

**MEMORANDUM**

TO: Government Operations & Fiscal Policy Committee

FROM: Justina J. Ferber,  Legislative Analyst

SUBJECT: Executive Regulation 23-12, Miscellaneous Amendments to Montgomery County Personnel Regulations

On December 27, 2012, the Council received Regulation 23-12, *Miscellaneous Amendments to the Montgomery County Personnel Regulations*, from the Executive. Regulation 23-12 is processed under Method (1) Section 2A-15 of the County Code. A regulation proposed under this method does not take effect until the Council approves it.

The Government Operations and Fiscal Policy (GO) Committee will consider the Executive's proposed amendments to Sections 7, 10, 13, 15 and 19 of the Personnel Regulations. These changes affect non-union merit system employees and non-merit employees. **These amendments clarify or update certain provisions and are discussed below:**

- **Section 7** – Noncompetitive reappointment – Clarifies that non-competitive reappointment includes appointment to a temporary position at the same or lower grade level than the employee held at the time of separation.

**Discussion:** This amendment is a clarification of existing policy. Under Section 1-75 of the MCPR, a temporary position is defined “as a non-career position classified and filled under merit system principles.” Because temporary positions are filled competitively under merit principles this amendment is necessary.

- **Section 10** – Payroll and salary setting policies – Provides that an employee is not required to repay the portion of overpayments which has extended beyond a three-year period and to clarify and eliminate confusion with respect to salary on promotion.

**Discussion:** This amendment is a clarification of existing policy. There are very few cases where the County has sought repayment for overpayments beyond three years.

This amendment will also eliminate the confusion with regard to salary on promotion. It came to the attention of the Office of Human Resources that there was some confusion by departments in reading Section 10-5(c), and therefore clarification was necessary. The proposed changes clarify that for a regular single promotion a 5 percent increase in base

salary is mandatory but that the director has discretion to raise the base salary up to an additional 10 percent. Since this Executive Regulation is technical in nature and clarifies existing language, OHR decided to develop specific factors to determine whether to award up to an additional 10 percent as part of the ongoing comprehensive review of the Personnel Regulations currently underway.

- **Section 13** – Policy on employee performance awards – Allows for Paid Time Off Awards for MLS employees in certain instances.

**Discussion:** An MLS employee is not eligible to receive service increments but may receive performance-based pay as described in Section 10-10 of the Personnel Regulations. The intent of the MLS performance-based pay system was that MLS employees would not be eligible for other cash awards for job performance. An MLS employee is not eligible for a monetary performance award described in Section 13-2 of the Personnel Regulations; however, they are eligible for an honorary or non-monetary award under Section 13-4.

Paid Time Off Awards for MLS employees is an amendment that department directors have requested as an exceptional award. As managers, MLS employees are not eligible for either compensatory time or overtime. Paid Time Off Awards for MLS employees would allow department directors to recognize the extra days being worked by MLS employees. As an example, during bad weather bargaining unit employees and MLS employees at Highway Services may be needed to work extra shifts and extra hours. Bargaining unit employees are compensated for the overtime worked while MLS employees are not.

In general, Paid Time Off (PTO) is a type of leave granted to MLS employees in the Retirement Savings Plan (RSP) or Guaranteed Retirement Income Plan (GRIP) that may be used as sick or annual leave. **The proposed regulation would allow for a Paid Time Off Award under the following criteria: A) exceptional performance for an extended period of time; B) completion of a major special project requiring unusual skill and effort and working a substantial number of uncompensated hours; or C) working a substantial number of uncompensated hours during an emergency.**

In anticipation of the expiration of the 2001 Montgomery County Personnel Regulations on January 5, 2014, OHR is in the process of conducting an extensive review of the current regulations. As part of the review, OHR is reexamining Section 13, Performance Awards, and anticipates making substantive changes in the employee awards program.

The recommended leave award should not be an issue in the GO Committee review of the OLO report on Employee Work Hours and Leave.

