

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) business days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 3—Preapproval of Claims and Accounts**

EMERGENCY RULE

1 CSR 10-3.020 Deduction of Amounts Owed by Employees to the State

PURPOSE: Section 33.103.2(4), RSMo provides that the Commissioner may deduct from a state employee's compensation warrant "[a]ny amount determined to be owed by the employee to the state in accordance with guidelines established by the commissioner of administration which shall include notice to the employee and an appeal process." This rule sets forth the guidelines by which amounts owed by employees to the state may be deducted from compensation warrants.

EMERGENCY STATEMENT: This emergency rule establishes guidelines by which amounts owed by employees to the state, including outstanding borrowed leave balances, may be deducted from compensation warrants. The borrowed leave program authorized by emergency rule 1 CSR 20-5.030 will allow state employees impacted by COVID-19 to take additional sick leave beyond their existing balances. This emergency rule is a necessary component of the introduction of the borrowed leave program, as employees who leave state employment with outstanding borrowed leave balances must repay those balances to the state and can do so most efficiently through a payroll deduc-

tion. The COVID-19 pandemic poses an immediate danger to the public health, safety, and welfare, and emergency action is required to address this danger by allowing state employees without leave balances to take leave from the first moment they are sick free of immediate adverse economic consequences, which will help protect the co-workers of employees who might otherwise report to work while sick as well as the public and help to disrupt the spread of COVID-19. In addition to the foregoing, the emergency rule will help to preserve the compelling governmental interests of retaining employees, keeping employees and the public safe, maximizing government responsiveness and efficiency during the COVID-19 pandemic, and safeguarding state government resources. A proposed rule, which covers the same material with one additional subsection, is published in this issue of the *Missouri Register*. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The board believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed April 16, 2020, becomes effective April 30, 2020, and expires October 30, 2020.

(1) Definitions.

(A) All terms used in this rule have the same meanings as in chapter 33, RSMo, unless otherwise indicated.

(B) The term "decision" shall have the same meaning as in section 536.010, RSMo.

(C) The term "Division of Accounting" shall mean the Division of Accounting of the Office of Administration. Contact information for the Division of Accounting may be found on the Office of Administration's website, <https://oa.mo.gov>.

(D) The term "employee" shall include both current state employees and former state employees.

(2) Deduction Procedure.

(A) Deductions Initiated by the Division of Accounting.

1. Division of Accounting Responsibilities. The Division of Accounting will utilize the following procedure to effectuate the deduction of an amount owed by an employee to the state from an employee's compensation warrant pursuant to section 33.103.2(4), RSMo:

A. The Division of Accounting may initiate deductions of amounts owed by an employee to the state due to erroneous overpayments, borrowed leave, or other circumstances in which the Division of Accounting can determine the amount of the deduction without receiving additional information from the state agency;

B. Prior to the effective date of the deduction, or as soon as practicable thereafter, the Division of Accounting will provide written notice to the employee, either in paper or electronic format, of the amount to be deducted, the reasons for the deduction, and his/her right to appeal the deduction pursuant to this rule; and

C. The Division of Accounting will provide notice of the deduction to the state agency no later than when notice is provided to the employee.

(3) Appeal Procedure.

(A) Timing of Appeal. Appeals of deductions must be received in hard-copy by mail or hand-delivery in the Office of the Commissioner, State Capitol Building, Room 125, P.O. Box 809, Jefferson City, Mo 65102-0809, no later than thirty (30) calendar days after the later of the date notice is sent to the employee or the effective date of the deduction from the employee's compensation warrant, or by the next working day thereafter if the appeal period ends on a weekend or holiday. For example, if an employee was paid on January 15th, received notice of the deduction prior to that date, and wishes to appeal a deduction taken from that paycheck, an appeal must be received no later than February 14th, or by the next working

day thereafter if February 14th falls on a weekend or holiday.

(B) Effect of Appeal on Pending Deduction. The submission of an appeal prior to the effective date of the deduction will not prevent the deduction from occurring so long as the state agency and/or Division of Accounting have complied with the applicable deduction procedure described in this rule, except in instances where a final decision is reached to modify the amount of the deduction or reverse the deduction with sufficient time remaining to effectuate the final decision prior to the deduction.

(C) Contents of Appeal. Appeals should set out in clear, concise language the employee's understanding of the events preceding the deduction, any inaccuracies in the state agency's communications to the employee regarding the deduction, the reason(s) why the employee believes the deduction is inappropriate, and attach all evidence supporting the employee's position.

