complex work area standards, and other processing standards developed by the appointing authority and approved by Civil Service is the beginning of the pay period in which the proposed standard or standard revision is received by Civil Service. The effective date for a classification action cannot precede the approved effective date of the standard.
  - 8. A fully documented position action request consists of an up-to-date, completed Position Description (CS-214) and a properly prepared Position Action Request (CS-129).
  - 9. The appointing authority must supply any additional necessary information requested to render a classification decision, such as an updated organizational chart, evaluation system rating forms, senior standards, etc.
  - 10. After an appointing authority initiates a request, failure to provide additional requested information within 20 workdays (30 workdays for positions requiring appointing authority evaluation on a classification rating system) of a request may result in the issuance of a "No Action" on the request. The effective date of any subsequent action will be the beginning of the pay period in which a fully documented resubmitted position action request is received by Civil Service.

**B. Preauthorized Reclassifications.**

- 1. Preauthorized reclassification actions can be processed by the appointing authority only for a position in an entry/intermediate/experienced classification series.

2. The appointing authority must assign as the effective date the beginning of the pay period in which the preauthorized reclassification is processed, except as provided in 3 below.
3. Agency delays may be considered as reasonable justification for granting retroactivity of up to a maximum of 26 pay periods preceding the beginning of the pay period in which the reclassification is processed. The appointing authority may not assign an effective date of reclassification earlier than 26 pay periods after the employee's appointment to the position or the employee's last reclassification.
4. Reclassification actions and effective dates are subject to Civil Service audit.

#### 4. Procedures

##### A. Classification Actions that Require Civil Service Approval.

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>1. For position establishments, reclassifications, and P-rate assignment, submits a Position Action Request (CS-129) and a Position Description (CS-214) to Civil Service.</li> <li>2. For retroactive reclassifications and P-rate assignment, submits a position action request and a position description with rationale for a retroactive effective date to Civil Service.</li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>3. Reviews the request and documents decision.</li> <li>4. Enters the necessary approved position information in the Human Resources Management Network (HRMN).</li> <li>5. Releases the position action request to the appointing authority. If disapproved, documents the reasons on the position action request. Informs the employee of the reclassification action and appeal rights.</li> </ol>
Appointing Authority	<ol style="list-style-type: none"> <li>6. Receives the completed position action request and enters the employee information in HRMN for any occupied position.</li> </ol>

##### B. Preauthorized Reclassifications.

Responsibility	Action
Agency Management	<ol style="list-style-type: none"> <li>1. Submits a position description and a request to the appointing authority for a classification review.</li> <li>2. Certifies to the appointing authority that the employee is satisfactorily performing the higher-level duties and meets the classification's requirements.</li> </ol>
Appointing	<ol style="list-style-type: none"> <li>3. Reviews the request and documents the decision.</li> </ol>

Responsibility	Action
Authority	4. For retroactive reclassifications, documents the reason for retroactivity. 5. Enters the necessary approved employee information in HRMN.
Civil Service	6. Conducts audit to ensure reclassifications and effective dates are processed in compliance with applicable standards.

## **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 4.05

<b>Subject:</b> <b>Frequency of Review of Positions</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 4.05 (SPDOC 14-06, July 20, 2014)

### 1. Purpose

This regulation establishes the standards and procedures governing how often a position can be reviewed to ensure proper classification.

### 2. CSC Rule References

#### **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.*

\* \* \*

**(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.*

\* \* \*

### 3. Standards

- A.** Civil Service staff typically may only review an occupied position once in any 12-month period (equivalent to full-time). If a significant, substantial, or material change has occurred since the last position review, a new position establishment may be required (see regulation 4.01, Position Classification Actions That Require Civil Service Review).
- B.** The appointing authority typically may only review an occupied position in a preauthorized classification once in any 12-month period (equivalent to full-time).
- C.** The appointing authority may request a classification review of a vacant position at any time before an appointment.
- D.** The date of the last position review is when a vacant position was filled or when the last classification action was taken on an occupied position.

**Note:** When a classification action is appealed, the effective date of the original action giving rise to the appeal is the date of the last position review.

- E. An early reclassification is a request to review and reclassify a position before the 12-month period (equivalent to full time) has elapsed from the date of the last position action, or a reclassification of more than one level.
- F. An appointing authority may implement an early preauthorized reclassification before the 12-month period (equivalent to full-time) has elapsed if one of the following conditions is met:
  - 1. The employee is performing the higher level work in a bachelor-degreed classification and possesses a directly related master's degree, doctorate degree, or recognized occupational license that is not a part of the classification's minimum requirements and was not used to qualify the employee for appointment to the position. This may be substituted only once for the equivalent of 6 months of full-time experience for any individual employee and only after the employee has served the equivalent of 6 months full-time in the position.
  - 2. The employee is performing higher-level work and possesses a minimum of the equivalent of 12 full-time months in multiple positions in the same classification and there is directly related value that the employee brings from the prior position. The appointing authority may implement a reclassification effective date approval when the 12-month (equivalent to full-time) requirement is satisfied for the next level within the preauthorized class series. The appointing authority must retain documentation verifying the value and relatedness of the prior experience.
- G. Civil Service staff will consider requests for early reclassification in **classifications that require Civil Service review** (e.g., Departmental Trainee, advanced, lead worker, supervisory, managerial, specialist, administrative, or executive positions) if one of the following conditions is met:
  - 1. The employee is performing the higher level work in a bachelor-degreed classification and possesses a directly related master's degree, doctorate degree, or recognized occupational license that is not a part of the classification's minimum requirements and was not used to qualify the employee for appointment to the position. This may be substituted only once for the equivalent of 6 months of full-time experience for any employee and only after the employee has served the equivalent of 6 full-time months in the position.
  - 2. The employee is performing higher-level work and possesses a minimum of the equivalent of 12 full-time months in multiple positions in the same classification and there is directly related value that the employee brings from the prior position. The appointing authority must document the value and relatedness of the prior position experience on the Position Action Request (CS-129).



**Note:** For purposes of meeting the probationary period requirement as provided in regulation 2.06 employees reclassified early to a higher classification will have the time served in the position at the lower level credited toward completing the probationary period required for the appointment.

- H. The appointing authority may request Civil Service staff approval of an early reclassification if (1) there has been atypically rapid growth (over the course of the equivalent of 6-full-time months) in the assigned duties and responsibilities of the employee as documented on the position description and (2) the employee qualifies for the higher level. The employee must be performing the higher-level work and meet the requirements for the higher-level classification as determined by a credential review performed by Civil Service staff or as evidenced by the employee's name appearing in the higher-level applicant pool. All reclassification requests involving atypically rapid growth must be reviewed by Civil Service staff, including preauthorized reclassifications.
- I. An early reclassification can be implemented only once for an employee in a class series.
- J. Only appointing authorities can request early reclassifications. Early reclassifications requested pursuant to regulation 4.03 will not be honored.
- K. Retroactive effective dates as described in regulation 4.04 are not assigned to an early reclassification, except under regulation 4.04, § 3.A.

#### 4. Procedures

##### A. Early Reclassifications for Position Actions Requiring Civil Service Review.

Responsibility	Action
Appointing Authority	1. Submits a Position Action Request (CS-129), Position Description (CS-214), and any other necessary documents for any early reclassifications requiring Civil Service review.
Civil Service	2. Reviews the request to determine if the position can be reclassified based on §§ 3.G and H. Documents the decision. 3. Enters the necessary approved position information in the Human Resources Management Network (HRMN) and releases the Position Action Request. 4. If disapproved, documents the reasons on the Position Action Request, releases it, and informs employee of the classification action and appeal rights.
Appointing Authority	5. Receives the Position Action Request and enters the employee information in HRMN.

**B. Early Reclassifications on Preauthorized Positions by Appointing Authorities.**

Responsibility	Action
Appointing Authority	<ol style="list-style-type: none"> <li>1. Reviews the request to determine if the position can be reviewed based on § 3.F. Documents the decision.</li> <li>2. Enters the necessary employee information into HRMN as authorized in regulation 4.02, § 4.B.4. If the agency participates in centralized processing, adjusts Hours in Grade plan (with a comment) so the employee will display correctly on the ZR100 report. Also indicates approval of the reclassification in HRMN (RECLASSIFY user field.)</li> </ol>
Civil Service	<ol style="list-style-type: none"> <li>3. For agencies participating in centralized processing, effectuate reclassification in HRMN.</li> </ol>

**CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 4.06

Subject: <b>Frozen Classifications and Positions</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 4.10 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation defines frozen position actions and establishes the standards, criteria, and procedures for such actions.

### 2. CSC Rule References

#### **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.*

\* \* \*

##### **4-1.4 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.*

\* \* \*

#### **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.*

\* \* \*

### 3. Definitions

#### A. Definitions in This Regulation.

1. **Frozen classifications** means classes that have been determined to be obsolete; e.g., classes in the Benchmark System and selected Equitable Classification Plan that have been deemed no longer viable. All positions in such classes are frozen. A freeze action is designated by a "Y" in the Human Resources Management Network (HRMN) Frozen User field on the PA02.1 and the addition of "FZN" to the position description.
2. **Frozen positions** means freeze actions on individual positions used to identify employees in specific positions with duties and responsibilities that are no longer proper for the current classification. The freeze prevents the appointing authority from refilling the position until it has been reviewed and the proper classification has been determined. A freeze action is designated by a "Y" in the HRMN Frozen User field on the PA02.1 and the addition of "FZN" to the position description.

### 4. Standards

- A. Civil Service shall not establish an improperly classified position.
- B. Appointing authorities shall give notice to Civil Service of material changes in the duties and responsibilities that may impact the proper classification of a position such that it should be frozen.
- C. When Civil Service issues a classification action to freeze a position, the proper classification must be identified on the Position Action Request (CS-129).
- D. The employee cannot appeal a freeze action.
- E. A freeze on a position in a preauthorized class series (entry/trainee or intermediate level) precludes reclassification to any higher level in the class series for the current employee.
- F. Freeze actions are employee and position-specific and are only transferable to another position when approved by Civil Service (e.g., the employee in the frozen position is assigned comparable or higher level work).
- G. A vacant, frozen position must be reviewed and properly reclassified before an appointment to the position can be made.
- H. An occupied frozen position can be reclassified to the proper classification if there is no negative impact to the employee's current pay rate, or the reclassification does not result in placement in a lower pay range, or there is no violation of Civil Service rules or regulations.
- I. Frozen positions are not exempted from reduction-in-force actions. A frozen position (both bargaining unit included and excluded) must be classified, after it has been

vacated, in the proper classification for the application of employment preference in accordance with regulation 2.01.

J. Transactions on frozen positions are subject to audit.

## 5. Procedure

### A. Placing a Freeze on a Position.

Responsibility	Action
Civil Service	<ol style="list-style-type: none"><li>1. Receives information that an employee in a position is no longer assigned duties and responsibilities commensurate with the classification.</li><li>2. Prepares a Position Action Request (CS-129) with an explanation for the freeze and identifies the proper classification and level on the CS-129.</li><li>3. Enters a "Y" in the HRMN-Frozen User field on the PA02.1 and adds "FZN" to the position description of the position being frozen.</li><li>4. Releases the CS-129.</li></ol>
Appointing Authority	<ol style="list-style-type: none"><li>5. Receives the CS-129 and verifies the information in HRMN.</li><li>6. Informs management and the employee.</li></ol>

## CONTACT

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 4.07

Subject: <b>Agency Reorganizations and Position Recodings</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 4.07 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

Article 11, section 5, of the Michigan Constitution and Civil Service rule 6-4, delegate to the appointing authority the exclusive right to organize the agency's structure. This regulation outlines the standards and procedures that an appointing authority must use to notify Civil Service of a planned reorganization or position recoding within an agency prior to its implementation so that Civil Service can determine any classification impact.

### 2. CSC Rule References

#### **4-1 Position Establishment and Classification**

\* \* \*

##### **4-1.2 Classification**

*A position established in the classified service must be reviewed to classify the position properly.*

\* \* \*

##### **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.*

\* \* \*

#### **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.*

\* \* \*

### **3. Standards**

#### **A. Agency Reorganizations.**

1. The appointing authority must notify Civil Service of a proposed reorganization before implementation. A meeting may be set to discuss the proposed reorganization.
2. The appointing authority must submit the following necessary documents to Civil Service for review to determine the impact of the proposed reorganization:
  - a. The current organizational chart(s).
  - b. The proposed organizational chart(s) for the reorganization. The organizational chart(s) must include the organizational title, classifications and levels, and employee names.
  - c. The position descriptions (CS-214) for the affected positions in the proposed organizational structure.
3. Civil Service will determine the appropriate classification actions and notify the agency of:
  - a. The appropriate classification of affected positions.
  - b. The positions that can be recoded.
  - c. The positions that need to be established or reclassified in accordance with regulation 4.01.
4. The appointing authority must submit a copy of the approval documentation that is required by any executive orders or directives in place that are applicable to their agency, Position Action Requests (CS-129), Position Recoding Worksheets (CS-1758), final position descriptions and final organizational charts to Civil Service to implement the reorganization. Required approvals are to be provided prior to Civil Service processing classification actions.

#### **B. Position Recodings.**

1. Position recoding means the change of a supervisor, process level, and/or department code for a position. The position's duties and responsibilities are essentially unchanged.
  - a. Positions must be recoded to reflect the new organizational placement and reporting relationship whenever a change occurs.
  - b. When the following occurs the appointing authority must complete and submit to Civil Service a position recoding worksheet (CS-1758):

- (1) Position/Employee moved to different supervisor.
  - (2) Position/Employee moved to different department code.
  - (3) Position/Employee moved to different process level.
2. Only Civil Service can process a change to the direct supervisor code on the position record and the supervisor code on the employee record (HR11.1). Changes to the direct supervisor code, process level code, and/or department code on the position record (PA02.1) impact all employees attached to the position. To separate existing many-to-one positions, transactions must be made in accordance with regulation 4.01.
  3. The appointing authority must indicate the reason for the position recoding in the "Appointing Authority's Comments" section of the request form.
  4. Civil Service will determine if a change in reporting relationship impacts the classification of positions. Any necessary classification actions will be discussed with the appointing authority.
  5. Civil Service will enter changes to the position record (PA02.1) in the Human Resources Management Network (HRMN), which will automatically change the employee record (HR11).

## 4. Procedures

### A. Agency Reorganizations.

Responsibility	Action
Appointing Authority	1. Submits to Civil Service the necessary documents described in this regulation to review the proposed reorganization. Requests a meeting, if necessary.
Civil Service	2. Reviews the proposed reorganization and, if necessary, meets with the appointing authority. Informs the appointing authority of the findings and recommendations.
Appointing Authority	3. Receives Civil Service review determination. 4. Submits to Civil Service the necessary documents to implement the reorganization, such as any required approvals, position action requests, appropriate rating system worksheets, CS-1758 form, position descriptions, and organizational charts.
Civil Service	5. Reviews the requested establishment, reclassification, or recoding of the positions, based on the previous review of the proposed reorganization. 6. Based on analysis of the establishment, reclassification, and recoding



Responsibility	Action
	requests, approves appropriate classification and recoding actions and documents approvals on the CS-129 or CS-1758.
	7. Enters the necessary position information in HRMN.
	8. If the establishment, reclassification, or recoding requests are disapproved, documents the reasons on the CS-129 or CS-1758.
	9. Releases the completed CS-129 or CS-1758.
Appointing Authority	10. Receives the completed CS-129 or CS-1758 and enters the appropriate action to update employee record in HRMN.

#### **B. Position Recodings.**

Responsibility	Action
Appointing Authority	1. Submits to Civil Service the completed CS-1758.
Civil Service	2. Reviews the CS-1758 and enters the recoding in HRMN on the position records (PA02.1) within 5 workdays of receipt.
	3. Files worksheet and any supporting documents in the position file.
	4. Notifies appointing authority of completed action.

### **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 4.08

Subject: <b>Working Out of Class</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 4.08 (SPDOC 11-03, May 1, 2011)

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## 1. Purpose

This regulation establishes the standards and procedures to determine what constitutes working out of class for all classified employees. The standards in this regulation determine the compensation rates, eligibility, time periods, and qualification credit that may be warranted.

## 2. CSC Rule References

### 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.*

\* \* \*

### **3. Definitions**

#### **A. CSC Rule Definitions.**

**1. 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.*

### **4. Standards**

#### **A. Authorized.**

**1.** The appointing authority or agency management may assign an employee duties and responsibilities of a different classification on a temporary basis for up to 26 pay periods, ensuring equal opportunity in such assignments.

2. A working-out-of-class assignment can be made when any of the following situations exist:
  - a. It is not practical or feasible, due to time constraints, to establish, recruit for, or fill a position on a limited-term basis.
  - b. There is an urgent or critical need to have duties and responsibilities performed during the absence of another employee.
  - c. The appointing authority is in the process of recruiting to fill the position.
  - d. Pending organizational changes within the agency or changes in its leadership necessitate temporary work assignments.
  - e. An overall assistant having direct-line authority and responsibility over the organizational entity is required to act as the chief supervisor in the absence of the supervisor for more than 6-consecutive pay periods. The working-out-of-class designation begins after the first 6 pay periods, and the working-out-of-class compensation will not include this qualifying period.
  - f. A Department of State Branch Supervisor 10 serves as a Relief Branch Support Supervisor in a relief assignment for more than 30-consecutive full work days. The working-out-of-class designation begins after 30-consecutive full work days, and the working-out-of-class compensation includes the qualifying period.
  - g. It is not practical to use one of the alternatives listed in § 4.E.

**B. Not Authorized.**

1. The following situations do not constitute working out of class:
  - a. An employee working in a pattern position or in a position downgraded for training.
  - b. An employee performing the permanently assigned entry/trainee through experienced-level duties and responsibilities of their position that may result in reclassification.
  - c. An employee performing higher level duties that may warrant reclassification.
  - d. A Department of State Branch Supervisor 10 serving as a Relief Branch Support Supervisor for 30 or less consecutive full work days. The classification concept takes into consideration the fact that the Relief Branch Support Supervisor may be required to supervise 10, 11, or 12 level offices.
2. An appointing authority is prohibited from entering into any settlement agreement for a working-out-of-class assignment in accordance with rule 4-5(b)(2).

**C. Eligibility Criteria.**

1. All of the following criteria must be met for an employee to be recognized as working out of class:
  - a. The appointing authority must submit a Position Action Request (CS-129), a Position Description (CS-214), and any other necessary documentation for a classification review before processing the working-out-of-class payment when any of the following conditions exist:
    - (1) An employee is temporarily assigned duties and responsibilities that have not been classified by Civil Service.
    - (2) A question exists with the employee, the appointing authority, or Civil Service staff as to whether the employee has worked out of class.
    - (3) A question exists with the employee, the appointing authority, or Civil Service staff as to the proper classification of the temporary duties and responsibilities.
  - b. The appointing authority or designee must direct the employee to perform the duties and the responsibilities of a properly classified assignment.
  - c. The employee must perform all, or substantially all, of the duties and responsibilities that are different from the employee's classification.
  - d. The employee must perform the duties and responsibilities of a single temporary assignment for the qualifying period of more than 10 consecutive, full workdays (80 hours), interrupted only by leave usage or a holiday, unless this regulation designates a different qualifying period.
  - e. The employee should possess the education and experience requirements or be in a classification level that would ultimately satisfy the experience requirement for the working-out-of-class assignment. If the employee does not possess the required education or experience, the appointing authority must have documentation on file as to the reason for utilizing this employee in a working-out-of-class situation. This will be subject to Civil Service audit. The employee must possess any state or federal licensure, registration, and certification requirements, as stated on the job specification for positions in the classification.
2. Leave usage or the occurrence of a holiday during the qualifying period does not constitute a break or count as part of the 10-day qualifying period or other time designated in the regulation. The time lost because of leave usage or a holiday must be made up by an equal number of consecutive workdays before the qualifying period is complete. Once the 10-consecutive-day period has been satisfied, the employee will be compensated at the working-out-of-class pay rate for all

subsequent leave usage and holidays for the duration of the working-out-of-class period.

3. An employee cannot be assigned to work out of class for initial and subsequent periods in the same assignment for more than a 12-month period. At the end of that 12-month period, the employee is not eligible for the same working-out-of-class assignment until 13 pay periods have elapsed. After the 13 pay periods, the employee must complete a new qualifying period of more than 10-consecutive, full workdays (80 hours), unless this regulation designates a different qualifying period.
4. When the appointing authority intends or has reason to believe that the working-out-of-class assignment may last more than 26 pay periods, the appointing authority should make an appointment to the position.

**D. Compensation and Qualification Credit Criteria.**

1. An employee is eligible for working-out-of-class compensation only for work that has been properly classified as required in § 4.C.1.
2. Once the qualifying period has been met, the employee is entitled to compensation through a pay adjustment for working out of class commencing with the first day of the assignment. The appointing authority must enter a comment line identifying the classification and position code of the position that necessitated the working-out-of-class assignment. This information is subject to audit by Civil Service.
3. If an employee is assigned to work out of class for a 10-consecutive-day period and is subsequently assigned to work out of class in the same assignment in a 12-month period, the employee is entitled to working out of class compensation for the full extent of any subsequent assignments unless this regulation designates a different qualifying period. A new 10-day qualifying period is not required. This compensation is limited to the maximum of 26 pay periods.
4. An employee may submit a request to Civil Service for a technical working-out-of-class determination, pursuant to rules 4-5(b)(1) and 4-2(a), and regulation 4.03 to determine if a working-out-of-class assignment has been made. The employee's request must be made within 28 calendar days after the assignment ends and must include a position description, describing the temporary duties, and documentation that a request for working-out-of-class compensation was submitted to the appointing authority. Claims submitted after that time period are not accepted for compensation and qualification credit purposes.
5. An appointing authority must process working-out-of-class compensation pay adjustments or submit a working-out-of-class determination request to Civil Service within 3 months from the end of any working-out-of-class assignment. The appointing authority must obtain approval from the State Personnel Director for any pay adjustments or determination requests that are beyond 3 months.

6. Determination of the working-out-of-class compensation rate must be in accordance with regulations 5.01 and 5.07.
7. An employee working out of class at an equal or lower pay range than the employee's permanent classification is not eligible for working-out-of-class compensation.
8. Qualification credit, as determined by Civil Service, is granted for experience gained in documented working-out-of-class assignments if the employee meets the minimum education, licensure, registration, and certification requirements for the classification of the temporary assignment.
9. Qualification credit may only be applied once for an appointment, reclassification, or job change and does not substitute for the aggregate qualification requirements of that classification.
10. Qualification credit cannot exceed a maximum of 26 pay periods for any one working-out-of-class assignment.

**E. Alternatives to Working out of Class.**

The following alternatives should be considered instead of working an employee out of class:

1. Assigning supervisory/managerial assignments to other supervisor/managerial personnel, eliminating the potential for working out of class.
2. Making a limited-term appointment to a position.
3. Making an emergency appointment of 28 days or less, pursuant to rule 3-3.3 and Civil Service regulations. Questions regarding the use of the emergency appointment process should be directed to Civil Service.
4. Rotating the potential working-out-of-class assignment among several employees in the work area, being mindful of the limitations set forth in this regulation on working an employee out of class.
5. Dividing the work function among the other employees in the work area, eliminating the potential for a working-out-of-class assignment.

**F. Compliance.**

Civil Service staff audits all working-out-of-class payments. The appointing authority shall retain adequate documentation to substantiate compliance with this working-out-of-class regulation. Failure to supply adequate documentation, upon request, may result in revocation of the appointing authority's delegated authority to process future payments for working out of class.

## 5. Procedures

Responsibility	Action
Agency Management or Employee	1. Submits a request for working-out-of-class compensation and documentation to the appointing authority.
Appointing Authority	2. Reviews the request in accordance with the standards set forth in this regulation and other regulations. 3. Determines the appropriate classification and processes a working-out-of-class payment, in accordance with regulations 5.01 and 5.07. If the request is denied, documents the reason.
Appointing Authority	4. If the request involves a set of duties that has not been reviewed and classified or there is a dispute between the employee and the appointing authority as to the proper classification of the temporary assignment, submits a Position Action Request (CS-129), Position Description (CS-214), and any other necessary documentation to Civil Service for a classification review.
Civil Service	5. Reviews the working-out-of-class request that involves a set of duties that has not been previously classified to determine the proper classification and approvable timeframe, documents it on the CS-129, and releases as a "No Action." 6. If the working-out-of-class request is denied, informs employee of the working-out-of-class decision and appeal rights.
Appointing Authority	7. Receives the CS-129 for the position review. 8. Processes the approval for payment, if appropriate.

### **CONTACT**

Questions on this regulation may be directed to Classifications and Selections, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-6695, or to [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).



# Michigan Civil Service Commission

## Regulation 5.01

<b>Subject:</b> <b>General Salary Schedule Administration</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 5.01 (SPDOC 07-14, October 7, 2007)

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## **1. Purpose**

This regulation establishes the standards and procedures for administration of the compensation schedules approved by the Civil Service Commission.

## **2. CSC Rule References**

### **5-1 Civil Service Compensation Plan**

\* \* \*

#### **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.*

\* \* \*

### **5-2 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.*

\* \* \*

### **5-3 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.*

\* \* \*

#### **5-3.3 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.

\* \* \*

- (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.*

**3. Standards****A. Full and Part-time Employees.**

All annual, monthly, and biweekly rates of pay authorized in the compensation plan are for full-time employment. Payment for part-time employment is based on time in pay status.

**B. Schedule Establishment and Amendment.**

The Civil Service Commission has established a compensation schedule covering all positions in the classified service, which consists of salary ranges to which all classification levels in the classified service are assigned.

1. **Schedule Amendments.** The Civil Service Commission amends the schedule as necessary. If the schedule is amended, compensation is adjusted as follows:

a. **General Salary Schedule Adjustment.** An employee remains at the same salary step in the adjusted range unless the Civil Service Commission has authorized a different step.

(1) An employee at a red-circle rate is not eligible for a general salary schedule adjustment unless the adjustment increases the maximum of the employee's appropriate salary range to a rate equal to or higher than the red circle rate, at which time the rate in the appropriate range replaces the red-circle rate.

(2) An employee occupying a frozen position or frozen classification is eligible for general increases.

b. **Salary Upon Appointment To a Newly Established Classification.** When an employee is appointed to a newly established classification, salary is determined in accordance with § 3.F.

**C. Salary Range.**

An employee must not be paid less than the minimum nor more than the maximum of the salary range for the classification level to which assigned. The employee is paid only at the precise increments listed in the compensation schedule, except as provided below.

1. **Salary for Red-Circled Employees.** An employee designated as red circled may be paid at a rate in excess of the maximum salary rate for the classification to which assigned in the position that is red-circled. If an employee moves to a different position, the employee may not retain the red-circled pay.

2. **Salary Upon Special Project Basis.** For employment on a project basis not involving continual employment, the State Personnel Director may establish an alternative hourly rate of pay or lump sum award that exceeds the scheduled maximum pay. Application for project pay must be made by the appointing authority in advance of the employment assignment.

#### **D. Movement Within the Salary Range.**

An employee progresses from one step to the next higher step within the salary range upon completion of the required number of hours in pay status, if the employee's current rating is satisfactory.

1. **Effect of Unsatisfactory Service Rating.** An employee who has received an unsatisfactory service rating does not have any time in pay status credited as hours since the last step while the unsatisfactory service rating is in effect. Upon return to satisfactory status, earning of hours since the last step resumes from the number accrued when credit was stopped.
2. **Teacher Salary Schedules.** An employee assigned to a 42-week or 46-week teacher salary schedule is eligible for progression to the next higher salary step upon completion of the annual work schedule, if the employee's current rating is satisfactory. When an employee in a teacher classification qualifies for a higher academic salary schedule by completing the scholastic requirements, the employee is paid at the same step in the new schedule and retains hours since the last step.
3. **Accelerated Step Increases.** The State Personnel Director may authorize advancing an employee whose current rating is satisfactory to a higher step in the salary range at an accelerated rate upon application by the appointing authority.
  - a. An appointing authority may advance an employee without prior approval if any of the following apply:
    - (1) The employee has completed special assignments that have resulted in a major benefit to the employee's agency.
    - (2) The employee has performed outstanding service, for reasons that have been documented.
    - (3) An employee's pay rate has been determined in accordance with § 3.F, and an additional step is necessary to provide additional compensation in special circumstances which have been documented.
  - b. Special step increases are normally limited to the next higher step in the range. The appointing authority must document all special step increases. The documentation must include justification for the step increase and reasons for granting more than one step. The documentation must be retained for audit purposes, in accordance with the retention schedule.

- c. Special step increases are normally effective on a prospective basis. If an appointing authority processes a retroactive special step increase based upon documented extenuating circumstances, any retroactivity must be within 7 pay periods of the date the increase is processed.
4. **Reduction of Pay.** The appointing authority must receive prior approval from the State Personnel Director to reduce the salary of an employee. Requests must contain all pertinent information, including the amount of reduction and the justification for the proposed action. The employee's rate of pay must not be reduced below the minimum rate for the classification level.

**E. Salary Upon New Hire (Initial Appointment).**

Upon first appointment to a position, an employee is paid the minimum rate in the salary range. The State Personnel Director may authorize a higher starting rate upon application by the appointing authority. An appointing authority may authorize a higher rate without prior approval if any of the following apply:

1. The position has been vacant for a long period of time and there is difficulty in recruiting for the particular position.
2. The prospective employee is currently employed outside the classified service and a salary in excess of the minimum is necessary to attract the prospective employee.
3. The prospective employee has special experience and/or education which should be well beyond the minimum qualifications contained in the specification for classification of the position.
4. The prospective employee was previously a state employee and has experience pertinent to the position.

Note: The appointing authority must document the reason for an above minimum starting rate when one of the above conditions applies. The documentation must be retained for audit purposes.

**F. Salary Upon Personnel Action Other Than New Hire, Reduction in Force, or Recall.**

1. If the former and the new classification level share the same pay range, or if the former and new positions are in the same classification level and the employee is moving from an included position to an excluded position or vice versa, the employee is placed at the same step in the range. If the maximum rates are the same and the steps are different, the employee is placed at the closest rate without a decrease. The employee's hours since the last step are retained.
2. If the maximum rate of the new classification level is higher than the maximum rate of the former classification level, the employee's rate of pay may be calculated in one of the following ways:

- a. If the maximum rate of the new classification level is higher than the maximum rate of the former classification level, the employee's rate of pay is the lowest step in the range for the new classification level that reflects a salary increase that is not less than the difference between the minimum and the first step in the range for the former classification level, if possible. The employee's hours since the last step are set to zero.
- b. An agency may request an individual or blanket approval for a different rate of pay if the maximum rate of the new classification level is higher than the maximum rate of the former classification level. Civil Service must approve the different rate of pay before implementation. It may not be used for working out of class payments, unless an exception has been approved by the State Personnel Director for a specific situation.

Note: If an employee is due a step increase on the same day as this standard is applied, the employee receives the step increase first, and that step is used to determine step placement in the new range.

3. If the maximum rate of the new classification level is less than the maximum rate of the former classification level, the employee is placed at the closest step in the new range that reflects no increase. The employee's hours since the last step are retained.
4. If an employee moves within the same classification and level to a new HRMN pay grade, the employee is placed at the same step in the new pay range and retains hours since the last step. Examples include Services Specialists and some State Police Lieutenant classifications, where different HRMN pay grades exist within the same classification level. Teacher salary schedules are covered under § 3.D.2, above.

#### **G. Salary Upon Reduction in Force.**

If an employee is moved to a different classification as the result of a reduction in force, the employee is placed at the closest step in the new range that reflects no increase. The employee's hours since the last step are retained.

#### **H. Salary Upon Recall.**

If an employee is recalled, the rate of pay is determined based upon the rate and range at the time of displacement in conjunction with § 3.F. The employee's hours since the last step are retained.

#### **I. Salary for Working Out of Class (WOC).**

An employee eligible for WOC compensation in accordance with regulation 4.08 is compensated by application of § 3.F.2.a of this regulation, if the range for the WOC classification is a step-in-grade salary range. If the employee is eligible for WOC compensation in a performance-pay classification, regulation 5.07 applies.

1. If an employee is eligible for WOC compensation, payment is processed as a gross pay adjustment (GPA).
2. Holidays or leave time used are not paid at the WOC rate until after completion of the first 10 workdays of the assignment.
3. If an employee eligible for WOC compensation is assigned to work out of class in a preauthorized series, the employee is paid at the appropriate step for the classification level for which the employee meets the required education and experience, typically the entry level.
4. The appointing authority must retain adequate documentation to substantiate WOC compensation for audit purposes.

**J. Salary Upon Return from Leave of Absence.**

If an employee returns from an approved leave of absence, the rate of pay and hours since the last step are determined as follows:

1. If an employee returns to a position in the same classification level, the employee returns to the same step in the range as when the leave of absence began. The employee's hours since the last step are retained.
2. If an employee returns to the same position, but the position has been reclassified to a higher level, the employee's rate of pay is determined in accordance with § 3.F.2.

**K. Salary Upon Return from Military Leave of Absence.**

If a veteran returns to the same position from an approved military leave of absence and the veteran's last service rating prior to the leave of absence was satisfactory, the veteran is placed at the step in the range which would have applied had there been no interruption of state service. If the veteran's last service rating prior to the leave of absence was unsatisfactory, the veteran is placed at the same step in the range as when the leave of absence began.

**L. Salary Upon Appointment to and Reclassification from Departmental Trainee and Transitional Positions.**

If an employee is appointed to a Departmental Trainee or to a position designated as transitional, the employee's salary may be retained or reduced as provided below:

1. Upon appointment, the employee maintains the current rate of pay if it is less than or equal to the maximum of the classification level to which the employee will be reclassified upon completion of the transition period. If the employee is paid more than the classification level to which the employee will be reclassified, the employee is paid at the maximum of the classification level to which the employee will be reclassified.



2. Upon successful completion of the required transition period, the employee is reclassified to the appropriate technician, professional, or managerial classification. Upon reclassification, the closest rate in the new pay schedule that is not a decrease is assigned.

**M. Salary Upon Appointment to Other Entry Level Professional Classifications.**

The employee is normally assigned to the minimum step of the salary range. The employee may be assigned to a step higher than the minimum in accordance with §§ 3.E, F, G, or H. Any step placement above the minimum step must not exceed a pay rate that will enable the employee to receive a promotional increase under § 3.F.2 upon timely reclassification to the intermediate level of the classification series (i.e., the entry level rate cannot exceed the maximum step of the intermediate level in the classification series.).

