

# Michigan Civil Service Commission

## Regulation 1.04

Subject: <b>Reasonable Accommodations</b>		
SPDOC No.: <u>216-046</u>	Effective Date: <del>January 1</del> <u>September</u> <u>5, 20217</u>	Replaces: Reg. 1.04 (SPDOC <del>16-04-01</del> , January <u>15</u> , 2017 <u>4</u> )

### 1. Purpose

This regulation establishes procedures ~~for~~to request~~ing~~ and provid~~e~~ing 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.*

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## **3. Definitions**

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

1. **Applicant** means a person who applies for consideration for appointment to a classified position~~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 applicant or 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 or selection process for a qualified employee or applicant. An accommodation that would cause an appointing authority undue hardship ~~to an appointing authority~~ is not a reasonable accommodation.
4. **Undue hardship** means significant difficulty or expense, as defined in federal law. ~~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 Employee~~ 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, a~~ An employee seeking an accommodation should ~~-, but is not required to,~~ submit a completed Disability Accommodation Request and Medical Statement ~~Form~~ (CS-1668) to the accommodation coordinator to facilitate the interactive process and ensure the understanding of relevant facts.
- ~~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 Applicant~~ Accommodation Requests ~~for Applicants~~. An applicant needing an accommodation to submit an application may contact the hiring agency's Title I Officer or HR office. An applicant needing an accommodation to participate in an interview may

request an accommodation when contacted to schedule the interview~~for any portion of an application, appraisal, or selection process may follow the procedures for requesting an accommodation found in Regulation 3.11.~~ A hiring agency shall engage in an interactive process for an applicant consistent with the requirements of federal law.

### C. Processing Employee 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 as part of the interactive process with the employee if the employee is unable or unwilling to complete the form.
  - b. Verify that the employee has a disability, as defined in ~~the Civil Service rules and regulations~~ federal law.
  - c. Verify the relevant position's 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 the employee 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 to 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 Accommodations.** The accommodation coordinator or designee may use the Evaluation of Disability Accommodation ~~Form~~ (CS-1670) or another effective

process to later evaluate ~~the effectiveness of~~ implemented accommodations' effectiveness ~~thereafter~~.

- E. ~~Appeal of Final Decision~~. If ~~the employee is~~ dissatisfied with the ~~response of the~~ accommodation coordinator's final response or if the ~~accommodation~~ coordinator fails to issue a final response within eight 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 517-284-0093, or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.078

Subject: <b><u>Drug and Alcohol Testing</u></b>		
SPDOC No.: <u>2116-0604</u>	Effective Date: <del>January-September</del> <u>51, 20217</u>	Replaces: Reg. <u>2.07</u> and 2.08 (SPDOC <del>160-056</del> , <del>April 4</del> <u>January</u> <u>1, 20170</u> )

### 1. Purpose

This regulation establishes standards to conduct drug and 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.*

*(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.*

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*(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.

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### **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) Test-designated positions.** *An employee selected for a test-designated position cannot serve 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 ineligible for appointment to any test-designated positions for three 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 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 ineligible for appointment to the classified service for three years.

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**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. CSC Rule Definition.

1. Drug means a controlled substance or a controlled substance analogue listed in schedule 1 or schedule 2 of part 72 of the Michigan public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7201, et seq., of the Michigan Compiled Laws, as may be amended from time to time.

#### 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. **Donor** means the individual from whom a urine ~~specimen~~ sample is collected.
5. **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 appropriate medical training to interpret and evaluate a positive test result, the donor's medical history, and any other relevant biomedical information.
6. **On duty** means engaged in or on-call to be engaged in work responsibilities for the employer.
- ~~57.~~ **Refusal to submit** means any of the following:
  - a. Failing to provide an adequate sample without a sufficient ~~n-adequate~~ medical explanation.
  - b. Engaging in conduct that obstructs the testing process.
  - c. Refusing to be tested.
- ~~68.~~ **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 [drug and](#) alcohol testing under rule 2-7 and to employees subject to mandatory federal [drug and](#) alcohol testing, as provided in rule 2-7.8.
3. **Collective Bargaining.** This regulation does not apply to [drug and](#) 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.
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 must pass a [preappointment drug test before starting in a new 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 testing requirement:](#)
  - a. **Prior drug test.** The preappointment testing requirement may be satisfied if the [employee passed another state drug test during the previous five years while continuously employed by the state.](#)
  - b. **Temporary assignment.** If an employee is assigned to temporarily perform the duties of a test-designated position and has not passed a state drug test during the previous five-year period of continuous employment, the employee shall submit to a drug test no later than 11 work days after beginning the test-designated duties. [The employee is also placed in the pool for random testing while temporarily performing the duties.](#)

## B. Testing Procedures.

### 1. Drug testing.

- a. **Guidelines.** Drug testing is conducted consistent with standards in the [Mandatory Guidelines for Federal Workplace Drug Testing promulgated by the U.S. Department of Health and Human Services, except as otherwise provided in the rules or regulations. This includes procedures for sample collection, laboratory analysis, and reporting and reviewing results.](#)
- b. **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. Before an agency requires testing for other drugs, it must obtain approval from the director. A request must include the agency's proposed initial test methods, testing levels, and performance test program. When conducting reasonable-suspicion or post-accident testing, an agency may require testing for any drug listed in schedule 1 or 2.

