



STATE OF MICHIGAN
CIVIL SERVICE COMMISSION

COMMISSIONERS
JANET McCLELLAND, CHAIR
JASE BOLGER
NICK CIARAMITARO
JEFF STEFFEL

STATE PERSONNEL DIRECTOR
JOHN GNODTKE

STATE PERSONNEL DIRECTOR OFFICIAL COMMUNICATION

SPDOC No. 22-04

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

FROM: JOHN GNODTKE, STATE PERSONNEL DIRECTOR

DATE: JULY 8, 2022

SUBJECT: **PROPOSED AMENDMENTS TO RULES 1-8, PROHIBITED
DISCRIMINATION; 3-1, EXAMINATIONS; 5-11, GROUP INSURANCE
PLANS; AND 9-1, DEFINITIONS; AND REGULATIONS 1.03,
INVESTIGATING REPORTS OF DISCRIMINATORY HARASSMENT;
1.04, REASONABLE ACCOMMODATIONS, 5.16, CORRECTING
COMPENSATION AND BENEFIT ERRORS; AND 5.18 COMPLAINTS
ABOUT BENEFITS**

A handwritten signature in black ink, appearing to read "John Gnodtke", written over the printed name in the "FROM:" field.

**THIS DOCUMENT IS AVAILABLE UPON REQUEST IN ALTERNATIVE FORMATS.
FOR FURTHER INFORMATION CALL 517-284-0115.**

The rules and regulations sometimes have condensed descriptions of procedures and definitions under state and federal laws. While the intent has been to highlight broad operational concepts under the laws and associated regulations, the summaries are necessarily incomplete and may lack updates or details on specific situations. Many such provisions in the rules and regulations have been rescinded recently, including attempts to summarize federal Family Medical Leave Act entitlements and restate the Mandatory Guidelines for Federal Workplace Drug Testing.

The rules prohibit employment discrimination based on, among other things, disability and genetic information unrelated to a person's ability to perform the duties of a particular job. They also require reasonable accommodations for a qualified person with a disability. In addition to general concerns over attempted statutory restatements, inconsistencies between state and federal laws over the same subject can complicate ensuring that restatements harmonize all potentially competing authorities.

Staff recommends that the rules and regulation be amended to eliminate potentially confusing statutory restatements while continuing to acknowledge the laws' applicability to the classified service. Specifically, staff recommends (1) amending the rules' definitions of disability and genetic information to clarify that they are as defined in state or federal law, (2) amending rule 1-8.1 to clarify that any employment action based on disability or genetic information must be consistent with state and federal law, (3) amending rules 1-8.2 and 3-1.4 to state that accommodations of a person with a disability are consistent with state and federal law, (4) removing redundant language from rule 3-1.4, and (5) deleting other definitions that would no longer be used in the amended rules.

Corresponding amendments to regulations 1.03 and 1.04 to reflect the proposed rule amendments are also being circulated for comment and would take effect upon any adoption of the proposed rule changes. Additional amendments to regulation 1.04 would delete unused definitions, refine the definition of reasonable accommodation, and explicitly state that no specific form or phrasing is required to request a reasonable accommodation and that records relating to accommodation requests are confidential medical records, as provided by law.

These amendments would not change employees' or applicants' rights under the federal Americans with Disabilities Act or Genetic Information Nondiscrimination Act, or the state Persons with Disabilities Civil Rights Act. The civil service rules and regulations have never purported to alter or overrule specific statutory frameworks regarding disability discrimination and reasonable accommodations.

Housekeeping amendments are also recommended in rules and regulations regarding benefits. Staff recommends that rule 5-11 be amended to reflect the elimination of separate health plans for employees depending on hire date, which were eliminated in 2014. Staff also recommends that provisions on group insurance eligibility in rule 5-11.2 and costs in rule 5-11.3(b) be amended to track similar provisions found in bargaining agreements. Staff notes that these proposed amendments would not change the eligibility or premium cost sharing of any current employees. An update to the definition of Group insurance benefits is proposed to include references to coinsurance and out-of-pocket maximums to codify the commission's authority to regulate these aspects of insurance benefits and clarify that any complaints over them must be brought through the administrative process required under rule 5-11.1(e)(1). These additions, if adopted, would not change current practice. Non-substantive changes to improve conciseness and clarity are recommended throughout rule 5-11.

Draft amendments to regulations 5.16 and 5.18 are also circulated for comment. In addition to rule references updated to reflect the proposed amendments to rule 5-11 discussed above, proposed amendments to regulation 5.18 include amending the definition of group insurance plans to clarify that such plans are responsible to pay eligible claims, updating the table in § 4.A.1 to include the State High-Deductible Health Plan with HSA and its TPA and updating the TPA of the flexible spending account plans to HealthEquity, identifying additional voluntary benefits plans not subject to the regulation in § 4.D, and deleting the word "Health" and letter "H" from "Dental Maintenance Organizations" and "DMO," respectively.

Comments on the proposed amendments may be emailed to MCSC-OGC@mi.gov or sent to Office of the General Counsel, Michigan Civil Service Commission, P.O. Box 30002, Lansing, Michigan, 48909. Comments must be received by July 22, 2022. The proposed rule changes will be considered by the commission at its July 25, 2022 meeting at 400 S. Pine Street, Lansing, Michigan. The proposed effective date of the changes is July 25, 2022.

Attachments

SPDOC 22-04 Proposed Rule Amendments

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 job application procedures, employment, job training, 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 consistent with state and federal law, ~~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 consistent with state and federal law, ~~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, consistent with state and federal law ~~as provided in the civil service rules and regulations.~~

...