- **Section 15** – Alternate Work Schedules – Deletes a provision that prohibits an employee from filing both a grievance and a complaint with the Montgomery County Human Relations Commission over a denial of a request by the employee for an alternate work schedule for religious observance.

**Discussion:** This administrative change is necessary for the County to be in compliance with the Federal Equal Employment Opportunity Commission’s policy.

- **Section 19** – Use of FMLA leave – Clarifies that the medical certification form submitted by an employee requesting Family and Medical Leave must be completed by the health care provider treating the serious health condition.

**Discussion:** This amendment requires an employee to obtain a medical certification from the health care provider treating the serious health condition when using FMLA leave.

### **Fiscal Impact**

The Executive’s transmittal memorandum notes that regulation 23-12 was advertised in the November 2012 issue of the *Montgomery County Register* and the MSPB reviewed the regulation and has no objection. A fiscal impact statement indicating no fiscal impact for sections 7, 10, 15 and 19 is at ©4-6. OMB makes the following explanation regarding the fiscal impact of the amendments to Section 13:

The fiscal impact of the amendments to Section 13 is difficult to project. The amendment allows MLS employees to receive monetary awards only by cashing out Paid Time Off (PTO) awards at the time that the employee either retires or leaves county service. The two unknown variables are the number of employees who will receive PTO awards in any given fiscal year and how many employees will use the PTO instead of “cashing in” the PTO upon retirement or leaving County Service. The average hourly rate for MLS employees eligible for PTO is \$53.55 and the total number of MLS Employees receiving PTO is 199.

### **Recommendation**

Council staff concurs with the miscellaneous amendments proposed in Regulation 23-12 and suggests the Committee recommend Council adoption of Executive Regulation 23-12 as submitted.

#### **This packet contains:**

	<b><u>Circle #</u></b>
Resolution	1
Transmittal Memorandum	3
Fiscal Impact Statement	4
Regulation 23-12, bracketed and underlined	7
Regulation 23-12, clean copy	16
Question from Council Staff and OHR Responses	24

Resolution No.: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Government Operations and Fiscal Policy Committee

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**Subject:** Approval of Executive Regulation 23-12, Miscellaneous Amendments to Montgomery County Personnel Regulations

**Background**

1. On December 27, 2012, the County Council received Executive Regulation 23-12 to amend Sections 7, 10, 13, 15 and 19 of the Personnel Regulations to clarify and update certain provisions.
2. Executive Regulation 23-12 amends the following:
  - a. Section 7-4 – Noncompetitive reappointment - Clarifies that non-competitive reappointment includes appointment to a temporary position at the same or lower grade level than the employee held at the time of separation;
  - b. Section 10-4 – Payroll policies – Provides that an employee is not required to repay the portion of overpayments which has extended beyond a three-year period;
  - c. Section 10-5 – Salary-setting policies - Clarifies and eliminates confusion with respect to salary on promotion;
  - d. Section 13-1 – Policy on employee performance awards – Allows for Paid Time Off Awards for MLS employees in certain instances;
  - e. Section 15-4 – Alternate Work Schedules – Deletes a provision that prohibits an employee from filing both a grievance and a complaint with the Montgomery County Human Relations Commission over a denial of a request by the employee for an alternate work schedule for religious observance; and
  - f. Section 19-9 – Use of FMLA leave – Clarifies that the medical certification form submitted by an employee requesting Family and Medical Leave under Section 19 must be completed by the health care provider treating the serious health condition.
3. Executive Regulation 23-12 is processed under Method 1 and takes effect upon adoption of the Council resolution approving it.

**Action**

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 23-12 to amend Sections 7, 10, 13, 15 and 19 of the Montgomery County Personnel Regulations to clarify and update certain personnel provisions is approved.

This is a correct copy of Council action.

