



STATE OF MICHIGAN
CIVIL SERVICE COMMISSION

STATE PERSONNEL DIRECTOR OFFICIAL COMMUNICATION

SPDOC No. 18-07

TO: ALL APPOINTING AUTHORITIES, HUMAN RESOURCES OFFICERS,
AND RECOGNIZED EMPLOYEE ORGANIZATIONS

FROM: JANINE M. WINTERS, STATE PERSONNEL DIRECTOR

DATE: OCTOBER 12, 2018 

SUBJECT: **AMENDMENTS TO REGULATIONS 3.09, 5.02, 5.07, 5.08, 5.09, 5.18,
6.03, AND 8.01; ADOPTION OF NEW REGULATION 6.09; AND
PROPOSED AMENDMENTS TO RULE 6-3.9(a) AND 9-1**

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After two rounds of informal feedback from unions and the employer in December and March, draft amendments to regulations to address upcoming rule amendments were circulated for full public comment in May and August. Most regulations circulated in May were adopted in SPDOC 18-03, but a few regulations were left open for further consideration and comment. The initial feedback also identified other regulations where clarifications were appropriate. Contact information and a few non-substantive stylistic updates are also made across regulations.

Previously proposed amendments to Regulations 5.07, 5.08, and 5.09 are adopted with minor modifications. In Regulation 5.07, language in § 4.C.3.g, which applies only to SES, SEMAS, and ECP Group-4, is moved to § 4.C.5.a, which is the part of the regulation dedicated to those employment types. In Regulation 5.08, language on prorating holiday credit for less-than-full-time NEREs is clarified in § 3.C.4.b. In Regulation 5.09, § 3.A.5.b(2) is revised to clarify that an employee may buy back some paid-off annual leave if recalled or if otherwise appointed to a classified position while on a recall list.

Previously proposed amendments to Regulation 6.03 are adopted. If the commission does not adopt a revision to Rule 6-7 proposed in SPDOC 17-06, updates to the rule reference in the regulation will be made before formal publication in January.

Previously proposed amendments to Regulation 8.01 are adopted with minor modifications. Language in § 4.B.4 on deficiency notices for agency-level grievances and administrative dismissals is clarified.

Previously proposed amendments to new Regulation 6.09 are adopted with minor modifications. Changes to § 4.D.1 clarify that an employee off full-time on paid officer leave codes time when not performing union work using appropriate payroll codes for

holiday, annual leave, sick leave, or other appropriate leave. § 4.D.3.c(4) is revised to recognize the potential use of banked leave or compensatory time in addition to annual leave for an employee who enters union buy-back without authorization. § 4.D.5 includes new language to clarify that approval of time entry for union activities as regular time provides just cause to discipline supervisors.

Several comments from unions requested expansion of the list of union activities eligible for paid leave. In adopting the rule reforms last year, an identified area of concern was state subsidization of union activities. The initial proposed rule changes eliminated all paid leave except for one official per union. Because this would have given NEREs broader rights to paid leave, the reforms ultimately allowed the state personnel director to identify specified union activities that would also qualify.

While unionized and NERE conditions of employment differ, the final regulation tries to mirror the general categories of leave available. For grievances, the systems' similarity made creating standards more straightforward. While there is traditionally little use of paid leave for the NERE pay-setting process that is the closest analog to collective bargaining, the final regulation authorizes absence for specified bargaining activities for a limited number of representatives. Unpaid absences for remaining areas (investigations, inspections, orientations, committees, etc.) remain proper subjects of bargaining. Under the final regulation the only remaining area eligible for paid leave is for scheduled meetings of committees created in approved primary agreements and at a frequency explicitly indicated in the agreement. A union can still have contractual rights for unpaid leave to attend activities that do not qualify for paid leave under the regulation and may authorize use of the buy-back union leave code to make their representatives whole for these contractually unpaid absences.

Additional changes to those previously approved to Regulation 3.09 are adopted to provide transitional relief for employees on medical layoff under the provisions of a collective bargaining agreement on December 31, 2018. These employees may remain in medical layoff for up to two years and transition to agency recall lists through 2021 if able to provide medical certification of their ability to return to work. Medical layoff is not otherwise available after 2018. Clarification is also added that agency layoff plans may only modify recall rights for autonomous entities with the consent of affected autonomous entities, similar to existing provisions on bumping and autonomous entities.

Additional changes to those previously approved to Regulation 5.02, § 3.A.2.d(2) are adopted to clarify the requirement to equalize overtime opportunities among employees who normally perform the work. The revised regulation gives agencies discretion to adopt written agency policies to equalize based on (1) a period other than the default calendar-year basis, (2) hours of overtime or overtime opportunities, (3) under broad occupational or organizational categories or agency-wide, and (4) treating voluntary and mandated opportunities separately or in coordination. The policy may be in an agency work rule, procedure, memorandum, or other written document. The revised regulation also clarifies

treatment of employees who are appointed or return from an extended leave in the middle of an equalization period by allowing adjustment of their status upon return to match that of an equivalent employee with the fewest overtime opportunities.

Changes to Regulation 5.18 to reflect the recent change in third-party administrator for the vision insurance benefit are also adopted.

All regulation changes are adopted effective January 1, 2019, in accordance with Regulation 1.01, §§ 4.B or 4.C.

Staff also recommends amending the definition of appointing authority in Rule 9-1 by striking “The state personnel director. (d).” Including the director in the definition has led to some confusion over whether the director is concurrently an appointing authority for other state agencies. The amendment would remove this potential source of confusion. The state personnel director was specifically added to the list of appointing authorities to reflect the director’s ongoing status as appointing authority for the commission when the Department of Civil Service was abolished in 2007. Any interpretation that this made the director an appointing authority for other agencies was not intended and is inconsistent with the structure of state classified employment established in the state constitution and civil service rules. The director’s status as appointing authority for the commission is also reflected in Rule 1-4.1(b) and falls within subsection (a) of the definition of appointing authority as the “single executive heading a principal department or autonomous entity.” Accordingly, striking the unnecessary specific reference to the director in the definition would have no substantive effect, but could eliminate potential confusion. If the commission adopts the revision, updates to the rule references in four regulation will be made before formal publication in January.

Finally, staff is proposing that the commission amend rule 6-3.9(a) so that “An appointing authority may approve” instead of “An appointing may approve” are its opening words. The resolution approved by the commission last September omitted the word.

Comments on the proposed rule amendments may be emailed to MCSC-OGC@mi.gov or sent to Office of the General Counsel, Michigan Civil Service Commission, P.O. Box 30002, Lansing, Michigan, 48909. Comments must be received by November 9, 2018.

Attachments