



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE DIRECTIVE

No. 2021-01

To: State Department Directors and Autonomous Agency Heads
From: Governor Gretchen Whitmer
Date: March 12, 2021
Re: Use of separation agreements

The State of Michigan is one of the largest employers in the state, employing around 48,000 people. As with any employer, each year a number of state employees separate from their employment, whether because of a good faith dispute, opportunities elsewhere, performance issues, health challenges, family emergency, or any number of other reasons. Sometimes, the employee and the State of Michigan mutually agree to the terms of separation in a legal agreement. Separation agreements are used for many purposes, including to define the terms of employment during a period of transition; to secure the return of state property; and to mitigate legal exposure and potential costs to taxpayers through a release of claims against the state.

The people of Michigan should have confidence in the activities of state government, including the expenditure of public funds on separation agreements. This directive establishes the basic policy of the executive branch of state government relating to the use of separation agreements. This directive does not replace any Michigan Civil Service Commission rules or regulations or any collective bargaining agreement.

Acting under sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. As used in this directive:
 - a. “Executive branch employer” means the executive office of the governor, a department, an autonomous agency subject to supervision by the governor, or any designated appointing authority.

- b. "Separation agreement" means a legal agreement between a director, appointee, or executive branch employee and an executive branch employer that concerns a separation from employment.
2. An executive branch employer may not solicit or agree to a term in a separation agreement that would require a party to deny the existence of the agreement.
3. An executive branch employer may not solicit or agree to a term in a separation agreement that would preclude the release of the text of the agreement.
4. An executive branch employer may not solicit or agree to a term in a separation agreement that purports to supersede rights or duties under section 23 of article 9 of the Michigan Constitution of 1963; Michigan Penal Code, 1931 PA 328, as amended, MCL 750.491; the Michigan Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 to 15.246; the Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 to 15.275; a collective bargaining agreement; or Michigan Civil Service Commission rules or regulations.
5. An executive branch employer may not solicit or agree to a term in a separation agreement that would guarantee the provision of legal representation beyond what is permitted under existing state law, including MCL 691.1408 and Michigan Civil Service Commission Rule 2-19.
6. An executive branch employer may not solicit or agree to a term in a separation agreement that purports to waive any rights or claims that may not be waived by operation of law.
7. An executive branch employer may agree to a term in a separation agreement that would require the state to provide valuable consideration (including but not limited to a monetary payment) in exchange for something other than services rendered if:
 - a. the agreement includes a release of all claims, past or present, against the state parties;
 - b. the executive branch employer makes a reasonable judgment that securing the release of claims will mitigate financial risk for the State of Michigan and protect taxpayer money; and
 - c. the agreement includes a merger and integration clause representing that the agreement contains the complete and exclusive agreement between the parties.
8. Subject to paragraph 9 of this directive, an executive branch employer may not solicit or agree to a term in a separation agreement that would require confidentiality or non-disclosure unless the term would:
 - a. memorialize confidentiality requirements otherwise required by law;
 - b. preserve confidentiality obligations in place during employment; or

- c. maintain confidentiality regarding an employment decision or dispute, including but not limited to the circumstances of the departure.
9. An executive branch employer may not solicit or agree to a term in a separation agreement that would deny a party the right or opportunity to disclose the underlying facts and circumstances regarding alleged unlawful acts in the workplace, including but not limited to discrimination, retaliation, sexual harassment, or fraud. However, a term that shields the identity of a victim and all facts that could lead to the discovery of the victim's identity may be included in a separation agreement at the request of the victim.
 10. Prior to finalizing a separation agreement, an executive branch employer must submit the agreement to the Michigan Department of Attorney General for review as to form.

This directive is effective immediately.

Thank you for your cooperation in implementing this directive.



Date: March 12, 2021

Time: 6:30 a.m.

GRETCHEN WHITMER
GOVERNOR