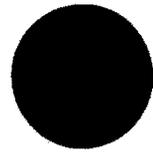
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Linda M. Lauer, Clerk of the Council

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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

December 20, 2012

RECEIVED  
MONTGOMERY COUNTY  
2012 DEC 27 AM 10:52

TO: Nancy Navarro, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Executive Regulation No. 23-12, Miscellaneous Amendments to the Montgomery County Personnel Regulations

METHOD 1

I am submitting Executive Regulation No. 23-12 for the Council's review and approval. This regulation amends Sections 7, 10, 13, 15, and 19 of the Personnel Regulations to clarify and update certain provisions. More specifically, the regulation amends Section 7 to clarify that non-competitive reappointment includes appointment to a temporary position at the same or lower grade level than the employee held at the time of separation. Section 10 is amended to provide that an employee is not required to repay the portion of overpayments which has extended beyond a three-year period. The regulation also amends Section 10 to clarify and eliminate confusion with respect to salary on promotion. The regulation amends Section 13 to allow for Paid Time Off Awards for MLS employees in certain instances. The regulation amends Section 15 by deleting a provision that prohibits an employee from filing both a grievance and a complaint with the Montgomery County Human Relations Commission over a denial of a request by the employee for an alternate work schedule for religious observance. This change is necessary for the County to be in compliance with the Federal Equal Employment Opportunity Commission's policy. Finally, the regulation clarifies that the medical certification form submitted by an employee requesting Family and Medical Leave under Section 19 must be completed by the health care provider treating the serious health condition.

I am also attaching the fiscal impact statement for this regulation.

Executive Regulation No. 23-12 was advertised in the November 2012 issue of the *Montgomery County Register*. No comments were received in response to this advertisement. The proposed regulation has been reviewed by the Merit System Protection Board and the Board has no objection.

IL:sw

Attachments

**Fiscal Impact Statement**  
Executive Regulation 23-12, Miscellaneous Amendments to the  
Montgomery County Personnel Regulations

**1. Executive Regulation Summary**

The proposed regulation amends Sections 7, 10, 13, 15, and 19 of the 2001 Montgomery County Personnel Regulations to clarify and update certain provisions. Amendments are made to:

- Section 7 to clarify that non-competitive reappointment includes appointment to a temporary position at the same or lower grade level than the employee held at the time of separation.
- Section 10 to provide that an employee is not required to repay the portion of overpayments which has extended beyond a three-year period. The regulation also amends Section 10 to clarify and eliminate confusion with respect to salary on promotion.
- Section 13 to allow for Paid Time Off Awards for MLS employees in certain instances.
- Section 15 by deleting a provision that prohibits an employee from filing both a grievance and a complaint with the Montgomery County Human Relations Commission over a denial of a request by the employee for an alternate work schedule for religious observance.
- Section 19 by clarifying that the medical certification form submitted by an employee requesting Family and Medical Leave must be completed by the health care provider treating the serious health condition.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

The proposed regulation does not have any fiscal impact with respect to amendments to Sections 7, 10, 15 and 19. The fiscal impact resulting from the amendments to Section 13 are difficult to project (see item #10 below for explanation).

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

The proposed regulation does not have any fiscal impact with respect to amendments to Sections 7, 10, 15 and 19. The fiscal impact resulting from the amendments to Section 13 are difficult to project (see item #10 below for explanation).

**4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.**

Not applicable.

**5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

The proposed regulation does not authorize future spending.

**6. An estimate of the staff time needed to implement the regulation.**

Any staff time needed to implement the regulation is minimal.

**7. An explanation of how the addition of new staff responsibilities would affect other duties.**

The proposed regulation does not create any new staff responsibilities.

**8. An estimate of costs when an additional appropriation is needed.**

Not applicable.

**9. A description of any variable that could affect revenue and cost estimates.**

Not applicable.

**10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

The fiscal impact of the amendments to Section 13 is difficult to project. The amendment allows MLS employees to receive monetary awards only by cashing out Paid Time Off (PTO) awards at the time that the employee either retires or leaves county service. The two unknown variables are the number of employees who will receive PTO awards in any given fiscal year and how many employees will use the PTO instead of 'cashing in' the PTO upon retirement or leaving County Service. The average hourly rate for MLS Employees Eligible for PTO is \$53.55 and the total number of MLS Employees receiving PTO is 199.

