# Michigan Civil Service Commission Regulation 1.01

Subject:		
Issuance of Civil Service Regulations		
SPDOC No.:	Effective Date:	Replaces:
<del>16</del> 22- <u>14</u> 06	January 1, 20 <u>23</u> <del>17</del>	Reg. 1.01 (SPDOC <del>07-14</del> <u>16-06</u> , <del>October January 7</del> <u>1</u> , 20 <del>0</del> <u>1</u> 7)

# 1. Purpose

This regulation establishes a procedure for issuing Civil Service regulations.

# 2. CSC Rule References

# 1-3 Regulations and Advisories

The state personnel director is authorized to may issue regulations and advisories that the director deemeds to be necessary or useful. A regulation issued by the state personnel director is binding unless the commission finds that the regulation it violates a rule. An advisory does not have the force and effect of law and is not binding. The state personnel director shall make all regulations and advisories available to employees through their personnel offices and the internet.

### 3. Definitions

#### A. CSC Rule Definitions.

- **1. Advisory** means a written statement issued by the civil service commission, state personnel director, or other civil service staff to provide direction, clarification, or other necessary or useful information.
- 2. Regulation means a formal, general written enactment issued by the state personnel director that: (1) exercises, implements, or applies powers granted to the director in article 11, section 5, of the constitution; (2) exercises, implements, or applies powers granted to the director or civil service staff by civil service rule; or (3) prescribes the procedures or practices of the civil service staff.
- 3. Rule means a statement of general applicability approved by the civil service commission and published by the state personnel director that (1) exercises, implements, or applies powers granted in article 11, section 5, of the constitution, or (2) prescribes the procedures or practices of the civil service commission or civil service staff. A rule has the force and effect of law unless a court of competent jurisdiction determines that the rule is unconstitutional or otherwise contrary to law.

# B. Definition in This Regulation.

- Contested case means a proceeding in which a determination of the legal rights, duties, or privileges of a named party is required by the constitution or rule to be made by the Civil Service Commission, State Personnel Director, or Civil Service staff after an opportunity for an evidentiary hearing. Contested case includes the following:
  - (a) A grievance by a classified employee alleging a violation of a rule or regulation by an appointing authority that has been timely filed with the employer and timely appealed to Civil Service.
  - (b) An unfair labor practice charge that has been timely filed.

# 4. Standards

- A. Notice of Proposed Regulation. The State Ppersonnel Ddirector shall give public notice of any proposed regulation or material amendment to a regulation to the Civil Service Commission, the Office of the State Employer, appointing authorities, and recognized employee organizations, at least 14 days before the proposed effective date. Any interested person may request a copy of the proposed regulation and may comment in writing on the proposal.
- **B.** Issuance of Regulation: Effective Date. After review of any comments, the State Personnel Ddirector may issue the regulation as proposed or as revised. A regulation is issued when the regulation has been approved by the State Personnel Ddirector and published by Civil Service. The regulation is effective on the date issued or any later date authorized by the State Personnel Ddirector.
- C. Emergency Regulation. If the State Personnel Ddirector determines that the efficient and orderly administration of the classified service requires issuance of a regulation without the notice required in §4.A, the State Personnel Ddirector may immediately issue such regulation without prior public notice or opportunity for comment.
- D. Notice to Commission. The State Personnel Ddirector shall place on the commission's agenda of the Civil Service Commission a notice of each regulation issued since the last meeting. Commission action is not required. However, the Commission may act to amend or repeal a regulation at any time without notice.
- E. Publication of Regulations. The State Personnel Ddirector shall number, organize, compile, certify, and publish all regulations. The regulations must be provided to the Office of the State Employer, all appointing authorities, and all employee organizations. Appointing authorities shall make all Civil Service rules and regulations available to classified employees. The regulations must be available to the public and may be published in electronic form.

**F. Severability.** Each provision of these regulations is severable. Therefore, if a court of competent jurisdiction or the <u>Civil Service Commission</u> finds that any provision of a regulation is invalid or unenforceable, every other provision not found invalid or unenforceable remains valid and enforceable.

# **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 2.03

Subject:		
Leaves of Absence		
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>20-14</del>	January 1,	Reg. 2.03 (SPDOC 20- <u>1403</u> , <u>April October</u> 1, 2020)
	2023October 1, 2020	

# 1. Purpose

This regulation sets standards to approve and administer <del>paid and unpaid</del> leaves of absence <del>and waived rights leaves of absence</del>.

# 2. CSC Rule References

# 2-11 Leave of Absence with Pay

#### 2-11.1 Authorization

An appointing authority may authorize salary payments to an employee to attend school, visit other governmental agencies, or undertake any other systematic improvement of the knowledge or skills required in the employee's work. Salary payments may be in whole or in part.

#### 2-11.2 Administrative Leave

An appointing authority may grant administrative leave with pay for necessary absence from duty for which annual, sick, or other leave with pay is not applicable. Additionally, the appointing authority must grant administrative leave when specifically required by the civil service commission.

# 2-11.3 Disaster Response Leave with Pay

An appointing authority may grant a leave of absence with pay for up to 10 workdays in a 12-month period to an employee to provide volunteer specialized disaster relief services within or outside this state, if the following conditions have been met:

- (a) The employee is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross.
- (b) The president or governor has declared the disaster.
- (c) The American Red Cross has requested the services of the employee.
- (d) If the services are to be rendered outside the state by an employee of the executive branch, the governor has approved the paid leave of absence as provided in MCL 30.411a

Page 2 of 9

# 2-12 Leave of Absence without Pay

#### 2-12.1 Authorization

### (a) Permissive leave.

- (1) Nonmedical leave of absence. An appointing authority may grant an employee a nonmedical leave of absence without pay and without loss of employment status.
- (2) Medical leave of absence. An appointing authority may grant a medical leave of absence without pay for up to 6 months to an eligible employee whose sick leave is exhausted. An employee is eligible for a medical leave of absence only if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. If an employee on medical leave requests an extension before the leave expires, an appointing authority is authorized to extend the leave to a maximum of one year. Any extension of a medical leave beyond one year requires the written approval of the state personnel director.
- (3) Disaster response leave of absence. An appointing authority may grant a leave of absence without pay to an employee who is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross to provide disaster or emergency relief assistance in this state.
- **(b) Mandatory leave.** An appointing authority must grant a leave of absence without pay when specifically required by the civil service commission.

#### 2-12.2 Expiration

A leave of absence without pay expires on the date established by the appointing authority, unless extended by the appointing authority. If an employee on a leave of absence without pay does not return to work on or before the end of the leave, the employee is separated.

# 2-12.3 Restoration to Position

When an authorized leave of absence without pay expires or the appointing authority authorizes a return to work before the end of the leave, the employee is returned to work as follows:

- (a) Unless subsection (b) or (c) apply, the employee is returned to the position formerly occupied or an equivalent position.
- (b) If the appointing authority has demoted the employee since the beginning of the leave under rule 2-6 [Discipline] or rule 3-3 [Appointments and Job Changes], the employee is returned to a position at the classification level to which demoted and is compensated within the range of rates approved for that classification level.
- (c) If the employee's position was abolished during the leave, the employee is returned to the classified service in accordance with rule 2-5 [Employment Preference].

January 1,	
2023October 1, 2020	)

#### Regulation 2.03: Leaves of Absence

Page 3 of 9

(d) At the expiration of a medical leave of absence, if the employee is medically qualified to return to work, the employee is returned to a position as provided in subsection (a), (b), or (c), as appropriate. If the employee is not medically qualified to return to work, the employee is separated.

#### 2-12.4 Annual Leave Balance

- (a) Retention during leave. An employee may choose to retain an annual leave balance during a leave of absence in accordance with the official compensation plan.
- **(b)** *Limitation and exception.* Payment for annual leave due an employee who does not return from a leave of absence is at the employee's last rate of pay.

# 2-13 Waived Rights Leave of Absence

- (a) Approval and extension. An appointing authority may grant a waived rights leave of absence without pay for up to one year to an employee if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. Any extension beyond one year requires the written approval of the state personnel director.
- (b) Ineligible employees. An employee in a limited-term appointment who has not achieved status in an indefinite appointment is not eligible for a waived rights leave of absence, unless authorized in writing by the state personnel director.
- (c) Operation. An employee granted a waived rights leave of absence cannot carry any annual leave balance during the leave. An employee on a waived rights leave has no right to return to the position formerly occupied or to an equivalent position upon expiration of the leave. If the employee returns to the classified service before the expiration of the waived rights leave through normal selection processes, the employee is not considered to have had a break in service.
- (d) Separation. If the employee does not return to the classified service before or upon the expiration of the leave, the employee is separated.

# 3. Definitions

#### A. Definitions in This Regulation.

- 1. **FMLA** means the federal Family and Medical Leave Act, 29 USC § 2601, et seq.
- Medical leave of absence means an approved absence, without pay, because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
- 3. **Parental leave of absence** means an approved leave of up to 6 months for the birth or adoption of the employee's child and care of the new child.

# 4. Standards

#### A. Paid Leave of Absence.

- 1. An appointing authority may grant a paid leave of absence for training and development, visits to other governmental agencies, and other authorized short-term absences from regular duties to improve systematically the knowledge or skills required in the employee's work.
- 2. A paid leave of absence may be granted as administrative leave for necessary absences from duty when other paid leaves do not apply. An employee shall receive paid administrative leave if the employee:
  - a. Is summoned to jury service or subpoenaed as a witness for the people to testify related to regular job functions. During the leave, the employee receives the difference between the employee's pay for the service and the employee's regular rate of pay (excluding any travel allowance paid by the court) for the dates of absence. If the employee uses annual leave, the employee can keep payments received from the courts.
  - b. Is absent from work because of the employee's workstation's closure or declared inaccessibility by the governor or the governor's designated representative. The employee also receives service and fringe benefit credits authorized in regulation 5.06.
  - c. Engages in qualifying labor-relations activities. The employee may also receive service or fringe-benefit credits authorized in chapters 6 and 8 of the rules and regulations.
  - d. Misses any regularly scheduled hours remaining on the date of a work-incurred injury, if necessary.
  - e. Is absent from work to provide disaster relief services, consistent with the requirements of rule 2-11.3, if authorized.

#### 3. Payment and leave accruals.

- a. An employee is paid for standard hours of work at the base rate of pay. The employee is not paid any premium, unless normally eligible while on approved annual or sick leave. Any compensation received for service to another entity necessitating a paid leave of absence is subtracted from any state payment due.
- b. An employee receives full service credit for hours that the employee would have been scheduled to work.
- c. An employee receives full fringe benefit coverage as if regularly employed.

- d. Annual and sick leave are accrued as if the employee is working. The employee cannot accumulate annual leave above the maximum allowed under rule 5-10.2.
- 4. **No waiver of immunity**. This regulation is not a waiver of immunity of the state under the Eleventh Amendment to the U.S. Constitution.
- **B. FMLA Leave of Absence.** An eligible employee may also take a leave as authorized under the federal FMLA, including military caregiver leave.
  - 1. **Entitlement.** The initial 12-month FMLA entitlement period begins when FMLA leave is first taken. Subsequent 12-month FMLA entitlement periods begin when FMLA leave is taken after completing the previous 12-month FMLA entitlement period.

# 2. Use of paid leave.

- a. An eligible employee on FMLA leave for the employee's serious health condition must exhaust any sick leave before continuing any unpaid FMLA leave. An eligible employee on FMLA leave to care for a spouse, parent, or child or as a military caregiver must reduce any sick leave balance to 80 or fewer hours before continuing any unpaid FMLA leave.
- b. An eligible employee on FMLA leave may elect to use any other accumulated paid leave credits for the leave, consistent with the normal approval requirements for such leave. A period when an employee uses annual, sick, or other accumulated paid leave credits for the leave counts toward the employee's FMLA entitlements.
- 3. **Requesting.** When foreseeable, employees should use an authorized online application process or the FMLA Notice of Eligibility, Rights, and Designation Form (CS-1810) to request an FMLA leave. Employees should give advance notice for foreseeable FMLA leave requests as soon as practicable and normally at least 30 days before the leave is to begin. If 30 days is not practicable or the need is unforeseeable, notice should be given as soon as practicable.
- 4. **Exhaustion.** After exhausting the FMLA entitlement, an employee may be eligible for a medical or parental leave of absence, as provided in this regulation.

#### C. Unpaid Leave of Absence.

#### 1. Criteria for granting.

a. **Medical leave of absence.** An appointing authority may grant a medical leave of up to 6 months to an eligible employee with the equivalent of at least 6 months of full-time employment whose sick leave is exhausted. If an employee requests an extension before the leave expires, an appointing authority may extend the leave to a maximum of one year. An appointing authority may establish in agency work rules the frequency with which medical leaves may be granted. If no work rule is adopted, an appointing authority may grant medical leaves totaling no more than

12 months during any five-year period. An appointing authority must receive written approval from the state personnel director for any extension of a medical leave beyond one year. Any unpaid portion of an FMLA leave resulting from the employee's serious health condition counts as part of the medical leave.

- b. **Unpaid parental leave of absence.** An appointing authority shall grant an employee with status an unpaid parental leave for up to 6 months for the birth or adoption and care for a new child during the 12 months following the birth or adoption. Any paid or unpaid absence or leave, including FMLA and paid parental leave, used for care of a new child counts as part of a parental leave.
- c. **Unclassified leave of absence.** An employee appointed to an unclassified position may be granted a leave of absence to serve in the unclassified position, as authorized in rule 1-9. The employee receives service credit for service in an unclassified position upon return to the classified service.
- d. **Disaster relief.** An employee may be granted a leave of absence to perform disaster relief services, as authorized in rule 2-12.1(a)(3).
- e. **Other.** An employee may be granted a leave of absence for further education or other appropriate nonmedical reasons.
- 2. **Duration.** Subject to the limitations in this section, the appointing authority may grant a leave and determine its length. An employee on a leave may request early termination or an extension before the leave expires. The appointing authority may grant or deny such requests.

#### 3. Leave accruals.

- a. An employee does not receive pay, service credit, fringe benefits, or leave accruals during the leave.
- b. An employee may elect to be paid off for part or all of the any unused annual leave balance before entering the leave. An employee may retain up to 80 hours of annual leave during the leave. The appointing authority may approve retention of any annual leave balance over 80 hours. Retained annual leave accruals are available upon return from the leave, consistent with regulation 5.09.
- c. The employee's sick leave balance is frozen during the leave. Sick-leave credits must be exhausted before any unpaid medical leave.
- d. The employee's banked leave and deferred hours are frozen during the leave and available upon return.

#### 4. Return.

a. **Generally.** Except as provided in § 4.C.4.b, an employee returning to duty after an unpaid leave is returned to the classified position last occupied or an equivalent

position. The employee is returned at the same salary or step of the salary range and starts to accumulate continuous service hours, hours toward step, and any other accumulations with no break in continuous service. If the employee's position was abolished during the leave, the employee may exercise bumping rights under rule 2-5.

- b. **SES or SEMAS from unclassified appointment.** The senior executive service or senior executive management assistant service contract of an employee who occupied an SES or a SEMAS position is terminated at the beginning of an unclassified leave. On return to the classified service, the employee has no right to return to the former SES or SEMAS position and future status is determined as provided in rule 4-6.2(g) or 4-7.2(g).
- 5. **Leave payoffs.** An employee who separates from the state service directly from a leave is paid for unused leave balances in accordance with applicable rules and regulations, including rule 5-10 and regulations 5.02, 5.09, and 5.10.
- **D. Military Leave of Absence.** A career classified employee receives a military leave of absence for <u>qualifying service</u>, <u>in the uniformed services</u>, consistent with federal law, rule 2-14, and regulation 2.04. Information on supplemental pay, insurance coverage, seniority, and return to work rights are in rule 2-14 and regulation 2.04.

#### E. Paid Parental Leave of Absence.

- 1. **Eligibility.** A career employee who is currently working and who has successfully completed an initial probationary period during the current employment period and worked at least 1,250 hours during the previous 12 months is eligible for a 12-week paid parental leave for the birth or placement by adoption of a child as provided in this regulation. The employee must be a named parent on the child's birth certificate or adoption papers, which must be presented within 31 days from the birth or adoption. Adoption of children related by blood or marriage or of a child over six years of age does not qualify for paid parental leave.
- 2. **Notice.** Before beginning a paid parental leave, the employee should give as much notice as practicable of the expected start and end date for the leave, subject to later modification as necessary.
- 3. **Duration.** A paid parental leave lasts up to 12 contiguous weeks. The leave begins on the date of the birth or adoption and ends, at most, 84 days later. For example, a birth or adoption occurring on Saturday, October 3, 2020, will allow a leave through Friday, December 25, 2020. An employee on paid parental leave may be absent from all regularly scheduled hours under the same conditions that would apply as if on paid sick leave. If an employee's position is limited-term, less-than-full-time, or abolished for reasons of administrative efficiency, any entitlement ends on the final date of employment before the employee's appointment ends or layoff begins.

Page 8 of 9

- 4. **Holidays.** Paid holidays observed during a leave are recorded as paid holidays and do not extend a 12-week paid parental leave.
- 5. **Pay.** The employee receives base pay during the leave using a payroll code corresponding to the normally scheduled shift.
- 6. **Leave and accruals.** An employee need not exhaust sick and annual leave before taking a paid parental leave and accrues sick and annual leave during the leave. Paid leave credits cannot be used to extend a paid parental leave beyond 84 consecutive days. Time on paid parental leave counts toward step increases if an employee is in satisfactory standing.
- 7. **Frequency and coordination.** The event of the birth or adoption of multiple children allows a single paid parental leave. If two state employees are parents for the same birth or adoption, both may take a paid parental leave of 12 weeks.
- 8. **Coordination with other benefits.** Time on paid parental leave also counts toward an employee's FMLA and unpaid parental leave entitlements. Long-term disability (LTD) benefits are not available during a paid parental leave.
- 9. **Effective date.** Births or adoptions before October 1, 2020, do not qualify for paid parental leave.

# F. Waived Rights Leave of Absence.

- An employee who terminates state employment may be granted a waived rights leave
  by the appointing authority of up to one year to protect the employee's continuous
  service, seniority, and any benefits connected with length of service. An appointing
  authority may extend a waived rights leave up to one additional year upon providing
  written notice to the state personnel director. The director must approve any further
  extension in writing.
- 2. An employee on a waived rights leave does not accrue annual, sick, or other leave.
- 3. An employee cannot carry any annual-leave balance or deferred-hour credits forward and is paid off for any balance and credits at the start of the leave at the last received rate of pay.
- 4. Sick- and banked-leave balances are frozen during the waived rights leave.
- 5. The agency is not required to return the employee to a classified position during or upon expiration of the waived rights leave.
- 6. During the waived rights leave, the employee may seek reemployment with the original agency or another agency. If successful, the employee is treated as if returning from a regular unpaid leave of absence.

January 1, 2023October 1, 2020	Regulation 2.03: Leaves of Absence	Page 9 of 9
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7. If an employee is not returned to the classified service by the end of the leave, any sick- and banked-leave balances of the separated employee are then liquidated in accordance with regulation 5.10 and rule 5-10.3.

# **CONTACT**

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

# Michigan Civil Service Commission

# **Regulation 2.04**

Subject:		
Military Leaves of Absence and Return to Work		
SPDOC No.:	<b>Effective Date:</b>	Replaces:
<del>16-06</del> <u>22-14</u>	January 1, 20 <u>23</u> <del>17</del>	Reg. 2.04 (SPDOC 0716-1406, October January 1,
		<del>2017</del> <del>7, 2007</del> )

# **Table of Contents**

<del>1.</del> -	_Purpose1
<del>2.</del> _	-CSC Rule References1
3.–	—Definitions3
4.	<del>Standards</del> 4
	A.—Military Leaves of Absence
	B.—Requirements for Returning to Work and Other Benefits5
	C.—Time Limits for Returning to Work7
	D.—Rights, Benefits, and Obligations8
	E.—Position on Returning to Work9
	F.—Prohibited Discrimination and Retaliation10
	G.—Termination of Entitlements11
	H.—State National Guard Duty11
	I.—Discharge for Just Cause
	J. Enforcement of Employment and Return-to-Work Rights12

# 1. Purpose

This regulation establishes the basic employment and return-to-work rights and benefits for classified employees who are absent due to service in the uniformed services.

# 2. CSC Rule References

# 2-14 Rights of Employees Absent Due to Service in the Uniformed Services

# 2-14.1 Basic Employment and Return-to-work Rights and Benefits

- (a) Regulations. The state personnel director shall issue regulations to provide employment and return-to-work rights and benefits for employees who are absent from a classified position due to service in the uniformed services. The regulations shall provide rights and benefits that are consistent with rights and benefits provided under applicable federal law, except where this rule provides supplemental or enhanced rights and benefits that exceed the minimum requirements of applicable federal law.
- **(b)** *Military leave of absence.* The regulations shall authorize a military leave of absence for an employee absent from a classified position due to service in the uniformed services, subject to the requirements of the regulation.
- (c) Effect on federal rights and benefits. The civil service rules and regulations shall not be applied or interpreted to limit, reduce, or eliminate any right or benefit under applicable federal law.
- (d) Character of rights and benefits in the rules and regulations. The rights and benefits granted in this rule and the regulations are granted solely under the authority of the civil service commission and the state personnel director and are not rights or benefits under federal law.

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#### 2-14.6 State Duty

An employee who is a member of a national guard unit or the state defense force who is ordered to emergency active duty by the governor or volunteers for such state duty or ordered to active service as defined in chapter 1 of the Michigan military act receives employment and return-to-work rights and benefits provided under this rule and related regulations.

#### 2-14.7 Enforcement

#### (a) Complaints.

- (1) Grievance. Except as provided in subsection (a)(2), an employee who is entitled under this rule or the regulations to return-to-work rights or benefits and who claims that an appointing authority has failed or refused, or is about to fail or refuse, to comply with the provisions of this rule or the regulations, may file a grievance and grievance appeal as authorized in the rules and applicable regulations.
- (2) **Technical complaint.** A person, whether or not a classified employee, who is entitled to employment or return-to-work rights or benefits under the regulations and has a complaint regarding a technical decision may file a technical complaint as authorized in the rules and the regulations.

- (b) Stay of proceedings. A grievance or technical complaint under this rule or the regulations concerning employment or return-to-work rights or benefits due to service in the uniformed services is automatically stayed if any of the following proceedings are initiated under applicable federal law concerning any of the same period of service in the uniformed services alleged in the grievance or technical complaint.
  - (1) An investigation by the United States Secretary of Labor in response to a complaint filed by the employee.
  - (2) A state or federal civil action filed by the employee against the State of Michigan or any of its agencies.
  - (3) A state or federal civil action filed by the United States on behalf of the employee against the State of Michigan or any of its agencies.
- (c) Summary dismissal of grievance. If an employee receives a final judgment on a claim in a civil action brought against the State of Michigan or any of its agencies under applicable federal law concerning employment or return-to-work rights or benefits due to service in the uniformed services, a grievance or technical complaint under this rule or the regulations by the employee regarding any of the same period of service in the uniformed services may be summarily dismissed in whole or in part on the basis of claim preclusion or issue preclusion, as appropriate.
- (d) No waiver. This rule does not constitute a waiver of the sovereign immunity of the State of Michigan under the United States Constitution.

# 3. Definitions

#### A. CSC Rule Definitions.

- **1. Seniority** means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.
- 2. Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, a period for which an employee is absent from employment for the purpose of an examination to determine the fitness of the employee to perform any such duty, and a period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized under applicable federal law [10 USC §12503 or 32 USC §115].
- 3. State defense force means the volunteer defense force authorized by chapter 4 of the Michigan military act.

#### **34.** *Uniformed services* means all of the following:

(a) The armed forces of the United States, including the army, navy, marine corps, air force, coast guard, army reserve, naval reserve, marine corps reserve, air force reserve, and coast guard reserve.

- **(b)** The army national guard and the air national guard when engaged in federal or state active duty for training, inactive duty training, or full-time national guard duty.
- (c) The commissioned corps of the public health service.
- (d) The National Disaster Medical Service (NDMS), for service performed as an intermittent disaster-response appointee upon activation of the NDMS or participation in a related training program, as authorized in 42 USC §300hh-11(e)(3)(A).
- (e) Any other category of persons designated by the president in time of war or national emergency.

# B. Definitions in This Regulation.

- 1. **Decompression time** means the period beginning on the date an employee on military leave is discharged from active duty in a uniformed service and ending on the date the employee returns to work in the classified service.
- **2. Service-connected disability** means a disability resulting from an illness or injury incurred in, or aggravated during, service in a uniformed service.
- 3. USERRA means the federal Uniformed Services Employment and Reemployment Rights Act, 38 USC § 4301 et seq.

#### 4. Standards

#### A. Military Leaves of Absence.

- 1. **Eligibility for military leave-of absence.** If an employee is absent from a classified position due to service in the uniformed services, an appointing authority shall place the employee on a military leave of absence if both of the following criteria are satisfied:
  - a. Notice. The employee or an appropriate officer of the uniformed service gives the appointing authority advance oral or written notice that the employee will be absent due to service in a uniformed service. This requirement is waived if notice is prevented by military necessity or is otherwise impossible or unreasonable under all of the circumstances.
  - b. **Five**—**year limit.** The cumulative length of the employee's previous absences from the employing agency due to service in the uniformed services does not exceed **5**<u>five</u> years. The exclusions in § 4.B.2 do not count toward the **5**<u>five</u>-year limit.
- 2. **Deemed to be on a military leave.** If an employee is absent from a classified position due to service in the uniformed services but has not been placed on a military leave of absence, the employee is nonetheless deemed to be on a military leave of absence if the employee is qualified under rule 2-14 and this regulation. If an employee is

deemed to be on a military leave of absence, the employee is entitled to all rights and benefits as though the employee had been granted a military leave of absence.

- 3. **Applicable rules and regulations.** A military leave of absence is governed exclusively by rule 2-14<sub>z</sub> and this regulation, and the USERRA. Rule 2-11 and rule 2-12 do not apply to a military leave of absence. An appointing authority shall not grant any other paid or unpaid leave of absence, right, or benefit to an employee absent due to service in a uniformed service except as expressly authorized in the civil service rules and regulations.
- 4. **Unpaid leave.** Unless otherwise expressly authorized in the rules or regulations, a military leave of absence is without pay.
- 5. **Use of accrued leave.** An employee is permitted to use <u>during military leave</u> any annual, personal, compensatory, or banked leave time accrued before beginning service in the uniformed services. An appointing authority cannot require an employee to use <u>annual</u>, <u>personal</u>, <u>compensatory</u>, <u>or bankedaccrued paid</u> leave time during such period.
- 6. **Funeral honors duty.** An appointing authority shall grant an employee who is a member of a reserve component a military leave of absence to allow the employee to perform funeral honors duty as authorized by 10 USC § 2503 or 32 USC § 115.

# B. Requirements for Returning to Work and Other Benefits.

- 1. **Entitlement.** An employee on a military leave of absence is entitled to return to work and to the other rights and benefits of rule 2-14 and this regulation if all of—the following occur:
  - a. Notice. The employee or an appropriate officer of the uniformed service gave advance written or verbal notice of the service to the employee's appointing authority. This requirement is waived if notice was prevented by military necessity or was otherwise impossible or unreasonable under all of the circumstances.
  - b. **Five**-**year limit.** The cumulative length of the absence and all previous absences from a position with the employee's agency due to service in the uniformed services does not exceed **5**<u>five</u> years. The exclusions in § 4.B.2 do not count toward the <u>five</u>**5**-year limit.
  - c. **Return to work.** The employee returns to work or gives written or oral notice of readiness to return to work before the military leave of absence expires.
- 2. **Five**—**year limit; exclusions.** The following service is not counted toward the 5five-year limitation in §§ 4.A.1.b and 4.B.1.b:
  - a. Service that is required, beyond  $\frac{5 \text{ five}}{100}$  years, to complete an initial period of obligated service.

- b. Service during which the employee was unable to obtain orders releasing the employee from a period of service in the uniformed services before the expiration of the <u>5five</u>-year period and such inability was through no fault of the employee.
- c. Service performed as required pursuant to 10 USC § 10147 or § 502(a), 32 USC § 503, or to fulfill additional training requirements determined and certified in writing by the Secretary of the uniformed service concerned, to be necessary for professional development, or for completion of skill training or retraining.
- d. Service performed by a member of a uniformed service who is ordered as follows:
  - (1) Ordered to or retained on active duty under 10 USC § 688, § 12301(a), § 12301(g), § 12302, § 12304, or § 12305, or under 14 USC § 331, § 332, § 359, § 360, § 367, or § 712.
  - (2) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary of the uniformed service concerned.
  - (3) Ordered to active duty (other than for training) in support, as determined by the Secretary of the uniformed service concerned, of an operational mission for which personnel have been ordered to active duty under 10 USC § 12304.
  - (4) Ordered to active duty in support, as determined by the Secretary of the uniformed service concerned, of a critical mission or requirement of the uniformed services.
  - (5) Called into federal service as a member of the national guard under 10 USC § 331, et seq., or § 12406.
- e. Decompression time.

#### 3. Documentation for Returning to Work.

- a. **Required documentation.** An employee returning to work after a period of service in a uniformed service that exceeds 30 days shall, upon request, provide documentation to establish each of the following:
  - (1) The employee's return to work is timely under § 4.C.
  - (2) The employee has not exceeded the <u>5five</u>-year service limitation (subject to the exclusions in § 4.B.2).
  - (3) The employee's entitlement to the benefits has not been terminated pursuant to § 4.G.
- b. **Lack of documentation.** The failure of an employee to provide documentation that satisfies § 4.B.3.a is not a basis for denying return to work if the failure occurs

because the documentation does not exist or is not readily available at the time of the request of the appointing authority. If, after the employee returns to work, documentation becomes available that establishes that the employee does not meet one or more of the requirements referred to in § 4.B.3.a, the appointing authority may terminate the employment of the employee and the provision of any rights or benefits afforded the employee under this regulation.

- c. **Limit on demand for documents.** An appointing authority may not delay an employee's return to work by demanding documentation that does not then exist or is not then readily available.
- 4. **Return to work not required**; standards. An appointing authority is not required to return an employee to work under this regulation if any of the following occur.
  - a. The employer's circumstances have so changed as to make such return to work impossible or unreasonable.
  - b. The employee has a service-connected disability and the employee's return to work would impose an undue hardship on the employer.
  - c. The state position which the employee left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that state employment would continue indefinitely or for a significant period. Typically, this includes a non-career position or a limited-term position that was not expected to be renewed.
- 5. Timing, frequency, and duration of service not to be considered. In any determination of an employee's rights to protection under this regulation, the timing, frequency, and duration of the employee's training or service, or the nature of such training or service in the uniformed services (including voluntary service), cannot be a basis for denying protection of this regulation so long as the military service does not exceed the 5five-year limit in § 4.B.2, the employee gave the advance notice required in § 4.A.1.a, and the employee gave the return-to-work notice required in § 4.C.