2. Alcohol testing. ~~The state a~~ Alcohol testing ~~program operates under the~~ is conducted consistent with 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. Drugs. A positive result for drugs reported by an MRO violates rule 2-7.1(b) and constitutes just cause to discipline the donor and for civil service to disqualify the donor from future state employment. Failure or refusal to submit to a required drug test also violates rule 2-7.1(c).

2. Prohibited Levels Alcohol. ~~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 constitutes a violation of rule 2-7.1(~~cb~~).

23. 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 drug or alcohol or if the employee otherwise violates rule 2-7.1. In addition, Civil Service staff shall immediately disqualify the donor from future state employment as provided in rule 2-7.4 for a failed drug test.

### D. Disclosure of Drug and Alcohol Testing Information.

1. Appointing authorities shall maintain records ~~in a securely 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 on drug or alcohol tests ~~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~~ on the employee's use of drugs or alcohol, including any records ~~pertaining to~~ on drug or 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~~ on the agency's alcohol-misuse or substance-abuse-prevention programs, 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 on drug or alcohol tests ~~under this regulation on an employee~~ to the tested employee or the decisionmaker in a lawsuit, grievance, or proceeding initiated by or ~~on behalf of for~~ the individual, and arising from the results of ~~an alcohol-testing administered~~ under this regulation, or from the appointing authority's determination that the employee engaged in prohibited conduct. This ~~(includes~~ a worker's compensation, unemployment compensation, or other proceeding ~~relating to~~ over a benefit sought by the employee).
7. An appointing authority shall release information on an employee's records as directed by the employee's 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~~ that 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 drugs and alcohol.
  - f. The penalties for an employee found to have violated rule 2-7.
  - g. The procedures to test employees for drugs and 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.

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- i. Explanation of what constitutes a refusal to submit and penalties for failure to submit to testing.
  - j. Information on the effects of [drug and](#) alcohol use on an employee's health, work, and personal life; signs and symptoms of [a drug- or](#) 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 [drug and](#) 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 [drug and](#) ~~use of~~ alcohol [use](#).

## **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 517-284-0093; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).

# Michigan Civil Service Commission

## Regulation 2.10

Subject: <b>Drug Testing Complaints by Non-Employees</b>		
SPDOC No.: <del>16-06</del> <u>21-04</u>	Effective Date: <del>January 1</del> <u>September</u> <u>5, 2017</u> <del>21</del>	Replaces: Reg. 2.10 (SPDOC <del>165-1506</del> , <del>October</del> <u>January 1</u> , 201 <u>5</u> <del>7</del> )

### 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 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 ineligible for~~ appointment to the classified service for ~~a period of 3~~ three 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~~ [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 an attorney must file any complaint at [MCSC-HearingsOGC@mi.gov](mailto:MCSC-HearingsOGC@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~~ [sent](#) its written rescission to the complainant. A late complaint ~~will be~~ [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 ~~Michigan C~~ 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 ~~A~~ article 11, § 5, of the ~~Michigan C~~ constitution or a rule or regulation.

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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 517-284-0093; or to [MCSC-OGC@mi.gov](mailto:MCSC-OGC@mi.gov).



# Michigan Civil Service Commission

## Regulation 3.04

<b>Subject:</b> <b>Selection of Employees for Position Vacancies</b>		
<b>SPDOC No.:</b> <u>21-0418-03</u>	<b>Effective Date:</b> <del>January 1</del> <u>September 5, 2019</u> <del>21</del>	<b>Replaces:</b> Reg. 3.04 (SPDOC <del>168-063</del> , January 1, 2017 <del>9</del> )

### 1. Purpose

This regulation establishes standards to consider and select candidates for vacant positions through 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.*~~

~~\* \* \*~~

### **3-2.13 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 statewide recall, or 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 applies for consideration for appointment to a classified position~~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 system used for classified selection and hiring.

## 4. Standards

### A. Recall.

1. The appointing authority must obtain a recall list report (ZP106) from the Human Resources Management Network (HRMN) and satisfy any recall obligations.
2. All recall names must be cleared in accordance with regulation 3.07 using a recall list created within 90 days of the date an offer of employment is made.

### B. 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~~ candidate pool.
  - a. NEOGOV is the primary recruiting method when filling a position from an ~~agency-created applicant~~ candidate pool.
  - b. Civil Service shall develop and maintain an overall recruitment strategy and plan to assist agencies in obtaining applicants. In addition to NEOGOV, other recruitment activities may be used, such as partnerships with schools, community service agencies, trade organizations, and community organizations (e.g., Urban League, NAACP, minority and women's professional or fraternal associations, etc.); premium job boards; and recruitment firms.
  - c. For classifications with ongoing hiring needs, appointing authorities may maintain continuous postings that allow standing candidate pools of applicants for consideration as vacancies arise.
2. Appointing authorities shall ensure equal employment opportunity consistent with the 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 any working title.
  - b. A brief description of the job duties, responsibilities, and working conditions.
  - c. Qualifications or special requirements for the position.
  - d. Salary.
  - e. Employee status code.
  - f. Job location.
4. A minimum of seven days from the date of posting or contact is recommended for applicants to respond.

