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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.

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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 Many such provisions in the rules and regulations have been rescinded recently, including attempts to summarize federal Family Medical Leave Act entitlements and restate the Mandatory Guidelines for Federal Workplace Drug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