# C. Time Limits for Returning to Work.

- 1. **Time limits for returning to work.** After completion of a period of service in the uniformed services, an employee must report to work or give notice of readiness to return to work with the appointing authority, as follows:
  - a. **Less than 31 days' service or fitness exam.** If the period of service was less than 31 days or was for a service fitness examination, the employee must report to work not later than the beginning of the first full regularly scheduled work period on the first full calendar day following:
    - (1) the completion of the period of service (or fitness examination), plus

- (2) a period allowing for the safe transportation from the place of the service (or examination) to the employee's residence, plus
- (3) eight hours.

If reporting within the required period is impossible or unreasonable through no fault of the employee, then the employee must report as soon as possible after the expiration of the 8-hour period.

- b. **31 to 180 days' service.** If the period of service was more than 30 days but less than 181 days, the employee must report for work or give notice not later than **14 days** after the completion of the period of service. If reporting for work or giving notice within the 14-day period is impossible or unreasonable through no fault of the employee, the employee must report or give notice no later than the first full calendar day when it becomes possible.
- c. 181 or more days' service. If the period of service was for more than 180 days, the employee must report for duty or give notice not later than 6 months after the completion of the period of service.

### 2. Time limits extended for medical reasons.

- a. Extension of time limits. An employee who is hospitalized for, or convalescing from, an illness or injury incurred in or aggravated during service in the uniformed services shall, at the end of the period that is necessary for the person to recover from the illness or injury, return to work or give notice of readiness to return to work. Except as provided in § 4.C.2.b, the period of recovery may not exceed 2 years.
- b. **Further extension of period.** The 2-year period in § 4.C.2.a shall be extended by the minimum time required to accommodate the circumstances beyond the employee's control which make reporting or giving notice within the 2-year period impossible or unreasonable.
- 3. **No automatic forfeit.** An employee who fails to return to work or give notice of readiness to return to work within the appropriate period specified in this § 4.C shall not automatically forfeit the employee's entitlement to the rights and benefits provided in rule 2-14 or this regulation but shall be subject to civil service rules and regulations and the agency's rules, policy, and general practices pertaining to explanations and discipline for absence from scheduled work.

#### D. Rights, Benefits, and Obligations.

An employee who returns to work under this regulation is entitled to the rights and benefits determined by seniority that the employee had on the day the employee began the military leave plus any additional seniority-based rights and benefits that the employee would have attained if the employee's continuous service with the state had not been interrupted by the military leave.

- 1. **Seniority-based rights.** On returning to work, the following service and work hour counters are adjusted,—(\_if not previously adjusted during the military leave of absence,) are adjusted to include an employee's time on a military leave of absence, including any decompression time.
  - Continuous service hours.
  - b. Employment preference.
  - c. Eligibility for annual leave accruals.
  - d. Eligibility for severance pay.
  - e. Eligibility for longevity payment.
  - f. Eligibility for family and medical leave.
  - g. Eligibility for parental leave.
  - h. Step in a pay range with steps (if in satisfactory status at the beginning of the military leave).
- 2. **Nonseniority-based rights; examples.** By way of example only, the following are not seniority-based and are not adjusted as a result of an employee's service in the uniformed services:
  - a. Eligibility for lump sum or base salary increase (if in a performance pay plan). Performance pay awards are based on evaluations of actual job performance, not on seniority.
  - b. Eligibility for reclassification. Eligibility for reclassification is based on actual job performance, not on seniority.
  - c. Length of a follow-up rating period (rule 2-3.4). A follow-up rating period is suspended during a military leave of absence. When the employee returns to work, the follow-up rating period picks up at the point where the military leave of absence began.
  - d. Length of a probationary period (rule 3-6.2). A probationary period is a part of the merit selection process and is suspended during a military leave of absence. When the employee returns to work, the probationary period picks up at the point where the military leave of absence began.

### E. Position on Returning to Work.

An eligible employee who returns to work after a military leave of absence is returned to work in the classified service as follows:

- 1. **Less than 91 days' service.** An employee whose period of service in the uniformed services was less than 91 days is returned to work in the position the employee occupied before beginning service in the uniformed services.
- 2. **More than 90 days' service.** An employee whose period of service in the uniformed services was more than 90 days is returned to work in either (1) the position the employee occupied before beginning service in the uniformed services or (2) a position in the same classification level.

# 3. Abolishment of position or RIF.

- a. If, while an employee is on a military leave of absence, the employee's position is abolished or affected by a reduction in force (RIF), the employee is treated as though the employee is at work on the day of the abolishment or RIF. For example, the employee may be demoted, laid off, placed on recall, or otherwise affected by the application of employment preference in the same manner as if the employee was present.
- b. When the employee returns to work from the military leave of absence, the employee is placed in the same circumstance the employee would have been in if the employee's continuous employment with the state had not been interrupted by a military leave of absence, including, for example, a demotion, layoff, recall, or other personnel action.

#### 4. Effect of disability.

- a. **Service-connected disability.** If an employee, due to a service-connected disability, is not qualified to return to work in the position required under §§ 4.E.1 or 4.E.2, after reasonable efforts by the appointing authority to accommodate the disability, the employee is returned to work in the following order of priority:
  - (1) In any other position with equivalent seniority, status, and pay, the duties of which the employee is qualified to perform or would become qualified to perform (as determined by Civil Service) with reasonable efforts by the appointing authority.
  - (2) If the employee cannot be returned to work under § 4.E.4.a(1), then in a position which is the nearest approximation to a position referred to in § 4.E.4.a(1) in terms of seniority, status, and pay, consistent with circumstances of the employee's case.
- b. **Nonservice-connected disability.** If an employee, due to a nonservice-connected disability, is not qualified to return to work in the position required under §§ 4.E.1 or 4.E.2 and cannot become qualified with reasonable efforts by the employer, then the employee is returned to work in any other position that the employee is qualified to perform.

- c. **Failure to qualify.** If an employee, due to any disability, is not qualified to return to work in any position after reasonable efforts by the appointing authority to accommodate the disability, the employee is separated.
- d. **Status of <u>disabled</u> employee.** An employee who is discharged from active duty and whose return to work is delayed by a service-connected disability remains on an unpaid military leave of absence until the employee is returned to work or the employee is separated after failing to qualify to return to work.
- 5. **Ties.** If two or more employees are entitled to return to work to the same position, the employee who left the position first has the prior right to return to that position.

#### F. Prohibited Discrimination and Retaliation.

- 1. **Discrimination.** An appointing authority shall not deny initial employment, retention in employment, promotion, the right to return to work after a military leave of absence, or any benefit of employment to a person who (1) is or applies to be a member of a uniformed service or (2) performs, has performed, applies to perform, or is obligated to perform service in a uniformed service, based on that person's actual or potential membership or service.
- 2. **Retaliation prohibited.** An appointing authority shall not discriminate in employment against or take any tangible adverse employment action against any person because the person has (1) acted to enforce a protection afforded any person under this rule 2-14 or this regulation, (2) testified or otherwise made a statement in connection with any proceeding under this rule 2-14 or this regulation, (3) assisted or otherwise participated in an investigation under this rule 2-14 or this regulation, or (4) exercised a right provided in this rule 2-14 or this regulation. The prohibition in this standard applies with respect to a person regardless of whether that person has performed service in the uniformed services.

#### G. Termination of Entitlements.

An employee's entitlement to the benefits under rule 2-14 or and this regulation terminates if any of the following occur:

- 1. The employee is separated from a uniformed service (1) with a dishonorable discharge, (2) with a bad conduct discharge, or (3) under other than honorable conditions, as characterized by regulations of the uniformed service.
- 2. The employee is a commissioned officer dismissed (1) by sentence of a general court-martial, (2) in commutation of a sentence of general court-martial, or (3) by order of the President in time of war, as permitted under 10 USC § 1161(a).
- 3. The employee is a commissioned officer dropped from the rolls pursuant 10 USC § 1161(b), due to (1) absence without authority for at least 3 months, (2) separation by

reason of a sentence to confinement adjudged by a court-martial, or (3) a sentence to confinement in a federal or state penitentiary or correctional institution.

4. The employee fails to return to work in the classified service within the appropriate period specified in § 4.C.

# H. State National Guard Duty.

An employee who is a member of a national guard unit or the state defense force and is ordered to active state duty or active service by the governor or volunteers for such duty is entitled to the employment and return-to-work rights, and protections provided in rule 2-14 and this regulation even if the employee is not entitled to similar rights or benefits under federal law.

#### I. Discharge for Just Cause.

Notwithstanding any other rule or regulation that may permit discharge for reasons other than just cause, an employee in an indefinite position who returns to work under this regulation is subject to the following:

- 1. **31 to 180 days' service.** If the employee's period of service in the uniformed services before returning to work was more than 30 days but less than 181 days, the employee may not be discharged within 180 days after returning to work except for just cause.
- 2. **More than 180 days' service.** If the employee's period of service in the uniformed services before returning to work was more than 180 days, the employee may not be discharged within one year after returning to work except for just cause.

#### J. Enforcement of Employment and Return-to-Work Rights.

- 1. **Complaints.** As authorized in rule 2-14.7, an employee who is entitled to employment or return-to-work rights or benefits and who claims that an appointing authority has failed or refused, or is about to fail or refuse, to comply with rule 2-14 or this regulation may file a grievance or technical complaint, as appropriate.
- 2. **Grievance and Grievance Appeal; Procedures and Burdens of Proof.** A grievance or grievance appeal under rule 2-14 and this regulation is conducted as provided in rule 8-1, rule 8-2, and regulation 8.01, except that the burden of proof shall be as follows:
  - a. **General.** Except as provided below in §§ 4.J.2.b through f, the employee has the burden of proving by a preponderance of the evidence that the appointing authority discriminated against the employee or otherwise failed to comply with a rule or applicable regulation and, as a result, the employee has suffered or will suffer a tangible adverse employment action.
  - b. **Discrimination.** In a grievance alleging discrimination under § 4.F.1:
    - (1) The grievant first has the burden of proving by a preponderance of the evidence that that the grievant's membership or application for membership,

service or application for service, or obligation for service, in the uniformed services or the state defense force one of the following was a motivating factor in the appointing authority's action:

- (a) The grievant's membership in the uniformed services.
- (b) The grievant's application for membership in the uniformed services.
- (c) The grievant's service in the uniformed services.
- (d) The grievant's application for service in the uniformed services.
- (e) The grievant's obligation for service in the uniformed services.
- (2) If so, the appointing authority <u>must</u> then <u>has the burden of proveing</u> by a preponderance of the evidence that the challenged action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service.
- c. **Retaliation.** In a grievance alleging retaliation under § 4.F.2:
  - (1) The grievant first has the burden of proving by a preponderance of the evidence that one of the following was a motivating factor in the appointing authority's action.
    - (a) The grievant's action to enforce a protection afforded any person under <u>rule 2-14 or</u> this regulation.
    - (b) The grievant's testimony or making of a statement in or in connection with any proceeding under <u>rule 2-14 or</u> this regulation.
    - (c) The grievant's assistance or other participation in an investigation under rule 2-14 or this regulation.
    - (d) The grievant's exercise of a right provided for in <u>rule 2-14 or</u> this regulation.
  - (2) If so, the appointing authority <u>must</u> then <u>has the burden of proveing</u> by a preponderance of the evidence that the challenged action would have been taken in the absence of the grievant's enforcement action, testimony, statement, assistance, participation, or exercise of a right.
- d. **Impossibility of returning to work.** In a grievance involving return to work in which the appointing authority claims under § B.4.a that circumstances have so changed as to make returning to work unreasonable or impossible, the appointing authority has the burden of proving such impossibility or unreasonableness by a preponderance of the evidence.
- e. **Undue hardship.** In a grievance involving return to work in which the appointing authority claims under § 4.B.4.b that a required accommodation, training, or effort

is an undue hardship, the appointing authority has the burden of proving such undue hardship by a preponderance of the evidence.

f. **Brief employment.** In a grievance involving return to work in which the appointing authority claims under § 4.B.4.c that the employment from which the employee left was for a brief, non-recurrent period and there was no reasonable expectation that such employment will continue indefinitely or for a significant period, the appointing authority has the burden of proving by a preponderance of the evidence the brief or non-recurrent nature of the employment and that there was no reasonable expectation of the employment continuing indefinitely or for a significant period.

# **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 2.06

Subject:		
Performance Ratings		
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> 17-11	January 1, 20 <u>23</u> 18	Reg. 2.06 (SPDOC <u>17-11</u> <del>16-06</del> , <u>January 1</u> ,
		<u>2018December 15, 2016</u> )

# 1. Purpose

This regulation establishes procedures to conduct performance ratings.

# 2. CSC Rule References

# 2-3 Ratings

# 2-3.1 Rating System

(a) Regulations. The state personnel director shall issue regulations to establish a system of performance and interim ratings for appointing authorities to evaluate and report employee performance. Performance includes levels of performance, competencies, and behavior. Probationary ratings are addressed in rule 3-6.

# (b) Ratings.

- (1) Types. A rating issued under this rule is a single overall evaluation of the employee's performance for the relevant rating period:
  - (A) Performance. A performance rating rates the employee's overall performance as (high performing, meets expectations, or needs improvement. High-performing and meets-expectations ratings are satisfactory.
  - **(B)** Interim. An interim rating rates the employee's overall performance as satisfactory or unsatisfactory.
- (2) Methods. Unless the regulations provide otherwise, an appointing authority may use any appropriate rating method approved by the state personnel director to evaluate and rate employees. If a method yields overall evaluation categories different from those in subsection (b)(1), the categories must equate to those overall performance categories. An appointing authority may also develop systems to provide ongoing feedback to employees on performance that are not ratings, but may form a basis for ratings under this rule.
- (3) Component parts. If an overall rating is satisfactory, a non-satisfactory evaluation on a subpart of the rating, such as an objective, a competency, or a factor, is not grievable or reviewable in the agency review procedure.

- (c) Review. A supervisor or designee shall review each performance or interim rating with the employee. Both shall sign each rating as evidence of the review. The employee's signature does not indicate agreement. An employee may file an explanatory statement with a rating.
- (d) Use. A performance or interim rating may be considered in making employment decisions, including appointment, promotion, retention, assignment, and training.
- (e) Report. Each appointing authority shall report or certify performance and interim ratings to civil service staff.

# 2-3.2 Performance Ratings

- (a) General. An appointing authority shall evaluate each non-probationary employee's performance and issue a performance rating as the rules and regulations require.
  - (1) *Timing.* An appointing authority shall issue a performance rating at least once annually, but may issue performance ratings anytime. An appointing authority need not issue a performance rating for any period covered by an interim rating.
  - (2) Performance-improvement plan. If an employee receives a needs-improvement rating, the appointing authority shall establish a performance-improvement plan to monitor the employee's performance. The plan must establish a date by which the appointing authority will issue another rating evaluating the employee's performance under the plan. If performance has not improved, the appointing authority may issue an interim rating based on performance under the plan.
  - (3) Agency review procedure. Each appointing authority shall establish a procedure for employees to obtain a review of a needs-improvement rating by the appointing authority or a designee. If a rating is not grievable, the appointing authority's review is also not appealable.
- (b) Compensation plans with fixed steps.
  - (1) Satisfactory rating. A satisfactory rating is not discipline and is not grievable or reviewable.
  - (2) Needs-improvement rating.
    - (A) Complaints. A needs-improvement rating is not discipline and cannot be grieved, unless it violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]. An employee may request review of the rating in the agency review procedure.
    - **(B)** Effects. An employee who receives a needs-improvement rating is eligible for a step increase, but is ineligible for reclassification until a later satisfactory rating is issued. A reclassification cannot be retroactive to a date before a new satisfactory rating is issued.

#### (c) Performance-pay programs.

(1) Salary review. An appointing authority shall complete a salary review for each employee in a performance-pay program after completing a performance rating. The appointing authority shall use the rating as one factor in determining the employee's eligibility for a base-salary increase or lump-sum award authorized in rule 5-3.4.

- (2) Satisfactory rating. A satisfactory rating is not discipline and is not grievable or reviewable.
- (3) Needs-improvement rating.
  - (A) Complaints. A needs-improvement rating is not discipline (and cannot be grieved, unless it violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]. An employee may request review of the rating in the agency review procedure.
  - **(B)** Effects. An employee who receives a needs-improvement rating is ineligible for a performance-pay award or reclassification until a later satisfactory rating is issued. Neither can be made retroactive to a date before a new satisfactory rating is issued.
- **(4)** *Grievances.* Performance-pay awards are discretionary. An employee cannot grieve or appeal a performance-pay action, unless specifically permitted in this rule or regulations.
  - (A) Permitted. An employee aggrieved by the following performance-pay actions may file a grievance:
    - (1) The employee's base salary is reduced.
    - (2) The appointing authority does not rate the employee's performance at least once annually.
    - (3) The performance-pay action violates rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].
  - **(B) Prohibited.** Non-grievable performance-pay actions include:
    - (1) The amount of a performance-pay award.
    - (2) The failure to receive an award.
    - (3) The distribution of an award between base-salary increase and lump-sum award.
    - (4) Another employee's performance rating or award.
    - **(5)** The decision to include a position in or exclude a position from a performance-pay program.
    - **(6)** The performance-pay program itself, including performance standards, agency evaluation methods, rating categories, and agency salary-range subdivisions.

#### 2-3.3 Interim Ratings

- (a) Interim ratings. An appointing authority may evaluate the performance of an employee, including a probationary employee, and issue an interim rating anytime.
- **(b) Rating period.** If an appointing authority issues an unsatisfactory interim rating but does not dismiss the employee, the appointing authority shall establish in writing a follow-up rating period. If an employee is suspended, on an unpaid leave of absence, or on extended sick leave, the period is automatically extended by a period equal to the absence. Within 28 days after its end, an appointing

- authority may extend in writing the period's length to a total of up to six months. An extension cannot be grieved.
- (c) Follow-up interim rating. The appointing authority shall evaluate the employee's performance during the follow-up rating period and issue another interim rating. The appointing authority shall extend the rating period or issue the rating by 28 days after the period ends. If the appointing authority fails to timely issue the rating or an extension, the employee may request its issuance in writing to the appointing authority's human resources director. If the appointing authority fails to issue a rating or an extension within 14 days in writing after receiving a valid written request, the employee is returned to satisfactory standing, effective the end of the rating period.
- (d) Discipline. Unsatisfactory interim ratings are discipline and may be the basis for additional discipline, up to and including dismissal.

#### (e) Grievances.

- (1) Non-probationary. A non-probationary employee who receives an unsatisfactory interim rating may grieve the rating.
- (2) **Probationary.** A probationary employee who receives an unsatisfactory interim rating may grieve the rating only as provided in rule 3-6.4.
- (f) Effects. An employee who receives an unsatisfactory interim rating is ineligible for a step increase, performance-pay award, or reclassification until a later satisfactory rating is issued. Any such action cannot be retroactive to a date before a new satisfactory rating is issued. The period under an unsatisfactory rating is not qualifying time for a step increase or reclassification.

# 3. Definitions

#### A. Definitions in This Regulation.

- 1. **Competency** means the ability, skill, knowledge, and motivation needed for success on the job.
- 2. **Supervisor**, means the person with formal authority to enforce directives and ensure satisfactory performance of subordinates. A supervisor may be immediately superior in or removed but directly in the employee's chain of command.

#### 4. Standards

#### A. General Standards.

- Performance management plans and performance ratings are required for all career employees in the classified service.
- 2. All supervisory, managerial, and executive employees must have in their performance management plans a factor or competency establishing a performance expectation to conduct timely and effective employee ratings.
- 3. Meets expectations and high-performing ratings are satisfactory.

#### B. Forms.

- An online performance management form accessible through MI HR Self-Service or NEOGOV is used for all performance ratings, unless the State Personnel Director has approved an alternative method, including continued use of the paper CS-1750 (Group 1); CS-1751 (Group 2); CS-1761 (Group-3 Managers); CS-1752 (Group-3 Supervisors); and CS-1719 (Group-4/SES).
- 2. A separate Interim Employee Rating form (CS-375) is used for interim ratings.

# C. Performance Ratings.

# 1. General Rrequirements.

- a. A rating of an employee's performance must be conducted at least once per year. The appointing authority shall determine if employees are rated on their anniversary date or a common date.
- b. If an employee receives an interim rating, the appointing authority need not issue a performance rating for any period covered by the interim rating.
- c. Supervisors shall review employees' performance and behavior under established, measurable, and specific performance factors, objectives, and competencies, except Group-1 employees require only compentencies. The supervisor shall review rating criteria with the employee at the start of each rating period. The employee and supervisor must certify the review of the rating criteria.
- d. Modifications to performance factors, objectives, or competencies may be made anytime to reflect a change of assignments or expectations. When changes are made, the employee and supervisor must certify the revised rating form.
- e. Performance reviews should be conducted with regular feedback throughout the rating period. Employees in performance-pay classifications may receive a rating and pay review six months after appointment or conversion.
- f. A supervisor shall complete performance ratings within 28 days after a rating period ends. A supervisor shall review an employee's performance during the period covered and indicate whether the employee exceeded, met, or did not meet expectations.
- g. The employee and supervisor must certify the rating. The employee's certification does not indicate that the employee agrees with the rating. If necessary, the supervisor shall indicate an employee's refusal to sign, including an online refusal override certification, if applicable.
- h. An employee who disagrees with a performance rating may enter any exception in the online comments section or submit a written statement to the appointing authority.

# 2. Needs-Limprovement Rrating.

- The appointing authority must certify any needs-improvement rating.
- b. If a needs-improvement rating is issued, the appointing authority must establish a plan within 28 days after the rating—in HRMN, if possible—for improving the employee's performance or behavior. A performance or interim rating evaluating the employee's performance under the plan must be conducted by 28 days after the plan period's end.
- c. During the plan period, regular progress reviews should be provided.
- d. If the employee's performance is satisfactory at the plan period's end, a satisfactory performance rating is issued.
- e. If performance is not satisfactory, (1) another needs-improvement rating is issued and regular progress reviews continue under another plan or (2) an unsatisfactory interim rating is issued.
- f. If the appointing authority does not issue a rating by 28 days after the plan period's end, the employee may request in writing to the agency's human resources director that one be issued. If the appointing authority does not issue a rating within 14 days after a request is received, the employee receives a meets-expectations rating, effective the plan period's end.
- g. A needs-improvement rating does not impact eligibility for step increases.
- h. An employee under a needs-improvement rating is not eligible for reclassification until a later satisfactory rating is issued. A reclassification action cannot be made retroactive to before a new satisfactory rating is issued. Time under a needs-improvement rating is not creditable toward reclassification.
- Performance ratings and progress reviews are not discipline and are not grievable.
   An employee may request a review of the rating under the agency review procedure.

# D. Interim Ratings.

- 1. Interim ratings may be conducted, using form CS 375, anytime to document an employee's unsatisfactory performance or behavior.
- An unsatisfactory interim rating must address specific performance or behavior problems, identify specific expectations for improvement, and establish a timeframe for improvement during a follow-up rating period.
- 3. An unsatisfactory interim rating is typically preceded by counseling, reprimands, or corrective action regarding the employee's performance or behavior.

- 4. An unsatisfactory interim rating is discipline and must be issued in accordance with rule 2-6.
- 5. The appointing authority and employee must sign and date an interim rating form. If necessary, the supervisor shall indicate an employee's refusal to sign.
- 6. The appointing authority must enter any interim rating in the employee's HRMN record (ZP26.1). Any subsequent satisfactory rating must also be entered on the ZP26.1.
- 7. An employee who disagrees with a rating may submit a written statement to the appointing authority.
- 8. The appointing authority must notify Civil Service of an interim rating within 28 days of the rating.
- 9. A follow-up rating period must be established if an unsatisfactory interim rating is issued and the employee is not dismissed. Unless a different period is established, a follow-up rating period is three months.
- 10. If an employee is suspended, on a leave of absence, or on extended sick leave, a follow-up rating period is automatically extended by that period of time.
- 11. The employee should be provided feedback on performance and behavior during the follow-up rating period.
- 12. If an employee performs satisfactorily during a follow-up rating period, the appointing authority shall issue a satisfactory rating effective the end of the rating period.
- 13. If an employee's performance is unsatisfactory during the follow-up rating period, the employee may receive (1) counseling, reprimands, and other corrective action during the period and (2) another unsatisfactory interim rating and other discipline, including dismissal. An appointing authority may dismiss an employee before the end of a follow-up rating period, if appropriate.
- 14. By 28 days after a follow-up rating period's end, the appointing authority must either (1) extend the rating period and notify the employee or (2) issue a rating. If the appointing authority does neither, an employee may request a rating in writing to the appointing authority's human resources director. If the appointing authority does not issue a rating within 14 days after an employee's request is received, the employee is returned to satisfactory standing effective the end of the rating period.
- 15. An employee under an unsatisfactory interim rating is not eligible for a step increase, a performance-pay award, or reclassification until a later satisfactory rating is issued.

- 16. A step increase, performance-pay award, or reclassification action cannot be made retroactive to a date before a new satisfactory rating is issued. Time under an unsatisfactory interim rating is not creditable toward reclassification.
- 17. An unsatisfactory interim rating is grieved under regulation 8.01 or an applicable collective bargaining agreement.

# E. Audit and Compliance.

- 1. All ratings are subject to audit by Civil Service.
- 2. Interim ratings must be maintained in the employee's personnel file for at least four years.
- 3. Performance ratings must be maintained for four years from the date of issuance. Ratings completed online are stored for at least four years.

# **CONTACT**

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

# Michigan Civil Service Commission Regulation 2.07

Subject:		
Drug and Alcohol Testing		
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>21-04</del>	September-January 1,	Reg. 2.07 and 2.08 (SPDOC 1621-046, September 5,
	<u>2023</u> <del>5, 2021</del>	<u>2021</u> January 1, 2017)

# 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.
  - (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.

#### 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.

Page 3 of 8

(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 conditionally offered of employment fails or refuses to submit to the does not complete a preemployment drug test, interferes with a test procedure, or tampers with a test sample, the appointing authority must shall 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 The person whose conditional offer of employment is rescinded must not be appointed to the position in the classified service. The person also is ineligible disqualified for appointment to the classified service for three years.

\* \* \*

# 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 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.
- 7. **Refusal to submit** means any of the following:
  - a. Failing to provide an adequate sample without a sufficient medical explanation.
  - b. Engaging in conduct that obstructs the testing process.
  - c. Refusing to be tested.
- 8. **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. **Agencies.** This regulation applies to all executive agencies of the State of Michigan.

- 2. **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.** Alcohol testing 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 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. **Alcohol.** It violates 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 constitute a violation of rule 2-7.1(c).
- 3. **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 securely 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 in records required to be maintained on drug or alcohol tests.
- 3. An employee subject to testing is entitled, upon written request, to copies of any records on the employee's use of drugs or alcohol, including any records 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 testing under this regulation and any other information on the

- agency's alcohol-misuse or substance-abuse-prevention programs, including name-specific 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 employee's written request.
- 6. An appointing authority may disclose information required to be maintained on drug or alcohol tests to the tested employee or the decisionmaker in a lawsuit, grievance, or proceeding initiated by or for the individual, and arising from the results of testing 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 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 authorizing release to an identified person. Release is permitted only in accordance with the terms of the 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 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.
  - i. Explanation of what constitutes a refusal to submit and penalties for failure to submit to testing.

September January	y
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# Regulation 2.07: Drug and Alcohol Testing

Page 8 of 8

- 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 a 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 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.

# Michigan Civil Service Commission

# Regulation 2.10

Subject:		
]	Drug Testing Comp	laints by Non-Employees
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>21-04</del>	January 1,	Reg. 2.10 (SPDOC 1621-046, September 5,
	2023September 5,	<u>2021</u> <del>January 1, 2017</del> )
	<del>2021</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
- \* \* \*
- 2-7.4 Penalties
- \* \* \*
- (b) New hires.
- (1) Rescission of conditional offer-of employment. If a person given a conditionally offered of employment fails or refuses to submit to the does not complete a preemployment drug test, interferes with a test procedure, or tampers with a test sample, the appointing authority must shall 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 The person whose conditional offer of employment is rescinded must not be appointed to the position in the classified service. The person also is ineligible disqualified for appointment to the classified service for three years.
- (2) Complaint by applicant. If a person An applicant claimings that the a rescission of the person's conditional appointment as authorized in under 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) <u>The director</u> A complaint-must be-received by-the <u>complaint</u> state personnel director within 14 calendar days after the appointing authority <u>mailed the gave</u> written notice of the rescission of the conditional offer of employment and this complaint procedure. The person <u>must also file a copy of the complaint with the appointing authority</u>.

- **(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 and requalifying the person applicant for classified appointments to the classified service.
- **(D)** Either the person or thet The applicant or 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 who (1) fails or refuses to submit to a preemployment drug test, (2) interferes with a drug-testing procedure, or (3) tampers with a drug-testing sample. This includes inability to produce an acceptable sample. A rescission must be written and include notice of the right to file a written complaint with the director within 14 days after the date the rescission notice is sent.

# B. Complaint.

- 1. **Filing requirements.** A person whose conditional offer of employment is rescinded under rule 2-7.4(b)(1) may file a complaint with the director. The complainant or an their attorney must file any complaint at MCSC-Hearings@mi.gov. The Civil Service Hearings Office will provide The complainant shall also serve a copy of the complaint on to the appointing authority.
- 2. **Time limit.** A complaint must be filed within 14 days of the date the appointing authority sent its written rescission to the complainant. A late complaint is denied, unless good cause or special extenuating circumstances are shown.
- 3. **Contents.** A complaint must contain the complainant's name, address, phone number, email address, and signature. If an attorney represents the complainant, the same information must be provided for the attorney. A complaint must include (1) a copy of the rescission letter, (2) a concise factual summary, and (3) an explanation of how the rescission violated Article 11, § 5, of the constitution or a rule or regulation.

#### C. Review of Complaint.

1. **Administrative dismissal.** The director or a designee may administratively dismiss a complaint for any reason in rule 8-4 or if the complaint does not allege a violation of article 11, § 5, of the constitution or a rule or regulation.

- 2. **Assignment.** If a complaint is not administratively dismissed, the director shall designate an adjudicating officer to investigate the complaint and issue a decision on the director's behalf.
- Interested parties. The appointing authority that rescinded the conditional offer and
  any employee subsequently appointed to the position to which the complainant
  received a conditional offer may file an appearance in writing and participate as an
  interested party.