### C. Applicant Screening.

1. An agency should reduce the size of the ~~applicant~~ candidate pool to an acceptable number of candidates. The pool size may be reduced randomly or by applying screening criteria (e.g., supplemental questions in NEOGOV).
2. Screening criteria must be job-related and ensure equal employment opportunity.

### D. Candidate Credential Reviews.

- ~~1. Civil Service shall conduct credential reviews in the following circumstances:~~
  - ~~a. To evaluate experience outside the classified service; experience working out of class; degree majors not specifically listed on the job specification; recognized alternatives identified on the job specification; and potential equivalent combinations of education or experience.~~
  - ~~b. When the appointing authority requests assistance conducting credential reviews for classifications when they have preauthorized authority.~~
  - ~~c. When the appointing authority does not have approval from Civil Service to conduct preauthorized credential reviews.~~
- ~~2. When requesting a Civil Service credential review under § 4.D.1, the appointing authority must provide credential information (résumés, transcripts, etc.) to Civil Service in NEOGOV for applicants that the agency has pre-screened and considers potential candidates. These are individuals the agency intends to include in the candidate pool for further consideration if Civil Service determines that they are qualified. 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 classification's minimum qualification requirements.~~
- ~~31. Civil Service authorizes appointing authorities and approved d~~Designated staff of appointing authorities to may conduct authorized credential reviews after receiving Civil Service ~~credential review~~ training and certification, except ~~except in the as~~ circumstances noted in § 4.D.12.a.
  - a. The appointing authority may nominate staff to act as agency credential reviewers, but the staff cannot conduct reviews until Civil Service has certified their adequate training. Periodic retraining may be required to ensure quality and accuracy.
  - b. ~~Civil Service must provide training for agency staff assigned to conduct reviews.~~
  - c. ~~Agency staff cannot conduct reviews until Civil Service has certified that the person is adequately trained. Additional periodic training may be provided to ensure quality and accuracy.~~

- d. If specifically listed in job specifications, certified agency staff may evaluate (1) education requirements based on degrees, majors, coursework and credit hours and (2) experience or alternate education and experience requirements based on work in state classified positions or specific educational requirements.
- c. Agency staff should ensure that special requirements, licenses, and certifications for a position are satisfied.
- 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.
2. Civil Service shall conduct credential reviews in the following circumstances:
- a. To evaluate experience outside the classified service; experience working out of class; coursework, related fields, and majors not specifically listed on a job specification; and potential equivalent combinations of education and experience.
- b. When the appointing authority requests assistance conducting credential reviews for classifications when they have preauthorized authority.
- c. When the appointing authority does not have approval from Civil Service to conduct preauthorized credential reviews.
23. ~~When requesting~~ For a Civil Service credential review under § 4.D.12, the appointing authority must provide credential information (résumés, transcripts, etc.) ~~to Civil Service in through~~ NEOGOV for applicants that the agency has pre-screened and considers potential candidates. ~~These are individuals that~~ the agency intends to include in the candidate pool for further consideration if Civil Service determines that they are qualified. ~~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 ~~classification's~~ minimum qualification requirements.
4. If an appointing authority does not believe an applicant or candidate qualifies for a classification after conducting a credential review and the applicant requests, an appointing authority shall request from Civil Service an official determination. If Civil Service staff determine conclusively in a credential review that an applicant does not satisfy the minimum requirements for the classification, a denial letter will be sent to the applicant, which may be appealed under regulation 8.02.
45. 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 an appointing authority does not believe an applicant or candidate qualifies for a classification after conducting a credential review and the applicant or candidate raises the issue, 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.

#### **E. Evaluating Candidates.**

1. An appointing authority may evaluate and verify candidates' qualifications using any appropriate selection methods permitted by law. Examples of appropriate methods include: job/person fit measures; background investigations; assessment of applicants' education, training, and experience; formal job performance evaluations from current and previous jobs; structured interviews; job simulations; performance tests; physical agility tests; reference checks; and supplemental written or electronic tests.
2. An appointing authority cannot hire an applicant with a sanction issued by Civil Service and shall confirm that candidates do not have active sanctions by checking sanctions information for employees in HRMN Self-Service, HR Statewide, Employee Info or for non-state employees in the PA 31.1 in HRMN.
3. Evaluation methods and criteria must be job-related. To the extent practical, an agency shall use 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~~may assist in developing additional evaluation methods, if requested.
4. At the end 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.

**F. Participation 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 entry-level.
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 is contingent upon receiving the required degree. The applicant cannot fill the vacancy until the educational requirement is met. Failure to receive the required degree on schedule results in the revocation of any conditional offer.

**G. 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 and evaluation of selected candidates compared to the rating criteria used.

**H. Certification of Appointment.** A requisition using PA42.1 in HRMN must be created when NEOGOV is not the selection process used.