3-1 Examinations

...

3-1.4 Reasonable Accommodations

Appointing authorities shall make reasonable accommodations for the known physical or mental limitations in their application and appraisal methods for a person with a disability, consistent with state and federal law ~~who makes a request for reasonable accommodation in advance. Appointing authorities may offer an alternative evaluation method for a person with a disability if the person cannot participate in the regular appraisal method. Appointing authorities are not required to make an accommodation that would cause undue hardship.~~

...

5-11 Group Insurance Plans

5-11.1 ~~Types of Group Insurance Plans~~

- (a) ~~Types of group insurance plans.~~ The ~~civil service~~ commission has approved the following group insurance plans for eligible employees:
 - (1) ~~[A] One m~~Medical benefit plan for employees hired before April 1, 2010, and ~~[B] a separate medical plan for employees hired on or after April 1, 2010.~~
 - (2) ~~A d~~Dental benefit plan.

SPDOC 22-04 Proposed Rule Amendments

- (3) ~~A vision benefit plan.~~
 - (4) ~~A life insurance plan.~~
 - (5) ~~An accidental death benefit plan.~~
 - (6) ~~A long-term disability income protection plan.~~
- (b) **Recommendations.** The employer, limited-recognition organizations, and nonexclusively represented employees may annually recommend changes in the group insurance plans in the coordinated compensation process. The coordinated compensation panel shall make a final recommendation to the civil service commission.
- (c) ~~Action by the commission.~~ **Commission action.** The ~~civil service~~ commission shall review ~~the final recommendation of the coordinated compensation panel~~ and may approve, reject, or modify the ~~recommendation of the~~ coordinated compensation panel's recommendation.
- (d) **Publication.** The ~~state personnel~~ director or plan provider shall make available ~~to employees documentation~~ documents describing each group insurance plan approved by the ~~civil service~~ commission.
- (e) **Administration.** The ~~state personnel~~ director ~~is responsible for implementing~~ shall implement and ~~administering~~ administer the approved group insurance plans ~~approved by the civil service commission~~.
- (1) **Complaints.** The ~~state personnel~~ director shall provide an expedited administrative review of employee complaints ~~regarding~~ over group insurance benefits. The director's ~~administrative review~~ process is the exclusive procedure for ~~reviewing~~ employee complaints ~~regarding~~ over group insurance ~~plan~~ benefits. An employee aggrieved by ~~a~~ the director's final ~~administrative~~ decision may appeal ~~the decision~~ to the ~~civil service~~ commission as provided in the civil service rules and regulations.
 - (2) **Agreements with other public entities.** The ~~state personnel~~ director may approve agreements with other public entities to permit their employees to participate in approved group insurance plans ~~authorized by the civil service commission if 100 percent of any additional total cost of participation is paid by~~ if the participating ~~public entities~~ or ~~and their~~ its employees pay all additional total costs from participation.
- (f) **Other benefits.**
- (1) The ~~state personnel~~ director may establish and administer flexible spending accounts authorized under federal law.
 - (2) The ~~state personnel~~ director may authorize payroll deduction of premiums for other insurance or benefit programs if the employee pays 100 percent of the total costs.

5-11.2 Eligibility ~~for Group Insurance Plans~~

~~Classified employees~~ Employees are eligible for approved group insurance benefits ~~approved by the civil service commission~~ in accordance with the ~~following eligibility~~ table below:

SPDOC 22-04 Proposed Rule Amendments

Benefit Plan ↓	Employee Status				Noncareer Appointments
	Career Appointments (Indefinite and Limited-term):				
	Full-time	Part-time	Intermittent	Seasonal	
Health Plan A: [Hired before 4-1-10]	Eligible	Eligible	Eligible	Eligible	Not Eligible
Health Plan B: [Hired after 3-31-10]	Eligible	Eligible	Eligible	Eligible	Not Eligible
Dental Plan	Eligible	Eligible (if working <u>at least</u> > 40% of full-time)	Eligible (if working <u>at least</u> > 40% of full-time)	Eligible if working full-time at least 8 months per year	Ineligible Not Eligible
Vision Plan	Eligible	Eligible (if working <u>at least</u> > 40% of full-time)	Eligible (if working <u>at least</u> > 40% of full-time)	Eligible if working full-time at least 8 months per year	Ineligible Not Eligible
Life Insurance Plan	Eligible	Eligible (if working <u>at least</u> > 40% of full-time)	Eligible (if working <u>at least</u> > 40% of full-time)	Eligible (if working <u>at least</u> > 40% of full-time)	Ineligible Not Eligible
Accidental Duty Death	Eligible	Eligible	Eligible	Eligible	Ineligible Not Eligible
Long-term Disability Plan	Eligible	Eligible (if working <u>at least</u> > 40% of full-time)	Eligible (if working <u>at least</u> > 40% of full-time)	Eligible if working full-time	Ineligible Not Eligible

5-11.3 Costs of Group Insurance Plans

- (a) **Costs.** The ~~state personnel~~ director shall annually determine the total cost per employee to provide each group insurance plan benefit approved by the ~~civil service~~ commission. During the coordinated compensation process, the employer may propose that the cost of each group insurance plan be paid in part or in whole by an employee.
- (b) **Costs for part-time employees hired after December 31, 1999.** ~~Notwithstanding any apportionment of costs approved by the civil service commission, a~~ An eligible part-time career employee is required to pay one-half of the total cost of the medical, dental, vision, and life insurance plans if (1) the employee has a regular work schedule of ~~less than~~ 50 percent or less of full-time and (2) the employee was hired into the classified service after December 31, 1999.