#### 4. Consideration.

- a. **Summary disposition.** If no genuine issue exists on any material fact, the adjudicating officer may issue a written decision based on the complaint and any written submissions or arguments of the parties deemed necessary.
- b. **Investigation.** If a genuine issue exists on any material fact, the adjudicating officer shall further investigate the complaint. All interested parties must have a reasonable opportunity to present documentary evidence, sworn affidavits, and written arguments and respond to other parties' submissions. The adjudicating officer may hold conferences with the parties and independently investigate the claim. The adjudicating officer shall maintain an official record of the review.
- c. **Decision.** The adjudicating officer shall examine the record and issue a written decision detailing findings of facts and conclusions of law. The decision must be based on the rules and regulations, the adjudicating officer's technical expertise, and the record created during any investigation. If the adjudicating officer finds that the rescission substantively violated article 11, § 5, of the constitution or a rule or regulation, the officer may order an appropriate remedy, including reinstating an offer of employment, ordering another drug test, or requalifying a person for appointment to the classified service.
- **D. Appeal.** Any interested party who participated in the review proceeding may appeal to the commission by filing an application for leave to appeal within 28 days after the date the final decision is issued.

# **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 3.04

Subject:		
S	election of Employe	ees for Position Vacancies
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>21-04</del>	January 1,	Reg. 3.04 (SPDOC 1821-043, January September 15,
	2023September 5,	20 <del>19</del> 21)
	<del>2021</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 Recall Lists

#### 3-2.1 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.
- **2.** 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.
- 3. Candidate pool means qualified persons considered for a position.

# B. Definitions in This Regulation.

- 1. **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.
- 2. **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 candidate pool.
  - a. NEOGOV is the primary recruiting method when filling a position from a 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. A selection for a classified position must be processed through NEOGOV, unless an alternative selection process is approved by civil service under regulation 3.01.
- 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 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. Designated staff of appointing authorities may conduct authorized credential reviews after receiving Civil Service training and certification, except as noted in § 4.D.2.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. 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.
- 3. For a Civil Service credential review under § 4.D.2, the appointing authority must provide credential information (résumés, transcripts, etc.) through NEOGOV for applicants that the agency has pre-screened and considers potential candidates that the agency intends to include in the candidate pool for further consideration if Civil Service determines that they are qualified. Civil Service approval signifies only that an individual candidate meets the 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.
- 5. 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.
- 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 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 <u>or immediately following</u> 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 wWhen an approved alternative selection process other than NEOGOV is not the selection process—used, a NEOGOV requisition must be created to which all required documentation and approvals must be attached.

#### 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 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. <u>Description of Evaluation of</u> the selected candidate<u>'s evaluation</u> <del>compared to</del> <u>against</u> 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.
  - 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

January 1,
2023September 5
2021

# Regulation 3.04: Selection of Employees for Position Vacancies

Page 7 of 7

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 <a href="MCSC-OCSC@mi.gov">MCSC-OCSC@mi.gov</a>.

# Michigan Civil Service Commission Regulation 3.07

Subject:		
	Appointment	s and Job Changes
SPDOC No.:	Effective Date:	Replaces:
<u>22-14<del>21-07</del></u>	January 1, 202 <u>3</u> 2	Reg. 3.07 (SPDOC 21-0 <u>7</u> 4, <u>January 1, 2022</u> <del>September</del> <del>5, 2021</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 the candidate meets the civil service qualifications for appointment to a classification or 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 the candidate meets the civil service qualifications for appointment to a classification or 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.
- **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 <u>for the current employment period</u> to the <u>state</u> classified service <u>authorized by civil service staff</u>.
- **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.
- 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 transitional or 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 transitional or 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.2, 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 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 <u>request for</u> continuation beyond four years must be submitted to the <u>state personnel</u> director <u>at least 30 days before the appointment's expiration</u>, with the rationale for extending. <u>The director's decision on an extension request is final.</u>
- 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.

- 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. A lateral job change may be occur from a position in Equitable Classification Plan Group 1, 2, or 3 to a position in a different ECP Group, except Group 4, if it otherwise satisfies this regulation. A lateral job change may occur from a position in ECP Group 4 to a position in another ECP Group if it otherwise satisfies this regulation and applicable rules.
- 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.
- 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 <a href="MCSC-OCSC@mi.gov">MCSC-OCSC@mi.gov</a>.

# Michigan Civil Service Commission Regulation 3.09

Subject:		
	Reca	all Lists
SPDOC No.:	Effective Date:	Replaces:
22- <u>14</u> 09	<del>September 4,</del>	Reg. 3.09 (SPDOC 2122-094, September 54, 20221)
	<del>2022</del> January 1, 2023	

# 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

#### 3-2.1 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.

#### 3-2.2 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 3-2.42(b), (c), or (d).
- 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.

- 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 technician or 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 3-2.24 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 3-2.42(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 <u>new</u> 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.

# **Michigan Civil Service Commission**

# **Regulation 5.01**

Subject:		
	General <del>Salary <u>Pay</u> S</del>	Schedule Administration
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>19-05</del>	<u>January 1, 2023</u> May 1,	Reg. 5.01 (SPDOC 1619-065, January May-06, January
	<del>2019</del>	1, 201 <del>7</del> 9)

# **Table of Contents**

<del>1.</del>	Purpose
2.	CSC Rule References2
3.	Standards
	A. Full and Part-time Employees4
	B. Schedule Establishment and Amendment4
	C. Salary Range4
	D. Movement Within the Salary Range5
	E. Salary Upon New Hire (Initial Appointment)6
	F. Salary Upon Personnel Action Other Than New Hire, Reduction in Force, or Recall.
	G. Salary Upon Reduction in Force
	H. Salary Upon Recall
	I. Salary for Working Out of Class (WOC)7
	J. Salary Upon Return from Leave of Absence8
	K. Salary Upon Return from Military Leave of Absence8
	L. Salary Upon Appointment to and Reclassification from Departmental Trainee and Transitional Positions8
	M. Salary Upon Appointment to Other Entry Level Professional Classifications9
	N. Training Rate Upon Job Change Within Group 1 of the ECP9
	O. Special Pay Application. 9
	P. Special Work Schedule

January 1, 2023May 1, 2019

# Regulation 5.01: General Salary Pay Schedule Administration

Page 2 of 11

# Q. Exceptions. 10

# 1. Purpose

This regulation establishes the standards and procedures forto administer administration of the compensation pay schedules approved by the Civil Service commission Commission.

# 2. CSC Rule References

# 5-1 Civil Service Compensation Plan

\* \* \*

## 5-1.2 Amendments to Compensation Plan

The civil service commission may amend the compensation plan at any time, consistent with article 11, section 5, of the constitution. The state personnel director may submit to the commission recommended amendments to the compensation rules at any time. The director shall also submit to the commission for its review (1) any proposed collective bargaining agreement or amendment agreed to by the state employer and an exclusive representative, (2) any recommendation of the impasse panel, and (3) any recommendation of the coordinated compensation panel.

\* \* \*

# 5-2 Hours of Service

#### 5-2.1 Work Period

- (a) Standard work period. The standard biweekly work period for a full-time employee in the classified service is the equivalent of 80 hours of work.
- **(b) Alternative work periods.** The state personnel director may issue regulations that establish alternative work periods and measures of equivalent full-time service. The regulations may conform the compensation plan to the alternative periods and measures.

\* \* \*

# 5-3 Compensation Schedules

## 5-3.1 Compensation Schedules

The civil service commission shall approve compensation schedules that establish the rates of compensation for each class of positions in the classified service. The rates of compensation authorized are for full-time employment. Payment for part-time service is proportionate to the time actually worked. If a new classification is added to the classification plan, the state personnel director shall initially establish the rates of compensation for the classification.

\* \* \*

## 5-3.3 Individual Compensation

The appointing authority shall assign the individual level of compensation for each classified employee as provided in the compensation plan. The individual level of compensation must fall within the range of rates of compensation approved by the civil service commission for the employee's classification level. If the appointing authority implements an approved salary-range subdivision, the individual level of compensation of an employee subject to the subdivision must also fall within the approved agency range of rates for the subdivision. Any exception must be approved by the state personnel director.

# 5-3.4 Operation of Compensation Schedules

An employee in the classified service cannot be paid less than the minimum nor more than the maximum authorized in the compensation plan, unless authorized by the state personnel director.

- (a) Initial appointment. On initial appointment, an employee is paid the minimum salary step in the salary range unless the appointing authority chooses to pay a higher initial salary as authorized in the compensation plan.
- (b) Schedules with steps. If the compensation plan creates steps in the pay range, an employee receives pay increases in the amounts and at the intervals provided in the compensation schedule for the employee's classification level. An employee under an unsatisfactory probationary or interim rating is ineligible for a step increase.
  - (1) Effective date. Any pay increase is effective at the beginning of the first pay period after the employee becomes eligible.
  - **(2)** Advancement. An employee advances in pay by successive steps of the pay range for the employee's classification level, as provided in the compensation plan, unless a special increase is granted in accordance with the compensation plan.
  - (3) Reduction of pay. An appointing authority may, for cause, reduce the pay of an employee receiving more than the minimum step for the classification level.
  - **(4) General schedule revision.** If the compensation schedule is amended, an employee is paid at the salary step corresponding in length of service to the step at which that employee was being paid in the previous salary range for the classification level.

\* \* \*

- (e) Salary rate for temporary projects. Upon request of an appointing authority, civil service staff may approve alternative or supplemental compensation that exceeds the scheduled maximum rate of pay for an employee assigned to a temporary project. The appointing authority must receive written authorization for the project pay from civil service staff before the employee is assigned to the project. Temporary project pay may not exceed two years without the written authorization of the state personnel director.
- (f) Red-circled pay treatment. The state personnel director may authorize an employee's salary to be red-circled. An employee whose pay is red-circled continues to be paid at the employee's red-

circled salary rate until the scheduled maximum salary of the employee's classification or classification level equals or exceeds the red-circled salary rate. An employee whose salary is red-circled is not eligible for any portion of a general wage adjustment that exceeds the maximum of the employee's classification or classification level.

# 5-3.5 Salary Rate upon Change in Classification, Return from Layoff, or Reinstatement

An employee who moves from one classification to another and who returns from layoff or is reinstated after separation is paid in the new classification at the appropriate salary step in accordance with the compensation plan.

# 3. Standards

# A. Full and Part-time Employees.

All annual, monthly, and biweekly rates of pay authorized in the compensation plan are for full-time employment. Payment for part-time employment is based on time in pay status.

# B. Schedule Compensation Plan Establishment and Amendment.

- 1. Establishment. The <u>Civil Service commission</u> commission has established a compensation <u>schedule plan</u> covering all <u>classified</u> positions <u>in the classified service</u>, <u>which consists of with salary ranges assigned to which for all classification levels in the classified service are assigned.</u>
- 12. Schedule Aamendments. The Civil Service commission Commission amends the pay schedule as necessary. If the schedules are schedule is amended, compensation pay is adjusted set as follows:
  - a. General Salary pay Sschedule Aadjustment. An employee remains at the same salary step in the adjusted range, unless the Civil Service commission has authorized a different step.
    - (1) An employee at a red-circle rate is not ineligible for a general salary pay schedule adjustment, unless the adjustment increases the maximum of the employee's appropriate salary range's maximum range to above a rate equal to or higher than the red\_-circle rate, at which time the rate in the appropriate range's rate range replaces the red-circle rate.
    - (2) An employee occupying in a frozen position or frozen classification is eligible for general increases.
  - b. Salary Upon Appointment To a Newly Eestablished Cclassification. Salary for When an employee is appointments appointed to a newly established classification, salary is determined under in accordance with § 3.F.

# C. Salary Range.

<u>Unless specifically authorized in the compensation plan, anAn</u> employee <u>must\_cannot</u>not be paid less than the minimum nor more than the maximum of <u>the salary range for</u> the <u>assigned classification level's salary rangelevel to which assigned</u>. The employee is paid only at <u>the precise increments listed</u> in the <u>compensation pay</u> schedule, except as provided below.

- 1. Salary for Red-Ccircled Eemployees. An employee designated as red circled may be is paid at a rate above in excess of the maximum salary rate for the assigned classification's maximum salary rate classification to which assigned in the position that is red circled. If an the employee moves to a different position, the employee may cannot retain the red-circled pay.
- 2. Salary Upon Special Pproject Bbasis. For employment on a project basis not involving continual employment, the State Personnel director Director may establish an alternative hourly rate of pay rate or lump-sum award that exceeding exceeds the scheduled maximum pay. Application for The appointing authority must request project pay before must be made by the appointing authority in advance of the employment assignment. Project pay is not intended for projects of limited scope or that are consistent with or expected of the duties generally assigned to a position.

# D. Movement Within the Salary Range.

An employee progresses from one step to the next <u>higher</u> step within <u>the a salary</u> range upon <u>completing</u> completion of the required number of hours in pay status, if the <u>employee's current rating is in satisfactory standing</u>.

- Effect of Unsatisfactory Service Rrating. An employee who has receives received an unsatisfactory service rating does not have any time in pay status credited as hours since the last step while the unsatisfactory service rating is in effect. Upon return to satisfactory status, earning of hours since the last step resumes from the number accrued when credit was stopped.
- 2. **Teacher Salary** pay Sechedules. An employee assigned to a 42-week or 46-week teacher salary pay schedule is eligible for progresses progression to the next higher salary step upon completing completion of the required number of hours in the annual work schedule in , if the employee's current rating is satisfactory standing. When Anan employee in a teacher classification who qualifies for a higher academic salary pay schedule by completing the scholastic educational requirements, the employee is paid at the same step in the new schedule and retains hours since the last step.
- 3. **Accelerated Sstep Fincreases.** The State Personnel Ddirector may authorize advancing an employee whose current rating is satisfactory to a higher step in the salary range at an accelerated rateearly upon application by the appointing authority.

- a. An appointing authority may advance an employee without prior approval if any of the following apply:
- (1) Tthe employee has (1) completed special assignments that have resulted in a major benefit to the employee's agency;
- (2) The employee has performed outstanding service, for reasons that have been documented reasons; or-
- \_(3)\_<u>An employee'sa</u> pay rate <u>w</u>has <u>been</u> determined <u>in accordance with under</u> § 3.F<sub>7</sub> and <u>an one</u> additional step is necessary to provide additional <u>compensation pay</u> in special <u>documented</u> circumstances <u>which have been documented</u>.
- b. Special step increases are normally limited to the next <a href="https://higher.step">higher</a> step in the range. The appointing authority must document all special step increases. The documentation must includinge justification for the step increase and reasons for granting more than one multiple steps. The documentation must be retained for audit purposes, in accordance with the retention schedules.
- c. Special step increases are normally <u>effective on a prospective basis</u>. If an appointing authority processes an <u>increase</u> retroactive<u>ly</u> <u>special step increase</u> based <u>up</u>on documented extenuating circumstances, any retroactivity <u>must be within is limited to seven</u>? pay periods <u>of the datebefore</u> the increase is processinged.
- 4. Reducing Reduction of pay. The appointing authority must receive prior approval from the State Personnel director Director to reduce the salary of an employee's salary employee. Requests must contain all pertinent information, including the amount of reduction and the justification for the proposed acreduction action. The employee's pay rate of pay must cannot be reduced below the minimum rate for the classification level's minimum level.

# E. Salary Upon New Hire (Initial Appointment).

Upon first initial appointment to a position, an employee is paid the minimum rate in the salary range, except an employee appointed to a level above the entry level in a class series in which the level's minimum rate is below the entry level's minimum rate is paid the at the lowest step that is greater than the entry level's minimum rate. The State Personnel director Director may authorize a higher starting rate upon application by the appointing authority. If documentation is retained for later audit, an An appointing authority may authorize a higher rate without prior approval if any of the following apply:

1. The position has been vacant for a long period of time and there is difficulty in recruiting for the particular position.

- 2. The prospective employee is currently employed outside the classified service <u>earning</u> <u>an annual and a salary in excess of above</u> the minimum <u>and a higher rate</u> is necessary to attract the prospective employee.
- 3. The prospective employee has special experience and/or education which should be well beyond the minimum qualifications contained in the specification for classification of the position's classification position.
- 4. The prospective employee was previously a state employee and has experience pertinent to the position.

Note: The appointing authority must document the reason for an above minimum starting rate when one of the above conditions applies. The documentation must be retained for audit purposes.

# F. Salary Upon Personnel Action Other Than New Hire, Reduction in Force, or Recall.

- 1. If the former and the new classification level share have the same pay range, or if the former and new positions are in the same classification level and the employee is moving from an between included and position to an excluded positions position or vice versa at the same classification level, the employee is placed at the same step in the range. If the maximum rates are the same and but the steps are different, the employee is placed at the closest rate without a decrease. The employee's Hours hours since the last step are retained.
- 2. If the maximum rate of the new classification <u>level's maximum ratelevel</u> is higher than the maximum rate of the former classification <u>level'slevel</u>, the employee's <u>pay</u> rate of <u>pay may be is calculated in one of the set as followsfollowing ways</u>:
  - a. If the maximum rate of the new classification level's maximum ratelevel is higher than the maximum rate of the former classification level's level, the employee's pay rate of pay is the lowest step in the range for the new classification level's rangelevel that reflects a salary increase that is not less than the difference between the minimum and the first step in the range for the former classification level's rangelevel, if possible. The employee's hHourshours since the last step are set to zero.
  - b. An agency may request an-individual or blanket approval for a different <u>pay</u> rate of pay if the maximum rate of the new classification <u>level's maximum ratelevel</u> is higher than the maximum rate of the former classification <u>level'slevel</u>. Civil Service must approve the different <u>pay</u> rate of <u>pay</u> before implementation. It <u>may cannot not</u> be used for working—out—of—class payments, unless <u>the director approves an specific</u> exception has been approved by the State Personnel Director for a specific situation.

- c. Note: If an employee is due a step increase on the same day as this standard is applied, the employee receives the step increase first, and that step is used to before determineing step placement in the new range. An employee with over 1,040 hours since step moving to a new 1,040-hour step receives the step increase in the new classification upon job change and hours since step are reset to zerodetermine step placement in the new range.
- 3. If the maximum rate of the new classification level's maximum ratelevel is less than the maximum rate of the former classification level's level, the employee is placed at the closest step in the new range that reflects no increase. The employee's hourshours since the last step are retained.
- 4. If an employee moves within the same classification and level to a new HRMN pay grade, the employee is placed at the same step in the new pay range and retains hours since the last step. Examples include Services Specialists and some State Police Lieutenant classifications, where different HRMN pay grades exist within the same classification level. Teacher salary schedules are covered under § 3.D.2, above.

#### G. Salary Upon Reduction in Force.

If—Aan employee who is moved to a different classification as the result because of a reduction in force, the employee is placed at the closest step in the new range that reflects no increase. The employee's hHours since the last step are retained.

### H. Salary Upon Recall.

If <u>A recalled employee's an employee is recalled, the rate of pay rate</u> is determined based upon the rate and range at the time of when displaced ment displacement in conjunction with § 3.F. The employee's <u>H</u>hours since the last step are retained.

#### I. Salary for Working Out of Class (WOC).

An employee eligible for WOC compensation pay in accordance with regulation 4.08 to an eligible employee is calculated compensated by application of § 3.F.2.a and regulation 4.08 of this regulation, if for a position the range for the WOC classification is in a step in grade salary range with steps. If the employee is eligible Forfor WOC compensation pay in for a position in a performance-pay classification, regulation 5.07 applies.

- 1. If an employee is eligible for WOC compensation, payment is processed as a gross pay adjustment (GPA).
- Holidays or leave time used are not paid at the WOC rate until after completion of the first 10 workdays of the assignment.
- 3. If an employee eligible for WOC compensation is assigned to work out of class in a preauthorized series, the employee is paid at the appropriate step for the classification

level for which the employee meets the required education and experience, typically the entry level.

4.—The appointing authority must retain adequate documentation to substantiate WOC compensation pay for audit purposes.

#### J. Salary Upon Return from Leave-of Absence.

If an employee returns from an approved leave of absence, the <u>pay</u> rate <u>of pay</u> and hours since <u>the last</u> step are <u>determined set</u> as follows:

- 1. If an employee returns to a position in the same classification level, the employee returns to the same step in the range as when the leave of absence began.— The employee's hours since the last step are retained.
- 2. If an employee returns to the same position, but the position has been reclassified to a higher level, the employee's <u>pay</u> rate <u>of pay</u> is determined <u>in accordance with under</u> § 3.F.2.

#### K. Salary Upon Return from Military Leave of Absence.

If <u>an employee</u> veteran returns to the same position from an approved military leave of absence and the veteran's last service rating <u>prior to before</u> the leave of absence was satisfactory, the <u>veteran employee</u> is placed at the step in the range which that would have applied had there been no interruption of state service. If the <u>veteran's</u> last service rating <u>before prior to</u> the leave of absence was unsatisfactory, the <u>veteran employee</u> is placed at the same step in the range as when the leave of absence began.

# L. Salary Upon Appointment to and Reclassification from Departmental Trainee and Transitional Positions.

<u>If</u> <u>An</u> employee <u>is</u> appointed to a <u>Departmental trainee</u> or <u>to a position</u> designated as transitional <u>position</u>, the employee's <u>has</u> salary may be retained or reduced as provided belowset as follows:

- 1. Upon appointment, the employee maintains the current <u>pay</u> rate <u>of pay</u> if <u>it is</u> less than or equal to the maximum of the classification level to which the employee will be reclassified <u>upon completion of after</u> the transition period. If <u>the employee is paid</u> more than the classification level to which the employee will be reclassified, the employee is paid <u>at</u> the maximum of the classification level to which the employee will be reclassified.
- 2. Upon <u>successful\_completing</u>completion of the <u>required\_transition</u> period, the employee is reclassified to the appropriate <u>technician</u>, <u>professional</u>, or <u>managerial</u> classification <u>and assigned</u>. <u>Upon reclassification</u>, the closest rate in the new pay schedule that is not a decrease <u>is assigned</u>.

M. Noncareer Positions in Broadbanded Classes. In noncareer classes without steps, an appointing authority may grant an increase within the authorized pay range after 13 pay periods have passed since appointment or a previous increase.

#### M. Salary Upon Appointment to Other Entry Level Professional Classifications.

The employee is normally assigned to the minimum step of the salary range. The employee may be assigned to a step higher than the minimum in accordance with under §§ 3.E, F, C, or H. Any step placement above the minimum step must **not** exceed a pay rate that will enable the employee to receive a promotional increase under § 3.F.2 upon timely reclassification to the intermediate level of the classification series (i.e., the entry level rate cannot exceed the maximum step of the intermediate level in the classification series.).

#### N. Training Rate Upon Job Change Within ECP Group 1 of the ECP.

Upon appointment to a new classification series at the entry or intermediate level within ECP Group 1, a training rate may be available. The training rate is: (A) the employee's current rate or the maximum rate of the new classification series' experienced level, whichever is less, when the current rate exceeds the new pay range max (see § 3.N.1); or (B) the closest step in the new range without a decrease, when the employee's current rate is less than the new pay range max (see § 3.N.2).

- 1. Training rate exceeds the maximum rate for the new classification level. Upon appointment to the new classification series at the entry or intermediate level, when the employee's training rate exceeds the maximum rate of the new level, the employee's pay step is set at the employee's current rate, or the maximum rate of the new series experienced level, whichever is less. Civil Service will authorize use of the "Training" pay schedule to enable the appointing authority to enter a rate above the maximum. When an employee is eligible to move out of the "Training" pay schedule, the closest rate in the new pay range that is not a decrease is assigned. If the employee's current rate exceeds the new level's maximum rate, the step is set at the lesser of the current rate and the new series's experienced level's maximum rate. Civil Service will authorize the training pay schedule so the appointing authority can enter a rate above the maximum. When an employee is eligible to move out of training rate, the closest rate in the new pay range that is not a decrease is assigned.
- 2. Training Rate is less than the maximum rate for the new classification level. Upon appointment to the new classification series at the entry or intermediate level, when the employee's current rate is less than the maximum of the new range, the employee's pay step is set at the closest step in the new range without a decrease. The employee's hours since the last step are retained. The employee is eligible to receive step increases. If the employee's current rate is less than the new range's maximum, pay is

set at the closest step in the new range without a decrease. Hours since step are retained.

**OP.** Waived Rights Leave or Reinstatement. An employee rehired from an unexpired waived rights leave or reinstated has pay and hours since step set consistent with § 3.J if returning to the same classification and level or § 3.F if returning to a different classification.

#### O. Special Pay Application.

An appointing authority may require an employee to work under special conditions not covered by specific provisions of these regulations. Additional compensation for such applications may be authorized by the State Personnel Director upon application by the appointing authority.

## P. Special Work Schedule.

Employees at the Michigan School for the Deaf and Blind who work on a school—year basis are considered annual employees for purposes of service—credits purposes.

## Q. Exceptions.

Exceptions to the standards contained in this regulation must require the state personnel director's approval be approved by the State Personnel Director.

#### **CONTACT**

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

# Michigan Civil Service Commission

# Regulation 5.02

Subject:		
O.	vertime, On-Call, an	nd Callback Compensation
SPDOC No.:	Effective Date:	Replaces:
<del>20-09</del> 22-14	July 15, 2020 January 1,	Reg. 5.02 (SPDOC 1820-079, January 1, 2019 July 15,
	<u>2023</u>	<u>2020</u> )

# 1. Purpose

This regulation establishes standards to pay overtime, on-call, and callback compensation.

#### 2. CSC Rule References

#### 5-4 Additional Compensation: Overtime, etc.

#### 5-4.1 Additional Compensation

An appointing authority may require an employee to work under special conditions. An eligible employee working under the following special conditions is paid the pay premiums provided in this rule in accordance with the regulations.

#### 5-4.2 Overtime

- (a) Eligibility. The compensation schedules must identify each classification that is eligible for overtime pay. Overtime pay is paid to eligible employees for time in pay status, excluding sick and annual leave, in excess of 40 hours in a week or as otherwise provided in the regulations.
- **(b) Rate.** The overtime rate of pay is one and one-half times the employee's regular rate of pay, as defined in the regulations. The regulations may provide for accrual of compensatory time at the premium rate instead of a cash payment.

#### 5-4.3 On-call

- (a) Eligibility. The compensation schedules must identify each classification that is eligible for on-call pay. On-call pay is paid to an eligible employee who is scheduled to be available to return to duty, work-ready, within a specific time.
- (b) Rate. The on-call rate of pay is one hour of straight time pay for each 5 hours of on-call time.

#### 5-4.4 Callback

(a) Eligibility. The compensation schedules must identify each classification that is eligible for callback pay. Callback pay is paid to an eligible employee who is not on scheduled on-call status but is called back to duty outside of normal working hours.

July 1	5	,	
2020January	,	1,	2023

Page 2 of 10

**(b)** *Rate.* Callback pay is paid at the overtime rate of pay. An eligible employee is paid for a minimum of 3 hours unless called back within 3 hours of the employee's regular starting time.

#### 3. Standards

## A. Eligible Employees.

1. Employees in classifications with an eligibility code of "N" are eligible for overtime. Eligible is represented as "non-exempt" in HRMN. When processing a preauthorized reclassification, an agency shall enter the <a href="new classification's">new classification's</a> assigned eligibility code for the new classification level as reported in Section A of the Compensation Plan.

#### 2. Overtime.

a. **Rate.** The overtime rate is 1.5 times the employee's regular rate. The regular rate is the employee's base pay rate plus any applicable shift premium, special pay premium (e.g., prison rate), on-call, longevity, or other pay, except overtime premium.

#### b. Basis.

- (1) Overtime payment is made to eligible employees for time worked in excess of 40 hours in a week, unless another calculation method authorized under federal law is used. Overtime payment is also made as provided in § 3.A.2.d(1) for some schedule changes.
- (2) Premium payment cannot be duplicated or pyramided for the same hours worked.
- (3) Time worked is defined as (a) hours actually spent in pay status, excluding sick, annual, and paid or reimbursed union leave, and (b) travel time required by and at the employer's discretion before, during, or after a regularly scheduled workday.
- (4) All paid leave, except sick, annual, and paid or reimbursed union leave, counts as time worked to compute overtime. Holiday credit counts as time worked in computing weekly (or other longer period authorized under federal law) overtime only. If an employee works on a holiday, premium payment for the first 8 hours worked on the holiday is due and payable only when 40 hours in a week (or other amount authorized under federal law) are exceeded. The employee may, with the employer's approval, take another day in the same period as the holiday.
- (5) Unless otherwise authorized by the state personnel director, a day is defined as a 24-hour period beginning and ending at midnight and a week is defined as a seven-day period beginning Sunday and ending Saturday.

(6) Unless otherwise authorized by the state personnel director, a biweekly work period consists of 80 hours of work, normally performed on 10 workdays within the 14 consecutive days that coincide with current pay periods. A biweekly pay period is complete if the actual time worked, plus any paid administrative, annual, sick, paid or reimbursed union, military, or holiday leave equals or exceeds 80 hours.

#### c. Control.

- (1) An agency may require an employee to work overtime and shall ensure that an employee does not work unauthorized overtime.
- (2) An agency shall establish written policies to schedule and authorize overtime.
- (3) An agency is responsible for pay for all overtime worked, even if unauthorized, if the agency accepts the benefits of the overtime work.

#### d. Scheduling.

- (1) An employee's daily or biweekly work schedule may be changed temporarily.
  - (a) For full-time employees and for less-than-full-time employees with a regular work schedule, an agency shall post or provide notice of an employee's work schedule at least 96 hours before a biweekly work period begins. If the agency does not do so or if the employee's schedule is changed after 96 hours before the work period's start, the employee is eligible for overtime payment for all hours worked outside the employee's noticed work schedule for that pay period. Biweekly posting or notice of work schedule is not required for those with a regular work schedule, unless the regular schedule will change for that pay period or going forward.
  - (b) For noncareer employees, permanent-intermittent employees, or other less-than-full-time employees with variable schedules, an employee qualifies for overtime payment only if otherwise eligible based on the number of hours worked.
- (2) If sufficient notice is available and the state's best interests allow, and considering work assignments and organizational units in the agency, the employer must offer overtime opportunities as equally as practicable among employees who normally perform the assigned duties.
  - (a) An agency's overtime scheduling and equalization standards must be reduced to a work rule, memorandum, policy, or other written document.
  - (b) An agency may measure overtime opportunities based on assignments or hours.