**N. Training Rate Upon Job Change Within Group 1 of the ECP.**

The training rate is: (A) the employee's current rate or the maximum rate of the new classification series' experienced level, whichever is less, when the current rate exceeds the new pay range max (see § 3.N.1); or (B) the closest step in the new range without a decrease, when the employee's current rate is less than the new pay range max (see § 3.N.2).

1. **Training rate exceeds the maximum rate for the new classification level.** Upon appointment to the new classification series at the entry or intermediate level, when the employee's training rate exceeds the maximum rate of the new level, the employee's pay step is set at the employee's current rate, or the maximum rate of the new series experienced level, whichever is less. Civil Service will authorize use of the "Training" pay schedule to enable the appointing authority to enter a rate above the maximum. When an employee is eligible to move out of the "Training" pay schedule, the closest rate in the new pay range that is not a decrease is assigned.
2. **Training Rate is less than the maximum rate for the new classification level.** Upon appointment to the new classification series at the entry or intermediate level, when the employee's current rate is less than the maximum of the new range, the employee's pay step is set at the closest step in the new range without a decrease. The employee's hours since the last step are retained. The employee is eligible to receive step increases.

**O. Special Pay Application.**

An appointing authority may require an employee to work under special conditions not covered by specific provisions of these regulations. Additional compensation for such applications may be authorized by the State Personnel Director upon application by the appointing authority.

**P. Special Work Schedule.**

Employees at the Michigan School for the Deaf and Blind who work on a school year basis are considered annual employees for purposes of service credits.

**Q. Exceptions.**

Exceptions to the standards contained in this regulation must be approved by the State Personnel Director.

**CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.02

Subject: <b>Overtime, On-Call, and Callback Compensation</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.02 (SPDOC 14-09, August 31, 2014)

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## 1. Purpose

This regulation establishes the standards for the payment of overtime, on-call compensation, and callback compensation.

## 2. CSC Rule References

### 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 and annual 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.*

## **3. Standards**

### **A. Eligible Employees.**

1. Employees in classifications that are assigned an eligibility code of "N" are eligible for overtime. *Eligible* is represented as "non-exempt" in the Human Resources Management Network system (see the Compensation Plan for eligibility codes). When processing a preauthorized reclassification, the appointing authority must enter the assigned eligibility code for the new classification level as reported in Section A of the Compensation Plan.

### **2. Overtime.**

#### **a. Rate.**

- (1) The overtime rate is one and one-half times the employee's regular rate.
- (2) The regular rate is defined as the employee's base rate of pay plus any applicable shift premium, special pay premium (e.g., prison rate), on-call, longevity, or other pay, except overtime premium.

#### **b. Basis.**

- (1) Overtime payment is made to eligible employees for time worked in excess of 40 hours in a week, unless another calculation method authorized under federal law is used.
- (2) Premium payment must not be duplicated (pyramided) for the same hours worked.
- (3) Time worked is defined as all the following:
  - (a) All hours actually spent in pay status, excluding sick and annual leave.

(b) Travel time required by and at the discretion of the employer before, during, or after the regularly scheduled workday.

- (4) All paid leave, except sick and annual leave, is counted as time worked for computing overtime. Holiday credit is counted as time worked in computing weekly (or other longer period authorized under federal law) overtime only. If an employee works on a holiday, premium payment for the first 8 hours worked on the holiday is due and payable only when 40 hours in a week (or other amount authorized under federal law) are exceeded. The employee may, with the approval of the employer, take another day in the same period as the holiday.
- (5) A day is defined as a 24-hour period beginning at 12:01 a.m., unless otherwise authorized by the State Personnel Director.
- (6) A week is defined as a 7-day period beginning at 12:01 a.m., Sunday, unless otherwise authorized by the State Personnel Director.
- (7) A biweekly work period consists of 80 hours of work, normally performed on 10 workdays within the 14 consecutive calendar days that coincide with the current pay periods. A biweekly pay period is considered complete if the actual time worked, plus any paid administrative, annual, sick, military, or holiday leave, equals or exceeds 80 hours. The premium for overtime hours worked is not counted as work time.

**c. Control.**

- (1) The appointing authority has the right to require an employee to work overtime, and to ensure that the employee does not work unauthorized overtime.
- (2) The appointing authority is responsible for scheduling and authorizing overtime.
- (3) The appointing authority must establish policies and procedures for scheduling and authorizing overtime.
- (4) The appointing authority is responsible for pay for all overtime worked, even if overtime worked was not authorized, and the benefits of the overtime work are accepted by the appointing authority.

**d. Scheduling.**

- (1) The daily or biweekly work schedule of an employee may be changed temporarily. The employee's work schedule must be posted or the employee must be notified of the next biweekly work schedule not less than 96 hours before the beginning of the biweekly work period. If the employee's work schedule is changed during a biweekly work period or within 96 hours prior

to the beginning of a pay period for the following pay period, the employee is eligible for overtime payment for all hours worked outside of the employee's original work schedule for the balance of the affected pay period.

- (2) To the extent that sufficient notice is available and the best interests of the state allow, and giving consideration to work assignments and organizational units in the agency, the employer must schedule overtime work as equally as practical among employees who normally perform the assigned duties.
  - (a) An employee who declines to work overtime is counted as having worked in determining this "equal share."
  - (b) If an insufficient number of employees normally performing the duties volunteer to work overtime, the overtime may be offered to other employees qualified to do the work.
  - (c) The appointing authority may mandate overtime when an insufficient number of employees volunteer for scheduled overtime or there is an emergency.
- e. **Timekeeping.** Positive timekeeping records must be maintained at the agency for all eligible employees. Positive timekeeping is defined as recording the total number of hours worked and the total number of leave hours used on a daily and weekly basis with weekly totals.
- f. **Timeliness of Payment.** The employer must make a good faith effort to make payment for overtime worked on the payday of the first pay period following the biweekly work period in which the overtime is worked.
- g. **Compensatory Time.**
  - (1) With the approval of the employer, the employee may, upon request, accrue compensatory time at the premium rate (time-and-one-half) in lieu of payment for overtime, if agreement to accrue compensatory time is reached before the work is performed.
  - (2) The appointing authority may adopt a maximum accrual limit of up to 240 hours of compensatory time. In the case of an employee engaged in public safety, emergency response or seasonal activity, the appointing authority may adopt a maximum accrual of up to 480 hours.
    - (a) Public safety activity refers to employees employed to enforce laws and maintain peace and order, who have the power to arrest and have undergone, or are undergoing, specialized training. Security personnel in correctional institutions, by specific mention, are likewise covered.
    - (b) Emergency response activity refers to rescue work and ambulance services.

(c) Seasonal activity refers to work during lengthy regular recurring periods of significantly increased demand.

- (3) When compensatory time is approved, the employee must be paid, by gross pay adjustment, for all premiums (e.g., shift, hazard except T-rate and G-rate) due for the overtime hours worked at a time-and-one-half rate.
- (4) With the approval of the employer, the employee may, upon request, have a work schedule adjustment within the week in lieu of an accumulation of overtime. For employees working in hospitals and residential care facilities, such adjustments are not allowed.

**h. Scheduling of Compensatory Time.**

- (1) Compensatory time is used at the convenience of the employee subject to supervisory approval based on criteria applicable to the use of annual leave. The employer is required to honor all requests for compensatory time off, unless to do so would be “unduly disruptive.”
- (2) Compensatory time must be used before annual leave except when an employee at the maximum annual leave accumulation cap would thereby lose annual leave.
- (3) If the employee has not used accrued compensatory time before the end of the fiscal year in which the time has been accrued, the employee may be paid at the base rate for the compensatory time unused at the end of the fiscal year, or at the average base rate received during the last 3 years, whichever is higher. If the employee is not paid for the accrued compensatory time, it is carried forward into the next fiscal year.
- (4) Unused compensatory time accruals of an employee who resigns, retires, is dismissed, or moves to a different appointing authority are paid at the employee's current base hourly rate, or at the average base rate received during the last 3 years, whichever is higher.
- (5) Unused compensatory time accruals of an employee who is laid off are paid at the base rate, or at the average base rate received during the last 3 years, whichever is higher. This does not apply to temporary layoffs.
- (6) Freezing of compensatory time accruals is not allowed.

**3. On-Call Compensation.**

- a. **Rate.** Employees scheduled for on-call duty are compensated at the rate of 1 hour of straight time pay for each 5 hours of on-call duty.

**b. Basis.**

- (1) "On-Call" is defined as the scheduled state of availability to return to duty, work ready, within a specified time period. General availability of employees as "backup" to working personnel in the event of an extreme emergency is not considered as on-call.
- (2) An employee actually required to return to duty is compensated in accordance with the regulations on callback compensation for those hours actually worked or for which payment under the callback procedure is made (see § 3.A.4).
- (3) An employee is not paid on-call compensation for regularly scheduled duty hours or while on paid authorized leave.

**c. Control.**

- (1) The employer has the right to require an employee to be on-call or to schedule on-call work as needed in the manner most advantageous to the employer and consistent with the requirements of state employment and the public interest.
- (2) Policies and procedures for authorization and payment of on-call time must be established by the appointing authority.

**d. Scheduling.**

- (1) An employee scheduled by an appointing authority for on-call duty is required to remain available through a pre-arranged means of communication.
- (2) An employee in on-call duty status who is not available when contact is attempted or who is not able to report, work ready, to duty within the prescribed time period is not eligible for on-call compensation for that date and may be subject to disciplinary action.

**e. Timekeeping.** Positive timekeeping records must be maintained at the agency for all eligible employees as defined in § 3.A.2.e.**f. Method of Payment.** The employer must compensate employees for on-call time in cash.**g. Timeliness of Payment.** The employer must make a good faith effort to pay for on-call duty on the payday of the first pay period following the biweekly work period in which the on-call duty is worked.**h. Overtime Impact.** Compensation earned for on-call time is included as part of the regular rate for overtime premium computation (see § 3.A.2.a(2)). The hours



on-call, however, are not used in this computation; only the dollar amounts are used.

**4. Callback.**

**a. Rate.**

- (1) Full-time employees called back to duty are paid at established overtime rates as outlined in § 3.A.2.
- (2) Less than full-time employees are compensated at straight time rates, unless by virtue of the callback the employee works hours qualifying for overtime under § 3.A.2.b(1).

**b. Basis.**

- (1) Employees called back to duty outside of their normal working hours are guaranteed a minimum of 3 hours pay, except that employees must be compensated for the actual amount of time worked if either of the following apply:
  - (a) They are called back to duty within 3 hours of their regular starting time; or,
  - (b) The period of callback duty exceeds 3 hours.
- (2) Employees on scheduled on-call status are not paid on-call compensation for callback duty hours.

**c. Control.**

- (1) The employer has the right to call an employee back to duty and to schedule callback duty as necessary in the manner most advantageous to the employer and consistent with the requirements of state employment and the public interest.
- (2) Policies and procedures for authorization and payment of callback duty must be established by the appointing authority.

**d. Timekeeping.** Positive timekeeping records must be maintained at the agency for all eligible employees as defined in § 3.A.2.e.

**e. Method of Payment.** The employer must compensate employees for callback time in accordance with § 3.A.2.f.

**f. Scheduling of Compensatory Time.** The scheduling and use of compensatory time must be in accordance with § 3.A.2.h.

**g. Timeliness of Payment.** The employer must make a good faith effort to pay for callback duty on the payday of the first pay period following the biweekly work period in which the callback duty is worked.

**B. Ineligible Employees.**

1. Employees in classifications that are assigned the eligibility code of “Y” are ineligible for overtime. *Ineligible* is represented as “exempt” in the Human Resources Management Network system (see the Compensation Plan for eligibility codes).

2. **Work Schedules.**

- a. **Scheduling and Control.**

- (1) Work schedules for ineligible employees are established by the appointing authority. Employees are normally present during the regular course of the workday. However, it is recognized that demands on their time may vary from one pay period to another. Absences without charge to leave credits may be granted for any period of time, providing the appointing authority certifies the employee has completed the equivalent of a full pay period.
    - (2) The appointing authority can adopt a formalized compensatory time plan for ineligible employees in lieu of the above. If a compensatory time plan is used, the following conditions must be met:
      - (a) Sick and annual leave used in the work period must not be counted towards the eligibility for accruing compensatory time.
      - (b) The employee must be paid by gross pay adjustment for all premiums (e.g., shift, hazard except "P" rate) due for the overtime worked.
      - (c) Positive timekeeping records must be maintained for all employees covered. Positive timekeeping is defined as recording the total number of hours worked and the total number of leave hours used on a daily and weekly basis.
      - (d) Compensatory time is used at the convenience of the employee subject to supervisory approval based on criteria applicable to the use of annual leave.
      - (e) Compensatory time must be used before annual leave, except where an employee at the maximum annual leave cap would thereby lose annual leave.
      - (f) Ineligible employees must not be paid for unused compensatory accruals at any time, except as provided in rule 5-4.6.
      - (g) Employees in the Senior Executive Service and ECP Group 4 are not eligible to accrue compensatory time, except as provided in rule 5-4.6.

- b. **Overtime.** The appointing authority must obtain prior approval from Civil Service to compensate ineligible employees for overtime hours worked.

- (1) Appointing authority requests for approval to pay overtime to ineligible employees must be submitted to Civil Service.
- (2) Overtime approval requests must contain the employee's name, employee identification number, classification, position code, justification for request, beginning date, and expiration date. The request must also contain the criteria for payment of overtime if other than for time worked in excess of 40 hours in a week.
- (3) Appointing authorities must assign employees working an alternate work schedule to an 80 hour biweekly work period, if this minimizes overtime eligibility (e.g., an employee working 45 hours in the first week and 35 hours in the second week of the pay period.)
- (4) Sick and annual leave used during the work period may not be counted towards reaching the threshold required for overtime eligibility.
- (5) If approval is granted to pay overtime, the employee must be compensated at a premium rate to be determined as follows:
  - (a) If the employee's hourly rate is less than the highest rate of eligible employees, the employee is paid time and one-half for overtime.
  - (b) If the employee's hourly rate is greater than the highest rate of eligible employees, the employee is paid time and one-half times the highest rate of eligible employees, or straight time, whichever is greater.

NOTE: Refer to the Introduction section of the Civil Service Compensation Plan for current overtime rate information.

  - (c) Employees whose work assignments result in premiums being added to their base rates, (e.g., shift differential, "P" rate, etc.), must have their overtime rate adjusted by the amount of the premium in the same proportion.

3. **On-Call.** The appointing authority must obtain prior approval from Civil Service to compensate ineligible employees for on-call duty under special circumstances.

- a. Appointing authority requests for approval to pay on-call compensation to ineligible employees must be submitted to Civil Service. This request should address the following criteria:
  - (1) Physical restrictions placed on the employee while on-call.
  - (2) Maximum period of response time allowed.
  - (3) Percentage of calls expected to be returned by the on-call employee.
  - (4) Frequency of expected calls during on-call time.

- (5) Potential use of the on-call time by the employee.
  - (6) Disciplinary action taken against employees who fail to answer calls.
  - b. If approved, compensation is paid at the rate of 1 hour of straight time credit for each 5 hours of on-call.
  - c. If compensatory time is used in lieu of payment for on-call compensation, scheduling and use of compensatory time must be in accordance with § 3.B.2.a.
  - d. Employees called back to work while in on-call status will continue to receive on-call payment while on callback duty, unless exception has been granted to pay employees callback pay.
4. **Callback.** The appointing authority must obtain prior approval from Civil Service to compensate ineligible employees for callback duty under special circumstances.
- a. If approved, employees are compensated in the same manner as eligible employees (see § 3.A.4).
  - b. Computation of premiums and payment must be in accordance with the regulations for overtime compensation (see § 3.B.2.a).

**C. Exceptions.**

Exceptions to the above standards for non-exclusively represented employees may be requested by the appointing authority. These requests should be submitted to the State Personnel Director.

**CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.03

Subject: <b>Shift Differential</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.03 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes the standards for the payment of a shift differential premium for eligible nonexclusively represented employees.

### 2. CSC Rule References

**5-4 Additional Compensation: Overtime, etc.**

\* \* \*

**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.

\* \* \*

### 3. Standards

**A.** Employees in certain classification levels are eligible for a shift premium of 5 percent above straight-time rates, rounded to the nearest cent:

- 1. Nonexclusively Represented Employees.** Eligible classification levels, as determined by the State Personnel Director, are identified by shift eligibility code of "Y" in Section A of the Compensation Plan.
- 2. Exclusively Represented Employees.** Refer to the applicable collective bargaining agreement.

**B.** Shift differential premium is paid to eligible employees for each shift when 50 percent or more of their regularly scheduled shift falls between the hours of 4:00 p.m. and 5:00 a.m.

- C. Shift differential premium is included as part of the regular rate for computation of the premium for overtime hours worked by eligible employees working regularly scheduled afternoon and night shifts (See regulation 5.02).
- D. Shift differential premium is not paid for holiday time off or leave time used.
- E. The value of shift differential premium is not included in determining the value of fringe benefits which are based on pay rate; all fringe benefits are based on the straight time pay rates.
- F. An employee reassigned from a day shift to an afternoon or a night shift is paid shift differential premium as in the case of regularly assigned afternoon and night shifts.
- G. When an employee takes the place of an absent worker and either of the employees is eligible for shift differential premium, the employee must be paid shift differential premium in addition to any eligible overtime.

### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.04

Subject: <b>Special Pay Premiums</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.04 (SPDOC 15-05, May 24, 2015)

### 1. Purpose

This regulation establishes standards for application of special pay premiums approved by the Civil Service Commission for nonexclusively represented employees. It also establishes the standards and procedures for reviewing positions to approve or disapprove eligibility for prison and forensic premium pay (P-rate).

### 2. CSC Rule References

#### **5-5 Additional Compensation: Prison Employees**

##### **5-5.1 Prison and Forensic Employee Premium (P-rate)**

**(a) Eligibility.** *An employee who meets any of the following eligibility criteria is paid P-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 at a correctional facility or the Center for Forensic Psychiatry 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 or forensic patients.*
- (3)** *An employee whose work location is within the security perimeter of a correctional facility or the Center for Forensic Psychiatry, thereby placing the employee in an environment where physical confrontation could occur.*

**(b) Exception.** *An employee is not eligible for P-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 commission meeting on December 14, 1978. The state personnel director shall list the current ineligible classifications in the regulations.*

**(c) Rate.** *P-rate is \$0.40 an hour. P-rate is paid for all hours in pay status, including holidays and leave time.*

\* \* \*

### 3. Definition

#### A. Definition in This Regulation.

1. **P-rate compensation** means a special pay premium that is assigned to eligible positions in addition to the classification's regular compensation.

### 4. Standards

- A. An employee is eligible for P-rate compensation if the employee's position has been assigned responsibility for custody or supervision of prisoners in the Department of Corrections on a regular and recurring basis, in addition to regular job duties.
1. The position must be located within an institution under the jurisdiction of the Department of Corrections, Correctional Facilities Administration, or at a Corrections Center in the Field Operations Administration.
  2. No two employees are given credit for supervising the same prisoners.
  3. Positions in other agencies must supervise prisoners assigned from the Department of Corrections, Correctional Facilities Administration.
- B. An employee is eligible for P-rate compensation if the employee's position is located at a correctional facility or the Center for Forensic Psychiatry and handles, on a regular and recurring basis, the personal, financial, or other matters affecting the well-being of prisoners or forensic patients.

An employee who handles the personal, financial, or other matters affecting the well-being of prisoners or forensic patients must have regular recurring and face-to-face contact with them. The work being performed must be of such a nature that it could create an adversarial relationship with the employee. Regular, recurring, and face-to-face contact is defined as contact with prisoners or forensic patients in person, 25 percent or more of the time, in an environment that could permit a physical act to occur. Work performed that could create an adversarial relationship is defined as those situations when there is a reasonable chance of a difference of opinion leading to a physical attack by a prisoner or forensic patient.

- C. An employee is eligible for P-rate compensation if the employee's work location is within the security perimeter of a correctional facility or the Center of Forensic Psychiatry, thereby placing the employee in an environment where physical confrontation could occur.
- D. An employee is **not** eligible for P-rate compensation if classified in the following classifications identified in Part 1B, Special Increase, of the minutes from the December 14, 1978, Civil Service Commission meeting (as updated with the current nonexclusively represented classifications):



Assistant Resident Unit Supervisor 11	Forensic Security Supervisor 11
Corrections Security Inspector 13	Forensic Security Supervisor 12
Corrections Shift Supervisor 11	Forensic Security Supervisor 13
Corrections Shift Supervisor 12	Resident Unit Officer E10
Corrections Shift Supervisor 13	

- E. Agency policies may require employees with regular work locations outside the security perimeter to assume custodial responsibilities in emergency situations (disturbances, riots, etc.). Such situations are not considered “regular and recurring” and do not qualify a position for P-rate compensation.
- F. Incidental contact, such as passing by a prisoner porter, does not qualify for P-rate compensation.
- G. Appeals of staff decisions on P-rate compensation for individual positions are processed through the technical appeal process established in regulation 8.02.
- H. If an employee vacates a position previously approved for P-rate compensation, the new employee may be assigned P-rate compensation without Civil Service review if the employee is performing the same duties.
- I. If an employee receiving P-rate compensation moves to another position, the new position must be reviewed by Civil Service for the continuation of P-rate compensation.
- J. When a change occurs to an employee’s position, whereby the employee is no longer eligible for P-rate compensation, the P-rate assignment must be removed by the Appointing Authority.

## 5. Procedure

Responsibility	Action
Appointing Authority	1. Submits a Position Action Request (CS-129) and a Position Description form (CS-214) to Civil Service for a position review and approval before assigning P-rate compensation.
Civil Service	2. Reviews the request for position review to approve or disapprove P-rate compensation. 3. If approved, releases the CS-129 to the appointing authority. 4. If disapproved, documents the reasons on the CS-129 and releases to the appointing authority.

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<b>Responsibility</b>	<b>Action</b>
Appointing Authority	<ol style="list-style-type: none"> <li>5. Receives the approved CS-129 and assigns P-rate compensation to the employee in the Human Resources Management Network (HRMN).</li> <li>6. Removes P-rate compensation in HRMN when an employee becomes ineligible for such.</li> </ol>

### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.05

<b>Subject:</b> <b>Longevity Compensation</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 5.05 (SPDOC 12-09, June 24, 2012)

### 1. Purpose

This regulation establishes the standards and procedures for longevity payment for nonexclusively represented employees.

### 2. CSC Rule References

#### *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:*

<i>Years of Full-time Service Expected to be Completed During the Fiscal Year</i>	<i>Annual Longevity Payment Due on October 1 of the Fiscal Year</i>
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.*

### 3. Standards

#### A. General Eligibility.

A career employee who is expected to complete, or has completed, the equivalent of 6 years (12,480 hours) or more of continuous full-time classified service in a fiscal year is eligible for an annual longevity payment on October 1 of that fiscal year in the amount provided below:

<b>Years of Full-time Service Expected to be Completed during the Fiscal Year</b>	<b>Equivalent Hours of Full-time Service that Must be Completed before October 1</b>	<b>Annual Longevity Payment Due on October 1 of the Fiscal Year</b>
6-9	10,400 - 18,719	\$260
10-13	18,720 - 27,039	\$300
14-17	27,040 - 35,359	\$370
18-21	35,360 - 43,679	\$480
22-25	43,680 - 51,999	\$610
26-29	52,000 - 60,319	\$790
30 & over	60,320 and over	\$1,040

1. A career employee is eligible to receive credit for longevity for service in a non-elective excepted or exempted position in an agency, the legislature, or the supreme court if entry into or return to the classified service is within 28 days after leaving the excepted or exempted position.
2. A career employee is eligible to receive longevity credit for up to 5 years of honorable service in the armed forces of the United States. This credit is received immediately upon entry into the classified service under the following conditions:
  - a. A new employee is advised by the appointing authority of the military service benefit upon hire.
  - b. The employee is responsible for submitting the required documentation to the appointing authority within 90 days to receive additional service credit retroactive to the date of hire.
  - c. If the employee does not submit the required documentation within 90 days, credit is not given retroactive to the date of hire, but is credited the first day of the pay period in which the documents are received by the appointing authority.

- d. The appointing authority will forward a copy of the required documentation to Civil Service staff for review, calculation of eligible service credit, and processing of applicable HRMN adjustments.
  - e. The following criteria are applied in determining eligibility for military service credit:
    - (1) Only active service for which the veteran has received an honorable discharge or other certified evidence of honorable active service is creditable. Any of the following documents provide such evidence:
      - (a) DD-214, Certificate of Release or Discharge from Active Duty, which must include Field #24: Character of Service.
      - (b) NGB Form 22, Report of Separation and Record of Service in the Air/Army National Guard, which must include Field #24: Character of Service.
    - (2) Active military service is considered active duty in any branch of the armed forces under conditions for which a regular military leave of absence would have been granted had the veteran been a classified employee at the time the military tour of duty began.
    - (3) Military service need not immediately precede state employment.
    - (4) Military duty in a reserve component does not qualify for credit. However, active duty time served for basic training while in a reserve component is creditable.
    - (5) Military service resulting from more than one tour of active duty may be combined, but cannot exceed the maximum of 5 years of creditable service.
    - (6) Career classified employees are entitled to full credit for their active military service, regardless of their work schedule.
    - (7) Noncareer classified employees are not entitled to military service credit.
  - f. The following conversion table is used to adjust active military service time to continuous state service hours:

1 year	=	2,080 hours
1 month	=	174 hours
1 day	=	5.8 hours
3. Military service credit is credited as currently continuous service.
- a. An employee separating and returning has previously credited military service placed in the employee's prior service counter, if the total current service counter, including the military time, exceeded 5 years (10,400 hours).

- b. If an employee separates and returns, previously credited military service is retained in the current hours service counter if the total current service hours was less than 5 years (10,400 hours). Only state service credit is moved to the prior service counter. Military hours retained in current service hours are entered to military hours.
- 4. An employee granted a leave of absence with pay has the leave time credited for longevity compensation purposes.
  - a. An employee receiving workers' compensation receives service credit in accordance with regulation 5.13.
  - b. An employee on a paid leave of absence as the result of an assault receives service credit for the leave in accordance with regulation 5.13.
- 5. An employee granted a leave of absence without pay does not have a break in service for the purpose of eligibility for longevity, but does not receive service credit for the time of the leave of absence.

## **B. Longevity Payment.**

### **1. Eligibility.**

- a. Career employees who separate from state service and return and complete 5 years (10,400 hours) of full-time continuous service before October 1 of any year receive credit for all previous hours in the state classified service.
  - b. To be eligible for a full annual longevity payment after the initial payment, a career employee must have completed continuous full-time classified service equal to the service required for original eligibility, plus a minimum of one additional year (2,080 hours).
  - c. Career employees rendering seasonal, intermittent, or other part-time classified service are, after establishing original eligibility, entitled to subsequent annual payments on a prorated basis for the number of hours in pay status during the longevity year.
2. **Payments.** Payment is made in accordance with the table of longevity values based on length of service.
- a. No active employee can receive more than the amount scheduled for one annual longevity payment during any 12-month period, except in the event of retirement or death or as provided in § 3.B.2.g.
  - b. **Initial Payments.** Employees qualify for their initial payment by completing an aggregate of 10,400 hours of continuous service before October 1. The initial payment is always a full payment (no proration).

### **c. Annual Payments.**

- (1) Employees qualify for full annual payment by completing 2,080 hours of continuous service during the longevity year.
  - (2) Employees who are in pay status less than 2,080 hours receive a prorated annual payment based on the number of hours in pay status during the longevity year.
- d. Payments to employees who become eligible on October 1 of any year are made on the pay date following the first full pay period in October; except that prorated payments in case of retirement or death are made as soon as practicable thereafter.
- e. **Lost Time Considerations.**
  - (1) Lost time is not creditable continuous service, nor does it count in qualifying for an initial or annual payment.
  - (2) Employees do not earn state service credit in excess of 80 hours in a biweekly pay period. Paid overtime does not offset lost time, except when both occur in the same pay period.
- f. **Payment to Employees on Leave of Absence Without Pay and Layoff on October 1.**
  - (1) An employee on other than a waived rights leave of absence, who was in pay status less than 2,080 hours during the longevity year, receives a prorated annual payment based on the number of hours in pay status during the longevity year; such payment is made on the pay date following the first full pay period in October.
  - (2) An employee on a waived rights leave of absence receives a prorated longevity payment upon returning from leave.
- g. **Payment at Retirement or Death.** An employee with 12,480 hours of currently continuous service who retires or dies receives a longevity payment. The payment amount is prorated based on hours in pay status since October 1 of the current fiscal year. The payment consists of the following:
  - (1) A terminal payment, which is either:
    - (a) A full initial longevity payment based upon the total years of both current and prior service, if the employee has not yet received an initial longevity payment; or
    - (b) A prorated payment for time worked from the preceding October 1 to the date of separation, if previously qualified. The prorated payment is based on hours in pay status since October 1 of the current fiscal year.

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- (2) A supplemental payment for all time previously not counted in determining the amount of prior longevity payments. The supplemental payment is limited to the number of full-time equated biweekly pay periods completed (multiples of 80 hours).

### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).



# Michigan Civil Service Commission

## Regulation 5.06

Subject: <b>Compensation Under Conditions of General Emergency</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.06 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes the standards and procedures for compensating employees under conditions of general emergency.

### 2. CSC Rule References

**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.*

\* \* \*

### 3. Standards

#### A. Definition.

Conditions of general emergency include, but are not necessarily limited to, severe or unusual weather, civil disturbance, loss of utilities, physical plant failures, or similar occurrences. Such conditions may be widespread or limited to specific work locations.

#### B. Administrative Determination.

When conditions in an affected area or specific location warrant, state facilities may be ordered closed or, if closure is not possible because of the necessity to continue services, a facility may be declared inaccessible. The decision to close a state facility or declare it inaccessible is at the full discretion of the Governor or designated representative. The appointing authority is responsible for receiving and documenting the appropriate authorization for closure or declared inaccessibility.

#### C. Compensation.

1. When a state facility is closed or declared inaccessible in accordance with this regulation, employees unable to report for work due to such conditions are granted administrative leave to cover their absence during normally scheduled hours of

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work for the period of closure or declared inaccessibility. An employee who is sent home under such conditions after completing a portion of the regularly scheduled shift is granted administrative leave for the balance of the shift.

2. An employee may be required to work during situations of closure or declared inaccessibility. In these instances, the employee is compensated as follows:
  - a. At the employee's base rate of pay during all hours of the employee's regularly scheduled shift.
  - b. In accordance with regulation 5.02 for all hours worked outside the employee's regularly scheduled shift.
  - c. In addition to pay, an employee is granted paid time off equal to the number of hours worked during the period of closure or declared inaccessibility.

#### **D. Additional Timekeeping Procedures.**

1. If a state facility has not been closed or declared inaccessible in accordance with the definition in this procedure, and an employee is unable to work because of such conditions, the employee is allowed to use annual leave or compensatory time credits to cover the absence from work. If the employee does not have sufficient credits, or the employee chooses, the employee is placed on lost time.
2. When an employee is absent from a scheduled work period, a portion of which is covered by a declaration of closure or inaccessibility, annual leave or compensatory credits may be used to cover that portion of the employee's absence not covered by administrative leave. If sufficient credits are not available, or the employee chooses, the employee is placed on lost time.
3. Employees who are absent due to sick or annual leave usage or who have previously scheduled annual leave during the period of closure or inaccessibility are not entitled to administrative leave.
  - a. If an employee previously on sick or annual leave is scheduled to return to work while the building remains closed or inaccessible the employee then becomes eligible for such administrative leave for the remaining portion of closure or inaccessibility.
  - b. Employees who incur lost time as the result of application of this regulation receive credit for a completed biweekly work period for all other purposes.

#### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.07

<b>Subject:</b>		
<b>Performance-Pay Programs</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 5.07 (SPDOC 14-09, August 31, 2014)

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## 1. Purpose

This regulation establishes the standards for performance-pay programs. Eligibility for a performance-pay award is based upon evaluation of the performance of an individual, a team of eligible individuals, or an entire agency. The agency's ability to pay may be considered in setting performance-pay award amounts.

## 2. CSC Rule References

### 2-3 *Performance Ratings*

\* \* \*

#### 2-3.3 *Annual Ratings*

\* \* \*

#### *(c) Performance-pay program ratings and actions.*

\* \* \*

**(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.*

\* \* \*

### **5-3 Compensation Schedules**

\* \* \*

#### **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.*

\* \* \*

#### **5-3.4 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.*

\* \* \*

### 3. Definition

#### A. CSC Rule Definition.

1. ***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.*

### 4. Standards

#### A. Scope.

The Civil Service Commission has established performance-pay programs for employees in designated classifications. Performance-pay programs consist of base salary and lump sum awards to be administered within established pay ranges in accordance with regulations approved by the State Personnel Director.

#### B. Salary Range.

The Civil Service Commission fixes the range of rates of compensation for all classifications.

1. **Classification Ranges.** The Civil Service Commission, for each classification level in a performance-pay program, fixes a salary range that consists of (1) a minimum point, (2) a control point, and (3) a maximum point.
2. **Agency Salary-range Subdivisions.** As authorized in rule 5-3.2, an appointing authority may establish one or more salary-range subdivisions within a class salary range established by the Civil Service Commission. Each salary-range subdivision must have a subdivision control point (a base-pay ceiling) that is less than the control point of the class. An appointing authority may propose a salary-range subdivision to Civil Service. Civil Service reviews the proposal and approves or denies the request. If Civil Service approves a salary-range subdivision, the appointing authority must give notice of the subdivision to each employee whose position is subject to the limits of the subdivision.

#### C. Performance-Pay.

The appointing authority may grant a performance-pay award in accordance with the standards of this regulation. A performance-pay award may consist of a base salary increase, a lump sum award, or a combination of the two.

1. **Base Salary Increase.** An employee may receive an increase in base salary up to the lower of (1) the control point for the class or (2) any applicable base ceiling if the employee's position is subject to an approved salary-range subdivision.