...

SPDOC 22-04 Proposed Rule Amendments

9-1 Definitions

...

Disability

~~(a) — *Disability* means a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment, as defined in state or federal law. 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.~~

...

Genetic Information

~~*Genetic information* means an individual's genetic information, as defined in state or federal law about a gene, gene product, or inherited characteristic of an individual derived from the individual's family history or a genetic history.~~

Genetic Test

~~*Genetic test* means the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. *Genetic test* does not include a routine physical examination or a routine analysis including, but not limited to, a chemical analysis of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.~~

...

SPDOC 22-04 Proposed Rule Amendments

Group Insurance Benefits

Group insurance benefits means eligibility, enrollments, premiums, coverages, exclusions, costs, reimbursements, payments, copayments, deductibles, [coinsurance](#), [out-of-pocket maximums](#), coordination of benefits, or other benefits authorized under the group insurance plans.

...

~~Unrelated to the Person's Ability~~

~~*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.~~

Michigan Civil Service Commission

Regulation 1.03

Subject: Investigating Reports of Discriminatory Harassment		
SPDOC No.: <u>19-0522-04</u>	Effective Date: May 1, 2019 <u>July 25, 2022</u>	Replaces: Reg. 1.03 (SPDOC 196-056 , January <u>May</u> 1, 2017 9)

1. Purpose

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

2. CSC Rule References

1-8 *Prohibited Discrimination*

1-8.1 *Prohibited Discrimination*

Neither civil service staff nor an appointing authority shall do any of the following:

- (a) *Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to job application procedures, employment, job training, 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 consistent with state and federal law, 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 consistent with state and federal law, 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, consistent with state and federal law as provided in the civil service rules and regulations.

1-8.3 Discriminatory Harassment

- (a) **Discriminatory harassment prohibited.** *Discriminatory harassment is prohibited in the classified service. A classified employee who engages in discriminatory harassment may be disciplined by the appointing authority, up to and including dismissal.*
- (b) **Requirement to report.** *A classified employee who is subjected to discriminatory harassment or who observes discriminatory harassment in the workplace shall report the discriminatory harassment to the appointing authority through reporting procedures established by the appointing authority.*
- (c) **Regulations and action.** *The state personnel director shall issue regulations governing reporting and investigating discriminatory harassment. The regulations must require each appointing authority to make good faith efforts to eliminate and prevent discriminatory harassment in the workplace. The regulations must require the following minimum actions by each appointing authority:*
- (1) *Each appointing authority shall assign one or more investigators to investigate reports of discriminatory harassment by employees.*
 - (2) *Each appointing authority shall investigate all reports of discriminatory harassment.*
 - (3) *If a report of discriminatory harassment is substantiated or there is reasonable cause to believe that an allegation of discriminatory harassment is true, the appointing authority shall take appropriate corrective and remedial action.*

1-8.4 Bona Fide Occupational Qualification

An appointing authority may establish a bona fide occupational qualification based on religion, national origin, sex, sexual orientation, age, marital status, height, or weight, only if it is consistent with applicable law and is approved in advance by the state personnel director.

1-8.5 Elimination of Present Effects of Past Discrimination

An appointing authority may adopt and carry out a plan to eliminate the present effects of past discriminatory practices with respect to religion, race, color, national origin, sex, or disability if the plan is approved in advance by the state personnel director and is otherwise consistent with applicable law.

1-8.6 Seniority and Merit System

Notwithstanding any other provision of these rules, civil service staff or an appointing authority may apply different standards for compensation or different terms, conditions, or privileges of employment under a bona fide seniority or merit system approved by the civil service commission or the state personnel director.

1-8.7 Agency Work Rules

This rule does not limit the authority of an appointing authority to issue an agency work rule that regulates verbal or physical conduct or communication that does not rise to the level of prohibited discrimination or discriminatory harassment as defined in these rules.

2-10 Whistleblower Protection

2-10.1 Reprisal Prohibited

An appointing authority shall not engage in reprisal against an employee for disclosing a violation or suspected violation of any of the following:

- (a) A state or federal law.*
- (b) A lawful regulation or rule promulgated by a political subdivision of the state of Michigan.*
- (c) A civil service rule or regulation.*

2-10.2 Application

An employee who reports, or who is known by the appointing authority to have indicated an intent to report, violations or suspected violations is protected by this rule, unless the employee knew the report was false. This protection extends to an employee who participates in, or who was known by the appointing authority to have indicated an intent to participate in, a court proceeding or an investigation, hearing, or inquiry conducted by a public body.

2-10.3 Forms of Reprisal

Reprisal includes actions such as discharge, threats of discipline, or arbitrary and capricious changes in the conditions of employment.

3. Definitions

A. CSC Rule Definitions.

1. Appointing authority means each of the following:

- (a) A single executive heading a principal department.*
- (b) A chief executive officer of a principal department or autonomous entity headed by a board or commission.*
- (c) A person designated by any of the preceding as responsible for administering the personnel functions of the department, autonomous entity, or other agency.*

2. Disability means a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment, as defined in state or federal law.

~~**(a) Disability means any of the following:**~~

~~(1) A determinable physical or mental characteristic of a person, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:~~

~~(A) substantially limits one or more of the major life activities of the person, and~~

~~(B) is unrelated to (1) the person's ability to perform the duties of a particular job or position or (2) the person's qualifications for employment or promotion.~~

~~(2) A history of a determinable physical or mental characteristic described in subsection (a)(1).~~

~~(3) Being regarded as having a determinable physical or mental characteristic described in subsection (a)(1).~~

~~(b) Disability does not include either of the following:~~

~~(1) A determinable physical or mental characteristic caused by the current illegal use of a controlled substance by the person.~~

~~(2) A determinable physical or mental characteristic caused by the use of alcohol by the person if that physical or mental characteristic prevents the person from performing the duties of the person's job.~~

3. **Discriminatory harassment** means unwelcome advances, requests for favors, and other verbal or physical conduct or communication based on religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, disability, or genetic information under any of the following conditions:

(a) Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment.