**I. Documentation.**

1. An appointing authority shall maintain accurate documentation for all steps of the selection process for at least three years from the end of the process. If used, [retained](#) documentation ~~to be retained~~ must include:
  - a. A current approved position description, including any approved special requirements (e.g., selective position requirements).
  - b. Methods used to notify applicants of a vacancy, selection, or decision not to fill.
  - c. Verification that recall obligations were met.
  - d. Verification that the selected candidate is not sanctioned.
  - e. Applications or résumés of candidates evaluated.
  - f. Interview questions, final completed rating forms, or other selection documentation.
  - g. Results of other selection methods (e.g., performance tests, reference checks, job simulations).
  - h. Evaluation of the selected candidate compared to the selection criteria.
  - i. Documentation verifying that the selected candidate meets educational and experience qualifications and any special requirements for the job. Verification must be completed before appointment. Appointing authorities shall notify Civil Service if it appears a candidate may have misrepresented 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.

**J. Compliance.** The three-year documentation retention period begins once all candidates who were contacted for an interview or other assessment are notified of the outcome of

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the selection process. The selection process is subject to audit. Appointing authorities shall cooperate in the investigation and participate in the defense of their selection methods.

**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; 517-284-0103; or [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).



# Michigan Civil Service Commission

## Regulation 3.06

<b>Subject:</b>		
<b>Employment Sanctions</b>		
<b>SPDOC No.:</b>	<b>Effective Date:</b>	<b>Replaces:</b>
<del>21-046-06</del>	<del>September 5, 2017</del> January 1, 2017	Reg. 3.06 (SPDOC <del>164-076</del> , <del>January 201</del> , 20174)

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## 1. Purpose

This regulation ~~implements rules authorizing employment sanctions and~~ establishes procedures for applying and challenging [employment](#) 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~~ Acts.** 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~~ method.
- (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 appointment in the classified service ~~state employment~~.
- (2) Require Revoke the ~~separation of the~~ applicant's appointment ~~from state employment~~.
- (3) Impose any other ~~or additional~~ appropriate sanctions ~~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 applies for consideration for appointment to a classified position ~~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 a person who ~~any of the following:~~

1. ~~An employee~~ Was dismissed by an appointing authority.
2. ~~An employee or who~~ engaged in conduct that could have resulted in dismissal ~~who~~ but resigned or retired before disciplinary proceedings could be begun or completed by an appointing authority.
3. ~~A person who e~~ Engaged in any act prohibited by rule 3-1.5.
3. ~~A person who e~~ Committed an act that the rules or regulations authorize a sanction for.
4. ~~A person who e~~ Consented in writing with an agent of the State ~~of Michigan~~ or an appointing authority to an employment sanction or other limitation on classified employment ~~in the classified service.~~
5. ~~A person for whom there is~~ Has adequate evidence of conduct indicating that the person is ineligible, unfit, or unsuitable for appointment in the classified service.

6. ~~A person~~ Was convicted of a felony or misdemeanor crime, as disclosed by a criminal history check, court documents, or other trustworthy evidence.

#### **B. Limitations 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 or appointment to specified classification positions or in specified agencies.
  - ~~c. Designation as ineligible for appointment to specified classified positions.~~
  - ~~d. Designation as ineligible for appointment in specified agencies.~~
  - ec. Revocation of an appointment.
  - fd. 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 D~~irector's designee modifies the sanction after a three-year review authorized under § 4.F. If the duration is limited, the sanction automatically expires at the ~~end of the~~ sanction period's end, 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~~ in § 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~~ provide 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 sanctioned person's last known address ~~of the sanctioned person.~~
  - b. Electronic delivery to the sanctioned person's 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 commission's final decision ~~of the commission~~ and cannot be further administratively appealed.
2. **Drug Testing of New Hire.** A ~~person~~ new hire receiving a mandatory sanction for ~~new hire~~ drug ~~testing~~ violations of ~~under~~ 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 ~~C~~ollateral ~~C~~hallenge.** 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~~three ~~Y~~years and or ~~L~~ess.** If an employment sanction is for ~~3~~three years or less and no timely appeal of the technical qualification decision was filed ~~as authorized in~~ under § 4.E.1, the sanction cannot be reduced or modified, except under § 4.F.3.
2. **Sanctions over ~~3~~three ~~Y~~years.** An employment sanction of ~~over longer than 3~~three years, including a sanction of unlimited duration, may be reviewed once by Civil Service after ~~3~~three 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 ~~r~~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~~ Civil Service ~~designee~~ shall issue a technical qualification decision denying the request.
    - (2) If sufficient grounds to modify the sanction are found, Civil Service ~~the director's designee~~ shall issue a technical qualification decision removing or modifying the sanction.
3. **Request ~~B~~based on ~~C~~hanged ~~C~~ircumstances.** If the basis for an employment sanction is subsequently vacated, a sanctioned person may request that a sanction be ~~ended~~ removed. 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) removal based on 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~~ removed. Civil Service must receive the request no later than 28 ~~calendar~~ days after the change in circumstances.