(D) Standard of Review. Appeals shall involve a review of the appropriateness of the deduction in light of all of the relevant facts and law.

(E) Optional Hearing. The Commissioner or his/her designee may or may not decide to hold an informal hearing to gather additional information regarding the deduction. It is expected that the employee, one or more representatives of the state agency, and/or one or more representatives of the Division of Accounting will attend this hearing if held. The employee may request that the Commissioner or his/her designee allow the attendance of individuals with first-hand knowledge relevant to the deduction. The parties shall all proceed in a respectful and orderly fashion as directed by the Commissioner or his/her designee so as to allow the Commissioner or his/her designee the opportunity to gather information regarding the deduction.

(F) Final Decision. At any time following the receipt of a timely appeal of a deduction after sufficient information has been gathered to make an informed decision, the Commissioner shall issue a written decision disposing of the employee's appeal by either upholding the deduction, modifying the amount of the deduction, or reversing the deduction. The employee may request a stay of the appeal pending the resolution of other relevant administrative, civil, or criminal proceedings and the Commissioner or his/her designee may rule on the request in an exercise of their discretion. Any unrulable request for stay will be presumed denied.

(4) Appeals from Final Decisions. Final decisions of the Commissioner under this rule may be appealed pursuant to section 536.150, RSMo.

AUTHORITY: sections 33.103 and 536.023, RSMo 2016. Emergency rule filed April 16, 2020, effective April 30, 2020, expires Oct. 30, 2020. A proposed rule covering this same material is published in this issue of the Missouri Register.

PUBLIC COST: This emergency rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 5—Working Hours, Holidays and Leaves of Absence

EMERGENCY RULE

1 CSR 20-5.030 Borrowed Leave

PURPOSE: This rule provides for borrowed leave use and availability in response to Coronavirus Disease 2019 (COVID-19).

EMERGENCY STATEMENT: This emergency rule establishes the availability and eligibility requirements of the new borrowed leave program within state agencies subject to section 36.350, RSMo. The borrowed leave program will allow state employees impacted by COVID-19 to take additional sick leave beyond their existing balances. The COVID-19 pandemic poses an immediate danger to the public health, safety, and welfare, and emergency action is required to address this danger by allowing state employees without leave balances to take leave from the first moment they are sick free of immediate adverse economic consequences, which will help protect the co-workers of employees who might otherwise report to work while sick as well as the public and help to disrupt the spread of COVID-19. In addition to the foregoing, the emergency rule will help to preserve the compelling governmental interests of retaining employees, keeping employees and the public safe, and maximizing government responsiveness and efficiency during the COVID-19 pandemic. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The board believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed April 16, 2020, becomes effective April 30, 2020, and expires October 30, 2020.

(1) Scope. This rule establishes the availability and eligibility requirements of borrowed leave within state agencies subject to section 36.350, RSMo, notwithstanding any other rule in this chapter to the contrary. The board expects that section (2) of this rule will be rescinded when the availability of borrowed leave in response to the COVID-19 pandemic is no longer necessary.

(2) Borrowed Leave.

(A) State agencies may permit employees who have exhausted their sick leave balance to borrow against future sick leave accruals in circumstances caused directly or indirectly by COVID-19 as specified in this rule.

(B) Borrowed leave may be approved by state agencies in accordance with a written interagency memorandum issued by the Commissioner of the Office of Administration. The board does not anticipate that this memorandum will substantially affect the legal rights of, or procedures available to, the public or any segment thereof, because it only impacts the internal management of state agencies. In response to the exigencies created by the COVID-19 pandemic, the memorandum may describe any of the following:

1. The circumstances in which borrowed leave may be approved;
2. The amount of borrowed leave available, which may vary by circumstance;
3. Documentation requirements applicable to borrowed leave, which may vary by circumstance;
4. Additional requirements applicable upon taking threshold amounts of borrowed leave;
5. The procedure by which borrowed leave will be repaid while the employee remains in state service;
6. The establishment of ShareLeave programs by which eligible employees may donate leave hours to assist recipient employees in the repayment of borrowed leave; and
7. Any other procedures or requirements incident to the administration of leave as the Commissioner believes to be appropriate and necessary to address the emergency created by the COVID-19 pandemic.

(3) Repayment of Borrowed Leave. Employees approved to borrow against future sick leave accruals must repay the borrowed leave in