(b) Submission to or rejection of the conduct or communication by a person is used as a factor in decisions affecting the person's employment.

(c) The conduct or communication has the purpose or effect of substantially interfering with a person's employment or creating an intimidating, hostile, or offensive employment environment.

4. **Genetic information** means an individual's genetic information, as defined in state or federal law about a gene, gene product, or inherited characteristic of an individual derived from the individual's family history or a genetic history.~~5. — Genetic test means the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis~~

~~including, but not limited to, a chemical analysis of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.~~

~~65. **Sexual orientation** means actual or imputed heterosexuality, homosexuality, or bisexuality.~~

~~7. **Unrelated to the person's ability** means, with or without accommodation, a person's disability does not prevent the person from performing the duties of a particular job or position.~~

4. Standards

A. Reporting Process.

1. Obligation to Report Discriminatory Harassment.

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

2. To Whom to Report Discriminatory Harassment.

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

3. **When to Report Discriminatory Harassment.** The employee is encouraged to report any discriminatory harassment immediately. However, in any event, the employee must report any discriminatory harassment within **180 calendar days** after the alleged harassment.

4. **Confidentiality.** To protect the interests of all involved, the appointing authority shall maintain confidentiality to the extent practicable and appropriate under the circumstances.
5. **Use of Grievance Procedure.** Although an employee who is subjected to unwanted discriminatory harassment is obligated to report the harassment as provided in this regulation, the employee may also file a grievance regarding the harassment as authorized in the rules and regulations governing grievances or an applicable collective bargaining agreement.
6. **Reporting Other Types of Discrimination.** If an employee becomes aware of improper discrimination other than discriminatory harassment, the employee may use the procedures provided in this regulation to report the discrimination.

B. Investigative Procedures.

1. Each appointing authority shall make a good faith effort to eliminate and prevent discriminatory harassment in the workplace.
2. Each appointing authority shall investigate **all** reports of discriminatory harassment, regardless of the source of the report. If a report of discriminatory harassment is substantiated or there is reasonable cause to believe the allegations are true, the appointing authority shall take prompt and appropriate remedial action.
3. If, at the time of the alleged harassment, the alleged harasser was an employee of an agency other than the one receiving the report, the report must be referred to the agency employing the alleged harasser for investigation.
4. Each appointing authority shall appoint one or more investigators with the authority to investigate any report of discriminatory harassment. The appointing authority shall assure the availability of sufficient investigators, considering the location and hours of the agency's operation. If more than two investigators are appointed, the appointing authority shall designate a coordinator of investigators.
5. Each appointing authority shall notify all employees under its authority of the prohibitions against discriminatory harassment. The notice must identify the persons to whom employees may file a report of discriminatory harassment. The notice must also describe the process for filing such a report.
6. Each appointing authority shall implement an education and training program for all new and continuing employees on the definitions of discriminatory harassment and the need to make good faith efforts to eliminate and prevent discriminatory harassment in the workplace.
7. Each appointing authority shall provide additional training for each investigator, coordinator of investigators, manager, and supervisor on techniques and procedures

for investigating reports of discriminatory harassment and recognizing and remedying discriminatory harassment.

8. Each appointing authority shall keep adequate records of reports and investigations regarding discriminatory harassment. The records must include the following, if available:
 - a. Any statements of the person making the report, the alleged harasser, or any witnesses.
 - b. Other documents supporting conclusions reached by investigators.
 - c. Relevant disciplinary reports and performance evaluations.
 - d. The final investigatory report.

C. Guidelines for Investigating Reports.

1. Receiving the Report and Beginning the Investigation.

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

2. The Investigation.

- a. **Report.** After receiving a report, the investigator shall detail in writing the unwelcome conduct that is alleged to constitute discriminatory harassment. The report must include each of the following, if available:
 - (1) The signed statement provided by the reporting employee and any person allegedly harassed (or notation of any refusal to submit such a statement).
 - (2) The types of conduct alleged.

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

- f. **Confidentiality.** To the extent practicable, the investigator shall distribute and collect any signed statements or other documents in a manner that will protect confidentiality of the information.
 - g. **Preservation of Records.** The investigator shall preserve all records of all investigative steps for 3 years after the final decision.
3. **Final Investigative Report.** After completing the investigation, the investigator shall transmit a final investigative report to the appointing authority or other designated authority.

D. Further Action.

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

CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-284-0093; or to MCSC-OGC@mi.gov.

Michigan Civil Service Commission

Regulation 1.04

Subject: Reasonable Accommodations		
SPDOC No.: 21-04 <u>22-04</u>	Effective Date: September 5, 2021 <u>July 25, 2022</u>	Replaces: Reg. 1.04 (SPDOC 21-04 <u>16-04</u> , January 1, 2017 <u>September 5, 2021</u>)

1. Purpose

This regulation establishes procedures to request and provide reasonable accommodations for ~~qualified~~ employees and applicants with disabilities.

