

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

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

PROPOSED 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.

(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 a State Agency.

1. State Agency Responsibilities. A state agency seeking to recoup an amount owed by an employee to the state from the employee's compensation warrant must comply with the following procedure before the Division of Accounting will effectuate a deduction from an employee's compensation warrant pursuant to section 33.103.2(4), RSMo:

A. The employee must have received notice in compliance with paragraph 2. of this subsection;

B. The state agency must provide a written communication to the Division of Accounting explaining the justification for the deduction, the method by which notice to the employee was given, a copy of the notice, the amount of the deduction, and the requested coding for the deduction;

C. The state agency must provide the Division of Accounting with the name and contact information of the state agency contact person who should field any questions or requests for additional information regarding the deduction; and

D. The state agency must fully comply with this procedure no later than 12:00 p.m. six (6) working days prior to the proposed effective date of the deduction.

2. Notice to the Employee. A state agency will present to the Division of Accounting as sufficient evidence of notice to the employee of the deduction, a copy of a written communication to the employee, either in paper or electronic format, informing the employee of the amount of the deduction, the reasons for the deduction, and his/her right to appeal the deduction pursuant to this rule.

3. Requests for Additional Information. The state agency shall promptly respond to inquiries from the Division of Accounting relating to a requested deduction and provide additional information as needed. Failure to promptly provide additional information requested by the Division of Accounting may prevent the Division of Accounting from being able to process a requested deduction.

4. Deduction Processing. The Division of Accounting will process a deduction after sufficient evidence of the appropriateness of the deduction and notice to the employee has been provided by the state agency. Deductions will be processed by the Division of Accounting as near to the effective date proposed by the state agency as is practicable under the circumstances.

(B) 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, PO 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 15, 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 14, or by the next working day thereafter if February 14 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 (1) 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. Original rule filed April 16, 2020.

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

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED 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).

(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 full. In addition to repaying borrowed leave with sick leave, the interagency memorandum may specify that other accumulated time may be used by employees and, in the event of separation must be used, to repay borrowed leave. In the event an employee separates from