

Michigan Civil Service Commission

Regulation 2.10

Subject: Drug Testing Complaints by Non-Employees		
SPDOC No.: 23-11	Effective Date: October 1, 2023	Replaces: Reg. 2.10 (SPDOC 22-15, January 1, 2023)

1. Purpose

This regulation establishes the exclusive 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*

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2-7.4 *Penalties*

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(b) New hires.

- (1) Rescission of conditional offer. If a person conditionally offered employment fails or does not complete a preemployment drug test, interferes with a test procedure, or tampers with a test sample, the appointing authority shall rescind the conditional offer in writing. The rescission must include notice of the complaint procedure and the 14-day time limit. The person is disqualified for appointment to the classified service for three years.*
- (2) Complaint. An applicant claiming that a rescission under subsection (b)(1) was contrary to article 11, §5 or a rule or regulation may file a written complaint with the state personnel director.
 - (A) The director must receive the complaint within 14 days after the appointing authority gave written notice of the rescission.*
 - (B) The director shall review the complaint and issue a decision.*
 - (C) If the rescission was contrary to article 11, §5 or a rule or regulation, the director may order an appropriate remedy, including reinstating the offer, ordering another drug test, and requalifying the applicant for classified appointments.*
 - (D) The applicant or appointing authority may appeal the director's final decision to the commission.**

(c) **Rescission of marijuana sanctions.** *A person with an active three-year sanction based on a positive result for marijuana from a pre-employment drug test for a non-test-designated position may request the sanction's prospective rescission as provided in the regulations.*

3. Standards

A. Rescission. Under rule 2-7.4(b)(1), an appointing authority must rescind a conditional offer of employment to any person 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 days after the date the rescission notice is sent.

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 their attorney must file any complaint at MCSC-Hearings@mi.gov. The Civil Service Hearings Office will provide a copy of the complaint to the appointing authority.
2. **Time limit.** A complaint must be filed within 14 days of the date the appointing authority sent its written rescission to the complainant. A late complaint is 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 constitution or a 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 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 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 days after the date the final decision is issued.
- E. Marijuana sanctions.** A person with an active three-year sanction based on a positive result for marijuana from a pre-employment drug test for a non-test-designated position under rule 2-7.4(b)(1) can have the sanction prospectively rescinded by email request to MCSC-OCSC@mi.gov. The request should identify the person's full name and, if available, the date that the sanction was imposed. Civil service staff shall provide written confirmation of the sanction's rescission.

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; 517-284-0093; or MCSC-OGC@mi.gov.