- b. **Civil Service Rreview.** Civil Service shall review the request and obtain any additional information necessary or useful ~~for to~~ evaluating it.
- (1) If sufficient grounds to ~~rescind~~ modify the sanction are not found, ~~the State Personnel Director's designee~~ Civil Service shall issue a technical qualification decision denying the request.
  - (2) If sufficient grounds to modify the sanction are found, Civil Service ~~the director's designee~~ shall issue a technical qualification decision ~~ending~~ removing the sanction.
4. **Notice of Ddecision.** 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's final decision is the commission's final decision ~~of the commission~~ and cannot be further administratively appealed.

## 5. Procedures

Responsibility	Action
<del>Appointing Authority (if originator)</del>	<del>1. Files request for sanction with Civil Service.</del>
Civil Service	<del>2.</del> <u>12.</u> Investigates suspected violations and requests. <del>3.</del> <u>23.</u> Reviews <u>provided</u> documentation <del>provided by appointing authority or complainant</del> and investigates further, if necessary. <del>4.</del> <u>34.</u> Determines if <del>the</del> person is ineligible, unfit, or unsuitable for future employment, appointment, etc. <del>5.</del> <u>45.</u> Determines any appropriate sanction. <del>6.</del> <u>56.</u> Creates sanction record in HRMN identifying <del>the</del> sanctioned person on <del>the</del> ZP22.1. <del>Removes sanctioned person from all appropriate applicant pools and employment lists.</del> <del>7.</del> <u>67.</u> Issues sanction decision <del>to give notice to the</del> sanctioned person and appointing authority, if applicable. Maintains documentation of <del>the</del> sanction.
Appointing Authority	<del>8.</del> <u>78.</u> Before hiring <del>a</del> person or moving <del>an</del> employee to <del>a</del> test-designated position, checks HRMN ZP22.1 for sanctions. For state employees,

Responsibility	Action
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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.: <a href="#">22-0418-03</a>	Effective Date: <del>January 1</del> <a href="#">September 5,</a> 2021 <del>19</del>	Replaces: Reg. 3.07 <del>7</del> (SPDOC <del>168-036</del> , January 1, 2019 <del>7</del> )

### 1. Purpose

This regulation provides standards and procedures governing various transactions to make appointments and job changes.

### 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 ~~if 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 or~~

~~(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 ~~if in one or more of the following ways:~~

~~(a) The candidate is listed in an appropriate civil service applicant pool.~~

~~(b) — The the candidate meets the civil service qualifications for appointment to a designated classification or -~~

~~(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. Definitions**

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

1. **Applicant** means a person who applies for consideration for appointment to a classified position~~requests to participate in an appraisal process.~~
2. **Appointment** means an authorized act of an appointing authority employing a properly qualified person in a specific position in the classified service.
3. **Class series** means a series of classifications with similar but progressively more responsible job duties.
4. **Demotion** means an authorized movement of an employee with status from a position in one classification level to a lower classification level.
5. **Hire** means the initial appointment to the state classified service authorized by civil service staff.

6. **Indefinite appointment** means a career appointment with no fixed ending date at the time of appointment.
7. **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.
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. **Limited-term appointment** means a career appointment that has a fixed ending date at the time of appointment.
10. **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.
11. **Promotion** means the appointment of an employee to a different position at a higher classification level.
12. **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.
13. **Reinstatement** means the appointment of a person who was previously separated from, or demoted in, the classified service while in satisfactory standing.
14. **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. **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 that Civil Service has assigned for each classification. Descriptions of each HRMN EEO category are 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 whose previous employment was modified by a reduction in force to a position in which status was achieved.

## 4. Standards

### A. Recall Appointments and Job Changes.

1. Recall names for a classification prevent the hire, promotion, reinstatement, demotion or lateral job change between agencies of an individual to that classification, unless allowed under Regulation 3.10 because of a hiring freeze or hiring restriction.
2. 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.
3. 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 on the Civil Service website. 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.
4. An appointment from an agency recall list must be the most senior available candidate, based on total continuous service hours. A recall name must possess at least one of any assigned sub-classes and meet any selective position requirement approved by Civil Service for a position to be recalled. There is no statewide recall.
5. Appointments to ~~T~~transitional or ~~T~~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 ~~T~~transitional ~~Manager, Transitional Professional, Transitional Business and Administrative Technician~~ or ~~Departmental T~~trainee positions is prohibited. Changes in classification of the position are subject to 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 made; possess at least one of any assigned sub-classes; and meet any selective position requirement criteria approved by Civil Service.
2. All appointments and job changes must be made in accordance with this regulation's standards. Misapplication of these standards creating an improper appointment or job

- change may result in revocation of the appointment or job change or other corrective action. An appointee whose position is revoked by the state personnel director after a Civil Service audit can challenge the revocation under the procedure in rule 3-7 and regulation 8.04
3. Civil Service 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.
  4. Appointing authorities may review qualifications of applicants for predetermined classifications under regulation 3.04. [Civil Service shall maintain a list of](#) ~~The State of Michigan Applicant Recruitment Strategies lists the~~ statewide preauthorized classifications. Other classifications may be individually preauthorized to agencies.
  5. Appointing authorities shall certify to Civil Service that all appointments and job changes are made in compliance with the rules and regulations.