- (c) An employee who declines to work offered voluntary overtime is counted as having worked in determining equalization.
- (d) If enough employees normally performing the duties do not volunteer, the agency may offer overtime to other employees qualified to do the work. If enough employees do not volunteer or if there is an emergency, the agency may mandate overtime.
- (e) An agency may equalize voluntary and mandated overtime separately or in coordination. An agency may consider voluntary overtime worked when determining equalization for mandating overtime. An agency may limit voluntary overtime during an equalization period for employees who renege on a voluntary overtime opportunity.
- (e) When appointed to a position, an employee may be treated as having been offered the same amount of overtime as the active employee then with the fewest opportunities offered.
- (f) After an extended leave, a returning employee may be treated as having been offered the same amount of overtime as the active employee then with the fewest opportunities offered, if more than the returning employee's overtime offered during the equalization period.
- (g) Unless an agency establishes a different period, overtime equalization is evaluated based on overtime opportunities over a calendar year. In any grievance over overtime equalization, relief is limited to subsequent overtime opportunities.
- (h) An agency may exclude overtime by employees held over to complete specific work in progress in overtime equalization considerations.
- (i) An agency may establish different overtime-equalization policies for different classes of employees for legitimate business reasons based on broad occupational or organizational categories.
- e. **Timekeeping.** An agency shall maintain positive timekeeping records for all eligible employees with the total number of hours worked and leave hours used each day.
- f. **Timeliness.** The employer shall make a good-faith effort to pay for overtime on the payday for the biweekly work period when worked.

#### g. Compensatory Time.

(1) With the employer's approval, an employee may request to accrue compensatory time at the overtime rate instead of receiving payment for overtime, if agreed to before the work is performed.

- (2) An agency may adopt an accrual limit of up to 240 hours of compensatory time. For an employee engaged in public-safety, emergency-response, or seasonal activity, an agency may adopt an accrual limit of up to 480 hours.
  - (a) Public-safety activity refers to employees who enforce laws, maintain peace and order, have the power to arrest, and had or are undergoing specialized training. It includes security personnel in correctional facilities.
  - (b) Emergency-response activity refers to rescue work and ambulance services.
  - (c) Seasonal activity refers to work during lengthy regular recurring periods of significantly increased demand.
- (3) When compensatory time is approved, the employee is paid for all premiums (e.g., shift, hazard except T-rate and G-rate, etc.) due for overtime hours worked at the overtime rate.
- (4) With the employer's approval, an employee may request a work-schedule adjustment within the week instead of accumulating overtime. Adjustments are not allowed for employees working in hospitals and residential-care facilities.

#### h. Scheduling Compensatory Time.

- (1) Compensatory time is used at the employee's convenience subject to supervisory approval based on criteria for using annual leave. The employer shall honor a request for compensatory-time use, unless it would be unduly disruptive.
- (2) Compensatory time must be used before annual leave, unless an employee at the accumulation cap would lose annual leave.
- (3) If an employee has not used accrued compensatory time during the fiscal year when accrued, the employee may be paid for the unused compensatory time at the higher of the base rate or the average base rate during the last three years. Accrued compensatory time that is not paid off is carried forward to the next fiscal year.
- (4) Unused accrued compensatory time of an employee who resigns, retires, is dismissed, moves to another agency, or is laid off is paid at the higher of the base rate or the average base rate during the last three years. This does not apply to temporary layoffs.
- (5) Accrued compensatory time cannot be frozen.

#### 3. On-Call.

a. **Rate.** Employees scheduled for on-call duty are paid at the rate of one hour of straight-time pay for each five hours of on-call duty.

#### b. Basis.

- (1) On-call is the scheduled state of availability to return to duty, work-ready, within a specified time period. General availability as backup to working personnel if an extreme emergency occurs is not on-call.
- (2) An employee actually required to return to duty is compensated under the regulations on callback for hours actually worked or for which payment is required under § 3.A.4.
- (3) An employee is not paid on-call pay for regularly scheduled duty hours or while on paid authorized leave.

#### c. Control.

- (1) The employer may require an employee to be on-call as needed in the manner most advantageous to the employer and consistent with the requirements of state employment and the public interest.
- (2) An agency must establish written policies to authorize and pay on-call time.
- d. **Scheduling.** An employee scheduled by an agency for on-call duty shall remain available through a pre-arranged means of communication. An employee on on-call duty who is unavailable when contact is attempted or cannot report, work ready, to duty within the prescribed time is ineligible for on-call pay for that date and may be disciplined.
- e. **Timekeeping.** An agency shall maintain positive timekeeping records for all eligible employees with the total number of hours worked and leave hours used each day. Work-schedule adjustments cannot be made based on on-call time.
- f. **Method of Payment.** The employer cannot award compensatory time in lieu of payment for on-call time.
- g. **Timeliness.** The employer shall make a good-faith effort to pay for on-call duty on the payday of the pay period of the duty.
- h. **Overtime Impact.** Pay earned for on-call time is included in the regular rate for overtime premium computation, but hours on-call are not.

#### 4. Callback.

a. Rate.

- (1) Full-time employees called back to duty are paid at the overtime rate established in § 3.A.2.a.
- (2) Less than full-time employees are compensated at straight-time rates, unless callback hours worked qualify for overtime under § 3.A.2.b(1).

#### b. Basis.

- (1) Employees contacted to report to duty outside their normal working hours receive a minimum of three hours of pay, except that employees are compensated for the actual time worked if (a) called back to duty within three hours of their regular starting time or (b) the callback duty exceeds three hours.
- (2) Employees on on-call status are not paid on-call pay for callback-duty hours.

#### c. Control.

- (1) The employer may call an employee back to duty and schedule necessary callback duty in the manner most advantageous to the employer and consistent with the requirements of state employment and the public interest.
- (2) An agency must establish written policies to authorize and pay callback duty.
- d. **Timekeeping.** An agency shall maintain positive timekeeping records for all eligible employees with the total number of hours worked and leave hours used each day.
- e. **Timeliness.** The employer shall make a good-faith effort to pay for callback duty on the payday of the pay period when worked.

#### B. Ineligible Employees.

1. Employees in classifications with the eligibility code of "Y" are ineligible for overtime. Ineligible is represented as "exempt" in HRMN.

#### 2. Work Schedules.

#### a. Scheduling and Control.

- (1) Work schedules for ineligible employees are established by the agency. Employees are normally present during the regular course of the workday, but demands may vary by pay period. Absences without charge to leave credits may be granted for any period of time, if the agency certifies that the employee has completed the equivalent of a full pay period.
- (2) An agency can instead adopt a formalized compensatory-time plan for ineligible employees. If a plan is used, the following conditions must be met:
  - (a) Sick, annual, and paid or reimbursed union leave used in the work period cannot count toward eligibility to accrue compensatory time.

- (b) The employee is paid for all premiums (e.g., shift, hazard except P-rate, etc.) due for the overtime worked.
- (c) The agency must maintain positive timekeeping records for all covered employees with the total number of hours worked and leave hours used each day.
- (d) Compensatory time is used at the employee's convenience subject to supervisory approval based on criteria applicable to using annual leave.
- (e) Compensatory time must be used before annual leave, unless an employee at the accumulation cap would lose annual leave.
- (f) Ineligible employees cannot be paid for unused compensatory accruals, except as provided in rule 5-4.6.
- (g) Employees in the Senior Executive Service and ECP Group 4 cannot accrue or use compensatory time, except as provided in rule 5-4.6.
- (h) Any formalized compensatory time plan adopted by an agency, and any amendments to the plan, must be submitted to Civil Service when adopted or amended.
- (i) Unless a lower rate is provided in the formalized plan, compensatory time is accrued at the rate of 1.5 hours per eligible hour worked.
- b. **Overtime.** An agency must obtain prior approval from Civil Service to compensate ineligible employees for overtime hours worked.
  - (1) Agency requests to pay overtime to ineligible employees must be submitted to Civil Service.
  - (2) Overtime approval requests must contain the employee's name, ID number, classification, and position code and a justification, beginning date, and end date. The request must also contain the criteria to pay overtime if other than for time worked in excess of 40 hours in a week.
  - (3) Employees working an alternative work schedule have an 80-hour biweekly work period, if this minimizes overtime eligibility (e.g., an employee normally scheduled to work 45 hours in the first week and 35 hours in the second week of a pay period does not qualify for overtime for normally assigned hours.)
  - (4) Sick, annual, and paid or reimbursed union leave used in the work period cannot count toward the threshold for overtime eligibility.
  - (5) If approval is granted to pay overtime, the employee is paid at a premium rate determined as follows:

- (a) If the employee's hourly rate is less than the highest rate of eligible employees, the overtime rate is 1.5 times the employee's regular rate, unless a lower rate is requested and approved.
- (b) If the employee's hourly rate is greater than the highest rate of eligible employees, the overtime rate is the greater of straight time or 1.5 times the highest rate of eligible employees, unless a lower rate is requested and approved.
- (c) If the employee's work assignments result in premiums being added to the base rate (e.g., shift differential, P-rate, etc.), the overtime rate is adjusted by the amount of the premium in the same proportion.
- 3. **On-Call.** An agency must obtain prior approval from Civil Service to compensate ineligible employees for on-call duty under special circumstances.
  - a. Requests to pay on-call pay to ineligible employees must address the following:
    - (1) Physical restrictions on the employee while on-call.
    - (2) Maximum response time allowed.
    - (3) Percentage of calls expected to be returned.
    - (4) Frequency of expected calls during on-call time.
    - (5) Potential use of on-call time by the employee.
    - (6) Disciplinary action for employees who fail to answer calls.
  - b. If approved, on-call pay is paid at the rate of one hour of straight-time credit for each five hours of on-call duty.
  - c. If compensatory time is used instead of payment for on-call pay, scheduling and use of compensatory time is in accordance with § 3.B.2.a.
  - d. Employees called back to work while in on-call status receive on-call pay while on callback duty, unless exception has been granted to pay callback pay.
- 4. **Callback.** An agency must obtain prior approval from Civil Service to compensate ineligible employees for callback duty under special circumstances.
  - a. If approved, employees are compensated in the same manner as eligible employees under § 3.A.4.
  - b. Premiums and payments must be computed in accordance with overtime pay under § 3.B.2.
- **C.** Exceptions. An agency may request that the state personnel director approve authorized exceptions to the above standards.

July 15,
2020January 1, 2023

Regulation 5.02: **Overtime, On-Call, and Callback Compensation** 

Page 10 of 10

# **CONTACT**

Questions on this regulation 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.

# Michigan Civil Service Commission Regulation 5.03

Subject:		
	Shift I	Differential
SPDOC No.:	Effective Date:	Replaces:
<del>16-06</del> <u>22-14</u>	January 1, <u>2023</u> <del>2017</del>	Reg. 5.03 (SPDOC <u>16-</u> 0 <u>6</u> <b>7-14</b> , October 7 January 1, 20 <u>1</u> <del>0</del> <b>7</b> )

# 1. Purpose

This regulation establishes the standards for to the payment of a shift-differential premium tfor eligible nonexclusively represented employees (NEREs).

## 2. CSC Rule References

5-4 Additional Compensation: Overtime, etc.

\* \* \*

## 5-4.5 Shift Differential

- (a) Eligibility. The compensation schedules must identify each classification that is eligible for shift differential premium. The shift differential premium is payable to an eligible employee for each shift in which more than 50 percent of the employee's regularly scheduled shift falls between 4:00 p.m. and 5:00 a.m.
- (b) Rate. The shift differential premium is 5 percent of an employee's regular rate.

\* \* \*

#### 3. Standards

- **A.** Employees in certain classification levels are eligible for a shift premium of 5-percent above straight-time rates, rounded to the nearest cent:
  - 1. **Nonexclusively Represented Employees.** For NERES, Eeligible classification levels, as determined by the Sstate Ppersonnel Ddirector, are identified by shift eligibility code of "Y" in Section A of the Compensation Plan.
  - 2. Exclusively Represented Employees. For exclusively represented employees, rRefer to the applicable collective bargaining agreement.
- **B.** Shift\_-differential premium is paid to eligible employees for each shift when <u>more than</u> 50 percent or more of their regularly scheduled shift falls between the hours of 4:00 p.m. and 5:00 a.m.

- **C.** Shift\_—differential premium is included as part of the regular rate for <u>calculating</u> <del>computation of</del> the premium for overtime hours worked by eligible employees working regularly scheduled afternoon and night shifts <u>under(See</u> regulation 5.02).
- **D.** Shift\_-differential premium is not paid for holiday time off or leave time used.
- **E.** The value of shift\_differential premium is not included in determining the value of fringe benefits which are based on pay rate; all fringe benefits are based on the straighttime pay rates.
- **F.** An employee reassigned from a day shift to an afternoon or a night shift is paid shiftdifferential premium as in the case of regularly assigned afternoon and night shifts.
- **G.** When an employee takes the place of an absent worker's place and either of the employees is eligible for shift\_-differential premium, the employee must be paid\_-shift differential premium in addition to any eligible overtime.

#### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837-or 517-373-7618; or to MCSC-Compensation@mi.gov.

# Michigan Civil Service Commission Regulation 5.04

Subject:		
Special Pay Premiums		
SPDOC No.:	Effective Date:	Replaces:
<del>16-06</del> 22-14	January 1, <u>2023</u> <del>2017</del>	Reg. 5.04 (SPDOC <u>1516</u> -056, <u>May 24, 2015</u> January 1,
		2017)

# 1. Purpose

This regulation establishes standards for application of special pay premiums approved by the Civil Service Ccommission for nonexclusively represented employees. It also establishes the standards and procedures for to reviewing positions to approve or disapprove for eligibility for prison and forensic employee premium pay (P-rate).

#### 2. CSC Rule References

- 5-5 Additional Compensation: Prison Employees
- 5-5.1 Prison and Forensic Employee Premium (P-rate)
- (a) Eligibility. P-rate is available to an An-employee who meets any of the following eligibility criteria is paid P-rate:
  - (1) An employee assigned regular and recurring responsibility for custody or supervision of prisoners in the department of corrections.
  - (2) An employee in a position at a correctional facility or the Center for Forensic Psychiatry who regularly handles, on a regular and recurring basis, the personal, financial, or other matters affecting the well-being of prisoners of the department of corrections or forensic patients.
  - (3) An employee www. location is within the security perimeter of a correctional facility or the Center for Forensic Psychiatry, thereby placing the employee in an environment where physical confrontation could occur.
- (b) Exceptions. An employee is not eligible for P-rate if (1) the employee's classification or a predecessor classification was granted-received a special 5-percent% increase in Part 1B of the minutes of at the commission's meeting on December 14, 1978 or (2) eligible for high-security retention premium under rule 5-5.2. The state personnel director shall list the current ineligible classifications in the regulations.
- (c) Rate. P-rate is of \$0.40 an per hour. P-rate is paid for all hours in pay status, including holidays and leave time.

#### 3. Definition

#### A. Definition in This Regulation.

**1. P-rate** compensation means a special pay premium that is assigned to eligible positions in addition to the classification's regular compensation.

#### 4. Standards

- **A.** An employee is eligible for P-rate compensation if the employee's position has been is assigned responsibility for custody or supervision of prisoners in the Department of Corrections on a regular and recurring basis, in addition to regular job duties.
- 1. The position must be located within an institution under the jurisdiction of the Department of Corrections, Correctional Facilities Administration, or at a Corrections Center in the Field Operations Administration.
- 2.—No two employees are given credit for supervising the same prisoners.
- **3.** Positions in other agencies must supervise prisoners assigned from the Department of Corrections, Correctional Facilities Administration.
- **B.** An employee is eligible for P-rate compensation if the employee's position is located at a correctional facility or the Center for Forensic Psychiatry and handles, on a regular and recurring basis, the personal, financial, or other matters affecting the well-being of prisoners or forensic patients.
- An The employee who handles the personal, financial, or other matters affecting the well-being of prisoners or forensic patients must have regular recurring and face-to-face contact with prisoners or forensic patients them. The work being performed must be of such potentially a nature that it could create an adversarial relationship with the employee. Regular, recurring, and face-to-face contact is defined as contact with prisoners or forensic patients in person, 25% percent or more of the time, in an environment that could permit a physical act between a prisoner or forensic patient and the employee to occur. Work performed that could potentially creates an adversarial relationship is defined as those situations when there is with a reasonable chance of a difference of opinion leading to a physical attack by a prisoner or forensic patient.
- C. An employee is eligible for P-rate compensation if the employee's work location is within the security perimeter of a correctional facility or the Center of Forensic Psychiatry, thereby placing the employee in an environment where physical confrontation could occur.
- **D.** An employee is **not** ineligible for P-rate <del>compensation</del> if <del>classified</del> in the following classifications identified in <del>Part 1B, Special Increase, of</del> the minutes <del>from of</del> the December 14, 1978, <del>Civil Service C</del>commission meeting (as updated with <del>the</del> current nonexclusively represented classifications): <u>Assistant Resident Unit Supervisor 11</u>,

<u>Corrections Security Inspector 13, Corrections Shift Supervisor 11–13, and Forensic Security Supervisor 11–13.</u>

Assistant Resident Unit Supervisor 11

Corrections Security Inspector 13

Corrections Shift Supervisor 11

Corrections Shift Supervisor 12

Corrections Shift Supervisor 12

Corrections Shift Supervisor 13

Corrections Shift Supervisor 13

- **E.** Agency policies may require employees with regular work locations outside the security perimeter to assume custodial responsibilities in emergency situations (disturbances, riots, etc.). Such situations are not considered "regular and recurring" and do not qualify a position for P-rate compensation.
- **F.** Incidental contact, such as passing by a prisoner porter, does not qualify for P-rate compensation.
- **G.** Appeals of staff decisions on P-rate compensation for individual positions are processed through the technical appeal complaint process established in under regulation 8.02.
- **H.** If an employee vacates a position previously approved for P-rate-compensation, the new employee may be assigned P-rate compensation—without Civil Service review if the employee is performings the same duties.
- **I.** If an employee receiving P-rate compensation moves to another position, the new position must be reviewed by Civil Service for the to continue ation of P-rate compensation.
- **J.** When a change occurs to an employee's position, whereby and the employee is no longer eligible for P-rate compensation, the appointing authority must remove the P-rate assignment designation must be removed by the Appointing Authority.

#### 5. Procedure

Responsibility		Action
Appointing Authority	1.	Submits a-Position Action Request (CS-129) and a-Position Description form (CS-214) to Civil Service for a-position review and approval before assigning P-rate compensation.
Civil Service	2.	Reviews the request for position review CS-129 to and approves or disapproves P-rate compensation.
	3.	If approved, releases the CS-129 to the appointing authority.
	4.	If disapproved, documents the reasons on the CS-129 and releases to the appointing authority.

January 1, 20232017 Regulation 5.04: Special Pay Premiums	Page 4 of 4
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Responsibility	Action
Appointing Authority	5. Receives the approved CS-129 and assigns P-rate compensation to the employee in the Human Resources Management Network (HRMN).
	6. Removes P-rate compensation in HRMN when if an employee becomes ineligible for such.

# **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837-or 517-373-7618; or to MCSC-Compensation@mi.gov.

# Michigan Civil Service Commission Regulation 5.05

Subject:		
Longevity Compensation		
SPDOC No.:	Effective Date:	Replaces:
<del>16-06</del> <u>22-14</u>	January 1, <u>2023</u> <del>2017</del>	Reg. 5.05 (SPDOC 162-069, June January 241, 20127)

# 1. Purpose

This regulation establishes standards for longevity payments.

#### 2. CSC Rule References

#### 5-8 Longevity Payment

An employee who is expected to complete or has completed the equivalent of 6 give years of full-time currently continuous employment, including any credits under rule 5-10.2(b)(4), in a fiscal year is eligible for an annual longevity payment, as provided in the regulations, on each October 1 of that fiscal year in the amount provided below. An employee with a break in service is eligible for a longevity payment based on total years of service after completing the equivalent of five years of full-time currently continuous employment.

Years of Full-time Service  Expected to be Completed  During the Fiscal Year	Minimum Hours	Annual Longevity Payment-Due on October 1 of the Fiscal Year
<del>6</del> <u>5</u> - <u>98</u>	10,400	\$260
<del>10</del> -9132	<u>18,720</u>	\$300
1 <u>4</u> - <u>3</u> 1 <u>76</u>	27,040	\$370
1 <del>8-</del> <u>7</u> —2 <u>10</u>	<u>35,360</u>	\$480
2 <del>2</del> _1_25 <u>4</u>	43,680	\$610
2 <del>6</del> - <u>5</u> —2 <del>9</del> <u>8</u>	<u>52,000</u>	\$790
<del>30 &amp; o</del> ○ver <u>29</u>	60,320	\$1,040

An employee with a break in continuous service but more than 6 years total employment is eligible for a longevity payment based on total years of service after completing the equivalent of 5 years of full-time currently continuous employment. The longevity payment is paid at the time and in the manner provided in the regulations.

#### 3. Standards

**A.** General Eligibility. A career employee who is expected to complete, or has completed, the equivalent of five years (10,40012,480 hours) or more of continuous full-time classified service in a fiscal year is eligible for an annual longevity payment on each October 1 of that fiscal year in the amount provided belowin rule 5-8.:

Years of Full-time Service Expected to be Completed during the Fiscal Year	Equivalent Hours of Full-time Service that Must be Completed before October 1	Annual Longevity Payment Due on October 1 of the Fiscal Year
<del>6-9</del>	10,400 18,719	<del>\$260</del>
<del>10-13</del>	<del>18,720 27,039</del>	<del>\$300</del>
14 17	<del>27,040 35,359</del>	<del>\$370</del>
<del>18-21</del>	<del>35,360 - 43,679</del>	<del>\$480</del>
<del>22-25</del>	43,680 - 51,999	<del>\$610</del>
<del>26-29</del>	<del>52,000 60,319</del>	<del>\$790</del>
<del>30 &amp; over</del>	60,320 and over	<del>\$1,040</del>

- 1. A career employee is eligible to receives eredit for longevity credit for service in a non-elective excepted or exempted position in an agency, the legislature, or the supreme court if entry into or return to the classified service is within 28 days after of leaving the excepted or exempted position.
- 2. A <u>new</u> career employee <u>is eligible to receives</u> longevity credit for up to <u>5five</u> years of honorable service in the armed forces of the United States. <u>This credit is received</u> immediately upon entry into the classified service under the following conditions:
  - a. A new employee is advised by the appointing authority of the military service benefit upon hire.
  - <u>ba</u>. The employee <u>is responsible for must</u> submitting the required documentsation to the appointing authority within 90 days <u>of hire</u> to receive additional service credit retroactive to the date of hire.
  - c. If the employee does not submit the required documentation within 90 days

    Otherwise, credit is not given retroactive to the date of hire, but is only credited

    from the first day start of the pay period in which when the documents are
    received by the appointing authority receives the documents.

- db. The appointing authority will shall forward a copy of the required documentsation to Civil Service staff for review, calculation of eligible service credit, and processing of applicable HRMN adjustments.
- ec. The following criteria are appliedy in determining eligibility for military service credit:
  - (1) Only active service for which the <u>employee veteran has</u> received an honorable discharge or <u>other certified evidence of honorable active service</u> is creditable. <u>Any of tOnly tT</u>he following documents provide <u>such evidence</u>:
    - (a) DD-<u>Form</u> 214, Certificate of Release or Discharge from Active Duty, which <u>must</u>-includes Field #24: Character of Service.
    - (b) NGB Form 22, <u>National Guard</u> Report of Separation and Record of Service in the Air/Army National Guard, which must includes Field #24: Character of Service.
  - (2) Active military service <u>for purposes of this regulation</u> is <u>considered</u> active duty in any branch of the armed forces under conditions for which a <u>regular</u> military leave of absence would have been granted had the <u>veteran employee</u> been a classified employee at the time <u>when</u> the <u>military tour of</u> duty began. <u>Military duty in a reserve component generally does not qualify for credit, but active duty time served for basic training while in a reserve component as shown by an official copy of one of the following is creditable:</u>
    - (a) DD Form 214, Certificate of Release or Discharge from Active Duty, fields 12.c and 12.d.
    - (b) NGB Form 22, Report of Separation and Record of Service in the Air/Army National Guard, field 10(c).
  - (3) Military service need not immediately must precede, bu does not need to be immediately before, state employment.
  - (4) Military duty in a reserve component does not qualify for credit. However, active duty time served for basic training while in a reserve component is creditable.
  - (45) Military service resulting from more than one tours of active duty may can be combined, but cannot exceed the maximum of 5 give years of creditable service.
  - (65) <u>A Ccareer classified employees are entitled to receives</u> full credit for their active military service, regardless of their work schedule.
  - (76) Noncareer classified employees are not entitled to military\_service credit.

fd. The following conversion table is used tTo adjust convert active military service time to continuous state service hours, one year is 2,080 hours, one month is 174 hours, and one day is 5.8 hours.

1 year = 2,080 hours 1 month = 174 hours 1 day = 5.8 hours

- <u>3e</u>. Military\_<u>service</u>\_credit is <u>credited\_given\_</u>as currently continuous service<u>as</u> <u>provided below:</u>
  - a.(1) An employee separating and returning has pPreviously credited military service is placed in the employee's prior service counter, if the total current service counter for a separating employee, including the military timecredit, exceeded 5 years (10,400 hours).
  - b.(2) If an employee separates and returns, pPreviously credited military service is retained in the current hours service counter if the total current service hours was less than 5 years (10,400 hours) or less. Only state service credit is moved to the prior service counter. Military hours retained in current service hours are entered to military hours.
- <u>34</u>. An employee granted a <u>paid</u> leave of absence <del>with pay</del> has the leave <del>time</del> credited for longevity <del>compensation</del> purposes.
- a⁴4. An employee receiving workers' compensation receives service credit in accordance with regulation 5.13.
  - b. An employee on a paid leave of absence as the result of an assault receives service credit for the leave in accordance with regulation 5.13.
- 5. An employee granted an <u>unpaid</u> leave of absence <u>without pay</u> does not have a break in service for <u>the purpose of longevity</u>-eligibility <u>for longevity purposes</u>, but does not receive service credit for the <u>time of the leave of absence</u>.
- 6. An employee who separates from state service, returns, and completes 10,400 hours of current continuous service receives credit for all hours in the prior service counter for longevity-elibility purposes.

#### B. Longevity Payment.

#### 1. Eligibility.

- a. Career employees who separate from state service and return and complete 5 years (10,400 hours) of full-time continuous service before October 1 of any year receive credit for all previous hours in the state classified service.
- b. To be eligible for a full annual longevity payment after the initial payment, a career employee must have completed continuous full-time classified service equal to the service required for original eligibility, plus a minimum of one additional year (2,080 hours).
- c. Career employees rendering seasonal, intermittent, or other part time classified service are, after establishing original eligibility, entitled to subsequent annual payments on a prorated basis for the number of hours in pay status during the longevity year.
- **2. Payments.** Payment is made in accordance with the table of longevity values in rule 5-8 based on length of service.
- a. Except as otherwise provided in this regulation, payment is made on the payday for October's first full pay period. No active employee can receive be paid more than the amount scheduled for one annual longevity payment during any 12-month period, except in the event of after retirement or death or as provided in § 3.B.2.g5.
  - b1. Initial Payments. Employees qualify for an their initial payment by completing an aggregate of having 10,400 hours of current continuous service before October 1. The initial payment is always a full payment (no proration). Payments to employees who first become eligible on October 1 are made on the payday after the first full pay period in October.

#### €2. Annual Payments.

- (1)a. Employees qualify for full annual payment by completing 2,080 hours of continuous service during the longevity year.
- (2)b. Employees who are in pay status less than under 2,080 hours during the longevity year receive a prorated annual payment based on the number of hours in pay status during the longevity year.
- d. Payments to employees who become eligible on October 1 of any year are made on the pay date following the first full pay period in October; except that prorated payments in case of retirement or death are made as soon as practicable thereafter.

#### e3. Lost Time Considerations.

(1)a. Lost time is not creditable continuous service, nor and does inot count in qualifying for an initial or annual payment.

- (2)b. Employees do not earn state service credit in excess of 80 hours in a biweekly pay period. Paid overtime does not offset lost time, except when unless both occur in the same pay period.
- **<u>f4.</u>** Payment to Employees on <u>Unpaid</u> Leave of Absence Without Pay and or Layoff on October 1.
  - a. An employee on a waived rights leave of absence receives a prorated longevity payment upon returning from leave.
  - (1)b. An employee on <u>any</u> other than a waived rights <u>unpaid</u> leave of absence, who was in pay status less than 2,080 hours during the longevity year, or layoff on <u>October 1</u> receives a prorated annual payment based on the number of hours in pay status during the <u>longevity prior fiscal</u> year; <u>such payment is made on the pay date following the first full pay period in October.</u>
  - (2) An employee on a waived rights leave of absence receives a prorated longevity payment upon returning from leave.
- g5. Payment at Retirement or Death. An employee with at least 120,4800 hours of currently continuous service who retires or dies receives is paid a terminal longevity payment as soon as practicable thereafter. The payment amount is prorated based on hours in pay status since October 1 of the current fiscal year. The payment consists of the following:
- (1) A terminal payment, which that is either:
- <u>(a1)</u> Aa full initial longevity payment based upon the total years of both current continuous and prior service, if the employee has not yet received an initial longevity payment; during the current period of service or
- (b2)—A a prorated payment for time worked from during the current fiscal yearthe preceding October 1 to the date of separation, if previously qualified. The prorated payment is based on hours in pay status since October 1 of the current fiscal year.
- (2) A supplemental payment for all time previously not counted in determining the amount of prior longevity payments. The supplemental payment is limited to the number of full time equated biweekly pay periods completed (multiples of 80 hours).

#### **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373-7618; or to MCSC-Compensation@mi.gov.

# Michigan Civil Service Commission

# Regulation 5.06

Subject:		
Compensation Under Conditions of General Emergency		
SPDOC No.:	Effective Date:	Replaces:
<del>16-06</del> <u>22-14</u>	January 1, 20 <u>23</u> <del>17</del>	Reg. 5.06 (SPDOC <del>07</del> 16- <u>06</u> 14, <del>October January 1</del> 7, 20 <u>1</u> <del>0</del> 7)

# 1. Purpose

This regulation establishes the standards and procedures for to paycompensating employees under conditions of general emergency.

#### 2. CSC Rule References

5-4 Additional Compensation: Overtime, etc.

#### 5-4.1 Additional Compensation

An appointing authority may require an employee to work under special conditions. An eligible employee working under the following special conditions is paid the pay premiums provided in this rule in accordance with the regulations.

\* \* \*

#### 3. Standards

- **A. Definition.** Conditions of general emergency include, but are not necessarily limited to, severe or unusual weather, civil disturbance, loss of utilities, physical\_plant failures, or similar occurrences. Such conditions may be widespread or limited to specific work locations.
- **B.** Administrative Determination. When conditions in an affected area or a specific location warrant, state facilities may be ordered closed or, if closure is not impossible because of the necessity need to continue services, a facility may be declared inaccessible. The decision to close a state facility or declare it inaccessible is at the full discretion of the Governor or designated representative. The appointing authority is responsible for receiving and documenting the appropriate authorization for closure or declared inaccessibility.

#### C. Compensation.

1. When a state facility is closed or declared inaccessible in accordance with this regulation, employees who cannot unable to report for work due to such conditions are granted administrative leave to cover their absence during normally scheduled

hours of work for the a period of closure or declared inaccessibility. An employee who is sent home under such conditions after completing a poartion of the regularly scheduled shift is granted administrative leave for the balance of the shift.