2. **Lump Sum Award.** An employee may receive a lump sum award not to exceed the difference between the control point and the maximum point. If the employee's base salary is below the control point or any applicable base pay ceiling, the employee may receive both a lump sum award and an increase in base salary. If the employee's base salary is at the control point or any applicable base pay ceiling, a performance award must be granted in a lump sum only.
3. **Other Performance-Pay Conditions.**
  - a. The total base salary and lump sum awards received by an employee in any fiscal year must not exceed the maximum point of the salary range.
  - b. The minimum point of the salary range is the lowest base-pay salary for an individual appointed, reclassified, or converted to a classification in the performance-pay program.
  - c. An employee's base salary must not exceed the lower of (1) the control point or (2) any applicable base pay ceiling if the employee's position is subject to an approved salary-range subdivision.
  - d. The total lump sum award received by an employee in any one fiscal year must not exceed the amount of the difference between the control point and the maximum point.
  - e. An employee must receive a performance rating of "meets expectations," "high performing," or other equivalent satisfactory rating before receiving any performance-pay award.
  - f. If an employee receives an "unsatisfactory" probationary, interim, or follow-up rating, the employee's base salary may be reduced. The employee's base salary may be reduced by up to **5 percent** of the base salary in any one fiscal year, unless a different percentage limit is specified for the particular class or group.
  - g. **Approval Required.** Each initial rate of pay and each subsequent performance-pay action for employees in the Senior Executive Service (SES), ECP Group 4, and the Senior Executive Management Assistant Service (SEMAS) requires prior review and approval by the State Personnel Director.
    - (1) **Request for Approval of Appointment or Reappointment Pay Rates.** The appointing authority must submit a request for pay approval to Civil Service for all appointments and lateral job changes to SES, ECP Group 4, and SEMAS positions, certifying that a performance management plan is in place for the employee. If the position is in the SES or SEMAS, a limited-term appointment agreement and certification that Civil Service has reviewed and approved a current position description must be submitted with the request.



Requests must be submitted before the close of the pay period in which the appointment or reappointment would be effective.

- (2) **Request for Approval of Performance-Pay.** The appointing authority must submit a request for pay approval to Civil Service via the automated web-based approval process for all performance-pay base salary and lump sum awards for employees in SES, ECP Group 4, and SEMAS positions, certifying that a performance evaluation has been completed. Requests must be submitted within twelve months of the effective date of the performance evaluation. Base salary increase retroactivity may not exceed seven pay periods from the date of receipt of the request by Civil Service.
- (3) **Approval of Pay Upon Appointment and Performance-Pay.** Civil Service shall issue approval or disapproval actions on properly documented appointment pay approval requests within five workdays of receipt and on performance-pay approval requests within ten workdays. Special extenuating circumstances may provide a basis for approval of retroactivity beyond seven pay periods. Any requests for consideration of extenuating circumstances must be approved by the State Personnel Director.
4. **Other Conditions Applicable to ECP Groups 1, 2, and 3 Employees.** The following limits on performance-pay apply to all nonexclusively represented employees in Groups 1, 2, and 3 of the Equitable Classification Plan:

  - a. An appointing authority must submit to the State Personnel Director a request to add or delete a classification to or from a performance management plan. All performance management plans, changes, and additions must be approved before implementation.
  - b. The maximum performance-pay increase or decrease in base pay in any one fiscal year must not exceed **5 percent** of the employee's prior base salary.
  - c. The total of all performance base pay increases and lump sum awards during any one fiscal year must not exceed **5 percent** of the employee's prior base salary.
5. **Other Conditions Applicable to SES, SEMAS, and ECP Group 4 Employees.** The following limits of performance-pay awards apply to all employees in the Senior Executive Service (SES), Senior Executive Management Assistant Service (SEMAS), and Group 4 of the Equitable Classification Plan (ECP):

  - a. The maximum performance-pay increase or decrease in **base pay** in any one fiscal year should not exceed **5 percent** of the employee's prior base salary.
  - b. The total of all performance base pay increases and lump sum awards during any one fiscal year must not exceed **10 percent** of the employee's prior base salary.

- c. Any performance award in excess of **5 percent** of the employee's base salary should typically be in the form of a lump sum award. Before an award in excess of 5 percent of the employee's base salary or in excess of the "agency maximum lump sum amount" is approved, it must be submitted by the appointing authority to the State Personnel Director for review and approval under statewide performance criteria.

The following documentation must be submitted with each request:

- (1) **A statement of support for the award from the agency director.** The statement should address the employee's accomplishments during the rating period, the importance of the employee's achievements to the agency's strategic goal attainment, and the effort or competencies applied by the employee to achieve positive results. In addition, if the agency is requesting that the performance award include a base pay increase in excess of 5%, the reason(s) why a base pay increase is warranted should be addressed. The statement may address other factors the director believes should be considered as the basis for an exceptional award.
  - (2) **The employee's performance standards and evaluation for the rating period.** A copy of the signed and dated performance evaluation form must be provided that includes the performance factors/objectives, the relevant competencies, and the supervisor's evaluation.
  - (3) **A completed request for pay approval form.** A Request for Pay Approval for SES/SEMAS and Group 4 Performance-Pay Program form (CS-1725) must be provided indicating the amount of the award requested. Civil Service staff notifies the appointing authority of approval or disapproval of the request.
6. **Other Conditions Applicable to Senior Attorneys.** The following limits on performance-pay awards apply to all ECP Group 2 attorneys in performance-pay classifications in the Department of Attorney General:
    - a. The maximum performance-pay increase or decrease in base pay in any one fiscal year must not exceed **8 percent** of the employee's prior base salary.
    - b. The total of all performance base pay increases and lump sum awards during any one fiscal year must not exceed **8 percent** of the employee's prior base salary.
  7. **Working Out of Class Compensation in Performance-Pay Classifications.** An employee may be temporarily assigned to perform the duties and responsibilities of a properly classified position in a performance pay classification with a higher maximum salary rate or control point. In such circumstances, the employee's base salary rate must not exceed the midpoint between the employee's current base salary and the fixed control point or salary-range subdivisions of the temporarily assigned classification.

**D. Performance Evaluations.**

The appointing authority must evaluate and rate each employee in a performance-pay program at least once annually. The appointing authority may use any reasonable evaluation and rating methods. However, the appointing authority must report each performance evaluation to the State Personnel Director in the manner prescribed by the director to permit comparison across agencies.

1. **Plan for Agency-wide Evaluation of SES and ECP Group 4 Employees.** Each agency must have a plan on file with the State Personnel Director that addresses all of the following:
  - a. The annual cycle for performance evaluation used by the agency, including common review dates, as appropriate, and a plan to convert to common dates,
  - b. A process to ensure internal consistency of performance evaluations and pay recommendations,
  - c. The number of rating categories used, and, if greater than three, how they will convert to the statewide reporting categories of high performing/exceeds expectations, meets expectations, and improvement expected/does not meet expectations and,
  - d. Measures to ensure timely submission of performance-pay requests to Civil Service for approval.
2. **Performance Evaluation Documentation, Audit, and Reporting.** The appointing authority must document and retain for compliance audit by Civil Service, the performance plan and evaluation for all employees in a performance-pay program using the appropriate Civil Service Performance Management and Competency Employee Rating form or other form approved by Civil Service. If an audit finds performance evaluation documentation is inadequate, the appointing authority will be required to submit performance evaluation documents to Civil Service in order to receive performance-pay approvals. The appointing authority must report each ECP Group 4, SES, and SEMAS employee rating to Civil Service via the automated web-based approval process when seeking performance-pay approval.

**E. Salary Upon Appointment or Conversion to the SES or SEMAS.**

Upon appointment or conversion to the SES or SEMAS, the base salary rate must be at or above the minimum point and must not exceed the control point. The first salary review may be given at the six-month period.

**F. Salary Upon New Hire, Promotion, or Conversion to a Performance-Pay Position in ECP Groups 1, 2, 3, or 4.**

Upon new hire, promotion, or conversion into an ECP Group 1 (NERE), Group 2 (NERE), Group 3, or Group 4 class, the base salary rate must not exceed the midpoint

between the base salary rate received prior to the hire, promotion, or conversion and the control point of the range. If a salary-range subdivision applies, the base salary rate must not exceed the ceiling of the subdivision. The first salary review may be given at the six-month period. The State Personnel Director may authorize a higher starting rate upon application by the appointing authority. An appointing authority may authorize a higher rate without prior approval if any of the following apply:

1. There is difficulty in recruiting for the particular position.
2. The prospective employee is currently employed outside the classified service and a salary in excess of the midpoint formula is necessary to attract the prospective employee.
3. The prospective employee has special experience and/or education which should be well beyond the minimum qualifications contained in the specification for classification of the position.
4. The prospective employee is currently or was previously, a state employee, and has experience pertinent to the position.

Note: The appointing authority must document the reason for the higher starting rate when one of the above conditions applies. The documentation must be retained for audit purposes.

**G. Salary Upon Reclassification From Staff Attorney to Senior Attorney.**

Upon reclassification from Staff Attorney to Senior Attorney, the base salary rate must not exceed the midpoint between the base salary rate received prior to the reclassification and the control point of the Senior Attorney range, or 8% above the base salary rate received prior to the reclassification, whichever is greater.

**H. Salary Upon Reclassification From a Performance-Pay Classification to Another Performance-Pay Classification With a Higher Control Point.**

Upon reclassification within the performance-pay program, the base salary rate must not exceed the midpoint between the base salary received prior to the reclassification and the control point, or ceiling of the salary-range subdivision of the new salary range.

**I. Effect of Position Freeze.**

An employee occupying a position frozen for classification or level in a performance-pay program classification must receive annual performance evaluations, but is not eligible to receive a base pay increase unless the maximum salary rate of the proper classification if a step and grade classification, or the control point of the proper classification if a performance-pay classification, exceeds the employee's base salary rate. An employee occupying a frozen position is otherwise eligible to receive lump sum performance awards.

**J. General Salary Increases.**

The general pay adjustment is based on the employee's base salary on the effective date of the general pay adjustment.

**K. Salary Upon Conversion from Performance-Pay Schedule to Step Schedule.**

If the State Personnel Director approves the conversion of an entire class or part of a class from a performance-pay schedule to a schedule with steps, the employee is placed at a pay step at least equal to the employee's base salary under the performance-pay plan at the time of conversion. The employee's hours since last step are set to reflect the number of hours in pay status since the effective date of the last performance evaluation, which must be less than 2,080 hours. If the employee served less than 2,080 hours in the position and has not received a performance evaluation, the hours since last step are set to reflect the number of hours in pay status in the position.

**L. Exceptions.**

1. Exceptions to the standards for non-exclusively represented employees may be requested by the appointing authority.
2. Written requests should be submitted to the State Personnel Director.
3. Exceptions can only be approved by the State Personnel Director.

**CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.08

Subject: <b>Paid Holidays</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.08 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes the standards and guidelines for paid state holiday absence for career employees.

### 2. CSC Rule References

#### *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.*

### 3. Standards

#### **A. State Holidays.**

A career employee is allowed paid absence from work on the following days:

<u>Day</u>	<u>Observance</u>
New Year's	January 1
Martin Luther King, Jr.	The third Monday in January
Presidents	The third Monday in February
Memorial	The last Monday in May
Independence	July 4

Labor	The first Monday in September
Election Day	General election day (even numbered years)
Veterans	November 11
Thanksgiving	The fourth Thursday in November
Day After Thanksgiving	The Friday following Thanksgiving
Christmas Eve	December 24
Christmas	December 25
New Year's Eve	December 31

A career employee who regularly provides less than full-time service is allowed paid absence according to § 3.C.2.

**B. Observance.**

1. Employees have their holiday observance on the holiday itself if the holiday falls on a scheduled workday.
2. A holiday that falls on Saturday is observed on the preceding Friday. A holiday that falls on Sunday is observed on the following Monday.
  - a. When Christmas Eve or New Year's Eve falls on Friday, the holiday may be observed on the preceding Thursday. When Christmas Eve or New Year's Eve falls on Sunday, the holiday may be observed on the preceding Friday. The State Personnel Director may establish alternate observance days for these holidays before the beginning of the fiscal year.
  - b. Equivalent provisions for time off for holidays falling outside the scheduled work week shall be made for employees working other than a Monday through Friday schedule.
  - c. Holiday observance cannot be used to extend employment, unless § 3.C.1.c applies.

**C. Eligibility.**

1. A career full-time employee, regardless of work schedule, is allowed paid holiday absence by being in full pay status on:
  - a. The holiday itself, as demonstrated by actually working on the holiday; or,
  - b. The employee's last scheduled workday immediately preceding the holiday and their first scheduled workday following the holiday when both days fall within the same biweekly work period; or,

- c. The employee's last scheduled workday immediately preceding the holiday when the holiday occurs on or is observed on the last scheduled workday of the biweekly work period; or when the holiday occurs or is observed on the last day of the month in which the employee is retiring; or,
  - d. The employee's first scheduled workday following the holiday when the holiday occurs on or is observed on the first scheduled workday of the biweekly work period.
  - e. A newly hired employee is not allowed paid holiday absence for a holiday occurring on or observed on the first scheduled workday of the initial biweekly work period.
  - f. A continuing employee returning from layoff or leave of absence, whose first scheduled workday is the day after a holiday, is allowed paid holiday absence for the holiday.
2. A career employee working less than full-time is allowed paid holiday absence as follows:
- a. Employees are allowed full holiday credit of 8 hours if they otherwise have been in full pay status for the pay period in which the holiday falls.
  - b. Employees not in full pay status for the pay period in which the holiday falls, are allowed proportionate holiday credit based on the average hours in pay status during the six biweekly work periods (including work periods when not in pay status) preceding the work period in which the holiday occurs.
    - (1) Career employees not in pay status during the biweekly work period when a holiday occurs are allowed proportionate holiday credit upon return from furlough.
    - (2) Newly hired employees and employees returning from a layoff or leave who have completed less than six biweekly work periods are allowed proportionate holiday credit based on the average hours in pay status since appointment or return from layoff or leave.

#### **D. Work on a Holiday.**

Payment for work on a holiday is in accordance with regulation 5.02.

#### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).



# Michigan Civil Service Commission

## Regulation 5.09

Subject: <b>Annual, Personal, and School and Community Participation Leave</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.09 (SPDOC 15-05, May 24, 2015)

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## 1. Purpose

This regulation establishes the standards and procedures for paid annual leave, school and community participation leave, and personal leave.

## 2. CSC Rule References

### *5-10 Paid Holidays and Leave*

\* \* \*

#### *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:*

1. Years of Service	2. Hours of Annual Leave Accrued (for 80 hours of service)	3. Maximum Accumulation (total hours of annual and personal leave)	4. 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

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*participation leave each October 1. School and community participation leave credits not used by the last pay period of the fiscal year are lost.*

\* \* \*

**(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.*

\* \* \*

- (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.*

### **3. Standards**

**A. Annual Leave.**

1. **Initial Leave Grant.** Upon entry into the classified service a career employee is credited with 16 hours of annual leave. An employee cannot be credited with the initial leave grant more than once per calendar year.
2. **Crediting and Accumulation.** A career employee accrues annual leave for each 80 hours in full pay status in accordance with the annual leave table established in rule 5-10.2(a)(1)(B).
  - a. An employee accrues annual leave with pay in accordance with total (both prior and currently continuous) classified service upon completion of five years (10,400 hours) of currently continuous service. An employee who separates and returns to state service must re-qualify for additional annual leave.

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- b. Paid service in excess of 80 hours in a biweekly work period is not counted.
- c. When paid service does not total 80 hours in a biweekly work period, leave credits are pro-rated based on hours in pay status for that pay period.
- d. Temporary layoff time is included in the computation of service hours for annual leave credits in accordance with rule 2-4.4.
- e. Annual leave is credited at the end of each biweekly work period.
- f. Career employees eligible for special credit for unclassified or military service for annual leave under rule 5-10.2 are subject to the same standards and documentation requirements as for longevity under regulation 5.05.
- g. An employee is not allowed annual leave accumulation in excess of the maximum accumulation listed in column 3 of the annual leave table, except under the following conditions:
  - (1) An employee is assaulted by a resident, client, or member of the general public, if covered by the following public acts: PA 293 of 1975 (MCL 791.263a) for the Department of Corrections; PA 414 of 1976 (MCL 330.1113) for the Department of Health and Human Services (formerly Department of Community Health); PA 131 of 1978 (MCL 400.1, *et seq.*) for Department of Health and Human Services (formerly Department of Human Services) Institutional Employees; and PA 452 of 1978 (MCL 38.1181) for Department of State employees providing direct services to the public.
  - (2) An employee is suspended or dismissed and is subsequently returned to employment with full service benefits.

### 3. **Use of Annual Leave.**

- a. An employee may use the initial grant of 16 hours immediately upon hire, with the prior approval of the appointing authority.
- b. Annual leave is available for use only in biweekly work periods subsequent to the biweekly work period in which it is earned. Annual leave may not be credited or used in anticipation of future leave accruals. In the absence of applicable accrued leave, compensation reductions for lost time will be made for the work period in which the absence occurred.
- c. An employee may use annual leave only with the prior approval of the appointing authority, except that an employee may use accrued annual leave when an insufficient amount of sick leave exists to cover an absence for which sick leave is normally used. In this circumstance, the standards of regulation 5.10 pertaining to use of sick leave apply.

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- d. Annual leave cannot be used to extend employment, except that during November and December of 2010 up to three days of annual leave can be used to extend employment. An appointing authority may request that the State Personnel Director authorize an employee to use more than three days of leave to extend employment during November and December of 2010.
  - e. An employee allowed annual leave accumulation in excess of the maximums listed in the annual leave table under the exception in § 3.A.2.g, is allowed up to one year from the date of return to employment to liquidate the amount of annual leave above the maximum by use of paid time off work.
4. **Transfer of Leave.** An employee who moves from one state agency to another may transfer up to 80 hours of accrued annual leave. Annual leave in excess of 80 hours up to the maximum may be transferred with the approval of the appointing authority to whose service the employee moves. An employee is paid in cash at the current rate of pay for unused annual leave that is not transferred. This section does not apply to transfers resulting from an executive reorganization.
  5. **Layoff.** An employee separated by layoff, other than a temporary layoff under rule 2-4.4, may freeze annual leave up to the accrued balance at time of layoff or be paid off for it up to the appropriate maximum pay off limitation contained in column 4 of the annual leave table.
    - a. If the employee freezes annual leave, the leave balance is retained until the employee elects to be paid off for the balance or until the employee's recall rights expire, whichever occurs first. The payoff amount is calculated at the employee's last rate of pay.
    - b. If an employee elects to be paid off for annual leave at the time of separation by layoff, the employee upon recall may buy back annual leave, subject to the following conditions:
      - (1) An employee recalled to the agency from which laid off may buy back any portion of annual leave up to the amount paid off.
      - (2) An employee recalled to a permanent position in a different agency may buy back any portion of annual leave that had been paid off, up to 80 hours.
      - (3) An employee electing this option must buy back the annual leave at the returning rate of pay.
      - (4) Such payment is made to the agency that made the original payoff.
      - (5) This option may be exercised only once per recall, and must be exercised during the first 13 pay periods of the recall.

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**6. Payoff on Retirement, Death, or Separation.**

- a. When employment is terminated for any reason, the employee or beneficiary is paid for the balance of unused annual leave and the balance of any unused hours of the initial 16 hour grant at the employee's last rate of pay.
  - b. Payment for unused annual leave is limited to the applicable maximum listed in the annual leave table of unused credited annual leave. This includes employees who, under the exceptions in § 3.A.2.g, were permitted to accrue more than the maximum.
  - c. Payment for unused annual leave in excess of 240 hours at retirement is not included in final average compensation for calculating the level of retirement benefits.
  - d. An employee retiring under a normal retirement, while otherwise eligible for an incentivized retirement under MCL 38.19j, shall receive leave balance payoffs only after rights to retire under the incentivized retirement program end. An employee electing incentivized retirement shall receive leave balance payoffs as provided in MCL 38.19j.
- 7. Deferred Hours.** Deferred hour credits are administered in the same manner as annual leave.
- 8. Annual Leave Transfer.** A direct leave transfer process and a central leave bank are available to assist nonexclusively represented employees facing financial hardship due to serious injury or prolonged illness of the employee or the employee's dependent spouse, child, or parent:
- a. **General Provisions.**
    - (1) An employee may receive a direct transfer of annual leave from employees within their employing agency, or through the central leave bank, subject to the following conditions:
      - (a) The receiving employee must have successfully completed the initial probationary period.
      - (b) The receiving employee must have exhausted all leave credits.
      - (c) The receiving employee's absence must have been approved.
    - (2) An employee may receive a combined maximum donation of 240 hours per calendar year.
    - (3) Donations of annual leave (either by direct transfer or to the central leave bank) are irrevocable and are limited to a combined maximum of 40 hours in a calendar year. Donations must be in whole hour increments.

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(4) Unused donated annual leave must be forwarded to the central leave bank.

**b. Direct Leave Transfer.**

- (1) Direct leave transfers must be made before or concurrent with the employee's absence.
- (2) The right to donate and receive hours through direct transfer is not limited to nonexclusively represented employees when a collective bargaining agreement provision allows for similar direct transfer donation of annual leave.
- (3) Direct leave transfer requires a completed direct leave transfer form approved by the appointing authority.

**c. Central Leave Bank.**

- (1) The central leave bank is administered by the Department of Technology, Management and Budget, Financial Services.
- (2) Donations of leave to the bank and requests for annual leave from the bank require a completed central leave bank transfer form approved by the appointing authority.

**B. Personal Leave.**

On October 1 of each year, career employees with at least 6 months of continuous satisfactory service are credited with personal leave. These leave hours are credited to an employee's annual leave balance and may be used in accordance with normal requirements for annual leave.

1. A full-time employee receives 16 hours. A less than full-time employee receives proportionate credit based on the average hours in pay status during the six full biweekly work periods preceding October 1.
2. An employee covered by other paid personal leave credit provisions under a collective bargaining agreement who subsequently moves to a position that is excluded from representation or not covered by a bargained agreement receives appropriate paid personal leave credit immediately upon transfer out of the unit, unless a similar grant was received in the same fiscal year under the bargained agreement.
3. A full-time employee on a leave of absence on October 1 receives the full grant as described in B.1 above, upon return to active employment status. A less than full-time employee on a leave of absence on October 1 who has completed less than six biweekly work periods receives a partial grant based on the average hours in pay status since return from leave. Any leave grant must be manually added when the employee returns.

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4. An employee recalled from layoff is credited with the personal paid leave credit on a prorated basis for the balance of the fiscal year.

### **C. School and Community Participation Leave.**

A nonexclusively represented career employee who has completed 1,040 hours of satisfactory service is credited annually with 8 hours of school and community participation leave to be used in accordance with the following provisions:

1. An employee may use the leave to participate in any school sponsored activity including, but not limited to, tutoring, field trips, classroom programs, school committees, assisting with athletic or music programs, theater and school clubs. The leave may also be used for active participation in any structured secular community activity sponsored by a governmental agency, or a non-profit community organization or agency, and not for mere attendance at school or community events.
2. School and community participation leave may be used only in increments of one hour, and only for qualifying events occurring during an employee's scheduled work time.
3. An employee must obtain prior approval to use school and community participation leave on a form provided by the appointing authority.
4. School and community participation leave is credited to employees on each October 1 and will not carry forward beyond the fiscal year.

### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).



# Michigan Civil Service Commission

## Regulation 5.10

Subject: <b>Sick Leave</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.10 (SPDOC 15-21, January 3, 2016)

### 1. Purpose

This regulation establishes standards and procedures for paid sick leave.

### 2. CSC Rule References

#### **5-10 Paid Holidays and Leave**

\* \* \*

#### **5-10.2 Paid Leave**

##### **(a) Leave accrual and accumulation.**

\* \* \*

**(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.**

\* \* \*

**(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.*

\* \* \*

### 3. Standards

**A. Crediting and Accumulation.** Every career employee is credited with 4 hours of sick leave for each 80 hours of service completed.

1. Paid service above 80 hours in a biweekly work period is not counted.
2. If paid service is below 80 hours in a biweekly work period, leave credits are prorated based on hours in pay status for that pay period.
3. Temporary layoff and Plan A time is included in computing service hours for sick leave credits, under rule 2-4.4.
4. Sick leave is credited after the biweekly work period when it is earned.
5. Sick leave is accumulated during the employee's period of classified service.

**B. Use.**

1. Any sick leave use must have the appointing authority's approval.
2. Sick leave is available only in biweekly periods after it is earned. Sick leave cannot be credited or used in anticipation of future accruals. Absent applicable accrued leave, compensation reduction for lost time is made for the work period when an absence occurred. The employee may elect to not use annual leave to cover such absence.
3. The employee must certify all sick leave use by such evidence as the appointing authority requires. Falsifying such evidence is cause for dismissal.
4. Sick leave may be used by an employee for the following:
  - a. Personal illness, injury, serious health condition, temporary disability, exposure to a contagious disease endangering others, or illness or injury in the immediate family necessitating absence from work. Immediate family is defined as the employee's spouse, children, grandchildren, parents, foster parents, parents-in-law, siblings, and any persons whose financial or physical care is the employee's principal responsibility.
  - b. Appointments with a doctor, dentist, or other recognized practitioner to the extent required to complete such appointments when appointments cannot be arranged during non-duty hours.
  - c. Death or attendance at the funeral of a relative or person whose financial or physical care is the employee's principal responsibility.
  - d. Work incapacitating injury or illness for which an employee may be eligible for disability benefit under the Michigan Workers' Compensation Act, to supplement the employee's disability benefit to the employee's regular wage.

**C. Transfer of Leave.**

1. Employees who move to another state agency and remain in the classified service are credited with all unused sick leave by receiving agencies.
2. Employees moving between classified and executive branch unclassified positions transfer all accrued sick leave.

**D. Separations.****1. Employees continuously employed since before October 1, 1980.**

- a. An employee separating from the classified service because of death, retirement, or vested retirement under a state retirement act is paid for 50 percent of unused sick leave as of the effective date of separation. In case of death, payment is made to the beneficiary or estate.
- b. An employee separating from the classified service for any other reason is paid for the percentage of unused sick leave indicated below:

Sick Leave Balance (hours)	Percentage Paid
<104	0
104-208	10
209-416	20
417-624	30
625-832	40
>832	50

- c. Payment is made at the employee's last rate of pay by the agency from which the employee separates.
  - d. Employees who receive payoffs are not entitled to buy back or have unpaid balances restored if returning to classified employment.
- 2. Employees not continuously employed since before October 1, 1980.**
- a. Employees separating from the classified service for any reason are not entitled to payoff of sick leave balances.
  - b. Employees reinstated or rehired to a career position within three years of separation have previous sick leave balances restored.

**E. Recall.**

1. Sick leave balances are credited to a laid-off employee upon return to employment in the state classified service before the expiration of recall rights.

2. Employees hired before October 1, 1980, who are not recalled to employment from layoff are entitled to payoff of unused balances at their last rate of pay, as indicated in the table above.

**F. Leave of Absence.**

1. Sick leave balances are not liquidated or paid off at the start of any leave of absence.
2. If an employee separates directly from a leave of absence, liquidation or payoff is in the same manner as a laid-off employee who does not return.

**CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.11

<b>Subject:</b> <b>Compensating Employees Occupying Multiple Positions</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 5.11 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes the standards and procedures for compensating employees who occupy multiple positions.

### 2. CSC Rule References

#### **5-3 Compensation Schedules**

\* \* \*

#### **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.*

\* \* \*

### 3. Standards

**A.** A classified employee may concurrently occupy more than one position in the state service, in either the same or different agencies.

**B. Limitations.**

An appointing authority cannot appoint an employee from a different agency to a second position without first obtaining documentation from the employee's primary appointing authority allowing the employee to engage in supplemental employment.

**C. Compensation, Longevity, and Fringe Benefits.**

The employee is compensated by the agency for those hours worked in the agency.

1. Eligibility for overtime payment is based on the number of hours worked by the employee for all agencies combined.
2. An employee cannot be credited with more than 80 hours in pay status per pay period for any purpose, except salary.

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#### **D. Proration.**

Overtime, longevity, and fringe benefits for career employees occupying positions in more than one agency are prorated as follows:

1. An employee occupying a full-time position plus one or more part-time or permanent-intermittent positions.
  - a. The agency for which the employee works full-time (primary agency) compensates the employee at straight time rates for regularly scheduled shifts. All time that the employee works in the part-time or permanent-intermittent position is paid in accordance with overtime regulations.
  - b. The primary agency for which the employee works full-time provides the complete longevity and fringe benefit package.
2. An employee occupying more than one part-time or permanent-intermittent position, but no full-time position.
  - a. If the combined total number of hours the employee is regularly scheduled to work equals or is less than 80 hours a pay period:
    - (1) The employee is paid for all regularly scheduled work hours at straight time rates. An eligible employee is paid for overtime worked in accordance with regulation 5.02 by the agency for which the overtime is worked.
    - (2) Each agency provides longevity payment and fringe benefits in proportion to the number of regularly scheduled hours in the pay period that the employee is in pay status.
  - b. If the combined total number of hours the employee is regularly scheduled to work exceeds 80 hours:
    - (1) The primary agency compensates the employee at straight time rates. Those agencies whose regular scheduling of the employee causes the employee to work in excess of 80 hours in a pay period must compensate the employee for such hours in accordance with regulation 5.02. The employee must be compensated for any other overtime hours worked by the agency for which the overtime is worked.
    - (2) The proration of fringe benefits and longevity is made between those agencies in proportion to the number of regularly scheduled hours paid at straight time rates.

#### **E. Use.**

An employee's accrued leave balances may be used to the extent necessary for absence from scheduled work in either agency or position.

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### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.12

Subject: <b>Severance Pay</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.12 (SPDOC 15-05, May 24, 2015)

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### 1. Purpose

This regulation establishes the standards and procedures for severance payment for eligible non-exclusively represented employees.

### 2. CSC Rule References

#### *5-6 Additional Compensation: Miscellaneous*

\* \* \*

#### *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 health and human services laid off because of deinstitutionalization of the department of health and human services 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:

<b>Years of Service</b>	<b>Weeks of Severance Pay</b>
1	1
2	2

Years of Service	Weeks of Severance Pay
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.*

\* \* \*

### 3. Definitions

#### A. Definitions in This Regulation.

1. **Layoff** means a termination of active state employment solely as a direct result of a reduction in force.

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2. **Severance payment** means a lump sum payment in accordance with the approved pay schedule granted to eligible employees in return for forfeiting all recall rights.
3. **Week's pay** means an employee's gross pay for 40 hours of work at straight time rates excluding premiums, such as shift differential and "P" rate.
4. **Year of service** means one year of seniority (2,080 hours) as defined in the HRMN "continuous service hours" counter.

## 4. Standards

### A. Eligibility.

1. Department of Health and Human Services "agency-based" employees who meet the eligibility criteria of § 4.A.3 are eligible for severance pay if they have been laid off because of deinstitutionalization of the Department of Health and Human Services resident population after October 1, 1996.
2. Nonexclusively represented employees who meet the eligibility criteria of § 4.A.3 and who are indefinitely laid off may be eligible for severance pay if monies exist in a special severance fund approved by the Civil Service Commission.
3. Employees who meet the above eligibility criteria are eligible for severance pay if they (1) have more than one year of state service at time of layoff; (2) have been laid off for 6 months or more; (3) are in satisfactory employment status; and (4) are not in a temporary or limited-term appointment.
4. Otherwise eligible employees are disqualified from receiving severance pay under any of the following conditions:
  - a. The employee dies before accepting payment.
  - b. The employee is hired for any position within the classified service.
    - (1) Disqualification occurs upon date of hire, unless the new position requires completion of a probationary period.
    - (2) Disqualification occurs upon completion of probationary period, if one is required.

Note: If the required probationary period is not completed and the employee is separated, such time of employment is bridged for purposes of the time limits for severance pay.

- c. The employee refuses recall to state employment located within a 75 mile radius of the agency from which laid off.
- d. The employee is permanently recalled to another job in state government covered by a collective bargaining agreement, in which case the agreement will control.

- e. If the employee is hired for any position outside of the state classified civil service and the initial base hourly rate for that new employment is 75 percent or more of the employee's final base hourly rate of the position from which the employee was laid off.

#### **B. Time Limitations.**

The agency must notify eligible employees of the option of severance pay after 6 months of layoff, and again after 12 months of layoff.

1. The employee may accept in writing the lump sum severance payment at any time from receipt of first notice until 14 calendar days after receipt of second notice. An employee who does not accept severance payment in writing within the prescribed time frame is deemed to have permanently rejected the payment.
2. If payment is accepted, the agency must, within 60 calendar days, make payment to the employee and remove the employee's name from all recall lists.
3. Acceptance of severance pay constitutes a break in service and terminates rights to continuous service credits for all purposes, including annual leave accrual rate and longevity.

#### **C. Amount of Severance Pay.**

Eligible employees who accept severance payment are paid in accordance with the severance pay table in rule 5-6.10(c).

1. The appointing authority deducts from the severance payment any amount required to be withheld by reason of law or regulation for payment of taxes to federal, state, county, or municipal government.
2. Eligible employees who work less than full-time (80 hours per pay period) receive a proportional severance payment. The appointing authority calculates the average number of hours the employee worked for the calendar year preceding layoff. This number is used to determine the proportion of time in relation to full-time employment. This proportion is then applied to the severance pay table for purposes of payment.

#### **EXAMPLE OF SEVERANCE PAY FOR A LESS THAN FULL-TIME EMPLOYEE**

Average number of hours worked in previous calendar year:	1,980 hours
Full-time employee hours:	2,088 hours
Proportion (or percentage):	1,980 = 94.8% of 2,088

.948 x severance payment from table = gross amount to be paid

**D. Return to State Service.****1. Recall before exercising option of severance pay.**

- a. An employee temporarily recalled for less than 60 calendar days has this time bridged for purposes of counting the time in accordance with § 4.A.
- b. An employee permanently (more than 60 calendar days) recalled to a position qualifying for severance pay, and subsequently laid off, is eligible for severance pay, if the employee meets all of the requirements of this procedure. The time limits are applied from the date of the most recent layoff.

**2. Rehire to state service after receiving severance payment.**

- a. An employee rehired after two years have elapsed since receipt of severance payment is treated as any other employee who has separated and returns to state employment.
- b. An employee who returns within two years of acceptance of severance payment must:
  - (1) Repay the state the net amount of the severance payment received.
    - (a) The employee has a 12 month period in which to make repayment to the agency from which severance payment was received.
    - (b) Time limitations for repayment begin with the date of return to state service or upon the completion of any required probationary period.
    - (c) The method and time schedule for repayment must be documented in a written agreement between the employee and the appointing authority.
  - (2) Have current hours restored from prior service hours when repayment of severance pay is made in full.

**E. Effect on Retirement.**

The acceptance or rejection of severance pay has no effect on vested pension rights under the State Retirement Act. Severance payment will not be included in the computation of compensation for the purpose of calculating retirement benefits.