**C. Limited-term Appointments.**

1. A limited-term appointment is a career appointment with a fixed ending date when the appointment is made.
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 may make a limited-term appointment for up to two years from the date of appointment.
4. An appointing authority may request Civil Service approval to extend a limited-term appointment for up to two additional years. A request for extension beyond two years must be submitted to Civil Service for approval, with the rationale for extending, before an appointment expires.
5. Limited-term appointments shall not exceed four years from the date of the initial appointment. Any continuation beyond four years must be submitted to the state personnel director, with the rationale for extending.
6. The appointing authority must enter the appointment date and expiration date to the employee record (HR11) when making a limited-term appointment.
7. An employee in limited-term status cannot be extended beyond four 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 in the rules or regulations.

9. A limited-term appointment need not be 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 on the Civil Service website.
  - c. 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.
  - d. 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 taking action. 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 under rule 3-3.5, as follows:
  - a. The sending and receiving appointing authorities must certify their mutual agreement to the job change in writing to the state personnel director.
  - b. An employee may refuse a lateral job change between agencies and, when necessary, exercise employment preference within the sending agency.
  - c. An employee cannot be laterally job changed between agencies if an employee currently working for the receiving agency has recall rights to the classification level.
  - d. An employee must receive written notice at least 28 days before the effective date of the lateral job change, unless agreed otherwise.

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5. Reinstatement must take place within three years of the employee's separation, demotion, or departure on a waived-rights leave from an indefinite or limited-term appointment where status was attained. The reinstatement period for employees laid off or demoted because of a reduction in force begins when 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; 517-284-0103; or [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).



# Michigan Civil Service Commission

## Regulation 3.09

<b>Subject:</b>		
<b>Recall Lists</b>		
<b>SPDOC No.:</b> <del>19-05</del> <u>21-04</u>	<b>Effective Date:</b> <del>May 1</del> <u>September 5,</u> 20 <u>21</u> <del>9</del>	<b>Replaces:</b> Reg. 3.09 (SPDOC <del>189-085</del> , <del>January</del> - <u>May 1</u> , 2019)

### 1. Purpose

This regulation provides standards to place employees on and remove them from recall lists.

### 2. CSC Rule References

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

\*\*\*

#### **3-2.31** *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 statewide recall or for classifications that are protected from the application of employment preference in rule 2-5 [Employment Preference] or applicable regulations.*

#### **3-2.42** *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. 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. **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.
4. **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.

#### B. Definitions in This Regulation.

1. **Eligible class series** means class series where an employee has attained status from an indefinite appointment during the current employment period.
2. **Lack of interest** means an action by an employee listed in rule 3-2.4(b), (c), or (d).
3. **Reduction in force (RIF)** means an appointing authority's action to lay off, demote, or otherwise displace an employee for reasons of administrative efficiency, including lack of work, lack of adequate funding, change in mission, or workforce reorganization.
4. **Seniority** means total continuous service, as recorded in the Human Resources Management Network (HRMN), adjusted by deducting any hours in counters for unclassified, prior military, county, and college/university service and setting hours to zero for initial probationary employees without status.

### 4. Standards

#### A. Information.

1. Recall lists contain employees who were displaced by a RIF in eligible class series. Appointing authorities shall maintain recall records of their employees affected by a RIF. Displaced employees must be added to recall lists by the end of the pay period following the RIF. An appointing authority shall provide a recall list to a labor organization upon written request.
2. Employees on a recall list must report any name or address change (1) by updating information in Human Resources Management Network (HRMN) using MI HR Self Service or (2) in writing to the appointing authority.

3. An employee may prospectively update recall records, including changes to classification, location, or employment status availability in writing to the appointing authority.

**B. Eligibility.** An employee with status from an indefinite appointment who is displaced by a RIF has recall rights to eligible class series in the principal department or autonomous entity that implemented the RIF. An approved agency layoff plan may vary recall eligibility between recognized autonomous entities and appointing authorities of a principal department. An autonomous entity must also request approval of any plan altering recall eligibility for its employees or positions.

**C. Placement.**

1. **Placement and Election.** If displaced, an employee is placed on the recall list for the class, county, and employee status code from which displaced. An employee must submit a CS-1848 form to the appointing authority to request placement on additional recall lists for which the employee is eligible and for counties of interest.
2. **Class series.** An employee is placed on recall lists:
  - a. For an eligible class series from which displaced at and below the level when displaced.
  - b. For any other eligible class series at and below the highest level where status was attained in each class series, but not above the level when displaced.
3. **Displaced within county.** If displaced in the same county, an employee is eligible for recall lists for the original county and counties of interest for eligible class series and levels above the level or pay rate of the new position.
4. **Displaced outside county.** If displaced to another county, an employee is eligible for recall lists for eligible class series (1) at eligible levels above the level or pay rate of the new position for counties of interest besides the county of original displacement and (2) at all eligible levels for the county of original displacement.
5. **Employee status codes.** An employee with status in a class from a full-time indefinite appointment may request recall to eligible positions in the class for any status code. An employee with status in a class from any other appointment type may only request recall to eligible positions in less-than-full-time status codes.
6. **Limited-term appointments.** If displaced from a limited-term appointment in a class where the employee lacks status from an indefinite appointment, the employee is eligible for recall lists for eligible class series at levels at or below the level of the last indefinite appointment where status was attained.
7. **Protected classes.** Recall lists are not maintained for (1) Group-4 classifications, including the Senior Executive Service (SES); (2) Senior Executive Management

Assistant Service (SEMAS) classifications; (3) noncareer classifications; or (4) any classification designated as protected in a civil service rule or regulation.