2. CSC Rule References

1-8 *Prohibited Discrimination*

~~***~~

1-8.2 *Accommodation of Disabilities*

Civil service staff and appointing authorities shall accommodate a person with a disability, consistent with state and federal law ~~as provided in the civil service rules and regulations.~~

~~***~~

3-1 *Examinations*

~~***~~

3-1.4 *Reasonable Accommodations*

~~**Error! Bookmark not defined.** Appointing authorities shall make reasonable accommodations for the known physical or mental limitations in their application and appraisal methods for a person with a disability, consistent with state and federal law ~~who makes a request for reasonable accommodation in advance. Appointing authorities may offer an alternative evaluation method for a person with a disability if the person cannot participate in the regular appraisal method. Appointing authorities are not required to make an accommodation that would cause undue hardship.~~~~

~~***~~

3. Definitions

A. CSC Rule Definitions.

1. *Applicant* means a person who applies for consideration for appointment to a classified position.

2. Disability

~~(a) **Disability** means a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment, as defined in state or federal law, 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** means an applicant or employee with a disability who can perform the essential functions of a position, with or without reasonable accommodation.~~

~~23. **Reasonable accommodation** means a modification or adjustment to a job, of the work environment, or a selection process for a qualified to provide an employee or applicant an equal employment opportunity, as defined under state and federal law and regulations, including 29 CFR 1630.2(o). An accommodation that would cause an appointing authority undue hardship is not a reasonable accommodation.~~

~~4. **Undue hardship** means significant difficulty or expense, as defined in federal law.~~

4. Standards

- A. **Employee Accommodation Requests.** Each appointing authority shall designate an accommodation coordinator to process accommodation requests. Employees or their designees ~~should~~may submit accommodation requests directly to the coordinator. No specific form or phrasing is required to request a reasonable accommodation. If a request is made to someone else, such as a supervisor or manager, the recipient must promptly notify the coordinator of the request. An employee seeking an accommodation ~~should, but is not required to,~~may submit a completed Disability Accommodation Request and Medical Statement (CS-1668) to the accommodation coordinator to facilitate the interactive process and ensure the understanding of relevant facts.
- B. **Applicant Accommodation Requests.** 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. 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-16868 describing the request is (1) provided by the employee or a designee or (2) completed by the 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 federal law.
 - c. Verify the relevant position's essential functions.
 - 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 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 (CS-1669). The response must describe the recommended accommodation or explain 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~~ as required by state and federal law.
3. After a final decision is issued, the accommodation coordinator shall:
 - a. Provide the employee a copy of the CS-1669.
 - b. Have the employee complete and sign the relevant portions of the CS-1669.
 - c. If applicable, arrange to implement the approved accommodation.
4. Completed forms and medical documentation related to the request must be maintained consistent with state retention schedules and as confidential medical records as provided by state and federal law.

D. Evaluating Accommodations. The accommodation coordinator or designee may use the Evaluation of Disability Accommodation (CS-1670) or another effective process to later evaluate implemented accommodations' effectiveness.

E. Appeal. If dissatisfied with the accommodation coordinator's final response or if the coordinator fails to issue a final response within eight weeks, the employee may appeal through the appropriate grievance procedure.

F. Alternative Forms. An appointing authority may use alternative forms approved by the ~~S~~state ~~P~~ersonnel ~~D~~irector.

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.

Michigan Civil Service Commission

Regulation 5.16

Subject: Correcting Compensation and Benefit Errors		
SPDOC No.: 19-11 <u>22-04</u>	Effective Date: October 1, 2019 <u>July 25,</u> <u>2022</u>	Replaces: Reg. 5.16 and 5.19 (SPDOC 1619-1106 , January <u>October 1, 2019</u> 7)

1. Purpose

This regulation establishes standards to correct compensation and benefit errors.

2. CSC Rule References

5-1 Civil Service Compensation Plan

5-1.1 Application

(a) General application. All eligible employees in the classified service receive compensation and fringe benefits in accordance with the compensation plan, except as provided in subsection (b).

(b) Collective bargaining agreement. All employees in the classified service are covered by these rules, except that employees covered by an approved collective bargaining agreement differing from the compensation plan are governed by the collective bargaining agreement, where different.

* * *

5-3 Compensation Schedules

* * *

5-3.9 Approval and Disapproval of Disbursements for the Classified Payroll

The state personnel director shall certify each payroll for the classified service. Payroll certification is based on computerized payroll system edits of payroll calculations and personnel transactions and the audit of personnel transactions for compliance with civil service rules and regulations. The director shall establish edit requirements and audit procedures. The director may delete from the payroll any item that cannot be certified under this rule and shall give notice of the action, together with the reason for the action, to the appointing authority concerned.

* * *

5-11 Group Insurance Plans

5-11.1 Types of Group Insurance Plans

* * *

(e) **Administration.** ~~The state personnel director is responsible for implementing and administering the approved group insurance plans approved by the civil service commission.~~ *The state personnel director shall implement and administer the approved group insurance plans approved by the civil service commission.*

* * *

3. Definitions

A. CSC Rule Definitions.

1. **Compensation plan** means the civil service rules and regulations (including pay schedules) for administration of pay in the classified service.
2. **Group insurance benefits** means eligibility, enrollments, premiums, coverages, exclusions, costs, reimbursements, payments, copayments, deductibles, coinsurance, out-of-pocket maximums, coordination of benefits, or other benefits authorized under the group insurance plans.