**F. Payment.**

1. The appointing authority must notify eligible employees in writing of the option of severance pay at the completion of six months of layoff and again at the completion of 12 months of layoff.
2. Upon receipt of a laid-off employee's written acceptance of the severance pay option, the appointing authority must do the following:

- a. Provide for payment to the employee by having the necessary forms completed and gross pay adjustment processed.
- b. Immediately provide copies of the severance pay form to the Office of the State Employer and Civil Service for removal of the name from all recall lists.

Note: A laid-off worker whose name is currently included in a candidate pool for consideration at the time the Office of the State Employer or Civil Service receives notification of the severance payment remains eligible for appointment.

#### **G. Rehire.**

1. After more than two years have elapsed since an employee has received severance payment, the employee is only returned to the state service as either a new hire or a reinstatement in accordance with regular procedures for such appointments. All state service time before receipt of severance pay is transferred to the prior service counter, and cannot be restored as continuous service credit under any condition.
2. If an employee who has received severance pay is returned to state service within 2 years from the date of receipt of such payment, the employee is subject to the following:
  - a. The employee is initially returned to state service as a reinstatement. Current continuous service time which existed at the time of the severance payment is transferred to the prior service counter.
  - b. If the employee returns to state service in a different calendar year from the one in which the payment was made, the employee is credited with an initial annual leave grant of 16 hours. The employee is credited with annual leave at the rate of four hours for each 80 hours of completed service in the same manner as a new hire.
  - c. The employee is notified in writing that contact must be made with the appointing authority of the agency from which the severance payment was made to arrange for a repayment schedule for both severance payment and sick leave payoff (if applicable).
  - d. The employee must notify the current agency in writing of the arrangements that have been made and the time frame within which they are to be completed.
  - e. The employee is treated as a newly reinstated employee during the entire period of repayment. The employee accrues annual leave at the rate of four hours for each 80 hours of paid service and, even if the employee had been previously eligible for longevity payment, does not receive credit for this period of time toward an annual longevity payment.
  - f. At the completion of repayment, the employee's current agency changes the reinstatement to a return from layoff.

- (1) The agency restores to the continuous service hours counter from the prior service hours counter, those hours the employee had in the continuous service hours counter at the time the severance payment was made.
  - (2) The agency re-credits all sick leave hours the employee had at the time that the severance payment was made.
  - (3) If the employee qualified for an initial longevity payment, but had not received one before being laid off, the agency must make this initial payment to the employee.
  - (4) If the employee has previously qualified for longevity, returns in one fiscal year, and completes repayment in another, the agency must make a pro-rata longevity payment to the employee for such hours worked in the previous fiscal year.
  - (5) When the employee has made complete and total repayment of severance pay and the agency has made the necessary adjustments in the employee's history and hours counters, the employee is eligible to buy back paid off annual leave. The eligibility and time limits of the employee to make this purchase start from the date that the final repayment of severance pay is made. All regular procedures for buy back must be followed.
3. Under no circumstances may the appointing authority do any of the following:
    - a. Make any adjustment in the 16 hour initial annual leave grant.
    - b. Retroactively adjust the annual leave counter for any differences that may have occurred between the accrual rate for each 80 hours of service the employee had been receiving while making repayment and the accrual rate the employee would have received, based on the service hours after restoration.
    - c. Allow the employee to use any re-credited sick leave hours for any lost time the employee may have due to illness during the period of repayment.
  4. The employee is not placed on any recall lists.

## **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.13

<b>Subject:</b> <b>Disability Payment For Duty-Incurred Injuries</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 5.13 (SPDOC 15-05, May 24, 2015)

### 1. Purpose

This regulation establishes standards and procedures for payment of the disability benefit for duty-incurred injuries.

### 2. CSC Rule References

#### **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 health and human services who is injured as a result of an assault by a recipient of mental health services.*



*(D) An employee of the department of health and 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, Camp Shawono in Grayling, or a similar facility under the jurisdiction of the department of health and 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 a 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.*

### **3. Standards**

- A.** In case of work-incapacitating injury or illness for which an employee is, or may be eligible for work disability benefit under the Michigan Workers' Compensation Act, an employee may be allowed salary payment which, with the workers' disability benefit, equals two-thirds of the regular salary or wage.
- B.** Leave credits may be utilized to the extent of the difference between the two thirds payment and the employee's regular salary or wage.
- C.** Approval of the first 50 weeks of two-thirds pay is based on receipt of a copy of the Notice of Commencement of Compensation Payments form (CS-701) received by the employee's appointing authority office from the workers' compensation administrator. This approval is limited to the employee's normal working days that fall within an expected or specific compensable period under the Michigan Workers' Compensation Act. Salary for permanent intermittent employees is as defined under the Michigan Workers' Compensation Act.

- D. The approval of two-thirds pay is limited to employees who have not received long term disability (LTD) benefits for the same period of disability. If LTD benefits have been paid, and worker's compensation for the same disability is retroactively awarded or the claim is settled by a redemption agreement, consideration of supplemental pay occurs when proper repayment to the LTD Plan has been made, unless the total LTD benefit is used as an offset for workers' compensation. In the case of an LTD offset, some repayment may be necessary to avoid paying the employee more than two-thirds pay.
- E. Employees receiving a retroactive workers' compensation payment must use these funds to repay the LTD Plan in accordance with any repayment agreement between the employee and the LTD plan administrator. In addition, the amount represented by a two-thirds supplement must be handled in one of the following ways:
1. The amount due is calculated, but not processed or paid directly to the employee. Instead, the information is sent to the director of the Office of the State Employer to be used as a credit against the amount owed to the LTD Plan.
  2. If the supplement is paid, the employee endorses the check over to the state toward repayment to the LTD Plan.
- F. In accordance with the following statutes, employees who are injured as a result of an assault by an inmate, resident or client will continue to receive, in addition to workers' compensation, a supplement from the agency which, together with the workers' compensation equals but does not exceed the weekly net wage of the employee at the time of injury:

Public Act Number	Department
293 of 1975 (amended 232, 1953)	Corrections
414 of 1976 (amended 258, 1974)	Health and Human Services (formerly Community Health)
131 of 1978 (amended 280, 1974)	Health and Human Services (formerly Human Services)
452 of 1978	State
285 of 1987	Military and Veterans Affairs

- G. The director of the Office of the State Employer shall consider, upon request, extending approval of the supplemental pay beyond 50 weeks only for those employees who will be able to return to work within 15 weeks, or allow the permanently disabled employee time to apply for duty-disability retirement benefits through the State Employees Retirement System and the Social Security System. The approval of any supplement is limited to a combined total of 100 weeks.

- H. Employees who are receiving workers' compensation and are also on the state payroll receiving an approved supplement are entitled to the state's contribution for group insurances (except LTD) if they remain on the state payroll.
- I. Employees not on the state payroll who receive a workers' compensation benefit are eligible for the state contribution to group insurance (except LTD) if the employees continue to pay their share directly to the respective appointing authority.
1. The state's contribution to the plans must be invoice-vouchered and forwarded to the respective group insurance fund account or insurance carrier.
  2. Continuance of the state contribution is limited to 25 pay periods (50 weeks) from onset of disability if the employee remains on an approved leave of absence and receives continual workers' compensation benefits.
- J. Continuance of the state contribution for insurance in excess of 50 weeks must be approved by the director of the Office of the State Employer with the same limitations as in § 3.H.
- K. Supplemental pay.**
1. The director of the Office of the State Employer administers the supplemental duty-disabled pay procedure. Documentation for the first 50 weeks of supplement are directed to the employee's appointing authority. All correspondence and requests for approvals and extension are sent to the director of the Employee Health Management Division.
  2. The appointing authority is responsible for processing the two-thirds supplement and the full net pay supplement on the payroll in accordance with HRMN procedures.
  3. The following chart is provided to assist in the administration of this benefit and to ensure that all agencies are computing time and granting credits uniformly.

**EMPLOYEE BENEFIT PROVISIONS FOR COMPENSABLE INJURIES**

<b>Benefits</b>	<b>Workers' Comp Only</b>	<b>Workers' Comp Supplemented to 2/3 Pay</b>	<b>Workers' Comp Supplemented to 2/3 Pay and 1/3 Leave* (full pay)</b>
Regular Accrual of Annual Leave	No	No	Yes
Regular Accrual of Sick Leave	No	No	Yes
Credit for Step Increases	No	No	Yes
Credit for Employment Preference	Full	Full	Full

<b>Benefits</b>	<b>Workers' Comp Only</b>	<b>Workers' Comp Supplemented to 2/3 Pay</b>	<b>Workers' Comp Supplemented to 2/3 Pay and 1/3 Leave* (full pay)</b>
Purposes			
Credit for Longevity	Full	Full	Full
Credit for Additional Leave	Full	Full	Full
Credit for Holiday Pay	No	No	1/3 credit
Credit for State Contribution for Insurances	Yes	Yes	Yes
Credit for State Contribution for Retirement	Yes	Yes	Yes
Credit Toward Gaining Status	No	No	No

\*Also applies to employees who are injured as a result of an assault.

## **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.14

<b>Subject:</b> <b>Maintenance Allowances And Reimbursements</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 5.14 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes standards for maintenance allowances and reimbursements for classified employees.

### 2. CSC Rule References

#### *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.

\* \* \*

**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.*

\* \* \*

**3. Standards****A. General.**

1. Allowances for maintenance are deducted from the employee's salary to the extent of their value as recommended by the appointing authority and the director of the Department of Technology, Management, and Budget.
2. Such deductions must be approved by the State Personnel Director.
3. The total amount of compensation paid to an employee plus the value of any maintenance must not be less than the minimum rate nor greater than the maximum rate for the classification as provided in the compensation plan.
4. Receipt of maintenance is optional with the employee except when necessary for the proper performance of the duties of the position.

**B. Meal Maintenance.**

1. An employee may purchase meals at state facilities at the discretion of the employer.
2. Charges for any such meals are set by the appointing authority at a level equal to the cost of food and labor.
3. It is the duty and responsibility of each appointing authority to annually provide written verification to the Office of the Budget that charges for meals sold to employees are sufficient to cover the cost.

**C. State-Owned Housing Maintenance.****1. Mandatory Housing.**

- a. Mandatory residency in state-owned housing is a condition of employment, when the appointing authority determines that such residency is essential and of benefit to the state.
- b. Notice of all mandatory housing determinations must be provided to the State Personnel Director. A copy of the notice must also be provided to the director of the Department of Technology, Management, and Budget.
- c. Rental rates are established upon occupancy of an employee in a particular unit.

- d. The rates are not changed until the premises are vacated and a different employee is assigned to the mandatory housing unit.

**2. Non-Mandatory Housing.**

- a. State-owned housing may be leased to employees for their own benefit and convenience.
- b. Rental rates are based, in part, on 100% fair-market rental value as determined by on-site appraisals conducted at least once every 5 years by the Department of Technology, Management and Budget.
  - (1) The rental rates are adjusted annually.
  - (2) Annual adjustments are based on the actual appraisals, and the percentage increase since the last adjustment in the Detroit Consumer Price Index for Urban Wage Earners and Clerical Workers, 1967=100, Residential Rent component.
  - (3) When it is not practical for employee-tenants to pay directly for utilities, the estimated costs for utilities are added to the appraised rental rate.

**3. Limitations.**

- a. State-paid housekeeping or groundskeeping services may be provided to housing units that are located on the main site of a facility. The value is determined by the Department of Technology, Management, and Budget.
- b. There is no state payment for telephone service within state-owned housing, except as costs are verified in writing to have been incurred on state business.
- c. Furnishings for state houses and apartments are provided by the occupants with the exception of currently existing state-owned furnishings. Any replacement of existing furnishings will be at the expense of the tenant with a commensurate decrease in rental charges.

**4. Exceptions.**

The governor's residences and training camps or academies operated by agencies such as Military and Veterans Affairs, Technology, Management, and Budget, Corrections, Natural Resources, and State Police, as they relate to state-employed trainees and students, are excluded from the provisions of this policy. Other exceptions may be granted by joint approval of the State Personnel Director and the director of the Department of Technology, Management, and Budget.

**D. Clothing and Uniform Cleaning Allowances.**

1. All employees who are furnished uniforms, identifying apparel, or protective apparel or equipment required by the employer as a condition of employment.

- a. When dry-cleaning the items is required, the cost is borne by the employer.
  - b. Cost of replacement due to normal wear and tear or accidental damage while being used on the job is borne by the employer.
2. The Civil Service Commission has approved special provisions for certain agencies.

**E. Expense Reimbursement Incurred for Official Travel.**

The director of the Department of Technology, Management, and Budget and the State Personnel Director shall jointly recommend to the Civil Service Commission reimbursement rates for employees who incur travel expenses for official travel. The joint recommendation must be submitted no later than April 30 of each year, for the fiscal year beginning October 1 of the same year.

1. **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.
2. **Action by the Commission.** The Civil Service Commission shall review the recommendation and approve, reject, or modify the recommendation.
3. **Exceptions.** For reasons of business necessity, either the director of the Department of Technology, Management, and Budget or the State Personnel Director may approve individual exceptions that vary from the approved rates.
4. The Department of Technology, Management, and Budget shall issue schedules of travel rates.

**CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).



# Michigan Civil Service Commission

## Regulation 5.15

Subject: <b>Moving Expenses</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 5.15 (SPDOC 14-09, August 31, 2014)

### 1. Purpose

This regulation establishes standards and procedures for payment of moving expenses.

### 2. CSC Rule References

#### 5-7 *Expense Reimbursement*

\* \* \*

#### 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.

\* \* \*

### 3. Standards

A. The State pays the following household moving expenses if an employee is transferred for the convenience and benefit of the State.

1. Transportation charges up to 14,000 pounds moved by common carrier, including bridge tolls, elevator, or flight charges.
2. Up to \$800 for packing charges.
3. The actual cost of moving mobile homes, including furnishings, used as normal residence, plus up to \$1,000 for blocking, unblocking, securing contents, or expando units.

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4. Insurance costs as provided for in the Department of Technology, Management and Budget Administrative Guide.
- B. The State will not pay for moving new employees not previously on the State payroll, except as authorized by the appointing authority and the director of the Department of Technology, Management and Budget.
  - C. The procedures for payment of employee household-moving expenses are contained in the Administrative Guide of the Department of Technology, Management and Budget.
  - D. The allowance for payment of travel, lodging, and meals in relation to changes in official workstation is in the Standardized Travel Regulations.

### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.16

<b>Subject:</b>  <b>Correcting Compensation Errors</b>		
<b>SPDOC No.:</b>  16-06	<b>Effective Date:</b>  January 1, 2017	<b>Replaces:</b>  Reg. 5.16 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes standards and guidelines for correcting errors in compensation.

### 2. CSC Rule References

#### **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.*

\* \* \*

#### **5-3 Compensation Schedules**

\* \* \*

##### **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.*

\* \* \*

**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.*

\* \* \*

**3. Definitions****A. CSC Rule Definition.**

1. **Compensation plan** means the civil service rules and regulations (including pay schedules) for administration of pay in the classified service.

**4. Standards****A. Requirements.**

1. **Authorized.** All employee compensation must be authorized by and administered in accordance with the compensation plan and any applicable collective bargaining agreement.
2. **Review, audit, and correction.** All compensation is subject to review, audit, and correction by the appointing authority and Civil Service.
3. **Report errors.** An employee is required to report all errors in the administration of the compensation plan to the employee's appointing authority or Civil Service.
4. **Correction required.** Any compensation errors, including overpayment and underpayment, shall be corrected as provided in this regulation.
5. **Withholding.** All payments to employees to correct errors are subject to withholding as required by law.
6. **Prospective recovery and repayments.** Except where retroactive recovery or payment is expressly authorized, compensation errors are corrected prospectively only, beginning the first day of the pay period in which the appointing authority or Civil Service learned of the error.
7. **Document retention.** The appointing authority must retain documentation of any overpayment, underpayment, and collection effort for 3 years.

**B. Overpayments.**

1. **Recovery required.** If an employee is overpaid, the appointing authority or Civil Service shall recover the amount of overpayment from the employee, as provided in this regulation.
2. **Limits of employee liability.** If an employee is overpaid, the employee is liable to repay the amount of the overpayment, as follows:
  - a. **No fraud; limit on recovery from employee.** If an employee is overpaid for reasons other than fraud or misrepresentation by the employee, the employee must repay the amount of the overpayment received during the 26 biweekly pay periods before the pay period in which the appointing authority or Civil Service learned of the overpayment.
  - b. **Fraud; no limit on recovery from employee.** If an employee is overpaid as the result of fraud or misrepresentation by the employee, the employee must repay the entire amount of the overpayment. In addition, (1) the employee may be disciplined, up to and including dismissal, and (2) the matter may be referred to the Attorney General, State Police, or local law enforcement authorities for a criminal investigation and to the Attorney General for civil action.
3. **Repayment Procedures.** An employee must repay any overpayment in one of the following ways:
  - a. **Voluntary repayment agreement.** An employee obligated to make repayments may agree in writing to a repayment schedule acceptable to the appointing authority. Repayment shall be by voluntary deduction from the employee's biweekly wages. All repayment must be collected within one calendar year after the date of the agreement.
  - b. **Involuntary payroll deduction.** If an employee obligated to make repayments does not agree to a repayment schedule acceptable to the appointing authority, the amount of the overpayment may be deducted from the employee's biweekly wages without the employee's consent, subject to the following limitations:
    - (1) The employee must be given advance written notice of the deductions.
    - (2) The biweekly deduction cannot exceed 15 percent of gross wages earned in the pay period in which the deduction is made.
    - (3) The deduction is made after all deductions expressly permitted or required by law or a collective bargaining agreement and before any net amount of the employee's wages is paid or electronically deposited.
    - (4) The deduction does not reduce the employee's regularly scheduled gross wages otherwise due the employee below the minimum wage requirement in federal law.

4. **Waiver.** If it is not cost effective to recover overcompensation, Civil Service may authorize the appointing authority to waive recovery.
5. **Employee left state service.** If an overcompensated employee has left the classified service, the appointing authority should take any steps practicable to recover the overcompensation.

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

1. **Payment required.** If an employee is underpaid, the appointing authority must pay the employee the amount underpaid.
2. **Limit on retroactivity.** An employee is entitled to retroactive payment of any underpayment for up to 26 biweekly pay periods before the date the appointing authority or Civil Service learned of the underpayment. Retroactive payment of undercompensation beyond 26 biweekly pay periods is not permitted.
3. **Payment schedule.** The employee shall be paid the total authorized amount of the underpayment in a single payment within 4 pay periods after the underpayment was discovered. The employee and the appointing authority may agree in writing to a different payment schedule.

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

1. Employee complaints regarding compensation or involuntary deductions ordered by an appointing authority must be filed as authorized in rule 8-1 and regulation 8.01, unless the following rules or regulations require filing a technical complaint:
  - a. **Classification.** A complaint regarding classification must be filed in the technical complaint process, as authorized in rule 8-3 and regulation 8.02.
  - b. **Working out of class.** A complaint regarding working out of class must be filed in the technical working-out-of-class process, as authorized in rule 4-5 and regulation 4.08.
2. Employee complaints regarding involuntary deductions ordered by Civil Service must be filed under the procedures authorized in regulation 5.18, § 4.B.3.

### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.17

<b>Subject:</b>  <b>Electronic Funds Transfer</b>		
<b>SPDOC No.:</b>  16-06	<b>Effective Date:</b>  January 1, 2017	<b>Replaces:</b>  Reg. 5.17 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes standards and guidelines for the payment of salary or wages to employees hired after October 1, 2002.

### 2. CSC Rule References

#### *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.*

### 3. Standards

#### **A. Payment.**

1. Net salary or wages shall be directly deposited via electronic funds transfer (EFT).
2. The appointing authority shall inform all newly hired employees that direct deposit via EFT is mandatory and a continuing condition of employment.
3. The appointing authority shall provide all newly hired employees with necessary information and requisite paper form or on-line application.
4. The employee shall designate the financial institution routing number and account number to which the employee's net payment will be deposited.

Note: Under § 13(1) of the Freedom of Information Act, these records are personal in nature and exempt from disclosure. The appointing authority shall not disseminate this information pursuant to any written or oral request without written authorization of the employee.

5. The employee shall either complete the on-line direct deposit application or return the completed paper form to the appointing authority prior to the end of the first pay period in which the employee is hired.

6. The appointing authority shall verify the on-line application process or process the necessary information from the paper form into the Human Resource Management Network (HRMN) within the first pay period of the employee's hire date.

**B. Effective Date.**

The direct deposit of the employee's net pay via EFT begins with the second payday following the employee's date of hire.

**C. Exceptions.**

1. The appointing authority may waive the requirement of direct deposit payment via EFT for the following reasons:
  - a. If it causes an undue hardship to the employee, including, for example, a physical or mental disability; geographic, language, or literacy barrier; or financial hardship.
  - b. If an employee is hired for a position expected to last less than a four-week period.
2. An employee seeking to waive direct deposit payment via EFT must submit a written request to the appointing authority.
3. The appointing authority must provide a written response to an employee seeking to waive direct deposit payment via EFT.
4. The appointing authority shall retain waiver documentation in the personnel file.
5. Exceptions are subject to Civil Service audit.

**D. Compliance.**

1. Any employee hired after October 1, 2002, must complete an on-line direct deposit application through self-service access in HRMN, or submit the requisite paper form or request for waiver to the appointing authority prior to the end of the pay period in which the employee is hired.
2. The appointing authority shall notify any employee who fails to comply with § 4.D.1 that failure to do so by the end of the first full pay period following the date of notification will result in separation for just cause as provided in rule 2-6.
3. The appointing authority shall notify any employee, hired after October 1, 2002, who cancels an EFT that failure to reapply either on-line or by submitting a direct deposit form, or request seeking to waive direct deposit payment via EFT by the end of the first full pay period following the date of notification will result in discipline, up to and including separation as stated in § 4.D.2.
4. EFT records are subject to Civil Service audit.



#### 4. Procedures

Responsibility	Action
Appointing Authority	1. Informs employee of mandatory EFT and provides employee with on-line application or paper form.
Employee	2. Completes on-line direct deposit application or submits paper form. May submit written request for waiver.
Appointing Authority	3. Verifies that on-line application has been completed or enters necessary information in the Human Resource Management Network (HRMN), or approves request for waiver. Provides written response for waiver requests.
	4. Provide written notice to an employee who does not comply with § 4.D.1 that failure to do so will result in the employee's separation.
	5. In the event of an EFT cancellation, provides written notice to the employee that failure to reapply by on-line application, submission of the paper form, or written request for waiver will result in discipline, up to and including separation.
	6. If necessary, process separation in HRMN.
	7. Retains documentation in the personnel file.
Civil Service	8. Conducts audit of EFT records.

#### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.18

Subject: <b>Complaints About Benefits</b>		
SPDOC No.: 17-02	Effective Date: March 12, 2017	Replaces: Reg. 5.18 (SPDOC 16-06, January 1, 2017)

### 1. Purpose

This regulation provides the exclusive procedures for all classified employees to file (1) complaints about benefits under group insurance plans and (2) HIPAA privacy complaints about self-insured state health-insurance plans.

### 2. CSC Rule References

#### *5-11 Group Insurance Plans*

##### *5-11.1 Types of Group Insurance Plans*

\* \* \*

*(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.*

\* \* \*

### 3. Definitions

#### **A. CSC Rule Definitions.**

- 1. 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.*

#### **B. Definitions in This Regulation.**

- 1. Group insurance plans** means all the following:

- a. The group insurance plans authorized in the compensation plan for employee health, dental, vision, disability, life, and accidental death for which the State retains the responsibility to pay the cost of all claims.
  - b. COBRA and other insurance continuation programs authorized by law or the compensation plan.
2. **Qualified pretax plan** means health-care and dependent-care flexible spending accounts and qualified transportation fringe benefits reimbursement plans authorized by law.
  3. **Third-party administrator (TPA)** means an organization under contract with the State to administer claims under a group-insurance plan.
  4. **Voluntary benefits plan (VBP)** means a benefit or insurance plan for which (1) the State does not pay any portion of the costs or benefits and (2) the employee pays all premium costs.

#### 4. Standards

**A. Complaints About Third-Party Administrator (TPA) Decisions.** A TPA processes claims for the state for some state group-insurance plans, but the state retains responsibility to review these decisions. A classified employee with a complaint over a group-insurance-plan benefit must complain under the exclusive procedure in this regulation.

1. **Plans and third-party administrators.** As of this regulation's effective date, the following TPAs are responsible for the corresponding plans:

Plan	Third-Party Administrator (TPA)
State Health Plan PPO	Blue Cross Blue Shield of Michigan
Catastrophic Health Plan	Blue Cross Blue Shield of Michigan
State Dental Plan	Delta Dental Plan of Michigan
Preventive Dental Plan	Delta Dental Plan of Michigan
State Vision Plan	Blue Cross Blue Shield of Michigan
State Mental Health and Substance Abuse Plan	Magellan Healthcare
State Prescription Drug Plan	OptumRx
Group Life Insurance Plan	Minnesota Life
Long-term Disability Plan	York Risk Services Group
Health-Care or Dependent-Care Flexible Spending Account Plan	WageWorks

2. **Initial complaints to TPA.** If an employee has a complaint about a plan decision made by a TPA (e.g., coverage, exclusion, or payment decisions), the employee must first file a complaint with the TPA and exhaust all appeal mechanisms provided by the TPA. All documentation that an employee wants considered in any appeal must be provided by the final appeal available with the TPA; records newly submitted with an appeal to the Employee Benefits Division (EBD) will not be considered.
3. **Appeal of final TPA decision.** After exhausting the TPA's complaint and appeal process, an employee who disagrees with a TPA's final decision must file any appeal in writing to the EBD as follows:
  - a. **How to file.** The appeal must be filed with the EBD by email to [MCSC-EBDAppeal@mi.gov](mailto:MCSC-EBDAppeal@mi.gov).
  - b. **Time limit.** The EBD must **receive** the appeal within 28 days after the date of the TPA's final decision. If an employee fails to timely appeal, the TPA's decision is final and cannot be further appealed.
  - c. **Contents.** An appeal must include (a) a clear and concise statement of the relief sought and why the TPA's decision is in error and (b) a copy of the final TPA decision being appealed. The EBD will obtain the record from the TPA for its review.
  - d. **Review and decision.** If a timely appeal is filed, the EBD shall review the record from the TPA, the employee's filing, and any other information the EBD deems necessary to evaluate the appeal. The EBD shall then issue a written decision.
- B. **Direct Complaint to Civil Service.** If an employee has a complaint about a group-insurance-benefit or qualified-pretax-plan decision made by someone other than a TPA (e.g., a plan enrollment decision), the employee must file any complaint in writing directly with the EBD by email to [MCSC-EBDAppeal@mi.gov](mailto:MCSC-EBDAppeal@mi.gov).
  1. **Complaint.** The EBD must **receive** the complaint within 28 days after the employee knew of or, in exercising reasonable diligence, should have known of the circumstances giving rise to the complaint.
  2. **Contents.** The complaint must include (a) a clear and concise statement of the relief sought and (b) copies of all relevant information and evidence needed to consider the complaint.
  3. **Review and decision.** The EBD shall review the appeal and issue a written decision.
- C. **Further Appeal to Commission.** An employee who disagrees with a decision of the EBD, either as an appeal of a TPA decision or after a direct complaint, may appeal the decision to the commission under regulation 8.05.
- D. **HMOs, DHMOs, and VBPs.** Health Maintenance Organizations (HMOs), Dental Health Maintenance Organizations (DHMOs), and Voluntary Benefit Plans (VBPs) are not

covered by this regulation. Voluntary benefit plans include legal, term-life, universal-life, long-term-care, critical-illness, home, automobile, and other insurance programs where the employee pays the full premium cost. If HMOs, DHMOs, or VBPs are responsible for a group-insurance-benefit decision, an employee must file any complaint directly with the applicable HMO, DHMO, or VBP carrier. The carrier's final decision cannot be appealed to the EBD or commission.

**E. Complaints About Qualified Pretax Plans.** Complaints about qualified pretax plans arising under or related to regulation 5.19 must be filed with Civil Service exclusively under §§ 4.B or 4.C.

**F. Complaints About Involuntary Payroll Deductions by Civil Service.** Complaints against Civil Service about involuntary payroll deductions to recover overpayments under regulation 5.16 must be filed with Civil Service under § 4.B. Complaints against an agency about involuntary payroll deductions must be filed under the grievance process.

**G. Privacy Complaints.**

- 1. Complaint Filing.** An eligible classified employee enrolled in a self-insured health-insurance plan administered by the EBD who believes that the plan has improperly used or disclosed personal health information may file a complaint with the plan's Privacy Official. The complaint must be filed on the HIPAA Privacy Complaint Form ([CS-1782](#)). The complaint must identify the alleged violation of privacy rights with sufficient specificity to allow review. Privacy complaints over HMOs, DHMOs, VBPs, long-term-disability plans, or life-insurance plans must be directed to the plan's TPA or carrier.
- 2. Privacy Official Review.** Under the plan's privacy policies, the Privacy Official or a designee shall review the complaint and make written findings on the alleged violations. This decision is final. The Privacy Official shall send the complainant and any other relevant party copies of the written findings. The Privacy Official shall continuously evaluate complaints to seek improvements to existing privacy procedures. An appointing authority shall consider all appropriate discipline of an employee found by the Privacy Official or designee to have violated privacy procedures.

## **CONTACT**

Questions on this regulation may be directed to the Employee Benefits Division, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 1-800-505-5011; or to [MCSC-EBDAppeal@mi.gov](mailto:MCSC-EBDAppeal@mi.gov). Questions on privacy complaints may be directed to the Civil Service Privacy Official at the same address and phone number or [MCSC-HIPAA@mi.gov](mailto:MCSC-HIPAA@mi.gov).

# Michigan Civil Service Commission

## Regulation 5.19

<b>Subject:</b>  <b>Correcting Benefit Errors</b>		
<b>SPDOC No.:</b>  16-06	<b>Effective Date:</b>  January 1, 2017	<b>Replaces:</b>  Reg. 5.20 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes standards and procedures for correcting benefit errors in group insurance plans and qualified pretax plans.

### 2. CSC Rule References

#### *5-11 Group Insurance Plans*

##### *5-11.1 Types of Group Insurance Plans*

\* \* \*

*(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.*

\* \* \*

### 3. Definitions

#### **A. CSC Rule Definitions.**

- 1. Compensation plan means the civil service rules and regulations (including pay schedules) for administration of pay in the classified service.*
- 2. 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.*

#### **B. Definitions in This Regulation.**

- 1. Unpaid benefits** means any of the following:

- a. Unpaid medical, dental, or vision costs that are eligible for payment or reimbursement under a group insurance plan.
  - b. Unpaid long-term disability income or death benefits that are payable under a group insurance plan.
  - c. Unreimbursed medical care or dependent care costs that are eligible for reimbursement under a qualified pretax plan.
2. **Excess benefit costs** means benefit costs incurred by the state on behalf of an employee or dependent that are not authorized under any group insurance plan or qualified pretax plan.
3. **Benefits** means (1) group insurance benefits and (2) eligibility, enrollments, coverages, exclusions, costs, reimbursements, payments, deductibles, or other benefits authorized under a qualified pretax plan.
4. **Group insurance plans** means all of the following:
  - a. The group insurance plans authorized in the compensation plan for employee health (medical, dental, vision), disability, life, and accidental death.
  - b. COBRA and other insurance continuation programs authorized by law or the compensation plan.
5. **Qualified pretax plan** means any of the following:
  - a. Medical care spending account authorized by law.
  - b. Dependent care spending account authorized by law.
  - c. Qualified parking reimbursement plan authorized by law.
6. **Improper reimbursement** means a reimbursement under a qualified pretax plan that is not authorized under applicable law or properly documented by the employee.

## 4. Standards

### A. Requirements.

1. **Authorized.** All benefits must be authorized by and administered in accordance with (1) the compensation plan, (2) any applicable collective bargaining agreement, (3) any contract between the state and a third-party administrator, and (4) other applicable law.
2. **Review, audit, and correction.** All benefits are subject to review, audit, and correction by Civil Service.
3. **Report errors.** All appointing authorities and employees are required to report benefit errors to Civil Service, Employee Benefits.

4. **Correction required.** Any benefit error shall be corrected as provided in this regulation.
5. **Withholding.** All payments to employees to correct errors are subject to withholding as required by law.
6. **Prospective recovery and repayments.** Except where retroactive recovery or payment is expressly authorized, benefit errors are corrected prospectively only, beginning the pay period in which Civil Service learned of the error.

**B. Eligibility for Group Insurance Benefits.**

1. **Documentation Required.** An employee may be required to document or verify the eligibility of the employee or a dependent for group insurance benefits before or at any time after enrollment.
2. **Denial or Cancellation of Eligibility.** If an employee cannot document or verify eligibility for a group insurance benefit to the satisfaction of Civil Service, Civil Service shall deny or cancel the group insurance benefit. Civil Service must give the employee at least 14 calendar days advance written notice of the cancellation of any existing group insurance benefit.

**C. Excess Benefit Costs for State.**

1. **Recovery of Excess Benefits Costs Authorized.**
  - a. **Recovery.** If the state incurs excess benefit costs, Civil Service shall recover the excess benefit costs from the employee as provided in this regulation.
  - b. **No fraud; limit on recovery from employee.** If the state incurs excess benefit costs for reasons other than fraud or misrepresentation by the employee, the employee must repay the amount of the excess benefit costs incurred or paid by the state during the 26 biweekly pay periods before the pay period in which Civil Service learned of the reasons giving rise to the excess benefit cost.
  - c. **Fraud; no limit on recovery from employee.** If the state incurs excess benefit costs as the result of fraud or misrepresentation by the employee, the employee must repay the entire amount of the excess benefit costs, without limit. In addition, (1) the employee may be disciplined, up to and including dismissal and (2) the matter may be referred to the Attorney General, State Police, or local law enforcement authorities for a criminal investigation and to the Attorney General for civil action.
  - d. **Coordination of benefits; no limit on recovery from employee.** Notwithstanding § 4.C.1.b, if the state incurs excess benefit costs as a result of coordination of benefit provisions, the employee must repay the entire amount of the excess benefit costs, without limit.