- 2. An employee may be required to work during situations of closure or declared inaccessibility. In these instances, the employee is compensated paid as follows:
  - a. At the employee's base rate of pay during all hours of the employee's regularly scheduled shift.
  - b. In accordance with regulation 5.02, for all hours worked outside the employee's regularly scheduled shift.
- c. In addition to pay, an employee is granted paid time off equal to the number of hours worked during the period of closure or declared inaccessibility.

#### D. Additional Timekeeping Procedures.

- 1. If a state facility has not been closed or declared inaccessible in accordance with the definition in under this procedure, and an employee is absent or is unable to-cannot work because of such conditions, an appointing authority may approve the employee is allowed to use of annual-leave or compensatory-time credits to cover the absence from work. If the employee does not have lacks sufficient credits, or the employee chooses, the employee is placed on lost time.
- 2. When an employee is absent from a scheduled work period, a portion of which is covered by a declaration of closure or inaccessibility, annual leave or compensatory credits may be used to cover that portion of the employee's absence not covered by administrative leave. If sufficient credits are not available, or the employee chooses, the employee is placed on lost time.
- 32. Employees who are absent due to sick or annual—leave usage, or who have previously scheduled annual leave during the a period of closure or inaccessibility, or who have an approved remote work agreement, are not entitled to ineligible for administrative leave.
  - a. If an employee previously on sick or annual leave is scheduled to return to work while the a building remains closed or inaccessible, the employee then becomes is eligible for such administrative leave for the remaining portion of closure or inaccessibility.
  - b. Employees who incur lost time as the result because of applying ication of this regulation receive credit for a completed biweekly work period for all other purposes.

January 1, 202317

# Regulation 5.06: **Compensation Under Conditions of General Emergency**

Page 3 of 3

c. An employee with an approved remote work agreement scheduled to work at a facility declared closed or inaccessible will be directed to work from their approved remote work location.

## **CONTACT**

Questions on this regulation may be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-0837 or 517-373 7618; or to MCSC-Compensation@mi.gov.

# Michigan Civil Service Commission

# Regulation 5.07

Subject:		
Performance-Pay Programs		
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>19-05</del>	<u>January 1, 2023</u> <u>May 1,</u>	Reg. 5.07 (SPDOC <u>1819</u> -0 <mark>75</mark> , <del>January</del> <u>May</u> 1, 2019)
	<del>2019</del>	

# 1. Purpose

This regulation establishes standards for performance-pay programs based on performance of an individual, a team of eligible individuals, or an entire agency.

### 2. CSC Rule References

4-8 Equitable Classification Plan (ECP) Group 4

(a) Performance Pay. All positions in ECP Group 4 are included in a performance-pay program.

\* \* \*

4-9 Equitable Classification Plan (ECP) Groups 1, 2, and 3

\* \* \*

4-9.4 Conditions of Employment in ECP Groups 1, 2, and 3

\* \* \*

- (e) Inclusion in a performance-pay program.
  - (1) Employees occupying positions in ECP Groups 1, 2, or 3 may be included in a performance-pay program. Only the state personnel director is authorized to designate positions or classifications for inclusion in an agency performance-pay program.
  - (2) The appointing authority shall notify employees occupying positions in ECP Groups 1, 2, or 3 who are eligible for conversion to an approved performance management system of the details of the plan and their individual performance standards.

\* \* \*

5-3 Compensation Schedules

\* \* \*

#### 5-3.2 Agency Salary-range Subdivisions

An appointing authority, with the prior written approval of the state personnel director, may implement agency salary-range subdivisions within a salary range. A salary-range subdivision must fall within the range of rates of compensation approved by the civil service commission for the classification. The salary-range subdivision must be based on relevant, job-related agency considerations, such as job complexity, level of responsibility, market conditions, or reporting relationships. The appointing authority shall publish all approved salary-range subdivisions for its affected employees.

\* \* \*

#### 5-3.4 Operation of Compensation Schedules

An employee in the classified service cannot be paid less than the minimum nor more than the maximum authorized in the compensation plan, unless authorized by the state personnel director.

\* \* \*

#### (c) Performance-pay programs.

- (1) Salary range. For each class of positions in a performance-pay program, the civil service commission shall approve a salary range that includes (1) a minimum point, (2) one or more control points, and (3) a maximum point:
  - (A) Minimum point. The minimum point is the lowest base salary payable to an employee in the classification.
  - **(B)** Control point. The control point is the highest base salary payable to an employee in the classification.
  - **(C) Maximum point.** The maximum point is the maximum total salary, including both base salary and any lump sum awards, payable to an employee in the classification during a fiscal year.

#### (2) Performance-pay awards.

(A) Awards authorized. If an employee's position is included in a performance-pay program, the appointing authority, with the approval of the state personnel director, may award the employee an increase in base salary or a lump sum award, or both, in accordance with the compensation plan. The director may set limits on the amount of performance pay that may be awarded in a fiscal year.

#### (B) Performance ratings.

(1) An employee who receives a needs-improvement performance rating or an unsatisfactory interim rating is ineligible for a base-salary increase or lump-sum award.

- **(2)** The base salary of an employee who receives an unsatisfactory interim rating may be reduced in accordance with the compensation plan.
- (d) Conversion of performance-pay schedule to step schedule. If a classification is converted from a performance-pay schedule to a schedule with steps, an employee whose position is converted must be placed at a step at least equal to the employee's base salary under the performance-pay plan at the time of conversion in accordance with the regulations.

\* \* \*

#### 3. Definition

#### A. CSC Rule Definition.

1. **Performance-pay program** means a compensation system in which the state personnel director, on request of an appointing authority, adjusts individual compensation on the basis of individual and group performance evaluations, individual competencies, agency objectives, agency budget, and other job-related factors. The primary purpose of a performance-pay program is to recognize, reward, and encourage exceptional individual and group performance.

#### 4. Standards

- A. Scope. The commission has established performance-pay programs consisting of base-salary and lump sum awards within established pay ranges for employees in designated classifications. Performance-pay programs consist of base-salary and lump-sum awards administered within established pay ranges.
- B. Salary Range. The commission fixes the range of rates of compensation for all classifications.
  - 1. **Classification Ranges.** For each classification level in a performance-pay program, the commission fixes a salary range with minimum, control, and maximum points.
  - 2. **Agency Salary-range Subdivisions.** As authorized in rule 5-3.2, an appointing authority may ask Civil Service to approve one or more salary-range subdivisions within a class salary range established by the commission. Each salary-range subdivision must have a subdivision control point (i.e., a base pay ceiling) that is less than the class's control point. The appointing authority shall give notice of an approved subdivision to each employee whose position is subject to its limits.
- **C. Performance-Pay.** The appointing authority may grant a performance-pay award in accordance with this regulation. The agency's ability to pay may be considered in setting any performance-pay award amounts. Subject to the below limits, Aa performance-pay award may consist of be a base-salary increase, a lump-sum award, or both.
  - 1. **Base-Salary Increase.** Any <u>employee may receive an increase in base salary increase may be up to the lower of (1) the class's control point or (2) any applicable base ceiling</u>

under an approved salary-range subdivision. Any base salary increase in any fiscal year also cannot exceed 5% of the employee's prior base salary. If the employee's base salary is at the control point or any applicable base ceiling, the employee cannot receive a base salary increase award.

2. Lump-Sum Award. Any employee may receive a lump-sum award that doescan-not exceed the difference between the control point and maximum point. If the employee's base salary is below the control point or any applicable base ceiling, the employee can receive both a lump sum award and a base salary increase. If the employee's base salary is at the control point or any applicable base ceiling, the employee can only receive a lump sum award.

#### 3. Other Conditions.

- a. The total of an employee's lump-sum awards and base salary in a fiscal year cannot exceed the salary range's maximum point.
- b. The salary range's minimum point is the lowest base salary for an individual appointed, reclassified, or converted to in a classification in the performance-pay program.
- c. An employee's base salary cannot exceed the lower of (1) the control point or (2) any applicable base ceiling under an approved salary-range subdivision.
- d. An employee must receive a meets-expectations,—a high-performing, or—an equivalent performance rating before receiving any performance-pay award.
- e. If an employee receives an unsatisfactory probationary, interim, or follow-up rating, the employee's base salary may be reduced by up to 5% in a fiscal year, unless a different limit is specified for a class or group.
- f. The maximum performance pay increase or decrease in base salary in any fiscal year cannot exceed 5% of the employee's prior base salary.
- 4. **Other Conditions for ECP Groups 1, 2, and 3**. The following limits on performance-pay apply to employees in ECP Groups 1, 2, and 3:
  - a. An appointing authority must submit to the director a request to add or delete a classification to or from a performance-management plans, changes, and additions must be approved before implementation.
  - b. The total of all performance base-pay increases and lump-sum awards during any a one fiscal year cannot exceed 5% of the employee's prior base salary.
- 5. Other Conditions for SES, SEMAS, and ECP Group-4. The following limits on performance pay apply to employees in the SES, SEMAS, and ECP Group 4:

- a. Appointment Pay Rates. The appointing authority must submit a request for pay approval to Civil Service for all appointments, including transfers, to SES, Group-4, and SEMAS positions, certifying that a performance-management plan is in place for the employee. In the SES or SEMAS, a limited-term appointment agreement and certification that Civil Service approved a current position description must be submitted with the request. Requests must be submitted before the pay period ends when the appointment or reappointment is effective.
  - (1) **Performance-Pay.** An appointing authority must request pay approval to Civil Service by the automated web-based approval process for all performance-pay base-salary and lump-sum awards for employees in SES, Group-4, and SEMAS positions, certifying that a performance evaluation has been completed. Requests must be submitted within 12 months of the performance evaluation's effective date. Retroactive base-salary increases cannot exceed seven pay periods from Civil Service receipt of the request.
  - **(2) Appointment- and Performance-Pay.** Civil Service shall approve or disapprove properly documented appointment-pay requests within 7 days of receipt and performance-pay requests within 14 days. Special extenuating circumstances may provide a basis for retroactive approval beyond seven pay periods. The director must approve any request for consideration of extenuating circumstances.
- b. The total of all performance base pay increases and lump sum awards during a fiscal year cannot exceed 10% of the employee's prior base salary.
- e.—\_Any performance award over 5% of the employee's base salary should typically be a lump-sum award. Any award over 5% of the employee's base salary or an agency maximum lump sum amount\_and\_must be submitted by the appointing authority to the <a href="state">state</a> personnel director for approval under statewide performance criteria with the following documentation:
  - (1) **Statement of support from the agency director**. The statement should address the employee's accomplishments during the rating period, the importance of the employee's achievements to the agency's strategic-goal attainment, and the effort or competencies applied by the employee to achieve positive results. If a base-salary increase over 5% is requested, the amount sought and why the base-salary increase is warranted must also be addressed. The statement may address other factors the agency director believes should be considered.
  - (2) **Employee's performance standards and evaluation.** A copy of the signed and dated performance evaluation must be provided that includes the performance factors and objectives, relevant competencies, and supervisor's evaluation.

- 6. Other Conditions for Senior Attorneys. The following limits on performance pay apply to Group 2 attorneys in performance pay classifications in the Department of Attorney General:
  - a. The maximum performance-pay increase or decrease in base salary in a fiscal year cannot exceed 8% of the employee's prior base salary.
  - b. The total of all performance base salary increases and lump sum awards during a fiscal year cannot exceed 8% of the employee's prior base salary.
- 76. Working Out of Class in Performance-Pay Classifications. An employee may be temporarily assigned to perform the duties of a properly classified position in a performance-pay classification with a higher maximum salary or control point. In such cases, the employee's base salary cannot exceed the midpoint between the employee's current base salary and the fixed control point or salary-range subdivisions of the temporarily assigned classification.
- **D. Performance Evaluations.** The appointing authority must evaluate and rate each employee in a performance-pay program at least once annually. The appointing authority may use any reasonable evaluation and rating methods but must report each performance evaluation to the director as required.
  - Agency-wide Evaluation Plan. Each agency must establish an annual cycle for performance evaluation, a process to ensure internal consistency of evaluations and pay recommendations, and measures to ensure timely submission of performancepay requests to Civil Service for approval.
  - 2. Performance Evaluation Documentation, Audit, and Reporting. For audit by Civil Service, the appointing authority must document and retain the performance plan and evaluation for all employees in a performance-pay program using the appropriate Civil Service form or agency form approved by Civil Service. If an audit finds inadequate documentation, the appointing authority will be required to submit performance-evaluation documents to Civil Service to receive performance-pay approvals. The appointing authority must report each Group-4, SES, and SEMAS employee rating to Civil Service by the automated web-based process when seeking performance-pay approval.
- **E. Appointment or Conversion to the SES or SEMAS.** Upon appointment or conversion to the SES or SEMAS, the base salary cannot be below the minimum point or above the control point. The first salary review may be given after six months.
- F. New Hire, Promotion Appointment, or Conversion to ECP Groups 1, 2, 3, or 4. Upon new hire, promotion, or conversion into an ECP Group 1, 2, 3, or 4 class in a performance-pay program, the base salary cannot exceed the midpoint between the base salary before hire, promotion, or conversion and the range's control point. If a salary-range subdivision applies, the base salary cannot exceed the subdivision's ceiling. The first salary review

may be given after six months. If the rationale is documented and retained for audit, an appointing authority may authorize a higher rate without the director's approval if:

- 1. There is difficulty recruiting for the particular position.
- 2. The prospective employee is currently employed outside the classified service <u>earning</u> an <u>annual and a salary</u> above the midpoint formula <u>and a higher rate</u> is necessary to attract the employee.
- 3. The prospective employee has special experience or education well beyond the minimum qualifications in the specification for the position's classification.
- 4. The prospective employee is currently or was previously a state employee and has experience pertinent to the position.
- G. Reclassification from Staff Attorney to Senior Attorney. Upon reclassification from Staff Attorney to Senior Attorney, the base salary cannot exceed the greater of (1) the midpoint between the base salary before reclassification and the control point of the Senior Attorney range or (2) 8% above the base salary before reclassification.
- **HG.** Reclassification to a Performance-Pay Classification with a Higher Control Point. Upon reclassification within the performance-pay program, the <a href="mailto:employee's">employee's</a> base salary cannot exceed the midpoint between (1) the base salary before reclassification and (2) the <a href="mailto:new salary range's">new salary range's</a> control point or ceiling of any salary-range subdivision—of the <a href="mailto:new salary range">new salary range</a>.
- IH. Effect of Position Freeze. An employee occupying a <u>frozen</u> position <u>frozen</u> for <u>classification or level</u> in a performance-pay program must receive annual performance evaluations, but cannot receive a base-pay increase, unless the <u>position's</u> proper classification's maximum salary, if a classification with steps, or control point, if a performance-pay classification, exceeds the employee's base salary. An employee occupying a frozen position is <u>otherwise</u> eligible to receive lump-sum performance awards.
- **JI. General Salary Increases.** A general-pay adjustment is based on the employee's base salary on the general-pay adjustment's effective date.
- **KJ.** Conversion from Performance-Pay Schedule to Step Schedule. If the director converts all or part of a class from a performance-pay schedule to a schedule with steps, an employee is placed at a pay step at least equal to the employee's base salary under the performance-pay plan-program when converted. The employee's hours since step are set to the number of hours in pay status since the last performance evaluation's effective date, which must be less than 2,080 hours. If the employee served less than 2,080 hours in the position and has not received a performance evaluation, the hours since step are set to the number of hours in pay status in the position.

January 1, 2023May
1, 2019

#### Regulation 5.07: Performance-Pay Programs

Page 8 of 8

- **LK**.**Exceptions.** Appointing authorities may ask the director to approve exceptions to these standards.
- ML. Critical-Position-Premium Pay. Each fiscal year, an appointing authority may designate up to 2% of its filled NERE positions as critical after providing the state personnel director written notice of and justification for the designation and indicating the amount of the premium. Any designation counts toward the 2% limit for the entirety of any fiscal year in which a designation is effective. A designation expires after twelve months, but may be renewed by an appointing authority in writing to the director. An appointing authority may also remove a designation by providing written notice to the director. A designation as critical, its removal, and the amount of any premium cannot be grieved. A designation cannot be made retroactive before the pay period when the director receives notice.

#### **CONTACT**

Questions on this regulation 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.

# Michigan Civil Service Commission Regulation 5.08

Subject:		
	Paid	Holidays
SPDOC No.:	Effective Date:	Replaces:
<del>21-07</del> <u>22-14</u>	January 1, 202 <mark>2</mark> 3	Reg. 5.08 (SPDOC <u>1821</u> -07, January 1, 20 <u>22</u> <del>19</del> )

#### 1. Purpose

This regulation establishes standards for paid state holiday absence for career employees.

#### 2. CSC Rule References

#### 5-10 Paid Holidays and Leave

#### 5-10.1 Paid Holidays

A full-time career employee is allowed 8 hours paid absence from work on 13 approved state holidays in odd numbered years and 14 approved state holidays in even numbered years. A less than full-time career employee is allowed paid holiday absence in proportion to the time actually in pay status, in accordance with the regulations.

- (a) **Procedure.** The state personnel director shall establish the appropriate dates for holiday observances and additional standards for determining employee eligibility.
- **(b)** Work on a holiday. An appointing authority may require an employee to work on a paid holiday. Such an employee is compensated in accordance with any applicable provisions governing compensation for overtime and shift differential.

#### 3. Standards

**A.** State Holidays. Except as otherwise provided in § 3.D, Aa career employee is allowed paid absence from work, in accordance with § 3.C, on the following days observed in accordance with § 3.B:

Day	Observance
New Year's	January 1
Martin Luther King, Jr.	Third Monday in January
Presidents	Third Monday in February
Memorial	Last Monday in May
Juneteenth	June 19

Independence	July 4
Labor	First Monday in September
Election Day	General election day (even-numbered years)
Veterans	November 11
Thanksgiving	Fourth Thursday in November
Day After Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas	December 25
New Year's Eve	December 31

#### B. Observance.

- 1. Employees observe the holiday on the holiday itself if on a scheduled workday.
- 2. A holiday falling on Saturday is observed the preceding Friday. A holiday falling on Sunday is observed the following Monday.
  - a. If Christmas Eve or New Year's Eve falls on Friday, the holiday is observed the preceding Thursday. If Christmas Eve or New Year's Eve falls on Sunday, the holiday is observed the preceding Friday. The director may establish alternate observance days for these holidays before the fiscal year begins.
  - b. Equivalent provisions for time off for holidays outside the scheduled work week are made for employees working other than a Monday-to-Friday schedule.
  - c. Holiday observance cannot be used to extend employment, unless § 3.C.1.c applies.

#### C. Eligibility.

- 1. A full-time career employee, regardless of work schedule, is allowed paid holiday absence by being in full pay status—on:
  - a. On T the holiday itself, as demonstrated by actually working on the holiday;
  - b. <u>For the entirety of Tthe employee's last scheduled workday before the holiday and first scheduled workday after the holiday when both days fall in the same biweekly pay period;</u>
  - c. For the entirety of Tthe employee's last scheduled workday before the holiday when the holiday occurs or is observed on the last scheduled workday of a biweekly pay period or the last scheduled workday of the month in which the employee is retiring; or

- d. <u>For the entirety of **T**the employee's first scheduled workday after the holiday when the holiday occurs or is observed on the first scheduled workday of a biweekly pay period.</u>
- 2. A newly hired <u>career</u> employee is not allowed paid holiday absence for a holiday occurring or observed on the first scheduled workday of the initial biweekly pay period.
- 3. An employee returning from layoff or leave of absence whose first scheduled workday is the day <u>immediately following after</u> a holiday is allowed paid holiday absence for thate holiday.
- 4. A career employee working less than full-time is allowed paid holiday absence as follows:
  - a. <u>An Eemployees otherwise</u> in full<u>-time</u> pay status for the pay period when the holiday falls <u>are-is</u> allowed full holiday credit of eight hours.
  - b. An Eemployees not in full-time pay status for the pay period when the holiday falls are is allowed prorated holiday credit based on the average hours in pay status (1) during the six biweekly pay periods (including pay periods when not in pay status) before the pay period when the holiday falls or (2) since hire or return for an employees who hasve completed less than six biweekly pay periods since hire or return from layoff or leave.
- 5. A career employee on an approved alternative work schedule with a regularly scheduled workday of over eight hours that falls on a holiday's observance may use accrued annual leave for any hours beyond eight to remain in pay status for the entire workday.
- **D.** Work on Holiday. An employee required to work on a holiday is paid Payment for work on the a holiday is in accordance with regulation 5.02.

#### **CONTACT**

Questions on this regulation 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.

### Michigan Civil Service Commission

## Regulation 5.09

Subject:		
Annual, Pe	rsonal, and School a	and Community Participation Leave
SPDOC No.:	Effective Date:	Replaces:
<del>18-07</del> <u>22-14</u>	January 1, 20 <u>23</u> 19	Reg. 5.09 (SPDOC <u>1618</u> -0 <u>76</u> , January 1, 201 <u>79</u> )

#### 1. Purpose

This regulation establishes standards for paid annual, school and community participation, and personal leave.

#### 2. CSC Rule References

5-10 Paid Holidays and Leave

\* \* \*

#### 5-10.2 Paid Leave

- (a) Leave accrual and accumulation.
  - (1) Annual and personal leave.
    - (A) Initial annual leave grant. Upon entry into the classified service, an eligible employee is credited with an initial annual leave grant of 16 hours, which is immediately available for use, upon approval of the appointing authority. The 16 hours of annual leave cannot be credited to an employee more than once in a calendar year.
    - **(B)** Annual leave accrual and accumulation. An eligible employee has annual leave credited in accordance with the following leave table:

1. Years of Service	2. Hours of Annual Leave Accrued (for 80 hours of service)	3.  Maximum  Accumulation (total hours of annual and personal leave)	4. Maximum Accumulation that may be paid off
Less than 1	4.0	296	256
1 – 5	4.7	296	256
5 – 10	5.3	311	271
10 – 15	5.9	326	286

January 1, 202319	Regulatior	Regulation 5.09: Annual, Personal, and School and Community  Participation Leave			f 6
	15 – 20	6.5	341	301	
	20 – 25	7.1	346	306	
	25 – 30	7.7	356	316	
	30 - 35	8.4	356	316	
	35 - 40	9.0	356	316	
	40 - 45	9.6	356	316	
	45 and above	10.2	356	316	

- (C) Prorated annual leave. An employee paid for less than 80 hours in a biweekly pay period is entitled to a prorated amount of annual leave. Paid service in excess of 80 hours in a biweekly pay period is not counted.
- **(D) Personal leave.** In addition to annual leave, an eligible employee with at least 6 months of continuous satisfactory service on October 1 of each year is credited with 16 hours of personal leave.
- **(E)** *Maximum accrual.* An employee may accumulate credited annual and personal leave hours up to the combined maximum authorized in column 3 of the leave table in subsection (a)(1)(B). Any annual or personal leave hours earned above the maximum accrual cannot be credited and the hours are lost.
- **(F) Maximum payoff.** If any employee receives a payoff of all accumulated annual and personal leave hours, the maximum amount that may be paid off is the amount authorized in column 4 of the leave table in subsection (a)(1)(B). Any annual or personal leave hours accumulated above the maximum amount authorized in column 4 are lost if not used before payoff.
- (2) School and community participation leave. An eligible employee who has completed 1,040 hours of satisfactory service is credited with 8 hours of school and community participation leave each October 1. School and community participation leave credits not used by the last pay period of the fiscal year are lost.

\* \* \*

#### (b) Leave use and limitations.

(1) Crediting and use of annual, personal, and school and community participation leave credits. An employee is credited with annual, personal, and school and community participation leave in accordance with the compensation plan. An employee may use annual, personal, and school and community participation leave when approved by the appointing authority in accordance with the compensation plan.

- (3) Other limitations. Annual, personal, school and community participation, and sick leave cannot be authorized, accumulated, or credited in excess of limits established in the compensation plan.
- **(4) Special credit for annual leave and longevity.** Solely for the purpose of annual leave and longevity credit, a career employee is allowed state service credit for the following:
  - (A) Service in a nonelective excepted or exempted position in a principal department, the legislature, or the supreme court, that immediately precedes entry or return to the classified service.
  - (B) Up to five years of honorable service in the armed forces of the United States completed before entry into the classified service. When an employee who has received additional annual leave and longevitymore than five years of currently credited continuous service separates from the classified service and subsequently returns, military service previously credited is recognized as prior service, subject to requalification for the benefits of this rule.

#### 3. Standards

#### A. Annual Leave.

- 1. **Initial Grant.** Upon entering the classified service, a career employee is credited 16 hours of annual leave. An employee can only be credited an initial leave grant once per calendar year.
- 2. **Crediting and Accumulation.** A career employee accrues annual leave for each 80 hours in full pay status in accordance with the annual-leave table in rule 5-10.2(a)(1)(B).
  - a. An employee accrues paid annual leave in accordance with both prior and currently continuous classified service upon completing 10,400 hours of currently continuous service.
  - b. Paid service over 80 hours in a biweekly pay period is not counted.
  - c. When paid service does not total 80 hours in a biweekly pay period, leave credits are prorated based on hours in pay status for that pay period.
  - d. Temporary layoff time is included in computing service hours for annual-leave credits.
  - e. Annual leave is credited at the end of each biweekly pay period.
  - f. Career employees eligible for special credit for unclassified or military service for annual leave under rule 5-10.2 must satisfy the standards and documentation requirements used for longevity under regulation 5.05.
  - g. An employee cannot accumulate annual-leave above the maximum accumulation in the annual-leave table, except for:

- (1) Aan assaulted employee covered by PA 293 of 1975; PA 414 of 1976; PA 131 of 1978; or PA 452 of 1978.
- (2) An employee suspended or dismissed who is subsequently returned to employment with full service benefits.

#### 3. **Use.**

- a. An employee may use the initial grant of 16 hours immediately upon hire, with the appointing authority's prior approval.
- b. Annual leave is only available in biweekly pay periods after the period when it is earned. Annual leave cannot be credited or used in anticipation of future accruals. Absent applicable accrued leave, compensation reductions for lost time are made for the pay period when the absence occurred.
- c. An employee can only use annual leave with the appointing authority's prior approval, except that an employee can use accrued annual leave if insufficient sick leave exists to cover an absence for which sick leave is normally used. In this circumstance, the standards of regulation 5.10 on sick-leave use apply.
- d. Annual leave cannot be used to extend employment.
- e. An employee allowed annual-leave accumulation above the maximums under § 3.A.2.g has one year after returning to employment to reduce the balance below the maximum. After one year, any excess accrual is lost.
- f. Consistent with operational needs, an appointing authority shall honor a seniority-based vacation for 2019 using annual leave approved under contractual provisions in 2018.
- 4. **Transfer of Leave.** An employee who moves from one state agency to another may transfer up to 80 hours of accrued annual leave. Annual leave above 80 hours may be transferred with the new appointing authority's approval. An employee is paid at the current pay rate for unused annual leave that is not transferred. This section does not apply to transfers from executive reorganizations.
- 5. **Layoff.** An employee separated by layoff, other than a temporary layoff, may freeze annual leave up to the accrued balance at layoff or be paid off up to the appropriate maximum payoff in the annual-leave table.
  - a. If the employee freezes annual leave, the balance is retained until the employee elects to be paid off or until the employee's recall rights expire, whichever occurs first. The payoff amount is calculated at the employee's last pay rate at which the employee last received pay.
  - b. An employee who elects payoff for annual leave when separated by layoff may buy back annual leave upon recall, subject to the following conditions:

January 1, 202319

# Regulation 5.09: **Annual, Personal, and School and Community Participation Leave**

Page 5 of 6

- (1) An employee recalled to the agency from which laid off may buy back any portion of annual leave up to the amount paid off.
- (2) An employee appointed to a permanent position in a different agency while on a recall list may buy back up to 80 hours of any portion of annual leave that had been paid off.
- (3) An employee buys back the annual leave at the returning pay rate.
- (4) Any payment is made to the agency that made the original payoff.
- (5) This option may be exercised only once per recall and must be exercised during the first 13 pay periods of the recall.

#### 6. Payoff on Retirement, Death, or Separation.

- a. When employment is terminated for any reason, the employee or beneficiary is paid the balance of unused annual leave at the employee's last pay rate at which the employee last received pay.
- b. Payment for unused annual leave is limited to the applicable maximum in the annual-leave table. This includes employees permitted to accrue above the maximum under § 3.A.2.g.
- 7. **Deferred Hours.** Deferred-hour credits are administered in the same manner as annual leave.
- 8. **Annual-Leave Transfer.** A direct leave-transfer process and central leave bank are available for nonexclusively represented employees (NEREs) facing financial hardship due to serious injury or prolonged illness of the employee or the employee's dependent spouse, child, or parent.

#### a. General Provisions.

- (1) An employee may receive a direct transfer of annual leave from employees in the same agency or through the central leave bank administered by DTMB Financial Services, if the receiving employee has (a) successfully completed the initial probationary period, (b) exhausted all leave credits, and (c) had the absence approved.
- (2) An employee may receive a combined maximum donation of 240 hours per calendar year.
- (3) Donations of annual leave by direct transfer or to the central leave bank are irrevocable and limited to a combined maximum of 40 hours per calendar year. Donations must be in increments of one hour.
- (4) Donation to and receipt from direct leave transfer or the central leave bank require the appointing authority's approval on an OSE form.

January 1, 202319

# Regulation 5.09: **Annual, Personal, and School and Community Participation Leave**

Page 6 of 6

(5) Unused donated annual leave is forwarded to the central leave bank.

#### b. Direct Leave Transfer.

- (1) Direct leave transfers must be made before or while the employee is absent.
- (2) The right to donate and receive hours through direct transfer is not limited to NEREs if a collective bargaining agreement allows similar donation.
- **B.** Personal Leave. Each October 1, a full-time career employees who has completed 1,040 hours of with at least six months' continuous satisfactory service are credited with 16 annual-leave hours. A less than full-time employee receives proportionate credit based on the average hours in pay status during the six full biweekly pay periods preceding October 1.
  - 1. A full-time employee on a leave of absence on October 1 receives the full grant upon return to active employment status. A less than full-time employee on a leave of absence on October 1 who has completed less than six biweekly pay periods receives a partial grant based on the average hours in pay status since return from leave.
  - 2. An employee recalled from layoff receives a personal-leave credit prorated for the balance of the fiscal year after recall.
- C. School and Community Participation Leave. <u>Each October 1</u>, <u>Aa</u> career <u>employeeNERE</u> who has completed 1,040 hours of satisfactory service <del>annually</del> receives eight hours of school and community participation leave.
  - An employee may use the leave to participate in any school-sponsored activity
    including tutoring, field trips, classroom programs, school committees, assisting
    athletic or arts programs, and school clubs. The leave may also be used to actively
    participate in any structured secular community activity sponsored by a
    governmental or non-profit community agency, but not for mere attendance at school
    or community events.
  - 2. The leave may only be used in increments of one hour and only for qualifying events occurring during an employee's scheduled worktime.
  - 3. An employee must obtain the appointing authority's prior written approval.
  - 4. The leave is credited to employees each October 1 and does not carry forward beyond the fiscal year.