8. **Transitional positions.** Employees displaced from transitional positions are placed on the recall list for the presumed future manager, professional, or technician class series at the same or lower levels. If recalled, the employee resumes transitional designation and pay treatment as provided in regulations 3.14 and 5.01.
  9. **Trainee positions.** Employees displaced from a trainee position are placed on the recall list for the presumed future professional class series at the same or lower levels as follows:
    - a. Employees with two years of satisfactory full-time service in the position have recall rights at the experienced level and below for the class series.
    - b. Employees with between one and two years of satisfactory full-time service in the position have recall rights at the intermediate level and below for the class series.
    - c. Employees with less than one year of satisfactory full-time service in the position have recall rights at the entry level for the class series.
  10. **Frozen positions.** Employees displaced from a frozen position are placed on the recall list for the class series of the frozen position at and below the level when frozen.
  11. **Reclassifications.** If a pending reclassification request is retroactively approved for a position from which an employee is displaced, the employee is also placed on the recall list for the approved class series and level and below.
  12. **Class clusters.** If an approved agency layoff plan includes class clusters, an employee is eligible for placement on the recall list for class series in a class cluster at or below the employee's level when displaced.
  13. **Ranking.** Employees are ranked on recall lists by seniority when an appointment is to be made.
  14. **Reorganization.** If an executive order or law transfers part of a department to another department, the recall rights of employees previously displaced from positions in the transferred work area transfer to the new department.
- D. Removal.** Employees are removed from recall lists for the reasons in rule 3-2.4 as follows:
1. An employee is removed from all recall lists because of expiration of eligibility; retirement; separation, including a waived-rights leave; accepting severance payment under rule 5-6.10 or a collective bargaining agreement; or ineligibility under rule 3-2.4(f), (g), or (h).
  2. An employee who shows a lack of interest in or returns to work in a position in the county of original displacement is removed from all recall lists for any classification and level at or below the level and maximum pay rate of the position.

3. An employee who shows a lack of interest in or returns to work in a position in a county besides the county of original displacement is removed from all recall lists for counties of interest besides the county of original displacement for any classification and level at or below the level and maximum pay rate of the new position.
4. If the new position in § 4.D.2 or 3 above is not indefinite and full-time, the employee is not removed from any recall lists for indefinite full-time positions.
5. An employee displaced from SES, SEMAS, or Group-4 with pay protection under rule 4-6.2(g)(2), 4-7.2(g)(2), or 4-8.2(f) who declines recall to a level where the pay rate meets or exceeds the maximum pay at the current level also has pay protection end and pay changed to the appropriate step for the level as provided in regulation 5.01, § 4.F.

#### **E. Duration.**

1. Employees are placed on recall lists for one year from the date of displacement.
2. An employee may request one-year extensions twice if the appointing authority receives a written extension request during the 28 days before expiration. Late requests are not honored.
3. Employees cannot remain on a recall list for more than three years, except under § 4.E.4.
4. **Transition provisions.** An exclusively represented employee on an agency recall list on December 31, 2018, remains on the list until the earliest of the recall expiration date on that date; December 31, 2021; or any removal authorized by rule 3-2.4. No additional renewal or extension is available after December 31, 2018. An exclusively represented employee on contractual medical layoff on December 31, 2018, can remain in that status until the earlier of December 31, 2020, or two years after the medical layoff began. An employee on medical layoff who timely provides medical certification of the ability to return to regular job responsibilities is moved to the agency's recall list with an expiration date of December 31, 2021. No statewide or other contractual recall rights can continue after December 31, 2018.

#### **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; 517-284-0103; or [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 3.10

Subject: <b>Hiring-Restriction Conditions</b>		
SPDOC No.: <u>21-04</u> <del>18-03</del>	Effective Date: <u>September 5,</u> <del>2021</del> <u>January 1, 2019</u>	Replaces: Reg. 3.10 (SPDOC <u>18-03</u> <del>16-06</del> , January 1, 201 <u>9</u> <del>7</del> )

### 1. Purpose

This regulation provides standards to establish hiring restrictions and to promote or transfer within an agency during hiring-restrictions or hiring-freeze declarations.

### 2. Definitions

#### A. CSC Rule Definitions.

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

### 3. Standards

#### A. Establishing an Authorized Hiring Restriction or Freeze.

1. The agency must have a current hiring-restriction declaration on file approved by the state personnel director.
2. A bona fide hiring restriction or freeze is established when a declaration is forwarded to the state personnel director by the governor or an appointing authority that describes the nature, rationale, and scope of the hiring restriction or freeze and anticipated effective and expiration dates.
3. A hiring-restriction or hiring-freeze declaration must identify the total staffing level of current filled positions of each area affected by the declaration.
4. A hiring restriction may be agency-wide or specific to organizational areas.
5. The organizational areas designated for hiring restrictions must be identified by major budgetary units or definable and distinct programs (i.e., bureau, division, office, or

district). Unit or section levels are too narrow organizationally. The restriction conditions must apply to all classifications and classification levels used in the designated organizational area. The state personnel director must approve any exceptions.