**2. Repayment of Excess Benefit Costs.**

- a. **Voluntary repayment agreement.** An employee obligated to repay excess benefit costs may agree in writing to a repayment schedule acceptable to Civil Service. Repayment shall be by voluntary deduction from the employee's biweekly wages. All repayment must be collected within one calendar year after the date of the agreement.
- b. **Involuntary payroll deduction.** If an employee obligated to make repayments does not agree to a repayment schedule acceptable to Civil Service, Civil Service may deduct the amount of the overpayment from the employee's biweekly wages without the employee's consent, subject to the following limitations:
  - (1) Civil Service must give the employee advance written notice of the deductions.
  - (2) The biweekly deduction cannot exceed 15 percent of gross wages earned in the pay period in which the deduction is made.
  - (3) The deduction is made after all deductions expressly permitted or required by law or a collective bargaining agreement and before any net amount of the employee's wages is paid or electronically deposited.
  - (4) The deduction does not reduce the employee's regularly scheduled gross wages otherwise due the employee below the minimum wage requirement established in law.
- c. **Waiver.** Civil Service may waive recovery of excess benefit costs if recovery is not cost effective.
- d. **Employee left state service.** If an employee has left the classified service, Civil Service may take any steps practicable to recover the excess benefit costs.

**D. Improper Reimbursements.**

1. **Recovery Authorized.** If an employee receives an improper reimbursement from a qualified pretax plan, Civil Service shall recover the amount of the improper reimbursement from the employee.
2. **Repayment of improper reimbursement by employee.**
  - a. **Voluntary Repayment Agreement.** An employee obligated to repay an improper reimbursement may agree in writing to a repayment schedule acceptable to Civil Service. Repayment shall be by voluntary deduction from the employee's biweekly wages or lump sum payment. All repayments must be collected within one calendar year after the date of the agreement.
  - b. **Involuntary Payroll Deduction.** If an employee obligated to make repayments does not agree to a repayment schedule acceptable to Civil Service, Civil Service

may deduct the amount of the improper reimbursement from the employee's biweekly wages without the employee's consent, as provided in § 4.C.2.b.

3. **Adjustments.** Civil Service shall make any necessary adjustments in the employee's tax withholding accounts.
4. **Retroactive recovery.** Civil Service may require repayment of any improper reimbursement if discovered up to 26 pay periods after the end of the tax year or the last date for submitting requests for reimbursements, whichever is later.

#### **E. Unpaid Benefits.**

1. **Payment authorized.** Civil Service shall reimburse an employee for any unpaid benefit if all of the following occur:
  - a. The employee or a dependent is denied an eligible group insurance benefit.
  - b. The denial was the direct result of an error regarding a group insurance benefit by an authorized state employee or plan administrator.
  - c. The employee (1) incurred or paid direct medical, dental, or vision care costs that, but for the error, the state would have paid or reimbursed the employee or (2) was not properly reimbursed for eligible expenses under a medical care or dependent care spending account.
2. **Limits on payment.** Payments to an employee for eligible unpaid benefits are limited as follows:
  - a. Payments may not exceed the actual dollar amount of eligible group insurance benefits necessarily paid by the employee or improperly denied to the employee solely as a result of the error by an authorized state employee or plan administrator. No payment is authorized for collateral, consequential, incidental, speculative, prospective, or other costs or damages claimed by the employee that are not covered eligible expenses.

Example: If an employee is denied medical coverage as a result of an error and the employee makes different medical care choices and incurs additional uninsured costs for travel, inconvenience, pain and suffering, lost income, lost leave credits, or additional medical costs, such collateral and consequential costs are not payable. The employee may recover only so much of the actual costs incurred that, but for the error, would have been covered benefits.

- b. No payment is authorized for costs resulting from any error, act, or decision by the eligible employee, the employee's dependent, or any person not an authorized state employee or plan administrator.
- c. An employee is entitled to retroactive payment of any benefit errors authorized in this regulation up to a maximum of 26 biweekly pay periods before the date

Civil Service learned of the benefit error. Retroactive payment beyond 26 biweekly pay periods is not permitted.

- d. Notwithstanding any other provision, in the case of a medical care or dependent care spending account, any reimbursement is limited to the maximum amount available in the spending account and to the appropriate tax year.

#### **F. Employee Complaints.**

An employee complaint regarding benefits, excess benefit costs, unpaid claims, or involuntary payroll deductions authorized under this regulation must be filed under the provisions of regulation 5.18.

### **CONTACT**

Questions on this regulation may be directed to the Employee Benefits Division, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-7977 or 1-800-505-5011; or to [MCSC-EBDAppeal@mi.gov](mailto:MCSC-EBDAppeal@mi.gov).

# Michigan Civil Service Commission

## Regulation 6.01

Subject: <b>Limited-Recognition Organizations</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 6.01 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation (1) provides procedures for the recognition of limited-recognition organizations (LROs) and (2) lists the rights afforded to LROs.

### 2. CSC Rule References

#### **6-2 Employee-Employer Relations Systems**

\* \* \*

#### **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.*

\* \* \*

#### **6-8 Recognition Rights for Labor Organizations**

\* \* \*

#### **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.

\* \* \*

### 3. Standards

**A. Recognition.** The State Personnel Director shall recognize an organization as an LRO if the organization provides the director with the following:

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.
4. Membership application forms, signed within the last year, that demonstrate proof of membership of 50 or more nonexclusively represented employees.

**B. Derecognition.** By April 1 of each year, each recognized LRO shall provide the director with a certification of the names and I.D. numbers of at least 50 excluded-employee members. Payroll deduction records may serve as proof of membership. The LRO must also submit an updated copy of its constitution, bylaws, or other governing documents, the names and addresses of its officers, and proof of registration as a nonprofit corporation in the State of Michigan, for each item that has changed since the most recent filing with the director. If the LRO does not demonstrate continuing membership of 50 or more members on or before April 1, the director shall give notice to the LRO of its derecognition. A derecognized organization cannot exercise rights reserved to LROs in the Civil Service rules and regulations.

**C. Rights.**

1. **Dispute Representation.** LROs may represent members in grievances, technical appeals, and unfair labor practices, when requested by the member.

2. **Interest Representation.** LROs may represent the interests of members at meetings with the Office of the State Employer, appointing authorities, Civil Service staff, Coordinated Compensation Panel, or the Civil Service Commission. Appointing authorities have discretion to grant administrative leave for such activities based on operational needs. The State Personnel Director may grant administrative leave to members of an LRO for a meeting with Civil Service staff, after giving notice to affected appointing authorities.
  3. **Dues Deduction.** LROs may obtain dues deduction, as allowed in regulation 6.03.
  4. **Reinstatement of Annual Leave.** LRO officers and other employees designated in writing by the LRO may reinstate up to 10 days of credits used on internal organizational affairs in the previous 12 months by cash payment, in accordance with Department of Management and Budget Administrative Manual Procedure 1210.16, Reinstatement of Annual Leave.
  5. **Administrative Leave Request.** An LRO may annually petition the State Personnel Director for administrative leave for representatives' necessary absence from work to attend an annual meeting of the members of the LRO. The director may approve up to 200 hours per 1,000 members on payroll deduction in the most recent reliable membership count readily available to the director when the request is received. The request to the director must be made at least 60 days in advance.
  6. **Leave To Accept Organization Position.** A classified employee who accepts employment with an LRO is not entitled to administrative leave, but is entitled to an unpaid formal leave of absence for the period of employment. However, after three years the vacated position may be filled by permanent appointment. Upon request for restoration to duty, the employee's name is placed on appropriate recall lists.
- D. Limitations.** Except where specifically required by the Civil Service rules or regulations, any administrative leave for LRO activities must be authorized by the appointing authority. LRO expenses, including travel expenses, and overtime compensation are not authorized.

## **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 6.02

Subject: <b>Unfair Labor Practice Charges</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 6.02 (SPDOC 15-15, October 1, 2015)

### 1. Purpose

This regulation provides procedures for filing unfair labor practice (ULP) charges.

### 2. CSC Rule References

#### **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.*

\* \* \*

#### **6-11 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.*

## **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.*

## **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 (CSHO).
2. **Filing and Service.** Any charge must be filed with the CSHO by email to [MCSC-Hearings@mi.gov](mailto:MCSC-Hearings@mi.gov).
3. **Time Limits.** An employee, employee organization, or employer normally must file any written ULP charge within six weeks of becoming aware of the cause of the charge. A ULP charge can be filed up to six months after the ULP occurred, if good cause for the untimely filing is demonstrated. No charge can be filed for a 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*.
4. **Charges.** A ULP charge filing must include the following:



- a. The name, email address, and signature of the charging party and the name and email address of any representative filing the charge. A signature can be a scanned document of an actual signature or the charging party's typed name followed by "/s/" (e.g., "John Doe /s/").
  - b. The name of the charged party.
  - c. A citation of the specific ULPs, as defined in rules 6-8, 6-11 and 6-12, that are alleged to have occurred.
  - d. A clear, concise, and complete statement of facts supporting each alleged ULP, including dates and locations of each alleged act.
5. **Administrative Review.** If a charging party does not meet the filing requirements in this regulation, the CSHO shall issue a notice of deficiency and allow 14 calendar days to correct the deficiency.
6. **Administrative Dismissal.** An adjudicating officer may administratively dismiss a 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 and 6-12.1.
  - b. **Failure to state a claim.** The charging party has not 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 timely filed.
  - 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. **Answers.** If a charge is not administratively denied, the CSHO shall ensure service of a copy to each charged party and allow 28 calendar days to file a signed, written answer by email to [MCSC-Hearings@mi.gov](mailto:MCSC-Hearings@mi.gov). The CSHO shall ensure service of the answers on the charging party. The Office of the State Employer or an exclusive representative may file a motion to intervene in a ULP charge with the CSHO. If assigned for hearing, the hearing officer shall rule on the motion to intervene. Failure to intervene will preclude involvement in any further appeals.

**C. Hearings.**

1. **Scheduling.** If the ULP charge meets the requirements of this procedure, 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, apply to hearings under this regulation, except that references to “grievance,” “grievances,” and “grievance appeal” therein are replaced with “ULP charge,” and “grievant” therein is replaced with “charging party”:
  - a. § 4.E, Prehearing Procedures.
  - b. § 4.F, Discovery.
  - c. § 4.G, Hearing Procedures.
4. **Burden of proof.** The charging party must prove each element of its charge by a preponderance of the evidence.
5. **Decision.** The hearing officer shall issue a written decision. The hearing officer shall dismiss or sustain each charge in whole or part. If a charge is sustained, the hearing officer shall order that the charged party (1) cease and desist any ULPs found and (2) take action to remedy their effects. The hearing officer cannot award attorney fees, witness fees, costs, or other expenses.

**D. Appeals.** A hearing officer’s final decision in a 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, as provided in rule 6-14.3. A ULP decision becomes final and binding on the parties 29 calendar days after issuance, unless the decision provides a later effective date or a timely appeal is filed. A decision is automatically stayed pending resolution of a timely appeal.

**E. Authorized Representation.** The provisions of Regulation 8.01, § 4.L apply to representation and administrative leave under this regulation, except that references to “grievance,” “grievance appeal,” and “grievance regarding a prohibited subject of bargaining under an exclusive Civil Service procedure” therein are replaced with “ULP charge,” and “grievant” therein is replaced with “charging party.” If a charge is against a labor organization, the employee cannot designate an employee or agent of the labor organization as an authorized representative without the labor organization’s written consent.

**CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 6.03

<b>Subject:</b> <b>Dues and Fees Deduction</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 6.03 (SPDOC-07-14, October 7, 2007)

### 1. Purpose

This regulation provides procedures to collect dues and service fees from labor-organization members and fee payers.

### 2. CSC Rule References

#### **6-7 Dues and Service Fees**

*If agreed to in a collective bargaining agreement, the state may deduct the dues or service fee of a member of an exclusively represented bargaining unit through payroll deduction. Notwithstanding any contrary provision of a collective bargaining agreement, an appointing authority shall not deduct membership dues or service fees unless the employee has filed a current voluntary written authorization.*

#### **6-8 Recognition Rights for Labor Organizations**

\* \* \*

##### **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.*

\* \* \*

### 3. Definitions

#### A. CSC Rule Definitions.

1. ***Exclusive representative** means a labor organization granted recognition and certified as the sole representative of all employees in an appropriate unit.*
2. ***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.*
3. ***Limited-recognition organization** means a labor organization recognized by the state personnel director to represent employees in nonexclusively represented positions.*

### 4. Standards

**A. Dues or Fee Deduction to Exclusive Representative.** If agreed to in a valid collective bargaining agreement, an employee organization may use payroll deduction for dues or service fees as authorized in writing by individual members in a bargaining unit. Employees in an exclusively represented unit cannot pay dues or fees through payroll deduction to, nor be represented by, an employee organization or agent other than the organization certified as the exclusive representative of their unit. The provisions of this procedure concerning the rights of an exclusive representative to payroll deduction of dues or fees may be changed by negotiation and agreement between an exclusive representative and the State Employer.

**B. Right to Dues Deduction of Nonexclusively Represented Employees in a Limited-Recognition Organization.** A limited-recognition organization, upon approval of the Office of the State Employer, may use payroll deduction for dues as authorized individually by its employee members in writing. A nonexclusively represented employee cannot have dues deducted from earnings and remitted to more than one organization.

#### C. Employee Deductions.

1. **Payroll Deduction Authorization Form.** A labor organization shall print a payroll deduction authorization form for use by its members or service-fee payers. The form must be approved by the State Personnel Director, consistent with the accounting convenience of the State.
  - a. **Current Deduction.** As of the effective date of this regulation, all payroll deduction cards filed with state agencies supporting current individual employee deductions will continue to be honored.
  - b. **Signatures.** If a change in card design is required, employee organizations are not required to obtain signatures of current members on payroll deduction.

2. **Starting.** To initiate payroll deduction, an authorization form signed and dated by the employee must be submitted to the employing agency in accordance with its procedures.
3. **Canceling.** To terminate payroll deduction, a written request, signed and dated by the employee, must be submitted to the employing agency. The employing agency shall not print or provide withdrawal cards.
4. **Service-Fee Payers.** An exclusive representative may deduct a service fee from a non-member employee in its unit if the employee has filed a prior written authorization.
5. **Effective Date.** The initiation or termination of deductions, based on a request received during any pay period, is effective no later than the following pay period.
6. **Automatic Cancellation.** Separation from employment or layoff in excess of 180 calendar days terminates an employee's deduction authorization. Decertification or derecognition of a labor organization also terminates deduction authorization of all members and fee payers.

**D. Changes in Deduction Amounts.** Group increases or decreases in the amount of deductions require application to the State Employer. The employee organization must provide the State Employer with a certification that the membership authorized the change and that notice has been given to all members. The Office of the State Employer shall ensure that the change is implemented within three payroll periods after State Employer approval.

## **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 6.04

Subject: <b>Determination of Exclusive Recognition</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 6.04 (SPDOC 07-14, October 7, 2007)

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## 1. Purpose

This regulation provides procedures for determining an exclusive representative for a bargaining unit.

## 2. CSC Rule References

### 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.*

### **3. Standards**

#### **A. Most Appropriate Unit.**

A most appropriate unit is a group of classifications that the State Personnel Director has determined meets all of the following criteria:

1. Contains a broad occupational unit of employees with a community of interest.

2. Facilitates primary negotiation of statewide issues and administration of state government as a whole.
3. Includes all employees in a broad grouping of occupationally-related classifications, except employees in excluded managerial, supervisory, or confidential positions.

**B. Exclusive Recognition.**

Exclusive recognition refers to the certified representation status of a labor organization as the sole and exclusive representative of all employees in a unit. The director shall assign newly created classifications to the most appropriate unit, if applicable, subject to review as provided in § 3.F.

**C. Requesting an Election.**

1. **Petition for Election.** An employee, group of employees, individual, or employee organization may request a certification or decertification election in a unit by submitting a petition for election to the State Personnel Director on a form provided by the director.
2. **Showing of Interest.** When filed, a petition must be supported by a showing of interest of 30 percent of the eligible employees actively at work in a unit on a form that meets the following minimum requirements:
  - a. The form contains the words “REQUEST FOR EXCLUSIVE REPRESENTATION” or “REQUEST FOR DECERTIFICATION” in the largest size type used on the form.
  - b. The form contains the words “I, the undersigned State of Michigan classified employee, wish to be exclusively represented by [(name of employee organization) or ‘no organization’] under the provisions of Chapter 6 of the Civil Service Commission Rules.”
  - c. The form includes a place for the employee’s name to be printed.
  - d. The form includes places for the employee’s signature and the date of the employee’s signature.
  - e. The form includes a place for the employee’s identification number.

Any showing of interest forms that do not meet these requirements must be submitted to and approved by Hearings, Employee Relations and Mediation before circulation for employees’ signatures.

3. **Sufficiency-of-interest determinations.** The sufficiency of a showing of interest is a matter of administrative determination by the director and is not subject to collateral attack by the parties. After a petition is filed, the Office of the State Employer shall provide a list of eligible employees to the director. The director shall determine whether a bona fide question of representation exists and whether petitioners have

shown the interest of at least 30 percent of the eligible employees actively at work in the unit. The director shall advise a petitioner of the reasons for any dismissal. The petitioning party may appeal a dismissal to the Civil Service Commission.

4. **Intervenors.** An employee, group of employees, individual, or employee organization may petition to intervene. The petition must be filed within 14 days of the director's sufficiency-of-interest determination and must be supported by a showing of interest of 10 percent of the eligible employees actively at work in the unit. The director shall similarly determine the sufficiency of a showing of interest to intervene. After demonstrating a sufficient showing of interest, an intervenor may attend any hearing that the director schedules and may appear on the election ballot.
5. **Excluded Employees.** Before the initial election in a unit and after the director's sufficiency-of-interest determination, the Office of the State Employer shall give the petitioner a list of the names of all employees in the classifications assigned to the unit. The petitioner may raise objections concerning the inclusion of any managerial, confidential, or supervisory employee on the list of eligible voters. If the employer and the petitioner cannot mutually resolve and settle all issues concerning excluded positions, the director shall schedule a hearing to resolve any unsettled question before making a final determination. Otherwise, no hearing is required before the director makes a determination. Upon final determination of the eligible voters, the director shall order an election.
6. **Petition Bar.** A petitioner cannot file a petition if the petitioner has filed a petition in the same unit within the previous 12 months.
7. **Contract Bar.** Election petitions cannot be processed if a valid collective bargaining agreement is in effect, except during the two-month period ending six months before the contract expires. An otherwise valid agreement acts as a bar pending Commission review, ratification, or modification. The director shall not order elections in any unit with a valid collective bargaining agreement that was not prematurely extended and is of fixed duration. No collective bargaining agreement shall bar an election when over three years have elapsed since the latter of the agreement's execution or last timely renewal.

#### **D. Conduct of Elections.**

1. **Eligible Voter List.** The Office of the State Employer shall provide the petitioner, any intervenors, and the State Personnel Director with a list of all eligible voters in the unit and their addresses of record within 14 calendar days after the director issues an election order. Eligible voters are those state employees who are (1) actively at work, (2) on a leave of absence with pay, (3) on a leave of absence of definite duration without pay, (4) on seasonal layoff, or (5) on a recall list. Former employees on waived-rights leaves of absence are not eligible. The payroll ending date for which this list is run is the cutoff date for voting eligibility.

2. **Ballot Distribution.** Civil Service staff shall mail ballots to all eligible voters no later than 14 calendar days after the provision of the names and addresses of the eligible voters.
3. **No Exclusive Representation Choice.** The ballots must contain a space for employees to indicate that no exclusive representation is desired.
4. **Deadline.** Only properly marked ballots received by the director within 14 calendar days from the date of mailing by the director can be considered in determining the election results.
5. **Numbering and Registration of Ballots.** All ballots must be numbered and registered. The number on each returned ballot must be checked against the register to ensure that only one ballot is received from an eligible employee and that no ballots are received from non-existent or ineligible employees.
6. **Ballot Counting.** The director shall order a count of the ballots returned and certify the outcome of the election to the petitioner, intervenors, and employer within seven calendar days of the deadline for receiving the marked ballots. The petitioner, intervenors, and Office of the State Employer can have one observer for each counting station when the ballots are counted.
7. **Certification of Election Results.** The director shall certify the employee organization receiving the majority of the valid votes cast in the election as the sole and exclusive representative of all employees in the unit. If a majority of the valid votes are cast for decertification or no representation, the director shall certify the withdrawal of authority of the certified organization to act as the unit's exclusive representative. If none of the choices on the ballot receive a majority of the valid votes cast, the director shall certify the results and conduct a runoff election between the two choices receiving the greatest number of votes. The runoff election is conducted in the same manner as the first election.
8. **Adjustments of Time Limitations.** The director may make reasonable adjustments in dates and time limitations in procedures and election orders for the conduct of representation elections.

**E. Election Bar.**

No new election in a unit can be conducted during the two years after an election when a majority of valid votes were cast for the choice of no representation. No petition for another employee organization or for decertification can be considered by the director during the two years following the certification of representation status.

**F. Appeal of Representation Determinations.**

The director may authorize Civil Service staff to conduct hearings to resolve any representation question or dispute. Representation determinations by the director may

be appealed to the Civil Service Commission. No appeal of any representation determination, question, or dispute can result in a stay of proceedings, unless ordered by the Employment Relations Board or the Civil Service Commission.

#### **G. Objections to Representation Elections.**

An interested party may file objections to the conduct of a representation election or conduct improperly affecting the results of an election with the director.

1. **Filing.** The following conditions govern the filing of objections:

- a. Objections must be filed within seven calendar days after the election results are furnished to the parties.
- b. Objections must be in writing and contain a statement of facts upon which the objections are based and the reasons for the objections.
- c. A copy of the objections must be simultaneously served upon each of the other parties.

2. **Hearings.** The following procedures govern the hearing of objections:

- a. If the filing of the objections meets the requirements of this procedure, the director shall designate an impartial hearing officer to take evidence on the objections through a hearing within three weeks after the filing of the objections.
- b. The hearing is conducted on the scheduled date and consecutive weekdays thereafter until completed. Postponements are allowed only if special extenuating circumstances are found. The inability of a particular attorney or representative to appear due to scheduling difficulties is not a sufficient basis for postponement or delay.
- c. At the hearing, the parties may call, examine, and cross examine witnesses and may introduce into the record documentary and other evidence. In the discretion of the hearing officer, depositions of witnesses may be ordered, taken, and entered as substantive evidence.
- d. The hearing officer shall issue a written decision. The hearing officer shall dismiss or sustain each objection. If the hearing officer orders that any challenged ballots be opened and counted, an amended tabulation and certification of election results must be issued. If the hearing officer sustains objections that could change the result of an election, the hearing officer shall direct that a new election be conducted.

3. **Appeals.** The decision of a hearing officer may be appealed to the Civil Service Commission within seven calendar days from its issuance.

**CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 6.05

Subject: <b>Impasse Panels</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 6.05 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation establishes the exclusive process for resolving collective bargaining disputes that are not agreed to by the employer and employee organizations in collective bargaining negotiations.

### 2. CSC Rule References

#### **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.*

\* \* \*

#### **6-9.7 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.*

## **3. Standards**

- A. Establishment of Panel.** The Employment Relations Board may establish an Impasse Panel or appoint itself. The Board may authorize assignment of any part of a dispute to a Panel member or a professional arbitrator to act as an impasse hearing officer and prepare a record and report for final Panel consideration.
- B. Duties.** The Impasse Panel shall consider unresolved contract disputes certified at impasse and provide the Civil Service Commission with an evaluation of impasse issues and recommendations for their resolution based on established Panel criteria.
- C. Participation.** Impasse Panel participation for primary negotiations issues is limited to the Office of the State Employer and exclusively recognized employee organizations. Impasse Panel participation for secondary negotiations issues is limited to appropriate employers, the Office of the State Employer, and exclusively recognized employee organizations. Upon timely receipt by the Board of a request of either party for Impasse Panel assistance, the applicants are eligible for Panel assistance, if the request was preceded by good faith negotiations and appropriate mediation. A party requesting Impasse Panel assistance must simultaneously serve a copy of the request on its bargaining party.
- D. Impasse Panel Hearing.**
  - 1. Notice of Time and Place.** Upon the appointment of the Impasse Panel, its Chair shall call a hearing, after giving reasonable notice of its time and place. The chair may also order relevant submissions from the parties.

2. **Parties.** Upon application and for good cause shown, the Panel may grant leave to intervene to a person, labor organization, or governmental unit having a substantial interest.
3. **Evidence.** The proceedings are informal; technical rules of evidence do not apply. Any oral or documentary evidence and other data deemed relevant may be received by the Panel in evidence.
4. **Record.** The Panel shall make a verbatim record of the proceedings. Transcripts may be made available to the parties at their own expense. A copy of the transcript is not necessary for a determination by the Panel.
5. **Attendance.** Attendance at Impasse Panel hearings is limited to the participants. Each party shall select one spokesperson during the hearing. If the participants are classified state employees, appropriate administrative leave will be granted.
6. **Procedural Requests.** The Panel shall rule on procedural requests, appearances of witnesses, and other motions. Due to time constraints imposed by the constitutional budgetary cycle, the formal hearings of the Panel must proceed with dispatch. No adjournments or delays can be granted unless the Chair determines that such delay is necessary. The hearing will proceed in the absence of a party who, after due notice, fails to appear in person or obtain an adjournment by a designated substitute. The Panel may require an absent party to submit evidence needed in making its determination.
7. **Coordinated Impasse Proceedings.** The Impasse Panel shall consider simultaneously all certified unresolved contract disputes in all bargaining units, on a coordinated basis. Coordinated consideration of issues is controlled by the similarity of issues considered. Economic issues are dealt with simultaneously for all bargaining units. The Panel shall consider non-economic issues regarding the same specific subject matter simultaneously for all bargaining units. The Panel shall determine the timing of this consideration.
8. **Witnesses.** The Panel may administer oaths, require the attendance of witnesses, and require the production of documents deemed material to a just determination of the dispute. The Panel may permit examination and cross-examination of witnesses, receive relevant testimony and evidence, introduce documentary or other relevant evidence, and rule on offers of proof.

#### **E. Agreements.**

1. **Agreements by Stipulation.** Agreement by stipulation of the parties during impasse activity and up until final consideration of Impasse Panel recommendations by the Civil Service Commission is permitted. The parties shall forward such agreements to the Panel and Commission.

2. **Remand for Further Collective Bargaining.** At any time before rendering the Impasse Panel recommendation, the Chair of the Panel may remand the dispute to the parties for further collective bargaining for a specified period. The Chair shall notify the Commission of the remand.
  3. **Order to Negotiate.** During the hearing, the Impasse Panel may direct the parties to engage in concurrent negotiations of selected disputes.
- F. Presentations.** The parties shall offer concise statements of proposals, accompanied by all data, exhibits, comparisons, and briefs that the parties intend to rely upon at the impasse proceedings. Any rebuttal must clarify the issues in dispute and specifically respond to the other bargaining party's position on economic and non-economic demands. The Panel shall determine the timing of rebuttal before Impasse Panel hearings.
- G. Impasse Panel Recommended Decisions.**
1. **Impasse Criteria.** The Impasse Panel shall base its findings and recommendation upon the criteria in rule 6-9.4(b).
  2. **Majority Decisions.** The Panel shall issue a recommended decision based on the evidence and matters officially noticed. The recommended decision of the Panel must be supported by a majority vote of the Panel. The decision must discuss all issues certified at impasse and contain findings of fact and a statement of the reasons supporting the decision. The Panel shall timely submit copies of its decision to all parties and the Civil Service Commission. If a majority of the Panel cannot agree to a recommendation, the Panel shall forward the matter to the Civil Service Commission with the separate recommendations of members.
- H. Procedural Determinations.** Unless otherwise specified in the Civil Service rules and regulation, the Board may make all decisions on scheduling of hearings and submission of position statements and related data.

## **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 6.06

<b>Subject:</b> <b>Coordinated Compensation Plan</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 6.06 (SPDOC 11-01, January 9, 2011)

### 1. Purpose

This regulation establishes procedures for determining the coordinated compensation plan for all nonexclusively represented classified employees.

### 2. CSC Rule References

#### *1-15 Employment Relations Board*

##### *1-15.4 Duties*

\* \* \*

*The employment relations board has the following duties:*

\* \* \*

*(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.*

\* \* \*

#### *5-1 Civil Service Compensation Plan*

##### *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.*

### 3. Definition

#### A. Definition in This Regulation.

1. **Position statement** means a written statement proposing a change to the compensation or benefits plan with supporting rationale and documentation addressing the Coordinated Compensation Panel guidelines.

### 4. Standards

**A. Scheduling.** Determinations under these procedures must be consistent with the budget cycle established by statute and the constitutional provisions governing the timing of increases in rates of compensation for classified employees. The State Personnel Director shall annually establish and publish a schedule for the annual Coordinated Compensation Plan process before September 1. The Coordinated Compensation Panel or its designated representative may adjust deadlines for submissions and responses, with the consent of the director, as necessary to effectively and timely carry out this compensation setting process.

**B. Participation.** The Office of the State Employer (OSE) and limited-recognition organizations (LROs) may participate in the coordinated compensation process. Additionally, nonexclusively represented classified employees who are not members of LROs may participate upon leave granted by the Panel or its Chair. Any request to participate under this provision must be submitted in writing to the Panel before the deadline established by the State Personnel Director. The Panel or its designated representative shall respond in writing to a valid request to participate before the deadline established by the State Personnel Director. A valid employee request must contain the following:

1. The name, address, and phone number of the employee or spokesperson for an employee or group of employees.
2. A certification that no employee or group member requesting to participate is a member of an LRO.
3. The specific compensation or benefits changes proposed and the classifications of employees for whom the change is requested.
4. A brief explanation of the reasons why the requested change is necessary.

#### C. Procedures.

1. **Written Statement.** All parties participating in the coordinated compensation process shall submit a position statement to the Panel before the deadline established by the State Personnel Director. The LRO and employee participants shall simultaneously serve a copy of their submission on the OSE. If resubmitting a

request previously considered by the Panel, an LRO or NERE must provide compelling evidence of a material change since the request's last consideration.

2. **Response Statements.** The OSE may issue a written response to a position statement filed by an LRO or a NERE participant. The OSE shall simultaneously serve a copy of any response on participating LROs and NEREs. LRO and NERE participants may also submit a written response to the OSE's response statement. LROs and NEREs must serve a copy of any response statements on the OSE. Response statements must be filed with the Panel before the deadline established by the State Personnel Director.
3. **Conference.** The Panel's Chair or the Chair's designated representative may conduct a preliminary conference with the parties before any coordinated compensation hearings. The Panel's representative shall identify the general types of information necessary to establish a relevant and material hearing record for the Panel's eventual deliberations. The Panel may reject specific requests from further consideration in the Coordinated Compensation hearing if the Panel determines that the request has previously been considered and no compelling evidence has been demonstrated to justify reconsideration.
4. **Coordinated Compensation Hearing.** At the hearing convened by the Panel, the parties may present their recommendations and respond to recommendations of other parties.

#### **D. Guidelines.**

1. **Standards.** Position statements and oral presentations of participants in the coordinated compensation plan process should address the following guidelines, which the Panel shall use in making its recommendations to the Civil Service Commission:
  - a. The public interest and welfare, including the current and forecasted financial condition of the State.
  - b. Comparison of the overall compensation received by excluded and non-exclusively represented classified state employees with the overall compensation received by exclusively represented classified state employees as the result of negotiated agreements or Impasse Panel recommendations.
  - c. Comparison of the rates of pay, the continuity and stability of employment, and the overall compensation and benefits received by excluded and non-exclusively represented classified state employees with employees performing similar services in other public and private employment.
  - d. Other appropriate considerations to the sound and rational determination of a coordinated compensation plan.



2. **Consensus Agreements.** The Panel shall also consider any recommendations that represent an agreement or consensus between the OSE and limited-recognition organizations or between the OSE and other participants in the coordinated compensation process.
3. **Post-hearing Information.** If the Panel finds good cause to consider information brought to its attention after the close of the hearing, the Panel may, in its discretion, use that information in its recommendation. Such information must be appended to the Panel's proposal to the Commission or be incorporated by reference into that document.

**E. Alternative Procedures.** The State Personnel Director may establish alternative procedures and schedules for the conduct of the Coordinated Compensation Plan process, after providing prior written notice, when deemed necessary.

### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to [MCSC-Compensation@mi.gov](mailto:MCSC-Compensation@mi.gov).

# Michigan Civil Service Commission

## Regulation 6.07

Subject: <b>Prohibited Subject of Bargaining Complaints</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 6.07 (SPDOC 15-20, January 3, 2016)

### 1. Purpose

This regulation establishes a process for resolving complaints that an agreement or arbitrator's decision violates, rescinds, limits, or modifies a Civil Service rule or regulation governing a prohibited subject of bargaining.

### 2. CSC Rule References

#### **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:*

\* \* \*

- (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.*

\* \* \*

## **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.*

\* \* \*

**(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 establishment and maintenance of the classification plan and the determination of the classification and grade assignment of a new or existing position in the classified service. A collective bargaining agreement cannot confer exclusive authority to perform specific duties to a classification or bargaining unit. Although the rates of compensation for an existing class of positions are 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.** *All working out of class issues, including (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, (5) the rights of an employee seeking review of a working-out-of-class claim, and (6) the authority of an appointing authority to make working-out-of-class assignments.*
- (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.*

\* \* \*

### **6-3.5 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.*

### 3. Standards

#### A. Complaints.

1. **Filing.** Any person may file a prohibited subject of bargaining complaint, as authorized in rule 6-3.5(a). The complaint must be filed with the State Personnel Director by email to MCSC-OGC@mi.gov.
2. **Contents of Complaint.** The complaint must contain the following:
  - a. The complainant's name, address, telephone number, and signature.
  - b. A concise summary of the factual background and an explanation of how 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.
  - c. If the complaint implicates a decision of an arbitrator, a complete copy of the arbitrator's decision must be attached.

#### B. Review of Complaint.

1. **Administrative Dismissal of Complaint.** The State Personnel Director or the director's designee may administratively dismiss a complaint without a hearing for the following reasons:
  - a. **Lack of jurisdiction.** The director lacks jurisdiction over a necessary party or over the subject matter of the complaint.
  - b. **Another action pending.** Another action has been initiated involving substantially the same issues raised in the complaint.
  - c. **Barred by prior claim.** Substantially the same complaint was adjudicated to conclusion in another action between the same parties.
  - d. **Insufficient filing.** The filing is incomplete or fails to allege the violation of a Civil Service rule or regulation governing a prohibited subject of bargaining.
2. **Assignment.** If the complaint is not administratively dismissed, the director shall designate an adjudicating officer to investigate the complaint.

**C. Investigation.** The adjudicating officer shall give written notice of the investigation to the (1) complainant, (2) Office of the State Employer, and (3) exclusive representative.