B. Definitions in This Regulation.

1. **Benefits** means (1) group insurance benefits and (2) eligibility, enrollments, coverages, exclusions, costs, reimbursements, payments, deductibles, or other benefits authorized under a qualified pretax plan.
2. **Group insurance plans** means all the following:
 - a. The group insurance plans authorized in the compensation plan for employee health, dental, vision, disability, and life.
 - b. COBRA and other insurance continuation programs authorized by law or the compensation plan.
3. **Excess benefit costs** means benefit costs incurred by the state on behalf of an employee or dependent that are not authorized under any group insurance plan or qualified pretax plan.
4. **Excess costs** means (a) excess benefit costs or (b) an overpayment.
5. **Improper reimbursement** means a reimbursement under a qualified pretax plan that is not authorized under applicable law or properly documented by the employee.
6. **Overpayment** means a payment to an employee that is not authorized by the compensation plan.
7. **Qualified pretax plan** means health-care and dependent-care flexible spending accounts and qualified transportation fringe benefits reimbursement plans authorized by law and the commission.

4. Standards

A. Requirements.

1. **Authorized.** All employee compensation and benefits must be authorized by and administered in accordance with the compensation plan and any applicable collective bargaining agreement, state contract with a third-party administrator, and applicable law.
2. **Eligibility for Insurance Benefits.** An employee may be required to document or verify the eligibility of the employee or a dependent for group insurance benefits before or anytime after enrollment. Civil Service shall deny or cancel a benefit if the employee cannot document and verify eligibility to its satisfaction. Civil Service must give the employee at least 14 days' written notice before cancelling the benefit.
3. **Audit and correction.** All compensation is subject to audit and correction by the appointing authority and Civil Service. All benefits are subject to audit and correction by Civil Service.
4. **Report errors.**
 - a. Employees shall report all errors in the administration of the compensation plan to the employee's appointing authority or Civil Service.
 - b. Appointing authorities and employees shall report all benefit errors to the Employee Benefits Division.
5. **Correction required.** Any compensation and benefit errors, including overpayment and underpayment, must be corrected as provided in this regulation.
6. **Withholding.** All payments to employees to correct errors are subject to withholding as required by law.
7. **Prospective recovery and repayments.** Except where retroactive recovery or payment is expressly authorized, compensation and benefit errors are only corrected prospectively, beginning the first day of the pay period when the appointing authority or Civil Service learned of the error.
8. **Document retention.** The appointing authority shall retain records of any overpayment, underpayment, and collection efforts for three years.

B. Excess Costs.

1. **Recovery required.**
 - a. If an employee is overpaid, the appointing authority or Civil Service shall recover the overpayment from the employee as provided in this regulation.
 - b. If the state incurs excess benefit costs, Civil Service shall recover the excess costs from the employee as provided in this regulation.
2. **No fraud.** If the state incurs excess costs for reasons other than fraud or misrepresentation by the employee, the employee must repay the amount of the

- excess costs incurred or paid by the state during the 26 biweekly pay periods before the pay period when the appointing authority or Civil Service learned of the excess costs.
3. **Fraud.** If the state incurs excess costs as the result of fraud or misrepresentation by the employee, the employee must repay the entire amount of the excess costs. In addition, the employee may be disciplined and the matter may be referred to the attorney general, state police, or local law enforcement for criminal investigation and civil action.
 4. **Repayment.** An employee must repay any excess costs in one of the following ways:
 - a. **Voluntary agreement.** An employee obligated to make repayments may agree in writing to a repayment schedule. A voluntary agreement to repay excess benefit costs is only effective if accepted by Civil Service. A voluntary agreement to repay an overpayment is only effective if accepted by the appointing authority. Repayment is by voluntary deduction from the employee's biweekly wages. All repayment must be made within one year after the date of the agreement.
 - b. **Involuntary payroll deduction.** If an employee obligated to repay excess costs does not agree to an accepted repayment schedule, the amount is deducted from the employee's biweekly wages without the employee's consent, subject to the following limitations:
 - (1) The employee must be given advance written notice of the deductions.
 - (2) The biweekly deduction cannot exceed 15% of gross wages earned in the pay period.
 - (3) The deduction is made after all deductions expressly permitted or required by law or collective bargaining agreement and before any net amount of the employee's wages is paid or electronically deposited.
 - (4) The deduction cannot reduce the regularly scheduled gross wages otherwise due the employee below the minimum wage required by federal law.
 - c. **Waiver.** If it is not cost effective to recover, Civil Service may waive recovery of excess benefit costs or authorize an appointing authority to waive recovery of an overpayment.
 5. **Separated employee.** If an employee has left the classified service, the appointing authority or Civil Service may take any steps practicable to recover excess costs.

C. **Improper Reimbursements.**

1. **Recovery.** If an employee receives an improper reimbursement from a qualified pretax plan, Civil Service shall recover the amount of the reimbursement from the employee.

2. **Repayment.**

- a. **Voluntary agreement.** An employee obligated to repay an improper reimbursement may agree in writing to a repayment schedule acceptable to Civil Service. Repayment is by voluntary deduction from the employee's biweekly wages or by lump-sum payment. All repayment must be collected within one year after the date of the agreement.
 - b. **Involuntary payroll deduction.** If an employee obligated to repay does not agree to an accepted repayment schedule, Civil Service may deduct the amount of the reimbursement from the employee's biweekly wages without the employee's consent, subject to the limitations in § 4.B.4.b.
3. **Adjustments.** Civil Service shall make any necessary adjustments in the employee's tax-withholding accounts.
 4. **Retroactive recovery.** Civil Service may require repayment of any improper reimbursement if discovered up to 26 pay periods after the later of the end of the tax year and the last date to submit requests for reimbursements.