#### **CONTACT**

Questions on this regulation 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.

# Michigan Civil Service Commission Regulation 5.10

Subject:		
	Sick and	Funeral Leave
SPDOC No.:	Effective Date:	Replaces:
2 <u>2-14</u> 1-07	January 1, 202 <u>3</u> 2	Reg. 5.10 (SPDOC 21-017, May 16 January 1, 20221)

#### 1. Purpose

This regulation establishes standards and procedures for paid sick and funeral leave.

#### 2. CSC Rule References

5-10 Paid Holidays and Leave

\* \* \*

5-10.2 Paid Leave

(a) Leave accrual and accumulation.

\* \* \*

- (3) Sick leave. A career employee in the classified service is credited with 4 hours of sick leave with pay for each completed 80 hours of service. An employee paid for less than 80 hours in a biweekly pay period is entitled to a prorated amount of sick leave. Paid service in excess of 80 hours in a biweekly pay period is not counted.
- (4) Funeral leave. In the event of the death of an employee's spouse, child, parent, or sibling, the employee will be allowed 8 hours of funeral leave on the day of the funeral to attend the service.
- (b) Leave use and limitations.

\* \* \*

- (2) Crediting and use of sick leave. An employee is credited with sick leave in accordance with the compensation plan. An employee may use sick leave in accordance with the compensation plan. An appointing authority may require an employee to present medical certification of physical or mental fitness to continue working. The appointing authority may require an employee to be examined at state expense by a physician selected by the appointing authority.
- (3) Other limitations. Annual, personal, school and community participation, funeral, and sick leave cannot be authorized, accumulated, or credited in excess of limits established in the compensation plan.

\* \* \*

(5) Use of funeral leave. An employee may use funeral leave when approved by the appointing authority in accordance with the compensation plan.

#### 3. Standards

- **A. Sick Leave Crediting and Accumulation.** Every career employee is credited with 4 hours of sick leave for each 80 hours of service completed.
  - 1. Paid service above 80 hours in a biweekly work pay period is not counted.
  - 2. If paid service is below 80 hours in a biweekly work pay period, leave credits are prorated based on hours in pay status for that pay period.
  - 3. Temporary layoff and Plan—A time is included in computing service hours for sick—leave credits, under rule 2-4.4.
  - 4. Sick leave is credited after the biweekly work pay period when it is earned.
  - 5. Sick leave is accumulated during the employee's period of classified service.

#### B. Sick Leave Use.

- 1. Any sick leave use must have the appointing authority's approval.
- 2. Sick leave is <u>only</u> available <u>only</u> in biweekly <u>pay</u> periods after it is earned. Sick leave cannot be credited or used in anticipation of future accruals. Absent <u>applicable</u> accrued leave, compensation reductions for lost time <u>areis</u> made for the <u>paywork</u> period when <u>an the</u> absence occurred. <u>An The</u> employee may elect to not use <u>annual other paid</u> leave to cover such absence.
- 3. The employee must certify all sick leave use by such evidence as the appointing authority requires. Falsifying such evidence is cause for dismissal.
- 4. An employee may use Ssick leave may be used by an employee for the following:
  - a. Personal illness, injury, serious health condition, temporary disability, exposure to a contagious disease endangering others, or illness or injury in the immediate family necessitating absence from work. Immediate family is defined as means the employee's spouse, children, grandchildren, parents, foster parents, parents-inlaw, siblings, and or any persons whose financial or physical care is the employee's principal responsibility.
  - b. Appointments with a doctor, dentist, or other recognized practitioner to the extent required to complete such appointments when appointments that cannot be arranged during non-duty hours.
  - c. Death or attendance at the funeral of a relative or person whose financial or physical care is the employee's principal responsibility.

- d. Work incapacitating injury or illness for which an employee <u>may beis</u> eligible for disability benefit under the Michigan Worker's- <u>Disability</u> Compensation Act, to supplement the <u>employee's</u> disability benefit to the employee's regular wage.
- C. Sick Leave for 2021 COVID-19 Vaccine. All career employees will receive a one time grant of 8 hours of sick leave to be added to their sick leave balance for the pay period beginning May 16, 2021, or as soon as administratively feasible, to implement in the state's payroll and timekeeping systems. This leave is intended to be used by the employee to obtain the COVID 19 vaccine during 2021. Use of this leave is subject to the same conditions as sick leave provided in this regulation and does not require exhaustion of any other accrued paid leave.

#### **DC.** Transfer of Sick Leave.

- 1. Employees who move to another state agency and remain in the classified service are credited with all unused sick leave by the receiving agencyies.
- 2. Employees moving between classified and executive branch unclassified positions transfer all <u>accrued\_unused\_sick leave\_if\_civil-service benefits were elected for the unclassified position</u>.

#### **ED**. Separations.

- 1. Employees continuously employed without a break in service since before October 1, 1980.
  - a. An employee separating from the classified service because of death, retirement, or vested retirement under a state retirement act, or expiration of recall rights or a waived-rights leave is paid for 50% percent of unused sick leave as of on the separation's effective date of separation. In case of For death, payment is made to the employee's beneficiary or estate.
  - b. An employee separating from the classified service for any other reason is paid for the percentage of unused sick leave indicated below:

Sick Leave Balance (hours)	Percentage Paid
<104	0
104-208	10
209-416	20
417-624	30
625-832	40
>832	50

- c. Payment is made at the employee's last rate the employee last received of pay by the agency from which the employee separates.
- d. Employees who receive payoffs are not entitled to buy back or have unpaid balances restored if returning to classified employment.

#### 2. Employees not continuously employed since before October 1, 1980.

- a. Employees separating from the classified service for any reason are not entitled to payoff of sick—leave balances.
- b. Employees reinstated or rehired to a career position within three years of separation have previous sick\_-leave balances restored.

#### F. Recall.

- 1.—Sick leave balances are credited to a laid-off employee upon return to employment in the state classified service before the expiration of recall rights.
  - 2. Employees hired before October 1, 1980, who are not recalled to employment from layoff are entitled to payoff of unused balances at their last rate of pay, as indicated in the table above.

#### G. Leave of Absence.

- **1.** Sick leave balances are not liquidated or paid off at the start of any leave of absence.
  - 2. If an employee separates directly from a leave of absence, liquidation or payoff is in the same manner as a laid off employee who does not return.

#### H. Funeral Leave

- Any funeral leave use must have the appointing authority's approval. Funeral leave
  is available only on the date of the funeral or memorial service for an employee's
  spouse, child, parent, or sibling occurring during the employee's scheduled work
  hours. Only one funeral or memorial service per spouse, child, parent, or sibling is
  eligible for funeral leave.
- 2. Approved funeral leave use is coded as FNLV on the employee's timesheet.
- 3. Not more than 8 hours of FNLV may be used for each eligible service. FNLV may be used only on the date of the service. FNLV is not carried over, accrued, or paid off.
- 4. The employee must certify all funeral leave use by such evidence as the appointing authority requires. Falsifying such evidence is cause for dismissal.

#### **CONTACT**

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

### Michigan Civil Service Commission

## Regulation 5.11

Subject:		
Comp	<del>ensating</del> Employees	Occupying Multiple Positions
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>16-06</del>	January 1, 20 <u>23</u> <del>17</del>	Reg. 5.11 (SPDOC <u>16-06</u> <del>07-14</del> , <del>October 7,</del>
		<del>2007</del> January 1, 2017)

#### 1. Purpose

This regulation establishes the standards and procedures for compensating employees who occupy multiple positions.

#### 2. CSC Rule References

#### 5-3 Compensation Schedules

\* \* \*

#### 5-3.7 Compensation from Other State Sources

A classified employee who concurrently occupies more than one position in the state service cannot be credited with more than 80 hours in pay status for any purpose, except salary. Salary is prorated and paid by each agency on the basis of time actually worked for each agency.

\* \* \*

#### 3. Standards

- **A.** <u>Allowed.</u> A classified employee may concurrently occupy <u>more than one multiple</u> positions in the state service, in either the same or different agencies.
- **B.** Limitations. An appointing authority cannot appoint an employee from a different another agency's employee to a second position without first obtaining documentation from the employee's primary other agencyappointing authority allowing the employee to engage in supplemental employment.
- **C.** Compensation, Longevity, and Fringe Benefits. The employee is compensated paid by the an agency for those hours worked in the agency.
  - 1. Eligibility for overtime payment is based on the <u>combined</u> number of hours worked by the employee for all agencies combined.
  - 2. An employee cannot be credited with more than 80 hours in pay status per pay period for any purpose, except salary.

- **D. Proration.** Overtime, longevity, and fringe benefits for career employees occupying positions in <u>multiplemore than one</u> agenc<u>iesy</u> are prorated as follows:
  - 1. For Aan employee occupying a full-time position plus and one or more part-time or permanent intermittent positions:
    - a. The <u>primary</u> agency, for which the employee works full-time, (primary agency) compensates pays the employee at straight\_-time rates for regularly scheduled shifts. All time that the employee workeds in athe-part-time or permanent intermittent position is paid in accordance with overtime regulations 5.02.
    - b. The primary agency for which the employee works full time provides the complete longevity and fringe benefit package.
  - 2. For Aan employee occupying more than one multiple part-time or permanent-intermittent positions, but no full-time position.
    - a. If the combined total number of hours the employee is regularly scheduled hours of to work equals or is less than 80 hours aper pay period is 80 or fewer:
      - (1) The employee is paid <u>at straight-time rates</u> for all regularly scheduled work hours <u>at straight time rates</u>. An eligible employee is paid for overtime worked in accordance with regulation 5.02 by the agency for which the overtime is worked.
      - (2) Each agency provides longevity payment and fringe benefits in proportion to the number of regularly scheduled hours in the pay period that the employee is in pay status.
    - b. If the combined total number of hours the employee is regularly scheduled hours of to work per pay period exceeds 80 hours:
      - (1) The primary agency compensates the employee is paid at straight\_-time rates by the agency beginning with that for which the employee has the longest service. This continues until an agency's Those agencies whose regular scheduling of the employee causes the employee to work in excess of over 80 hours in a pay period must compensate the employee for such Those excess hours must be paid in accordance with regulation 5.02. The employee is also paid must be compensated for any other overtime hours worked by the agency for which the overtime it is worked.
      - (2) The proration of f<u>F</u>ringe benefits and longevity <u>are prorated</u> between those agencies in proportion to the number of regularly scheduled hours paid at straight time rates.
- E. <u>Leave Use</u>. An employee's <u>may use</u> accrued leave balances <del>may be used to the extent necessary</del> for absence from scheduled work in either agency or any position.

January 1, 202317

# Regulation 5.11: **Compensating Employees Occupying Multiple**Positions

Page 3 of 3

#### **CONTACT**

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

# Michigan Civil Service Commission Regulation 5.12

Subject:		
	Seve	rance Pay
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>18-03</del>	January 1, 20 <u>23<mark>19</mark></u>	Reg. 5.12 (SPDOC 168-036, January 1, 20197)

#### 1. Purpose

This regulation establishes standards for severance pay for eligible employees.

#### 2. CSC Rule References

5-6 Additional Compensation: Miscellaneous

\* \* \*

#### 5-6.10 Severance Pay

- (a) Eligibility.
  - (1) *Employees.* The following employees are eligible for severance pay if they meet the criteria in subsection (a)(2) and are not disqualified by the criteria in subsection (a)(3):
    - (A) An "agency based" employee of the department of health and human services laid off because of deinstitutionalization of the department of health and human services resident population after October 1, 1996.
    - **(B)** A nonexclusively represented employee who is indefinitely laid off on or after October 1, 1995.
  - (2) Criteria. An employee is eligible if the employee was (1) laid off for at least 6 months, (2) was laid off in satisfactory employment status, and (3) was not separated from a temporary or limited-term appointment.
  - **(3) Disqualification.** An otherwise eligible employee is disqualified from receiving severance pay for any of the following reasons:
    - (A) The employee dies before accepting payment.
    - **(B)** The employee is hired in any position in the classified service.
    - (C) The employee refuses recall to state employment located within a 75-mile radius of the agency from which the employee was laid off.
    - **(D)** The employee is recalled to an indefinite appointment in a position covered by a collective bargaining agreement, in which case the agreement controls.

- **(E)** The employee is hired for any position outside of the classified service and the initial base hourly rate for the position is 75 percent or more of the employee's final base hourly rate in the position from which the employee was laid off.
- **(b)** *Time limits.* The appointing authority shall notify an employee of the employee's severance pay option 6 months and 12 months after the layoff.
  - (1) The employee may accept in writing the lump sum severance payment at any time after the first notice until 14 calendar days after the second notice. The employee is deemed to have rejected severance pay if the employee does not timely accept the severance pay in writing.
  - (2) If the employee accepts severance pay, the appointing authority shall pay the employee within 60 calendar days and remove the employee's name from all recall and layoff lists.
  - (3) Acceptance of severance pay constitutes a break in service and terminates any rights to continuous service credits for any purpose, including annual leave accrual and longevity.
- (c) Severance pay rates. The severance payment for an eligible employee who accepts severance pay is determined by the regulations and the following table:

Years of Service	Weeks of Severance Pay
1	1
2	2
3	3
4	4
5	5
6	7
7	9
8	11
9	13
10	15
11	18
12	21

Years of Service	Weeks of Severance Pay
13	24
14	27
15	30
16	33
17	36
18	39
19	42
20	45
21	48
22	51
23 or more	52

(d) If an employee receives a severance payment, the employee may be rehired in the classified service only under the conditions provided in the regulations.

#### 3. Definitions

\* \* \*

- A. Definitions in This Regulation.
  - **1. Layoff** means termination of active state employment solely as a direct result of a reduction in force.

- **2. Severance payment** means a lump-sum payment in accordance with under the approved pay schedule granted to eligible employees in return for forfeiting all recall rights.
- **3. Week's pay** means an employee's gross pay for 40 hours of work at straight-time rates excluding premiums.
- **4.** Year of service means one year of 2,080 hours of total continuous service seniority (2,080 hours) as defined in the HRMN continuous service hours counter.

#### 4. Standards

#### A. Eligibility.

- 1. <u>Nonexclusively represented</u> Department of Health and Human Services "agency-based" employees who meet the eligibility criteria in § 4.A.32 are eligible for severance pay if <u>indefinitely</u> laid off because of deinstitutionalization of the DHHS resident population and monies remain in a special severance fund approved by the <u>commission</u>.
- 2. Nonexclusively represented employees who meet the eligibility criteria in § 4.A.3 and are indefinitely laid off are eligible for severance pay only if monies remain in a special severance fund approved by the commission.
- 32. To be eligible for severance pay, an employee must (1) have one year of state service when laid off; (2) have been laid off for six or more months; (3) be in satisfactory employment status; and (4) not be in a temporary or limited-term appointment.
- 4.3. An otherwise eligible employee is disqualified from receiving severance <u>under this</u> regulation pay if the employee meets any of the following conditions:
  - a. Dies before accepting payment.
  - b. Is hired for any classified position.
  - c. Refuses recall to state employment within a 75-mile radius of the work location from which laid off.
  - d. Is permanently recalled to <u>a</u> another classified position covered by a collective bargaining agreement, in which case the agreement controls.
  - e. Is hired for any non-classified position with an initial base hourly rate of at least 75% or more of the employee's final base hourly rate when laid off.
- **B.** Time Limits. The agency must notify eligible employees of the option of severance pay after 6 and 12 months of layoff.
  - 1. An employee who does not accept a severance payment in writing between receiving the first notice and 14 days after receiving the second notice does not accept in writing a severance payment permanently rejects the severance payment.

- 2. If payment is accepted under rule 5-6.10(b) or a collective bargaining agreement, the agency must, within 60 days, pay the employee and remove the employee's name from all recall lists.
- 3. Accepting severance pay under rule 5-6.10(b) or a collective bargaining agreement constitutes a break in service.
- C. Amount of Severance Pay. An Eeligible employees who accepts severance payment are is paid in accordance with the table in rule 5-6.10(c).
  - 1. Any required withholding under law or regulation for federal, state, or local taxes is deducted from the severance payment.
  - 2. An Eeligible employees who works less than 80 hours per pay period receives a prorated severance payment based on the average number of hours worked for the calendar year preceding layoff. For example, the gross amount paid to an employee who worked 1,980 hours during the previous calendar year would be 94.8% (1980/2088) of the severance pay listed in the table.
- **D. Effect on Retirement.** Accepting or rejecting severance pay does not affect <u>any</u> vested statutory pension rights, which are received as provided by law.
- **E. Payment.** Upon receiving a laid-off employee's written acceptance of severance pay, the agency shall do the following:
  - 1. Pay the employee by having a Process a gross-pay adjustment processed for the severance payment.
  - 2. Immediately remove the employee's name from all recall lists. A laid-off worker employee currently included in a candidate pool for consideration when notice is given remains eligible for appointment.

#### F. Recall Before Exercising Severance-Pay Option.

- 1. An employee rRecalled to a position for less than 60 days has this time bridged disregarded for counting the time on layoff in accordance with under § 4.A.2.
- 2. An employee recalled for over 60 days to a position qualifying for severance pay, and subsequently laid off, is eligible for severance pay, if the employee meets all the requirements of this procedure regulation. The tTime limits are applied from the date of the most recent layoff.

#### G. Return to State Service after Receiving Severance Pay.

1. If two years pass after receiving severance payment, aAn employee who returns to state service by new-hired into the classified service at least two years after receiving severance payment or reinstatement is treated like any other employee who separates and returns to classified employment.

- 2. <u>If aAn</u> employee return<u>ings</u> to state service within two years of receiving severance pay<del>, the employee</del>:
  - a. Must agree in writing to the a method and schedule to repay to the agency of layoff the net amount of any severance pay within 12 months of hirereturning to the agency of layoff the net amount of any severance pay.
  - b. Is returned to state service by reinstatement with continuous service hours at layoff transferred to the prior-service counter.
  - c. Receives an initial annual-leave grant of 16 hours only if returning in a calendar year different from that when the payment was made.
- 3. After full repayment, the <u>agency employing the</u> employee's current agency shall:
- <u>a.</u> eChange the reinstatement to a return from layoff and do the following:
  - ab. Restore hours from the prior-service counter as continuous service hours.
  - **b**<u>c</u>. Restore all sick-leave hours the employee had when paid severance, unless sick leave was paid off based on continuous employment since October 1, 1980.
  - ed. Make any longevity payment to the employee that was not received but would have been received if the employee had been credited with the prior-service hours immediately upon return to state service.
  - de. Allow the employee to buy back paid off sick or annual leave under all regular procedures. The eligibility and time limits to purchase start after full repayment.
- 4. The appointing authority cannot:
  - a. Retroactively adjust the annual-leave counter for any difference between the accrual rates before and after repayment.
  - b. Allow the employee to use any credited leave hours for any lost time due to illness during the period of repayment.
  - c. Place the employees on any recall list.

#### **CONTACT**

Questions on this regulation 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.

### Michigan Civil Service Commission

## Regulation 5.13

Subject:		
Disability Payment Ffor Duty-Incurred Injuries		
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>16-06</del>	January 1, 20 <u>23</u> 17	Reg. 5.13 (SPDOC 156-056, May 24 January 1, 20175)

#### 1. Purpose

This regulation establishes standards and procedures forto payment of the disability benefits for duty-incurred injuries.

#### 2. CSC Rule References

#### 5-9 Supplement to Workers' Disability Compensation

#### 5-9.1 Duty-incurred Disability Payment

Eligibility for workers' disability compensation is established under the Michigan Workers' Disability Compensation Act. In addition, an appointing authority shall pay a supplemental payment authorized in this rule to an eligible injured employee.

#### 5-9.2 General Supplement up to Two-thirds

- (a) Eligibility. A classified employee who is disabled by injury or illness for which the employee is eligible for state workers' disability compensation payments is eligible for this supplement.
- **(b)** Rate. The appointing authority may allow a supplemental wage payment that, together with the workers' disability compensation payment, equals two-thirds of the regular salary or wage, subject to the limitations authorized in the regulations.

#### 5-9.3 Special Supplement up to Full Weekly Net Wage

#### (a) Eligibility.

- (1) *Employees.* The following employees are eligible:
  - (A) An employee of the department of corrections in a correctional facility who is injured during a riot or as a result of an assault by a prisoner housed in the correctional facility.
  - **(B)** An employee of the department of state who is injured as a result of an assault while performing employment duties, rendering direct services to the public.
  - (C) An employee of the department of health and human services who is injured as a result of an assault by a recipient of mental health services.

- (D) An employee of the department of health and human services who is injured during the course of employment as a result of an assault by a recipient of social services at the W. J. Maxey Training School campus in Whitmore Lake or any of its affiliated facilities, Camp Shawono in Grayling, or a similar facility under the jurisdiction of the department of health and human services established or funded by the state.
- **(E)** A person employed by the department of military and veterans affairs who is injured during the course of employment as a result of an assault by a recipient of social services at a veterans facility operated by the department of military and veterans affairs.

#### (2) Limitations.

- (A) The supplement is payable to an employee who is injured as the result of (1) a direct assault, (2) aiding another employee who is assaulted, or (3) responding, when officially obligated, to an alarm signaling an assault.
- **(B)** The supplement cannot exceed 100-weeks.
- (C) The supplement cannot be paid if the employee receives any similar workers' disability compensation supplement authorized by statute, including supplements authorized in Michigan Compiled Laws (MCL) §791.263a, MCL §38.1181, MCL §330.1113, MCL §400.1c, and MCL §333.2229.
- (b) Rate. An eligible employee receives full wages from the employing department until workers' compensation benefits begin. After benefits begin, the employee receives a supplement that, when added to the workers' compensation benefits, equals the weekly net wage of the employee at the time of the injury. This supplement is paid only while the person is on the department's payroll and receiving workers' compensation benefits. Fringe benefits normally received by an employee remain in effect while the employee receives this supplement.

#### 3. Standards

- A. Workers' Disability Compensation Act.
  - 1. An employee is eligible for workers' disability compensation as provided by law.
  - 2. An employee receiving compensation under the Michigan Workers' Disability Compensation Act (WDCA) may use paid leave credits to make up the difference between WDCA compensation and the employee's regular pay.
- In case of work incapacitating injury or illness for which an employee is, or may be eligible for work disability benefit under the Michigan Workers' Compensation Act, an employee may be allowed salary payment which, with the workers' disability benefit, equals two-thirds of the regular salary or wage.
- B. General Supplement to 2/3 of Regular Pay.

- 1. An employee receiving compensation under the WDCA may be granted a general supplement payment that, together with the WDCA compensation, equals two-thirds of the employee's regular pay.
- Leave credits may be utilized to the extent of the difference between the two thirds payment and the employee's regular salary or wage.
- 2. Subject to limits in this regulation, the first 50 weeks of the general supplement are approved upon the appointing authority's receipt of a copy of the Notice of Compensation Payments form from the workers' compensation administrator. Extensions beyond 50 weeks are available under § 3.D.2.
- 3. Regular pay for a permanent-intermittent employee is determined by applying the average-weekly-wage formula defined in § 371 of the WDCA.
- 4. An employee receiving the general supplement may use paid leave credits up to the difference between the employee's regular pay and the employee's WDCA compensation plus the general supplement.
- 5. An employee is no longer eligible for the general supplement from the earliest of the first day after 50 weeks of general supplement payment unless extended by the OSE's director; the date the employee is no longer on the agency's payroll; the date the employee ceases receiving WDCA compensation; the effective date of the OSE's director's denial of an extension request; or the date after 100 total combined weeks of supplemental pay under this regulation.

#### C. Special Supplement to Full Pay.

- 1. Under MCL 38.1181, MCL 330.1113, MCL 333.2229, MCL 400.1c, or MCL 791.263a, an employee may receive a special supplement in an amount that, when combined with WDCA compensation, equals the employee's regular pay.
- 2. Subject to limits in this regulation, the first 50 weeks of the special supplement are approved upon the appointing authority's receipt of (a) a copy of the Notice of Compensation Payments form from the workers' compensation administrator and (b) sufficient evidence that the employee is eligible for the special supplement.
- 3. An employee is no longer eligible for the special supplement from the earliest of the first day after 50 weeks of special supplement payment unless extended by the OSE's director; the date the employee is no longer on the agency's payroll; the date the employee ceases receiving WDCA compensation; the effective date of the OSE's director's denial of an extension request; or the date after 100 total combined weeks of supplemental pay under this regulation.
- Approval of the first 50 weeks of two thirds pay is based on receipt of a copy of the Notice of Commencement of Compensation Payments form (CS 701) received by the employee's appointing authority office from the workers' compensation

administrator. This approval is limited to the employee's normal working days that fall within an expected or specific compensable period under the Michigan Workers' Compensation Act. Salary for permanent intermittent employees is as defined under the Michigan Workers' Compensation Act.

#### D. General Provisions.

- 1. The OSE's director administers general and special supplements. Correspondence about supplements must be sent to the OSE at DTMB-OSE@mi.gov.
- 2. An appointing authority may request an extension of the general or special supplement beyond 50 weeks subject to limits in this regulation. The OSE's director may only grant extensions for employees able to return to work within 15 weeks or to allow permanently disabled employees to apply for disability retirement. The OSE's director cannot approve more than 100 total weeks of supplemental pay under this regulation for an eligible employee's period of disability.
- 3. The general or special supplement is payable only for the employee's normal workdays falling within a compensable period under the WDCA.
- 4. An employee on the state payroll receiving a supplement under this regulation is eligible for the state's contribution to group insurance premium costs, except LTD.
- 5. An employee not on the state payroll receiving WDCA compensation is eligible for the state's contribution to group insurance premium costs, except LTD, for up to 25 pay periods if the employee pays the employee's premium share, remains on an approved leave of absence, and continuously receives WDCA compensation benefits.
- The approval of two-thirds pay is limited to employees who have not received long term disability (LTD) benefits for the same period of disability. If LTD benefits have been paid, and worker's compensation for the same disability is retroactively awarded or the claim is settled by a redemption agreement, consideration of supplemental pay occurs when proper repayment to the LTD Plan has been made, unless the total LTD benefit is used as an offset for workers' compensation. In the case of an LTD offset, some repayment may be necessary to avoid paying the employee more than two thirds pay.
- E. Employees receiving a retroactive workers' compensation payment must use these funds to repay the LTD Plan in accordance with any repayment agreement between the employee and the LTD plan administrator. In addition, the amount represented by a two-thirds supplement must be handled in one of the following ways:
- The amount due is calculated, but not processed or paid directly to the employee.
   Instead, the information is sent to the director of the Office of the State Employer to be used as a credit against the amount owed to the LTD Plan.
- 2. If the supplement is paid, the employee endorses the check over to the state toward repayment to the LTD Plan.

F. In accordance with the following statutes, employees who are injured as a result of an assault by an inmate, resident or client will continue to receive, in addition to workers' compensation, a supplement from the agency which, together with the workers' compensation equals but does not exceed the weekly net wage of the employee at the time of injury:

Public Act Number	<del>Department</del>
<del>293 of 1975 (amended 232, 1953)</del>	Corrections
414 of 1976 (amended 258, 1974)	Health and Human Services (formerly Community Health)
<del>131 of 1978 (amended 280, 1974)</del>	Health and Human Services (formerly Human Services)
4 <del>52 of 1978</del>	State
285 of 1987	Military and Veterans Affairs

- G. The director of the Office of the State Employer shall consider, upon request, extending approval of the supplemental pay beyond 50 weeks only for those employees who will be able to return to work within 15 weeks, or allow the permanently disabled employee time to apply for duty-disability retirement benefits through the State Employees Retirement System and the Social Security System. The approval of any supplement is limited to a combined total of 100 weeks.
- H. Employees who are receiving workers' compensation and are also on the state payroll receiving an approved supplement are entitled to the state's contribution for group insurances (except LTD) if they remain on the state payroll.
- I. Employees not on the state payroll who receive a workers' compensation benefit are eligible for the state contribution to group insurance (except LTD) if the employees continue to pay their share directly to the respective appointing authority.
- 1. The state's contribution to the plans must be invoice-vouchered and forwarded to the respective group insurance fund account or insurance carrier.
- 2. Continuance of the state contribution is limited to 25 pay periods (50 weeks) from onset of disability if the employee remains on an approved leave of absence and receives continual workers' compensation benefits.
- J. Continuance of the state contribution for insurance in excess of 50 weeks must be approved by the director of the Office of the State Employer with the same limitations as in § 3.H.
- K. Supplemental pay.

- 1. The director of the Office of the State Employer administers the supplemental duty disabled pay procedure. Documentation for the first 50 weeks of supplement are directed to the employee's appointing authority. All correspondence and requests for approvals and extension are sent to the director of the Employee Health Management Division.
- 2. The appointing authority is responsible for processing the two-thirds supplement and the full net pay supplement on the payroll in accordance with HRMN procedures.
  - 36. The following chart is provided to assist in the administering ation of this benefit and to ensure that all agencies are computeing time and granting credits uniformly.

# EMPLOYEE BENEFIT PROVISIONS FOR EMPLOYEES RECEIVING WDCA COMPENSATIONBLE INJURIES

Benefits	Workers' CompWDCA Only or WDCA with General Supplement	Workers' Comp Supplemented to 2/3 Pay	Full Pay: WDCA and leave; Workers' CompWDCA, General Supplement, and leave; or WDCA and Special Supplemented to 2/3 Pay and 1/3 Leave* (full pay)
Regular Accrual of Annual Leave	No	No	Yes
Regular Accrual of Sick Leave	No	No	Yes
Credit for Step Increases	No	No	Yes
Credit for Employment Preference Bumping Purposes	Full	Full	Full
Credit for Longevity	Full	Full	Full
Credit for Additional Leave	Full	<del>Full</del>	Full
Credit for Holiday Pay	No	No	1/3 credit
Credit for State Contribution for Insurances	Yes	<del>Yes</del>	Yes
Credit for State Contribution for Retirement	Yes	<del>Yes</del>	Yes
Credit Toward <u>Reclassification</u> , <u>Qualification</u> , or Gaining Status	No	No	No

<sup>\*</sup>Also applies to employees who are injured as a result of an assault.

#### **CONTACT**

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

#### Michigan Civil Service Commission

## Regulation 5.14

Subject:		
Maintenance and Travel Allowances aAnd Reimbursements		
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>16-06</del>	January 1, 20 <u>23</u> <del>17</del>	Reg. 5.14 (SPDOC 07-1416-06, January 1,
		2017 October 7, 2007)

#### 1. Purpose

This regulation establishes standards for maintenance allowances and reimbursements for classified employees.