1. **Interested Parties.** The complainant, Office of the State Employer, and exclusive representative are interested parties.
2. **Conferences.** The adjudicating officer may conduct conferences with the interested parties as necessary to investigate the complaint. The adjudicating officer may direct the interested parties to file briefs on specified issues.
3. **Summary Disposition.** If there is no genuine issue over any material fact, the adjudicating officer may recommend a final disposition of the complaint without a hearing based on the complaint and written submissions of interested parties, including affidavits.
4. **Disposition with a Hearing.** If there is a genuine issue over any material fact, the adjudicating officer shall conduct a hearing over just the material facts in dispute. The interested parties must have a reasonable opportunity to present evidence, examine and cross-examine witnesses, and present argument. The adjudicating officer may swear witnesses, take testimony, receive evidence, including opinion evidence, and take other actions necessary to investigate the complaint and consider fairly the claims of the interested parties. The rules of evidence do not apply, but the adjudicating officer may refuse to take or admit evidence that is repetitive, irrelevant, unreliable, or speculative.

**D. Decision.**

1. **Recommended Decision.** The adjudicating officer shall examine the complaint, the collective bargaining agreement, any arbitrator's decision, any other record evidence, and the Civil Service rules and regulations governing prohibited subjects of bargaining. The adjudicating officer shall recommend a decision on the complaint to the director. The recommended decision shall set out the adjudicating officer's findings of facts and conclusions of law. If the adjudicating officer finds a violation, the adjudicating officer shall recommend a remedy authorized in rule 6-3.5(b).
2. **Director's Decision.** The director shall review the recommendation of the adjudicating officer and issue a final decision on the complaint. If the director disagrees with the recommendation, the director shall set forth the reasons for that disagreement in writing as part of the final decision. If the director determines that a violation has occurred, the director may take any of the following actions:
  - a. Issue an order to cure or correct the violation.
  - b. Issue an order to enjoin future violations.
  - c. Recommend that the Civil Service Commission amend its rules or a collective bargaining agreement to cure or correct the violation.

- d. In an arbitrator's decision, exercise superintending authority to vacate or modify the decision of the arbitrator or remand the matter to the arbitrator for further consideration.
- E. **Appeal.** An interested party aggrieved by a final decision may appeal to the Civil Service Commission by filing an application for leave to appeal within 28 calendar days after the date the decision is issued.

### **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).



# Michigan Civil Service Commission

## Regulation 6.08

Subject: <b>Designation of Excluded Positions</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 6.08 (SPDOC 07-14, October 7, 2007)

### 1. Purpose

This regulation provides procedures for the review and designation of positions excluded from participation in collective bargaining and exclusive representation.

### 2. CSC Rule References

#### **6-6    *Determination of Representation***

\* \* \*

#### **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.

### 3. Standards

- A. Consultation and Notice.** The State Employer, in consultation with the appointing authorities, shall designate positions outside Civil Service as excluded or eligible. If the State Employer designates a position as excluded, the State Employer shall give written notice of the designation to the appointing authority, any incumbent, and any exclusive representative.
- B. Effective Date and Petition for Review.** A designation cannot be effective until 29 calendar days after the date of the written notice of the designation. If an exclusive representative disagrees with a designation of the State Employer, the exclusive representative may file a petition for review with the State Personnel Director within 28 calendar days after the date of the written notice. If the director receives a timely petition for review, the designation is stayed pending the director's decision.
- C. State Personnel Director Review of Petition.** If an exclusive representative files a timely petition for review, the State Personnel Director may solicit additional information from the appointing authority, State Employer, and exclusive representative. The director may hold an informal conference to discuss the designation with interested persons.
- D. State Personnel Director Decision.** The State Personnel Director shall issue a written decision deciding whether the position is or is not excluded to the appointing authority, the State Employer, and any exclusive representative.
- E. Effective Date and Appeal.** The decision of the State Personnel Director is effective when issued or at such other date provided in the decision. The director's decision is final, unless a proper application for leave to appeal is filed with the Civil Service Commission within 14 calendar days after the date of the decision. The director's decision is not stayed during an appeal unless otherwise provided in the decision or ordered by the Employment Relations Board or Civil Service Commission.
- F. Delegation.** The State Personnel Director may delegate, in whole or in part, any of the director's authority under rule 6-6.4 or this regulation.

### CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 7.01

<b>Subject:</b> <b>Disbursements for Personal Services Outside the Classified Service</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 7.01 (SPDOC 07-14, October 7, 2007)

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### 1. Purpose

This regulation establishes procedures for an appointing authority to request approval from Civil Service to make disbursements for personal services by persons outside the classified workforce.

## 2. CSC Rule References

### **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.*

### **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:*

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- (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].*

### **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:*

Col. 1 Projected Average Annual Disbursements:		Col. 2 Minimum Required Average Annual Savings
From:	To:	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

#### **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.*

#### **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.*

#### **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*

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*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.*

## **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.*



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### **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].*

### **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.*

### **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.*

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- (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.*

### **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.*

### **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*

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*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.*

## **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.*

## **3. Definitions**

### **A. CSC Rule Definitions.**

- 1. **Contractor** means an independent contractor or special personal services employee who enters into a contract with a state agency to provide personal services.*
- 2. **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.*
- 3. **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.*
- 4. **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.*
- 5. **Party** means any of the following persons or organizations:*

*\* \* \**

*(d) **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 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.*

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- (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.*

\* \* \*

- (f) **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.*

- 6. **Personal services** means work performed for the direct benefit of the state by an individual for compensation.
- 7. **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.
- 8. **Technical decision** includes each of the following individual decisions:

\* \* \*

- (c) **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.

\* \* \*

## **B. Definitions in This Regulation.**

- 1. **Combined Personal Services Request** means a request by an appointing authority that combines two or more distinct personal services in a single request.
- 2. **Commodity Code** means a five to eleven digit number that identifies a specific type of service.
- 3. **Emergency Service** means a situation where personal services are required to immediately remedy and diminish the consequences of an unforeseen need. The emergency must be of such a nature that disbursements are required in less time than can be accomplished through normal review processes.

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## 4. Standards

### A. Jurisdiction.

#### 1. Review and Approval Required.

- a. Civil Service review and approval are required for disbursements for personal services outside the classified service that are within the jurisdiction of the Civil Service Commission.
  - b. **Pass-through funds.** Civil Service review and approval are required for the disbursement of funds passed through a state agency when the agency has discretion to determine the service provider.
- #### 2. Request for Jurisdictional Determination.
- An appointing authority may file a written request with Civil Service for a jurisdictional determination of whether a proposed disbursement is within the jurisdiction of the Commission.
- a. The request must contain a complete description of the proposed personal services and the reasons why the disbursements for such services should be found outside the jurisdiction of the Commission.
  - b. If Civil Service staff determines that the Commission has jurisdiction over the proposed disbursements, the appointing authority must submit a request to disburse funds for personal services (CS-138) and obtain Civil Service approval before disbursing any funds.
  - c. If Civil Service determines that the Commission has no jurisdiction over the proposed disbursement, the appointing authority may disburse the funds without submitting a CS-138.
  - d. A determination by Civil Service that a proposed disbursement is outside the jurisdiction of the Commission does not mean that the commodity code associated with that disbursement will always be deemed outside the Commission's jurisdiction.
  - e. A jurisdictional determination by Civil Service may only be appealed in accordance with rule 7-2.2.
- #### 3. Review or Approval Not Required.
- a. An appointing authority is not required to seek or obtain prior approval from Civil Service for any disbursements listed in rule 7-2.1.
  - b. Civil Service maintains on its website a list of personal services for which disbursements are deemed outside the jurisdiction of the Commission. An appointing authority is not required to seek or obtain prior approval from Civil Service for disbursements for any service on this list.

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- (1) Civil Service may modify the list at any time.
  - (2) If an appointing authority believes a specific service should be added to the list, the appointing authority may file a written request to add the service.
    - (a) The request should contain a complete description of the personal services at issue and the reason why the services are believed to be outside the jurisdiction of the Commission.
    - (b) If Civil Service determines that the personal services are not within the jurisdiction of the Commission, the service will be added to the list.
  - (3) A determination by Civil Service that a particular service is within the jurisdiction of the Commission cannot be appealed.
- c. Civil Service reserves the right to individually review personal services provided under the list of personal services outside the jurisdiction of the Commission to verify that the services are outside the Commission's jurisdiction. Civil Service may require an appointing authority to justify its use of a commodity code on the listing of services outside the jurisdiction of the Commission in a specific instance. Civil Service may modify, restrict or revoke the future use of the non-jurisdictional listing if Civil Service determines that the appointing authority has improperly used the non-jurisdictional service.

## **B. Disbursements Outside the Classified Service.**

Rule 7-3 provides the standards used to determine if appropriated funds can be disbursed for personal services obtained outside the classified service.

### **1. Standard A Guidelines.**

- a. **Examples of Temporary, Intermittent, or Irregular Personal Services:**
  - (1) Services that are needed so sporadically, randomly, or intermittently that the need for such personal services cannot be reliably predicted.
  - (2) Services for which the need is so temporary or limited that it is not practical to use the classified service.
- b. **Sunset within 36 Months.** Temporary full-time personal services may be approved under Standard A if funding or the need for the personal services will not continue beyond 36 months.
  - (1) The appointing authority must provide particularized proof that the specific funding, or the need for the personal services to be provided, is limited to no more than 36 months.
  - (2) The intended personal services must meet a particularized limited duration need.

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- (3) This guideline does not authorize approval of the (a) renewal of a request previously approved under this guideline, (b) request based on general uncertainty about future funding, or (c) request for personal services which are likely to be provided indefinitely even though the funding is limited to less than 36 months.

## 2. **Standard B Guidelines.**

### a. **Examples of Uncommon Personal Services:**

- (1) Personal services for which it is extremely difficult to recruit candidates willing to accept a classified position. The appointing authority must certify that an inadequate applicant pool exists and provide dates the job was posted on the Civil Service website, advertised in newspapers and publications, included in job fair announcements, or any other information that supports the certification.
- (2) Personal services that require expertise outside the normal scope of the classified service.
- (3) Personal services that are specialized or rare.
- (4) Personal services that reasonably require the provider to be outside the classified work force, such as expert testimony, independent audit services, and dispute-resolution and arbitration services.
- (5) Personal services that are necessary because they are integrated with the purchase of proprietary commodities and cannot be segregated from the primary commodities.

- b. **Personal Services not Classified.** These include personal services not typically provided by the classified service and recognizes that the classified service cannot reasonably include all possible personal services in its classification scheme. The absence of the personal services from the classification scheme may provide some justification for a request under these standards.

3. **Standard C Guideline.** An analysis of “cost” under Standard C includes, but is not necessarily limited to, simple dollar cost comparisons. An analysis under this standard may consider such qualitative factors as the (1) time and effort required to create and manage needed classified positions, (2) impact of the new personal services on the agency mission, and (3) likelihood of the personal services continuing into the future, or the like. If it is determined that the costs of the goods exceeds the costs of associated personal services, Civil Service lacks jurisdiction over the request and shall so specify in its technical decision.

#### 4. **Standard D Guidelines.**

##### a. **Wage and Benefit Standards.**

- (1) The State Personnel Director shall periodically develop and publish on the Civil Service website and in written form the Civil Service *Guide for Calculating Standard Cost Savings*. The guide shall provide standardized formulas and other electronic processes to assist in identifying and documenting costs associated with contracting for personal services in comparison to costs of utilizing the classified service.
- (2) The State Personnel Director shall publish standardized rates that establish minimum thresholds to be applied in the preparation of a Standard D cost analysis. The information may include, but is not limited to, salary and wages, fringe benefits, group insurance, inflation, indirect costs, unemployment insurance, workers' compensation insurance, retirement, FICA costs, contract monitoring costs, and the like.

- b. **Content of Cost Savings Submission.** Appointing authorities must adhere to the methods and guidelines provided in the Civil Service *Guide for Calculating Standard Cost Savings* when submitting requests under Standard D.

5. **Permissible Uses of Standards.** This table summarizes the permissible uses of each of the two procedures available for approving disbursements for personal services.

To find if an appointing authority can use a particular procedure to approve a particular type of service, go to the cell at the intersection of the procedure (major column), type of contractor (minor column), and standard (row). If the cell contains "OK," the particular procedure may be used to obtain approval. If the cell contains "N/A," the procedure is not available for use.

Standards Under Rule 7-3	Prior Approval Required Rule 7-6		Preauthorized Approval Rule 7-7	
	Hire an SPS Employee	Hire an Independent Contractor	Hire an SPS Employee	Hire an Independent Contractor
<b>Standard A</b> (Temporary Services)	OK	OK	OK	OK
<b>Standard B</b> (Unique Services)	OK	OK	OK	OK
<b>Standard C</b> (Lack of Equipment)	N/A	OK	N/A	OK



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<b>Standard D</b> (Cost Savings)	N/A	OK	N/A	N/A

### C. Disbursements to Special Personal Services (SPS) Employees.

#### 1. Requirements for Hiring SPS Employees.

- a. An appointing authority shall not hire or make disbursements for personal services to a special personal services (SPS) employee unless Civil Service has approved the disbursements *in advance*. This means that an agency must either file a request under rule 7-4 or have already obtained preauthorized approval under rule 7-7.
- b. An SPS employee may only be hired if the personal services meet either Standards A or B in rule 7-3. An appointing authority may not hire an SPS employee under Standards C or D.

#### 2. Guidelines for Hiring SPS Employees.

- a. **Cost Savings and SPS Employees.** Cost savings may be considered in evaluating submissions under both Standard A and Standard B. However, the cost savings tests under Standard C and Standard D are not applicable to SPS employees. Therefore, Civil Service will not approve the hiring of an SPS employee *solely* on the basis that it is less expensive to hire an SPS employee than a classified employee.
- b. **Hiring Freeze and SPS Employees.** The governor and appointing authorities occasionally impose hiring freezes, budget limitations, head count limitations, and other restrictions on hiring classified employees as mechanisms to control costs. Since cost savings alone are insufficient justification for hiring SPS employees, Civil Service will not approve the hiring of an SPS employee *solely* for the reason that there is a hiring freeze, budget limitation, head count limitation, or other management-imposed limitation on hiring classified employees. In such cases, independent contractors may be used if the contract meets one or more of the standards in rule 7-3.

### D. Disbursements to Independent Contractors.

Disbursements to an independent contractor for personal services may be made only subsequent to the Civil Service staff determination that the appointing authority's request meets one or more of the four standards in rule 7-3.

### E. Prior Written Approval by Civil Service Staff.

1. **Submission of Request by Appointing Authority.** Unless otherwise authorized, an appointing authority shall submit a new request or an amendment to an existing request to Civil Service and receive approval before it authorizes or makes a

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disbursement for personal services outside the classified service. The request shall include the following:

- a. A CS-138 that provides the proposed beginning and ending dates of the requested services, a detailed description of the requested personal services, rationale as to how the service meets the standard(s) selected, the total dollar amount of the disbursement request, and all other required information.
    - (1) Amendments to an expired CS-138 are prohibited, except when Civil Service determines good cause has been demonstrated by the appointing authority.
    - (2) Amendments to a currently active CS-138 are not appropriate when approval would result in both the addition of a year or more of service and the corresponding funds.
  - b. An analysis that identifies the standard(s) in rule 7-3 upon which the appointing authority relies and a justification that details the relationship between the personal services and the standard(s).
  - c. Any additional information to be considered by Civil Service staff reviewing the request. If additional information is provided by the appointing authority, a copy must also be provided to all interested parties.
  - d. Certification that each appropriate labor organization has been given written notice, if required, in accordance with provisions contained in the collective bargaining agreement before submission of the CS-138 to Civil Service. This certification requirement applies to both new and existing CS-138 submissions. The appointing authority shall retain a copy of the signed transmittal. All inquiries regarding union notice requirements should be directed to the Office of the State Employer.
  - e. Certification that a notice of intent to contract has been posted for work generally performed by nonexclusively represented employees.
  - f. The numbers and classifications of state classified employees who will or may be terminated, laid off, demoted, or bumped as a result of the implementation of the contract for personal services.
  - g. Certification that individual notification has been provided to nonexclusively represented employees whose positions will be abolished as a result of the contract for personal services.
2. **Civil Service Staff Standards for Review.** Civil Service staff shall review all requests to disburse funds for personal services in accordance with the standards in rule 7-3. Civil Service staff shall:

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- a. Record receipt of the request and all appearances filed by interested parties. A written appearance by an interested party must be filed with Civil Service and the appointing authority within 7 calendar days after the date the request is filed with Civil Service.
  - b. Review the request for sufficiency of documentation and request any necessary additional information from the appointing authority within 7 calendar days of the receipt of the request.
  - c. Review all timely and pertinent information presented by the appointing authority and other interested parties.
  - d. Conduct interviews or conferences necessary to adequately evaluate and act upon the request.
  - e. Approve or disapprove the request after receipt of all information necessary to complete the review.
  - f. If the request is approved, specify any conditions or limitations on the approval to ensure compliance by the appointing authority.
  - g. Provide written notice of the staff decision to the appointing authority and to all other interested parties.
3. **Evaluating a Request for Combined Personal Services.** If an appointing authority files a request that includes two or more distinct personal services, the Civil Service staff shall evaluate the request pursuant to the procedure in this section.
  - a. The appointing authority shall demonstrate that the individual personal services in the request (1) have been combined for valid business reasons or (2) have some practical and reasonable nexus that warrants considering the services together in the request.
  - b. If Civil Service staff determines that one or more personal services have been improperly combined in a single request, the staff shall treat those services as separate and distinct requests and shall issue separate decisions as to those services.
  - c. When Civil Service staff considers combined personal services in a request, the request shall be approved if the staff determines either of the following:
    - (1) One of the dominant or critical personal services in the combined request meets one or more of the standards in rule 7-3.
    - (2) The combined personal services, evaluated as a whole, meet one or more of the standards in rule 7-3.
4. **Effective Date of Staff Decision.** The effective date of the staff decision shall be in accordance with rule 7-6.3

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5. **Complaint Regarding Technical Decision.** Complaints regarding staff decisions must be made in accordance with rule 7-6.4.

**F. Preauthorized Personal Services.**

1. Preauthorization allows an appointing authority to make disbursements for personal services under the following conditions:
  - a. **\$5000 or Less per Vendor per Type of Service per Year (twelve-month period).**
    - (1) The appointing authority must complete a CS-138, with appropriate approvals before the personal service is utilized.
    - (2) The appointing authority must certify that each appropriate labor organization has been given written notice, if required, in accordance with provisions contained in the collective bargaining agreement. All inquiries regarding union notice requirements should be directed to the Office of the State Employer.
  - b. **Preauthorized to a Specific Agency.**
    - (1) Civil Service approval is required on the initial request, but the preauthorization eliminates the need to submit subsequent individual requests.
    - (2) The appointing authority must complete a CS-138, giving a complete description of the service for which preauthorization is requested and a rationale as to how the service meets Standards A, B, or C.
      - (a) The appointing authority should indicate a duration of 10 years; enter \$999,999,999.00 in the "Requested Amount" field, and "Y" in the "Preauthorized" field.
      - (b) The appointing authority must certify that each appropriate labor organization has been given written notice, if required, in accordance with provisions contained in the collective bargaining agreement before submission of the CS-138 to Civil Service. All inquiries regarding union notice requirements should be directed to the Office of the State Employer.
  - c. **Preauthorized to all Agencies.**
    - (1) Civil Service maintains on its website a list of personal services deemed to meet Standards A, B, or C, which are preauthorized to all agencies.
    - (2) Civil Service may add to, remove, or modify the preauthorized personal services list at any time.

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- (3) Deletion of specific personal services from the preauthorized list shall not affect any existing contract properly entered into by an appointing authority before the deletion. However, an appointing authority may not renew or extend a contract for personal services deleted from the preauthorized list without first obtaining approval under rule 7-6 or 7-7.
  - (4) The decision as to which personal services are preauthorized to all agencies is final and no appeal is authorized.
2. **Conditions.** Civil Service may impose conditions and requirements on the use of preauthorized personal services to ensure compliance with Civil Service Commission rules. If a service is preauthorized with conditions, it is the responsibility of the appointing authority to ensure that the conditions have been complied with in every particular before authorizing or making disbursements for the personal services.
  3. **Inquiry and Limitations.** Civil Service reserves the right to require an individual review of personal services provided under preauthorized authority when there is a question as to the applicability and validity of the use of the preauthorized service. Civil Service may require an appointing authority to justify its use of the preauthorized personal services in a specific instance. Civil Service may issue an order in writing to an appointing authority modifying, restricting or revoking the future use of the preauthorized service if Civil Service staff determines that the appointing authority has improperly used the preauthorized service.
  4. **Review of Preauthorized Disbursements.** Any person who objects to an agency's use of a preauthorized personal service may file a complaint with the State Personnel Director under rule 7-9. The director shall review the complaint and order an inquiry if there is a meritorious basis to the complaint. In addition to any other action permitted under rule 7-9, if the director determines that the preauthorized personal services do not meet the standards for preauthorization, the director may revoke the preauthorization and order that the list of preauthorized personal services be amended appropriately.
  5. **Complaint Regarding Use of Preauthorized Approval Process.** Any complaint regarding the use of the preauthorized approval process must be submitted in accordance with rule 7-9.
  6. **Appeal of Director's Decision.** Any appeal of the State Personnel Director's decision must be submitted in accordance with rule 7-9.3.

#### **G. Audit and Compliance.**

The appointing authority shall maintain sufficient documentation in support of its disbursements and shall timely report its expenditures to ensure that disbursements for personal services outside the classified service have been made in accordance with Civil

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Service rules and regulations. Civil Service staff will periodically conduct audits of disbursements to ensure compliance with the rules and regulations.

#### **H. Requirement to Report Contracts.**

Civil Service is required by the legislature, in 1984 PA 431, MCLA 18.1281, to file various reports related to contracts for personal services. Since Civil Service only authorizes disbursements and does not review contracts, appointing authorities must report contract information to Civil Service for transmittal to the legislature. Also, Civil Service requires, as a condition of the use of the preauthorized personal services list, that an appointing authority report all contracts initiated or renewed under these procedures during a reporting period. For preauthorized personal services, the preauthorized personal services list establishes the reporting period and any additional reporting requirements. If an appointing authority fails to report a personal service contract, the State Personnel Director may make a finding and take action against the appointing authority, as permitted in rule 7-9.

## **5. Procedures**

<b>Responsibility</b>	<b>Action</b>
Appointing Authority	1. Submits CS-138 via ADPICS for review by Civil Service staff. Provides notice to labor organizations, in accordance with applicable collective bargaining agreements, or posts notice of intent to contract for NEREs, and provides any individual notice as required by 4.E.1.g.
Civil Service	2. Reviews all information provided by the appointing authority and any interested parties to determine if the request meets one or more of the standards in rule 7-3. 3. If adequate information has been provided, writes decision in accordance with procedure in this regulation. If information is insufficient to make a determination, requests additional information from appointing authority. 4. Notifies appointing authority and any interested parties of staff decision. 5. Informs interested parties of their rights to file a complaint regarding the technical decision and associated filing limitations.

### **CONTACT**

Questions on this regulation may be directed to Personal Services Review, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-8552; or to [MCSC-CS138@mi.gov](mailto:MCSC-CS138@mi.gov).

# Michigan Civil Service Commission

## Regulation 8.01

Subject: <b>Grievance and Grievance Appeal Procedures</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 8.01 (SPDOC 15-15, October 1, 2015)

### 1. Purpose

This regulation establishes procedures for employees to (1) file grievances with appointing authorities and (2) appeal appointing authorities' final grievance answers to Civil Service.

### 2. CSC Rule References

#### **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.*

**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.*

## **3. Definitions**

### **A. Civil Service Commission Rule Definitions.**

- 1. 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.*
- 2. 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.*
- 3. 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.*

4. **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.
5. **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.
6. **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.
7. **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.

\* \* \*

8. **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.

#### **B. Definitions in This Regulation.**

1. **Authorized representative** means a qualified person authorized to appear and receive notices on behalf of a party in an agency grievance proceeding or Civil Service grievance appeal proceeding.
2. **Contested hearing** means a quasi-judicial proceeding before a hearing officer or arbitrator in which the parties may introduce documentary evidence, examine and cross-examine witnesses under oath, and submit arguments.
3. **Group grievance** means grievances by two or more employees with common issues of fact and law that the appointing authority processes in a single agency grievance proceeding.
4. **Member of the family** means a spouse, child, foster child, parent, foster parent, or sibling of the hearing officer or hearing officer's spouse.

5. **Member of the household** means any person (1) living in the household of or (2) whose financial or physical care is the principal responsibility of the hearing officer or hearing officer's spouse.
6. **Preponderance of evidence** means the greater weight of the evidence in the record, which shows that one conclusion is more likely true than not.
7. **Step-1 Official** means the person designated by the appointing authority to receive and adjudicate Step-1 grievances.
8. **Step-2 Official** means the person designated by the appointing authority to receive and adjudicate Step-2 grievances.
9. **Tangible adverse employment action** means an act by an employer or employer's agent that objectively, substantially, and negatively affects an employee's income, benefits, or employment status.

#### 4. Standards

**A. Eligibility.** These procedures are only available to nonexclusively represented employees (NEREs), except that exclusively represented employees may file grievances over (1) creation or abolition of classified positions for reasons other than administrative efficiency and (2) actions during prior employment as a NERE.

**B. Grievance Procedures at the Agency Level.**

**1. Step-1 grievances.**

- a. **Filing.** A grievant must file a signed, written grievance on a CS-100 form with the Step-1 Official. A grievant may file a grievance directly at step 2 if dismissed, suspended without pay, demoted, laid off, or otherwise aggrieved by an action by management above the level of the Step-1 Official; the grievant must indicate on the CS-100 that the grievance initiated at Step 2.
- b. **Time limits.** A grievance must be filed within 14 calendar days after a grievant knew of or reasonably should have known of the grievance.
- c. **Step-1 conference.** The Step-1 Official shall hold an informal conference with a grievant, unless the grievant declines to attend.
- d. **Step-1 answer.** The Step-1 Official shall issue a written answer to a grievant within 14 calendar days after a grievance is filed.

**2. Step-2 grievances.**

- a. **Filing.** A grievant who may bypass Step 1 under § 4.B.1.a or who is unsatisfied with a Step-1 Official's written answer or failure to answer may file a signed, written step-2 grievance on a CS-100 with the Step-2 Official. If a grievant does not timely file at step 2, a grievance is closed.

- b. **Time limit.** If a Step-1 Official timely issues a written answer, a grievant must file any step-2 grievance within 14 calendar days after issuance. The date issued is presumed to be the date on the answer. If no written answer is timely issued, the grievance is presumed denied and any step-2 grievance must be filed with the Step-2 Official within 21 calendar days after the step-1 answer was due.
        - c. **Step-2 conference.** A Step-2 Official may hold any conference deemed necessary. If a grievance began at step 2, the Step-2 Official must offer an informal conference to the grievant.
        - d. **Step-2 answer.** A Step-2 Official shall issue a written answer to a grievant within 28 calendar days after a step-2 grievance is filed.
3. **Group grievances.** Employees with grievances with common issues of fact and law may jointly file a single CS-100. Each joint grievant must sign the form. A group grievance must be filed directly at step 2. An appointing authority may process the grievance as a group grievance or as separate grievances. An appointing authority may also process separate grievances with common issues of fact and law as a group grievance.

#### **C. Grievance Appeals to the Civil Service Hearings Office (CSHO).**

1. **Authorization.** A grievant unsatisfied with a Step-2 Official's answer or failure to issue a timely, written answer may file a signed, written grievance appeal on a CS-100 form with the CSHO. If a grievant does not timely file a grievance appeal, the grievance is closed.
2. **Time limit.** If a Step-2 Official timely issues a written answer, a grievant must file any appeal to the CSHO within 28 calendar days after issuance. The date issued is presumed to be the date on the answer. If no written answer is timely issued, the grievance is presumed denied and any appeal must be filed with the CSHO within 42 calendar days after the step-2 answer was due.
3. **Contents.** An appeal must include the following on a CS-100 form:
  - a. The grievant's (1) name, (2) employee ID number, (3) employing agency, (4) mailing address, (5) telephone number, and (6) email address.
  - b. Any authorized representative's (1) name, (2) organization, (3) mailing address, (4) telephone number, and (5) email address.
  - c. A complete copy of the grievance chain, including all step-1 and step-2 grievances and answers.
  - d. A concise statement of the basis for the grievance appeal, including grounds for the appeal under rule 8-2.2.

- e. A concise statement of the relief sought, which must be within the jurisdiction of a hearing officer to grant.
- 4. **Administrative review.** The CSHO administrative officer shall review all grievance appeals and summarily dismiss any meeting the following criteria:
  - a. **Not authorized.** The CSHO lacks authority to consider the grievance appeal under the Civil Service rules and regulations because (1) the grievant is not authorized to file the grievance or grievance appeal, (2) the subject matter is not reviewable in the forum, or (3) the grievant seeks unauthorized relief.
  - b. **Lack of jurisdiction.** Civil Service lacks jurisdiction over a necessary party or the subject matter of the grievance.
  - c. **Untimeliness.** The grievance or grievance appeal was untimely.
  - d. **Another action pending.** Another Civil Service action between the same parties involves substantially the same grievance.
  - e. **Barred by prior claim.** Substantially the same grievance was adjudicated to finality in another action with the same parties.
  - f. **Failure to respond.** The grievant fails to respond to a deficiency notice from Civil Service staff.

#### **D. Timely Filing.**

- 1. **Based on receipt.** A timely grievance or grievance appeal must be **received** in the appropriate office by 5:00 pm on the deadline specified in this regulation. Time is counted as provided in regulation 8.06, § 3.A.
- 2. **Extensions.** A grievant and the appropriate Step-1 or Step-2 Official may agree in writing to extend the time to file a grievance or an answer. Extensions cannot exceed 6 months. A grievant must request any extension to file a grievance appeal to the CSHO, which has discretion to grant any extensions.
- 3. **Filing Method.** A grievance or grievance appeal must be filed as follows:
  - a. **Grievance.** A grievance may be filed in person, by mail, or by other courier to the designated office of the appropriate official. If a Step-1 or Step-2 Official has established an email address to receive grievances, documents may be filed there instead.
  - b. **Grievance appeal.** Unless the CSHO administrative officer grants advance permission to file differently, a grievance appeal must be filed as a Microsoft Word or Adobe PDF attachment at [MCSC-Hearings@mi.gov](mailto:MCSC-Hearings@mi.gov).
- 4. **Late filing.** To file a grievance or grievance appeal after a deadline, a grievant must establish good cause or special extenuating circumstances excusing the lateness. If



denying a grievance for untimeliness, a Step-1 or Step-2 Official must evaluate the merits of any excuse for lateness. A grievant may file a grievance appeal of an otherwise appealable grievance to the CSHO for a *de novo* consideration of the excuse.

- a. **Up to 28 days.** A filing received up to 28 calendar days late is denied as untimely, unless the filing party establishes good cause.
- b. **Over 29 days and under one year.** A filing received more than 28 calendar days but less than 1 year late is denied as untimely, unless the filing party establishes special extenuating circumstances.
- c. **One year late.** A filing received one year or more late is denied as untimely.

#### **E. Prehearing Procedures.**

1. **Assignment.** If a grievance appeal is not summarily dismissed and the arbitration alternative in § 4.K is not elected, the grievance appeal is assigned to a hearing officer for a fair, impartial, and expeditious adjudication of the grievance appeal. Separate appeals with common issues of fact and law may be consolidated for consideration by the CSHO, notwithstanding an appointing authority's treatment of grievances at the agency level.
2. **Mediation.** The hearing officer may require mediation of a grievance appeal. Any mediator cannot (1) be assigned as hearing officer in the same matter or (2) later testify on any aspect of the mediation.
3. **Limit on communications.** A hearing officer shall not communicate privately on the facts or merits of a pending matter with any party or representative. The hearing officer may communicate privately as needed for matters unrelated to the facts or merits.
4. **Hearing officer disqualification.** A hearing officer who cannot impartially decide a matter is disqualified. A party or the hearing officer may move to disqualify the hearing officer within 14 calendar days after the moving party knew or reasonably should have known the grounds for disqualification.
  - a. **Grounds.** Grounds to disqualify include the following:
    - (1) Personal bias or prejudice for or against a party or representative.
    - (2) Consultation by a party or representative on the pending matter before assignment.
    - (3) Employment by a party or representative in any private matter in the past five years. Appointment as a neutral arbitrator is not disqualifying.

- (4) The hearing officer or a member of the officer's family or household is (a) a party, (b) a party's representative, or (c) a person with more than a *de minimis* interest that the proceeding could substantially affect.
- b. **Ruling.** The assigned hearing officer shall decide the motion. If denied, within seven calendar days, a moving party may ask in writing for the State Personnel Director to exercise superintending control and disqualify the hearing officer. The director's decision is final. After any disqualification, the administrative officer shall assign the matter to another hearing officer.
5. **Prehearing conference.** The hearing officer may conduct a prehearing conference to identify material facts in dispute and simplify issues; obtain stipulations, admissions of fact, and documents to avoid unnecessary proofs or witnesses; exchange documents; and take other actions to facilitate fair and expeditious adjudication.
6. **Submissions and proof of service.** If a party submits any written material to the hearing officer, the party shall concurrently serve a complete copy on all other parties and certify in writing how every other party was served. Copying all parties and representatives on an email submission is sufficient proof of service.
7. **Summary disposition.** If there is no genuine issue of material fact, a party may file a motion for summary dismissal or the hearing officer may decide the matter without a contested hearing based on the grievance record and written submissions of the parties, including affidavits.

#### **F. Discovery.**

1. **Authority to issue.** To obtain relevant and material evidence needed to decide pending matters, a Civil Service adjudicating officer may:
- a. Order classified employees and agencies or their representatives to appear, testify, and produce evidence, including books, records, papers, correspondence, or documents under their control.
- b. Issue a subpoena to require a person who is not a classified employee to testify and produce evidence not under the control of a party, a classified employee, or an agency.
2. **Timing.** A party must request an order to appear or produce or a subpoena in writing at least 21 calendar days before the scheduled appearance or production date. The adjudicating officer may issue an order on a late request only if the requestor demonstrates good cause.
3. **Service.** The requesting party is responsible for serving an order or subpoena on the party to whom it is directed.