6. The hiring-restriction or hiring-freeze declaration is void if:
  - a. The expiration date is reached and it is not reissued.
  - b. An individual outside the agency is hired into a declared hiring-restricted organizational area defined in the declaration.
  - c. The declaration is rescinded.

**B. Transfer Within an Agency or Promotion 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 before a promotional appointment.
3. The selected candidate must possess the qualifications for the appointment's classification.
4. Recall names do not normally prevent an employee's lateral job change or demotion to a different position within the agency, but recall names prevent a lateral job change from a limited-term appointment to an indefinite appointment.

**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; 517-284-0103; or [MCSC-OCSC@mi.gov](mailto:MCSC-OCSC@mi.gov).

# Michigan Civil Service Commission

## Regulation 8.02

<b>Subject:</b>		
<b>Technical Classification and Qualification Complaints</b>		
<b>SPDOC No.:</b>	<b>Effective Date:</b>	<b>Replaces:</b>
<del>21-0416-06</del>	<del>January 1</del> <u>September 5,</u> <del>2017</del> <u>21</u>	Reg. 8.02 (SPDOC <del>165-1506</del> , <del>October</del> <u>January 1,</u> 201 <u>5</u> 7)

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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.*

#### **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.*

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 [the director or the director's designee to](#) reconsideration of a [staff qualification](#) 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](mailto:MCSC-OTC@mi.gov).
  - a. An employee organization cannot file a complaint ~~regarding over~~ a technical decision, but may. ~~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 by~~ Civil Service, ~~in accordance with~~ under regulation 4.03.
  - c. Disputes ~~concerning the over~~ evaluation ~~g 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.

2. **Complaint.** The technical complaint is the complainant's 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 form's 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. Each complainant's ~~The~~ signature, ~~which of each complainant. A signature~~ can be a scanned document of an actual signature or ~~the~~ a 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 must receive the complaint within 14 ~~calendar~~ days after the date ~~that the~~ underlying 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. Preliminary review. Upon receipt of a complaint, staff shall conduct a preliminary review to determine the timeliness and sufficiency of the complaint.
2. **Reasons.** In addition to ~~the~~ grounds in rule 8-4, a technical classification or qualification complaint may be administratively dismissed without prior notice if the complaint ~~for the following reasons~~:
  - a. ~~The complaint~~ fails to set forth allegations with sufficient particularity to permit review.

b. ~~The complaint I~~ involves ~~one or more of the following actions, decisions, and matters that are not subject to review, including the rules and regulations.~~

~~(1) Michigan Civil Service Commission Rules.~~

~~(2) Civil Service regulations, standards, and procedures. the Equitable Classification Plan, the maintenance, criteria, and pay of individual classifications, position freezes, and other requirements or limits approved by Civil Service.~~

~~(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 f~~ails for other good and sufficient reason to warrant further review.

### C. Technical Review Decisions.

1. **Complaint I** investigation. A technical review officer ~~is can~~not ~~authorized to~~ conduct a hearing, but may contact or meet with the complainant or other interested parties to discuss the complaint or seek additional submissions, if necessary.

2. **Decisions.**

- a. The technical review officer shall review ~~de novo~~ all submissions de novo 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~~ A technical review officer's decision in a technical classification complaint ~~shall~~ must contain notice of ~~the right of~~ interested parties' right to file an application for leave to appeal to the ~~Civil Service Commission, as provided in~~ under regulation 8.05.
- c. **Technical Qualification Review Decisions.** ~~A technical review offer's~~ The technical qualification review decision ~~of a technical review officer~~ in a technical qualification complaint is the commission's 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 first day~~ te of the pay period ~~in which~~ when 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~~ under regulation 4.04. If the employee submitted the position review request, the effective date is assigned ~~in accordance with~~ under 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 only 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~~ until 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 reinstated.
  - 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 S~~ubsequent ~~E~~mployee. 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~~ under regulation 4.05.

**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 regulation 8.01~~the Grievance and Grievance Appeal Procedures~~.

**~~5. Procedures~~**

<b>Responsibility</b>	<b>Action</b>
Civil Service	<del>1. Mails technical decision.</del>
Complainant	<del>2. Prepares technical complaint and submits to the Office of Technical Complaints at MCSC-OTC@mi.gov.</del>
Office of Technical Complaints	<del>3. Upon receipt of the technical complaint, conducts preliminary review to determine timeliness and sufficiency of the complaint.</del> <del>4. If the complaint is untimely or fails to meet the requirements of this regulation, dismisses the technical complaint.</del> <del>5. Obtains submissions from appointing authority and agency staff, if required.</del> <del>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.</del> <del>7. Prepares and issues technical complaint decision.</del>
Complainant or Interested Party	<del>8. May apply for leave to appeal a technical classification review decision to the Civil Service Commission. A technical qualification review decision is final.</del>

**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).