D. **Underpayments and Unpaid Benefits.**

1. **Underpayments**

- a. If an employee is underpaid under the compensation plan, the appointing authority must pay the employee the amount underpaid as provided in this regulation.
- b. An employee is entitled to retroactive payment of any underpayment for up to 26 biweekly pay periods before the date the appointing authority or Civil Service learned of the underpayment. Retroactive payment beyond 26 biweekly pay periods is not permitted.
- c. An employee is paid the total authorized amount of an underpayment in a single payment within four pay periods after its discovery. The employee and appointing authority may agree in writing to a different payment schedule.

2. **Unpaid Benefits**

- a. Civil Service shall reimburse an employee for any unpaid benefit if all the following occur:
 - (1) The employee or a dependent is denied an eligible group insurance benefit.
 - (2) The denial was the direct result of an error over a group insurance benefit by an authorized state employee or plan administrator.
 - (3) The employee (a) incurred or paid direct health, dental, or vision care costs that, but for the error, the state would have paid or reimbursed or (b) was not

properly reimbursed for eligible expenses under a health- or dependent-care spending account.

- b. Payments to an employee for eligible unpaid benefits are limited as follows:
- (1) Payments cannot exceed the actual dollar amount necessarily paid by the employee or the amount of eligible group insurance benefits improperly denied the employee solely as a result of the error by an authorized state employee or plan administrator. No payment is authorized for collateral, consequential, incidental, speculative, prospective, or other costs or damages claimed by the employee that are not covered eligible expenses. For example, if an employee is denied health coverage as a result of an error, makes different healthcare choices, and incurs additional uninsured costs for travel, inconvenience, pain and suffering, lost income, leave credits, or additional healthcare costs, such collateral or consequential costs are not payable. The employee may recover only actual costs incurred that, but for the error, would have been covered benefits.
 - (2) No payment is authorized for costs resulting from any error, act, or decision by the eligible employee, the employee's dependent, or any person who is not an authorized state employee or plan administrator.
 - (3) An employee is entitled to retroactive payment of any benefit errors for up to 26 biweekly pay periods before the date Civil Service learned of the error. Retroactive payment beyond 26 biweekly pay periods is not permitted.
 - (4) Notwithstanding any other provision, for a health- or dependent-care spending account, any reimbursement is limited to the maximum amount available in the employee's spending account and for the appropriate tax year.

E. Employee Complaints.

1. Employee complaints over compensation or involuntary deductions ordered by an appointing authority must be filed as authorized in rule 8-1 and regulation 8.01, unless the dispute involves a classification or working-out-of-class issue that must be filed in a technical complaint process under rules 4-5 or 8-3 and regulation 8.02.
2. An employee complaint over corrections ordered by Civil Service under this regulation must be filed using the process in regulation 5.18, § 4.B.

CONTACT

Questions on this regulation over compensation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; 517-241-0837 or 517-284-0102; or MCSC-Compensation@mi.gov. Questions on this regulation over benefits may

July 25,
2022~~October 1, 2019~~

Regulation 5.16: **Correcting Compensation and Benefit Errors**

Page 7 of 7

be directed to Employee Benefits Division, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; 1-800-505-5011; or MCSC-EBD@mi.gov.

Michigan Civil Service Commission

Regulation 5.18

Subject: Complaints About Benefits		
SPDOC No.: <u>22-04</u> 20-13	Effective Date: <u>July 25, 2022</u> October 1, 2020	Replaces: Reg. 5.18 (SPDOC 19 <u>20</u> -131, October 1, 201 <u>9</u> 20)

1. Purpose

This regulation provides the exclusive procedures for all classified employees to file (1) complaints about benefits under group insurance plans and (2) HIPAA privacy complaints about self-insured state health-insurance plans.

2. CSC Rule References

5-11 Group Insurance Plans

5-11.1 Types of Group Insurance Plans

* * *

(e) *Administration.* The ~~state personnel~~ director ~~is responsible for implementing~~ shall implement and ~~administering~~ administer the ~~approved~~ group ~~insurance~~ plans ~~approved by the civil service commission.~~

(1) *Complaints.* The ~~state personnel~~ director shall provide an expedited administrative review of employee complaints ~~regarding~~ over group ~~insurance~~ benefits. The director's ~~administrative review~~ process is the exclusive procedure for ~~reviewing~~ employee complaints ~~regarding~~ over group ~~insurance~~ ~~plan~~ benefits. An employee aggrieved by ~~a~~ the director's final ~~administrative~~ decision may appeal ~~the decision~~ to the ~~civil service~~ commission as provided in the civil service rules and regulations.

* * *

3. Definitions

A. CSC Rule Definition.

~~1.~~ Group insurance benefits means eligibility, enrollments, premiums, coverages, exclusions, costs, reimbursements, payments, copayments, deductibles, coinsurance, out-of-pocket maximums, coordination of benefits, or other benefits authorized under the group insurance plans.

B. Definitions in This Regulation.

1. **Group insurance plans** means all the following:

- a. The group insurance plans authorized in the compensation plan for employee health, dental, vision, disability, and life for which the State retains the responsibility to pay the cost of ~~all~~-eligible claims.
- b. COBRA and other insurance continuation programs authorized by law or the compensation plan.
- 2. **Qualified pretax plan** means health-care and dependent-care flexible spending accounts and qualified transportation fringe benefits reimbursement plans authorized by law and the commission.
- 3. **Third-party administrator (TPA)** means an organization under contract with the State to administer claims under a group-insurance plan.
- 4. **Voluntary benefits plan (VBP)** means a benefit or insurance plan for which (1) the State does not pay any portion of the costs or benefits and (2) the employee pays all premium costs.

4. Standards

A. Complaints About Third-Party Administrator (TPA) Decisions. A TPA processes claims for the state for some state group-insurance plans, but the state retains responsibility to review these decisions. A classified employee with a complaint over a group-insurance-plan benefit must complain under the exclusive procedure in this regulation.