- a. **Order to appear or produce.** If a party seeks to serve a classified employee, the appointing authority shall deliver the order to the employee on a party's request. Filing a proof of service is not required.
  - b. **Subpoenas.** A subpoena may be served anyplace in the state and must be served personally by an individual of suitable age and discretion who is not a party to the grievance appeal. Proof of service must be filed with the adjudicating officer.
4. **Orders of appearance for classified employees.**
  - a. **Appearance.** All classified employees shall appear as directed by an adjudicating officer. A classified employee who is a necessary witness may also voluntarily appear at a party's request. An appointing authority shall release necessary witnesses from regularly scheduled work without loss of regular pay or leave credits for necessary travel and attendance, unless an emergency or critical safety concern prohibits releasing the employee. The employee is not entitled to overtime pay or travel expenses.
  - b. **Producing documents.** A classified employee ordered to produce evidence under the person's control must comply as ordered. Any objection by the employee or employee's appointing authority must be filed in writing at least 7 calendar days before the production deadline. The hearing officer shall rule on objections before requiring the release of evidence.
5. **Orders to agencies.**
  - a. **Requirements.** An adjudicating officer may issue an order to an agency directing it to produce its employees at a hearing to provide testimony or produce evidence under the control of the agency on request of a party. Before requesting an order, a party must seek the agency's voluntary agreement. A party must state in a request that it asked the appointing authority to voluntarily comply but was refused.
  - b. **Appearance.** An agency shall comply with an order of appearance and provide witnesses or evidence as ordered, unless it files an objection at least 7 calendar days before the witness or evidence is to be produced. The hearing officer shall rule on the objections before requiring the release of evidence.
6. **Subpoenas.**
  - a. **Applications.** An application for a subpoena is normally acted on by the hearing officer assigned to a matter, but in the assigned hearing officer's absence, another adjudicating officer may grant or deny a request. When available, the assigned hearing officer may reexamine the decision.
  - b. **Notice.** A party requesting a subpoena shall provide every other party a copy of the subpoena within 24 hours after service.

- c. **Costs.** A party requesting a subpoena bears the cost of service and witness and mileage fees. Witness and mileage fees are the same as for witnesses in state circuit courts.
  - d. **Revocation.** Any person served a subpoena who does not intend to comply shall, within 7 calendar days after service, petition the CSHO in writing to revoke the subpoena. The petitioner shall serve a copy on the requesting party. The CSHO must also promptly notice the requesting party of the petition. The hearing officer may revoke a subpoena if it requires evidence unrelated to the matter at issue, does not describe the requested evidence with sufficient particularity, or is invalid for any other sufficient reason.
  - e. **Compliance.** If a person served with a subpoena fails to comply, the requesting party may petition the circuit court for an order requiring compliance. If a petition is filed, the hearing officer may adjourn proceedings or take other action deemed appropriate. If a hearing continues, the hearing officer may presume that evidence or testimony of a non-complying witness would be adverse to a party responsible for the failure or refusal to testify.
7. **Sanctions.** If a party ignores or willfully refuses to comply with an order to appear or produce or a subpoena and the requesting party is materially disadvantaged, the adjudicating officer may impose appropriate sanctions, including dismissal of the noncompliant party's claims or defenses or drawing reasonable inferences against it related to its noncompliance.
8. **Medical information.** If a party's mental or physical condition is in controversy, the hearing officer may order prehearing discovery on the condition. Medical information subject to discovery includes medical records in the control of a party, physician, hospital, or other custodian, including the Employee Services Program. A hearing officer shall not issue any order on any assessment or counseling services by the Employee Services Program, unless the recipient has signed a written release authorizing the disclosure; employees of the Employee Services Program shall comply with any order of a hearing officer accompanied by a properly authorized release. A party may assert a valid privilege to prevent discovery of medical information about the party's mental or physical condition. A privilege not timely asserted is waived in the proceeding. A party who asserts that medical information is privileged or refuses to sign a release and prevents discovery cannot thereafter introduce any physical, documentary, or testimonial evidence on the party's medical or physical history or condition.
- G. Hearing Procedures.** If a grievance appeal is not decided on summary disposition, a hearing officer shall conduct a contested hearing under the following procedures:
- 1. **Scheduling.** The hearing officer shall fix the time and place of hearing. Grievance appeal hearings are to be concluded in one day, unless otherwise previously

- authorized by the hearing officer in writing. The parties shall avoid calling unnecessary witnesses, be sufficiently prepared, and stipulate to all uncontested facts of the case to the hearing officer before the hearing date. Hearing officers should encourage the parties to focus their presentations on relevant evidence.
2. **Postponements.** Except for a serious emergency, a request to postpone a scheduled hearing must be filed at least 14 calendar days in advance. A hearing officer may postpone at a party's request if there is sufficient justification.
  3. **Absences.** A hearing may proceed in the absence of a party or representative who fails to appear and did not obtain a postponement.
    - a. If the party with the burden of proof fails to appear, the hearing officer may grant a default judgment to the responding party.
    - b. If the responding party fails to appear, the hearing officer shall make an award in favor of the party with the burden of proof if sufficient evidence to justify an award is introduced.
  4. **Prehearing exchange of documents and witness lists.** Each party shall provide every other party and the hearing officer (1) a copy of each document that the party intends to introduce into evidence in the party's case-in-chief and (2) a written list of the names and titles of all witnesses the party intends to call to testify at the hearing. The copies and list must be (1) hand-delivered or emailed to all other parties at least 7 calendar days before the hearing or (2) sent by first-class U.S. mail or other courier at least 14 calendar days before the hearing. This section does not prohibit a party from introducing rebuttal evidence or witnesses.
    - a. **Previously provided documents.** A party need not provide another copy of any document previously exchanged in the grievance process.
    - b. **Security risk.** If an appointing authority intends to call as a witness any prisoner or other person involuntarily committed, the witness may appear by telephone, unless the hearing is held where the witness is located.
  5. **Evidence.** The hearing officer shall provide the parties a reasonable opportunity to present evidence, examine and cross-examine witnesses, and present argument. The rules of evidence do not apply, but the hearing officer may refuse to admit repetitive, irrelevant, unreliable, or speculative evidence. Parties are limited in examining witnesses and presenting evidence to facts directly related to matters in dispute before the hearing officer. The hearing officer may swear witnesses, take testimony, receive evidence including opinion evidence, and take other actions necessary to fairly consider the parties' claims. The hearing officer may receive and consider evidence of witnesses by affidavit, giving it weight deemed proper after considering any objection to its admission.

6. **Hearing record.** The hearing record shall include the following:
    - a. The grievance chain, with all written grievances and answers.
    - b. Documents and items admitted into evidence by the hearing officer.
    - c. Sworn testimony of witnesses.
    - d. Motions or other pleadings filed by the parties.
    - e. Written orders and decisions of the hearing officer.
  7. **Civil Service rules and regulations.** The hearing officer may judicially note Civil Service rules, regulations, and decisions which need not be admitted into evidence unless there is a genuine dispute over their authenticity or actual text.
  8. **Agency work rules.** Relevant agency work rules, policy directives, or orders at issue must be admitted into evidence.
- H. Standards and Burden of Proof.** The burdens of proof in grievance appeals vary depending on the certified issues. The burdens are as follows:
1. **Prohibited discrimination.** If alleging discrimination, a grievant must prove by a preponderance of the evidence that the grievant suffered a tangible adverse employment action from discrimination prohibited by rule 1-8.
  2. **Whistleblower.** If alleging reprisal, a grievant must prove by a preponderance of the evidence that the grievant suffered a tangible adverse employment action from retaliation prohibited by rule 2-10.
  3. **Discipline.** If alleging that a dismissal, demotion, suspension, reduction in pay, or disciplinary lateral job change was without just cause, the burden of proof is:
    - a. **Just cause.** The appointing authority must first prove by a preponderance of the evidence that it had just cause to discipline the grievant.
    - b. **Discipline.** If the appointing authority proves that it had just cause to discipline, a hearing officer can only alter the discipline imposed if the grievant proves by a preponderance of the evidence that the particular discipline imposed (1) violated a Civil Service rule or regulation, (2) violated an agency work rule, or (3) was arbitrary and capricious.
  4. **Position abolition or creation.** If challenging a position's creation or abolition, a grievant must prove by a preponderance of the evidence that (1) the grievant suffered a tangible adverse employment action from the abolition or creation and (2) the position was abolished or created for reasons other than administrative efficiency.
  5. **Nondisciplinary lateral job change.** If challenging a nondisciplinary lateral job change, the grievant must prove by a preponderance of the evidence that (1) the

grievant suffered substantial harm from the lateral job change and (2) the lateral job change was arbitrary and capricious.

6. **Compensation.** If alleging a denial of compensation, the grievant must prove by a preponderance of the evidence that the grievant was denied compensation to which the grievant was entitled under a Civil Service rule or regulation.
7. **Service rating.** If an unsatisfactory service rating is challenged as without just cause, the appointing authority must prove by a preponderance of the evidence that it had just cause to issue the unsatisfactory service rating.
8. **Performance-pay evaluation.** If alleging a less-than-satisfactory overall performance-pay evaluation was without just cause, the appointing authority must prove by a preponderance of the evidence that it had just cause to issue an overall less-than-satisfactory evaluation.
9. **Rescinded probationary appointment.** If the rescission of an appointment during a probationary period where the grievant was demoted to a classification level not less than that occupied when appointed is challenged:
  - a. The appointing authority must first articulate the reasons for rescinding the probationary appointment and demoting the grievant.
  - b. The grievant must then prove by a preponderance of the evidence that the rescission and demotion (1) were arbitrary and capricious or (2) violated rule 1-6, 1-8, or 2-10.
10. **General grievance appeal.** Unless otherwise specifically provided elsewhere in Civil Service rules or regulations, a grievant must prove by a preponderance of the evidence both of the following:
  - a. The grievant was substantially harmed by an appointing authority's action.
  - b. That action 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 between the grievant and appointing authority permitted by Civil Service rules or regulations.

#### **I. Decisions.**

1. **Final decision.** The hearing officer shall issue a written decision setting forth findings of fact, conclusions of law, and any remedial orders. A decision disposing of a grievance appeal is final, unless a party timely files a claim of appeal or an application for leave to appeal to the Civil Service Commission.
2. **Remand decision.** If the hearing officer remands the matter to the agency for further proceedings and does not retain jurisdiction, the decision is appealable as a final

- decision. If the hearing officer remands the matter to the agency and retains jurisdiction, the decision is appealable only as an interlocutory order.
3. **Effective date.** If a party files an appeal to the commission within 28 calendar days after a decision is issued, the decision is automatically stayed pending further order of the Employment Relations Board or commission. Otherwise, a grievance appeal decision becomes final and binding on the parties 29 calendar days after the adjudicating officer's decision is issued, unless the decision provides a later effective date.
  4. **Dismissal grievances.** If an adjudicating officer's final decision orders an appointing authority to reinstate a grievant who had been dismissed for just cause, as a condition of further appeal the appointing authority must, temporarily at the class and level ordered for reinstatement, either (a) reinstate the grievant or (b) provide base pay and appropriate medical, dental, and vision group insurance. Temporary restoration does not reinstate the grievant to employment in the classified service. During any temporary restoration, the grievant is not entitled to any leave credit, retirement credit, longevity credit or payment, additional compensation, base-pay increases, severance pay, expense reimbursement, or other additional compensation or benefit.

#### **J. Awards.**

1. **Prohibitions.** A hearing officer cannot award attorney fees, witness fees, costs or other expenses, or interest on any monetary award.
2. **Back pay and benefits.** An appointing authority need not pay an award of back pay or benefits until a final, nonappealable decision of the commission or a court of competent jurisdiction affirms the award. If a reinstatement is affirmed after appeal, the appointing authority shall provide the rest of any back-pay award, offset by any base pay and benefits temporarily restored on appeal. An award of back pay and other benefits, even when not expressly stated in the decision, is subject to Civil Service rules and regulations and the following deductions, when appropriate:
  - 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.
  - d. Paycheck withholding required under federal, state, and local law.
  - e. The employee's share of the cost of any group insurance plan.
  - f. Retirement benefits, including disability retirement benefits.



3. **Expiring appointments.** A grievant in a limited-term, Senior Executive Service, or Senior Executive Management Assistant Service appointment cannot be awarded relief for any period after the scheduled expiration of the term of appointment.

**K. Arbitration Alternative.**

1. **Filing.** A grievant may elect to have an arbitrator hear a grievance appeal rather than a hearing officer appointed by the CSHO. A grievant electing arbitration must timely file a grievance appeal with the CSHO after exhausting the agency-level steps in § 4.B. If the grievant's first filing with the CSHO does not explicitly elect the arbitration alternative, the grievant waives the option and the CSHO shall appoint a hearing officer.
2. **Pre-arbitration conference.** If the administrative officer does not summarily dismiss a grievance appeal, the administrative officer shall schedule a pre-arbitration conference of the parties within 28 calendar days after filing. The parties may explore conciliation, stipulate to issues and facts, and coordinate selection of the arbitrator. After the conference, the administrative officer shall certify the grievance appeal to arbitration.
3. **Arbitrator selection.** Within 14 calendar days after the administrative officer's certification, the grievant must file a request with the selecting agency or acknowledge acceptance of an agreed-upon arbitrator. Unless the parties agree otherwise, the arbitrator is selected and the hearing conducted under rules of the American Arbitration Association that are consistent with the Civil Service rules and regulations. The Federal Mediation and Conciliation Service or Michigan Employment Relations Commission may be used by mutual agreement.
4. **Procedures.**
  - a. **Cost.** The grievant and appointing authority shall share arbitration costs equally.
  - b. **Applicable law.** An arbitrator shall decide a grievance appeal under the same substantive Civil Service rules and regulations that would apply if the grievance appeal were heard by a Civil Service hearing officer.
  - c. **Record.** The arbitration must be recorded so that a verbatim transcript of proceedings can be made, if needed. The arbitrator must retain all original documents, exhibits, pleadings, orders, and decisions.
  - d. **Decision.** The arbitrator shall issue a written decision setting forth findings of fact, conclusions of law, and any remedial orders. A remedial order cannot exceed the remedies available to a Civil Service hearing officer. The decision is final unless a party timely files a claim of appeal or application for leave to appeal to the Civil Service Commission. If a party appeals, the arbitrator shall

provide all original documents, exhibits, pleadings, orders, and decisions to the Board on the appellant's request.

#### **L. Authorized Representation.**

1. **Nonexclusively represented employees.** A NERE who is a party in a Civil Service grievance proceeding 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 classified NERE, subject to limits in the rules or regulations.
  - a. **Administrative leave.** An agency shall release a NERE who is a party in a Civil Service grievance proceeding from regularly scheduled work without loss of regular pay or leave credits for necessary travel to and attendance at grievance meetings or proceedings scheduled by the employer or Civil Service.
    - (1) If a representative is an employee of the same agency, the appointing authority shall release the representative from regularly scheduled work without loss of normal pay or leave credits to attend grievance procedure meetings and proceedings scheduled by the employer or Civil Service.
    - (2) If the representative is an employee of a different agency, the representative may attend grievance meetings or proceedings only if the representative's appointing authority approves annual or personal leave.
  - b. **Limits.** Administrative leave for investigations by a grievant or representative is not authorized. Overtime, consultation time over 15 minutes, and expenses, including travel expenses, are not authorized. To the extent practical, meetings should be scheduled during the grievant's workday. An appointing authority may limit the grant of administrative leave to three spokespeople for a group grievance.
2. **Exclusively represented employees.** If an exclusively represented employee files a grievance over a prohibited subject of bargaining under an exclusive Civil Service procedure, 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 in the same bargaining unit, subject to limits in the rules or regulations.

**M. Confidentiality.** Except for the record and published Civil Service decisions, all files of the commission and its adjudicating officers relating to grievance appeals, including internal correspondence, research, staff analyses, and draft decisions, are confidential and not open to the public.

**N. Other Administrative Proceedings.** Procedures in this regulation for conducting hearings may be used in other Civil Service proceedings when a contested hearing is

authorized to the extent that they are compatible with requirements for those proceedings. In Civil Service proceedings when a contested hearing is not authorized, the adjudicating officer may use these procedures to the extent that they are compatible with the subject matter and conduct of the investigation.

### **CONTACT**

Questions on this regulation may be directed to the Civil Service Hearings Office, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-9096; or to [MCSC-Hearings@mi.gov](mailto:MCSC-Hearings@mi.gov).

# Michigan Civil Service Commission

## Regulation 8.02

Subject: <b>Technical Classification and Qualification Complaints</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 8.02 (SPDOC 15-15, October 1, 2015)

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## 1. Purpose

This regulation establishes standards and procedures to file and process technical classification and qualification complaints, as authorized in rules 4-3 and 8-3.

## 2. CSC Rule References

### **3-3   *Appointments and Job Changes***

\* \* \*

#### **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.*

### **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.*

### **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.*

\* \* \*

#### **8-3.2 Time Limits**

\* \* \*

**(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.*

\* \* \*

**(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.*

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#### **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.*

\* \* \*

### **3. Definitions**

#### **A. CSC Rule Definitions.**

- 1. 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.*
- 2. Party means any of the following persons or organizations:*

\* \* \*

*(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.*

\* \* \*

- 3. 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.*

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4. **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.

5. **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. Definitions in This Regulation.

1. **Staff qualification decision** means a civil service staff decision determining the qualifications and fitness of a candidate for a position in the classified service.
2. **Technical qualification complaint** means a request for reconsideration of a decision by the state personnel director or the director's designee, as authorized in rule 3-3.10.

## 4. Standards

### A. Filing Complaints.

1. An employee or appointing authority directly affected by a technical classification decision or staff qualification decision made by the Office of Classification, Selection, and Compensation may file a technical classification or technical qualification complaint with the Civil Service Office of Technical Complaints. The complaint must be submitted on the Technical Complaint form (CS-212) to MCSC-OTC@mi.gov.
  - a. An employee organization cannot file a complaint regarding a technical decision. An employee organization is limited to serving as representative for the complainant.
  - b. A complaint for a position in a preauthorized classification is accepted only if Civil Service staff has made a technical decision. If an appointing authority denies a preauthorized reclassification, the incumbent must first request a position review with Civil Service, in accordance with regulation 4.03.
  - c. Disputes concerning the evaluation of an incumbent's work performance are not subject to technical complaints.
  - d. Incumbents in the same classification may file a joint complaint of a denied or modified classification action. The incumbents must be performing the same duties and responsibilities and must have occupied their positions for the equivalent of one year of full time service. Only incumbents who sign the CS-212 are considered complainants.

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2. **Complaint.** 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. All information required in Part A of the CS-212 for each complainant.
  - b. A clear and concise description of the technical decision being questioned, including any additional information required in the instructions for the form.
  - c. A complete statement of why the 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.
  - d. Any documentary evidence that the complainant believes supports the technical complaint.
  - e. A clear statement of the desired outcome, which must be within the authority of Civil Service staff to grant.
  - f. The signature of each complainant. A signature can be a scanned document of an actual signature or the complainant's typed name followed by "/s/" (e.g., "John Doe /s/").
  - g. The name, mailing address, and email address of the complainant's representative, if any.
3. **Time Limits.** To be timely, the complaint must be **received** by the Civil Service Office of Technical Complaints within 14 calendar days after the date that the technical decision involving the complainant was **issued**.
4. **Extension.** The technical review officer may grant an extension to file if, before the filing deadline passes, the technical complainant shows sufficient justification for the extension.

#### **B. Administrative Denial.**

1. **Reasons.** In addition to the grounds in rule 8-4, a technical classification or qualification complaint may be administratively dismissed without prior notice for the following reasons:
  - a. The complaint fails to set forth allegations with sufficient particularity to permit review.
  - b. The complaint involves one or more of the following actions, decisions, and matters that are not subject to review:
    - (1) Michigan Civil Service Commission Rules.
    - (2) Civil Service regulations, standards, and procedures.



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- (3) The official classification plan, including job specifications, job-evaluation factors, and the policies, procedures, and other official publications for administration of the classification system.
  - (4) The establishment, abolishment, or modification of a classification.
  - (5) The job evaluation factoring for a classification.
  - (6) The pay range assigned to a classification.
  - (7) Classifications preauthorized for position establishment and reclassification to agencies.
  - (8) Individual position freezes.
  - (9) Appraisal method and content.
  - (10) Appraisal determination, including section/item weights, passing points, and experience and education rating charts.
  - (11) Appraisal method administration decisions, including (a) replacing or combining applicant pools; (b) scheduling examinations and filing requirements; and (c) limitations on appraisal participation.
  - (12) Educational, experience, special, license, and certification requirements in the job specifications for classifications.
  - (13) Special posting requirements, standard staffing patterns, and other limitations previously requested by agencies and approved by Civil Service staff.
- c. The complaint fails for other good and sufficient reason to warrant further review.

### **C. Technical Review Decisions.**

1. **Complaint Investigation.** 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.
2. **Decisions.**
  - a. The technical review officer shall review *de novo* all submissions and decide the matter based on the submissions, agency records, Civil Service rules and regulations, and technical expertise.
  - b. **Technical Classification Review Decisions.** The decision of a technical review officer in a technical classification complaint 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.

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- c. **Technical Qualification Review Decisions.** The technical qualification review decision of a technical review officer in a technical qualification complaint is the final decision of the commission and may be appealed to the circuit court under the review procedures described in Rule 8-7.9

#### **D. Implementing Decisions.**

1. **Effective Date.** The effective date assigned to a technical classification complaint decision is the beginning date of the pay period in which the original request for a position review was received. If the appointing authority submitted the request for a position review, the effective date is assigned in accordance with regulation 4.04. If the employee submitted the position review request, the effective date is assigned in accordance with regulation 4.03.
2. **Parties Granted Relief.** Only complainants listed on the CS-212 may obtain full relief, including the effective date of the original position review. Other similarly situated individuals may be granted the same classification relief on a prospective basis only.
3. **Effects of Vacating a Position.** If an incumbent vacates a position before the complaint process ends and ultimately prevails, the following processes occur:
  - a. The employee who complained about a classification action receives compensation in the awarded classification retroactive to the effective date of the original position review up to the date the employee vacated the position.
  - b. The employee has reinstatement rights in the awarded classification, as described in the Civil Service rules and regulations.
  - c. If the employee vacated the position as a result of a reduction in force, the employee's name is placed on the appropriate recall list for the awarded classification. This does not require the bumping chain to be reinstituted.
  - d. The awarded classification is limited to the position that gave rise to the complaint and cannot be transferred to other positions.
4. **Effect of Decision on Subsequent Employee.** In a successful complaint, when a new incumbent has been appointed to the position, the position remains at the previous classification until the successor has satisfactorily performed the duties for the equivalent of one year of full-time service. The position may be reclassified to the awarded classification sooner if the successor qualifies for an early reclassification in regulation 4.05.

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#### E. Grievance Settlements.

An appointing authority cannot unilaterally settle a classification or qualification dispute through a grievance or arbitration proceeding covered by a collective bargaining agreement or the Grievance and Grievance Appeal Procedures.

### 5. Procedures

Responsibility	Action
Civil Service	1. Mails technical decision.
Complainant	2. Prepares technical complaint and submits to the Office of Technical Complaints at MCSC-OTC@mi.gov.
Office of Technical Complaints	3. Upon receipt of the technical complaint, conducts preliminary review to determine timeliness and sufficiency of the complaint. 4. If the complaint is untimely or fails to meet the requirements of this regulation, dismisses the technical complaint. 5. Obtains submissions from appointing authority and agency staff, if required. 6. If necessary, meets with the technical complainant and any other interested persons to review and discuss the complaint, with notification to the appointing authority. 7. Prepares and issues technical complaint decision.
Complainant or Interested Party	8. May apply for leave to appeal a technical classification review decision to the Civil Service Commission. A technical qualification review decision is final.

### CONTACT

Questions on this regulation may be directed to the Office of Technical Complaints, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-9093; or to [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov).

# Michigan Civil Service Commission

## Regulation 8.03

Subject: <b>Technical Disbursement Complaints</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 8.03 (SPDOC 15-15, October 1, 2015)

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### 1. Purpose

This regulation establishes standards and procedures to file and process technical disbursement complaints, as authorized in Civil Service rules and regulations.

### 2. CSC Rule References

#### 7-6 *Prior Written Approval by Civil Service Staff*

\* \* \*

#### 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.*

## **7-7 Preauthorized Approval**

\* \* \*

### **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].*

\* \* \*

## **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.*

\* \* \*

**(b) Technical disbursement complaint.** *An interested party authorized in rule 7-6.4 [Complaint Regarding Technical Decision] may file a technical disbursement complaint.*

\* \* \*

### **8-3.2 Time Limits**

\* \* \*

**(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.*

\* \* \*

**(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**

*\* \* \**

**(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.*

\* \* \*

#### **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.*

### **3. Definitions**

#### **A. CSC Rule Definitions.**

- 1. **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.*
- 2. **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.*
- 3. **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.*
- 4. **Party** means any of the following persons or organizations:*

\* \* \*

*(d) **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 the civil service staff to participate in the review.*

*5. **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.*

*6. **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.*

*7. **Technical decision** includes each of the following individual decisions:*

*\* \* \**

*(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.*

*\* \* \**



## 4. Standards

### A. Filing Complaints on Preauthorized Services.

1. Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process may be brought only under the procedure authorized in rule 7-9.
2. Any complaint regarding a technical decision to add personal services to the preauthorized list may be brought only by an interested party under the technical complaint procedures in rule 8-3 and this regulation.

### B. Filing Complaints on Nonpreauthorized Services.

1. **Authorized to Complain.** Only an interested party who participated in the timely submission of all relevant data and information at the initial staff review may file a technical disbursement complaint with the Office of Technical Complaints. The technical disbursement complaint must be submitted using the Technical Complaint form (CS-212) to [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov).
2. **Complaint.** 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. All information required in part A of the CS-212 for each complainant.
  - b. A clear and concise description of the technical decision being complained of in Part B of the CS-212, including any additional information required in the instructions for the form.
  - c. A complete statement of why the 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.
  - d. All documentary evidence that the complainant believes supports the technical complaint.
  - e. A clear statement of the desired outcome of the complaint. The outcome must be within the authority of Civil Service staff to grant.
  - f. The signature of each complainant. A signature can be a scanned document of an actual signature or the complainant's typed name followed by "/s/" (e.g., "John Doe /s/").
  - g. The name, mailing address, and email address of the complainant's representative, if any.

**C. Time Limits.**

To be timely, the complaint must be **received** by the Civil Service Office of Technical Complaints within 14 calendar days after the date the technical disbursement decision was issued.

**D. Extension.**

The technical review officer may grant an extension to file if, before the filing deadline passes, the technical complainant shows sufficient justification for the extension.

**E. Administrative Denial of Complaint.**

1. **Reasons for Administrative Denial.** In addition to the grounds in rule 8-4, a technical disbursement complaint may be administratively dismissed without prior notice for the following reasons:

- a. The complaint fails to set forth allegations with sufficient particularity to permit review.
- b. The complaint involves one or more of the following actions, decisions, and matters that are not subject to review:
  - (1) Michigan Civil Service Commission rules.
  - (2) Civil Service regulations, standards, and procedures.
- c. The complaint fails for other good and sufficient reason to warrant further review.

**F. Technical Review Decisions.**

1. **Technical Review Process.** A technical review officer is not authorized to conduct a hearing, but may meet with the complainant or other interested parties to discuss the complaint. Decisions of the technical review officer shall be based on the technical expertise of the technical review officer and a *de novo* review of all submissions of interested parties, agency records, and Civil Service rules and regulations.
2. **Decision of the Technical Review Officer.** 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.

**G. Implementing Technical Review Decisions.**

1. **Technical disbursement review.** A final technical decision on a technical disbursement complaint is effective as follows:
  - a. **Request approved.**
    - (1) If an initial Civil Service staff decision approving a request became effective under rule 7-6.3, a decision of a technical review officer also approving the

request is effective immediately. 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.

- (2) 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.
- b. **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 Commission or a court of competent jurisdiction rules otherwise.

## 5. Procedures

Responsibility	Action
Civil Service	1. Mails technical decision to interested parties.
Complainant	2. Prepares technical complaint and submits to the Office of Technical Complaints at MCSC-OTC@mi.gov.
Office of Technical Complaints	3. Upon receipt of the technical complaint, conducts preliminary review to determine timeliness and sufficiency of the complaint. 4. If the complaint is untimely or fails to meet the requirements of this regulation, dismisses the technical complaint. 5. If the complaint is properly submitted, obtains additional information from the appointing authority and other interested parties, if required. 6. If necessary, meets with the technical complainant and any other interested parties to review and discuss the complaint.

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<b>Responsibility</b>	<b>Action</b>
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- |                                 |   |
|---------------------------------|---|
|                                 | 7. Prepares and issues technical complaint decision.              |
| Complainant or Interested Party | 8. May apply for leave to appeal to the Civil Service Commission. |

### **CONTACT**

Questions on this regulation may be directed to the Office of Technical Complaints, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-9093; or to [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov).

# Michigan Civil Service Commission

## Regulation 8.04

Subject: <b>Technical Appointment Complaints</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 8.04 (SPDOC 15-15, October 1, 2015)

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## 1. Purpose

This regulation establishes standards and procedures to file and process technical appointment complaints authorized in rules 3-7 and 8-3.

## 2. CSC Rule References

### ***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.*

### ***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.*

### **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.*

*\* \* \**

#### **(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.*

*\* \* \**

#### **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**

\* \* \*

- (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.*

### **3. Definitions**

#### **A. CSC Rule Definitions.**

- 1. 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.*
- 2. 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.*
- 3. Party** *means any of the following persons or organizations:*

\* \* \*

**(e) 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.*
- 4. 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.*

5. **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.

6. **Technical decision** includes each of the following individual decisions:

\* \* \*

(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.

#### **B. Definitions in This Regulation.**

1. **Appointee** means a classified employee whose appointment is (1) vacated by Civil Service staff or (2) challenged by an unsuccessful candidate for the position.
2. **Appointing authority** means the appointing authority that made the disputed appointment.
3. **Considered by the appointing authority** means a qualified candidate who (1) met any screening criteria established by the appointing authority and (2) was interviewed or otherwise comparably evaluated by the appointing authority.

### **4. Standards**

#### **A. Filing Complaints.**

1. An employee whose appointment is revoked because of a Civil Service audit or an unsuccessful candidate directly affected by a technical appointment decision may file a technical complaint with the Office of Technical Complaints. The complaint must be submitted on the Technical Complaint form (CS-212) to [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov).
2. **Complaint.** The complaint must include the following:
  - a. All information required in part A of the CS-212 for each complainant.
  - b. A clear and concise description of the technical appointment decision being questioned in Part B of the CS-212, including any additional information required in the instructions for the form.
  - c. A complete statement of why the technical appointment 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.
  - d. Any documentary evidence that the complainant believes supports the technical complaint.

- e. A clear statement of the desired outcome of the complaint. The outcome must be within the authority of Civil Service staff to grant.
  - f. The signature of each complainant. A signature can be a scanned document of an actual signature or the complainant's typed name followed by "/s/" (e.g., "John Doe /s/").
  - g. The name, mailing address, and email address of the complainant's representative, if any.
3. **Time Limits.** If notice of the technical appointment decision was provided, the complaint must be received by the Office of Technical Complaints within 14 calendar days after the later of the effective date of the decision or the date the notice of the decision was provided. If no notice was provided, a complaint must be filed within 6 months after the effective date of the appointment.
  4. **Extension.** The technical review officer may grant an extension to file if, before the filing deadline passes, the technical complainant shows sufficient justification for the extension.

#### **B. Administrative Denial of Complaint.**

In addition to the reasons in rule 8-4, a technical appointment complaint may be administratively dismissed without prior notice for the following reasons:

1. The complaint fails to set forth allegations with sufficient particularity to permit review.
2. The complaint fails to allege a violation of a Civil Service rule or regulation or article 11, section 5, of the Michigan Constitution.
3. The complainant was not a qualified candidate considered by the appointing authority.
4. The complaint fails for other good and sufficient reason to warrant further review.

#### **C. Complaint Investigation.**

1. If a complaint is not summarily or administratively dismissed, the Office of Technical Complaints shall give notice of the complaint to the appointing authority and any appointees and inform them of their rights to participate. Notice to appointees must include the following:
  - a. Notice that the pending complaint challenges the appointee's appointment and that the appointee may be removed or demoted as a result of the complaint.
  - b. Notice that the appointee is a party to the complaint and may present documents and argument and appeal any adverse decision.

- c. Notice that, even if the appointee does not participate, the appointee will be bound by the final decision in response to the complaint and cannot bring a later grievance, technical appeal, or complaint to challenge the result of the final decision.
2. The technical review officer shall offer the appointing authority and any appointees an opportunity to respond to the complaint.
3. A technical review officer is not authorized to conduct a hearing, but may discuss the complaint with the complainant or other interested parties. If the complaint raises a genuine issue of material fact that cannot be adequately determined under the technical complaint procedures, the technical review officer may certify questions of fact to the Civil Service Hearings Office (CSHO). CSHO shall assign the matter to a hearing officer. The hearing officer shall then conduct a hearing, as provided in Civil Service rules and regulations, and issue a written recommendation on the certified question of fact to the technical review officer.

#### **D. Technical Review Decision.**

1. The technical review officer shall review all submissions, including any hearing officer's recommendation, 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 technical review decision setting forth the material findings of fact, conclusions of law, and any remedial orders.
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.

### **5. Procedures**

Responsibility	Action
Appointing Authority	1. Makes appointment to position.
Complainant	2. Prepares technical complaint and submits to the Office of Technical Complaints at <a href="mailto:MCSC-OTC@mi.gov">MCSC-OTC@mi.gov</a> .

Responsibility	Action
Office of Technical Complaints	<ol style="list-style-type: none"> <li>3. Upon receipt of the technical complaint, conducts preliminary review to determine timeliness and sufficiency of the complaint.</li> <li>4. If the complaint is untimely or fails to meet the requirements of this regulation, administratively dismisses the technical complaint.</li> <li>5. If the appeal is not administratively dismissed, notifies appointing authority, appointees, and any other necessary parties and gives an opportunity to respond.</li> <li>6. If necessary, meets with the technical complainant, appointing authority, appointee, or other interested persons to discuss the complaint.</li> <li>7. If necessary, certifies questions of fact for determination by a hearing officer.</li> <li>8. Prepares and issues technical review decision.</li> </ol>
Complainant or Interested Party	<ol style="list-style-type: none"> <li>9. May apply for leave to appeal to the Civil Service Commission.</li> </ol>

## **CONTACT**

Questions on this regulation may be directed to the Office of Technical Complaints, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-9093; or to [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov).

# Michigan Civil Service Commission

## Regulation 8.05

<b>Subject:</b> <b>Employment Relations Board Appeal Procedures</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 8.05 (SPDOC 15-03, April 26, 2015)

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## **1. Purpose**

This regulation establishes standards and procedures to appeal a decision to the Civil Service Commission through the Employment Relations Board.

