

Michigan Civil Service Commission

Regulation 2.10

Subject: Drug Testing Complaints by Non-Employees		
SPDOC No.: 16-06	Effective Date: January 1, 2017	Replaces: Reg. 2.10 (SPDOC 15-15, October 1, 2015)

1. Purpose

This regulation establishes the procedure for a non-employee to challenge the rescission of a conditional offer of employment after failing to pass a preemployment drug test.

2. CSC Rule References

2-7 *Drug and Alcohol Testing*

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2-7.4 *Penalties*

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(b) New hires.

- (1) Rescission of conditional offer of employment. If a person given a conditional offer of employment fails or refuses to submit to the preemployment drug test, interferes with a test procedure, or tampers with a test sample, the appointing authority must rescind the conditional offer of employment in writing. The written rescission must include notice of the complaint procedure and the 14-day time limit provided in subsection (b)(2). A person whose conditional offer of employment is rescinded must not be appointed to the position in the classified service. The person also is removed from all applicant pools and is disqualified from appointment to the classified service for a period of 3 years.*
- (2) Complaint by applicant. If a person claims that the rescission of the person's conditional appointment as authorized in subsection (b)(1) was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the person may file a written complaint with the state personnel director.
 - (A) A complaint must be received by the state personnel director within 14 calendar days after the appointing authority mailed the written notice of the rescission of the conditional offer of employment and this complaint procedure. The person must also file a copy of the complaint with the appointing authority.*
 - (B) The director shall review the complaint and issue a decision under procedures authorized in the regulations.**

(C) *If the director determines that the rescission was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the director may order an appropriate remedy, including, but not limited to, reinstating the offer of employment, ordering another drug test, or requalifying the person for appointment to the classified service.*

(D) *Either the person or the appointing authority may appeal the director's final decision to the civil service commission.*

3. Standards

A. Rescission. Under rule 2-7.4(b)(1), an appointing authority must rescind a conditional offer of employment to any person not currently employed in the classified service who (1) fails or refuses to submit to a preemployment drug test, (2) interferes with a drug-testing procedure, or (3) tampers with a drug-testing sample. This includes inability to produce an acceptable sample. A rescission must be written and include notice of the right to file a written complaint with the director within 14 calendar days after the date the rescission notice is mailed.

B. Complaint.

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

C. Review of Complaint.

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

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

CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to MCSC-OGC@mi.gov.