#### 2. CSC Rule References

#### 5-7 Expense Reimbursement

#### 5-7.1 Travel Expense Reimbursement

- (a) Eligibility. An employee who incurs expenses for on official travel is eligible for reimbursement and meal allowance as applicable in accordance with under the standardized travel regulations issued by the department of technology, management, and budget and the state personnel director.
- (b) Rates. An <u>eligible</u> employee is reimbursed <u>and receives applicable meal allowances</u> at <u>the</u> rates approved by the <u>civil service</u> commission.
  - (1) Recommendation. The director of the department of technology, management<sub>7</sub> and budget and the state personnel director may jointly recommend to the commission changes in the travel reimbursement rates and allowances.
  - (2) Comments. Before submitting the recommendation, the director of the department of technology, management, and budget shall solicit comments from employees and limited recognition organizations regarding ontravel reimbursement rates, allowances, methods, indices, and the rate-setting process.
  - (3) Action by the cCommission action. The civil service commission shall review the recommendation and shall approve, reject, or modify the recommendations.
  - (4) Exceptions. For reasons of business necessity, the director of the department of technology, management, and budget and the state personnel director mayare authorized to approve individual exceptions that vary from approved travel reimbursement and allowance rates or the standardized travel regulations.

+ \* +

January 1, 202317

## Regulation 5.14: **Maintenance and Travel Allowances** aAnd Reimbursements

Page 2 of 4

#### 5-12 Maintenance Allowance

When allowances are made for maintenance or other purposes, they are considered as part of compensation, unless specifically excepted by the civil service commission. A payment of allowance for maintenance, such as meals, lodging, domestic or other personal services, medical care or treatment, laundry, or other services is made in accordance with the compensation plan.

\* \* \*

#### 3. Standards

#### A. General.

- 1. <u>Any maintenance</u> <u>Aa</u>llowances <u>for maintenance</u> are deducted from the employee's salary to the extent of their value as recommended by the appointing authority and <u>the director of</u> the Department of Technology, Management, and Budget <u>(DTMB)</u> director.
- 2. <u>Any Ssuch deductions must be approved by require</u> the <u>Sstate Ppersonnel Ddirector's approval</u>.
- 3. The total amount of compensation salary or wages paid to an employee plus the value of any maintenance must cannot be less than the minimum rate nor greater than the maximum rate for the classification as provided in the compensation plan.
- 4. Receipt of <u>any offered</u> maintenance is <u>at the employee's</u> option, <u>al with the employee</u> except when <u>unless</u> necessary for the <u>to</u> properly performance of the <u>position's</u> duties of the <u>position</u>.

#### B. Meal Maintenance.

- 1. An employee may purchase meals at state facilities at the discretion of the employer.
- 2. Charges for any such meals are set by the appointing authority at a level equal to the cost of food and labor.
- 3. It is the duty and responsibility of eEach appointing authority to shall annually provide written verification to the Office of the Budget State Budget Office that charges for meals sold to employees are sufficient to cover the cost.

#### C. State-Owned Housing Maintenance.

#### 1. Mandatory Housing.

a. Mandatory residency in state-owned housing is a condition of employment, when the appointing authority determines that such residency is essential and of benefit to the state.

- b. Notice of all mandatory housing determinations must be provided to the <u>Ss</u>tate <u>Ppersonnel Ddirector and</u>. A copy of the notice must also be provided to the <u>DTMB</u> director of the <u>Department of Technology</u>, <u>Management</u>, and <u>Budget</u>.
- c. Rental rates are established upon <u>an employee's</u> occupancy of an employee in a particular unit.
- d. The rRates are not changed until the premises are vacated and a different employee is assigned to the mandatory housing unit.

#### 2. Non-Mandatory Housing.

- a. State-owned housing may be leased to employees for their own benefit and convenience.
- b. Rental rates are based, in part, on 100% fair-market rental value as determined by on-site appraisals conducted at least once every 5 give years by the Department of Technology, Management and Budget DTMB.
  - (1) The rental rates are adjusted annually.
  - (2) Annual adjustments are based on the actual appraisals, and the percentage increase since the last adjustment in the Detroit Consumer Price Index for Urban Wage Earners and Clerical Workers, <del>1967–100</del>, Residential Rent component.
  - (3) When it is <u>not im</u> practical for employee-tenants to pay directly for utilities, the estimated costs for utilities are added to the appraised rental rate.

#### 3. Limitations.

- a. State-paid housekeeping or groundskeeping services may be provided to housing units that are located on the main site of a facility's main site. The value is determined by the Department of Technology, Management, and Budget DTMB.
- b. There is no state payment for telephone service within state-owned housing, except unless costs are verified in writing asto have been incurred on state business.
- c. Furnishings for state houses and apartments are provided by the occupants with the exception of <u>for</u> currently existing state-owned furnishings. Any replacement of existing furnishings will beis at the <u>tenant's</u> expense of the tenant with a commensurate decrease in rental charges.
- 4. **Exceptions.** The governor's residences and training camps or academies operated by agencies such as Military and Veterans Affairs, Technology, Management, and Budget, Corrections, Natural Resources, and State Police, as they related to state-employed trainees and students, are excluded from the provisions of this policy. Other

January 1, 202317

## Regulation 5.14: **Maintenance and Travel Allowances** aAnd Reimbursements

Page 4 of 4

exceptions may be granted by joint approval of the <u>Ss</u>tate <u>Ppersonnel <u>Dd</u>irector and the <u>DTMB</u> director of the <u>Department of Technology</u>, <u>Management</u>, and <u>Budget</u>.</u>

#### D. Clothing and Uniform Cleaning Allowances.

- 1. For Aall employees who are furnished uniforms, identifying apparel, or protective apparel or equipment required by the employer as a condition of employment.
- a. When the cost of dry-cleaning the items or replacing the items due to normal wear and tear or accidental damage is required, the cost is borne by the employer, unless.
- b. Cost of replacement due to normal wear and tear or accidental damage while being used on the job is borne by the employer.
- 2. Tthe Civil Service Commission has approved special provisions for certain agencies.
- E. Expense Reimbursement Incurred for Official Travel. The <a href="DTMB">DTMB</a> director of the Department of Technology, Management, and Budget and the Sstate Ppersonnel Ddirector shall jointly recommend to the Civil Service Commission reimbursement and meal allowance rates to the commission for employees who incur travel expenses for on official travel. The joint recommendation must be submitted no later than April 30 of each year, for the fiscal year beginning October 1 of the same year.
  - Comments. Before submitting the recommendation, the <u>DTMB</u> director of the <u>Department of Technology</u>, <u>Management</u>, and <u>Budget</u> shall solicit comments from employees and limited\_recognition organizations <u>regarding on travel</u>-reimbursement <u>and meal allowance</u> rates, methods, indices, and the rate-setting process.
  - 2. Action by the Commission action. The Civil Service Commission shall review the recommendation and approve, reject, or modify the recommendation.
  - 3. **Exceptions.** For reasons of business necessity, either the <u>DTMB</u> director of the <u>Department of Technology</u>, <u>Management</u>, and <u>Budget</u> or the <u>Ss</u>tate <u>p</u>Personnel <u>dD</u>irector may approve individual exceptions that vary from the approved rates.
  - 4. The Department of Technology, Management, and Budget shall issue schedules of travel rates.

#### **CONTACT**

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

# Michigan Civil Service Commission Doculation 5 15

Regu	lation	5.15
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Subject:		
Moving Expenses		
SPDOC No.:	<b>Effective Date:</b>	Replaces:
<u>22-14<del>16-06</del></u>	January 1, 20 <u>23</u> <del>17</del>	Reg. 5.15 (SPDOC 1416-096, <u>January 1, 2017</u> August 31, 2014)

#### 1. Purpose

This regulation establishes standards and procedures for payment of moving expenses.

#### 2. CSC Rule References

5-7 Expense Reimbursement

\* \* \*

#### 5-7.2 Moving Expense Reimbursement

- (a) Eligibility.
  - (1) Employees. An employee who receives a lateral job change for the convenience and benefit of the state is eligible for reimbursement of moving expenses in accordance with the standardized travel regulations. An employee who is displaced because of a reduction in force and exercises employment preference is not eligible for reimbursement of moving expenses.
  - (2) New employees. An appointing authority may pay the moving expenses of a new employee not previously on the state payroll, in accordance with the standardized travel regulations.
- **(b)** Rates. The rates for reimbursement of moving expenses are established in the standardized travel regulations.

\* \* \*

#### 3. Standards

- **A.** The <u>s</u>State pays the following household moving expenses if an employee is transferred for the <u>state's</u> convenience and benefit <u>of the State</u>.
  - 1. Transportation charges up to 14,000 pounds moved by common carrier, including bridge tolls, elevator, or flight charges.
  - 2. Up to \$800 for packing charges.

- 3. The actual cost of moving mobile homes, including furnishings, used as normal residence, plus up to \$1,000 for blocking, unblocking, securing contents, or expando units.
- 4. Insurance costs as provided for in the Department of Technology, Management and Budget (DTMB) Administrative Guide.
- **B.** The State <u>will-can</u>not pay <u>for-to\_moveing</u> new employees not previously on the <u>s</u>State payroll, except as authorized by the appointing authority and the <u>DTMB</u> director <u>of the Department of Technology, Management and Budget</u>.
- **C.** The procedures <u>for to payment of employee</u> household-moving expenses are <u>contained</u> in the <u>DTMB</u> Administrative Guide <u>of the Department of Technology, Management and Budget</u>.
- **D.** The allowance for payment of travel, lodging, and meals in relation to changes in official workstation is in the Standardized Travel Regulations.

#### **CONTACT**

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

# Michigan Civil Service Commission Regulation 5.17

Subject:		
Electronic Funds Transfer		
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> <del>16-06</del>	January 1, 20 <u>23</u> 17	Reg. 5.17 (SPDOC 0716-1406, <u>January 1</u> ,
		2017 October 7, 2007)

#### 1. Purpose

This regulation establishes standards and guidelines for theto payment of salary or wages to employees hired after October 1, 2002.

#### 2. CSC Rule References

#### 5-15 Electronic Funds Transfer

The salary or wages of an employee hired after October 1, 2002, shall be paid by means of an electronic funds transfer (EFT) into an account at a financial institution designated by the employee. The appointing authority may waive the requirement of payment by an EFT if payment by an EFT causes an undue hardship for the employee.

#### 3. Standards

#### A. Payment.

- Net salary or wages shall beare directly deposited via by electronic funds transfer (EFT).
- 2. The appointing authority shall inform all newly hired employees that direct deposit via-by EFT is mandatory and a continuing condition of continuing employment.
- 3. The appointing authority shall provide all newly hired employees with necessary information and the requisite paper form or on-line application.
- 4. The employee shall designate the financial institution routing number and account number to whereich the employee's net payments will be deposited.
  - Note: Under § 13(1) of the Freedom of Information Act, these records are personal in nature and exempt from disclosure. The appointing authority shall not disseminate this information pursuant to any written or oral request without the employee's written authorization of the employee.
- 5. The employee shall <u>either</u>-complete the on-line direct\_-deposit application <u>in HRMN</u>, <u>or</u>-return <u>the a completed paper</u>-form to the appointing authority, <u>or request an</u>

- <u>exception under § 3.C.2</u>, <u>prior toby</u> the end of the first pay period <u>in which theof</u> employ<u>mentee is hired</u>.
- 6. The appointing authority shall verify the on-line application process or process enter the necessary information from the paper form into the Human Resource Management Network (HRMN) within during the first pay period of the employmentee's hire date.
- **B.** Effective Date. The dDirect deposit of the employee's net pay viaby EFT begins with the second payday following after the employment startsee's date of hire.

## C. Exceptions.

- 1. The appointing authority may waive the requirement of direct deposit payment via by EFT for the following reasons if:
- a. If iit causes an undue hardship to the employee, including, for example, a physical or mental disability; geographic, language, or literacy barrier; or financial hardship or the
- b. If an employee's position is hired for a position expected to last less than aunder four-weeks period.
- 2. An employee seeking to waive direct deposit payment via by EFT must submit a written request to the appointing authority.
- <u>3.</u> The appointing authority must provide a written response to an employee seeking to waive direct deposit payment via EFTthe request.
- 43. The appointing authority shall retain waiver documentation in the personnel file.
- <u>45</u>. Exceptions are subject to <u>c</u>eivil <u>S</u>ervice audit.

## D. Compliance.

- 1. Any employee hired after October 1, 2002, must complete an on-line direct deposit application through self service access in HRMN, or submit the requisite paper form or request for waiver to the appointing authority prior to the end of the pay period in which the employee is hired.
- 21. The appointing authority shall notify any employee who fails to comply with § 43.DA.15 that failure to do so by the end of the first full pay period following after the date of notification will result in separation for just cause as provided in rule 2-6.
- 32. The appointing authority shall notify any employee, hired after October 1, 2002, who cancels an EFT that failure to reapply either on-line or by submitting a direct deposit form, or to request seeking to a waiver direct deposit payment via EFT by the end of the first full pay period after notification following the date of notification will result in discipline, up to and including separation as stated in § 4.D.2.

43. EFT records are subject to Civil Service audit.

## 4. Procedures

Responsibility	Action	
Appointing Authority	1. Informs employee of mandatory EFT and provides employee with on- line application or paper form.	
Employee	2. Completes on line direct deposit application or submits paper form.  May submit written request for waiver.	
Appointing Authority	3. Verifies that on line application has been completed or enters necessary information in the Human Resource Management Network (HRMN), or approves request for waiver. Provides written response for waiver requests.	
	4. Provide written notice to an employee who does not comply with § 4.D.1 that failure to do so will result in the employee's separation.	
	5. In the event of an EFT cancellation, provides written notice to the employee that failure to reapply by on line application, submission of the paper form, or written request for waiver will result in discipline, up to and including separation.	
	6. If necessary, process separation in HRMN.	
	7. Retains documentation in the personnel file.	
Civil Service	8. Conducts audit of EFT records.	

## **CONTACT**

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

## Michigan Civil Service Commission

# Regulation 5.18

Subject:		
Complaints About Benefits		
SPDOC No.:	Effective Date:	Replaces:
22- <del>06</del> <u>14</u>	<del>July 25, 2022</del> <u>January 1,</u>	Reg. 5.18 (SPDOC 2022-06-13, July 25, 2022 October 1,
	<u>2023</u>	<del>2020</del> )

## 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 Plans

\* \* \*

- (e) Administration. The director shall implement and administer approved group-insurance plans.
  - (1) Complaints. The director shall provide an expedited administrative review of employee complaints over group-insurance benefits. The director's process is the exclusive procedure for employee complaints over group-insurance benefits. An employee aggrieved by the director's final decision may appeal to the commission as provided in the civil service rules and regulations.

\* \* \*

## 3. Definitions

#### A. CSC Rule Definition.

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 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 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	HealthEquity
Spending Account Plan	

- 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), or a complaint over corrections ordered by Civil Service under regulation 5.16, the employee must file any complaint in writing directly with the EBD by email to <a href="MCSC-EBDAppeal@mi.gov">MCSC-EBDAppeal@mi.gov</a>.
  - 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, DMOs, and VBPs.** Health Maintenance Organizations (HMOs), Dental Maintenance Organizations (DMOs), 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, DMOs, or VBPs are responsible for a group-insurance-benefit decision, an employee must file any complaint directly with the applicable HMO, DMO, 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, DMOs, 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

July 25, 2022

Page 5 of 5

<u>MCSC-EBDAppeal@mi.gov</u>. Questions on privacy complaints may be directed to the privacy official at the same address and phone number or <u>MCSC-HIPAA@mi.gov</u>.

# **Michigan Civil Service Commission**

# **Regulation 5.19**

Subject:		
Alternative Work Periods		
SPDOC No.:	<b>Effective Date:</b>	Replaces:
<u>22-14</u>	<u>January 1, 2023</u>	None (New Regulation)

## 1. Purpose

This regulation establishes standards and conforming compensation plan provisions for alternative work periods and measures of equivalent full-time service.

## 2. CSC Rule References

- 5-2 Hours of Service
- 5-2.1 Work Period
- (a) Standard work period. The standard biweekly work period for a full-time employee in the classified service is the equivalent of 80 hours of work.
- (b) Alternative work periods. The state personnel director may issue regulations that establish alternative work periods and measures of equivalent full-time service. The regulations may conform the compensation plan to the alternative periods and measures.

## 3. Standards

- A. Established. This regulation establishes alternative work period and measure of equivalent full-time service for listed classifications. Equivalent compensation plan provisions are also established when necessary to conform to alternative work periods and measures of equivalent full-time service. These conforming provisions control for listed classifications notwithstanding any conflicting rule or regulation. Any portion of the compensation plan not directly conflicting with any equivalent provision in this regulation applies to any classification included in this regulation.
- **B.** Fire Crash Rescue Supervisor. The following provisions apply to a career employee in a position classified as a Fire Crash Rescue Supervisor:
  - 1. Work period and service credit. The work period for a full-time employee is the equivalent of 106 hours of work in a 14-day pay period. An employee is credited with 80 continuous service, since step, and longevity hours for each completed pay period.
  - 2. Sick Leave Crediting and Accumulation. A career employee is credited with seven hours of sick leave for each completed pay period.

- a. Paid service above 106 hours in a biweekly work period is not counted.
- b. If paid service is below 106 hours in a biweekly work period, leave credits are prorated based on hours in pay status for that pay period.

## 3. Annual Leave.

- a. **Initial leave grant.** An employee is credited with 20.8 hours of annual leave upon entry into the classified service, not to be credited more than once in a calendar year.
- b. Crediting and Accumulation A career employee accrues annual leave for each completed pay period in accordance with the following table:

Years of service	Hours of annual leave accrued (for 106 hours of service)	Maximum accumulation (total hours of annual leave)	Maximum accumulation that may be paid off
Less than 1	<u>5.3</u>	<u>396</u>	<u>344</u>
<u>1-5</u>	<u>6.1</u>	<u>396</u>	344
<u>5 – 10</u>	6.9	416	364
<u>10 – 15</u>	7.7	435	383
<u>15 – 20</u>	8.5	<u>455</u>	403
<u>20 – 25</u>	9.2	<u>461</u>	409
<u>25 – 30</u>	10.0	474	422
30 – 35	10.9	<u>474</u>	422
35 – 40	11.7	<u>474</u>	422
40 – 45	<u>12.5</u>	<u>474</u>	422
45 and above	13.3	<u>474</u>	422

- (1) Paid service over 106 hours in a biweekly pay period is not counted.
- (2) When paid service does not total 106 hours in a biweekly pay period, leave credits are prorated based on hours in pay status for that pay period.
- c. Personal leave grant. Each October 1, full-time career employees with at least six months' continuous satisfactory service are credited with 32 annual-leave hours.

  A less than fulltime employee receives proportionate credit based on the average hours in pay status during the six full biweekly pay periods preceding October 1.

- 4. Holiday Pay. Each pay period, an employee receives 5.2 hours in odd years and 5.6 hours in even years, respectively, of compensatory time or payment at the employee's regular rate of pay. An employee must make any election to receive pay instead of compensatory time by August 15 each year. An employee is ineligible for holiday pay under regulation 5.02 and paid holiday absence under regulation 5.08.
- 5. Overtime Compensation. An employee receives compensation at the overtime rate of 1.5 times the employee's regular rate for time worked over 106 hours per 14-day, biweekly work period.

## **CONTACT**

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

# Michigan Civil Service Commission Regulation 8.04

Subject:		
Technical Appointment Complaints		
SPDOC No.:	Effective Date:	Replaces:
<u>22-14</u> 18-03	January 1, 20 <u>23</u> 19	Reg. 8.04 (SPDOC <u>18-03</u> <del>16-06</del> , January 1, 201 <u>9</u> <b>7</b> )

## 1. Purpose

This regulation establishes procedures for technical appointment complaints authorized in rules 3-7 and 8-3.

## 2. CSC Rule References

## 3-7 Revocation of Appointment

## 3-7.1 Review of Appointments

Every appointment in the classified service is expressly subject to review by civil service staff. If the state personnel director determines that an appointment violated a civil service rule or regulation, the director may order corrective action, including revocation of the appointment.

## 3-7.2 Methods of Review

Civil service staff may review any appointment as part of under the civil service audit function or as the result of a technical appointment complaint.

#### (a) Audit review.

- (1) Revocation of appointment. If an audit reveals civil service staff audits an appointment and determines that the a selection, an appointment, or a certification violated a civil service rule or regulation, the state personnel director may order corrective action, including revoking cation of the appointment. The director shall give written notice of the revocation to the appointing authority and the employee appointee whose appointment is revoked written notice.
- (2) Subsequent technical complaint Review. An employee appointee whose appointment is revoked, or the employee's appointing authority, may file a technical appointment complaint regarding over a revocation order within 14 calendar days after its issuance the date the revocation order was issued. If a timely technical appointment complaint is filed, the technical review officer may revocation order is automatically stayed the order pending a final decision or further order of the technical review officer.

## (b) Technical appointment complaint by candidate.

- (1) Technical appointment complaint a Authorized. If an unsuccessful candidate files a timely technical appointment complaint under rule 8-3 [Technical Complaints]—and the technical review officer determines that the challenged appointment violated a civil service rule or regulation, the officer may order corrective action, including revocation of revoking the challenged appointment. The officer cannot order a candidate's appointment.
- (2) Notice to incumbent. If a technical appointment complaint is filed, the incumbent employee whose appointeement is being challenged in the complaint is entitled to must be given notice of the complaint and an opportunity allowed to defend the appointment. If the technical review officer revokes aAn incumbent employee's whose appointment, that incumbent employee is revoked is bound by the complaint's final determination of the technical review officer, including revocation of the incumbent employee's appointment.

## 3-7.3 Effect of Revocation of Appointment

When the state personnel director or a technical review officer revokes an appointment, the employment status of the employee whose appointment is revoked is determined as follows:

- (a) Employee with continuing status. If the employee had continuing status at the time of the appointment, the employee is to be retained in a position within the agency that appointed the employee at a classification and level in which the employee had continuing status at the time of the appointment. If no such position is available within the agency at the time of the revocation, the employee may exercise employment preference.
- **(b)** Employee without continuing status. If the employee had no continuing status in the classified service at the time of the appointment, the appointing authority shall separate the employee from state employment, unless the employee has otherwise been properly appointed to another position.

## 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.

\* \* \*

## (c) Technical appointment complaint.

- (1) After revocation of appointment. If, as the result of a civil service audit, a person's appointment is revoked, the person or the person's appointing authority may file a technical appointment complaint.
- **(2)** After denial of appointment. An unsuccessful candidate who alleges that the selection, appointment, or certification process for the position violated a civil service rule or regulation may file a technical appointment complaint.

## 8-3.2 Time Limits

- (a) **Technical appointment complaint.** An unsuccessful candidate who alleges that the selection, appointment, or certification process for a position violated a civil service rule or regulation must file a technical appointment complaint with civil service technical review staff within the following time limits:
  - (1) Notice mailed. If the appointing authority mailed or delivered notice to the candidate that the candidate was removed from the selection process or that another person was appointed to the position, the candidate must file the technical appointment complaint no later than 14 calendar days after the later of (1) the effective date of the challenged appointment or (2) the date of the notice.
  - (2) No notice mailed. If the appointing authority does not mail or deliver notice to the candidate, the candidate must file the technical appointment complaint within 6 months after the effective date of the challenged appointment.

\* \* \*

## 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.
  - (2) Technical appointment complaint; certified question. If the technical review officer determines that a technical appointment complaint raises a genuine issue as to any material fact that cannot be adequately determined under the technical complaint procedures, the technical review officer may certify one or more questions of fact to a hearing officer to conduct a hearing and issue a recommended decision to the technical review officer, as provided in the civil service regulations.
  - (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

\* \* \*

(c) Technical appointment complaint. A technical review decision on a technical appointment complaint is final and binding on the parties 29 calendar days after the date the decision was issued unless either (1) the decision provides for a later effective date or (2) an interested party files a further appeal to the civil service commission within 28 calendar days after the date of the decision. If a party files a timely application for leave to appeal, the effective date of the decision is automatically stayed pending further order of the employment relations board or civil service commission.

## 8-3.6 Exclusive Technical Appointment Reviews

- (a) Exclusive proceeding. The technical appointment review is the exclusive proceeding for any candidate or employee, including an exclusively represented employee, to bring a complaint that arises out of (1) the selection, appointment, or certification of a candidate for a position in the classified service or (2) the revocation of an appointment after a civil service audit. A candidate, employee, and appointing authority are prohibited from using either the civil service grievance process provided in rule 8-1 [Grievances] or a negotiated grievance process permitted by rule 6-9.6 [Negotiated Grievance Procedures].
- (b) Incumbent employee. If a technical appointment complaint is filed, the technical appointment review is the exclusive proceeding in which an incumbent employee whose appointment is challenged may appear and defend the employee's own selection, appointment, or certification. An incumbent employee whose appointment is challenged and who is given notice of the technical appointment complaint and the opportunity to appear and defend the appointment in the technical appointment review is bound by the final technical appointment decision. The incumbent employee cannot later file a separate technical complaint or grievance regarding either (1) the incumbent employee's original selection, appointment, or certification or (2) the result of the technical appointment decision, including revocation of the incumbent employee's appointment.

## 3. Definitions

## A. CSC Rule Definitions.

- **1.** 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.
- 2. Technical decision includes each of the following individual decisions:

\* \* \*

(c) Technical appointment decision means (1) a decision of an appointing authority appointing a candidate to a position in the classified service or (2) a decision of civil service staff certifying or revoking an appointment to a position in the classified service.

## B. Definitions in This Regulation.

- 1. **Appointee** means a classified employee whose appointment is (1) vacated by Civil Service staff or (2) challenged by an unsuccessful candidate for the position.
- 2. **Appointing authority** means the appointing authority that made the disputed appointment.
- 3. **Considered by the appointing authority** means a qualified candidate who (1) met any screening criteria established by the appointing authority and (2) was interviewed or otherwise comparably evaluated by the appointing authority.

## 4. Standards

## A. Filing Complaints.

 An employee whose appointment is revoked because of a Civil Service audit or an unsuccessful candidate directly affected by a technical appointment decision may file a technical complaint with the Office of Technical Complaints. The complaint must be submitted on the Technical Complaint form (CS-212) to MCSC-OTC@mi.gov.

## 2. **Complaint.** The complaint must include:

- a. All information required in part A of the CS-212 for each complainant.
- b. A clear and concise description of the technical appointment decision questioned in Part B of the CS-212, including any additional information required in the form's instructions.
- c. A complete statement of why the technical appointment decision (1) violated article 11, § 5 of the Michigan Constitution; (2) violated a rule or regulation; or (3) was arbitrary and capricious.
- d. Any documents ary evidence that the complainant believes supports the technical complaint.
- e. A clear statement of the desired outcome of the complaint, which must be within the authority of Civil Service to grant.
- f. Each The complainant's signature, which can be a scanned document of an actual signature or thea 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. If notice of the technical appointment decision was provided, the complaint must be received by the Office of Technical Complaints within 14 days after the later of the decision's effective date or the date notice of the decision was provided. If no notice was provided, a complaint must be filed within six months after the appointment's effective date.
- 4. **Extension.** The technical review officer may grant an extension to file if, before the filing deadline passes, the complainant shows sufficient justification.
- **B.** Administrative Denial of Complaint. In addition to the reasons in rule 8-4, a technical appointment complaint may be administratively dismissed without prior notice if:
  - 1. The complaint fails to set forth allegations with sufficient particularity to permit review.
  - 2. The complaint fails to allege a violation of a rule or regulation or article 11, § 5, of the Michigan Constitution.
  - 3. The complainant was not a qualified candidate considered by the appointing authority.
  - 4. The complaint fails for other good and sufficient reason to warrant further review.

## C. Complaint Investigation.

- 1. If a complaint is not summarily or administratively dismissed, the Office of Technical Complaints shall give notifyce of the complaint to the appointing authority and any appointees of the complaint and of inform them of their right to respond to the complaint and participate. Notice to appointees must include notice that:
  - a. The **pending** complaint challenges the appointee's appointment and that the appointee may be removed or demoted as a result of the complaint.
  - b. The appointee is a party to the complaint and may present documents and argument and appeal any adverse decision.
  - c. Even if the appointee does not participate, the appointee will be bound by the final decision in response to the complaint and cannot bring a later grievance, technical appeal, or complaint to challenge the final decision's result.
- 2. The technical review officer shall offer the appointing authority and any appointees an opportunity to respond to the complaint.
- 32. A technical review officer cannot conduct a hearing, but may discuss the complaint with or seek additional written submissions from the complainant, the appointing

<u>authority</u>, the <u>appointee</u>, or other interested parties. If the complaint raises a genuine issue of material fact that cannot be adequately determined under the technical complaint procedure, the technical review officer may certify questions of fact to the Civil Service Hearings Office (CSHO). CSHO shall assign the matter to a hearing officer to conduct a hearing, as provided in rules and regulations, and issue a written recommendation on the certified question of fact to the technical review officer.

#### D. Technical Review Decision.

- 1. The technical review officer shall review all submissions, including any hearing officer's recommendation, and decide the matter based on the submissions, agency records, rules and regulations, and technical expertise. At the end of the technical review, the technical review officer shall issue a final technical review decision setting forth material findings of fact, conclusions of law, and any remedial orders. The officer may not order a candidate's appointment.
- 2. The technical review officer's decision shall contain notice of interested parties' right to file an application for leave to appeal to the commission under regulation 8.05.

## **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; 517-241-9096; or MCSC-OTC@mi.gov.

# Michigan Civil Service Commission

# Regulation 8.05

Subject:			
Employment Relations Board Appeal Procedures			
SPDOC No.:	Effective Date:	Replaces:	
22- <u>14</u> 06	<del>July 25, 2022</del> <u>January 1,</u>	Reg. 8.05 (SPDOC 1622-06, July 25, 2022 January 1,	
	<u>2023</u>	<del>2017</del> )	

## 1. Purpose

This regulation establishes standards and procedures to appeal a decision to the Civil Service Commission through the Employment Relations Board.

## 2. CSC Rule References

## 8-7 Appeal to Civil Service Commission

## 8-7.1 Appeal to Civil Service Commission

When authorized in the civil service rules, a party aggrieved by the final decision of an adjudicating officer may appeal the decision to the civil service commission. An appeal to the commission must be filed with the employment relations board, as provided in the civil service rules and regulations. Unless an administrative officer recommends dismissal of the appeal as provided in rule 8-7.4 [Summary Dismissal of Claim or Application], the employment relations board shall make a recommendation to the commission as provided in rule 1-15.4 [Duties].