## **2. CSC Rule References**

### **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.*

**3. Definitions****A. CSC Rule Definitions.**

- 1. 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.*
- 2. 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.*
- 3. Board** *means the employment relations board.*
- 4. Commission** *means the Michigan civil service commission.*
- 5. 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.*
- 6. 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.*
7. **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.

#### **B. Definitions in This Regulation.**

1. **Authorized representative** means a person authorized by a party in a proceeding before the Board or Commission to appear for and represent the interests of the party.
2. **Concurrently serve** means, on the same day that a document is filed with the Board, to (1) deliver by hand, (2) send by first-class or certified mail, (3) or send to an authorized email address.
3. **Contested hearing** means a quasi-judicial proceeding before a hearing officer in which the parties, after notice, may introduce documentary evidence, examine and cross-examine witnesses under oath, and submit arguments.
4. **File** means sending a document to the Board at [MCSC-ERB@mi.gov](mailto:MCSC-ERB@mi.gov) or by other method specifically and previously approved by the Board's administrative officer.
5. **Proof of service** means a statement filed with the Board certifying the date and method by which a party served a copy of a document on another party.

## **4. Standards**

### **A. Appellate Jurisdiction of Employment Relations Board.**

An appeal to the Civil Service Commission may be filed from the following decisions, for which the Employment Relations Board exercises appellate jurisdiction for the Commission:

1. **Grievance appeals.** Claims of appeal as of right and applications for leave to appeal from final decisions of adjudicating officers, under rule 8-2.5.
2. **Technical review decisions.** Applications for leave to appeal final technical review decisions, under rule 8-3.
3. **Labor relations appeals.** Applications for leave to appeal labor relations decisions of the State Personnel Director or other Civil Service staff, including decisions concerning the following:
  - a. Prohibited subjects of bargaining, under rule 6-3.5.
  - b. Recognition and unit determinations, petitions for unit elections, or excluded position determinations, under rule 6-6.
  - c. Unfair labor practice charges or other final labor relations decision, under rule 6-14.3.
  - d. Fines on employees or labor organizations for engaging in, promoting, encouraging, or supporting strikes, under rule 6-15.
4. **Other decisions.** Applications for leave to appeal other decisions of the State Personnel Director or other Civil Service staff, when authorized by the Civil Service rules or regulations, including the following:
  - a. Disbursements for personal services, under rule 7-9.
  - b. Drug testing of new hires, under Rule 2-7.4(b).
  - c. Benefits under group insurance plans, under Regulation 5.18.

**B. General Procedure.**

1. **Form of appeal.** Appeals to the Commission must be initiated by filing either (1) a claim of appeal as of right (claim) (Form CS-1756) to appeal a dismissal grievance or (2) an application for leave to appeal (application) (Form CS-1743) for all other appeals.
2. **Method of filing.** All documents must be filed with the Employment Relations Board by email at MCSC-ERB@mi.gov. The Board's administrative officer may authorize an alternative filing method upon a party's timely request received before a filing deadline passes.
3. **Filing deadline.** The party filing an appeal (appellant), whether by claim or application, must ensure **receipt** of the appeal by the Board within **28 calendar days** after the date the final decision of the adjudicating officer is **issued**. Any document filed with the Board is considered filed when the Board **receives** the document, as provided in Regulation 8.06.

4. **Signature required.** Any document filed with the Board must be **signed and dated** by the filing party or the filing party's authorized representative. Photocopied or electronic signatures are acceptable.
5. **Service on other parties required.** A party that files **any** document with the Board must **concurrently** serve a copy of the document on all other parties. In a group grievance, a party serving a group only must serve a copy on the group's authorized representative. In an appeal of a technical review decision or State Personnel Director decision, the adjudicating officer who issued the decision participates in Board proceedings as an interested party and must be served.
6. **Proof of service required.** A party that serves a copy of **any** document on other parties must file a proof of service with the Board within three calendar days after the served document is filed with the Board. If a party has been provided authorized emails from **all** other parties and their representatives, including a cc to all with the filing satisfies the proof of service requirement. Otherwise, a proof of service containing substantially all information in Form CS-1740, from [www.mi.gov/erb](http://www.mi.gov/erb), must be filed. The Board will not accept as proof of service a general statement in a cover letter or filing that other parties have been copied.
7. **Identification.**
  - a. The appeal must contain the appellant's (1) name, (2) employee identification number, (3) employing agency, (4) mailing address, (5) telephone number, and (6) email address.
  - b. If the appellant has an authorized representative, the appeal must contain the representative's (1) name, (2) organization, (3) mailing address, (4) telephone number, and (5) email address.
8. **Changing representatives.** If a party changes authorized representatives, the party or new representative must (1) provide the Board in writing the information in § 4.B.7.b for the new authorized representative, (2) concurrently serve a copy of the notice on all other parties, and (3) file proof of service with the Board.
9. **Cross-appeals.**
  - a. Any other party may file a cross-appeal within 14 calendar days after a claim or application is filed with the Board.
  - b. To perfect a cross-appeal, a cross-appellant must file (1) a signed concise statement of cross-appeal, (2) a cross-appeal brief, and (3) proof of service. The statement and brief must comply with the content and filing requirements for the underlying appeal.
  - c. A cross-appeal may be prosecuted even if the adverse party's appeal is abandoned or dismissed.

10. **Stipulations.** The parties may stipulate in writing to any matter pertaining to the appeal, including the composition of the record. All stipulations must comply with Civil Service rules and regulations and are subject to acceptance by the Board.
11. **Computing time and filing documents.** Unless otherwise specifically provided, Regulation 8.06 applies to all proceedings of the Board and Commission.
12. **Limit on communications.** The Board and its administrative officer shall not communicate privately with parties or authorized representatives on the facts or merits of a pending matter. Private communications for scheduling and administrative matters unrelated to the facts or merits are allowed. The Board does not consider additional or rebuttal briefs, unless specifically requested by the Board or authorized in this regulation.

### **C. Claim of Appeal as of Right (Claim).**

1. **Authorized.** Only the following may file a claim of appeal as of right:
  - a. A nonexclusively represented employee (NERE) with status aggrieved by a final decision of an adjudicating officer upholding the employee's dismissal for just cause.
  - b. An agency aggrieved by a final decision of an adjudicating officer reinstating a NERE dismissed for just cause.
2. **Eligibility.** A dismissal for just cause is the permanent termination of the employment relationship of a NERE with status for just cause. It does not include, for example, the following: (a) termination of a probationary employee without status; (b) layoff; (c) separation from the classified service at the end of a leave of absence; (d) revocation of an appointment authorized in rule 3-6; (e) separation of an employee in a limited-term appointment at or before the end of the term of appointment due to lack of work or funding; or (f) separation of a member of the Senior Executive Service (SES) or Senior Executive Management Assistant Service (SEMAS) when the employee's appointment expires if the employee did not have status when appointed to the SES or SEMAS.
3. **Contents of claim.** The claim must contain substantially all the information required in Form CS-1756, which is available from the Board or [www.mi.gov/erb](http://www.mi.gov/erb). The claim must clearly identify the decision appealed (including the case name, decision number, and Civil Service reference number). The appellant's brief in the support of the claim must accompany the claim and must include the following:
  - a. A statement identifying one or more ground for modification or reversal listed in § 4.O.1 on which the appellant relies.
  - b. A statement of the facts and law supporting the appellant's argument.

- c. Identification of the documents, testimony, or other facts in the record and the rules, regulations, agency work rules, or other law on which the appellant relies.
4. **Brief of responding parties.** An appellee or cross-appellee must file any response brief and proof of service to the Board within 28 calendar days after the claim is filed with the Board.

#### **D. Application for Leave to Appeal (Application).**

1. **Authorized.** If a claim of appeal as of right is not authorized, a party aggrieved by a final decision of an adjudicating officer may appeal to the Board upon application and leave granted when authorized in the Civil Service rules and regulations.
2. **Contents of application.** The application must contain substantially all the information required in Form CS-1743, which is available from the Board or [www.mi.gov/erb](http://www.mi.gov/erb), including the following:
  - a. **Decision appealed.** The identity of the decision appealed, including the case name, decision number, and Civil Service reference number. If an arbitrator's decision issued under Regulation 8.01 is appealed, the appellant must file a copy of the decision with the application.
  - b. **Concise statement of material proceedings.** A concise description of the material events, dates, and decisions leading to the application.
  - c. **Grounds for appeal.** A sufficient explanation establishing one or more of the following grounds for appeal:
    - (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.
    - (3) The question presented is of major significance to the classified service.
3. **Response to application.** Any other party to the decision appealed must file any response and proof of service within 28 calendar days after the application is filed with the Board. The response must contain substantially all the information required in Form CS-1754, which is available from the Board or [www.mi.gov/erb](http://www.mi.gov/erb). The response must clearly identify the decision (including the case name, decision number, and Civil Service reference number). If the original application is deficient, the Board may issue notice of an amended deadline for response to allow other parties an appropriate opportunity to respond.

#### **E. Summary Dismissal of Claim or Application.**

Before the Board considers an appeal, its administrative officer may recommend summary dismissal to the Commission for the reasons listed below. The recommendation is transmitted directly to the Commission for review and final action.

1. **Not authorized.** The appellant is not authorized to file the appeal.
2. **Lack of jurisdiction.** Civil Service or the Commission lacks jurisdiction over a necessary party or the subject matter of the appeal.
3. **Untimeliness.** The appeal is late.
4. **Another action pending.** Another Civil Service action has been initiated between the same parties involving substantially the same matter.
5. **Barred by prior action.** Substantially the same matter was adjudicated to finality in the Civil Service system in another action between the same parties.
6. **Failure to respond.** The party failed to perform properly and timely any act required by the Civil Service rules or regulations, administrative officer, Board, or Commission.
7. **Failure to state a claim.** The appeal failed to allege and address any ground for granting leave to appeal under Rule 8-7.5.

**F. Consideration of Application.**

If the Board's administrative officer does not recommend summary dismissal, the Board shall review the merits of the grounds for the application and issue a recommendation to the Commission.

1. **Grounds for granting application.** The Board may recommend that the Commission grant the application if it determines that any ground for appeal in Rule 8-7.5(b) is met.
2. **Recommendation.**
  - a. **Denial of application.** If the Board recommends denying the application, the Board shall issue a recommendation to the Commission for final action.
  - b. **Grant of application.** If the Board recommends granting the application, the Board may concurrently make its recommendation on the merits of the appeal or may conduct further proceedings before issuing a separate recommendation on the merits. The Board may notify parties of a schedule for any additional briefs or oral arguments that the Board deems necessary. The Board's recommendation to grant leave is reviewed by the Commission when reviewing the Board's final recommendation on the merits of the application.
3. **Remand.** The Board may remand a case for further action. Unless the Board expressly retains jurisdiction, a case is remanded without prejudice to filing a new application from any further final decision of the adjudicating officer. A remand order is not appealable to the Commission as a final recommendation of the Board.

**G. Extensions of Time.**

1. **Incomplete filing.** If a party in good faith files a timely claim, application, brief, or other pleading that does not substantially comply with the Civil Service rules and regulations, the Board's administrative officer shall issue a deficiency notice to the party and allow **14 calendar days** to correct the deficiency.
2. **Extension before deadline.**
  - a. **Stipulation.** The parties may stipulate in writing to an extension of time to file a claim, application, brief, or other pleading. The Board must receive any stipulation **before** the original deadline passes. A stipulated extension cannot exceed 28 calendar days.
  - b. **Advance request.** A party may file an extension request in writing with the Board. Any request must be received **before** the filing deadline. The Board's administrative officer may grant an extension if the administrative officer finds sufficient justification.
3. **Late filing.** Any late appeal, motion, or other document must be accompanied by a written explanation for the lateness. If no explanation is provided, the administrative officer must send a deficiency notice. If the party fails to establish the required good cause or special extenuating circumstances or does not timely correct the deficiency, the appeal is dismissed as late or for failure to respond. The Board or its administrative officer may ask the other parties to respond to the explanation, if deemed necessary.
  - a. **1 to 28 days.** The Board's administrative officer shall deny as untimely any document received up to 28 calendar days late, unless the filing party establishes good cause that was not due to the party's own negligence.
  - b. **29 days but less than 1 year.** The Board's administrative officer shall deny as untimely any document received more than 28 calendar days but less than 1 year late, unless the filing party establishes special extenuating circumstances.
  - c. **1 year or more.** The Board's administrative officer shall deny as untimely, without notice of deficiency, any document received 1 year or more late.

**H. Effect of Filing Appeal.**

1. **After final decision of adjudicating officer.**
  - a. **Exclusive jurisdiction.** Once an appeal from a final decision of an adjudicating officer is perfected, the Board exercises exclusive jurisdiction, subject to assumption of jurisdiction by the Commission.
  - b. **Stay of final grievance decision.** A grievance decision of an adjudicating officer is final and binding on the parties 29 calendar days after issuance, unless



either (1) the decision provides for a later effective date or (2) a party files an appeal to the Commission within 28 calendar days after issuance.

- (1) Unless all parties agree otherwise, the status of the parties and their relationships at the time of the decision remain unchanged during the 28-day period after the final decision is issued.
- (2) If a party files a timely and proper appeal within the 28-day period, the effective date of the decision is automatically stayed pending further order of the Board or Commission.
- (3) If no party intends to appeal a final decision, the parties may implement the decision anytime.
- (4) If no party has filed an appeal within 28 calendar days after the final decision is issued, the decision is effective on the 29th day and the parties must promptly comply with its terms.
- (5) If a motion to reinstate a stay is concurrently filed with a late appeal accepted under § 4.G.3, the Board may reinstate the stay if in the interests of justice.

- c. **Reinstatement or restoration of base pay.** If a final decision of an adjudicating officer orders an agency to reinstate a grievant who was dismissed for just cause, the agency, as a condition of appeal to the Commission, must temporarily either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision insurance.
  - d. **Unit representation determination.** If the state employer or a labor organization files a timely application for leave to appeal a unit determination decision of the State Personnel Director, the decision is stayed pending further order of the Board or Commission.
2. **Before final decision of adjudicating officer.**
- a. **Interlocutory appeal.** A party may file an application for interlocutory appeal from an interim decision of an adjudicating officer. The appellant must file any application and proof of service within 14 calendar days after the date of the interim decision. The application must concisely describe the material events, dates, and decisions leading to the interlocutory appeal, allege grounds for appeal, and establish one of the following conditions:
    - (1) **Certification.** The adjudicating officer has certified that the interim decision involves a controlling question of law or procedure for which (1) there is substantial ground for difference of opinion and (2) an immediate appeal will materially advance the case's ultimate resolution.
    - (2) **Irreparable harm.** If the relief requested is not granted, the appellant will suffer irreparable harm by awaiting final decision in the case.

- b. **Response.** Any other party must file any response to the application and proof of service within 14 calendar days after the date the application is filed.
  - c. **Stay of proceedings.** Proceedings before the adjudicating officer are not stayed by filing an interlocutory appeal, unless the adjudicating officer expressly orders a stay.
- I. **Special Procedures.**
  1. **Expedited procedure.** After notice to the parties, the Board may shorten the time to file responses, dispense with briefs, require simultaneous briefs, call for immediate appearance for oral argument, or otherwise expedite any proceeding.
  2. **Emergency appeal.** Upon (1) showing of due diligence and irreparable harm if normal practice is followed and (2) reasonable notice to all parties and opportunity for their response, the Board may grant a motion for emergency relief or appearance before the Board at its next meeting. The moving party must file the motion and proof of service.
  3. **Other motions.** All motions, other than those justifiably made at oral argument or otherwise authorized in this regulation, must (1) be made in writing to the Board, (2) briefly state the relief sought, and (3) be accompanied by a brief or affidavits setting forth grounds for the action requested. The moving party must file proof of service of the motion. Other parties must file any written response and proof of service within 14 calendar days after the date the motion was filed with the Board. All motions are decided upon the documents filed with the Board, unless the Board calls for oral argument or indicates otherwise.
  4. **Joinder.** Upon motion of a party, the Board, or its administrative officer, parties may be added, dropped, or substituted at any stage of proceedings as the Board deems appropriate.
  5. **Consolidation.** Upon motion of a party, the Board, or its administrative officer, proceedings before the Board may be consolidated when similar or related facts or issues of law exist, if no substantial right of any party is prejudiced.
  6. **Intervention.** Upon written motion establishing sufficient reason, the Board may permit a person, an organization, an employer, or Civil Service staff to intervene as a party or interested party before the Board. The moving party must file the motion and proof of service. The Board may request intervention or responses by non-participating persons as deemed necessary.
  7. **Group appeals.**
    - a. In group appeals, a filing may be signed by an authorized representative for the group.

- b. When a filing is made, the Board must be provided with the name, mailing address, and telephone number of each participant as a party in a group appeal. Group appellants must file a Form CS-1793, which is available from the Board or at [www.mi.gov/erb](http://www.mi.gov/erb).
- c. In group appeals, all correspondence between the Board and parties is with the authorized representative. If a party does not have an authorized representative or has more than one authorized representative, the Board shall issue appropriate orders for the conduct of proceedings.

#### **J. Relief.**

The Board may recommend any relief within the Commission's authority under the Constitution and Civil Service rules and regulations. This includes, but is not limited to, recommending that the Commission affirm, reverse, or modify any adjudicating officer decision or remand for further proceedings.

#### **K. Record.**

The original record possessed by Civil Service staff or an arbitrator must be transmitted promptly to the Board upon request.

##### **1. Preparation of record.**

- a. **Civil Service cases.** Unless the parties have stipulated to a record, the Board will obtain the record from the applicable Civil Service division and make it available to the parties for inspection and copying.
  - b. **Arbitration cases.** If the appeal is from a decision under the arbitration alternative under Regulation 8.01, § 4.C the appellant must certify having (1) ordered a copy of the transcript of the arbitration proceedings and (2) asked the arbitrator to forward to the Board the entire record, including the original exhibits and briefs.
2. **Record after contested hearing.** An appeal of a decision after a contested hearing is heard on the original papers and exhibits certified by the adjudicating officer and any transcript. The parties may stipulate to facts instead of providing a transcript. When a substantial part of the transcript has no bearing on the appeal, the entire transcript is not required, but a party can obtain and submit all or any part of the transcript.
3. **Record with no contested hearing.** An appeal of a decision without a contested hearing is heard on the original papers and exhibits transmitted to the Board by the adjudicating officer. These include all original documents filed by the parties and any supplemental documents used by the adjudicating officer in rendering a decision.

4. **Transcript not available.** When a stenographic record was made but a transcript cannot be created, the parties may meet with the adjudicating officer to settle the record.
5. **Definition of Record.**
  - a. **When contested hearing held.** If a contested hearing was held, the record before the Board to which the briefs are addressed, includes the following:
    - (1) The grievance record, including grievances, complaints, answers, investigative or disciplinary reports, and material correspondence at prior steps of the grievance process.
    - (2) Pleadings, papers, briefs, and correspondence properly submitted by the parties to the adjudicating officer.
    - (3) Filings, decisions, and orders of the adjudicating officer.
    - (4) Certified transcripts of proceedings.
    - (5) Exhibits admitted into evidence by the adjudicating officer or Board.
    - (6) Things judicially noticed.
    - (7) Any claim, application, or cross-appeal filed with the Board.
    - (8) Briefs, supporting documents, and affidavits filed with the Board.
  - b. **When no hearing held.** If no contested hearing was held, the record before the Board to which the briefs are addressed includes the following:
    - (1) Pleadings, papers, briefs, exhibits, and correspondence properly submitted by the parties to the adjudicating officer.
    - (2) Other documents relied upon by the adjudicating officer in rendering a decision.
    - (3) Filings, decisions, and orders of the adjudicating officer.
    - (4) Any claim, application, or cross-appeal filed with the Board.
    - (5) Briefs, supporting documents, and affidavits filed with the Board.

#### **L. New Evidence.**

1. **Record closed.** Except for pleadings filed and decisions issued on appeal to the Board, the record is closed when the final decision of the adjudicating officer is issued.
2. **Motions.** When considering an appeal, the Board shall not accept new evidence except upon its own motion or written motion of a party for a legally sufficient reason. A document that could have been added to the record during earlier

proceedings is presumed to have an inadequate basis for addition to the record. When the Board allows new evidence, it may do any of the following:

- a. Hear the evidence.
- b. Request a response brief from other parties.
- c. Assign the matter to a Board member or an adjudicating officer to hear and return a record.
- d. Remand the case to an adjudicating officer to hear the evidence and render a new or supplemental decision.

#### **M. Dismissal of Appeals.**

1. **Authority.** An appeal can only be dismissed by (1) the Board based upon a motion from a party or the Board itself, (2) the Board's administrative officer, as authorized in rule 8-7.4, or (3) stipulation of the parties.
2. **Withdrawal.** A party may withdraw an appeal by filing a written request and proof of service on all other parties with the Board and obtaining approval of the Board's administrative officer.

#### **N. Oral Argument.**

1. **Chair.** The Chair of the Board presides at oral argument.
2. **When heard.** Oral argument must be heard on a claim of appeal as of right. In any other case, oral argument may be scheduled at the discretion of the Board.
3. **Procedure.** The parties are heard in public session in the order established on the Board agenda. The Board shall give notice of oral argument to a party or the party's authorized representative. Unavailability of a party with an authorized representative is not cause to postpone oral argument.
  - a. A written motion to postpone oral argument may be filed up to the day before oral argument with the Board's administrative officer. The motion must state good cause and set out the position of all other parties on the motion. The moving party must file proof of service of the motion.
  - b. The Board's administrative officer may postpone or reschedule oral argument based on administrative considerations.
  - c. An oral request to the Board to postpone on the day of oral argument must set forth good cause. The Board may postpone, adjourn, or reschedule oral argument based on administrative considerations upon request or its own motion.
4. **Time limit.** Unless otherwise directed by the Board, each party may address the Board for up to 15 minutes. In a group grievance, one person may address the Board

for up to 15 minutes for all members of the group. An appellant may offer rebuttal argument for up to 5 minutes. The Board may extend the time for any party at its own discretion.

5. **Contemptuous conduct.** Contemptuous conduct during the claim, application, or oral argument is grounds for exclusion from oral argument and other appropriate disqualification.
6. **Recording by Party.** A party may employ at its expense a certified stenographic, audio, or video reporter to record an oral argument if the Board determines that it will not be unduly disruptive. The party must request approval of the Board at least 14 calendar days in advance.

#### **O. Recommendation.**

1. **Grounds for modification or reversal.** The Board reviews appeals from technical review decisions de novo and may recommend to the Commission any action authorized by law. For all other appeals, the Board may recommend that the Commission modify or set aside a decision of an adjudicating officer if substantial rights of the appellant are prejudiced because the decision is any of the following:
  - a. In violation of, or an erroneous interpretation of law, including the Civil Service rules and regulations.
  - b. In excess of the authority or jurisdiction of the adjudicating officer.
  - c. Made upon unlawful procedure resulting in material prejudice to a party.
  - d. Arbitrary and capricious.
  - e. A clear abuse or unwarranted exercise of discretion.
  - f. Affected by other substantial and material error of law.
  - g. For a decision based on a contested hearing, not supported by the preponderance of competent, material, and substantial evidence on the whole record.
2. **Interim Board decisions.** Board decisions that are procedural or not final recommendations are effective when issued, unless the decision provides otherwise. An interim decision is reviewed by the Commission only when it reviews any final Board recommendation.
3. **Final recommendation.** Unless the Board remands for further action, the Board must issue a final recommendation to the Commission on each claim and application. The Board must recommend that the Commission affirm, reverse, or modify the decision of the adjudicating officer.

4. **Conference.** Decisions of the Board are made in a conference from which all persons except the Board and its staff are excluded. The Board may meet and confer in person, by telephone or other electronic means, or by correspondence.
5. **Majority.** Decisions of the Board must be by majority vote of a quorum.
6. **Division.** When only two members participate and they disagree on the ultimate decision, each member shall make a separate written recommendation.
7. **Dissent.** Decisions of the Board are unanimous unless indicated.
8. **Confidentiality.** Except for the record and published decisions of the Board or Commission, all files of the Board and Commission, State Personnel Director, adjudicating officers, and Civil Service staff related to appeals, including internal correspondence and discussions, research, staff analyses, and draft decisions are confidential and not open to the public.
9. **Notice.** The Board shall issue all its decisions and orders to the parties by United States or interdepartmental mail or email to the last known address of the parties and their representatives or as otherwise deemed appropriate.
10. **Further appeal to the courts.** The final decision of the Commission is subject to review in the Michigan circuit court. A claim of appeal must be filed within 60 calendar days after the date the final Commission decision is issued. A claim of appeal must name the Michigan Civil Service Commission as an appellee and must be served on the Michigan Civil Service Commission at its main office, 400 S. Pine Street, Lansing, Michigan 48913. See Michigan Court Rule 7.117 and Michigan Compiled Laws 24.301.
11. **Awards.** All awards are subject to the provisions of Rule 8-2.4 and Regulation 8.01 § 4.B.15.

**P. Post-Decision Procedures.**

1. **Commission Review.** After the Board issues a final recommendation, the Commission automatically reviews the recommendation and issues a final Commission decision without further action required by any party.
2. **Enforcement.** If a party fails to comply with an order of the Board or Commission, a party may request a further order of the Commission compelling compliance. If the Commission issues a compliance order, every party must promptly comply and the State Personnel Director shall take all necessary steps to compel compliance. If a party fails to comply with a compliance order of the Commission, the Director or other party may apply for further relief to the appropriate circuit court or court of claims.

**CONTACT**

Questions on this regulation may be directed to the Employment Relations Board, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-335-5588; or to [MCSC-ERB@mi.gov](mailto:MCSC-ERB@mi.gov).



# Michigan Civil Service Commission

## Regulation 8.06

Subject: <b>Computing Time and Filing Documents</b>		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 8.06 (SPDOC 15-15, October 1, 2015)

### 1. Purpose

This regulation provides (1) uniform standards and requirements for computing periods of time in agency grievance proceedings and Civil Service proceedings and (2) requirements for filing documents in Civil Service proceedings.

### 2. Definitions

#### A. CSC Rule Definitions.

1. ***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.*
2. ***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.*

#### B. Definitions in This Regulation.

1. **Civil Service proceeding** means any administrative, technical, or quasi-judicial proceeding conducted by Civil Service, the State Personnel Director, the Employment Relations Board, or the Civil Service Commission. Civil Service proceeding does **not** include steps of the grievance process conducted at the agency level.
2. **Day** means a calendar day, including a Saturday, Sunday, and state holiday, except as described in § 3.B.2.d.
3. **Document** means any paper required to be filed, mailed, or received in any Civil Service proceeding. Document includes, but is not limited to, a grievance appeal,

technical complaint, claim of appeal, application for leave to appeal, motion, brief, decision, order, or recommendation.

4. **Agency grievance proceeding** means the steps of the Civil Service grievance process authorized by regulation 8.01 conducted at the agency level leading to a final grievance decision of the appointing authority.
5. **Mailed** means deposited in a United States Postal Service mail receptacle properly addressed, containing the document to be mailed, and with first-class postage fully prepaid on the envelope.
6. **Postmark** means a date stamp placed on a mailed envelope or a receipt issued by the United States Postal Service indicating the date the envelope was mailed or received by the United States Postal Service for mailing. A postmark does not include a date stamp placed by the sender, such as a postage meter stamp.
7. **Workday** means a day, Monday through Friday, on which the state executive offices are open for business. Workday does not include a Saturday, Sunday, or state holiday.

### 3. Standards

#### A. Application of Regulation.

1. § 3.B and applicable definitions apply to all (1) agency grievance proceedings and (2) Civil Service proceedings.
2. § 3.C and applicable definitions apply to all Civil Service proceedings, but do **not** apply to agency grievance proceedings.

#### B. Computing Time Periods.

1. **Application.** Unless a rule or another regulation specifically provides a different method, all time periods required by a rule or regulation for a Civil Service proceeding or an agency grievance proceeding are measured in days, weeks, months, or years, as provided in this regulation.
2. **Counting Time.**

- a. **Counting days.** The first day of a period measured in **days** is the day after the occurrence that starts the period. The last day of the period is included.

Example of counting days: “An appeal must be filed **within 14 calendar days** after the final grievance decision is issued.”

If the final decision is issued on Wednesday, September 13, the 14-day appeal period begins the next day, Thursday, September 14. The grievance appeal must be received by Civil Service staff no later than Wednesday, September 27. The calendar below highlights the 14 calendar days as they are counted:

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13/ Decision Issued Today	14	15	16
17	18	19	20	21	22	23
24	25	26	27/ Appeal Due Today	28	29	30

- b. **Counting Weeks.** The first day of a period measured in **weeks** ends on the same day of the week as the occurrence that starts the period.

Example of counting weeks: “An appeal must be filed **within 3 weeks** after the final decision is issued.”

If the final decision is issued on Tuesday, October 5, any appeal must be received by Civil Service staff no later than Tuesday, October 26. The calendar below highlights the three weeks as they are counted:

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
					1	2
3	4	5/ Decision Issued Today	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26/ Appeal Due Today	27	28	29	30
31						

- c. **Counting months or years.** A period measured in **months** or **years** ends on the same day of the month as the occurrence that begins the period. If what would otherwise be the final month does not include that day, the last day of the period is the last day of that month.

Examples of counting months: “An appeal must be filed within **6 months** after the date the final decision is issued.”

**Example 1:** If the final decision was issued on Wednesday, May 15, 2013, any appeal must be filed on or before Friday, November 15, 2013.

**Example 2:** If the final decision was issued on Thursday, October 31, 2013, any appeal must be filed on or before Wednesday, April 30, 2014. [Because April 2014 has no 31st day, the last day of April, the 30th, is the last day of the period.]

- d. **Effect of a Saturday, Sunday, and state holiday.** The occurrence of a Saturday, Sunday, or state holiday does not lengthen a filing period unless the last day of the period is a Saturday, Sunday, or state holiday. In such an event, the period runs until the next workday.

Example: “An appeal must be filed **within 14 calendar days** after the final grievance decision is issued.”

If the final grievance decision is issued on Friday, December 18, the grievance appeal must be received by Civil Service staff no later than Monday, January 4. The 14-day period is **not** extended by the state holidays on December 24, 25, and 31. However, since the last day of the period would fall on the holiday on January 1, the period is extended to the next workday, Monday, January 4.

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Dec 13	Dec 14	Dec 15	Dec 16	Dec 17	Dec 18/ Decision mailed Today	Dec 19
Dec 20	Dec 21	Dec 22	Dec 23	Dec 24 Holiday	Dec 25 Holiday	Dec 26
Dec 27	Dec 28	Dec 29	Dec 30	Dec 31 Holiday	Jan 1 Holiday	Jan 2
Jan 3	Jan 4/ Appeal Due Today	Jan 5	Jan 6	Jan 7	Jan 8	Jan 9

### C. **Delivery and Receipt of Documents in Civil Service Proceedings.**

1. **Documents Received by Civil Service.** If a period ends or begins on the date a document is received in a Civil Service office, the document is deemed received on the date the document is **received** in the Civil Service office while the office is open to the public. A document must be **received** in the Civil Service office before the relevant period expires to be timely. Receipt of documents by email is determined by the time-stamp for the message.
2. **Documents Sent by Civil Service.** If a period begins on the date a document is issued by a Civil Service office, the period begins on the **earliest** of the following:
  - a. The date the document is mailed or sent by other courier by Civil Service to the last address provided by the recipient. The mailing date is the date on the document, unless the postmark or other document is offered to demonstrate otherwise.

- b. The date the document is delivered to a responsible person in the office of the recipient at a time the office is open.
  - c. If delivered by fax, the date the document is sent to the fax number provided by the recipient and receipt is confirmed.
  - d. If delivered by email, the date the document is sent to the email address provided by the recipient.
  - e. The date the recipient actually receives the document.
- 3. **Extension of Period.** Unless a rule or regulation permits the parties to stipulate to an extension of time, a deadline for filing a document in a Civil Service proceeding cannot be extended without the prior consent of an authorized Civil Service officer before a deadline has passed.
- 4. **Effect of Time Limits.** A document filed late in a Civil Service proceeding shall be dismissed as untimely unless accompanied by a written explanation of the reasons for the late filing that establishes either good cause or special extenuating circumstances.
  - a. **Good cause.** A filing that is up to 28 calendar days late shall be denied as untimely, unless the filing party establishes good cause that was not due to the filing party's own negligence.
  - b. **Special extenuating circumstances.** A filing that is over 28 calendar days but less than 1 year late shall be denied as untimely, unless the filing party establishes special extenuating circumstances.
  - c. **Maximum Limit.** A filing that is 1 year or more late shall be denied as untimely.
- 5. **Correcting Deficiencies in Documents.** If a party in a Civil Service proceeding files a document that does not substantially comply with the requirements of a rule, regulation, or order, an adjudicating officer shall issue a deficiency notice to the party. If the party does not correct the deficiency within 14 calendar days after the date the notice was issued, the adjudicating officer shall reject the document, dismiss the party's claim, or take other appropriate action.

## **CONTACT**

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 8.07

<b>Subject:</b> <b>Technical Military Benefit Complaints</b>		
<b>SPDOC No.:</b> 16-06	<b>Effective Date:</b> January 1, 2017	<b>Replaces:</b> Reg. 8.07 (SPDOC 15-15, October 1, 2015)

### 1. Purpose

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

### 2. CSC Rule References

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

\* \* \*

#### *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. CSC 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. Definition in This Regulation.

1. **Technical military benefit decision** means a Civil Service staff decision regarding rights and benefits authorized under Rule 2-14 or Regulation 2.04. Examples of a technical military benefit decision include a determination of eligibility for supplemental pay and correction under compliance audits conducted by Civil Service staff.

### 4. Standards

#### A. Filing Complaints.

1. **Authorized.** A person directly affected by a technical military benefit decision may file a written complaint with the Civil Service Office of Technical Complaints at [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov).

2. **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. Documentary evidence establishing performance of uniformed service during the relevant time period, which shall consist of:
    - (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 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 on the days.
  - 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. If 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 outcome must be within the authority of Civil Service staff to grant.
  - g. The signature, address, phone number, and any email address of the complainant and any representative.
3. **Time Limits.** 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.
4. **Extension.** 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.

**5. Procedures**

Responsibility	Action
Employee	1. Files technical complaint and all necessary supporting documentation with the Office of Technical Complaints at <a href="mailto:MCSC-OTC@mi.gov">MCSC-OTC@mi.gov</a> .
Office of Technical Complaints	2. Obtains record for technical decision from the Office of Compliance.
	3. Reviews complaint, record, and any other filings and conducts any investigation deemed necessary.
	4. Issues written decision to employee.

**CONTACT**

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