- 1. **Plans and third-party administrators.** As of this regulation’s effective date, the following TPAs are responsible for the corresponding plans:

Plan	Third-Party Administrator (TPA)
State Health Plan PPO	Blue Cross Blue Shield of Michigan
State High Deductible Health Plan with HSA	Blue Cross Blue Shield of Michigan
Catastrophic Health Plan	Blue Cross Blue Shield of Michigan
State Dental Plan	Delta Dental Plan of Michigan
Preventive Dental Plan	Delta Dental Plan of Michigan
State Vision Plan	EyeMed
State Behavioral Health & Substance Abuse Plan Use Disorder	Blue Cross Blue Shield of Michigan
State Prescription Drug Plan	OptumRx
Group Life Insurance Plan	Securian Financial Group
Long-term Disability Plan	Sedgwick

Plan	Third-Party Administrator (TPA)
Health-Care or Dependent-Care Flexible Spending Account Plan	WageWorks HealthEquity

2. **Initial complaints to TPA.** If an employee has a complaint about a plan decision made by a TPA (e.g., coverage, exclusion, or payment decisions), the employee must first file a complaint with the TPA and exhaust all appeal mechanisms provided by the TPA. All documentation that an employee wants considered in any appeal must be provided by the final appeal available with the TPA; records newly submitted with an appeal to the Employee Benefits Division (EBD) will not be considered.
 3. **Appeal of final TPA decision.** After exhausting the TPA’s complaint and appeal process, an employee who disagrees with a TPA’s final decision must file any appeal in writing to the EBD as follows:
 - a. **How to file.** The appeal must be filed with the EBD by email to MCSC-EBDAppeal@mi.gov.
 - b. **Time limit.** The EBD must **receive** the appeal within 28 days after the date of the TPA’s final decision. If an employee fails to timely appeal, the TPA’s decision is final and cannot be further appealed.
 - c. **Contents.** An appeal must include (a) a clear and concise statement of the relief sought and why the TPA’s decision is in error and (b) a copy of the final TPA decision being appealed. The EBD will obtain the record from the TPA for its review.
 - d. **Review and decision.** If a timely appeal is filed, the EBD shall review the record from the TPA, the employee’s filing, and any other information the EBD deems necessary to evaluate the appeal. The EBD shall then issue a written decision.
- B. Direct Complaint to Civil Service.** If an employee has a complaint about a group-insurance-benefit or qualified-pretax-plan decision made by someone other than a TPA (e.g., a plan enrollment decision), the employee must file any complaint in writing directly with the EBD by email to MCSC-EBDAppeal@mi.gov.
1. **Complaint.** The EBD must **receive** the complaint within 28 days after the employee knew of or, in exercising reasonable diligence, should have known of the circumstances giving rise to the complaint.
 2. **Contents.** The complaint must include (a) a clear and concise statement of the relief sought and (b) copies of all relevant information and evidence needed to consider the complaint.
 3. **Review and decision.** The EBD shall review the appeal and issue a written decision.

- C. Further Appeal to Commission.** An employee who disagrees with a decision of the EBD, either as an appeal of a TPA decision or after a direct complaint, may appeal the decision to the commission under regulation 8.05.
- D. HMOs, DHMOs, and VBPs.** Health Maintenance Organizations (HMOs), Dental Health Maintenance Organizations (DHMOs), and Voluntary Benefit Plans (VBPs) are not covered by this regulation. Voluntary benefit plans include [accident, accidental death & dismemberment, identity theft](#), legal, term-life, universal-life, long-term-care, critical-illness, home, automobile, and other insurance programs where the employee pays the full premium cost. If HMOs, DHMOs, or VBPs are responsible for a group-insurance-benefit decision, an employee must file any complaint directly with the applicable HMO, DHMO, or VBP carrier. The carrier's final decision cannot be appealed to the EBD or commission.
- E. Qualified Pretax Plans.** Complaints about qualified pretax plans arising under or related to regulation 5.16 must be filed with Civil Service exclusively under §§ 4.B or 4.C.
- F. Involuntary Payroll Deductions by Civil Service.** Complaints against Civil Service about involuntary payroll deductions to recover overpayments under regulation 5.16 must be filed with Civil Service under § 4.B. Complaints against an agency about involuntary payroll deductions must be filed under the grievance process.
- G. Privacy Complaints.**
- 1. Complaint filing.** An eligible classified employee enrolled in a self-insured health-insurance plan administered by the EBD who believes that the plan has improperly used or disclosed personal health information may file a complaint with the plan's privacy official. The complaint must be filed on the HIPAA Privacy Complaint Form ([CS-1782](#)). The complaint must identify the alleged violation of privacy rights with sufficient specificity to allow review. Privacy complaints over HMOs, DHMOs, VBPs, long-term-disability plans, or life-insurance plans must be directed to the plan's TPA or carrier.
 - 2. Privacy official review.** Under the plan's privacy policies, the privacy official or a designee shall review the complaint and make written findings on the alleged violations. This decision is final. The privacy official shall send the complainant and any other relevant party copies of the written findings. The privacy official shall continuously evaluate complaints to seek improvements to existing privacy procedures. An appointing authority shall consider all appropriate discipline of an employee found by the privacy official or designee to have violated privacy procedures.

CONTACT

Questions on this regulation may be directed to the Employee Benefits Division, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; 1-800-505-5011; or MCSC-EBDAppeal@mi.gov. Questions on privacy complaints may be directed to the privacy official at the same address and phone number or MCSC-HIPAA@mi.gov.