## 8-7.2 Claim and Application

- (a) Further appeal as of right by employee. An employee with status who was dismissed for just cause may appeal as of right from a final decision of an adjudicating officer upholding the dismissal. The state personnel director shall provide for an expedited appeal procedure in the regulations.
- **(b)** Further appeal as of right by appointing authority. An appointing authority that dismissed an employee for just cause may appeal as of right from a final decision of an adjudicating officer reinstating the employee. The state personnel director shall provide for an expedited appeal procedure in the regulations.
- **(c)** Further appeal by application and leave granted. A party aggrieved by any other final decision of an adjudicating officer may appeal to the civil service commission upon application and leave granted.

## 8-7.3 Time Limits for Appeal to Commission

(a) Time limits for appeal to commission. Except where another rule or a regulation establishes a shorter period, a claim of appeal or an application for leave to appeal must be received by the

employment relations board within 28 calendar days after the date the final decision of the adjudicating officer is issued.

- **(b) Proof of service.** The party filing the appeal must serve a copy of the claim or application on all other parties and provide proof of the service within 3 calendar days after the claim or application is filed with the board.
- (c) Late filing. If a claim or application is not filed timely, the claim or application must be accompanied by an affidavit setting forth either good cause or special extenuating circumstances for the delay.
  - (1) The administrative officer may accept a claim or application up to 28 calendar days late if the appellant demonstrates good cause for the delay that was not due to the appellant's own negligence.
  - **(2)** The administrative officer may accept a claim or application filed more than 28 calendar days but less than one year late if the appellant demonstrates special extenuating circumstances for the delay.
  - (3) A claim or application filed more than one year late cannot be accepted or considered under any circumstances.

## 8-7.4 Summary Dismissal of Claim or Application

A civil service administrative officer may recommend that the civil service commission summarily dismiss a claim or application for any of the following reasons:

- (a) Not authorized. The appellant is not authorized to file the appeal or the claim or application is not subject to review by the commission.
- **(b)** Lack of jurisdiction. Civil service staff or the civil service commission lacks jurisdiction over a necessary party or over the subject matter of the appeal.
- (c) *Untimeliness*. The claim or application is untimely.
- (d) Another action pending. Another civil service action has been initiated between the same parties involving substantially the same matter.
- (e) Barred by prior claim. Substantially the same matter was adjudicated to finality in another action between the same parties.
- (f) Failure to respond. A grievant or technical complainant fails to respond to a deficiency notice issued by civil service staff, as provided in the civil service rules and regulations.

## 8-7.5 Grounds for Granting an Application for Leave to Appeal

(a) **Procedure.** If an administrative officer does not recommend summary dismissal of the application for leave to appeal, the employment relations board shall consider the application as provided in rule 1-15.4(b) [Duties] and the applicable regulations.

Page 3 of 17

(b) Grounds for granting leave to appeal. In the discretion of the civil service commission, leave to appeal may be granted in any matter in which it is alleged that (1) the decision of the adjudicating officer is erroneous, (2) the decision violates article 11, section 5, of the Michigan constitution or is otherwise contrary to law, including the civil service rules and regulations, or (3) the question presented is of major significance to the classified service.

## 8-7.6 Decision by Civil Service Commission

The civil service commission shall review and act on the recommendation of the administrative officer or the employment relations board, as provided in rule 1-15.5 [Final Action by the Commission].

## 8-7.7 Effective Date of Decision of Commission

A decision of the civil service commission is effective when issued unless a different effective date is specified in the decision.

## 8-7.8 Commission May Assume Jurisdiction

The civil service commission reserves the authority to assume jurisdiction and to take appropriate action in any proceeding at any time before the employment relations board issues its final recommendation.

## 8-7.9 Appeal of Final Commission Decision to Circuit Court

- (a) <u>Claim and Service of complaints and petitions for review</u>. If authorized by law, a party may file a <u>petition for review claim of appeal of from</u> a final decision of the <u>civil service</u> commission in the Michigan circuit court. Any <u>claim</u>, complaint, or petition <u>filed</u> challenging any decision, rule, or regulation of the commission must name the commission as a party and <u>must</u> be served on the commission at the office of the state personnel director in Lansing, <u>Michigan</u>.
- (b) Settlingement of claims and lawsuits. Where If a proposed agreement resolving a claim or lawsuit contains a provision pertaining to a commission decision, rule, or regulation of the commission, the appointing authority or its designee shall consult with the state personnel director or the director's designee before finalizing the agreement is finalized to ignsure that it is consistentcy with all civil service decisions, rules, and regulations. The commission is not bound by any provision pertaining to a civil service decision, rule, or regulation, unless the director or the director's designee has approved the provision.

## 3. Definitions

#### A. CSC Rule Definitions.

- 1. Adjudicating officer means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, or other officer authorized to make a decision reviewable by the civil service commission.
- **2.** Administrative officer means the state personnel director or a person authorized by the state personnel director to take administrative action on matters filed with civil service staff or the civil service commission.

Page 4 of 17

- **3. Board** means the employment relations board.
- **4.** Commission means the Michigan civil service commission.
- **5. Good cause** means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.
- **6. Special extenuating circumstances** means a compelling excuse for the failure to file a matter timely that arises out of one of the following:
  - (a) An intentionally or fraudulently misleading action by an appointing authority or party that prevented the filing.
  - **(b)** Serious physical or mental incapacity of the person that prevented the filing.
  - (c) Extraordinary unforeseen circumstances outside the control of the person that prevented the filing.
- 7. **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) Technical disbursement decision** means a civil service staff decision authorized under rule 7-6 [Prior Written Approval by Civil Service Staff] or rule 7-7 [Preauthorized Approval] regarding disbursements for personal services.
  - **(c) Technical appointment decision** means (1) a decision of an appointing authority appointing a candidate to a position in the classified service or (2) a decision of civil service staff certifying or revoking an appointment to a position in the classified service.

## B. Definitions in This Regulation.

- 1. **Authorized representative** means a person authorized by a party in a proceeding before the Board or Commission to appear for and represent the interests of the party.
- 2. **Concurrently serve** means, on the same day that a document is filed with the Board, to (1) deliver by hand, (2) send by first-class or certified mail, (3) or send to an authorized email address.
- 3. **Contested hearing** means a quasi-judicial proceeding before a hearing officer in which the parties, after notice, may introduce documentary evidence, examine and cross-examine witnesses under oath, and submit arguments.
- 4. **File** means sending a document to the Board at MCSC-ERB@mi.gov or by other method specifically and previously approved by the Board's administrative officer.
- 5. **Proof of service** means a statement filed with the Board certifying the date and method by which a party served a copy of a document on another party.

## 4. Standards

## A. Appellate Jurisdiction of Employment Relations Board.

An appeal to the Civil Service Commission may be filed from the following decisions, for which the Employment Relations Board exercises appellate jurisdiction for the Commission:

- 1. **Grievance appeals.** Claims of appeal as of right and applications for leave to appeal from final decisions of adjudicating officers, under rule 8-2.5.
- 2. **Technical review decisions.** Applications for leave to appeal final technical review decisions, under rule 8-3.
- 3. **Labor relations appeals.** Applications for leave to appeal labor relations decisions of the Sstate Ppersonnel Ddirector or other Civil Service staff, including decisions concerning the following:
  - a. Prohibited subjects of bargaining, under rule 6-3.5.
  - b. Recognition and unit determinations, petitions for unit elections, or excluded position determinations, under rule 6-6.
  - c. Unfair labor practice charges or other final labor relations decision, under rule 6-14.3.
  - d. Fines on employees or labor organizations for engaging in, promoting, encouraging, or supporting strikes, under rule 6-15.
- 4. Other decisions. Applications for leave to appeal other decisions of the Sstate Ppersonnel Ddirector or other Civil Service staff, when authorized by the Civil Service rules or regulations, including the following:
  - a. Disbursements for personal services, under rule 7-9.
  - b. Drug testing of new hires, under Rule 2-7.4(b).
  - c. Benefits under group insurance plans, under Regulation 5.18.

#### B. General Procedure.

- 1. **Form of appeal.** Appeals to the Commission must be initiated by filing either (1) a claim of appeal as of right (claim) (Form CS-1756) to appeal a dismissal grievance or (2) an application for leave to appeal (application) (Form CS-1743) for all other appeals.
- 2. **Method of filing.** All documents must be filed with the Employment Relations Board by email at MCSC-ERB@mi.gov. The Board's administrative officer may authorize an alternative filing method upon a party's timely request received before a filing deadline passes.

- 3. **Filing deadline.** The party filing an appeal (appellant), whether by claim or application, must ensure **receipt** of the appeal by the Board within **28 calendar days** after the date the final decision of the adjudicating officer is **issued**. Any document filed with the Board is considered filed when the Board **receives** the document, as provided in Regulation 8.06.
- 4. **Signature required.** Any document filed with the Board must be **signed and dated** by the filing party or the filing party's authorized representative. Photocopied or electronic signatures are acceptable.
- 5. **Service on other parties required.** A party that files **any** document with the Board must **concurrently** serve a copy of the document on all other parties. In a group grievance, a party serving a group only must serve a copy on the group's authorized representative. In an appeal of a technical review decision or **S**state **P**personnel **D**director decision, the adjudicating officer who issued the decision participates in Board proceedings as an interested party and must be served.
- 6. **Proof of service required.** A party that serves a copy of **any** document on other parties must file a proof of service with the Board within three calendar days after the served document is filed with the Board. If a party has been provided authorized emails from **all** other parties and their representatives, including a cc to all with the filing satisfies the proof of service requirement. Otherwise, a proof of service containing substantially all information in Form CS-1740, from <a href="www.mi.gov/erb">www.mi.gov/erb</a>, must be filed. The Board will not accept as proof of service a general statement in a cover letter or filing that other parties have been copied.

## 7. Identification.

- a. The appeal must contain the appellant's (1) name, (2) employee identification number, (3) employing agency, (4) mailing address, (5) telephone number, and (6) email address.
- b. If the appellant has an authorized representative, the appeal must contain the representative's (1) name, (2) organization, (3) mailing address, (4) telephone number, and (5) email address.
- 8. **Changing representatives.** If a party changes authorized representatives, the party or new representative must (1) provide the Board in writing the information in § 4.B.7.b for the new authorized representative, (2) concurrently serve a copy of the notice on all other parties, and (3) file proof of service with the Board.

## 9. Cross-appeals.

a. Any other party may file a cross-appeal within 14 calendar days after a claim or application is filed with the Board.

Page 7 of 17

- b. To perfect a cross-appeal, a cross-appellant must file (1) a signed concise statement of cross-appeal, (2) a cross-appeal brief, and (3) proof of service. The statement and brief must comply with the content and filing requirements for the underlying appeal.
- c. A cross-appeal may be prosecuted even if the adverse party's appeal is abandoned or dismissed.
- 10. **Stipulations.** The parties may stipulate in writing to any matter pertaining to the appeal, including the composition of the record. All stipulations must comply with Civil Service rules and regulations and are subject to acceptance by the Board.
- 11. **Computing time and filing documents.** Unless otherwise specifically provided, Regulation 8.06 applies to all proceedings of the Board and Commission.
- 12. **Limit on communications.** The Board and its administrative officer shall not communicate privately with parties or authorized representatives on the facts or merits of a pending matter. Private communications for scheduling and administrative matters unrelated to the facts or merits are allowed. The Board does not consider additional or rebuttal briefs, unless specifically requested by the Board or authorized in this regulation.
- 13. **Forms.** All Board forms referenced in this regulation are available at www.mi.gov/erb.

## C. Claim of Appeal as of Right (Claim).

- 1. **Authorized.** Only the following may file a claim of appeal as of right:
  - a. A nonexclusively represented employee (NERE) with status aggrieved by a final decision of an adjudicating officer upholding the employee's dismissal for just cause.
  - b. An agency aggrieved by a final decision of an adjudicating officer reinstating a NERE dismissed for just cause.
- 2. **Eligibility.** A dismissal for just cause is the permanent termination of the employment relationship of a NERE with status for just cause. It does not include, for example, the following: (a) termination of a probationary employee without status; (b) layoff; (c) separation from the classified service at the end of a leave of absence; (d) revocation of an appointment authorized in rule 3-6; (e) separation of an employee in a limited-term appointment at or before the end of the term of appointment due to lack of work or funding; or (f) separation of a member of the Senior Executive Service (SES) or Senior Executive Management Assistant Service (SEMAS) when the employee's appointment expires if the employee did not have status when appointed to the SES or SEMAS.

- 3. **Contents of claim.** The claim must contain substantially all the information required in Form CS-1756, which is available from the Board or <a href="www.mi.gov/erb">www.mi.gov/erb</a>. The claim must clearly identify the decision appealed (including the case name, decision number, and Civil Service reference number). The appellant's brief in the support of the claim must accompany the claim and must include the following:
  - a. A statement identifying one or more ground for modification or reversal listed in § 4.O.1 on which the appellant relies.
  - b. A statement of the facts and law supporting the appellant's argument.
  - c. Identification of the documents, testimony, or other facts in the record and the rules, regulations, agency work rules, or other law on which the appellant relies.
- 4. **Brief of responding parties.** An appellee or cross-appellee must file any response brief and proof of service to the Board within 28 calendar days after the claim is filed with the Board.

## D. Application for Leave to Appeal (Application).

- 1. **Authorized.** If a claim of appeal as of right is not authorized, a party aggrieved by a final decision of an adjudicating officer may appeal to the Board upon application and leave granted when authorized in the Civil Service rules and regulations.
- 2. **Contents of application.** The application must contain substantially all the information required in Form CS-1743, which is available from the Board or www.mi.gov/erb, including the following:
  - a. **Decision appealed.** The identity of the decision appealed, including the case name, decision number, and Civil Service reference number.
  - b. **Concise statement of material proceedings**. A concise description of the material events, dates, and decisions leading to the application.
  - c. **Grounds for appeal.** A sufficient explanation establishing one or more of the following grounds for appeal:
    - (1) The decision of the adjudicating officer is erroneous.
    - (2) The decision violates article 11, section 5 of the Michigan Constitution or is otherwise contrary to law, including the Civil Service rules and regulations.
    - (3) The question presented is of major significance to the classified service.
- 3. **Response to application.** Any other party to the decision appealed must file any response and proof of service within 28 calendar days after the application is filed with the Board. The response must contain substantially all the information required in Form CS-1754, which is available from the Board or <a href="https://www.mi.gov/erb">www.mi.gov/erb</a>. The response must clearly identify the decision (including the case name, decision number, and

Civil Service reference number). If the original application is deficient, the Board may issue notice of an amended deadline for response to allow other parties an appropriate opportunity to respond.

## E. Summary Dismissal of Claim or Application.

Before the Board considers an appeal, its administrative officer may recommend summary dismissal to the Commission for the reasons listed below. The recommendation is transmitted directly to the Commission for review and final action.

- 1. **Not authorized.** The appellant is not authorized to file the appeal.
- 2. **Lack of jurisdiction.** Civil Service or the Commission lacks jurisdiction over a necessary party or the subject matter of the appeal.
- 3. **Untimeliness.** The appeal is late.
- 4. **Another action pending.** Another Civil Service action has been initiated between the same parties involving substantially the same matter.
- 5. **Barred by prior action.** Substantially the same matter was adjudicated to finality in the Civil Service system in another action between the same parties.
- 6. **Failure to respond.** The party failed to perform properly and timely any act required by the Civil Service rules or regulations, administrative officer, Board, or Commission.
- 7. **Failure to state a claim.** The appeal failed to allege and address any ground for granting leave to appeal under Rule 8-7.5.

## F. Consideration of Application.

If the Board's administrative officer does not recommend summary dismissal, the Board shall review the merits of the grounds for the application and issue a recommendation to the Commission.

1. **Grounds for granting application.** The Board may recommend that the Commission grant the application if it determines that any ground for appeal in Rule 8-7.5(b) is met.

#### 2. Recommendation.

- a. **Denial of application.** If the Board recommends denying the application, the Board shall issue a recommendation to the Commission for final action.
- b. Grant of application. If the Board recommends granting the application, the Board may concurrently make its recommendation on the merits of the appeal or may conduct further proceedings before issuing a separate recommendation on the merits. The Board may notify parties of a schedule for any additional briefs or oral arguments that the Board deems necessary. The Board's recommendation to grant

leave is reviewed by the Commission when reviewing the Board's final recommendation on the merits of the application.

3. **Remand.** The Board may remand a case for further action. Unless the Board expressly retains jurisdiction, a case is remanded without prejudice to filing a new application from any further final decision of the adjudicating officer. A remand order is not appealable to the Commission as a final recommendation of the Board.

#### G. Extensions of Time.

1. **Incomplete filing.** If a party in good faith files a timely claim, application, brief, or other pleading that does not substantially comply with the Civil Service rules and regulations, the Board's administrative officer shall issue a deficiency notice to the party and allow **14 calendar days** to correct the deficiency.

#### 2. Extension before deadline.

- a. Stipulation. The parties may stipulate in writing to an extension of time to file a claim, application, brief, or other pleading. The Board must receive any stipulation before the original deadline passes. A stipulated extension cannot exceed 28 calendar days.
- b. **Advance request.** A party may file an extension request in writing with the Board. Any request must be received **before** the filing deadline. The Board's administrative officer may grant an extension if the administrative officer finds sufficient justification.
- 3. Late filing. Any late appeal, motion, or other document must be accompanied by a written explanation for the lateness. If no explanation is provided, the administrative officer must send a deficiency notice. If the party fails to establish the required good cause or special extenuating circumstances or does not timely correct the deficiency, the appeal is dismissed as late or for failure to respond. The Board or its administrative officer may ask the other parties to respond to the explanation, if deemed necessary.
  - a. **1 to 28 days.** The Board's administrative officer shall deny as untimely any document received up to 28 calendar days late, unless the filing party establishes good cause that was not due to the party's own negligence.
  - b. **29 days but less than 1 year.** The Board's administrative officer shall deny as untimely any document received more than 28 calendar days but less than 1 year late, unless the filing party establishes special extenuating circumstances.
  - c. **1 year or more.** The Board's administrative officer shall deny as untimely, without notice of deficiency, any document received 1 year or more late.

## H. Effect of Filing Appeal.

1. After final decision of adjudicating officer.

- a. **Exclusive jurisdiction.** Once an appeal from a final decision of an adjudicating officer is perfected, the Board exercises exclusive jurisdiction, subject to assumption of jurisdiction by the Commission.
- b. **Stay of final grievance decision.** A grievance decision of an adjudicating officer is final and binding on the parties 29 calendar days after issuance, unless either (1) the decision provides for a later effective date or (2) a party files an appeal to the Commission within 28 calendar days after issuance.
  - (1) Unless all parties agree otherwise, the status of the parties and their relationships at the time of the decision remain unchanged during the 28-day period after the final decision is issued.
  - (2) If a party files a timely and proper appeal within the 28-day period, the effective date of the decision is automatically stayed pending further order of the Board or Commission.
  - (3) If no party intends to appeal a final decision, the parties may implement the decision anytime.
  - (4) If no party has filed an appeal within 28 calendar days after the final decision is issued, the decision is effective on the 29th day and the parties must promptly comply with its terms.
  - (5) If a motion to reinstate a stay is concurrently filed with a late appeal accepted under § 4.G.3, the Board may reinstate the stay if in the interests of justice.
- c. **Reinstatement or restoration of base pay.** If a final decision of an adjudicating officer orders an agency to reinstate a grievant who was dismissed for just cause, the agency, as a condition of appeal to the Commission, must temporarily either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision insurance.
- d. **Unit representation determination.** If the state employer or a labor organization files a timely application for leave to appeal a unit determination decision of the Sstate Ppersonnel Ddirector, the decision is stayed pending further order of the Board or Commission.

## 2. Before final decision of adjudicating officer.

a. Interlocutory appeal. A party may file an application for interlocutory appeal from an interim decision of an adjudicating officer. The appellant must file any application and proof of service within 14 calendar days after the date of the interim decision. The application must concisely describe the material events, dates, and decisions leading to the interlocutory appeal, allege grounds for appeal, and establish one of the following conditions:

- (1) **Certification.** The adjudicating officer has certified that the interim decision involves a controlling question of law or procedure for which (1) there is substantial ground for difference of opinion and (2) an immediate appeal will materially advance the case's ultimate resolution.
- (2) **Irreparable harm.** If the relief requested is not granted, the appellant will suffer irreparable harm by awaiting final decision in the case.
- b. **Response.** Any other party must file any response to the application and proof of service within 14 calendar days after the date the application is filed.
- c. **Stay of proceedings.** Proceedings before the adjudicating officer are not stayed by filing an interlocutory appeal, unless the adjudicating officer expressly orders a stay.

## I. Special Procedures.

- 1. **Expedited procedure.** After notice to the parties, the Board may shorten the time to file responses, dispense with briefs, require simultaneous briefs, call for immediate appearance for oral argument, or otherwise expedite any proceeding.
- 2. **Emergency appeal.** Upon (1) showing of due diligence and irreparable harm if normal practice is followed and (2) reasonable notice to all parties and opportunity for their response, the Board may grant a motion for emergency relief or appearance before the Board at its next meeting. The moving party must file the motion and proof of service.
- 3. Other motions. All motions, other than those justifiably made at oral argument or otherwise authorized in this regulation, must (1) be made in writing to the Board, (2) briefly state the relief sought, and (3) be accompanied by a brief or affidavits setting forth grounds for the action requested. The moving party must file proof of service of the motion. Other parties must file any written response and proof of service within 14 calendar days after the date the motion was filed with the Board. All motions are decided upon the documents filed with the Board, unless the Board calls for oral argument or indicates otherwise.
- 4. **Joinder.** Upon motion of a party, the Board, or its administrative officer, parties may be added, dropped, or substituted at any stage of proceedings as the Board deems appropriate.
- 5. **Consolidation.** Upon motion of a party, the Board, or its administrative officer, proceedings before the Board may be consolidated when similar or related facts or issues of law exist, if no substantial right of any party is prejudiced.
- 6. **Intervention.** Upon written motion establishing sufficient reason, the Board may permit a person, an organization, an employer, or Civil Service staff to intervene as a party or interested party before the Board. The moving party must file the motion and

proof of service. The Board may request intervention or responses by non-participating persons as deemed necessary.

## 7. Group appeals.

- a. In group appeals, a filing may be signed by an authorized representative for the group.
- b. When a filing is made, the Board must be provided with the name, mailing address, and telephone number of each participant as a party in a group appeal. Group appellants must file a Form CS-1793, which is available from the Board or at www.mi.gov/erb.
- c. In group appeals, all correspondence between the Board and parties is with the authorized representative. If a party does not have an authorized representative or has more than one authorized representative, the Board shall issue appropriate orders for the conduct of proceedings.

## J. Relief.

The Board may recommend any relief within the Commission's authority under the Constitution and Civil Service rules and regulations. This includes, but is not limited to, recommending that the Commission affirm, reverse, or modify any adjudicating officer decision or remand for further proceedings.

#### K. Record.

The original record possessed by Civil Service staff must be transmitted promptly to the Board upon request.

- 1. **Preparation of record.** Unless the parties have stipulated to a record, the Board will obtain the record from the applicable Civil Service division and make it available to the parties for inspection and copying.
- 2. Record after contested hearing. An appeal of a decision after a contested hearing is heard on the original papers and exhibits certified by the adjudicating officer and any transcript. The parties may stipulate to facts instead of providing a transcript. When a substantial part of the transcript has no bearing on the appeal, the entire transcript is not required, but a party can obtain and submit all or any part of the transcript.
- 3. Record with no contested hearing. An appeal of a decision without a contested hearing is heard on the original papers and exhibits transmitted to the Board by the adjudicating officer. These include all original documents filed by the parties and any supplemental documents used by the adjudicating officer in rendering a decision.
- 4. **Transcript not available.** When a stenographic record was made but a transcript cannot be created, the parties may meet with the adjudicating officer to settle the record.

#### 5. Definition of Record.

- a. **When contested hearing held.** If a contested hearing was held, the record before the Board to which the briefs are addressed, includes the following:
  - (1) The grievance record, including grievances, complaints, answers, investigative or disciplinary reports, and material correspondence at prior steps of the grievance process.
  - (2) Pleadings, papers, briefs, and correspondence properly submitted by the parties to the adjudicating officer.
  - (3) Filings, decisions, and orders of the adjudicating officer.
  - (4) Certified transcripts of proceedings.
  - (5) Exhibits admitted into evidence by the adjudicating officer or Board.
  - (6) Things judicially noticed.
  - (7) Any claim, application, or cross-appeal filed with the Board.
  - (8) Briefs, supporting documents, and affidavits filed with the Board.
- b. **When no hearing held.** If no contested hearing was held, the record before the Board to which the briefs are addressed includes the following:
  - (1) Pleadings, papers, briefs, exhibits, and correspondence properly submitted by the parties to the adjudicating officer.
  - (2) Other documents relied upon by the adjudicating officer in rendering a decision.
  - (3) Filings, decisions, and orders of the adjudicating officer.
  - (4) Any claim, application, or cross-appeal filed with the Board.
  - (5) Briefs, supporting documents, and affidavits filed with the Board.

#### L. New Evidence.

- 1. **Record closed.** Except for pleadings filed and decisions issued on appeal to the Board, the record is closed when the final decision of the adjudicating officer is issued.
- 2. **Motions.** When considering an appeal, the Board shall not accept new evidence except upon its own motion or written motion of a party for a legally sufficient reason. A document that could have been added to the record during earlier proceedings is presumed to have an inadequate basis for addition to the record. When the Board allows new evidence, it may do any of the following:
  - a. Hear the evidence.
  - b. Request a response brief from other parties.

- c. Assign the matter to a Board member or an adjudicating officer to hear and return a record.
- d. Remand the case to an adjudicating officer to hear the evidence and render a new or supplemental decision.

## M. Dismissal of Appeals.

- 1. **Authority.** An appeal can only be dismissed by (1) the Board based upon a motion from a party or the Board itself, (2) the Board's administrative officer, as authorized in rule 8-7.4, or (3) stipulation of the parties.
- 2. **Withdrawal.** A party may withdraw an appeal by filing a written request and proof of service on all other parties with the Board and obtaining approval of the Board's administrative officer.

## N. Oral Argument.

- 1. **Chair.** The Chair of the Board presides at oral argument.
- 2. **When heard.** Oral argument must be heard on a claim of appeal as of right. In any other case, oral argument may be scheduled at the discretion of the Board.
- 3. **Procedure.** The parties are heard in public session in the order established on the Board agenda. The Board shall give notice of oral argument to a party or the party's authorized representative. Unavailability of a party with an authorized representative is not cause to postpone oral argument.
  - a. A written motion to postpone oral argument may be filed up to the day before oral argument with the Board's administrative officer. The motion must state good cause and set out the position of all other parties on the motion. The moving party must file proof of service of the motion.
  - b. The Board's administrative officer may postpone or reschedule oral argument based on administrative considerations.
  - c. An oral request to the Board to postpone on the day of oral argument must set forth good cause. The Board may postpone, adjourn, or reschedule oral argument based on administrative considerations upon request or its own motion.
- 4. **Time limit.** Unless otherwise directed by the Board, each party may address the Board for up to 15 minutes. In a group grievance, one person may address the Board for up to 15 minutes for all members of the group. An appellant may offer rebuttal argument for up to 5 minutes. The Board may extend the time for any party at its own discretion.
- Contemptuous conduct. Contemptuous conduct during the claim, application, or oral argument is grounds for exclusion from oral argument and other appropriate disqualification.

6. **Recording by Party.** A party may employ at its expense a certified stenographic, audio, or video reporter to record an oral argument if the Board determines that it will not be unduly disruptive. The party must request approval of the Board at least 14 calendar days in advance.

#### O. Recommendation.

- 1. **Grounds for modification or reversal.** The Board reviews appeals from technical review decisions de novo and may recommend to the Commission any action authorized by law. For all other appeals, the Board may recommend that the Commission modify or set aside a decision of an adjudicating officer if substantial rights of the appellant are prejudiced because the decision is any of the following:
  - a. In violation of, or an erroneous interpretation of law, including the Civil Service rules and regulations.
  - b. In excess of the authority or jurisdiction of the adjudicating officer.
  - c. Made upon unlawful procedure resulting in material prejudice to a party.
  - d. Arbitrary and capricious.
  - e. A clear abuse or unwarranted exercise of discretion.
  - f. Affected by other substantial and material error of law.
  - g. For a decision based on a contested hearing, not supported by the preponderance of competent, material, and substantial evidence on the whole record.
- 2. **Interim Board decisions.** Board decisions that are procedural or not final recommendations are effective when issued, unless the decision provides otherwise. An interim decision is reviewed by the Commission only when it reviews any final Board recommendation.
- 3. **Final recommendation.** Unless the Board remands for further action, the Board must issue a final recommendation to the Commission on each claim and application. The Board must recommend that the Commission affirm, reverse, or modify the decision of the adjudicating officer.
- 4. **Conference.** Decisions of the Board are made in a conference from which all persons except the Board and its staff are excluded. The Board may meet and confer in person, by telephone or other electronic means, or by correspondence.
- 5. **Majority.** Decisions of the Board must be by majority vote of a quorum.
- 6. **Division.** When only two members participate and they disagree on the ultimate decision, each member shall make a separate written recommendation.
- 7. **Dissent.** Decisions of the Board are unanimous unless indicated.

Page 17 of 17

- 8. **Confidentiality.** Except for the record and published decisions of the Board or Commission, all files of the Board and Commission, State Ppersonnel Ddirector, adjudicating officers, and Civil Service staff related to appeals, including internal correspondence and discussions, research, staff analyses, and draft decisions are confidential and not open to the public.
- 9. **Notice.** The Board shall issue all its decisions and orders to the parties by United States or interdepartmental mail or email to the last known address of the parties and their representatives or as otherwise deemed appropriate.
- 10. Further appeal to the courts. The final decision of the Commission is subject to review in the Michigan circuit court. A claim of appeal must be filed within 60 calendar days after the date the final Commission decision is issued. A claim of appeal must name the Michigan Civil Service Commission as an appellee and must be served on the Michigan Civil Service Commission at its main office, 400 S. Pine Street, Lansing, Michigan 48913. See Michigan Court Rule 7.117 and Michigan Compiled Laws § 24.301.
- 11. **Awards.** All awards are subject to the provisions of Rule 8-2.4 and Regulation 8.01 § 4.J.

#### P. Post-Decision Procedures.

- 1. **Commission Review.** After the Board issues a final recommendation, the Commission automatically reviews the recommendation and issues a final Commission decision without further action required by any party.
- 2. **Enforcement.** If a party fails to comply with an order of the Board or Commission, a party may request a further order of the Commission compelling compliance. If the Commission issues a compliance order, every party must promptly comply and the sstate Ppersonnel Ddirector shall take all necessary steps to compel compliance. If a party fails to comply with a compliance order of the Commission, the Director or other party may apply for further relief to the appropriate circuit court or court of claims.

## **CONTACT**

Questions on this regulation may be directed to the Employment Relations Baord, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-335-5588; or to MCSC-ERB@mi.gov.