**11. If a regulation is likely to have no fiscal impact, why that is the case.**

This regulation does have a potential fiscal impact.

- For amendments to Section 7-4, the proposed regulation clarifies current policy.
- For amendments to Section 10-4, there are very few cases where the County has sought repayment for overpayments beyond three years. For amendments to Section 10-5, the proposed regulation clarifies current policy.
- For amendments to Section 15-4, the proposed regulation creates an administrative change in order for the County to remain in compliance with Federal EEOC policy. There is no fiscal impact from remaining in compliance.
- For amendments to Section 19-9, the proposed regulation requires the employee to obtain certification from his/her health care provider; there is no fiscal impact to the County.

**12. Other fiscal impacts or comments.**

None.

13. The following contributed to and concurred with this analysis (enter name and dept.)

Stuart Weisberg, Office of Human Resources

Helen P. Vallone, Office of Management and Budget

Naeem Mia, Office of Management and Budget

  
Jennifer A. Hughes, Director  
Office of Management and Budget

12/10/12  
Date



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b>	Miscellaneous Amendments to the Montgomery County Personnel Regulations	<b>Number</b>	23-12
<b>Originating Department</b>	Office of Human Resources	<b>Effective Date</b>	

## Miscellaneous Amendments to the Montgomery County Personnel Regulations

Executive Regulation No. 23-12

Issued by: County Executive

Supersedes: Executive Regulation No. 12-00AM II, in part

Authority: Montgomery County Code, 2004, §33-7(b)

Council review: Method 1

*Montgomery County Register* Volume 29, Issue 11

Comment deadline: November 30, 2012

**Summary:** This regulation amends Sections 7, 10, 13, 15, and 19 of the 2001 Montgomery County Personnel Regulations to clarify and update certain provisions.

**Address for comments:** Office of Human Resources, Executive Office Building, 7th Floor  
101 Monroe Street, Rockville, Maryland 20850

**Staff contact:** Stuart Weisberg, 240-777-5154, or [stuart.weisberg@montgomerycountymd.gov](mailto:stuart.weisberg@montgomerycountymd.gov)

Please use the key below when reading this regulation:

- |                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <i>Heading or defined term.</i>                                  |
| <u>Underlining</u>           | <i>Added to existing regulation by proposed regulation.</i>      |
| [Single boldface brackets]   | <i>Deleted from existing regulation by proposed regulation.</i>  |
| <u>Double underlining</u>    | <i>Added by amendment.</i>                                       |
| [[Double boldface brackets]] | <i>Deleted from existing or proposed regulation by amendment</i> |
| * * *                        | <i>Existing language unchanged by executive regulation</i>       |



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<b>Subject</b>	Miscellaneous Amendments to the Montgomery County Personnel Regulations	<b>Number</b>	23-12
<b>Originating Department</b>	Office of Human Resources	<b>Effective Date</b>	

## SECTION 7. APPOINTMENTS, PROBATIONARY PERIOD, AND PROMOTIONAL PROBATIONARY PERIOD

\* \* \*

### 7-4. Noncompetitive reappointment.

- (a) A department director may noncompetitively reappoint a former County employee if the individual:
  - (1) is reappointed to a position, including a temporary position, at the same or lower grade level than the employee held at the time of separation;
  - (2) meets the requirements for the position;

\* \* \*

## SECTION 10. EMPLOYEE COMPENSATION

\* \* \*

### 10-4. Payroll policies.

\* \* \*

- (d) *Recovery of overpayment or employee debt.*
  - (1) *Recovery of overpayment to employee.*
    - (A) If the County overpays an employee, the CAO may deduct money from the employee's pay to recover the overpayment. The CAO must give the employee notice and an opportunity to respond before deducting the amount of the overpayment from the employee's pay.
    - (B) An employee will not be required to repay the portion of overpayments which has extended beyond a 3-year period.



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[(B)]

(C) An employee who is overpaid by the County has a duty to promptly notify the department director of the overpayment.

[(C)]

(D) A department director may take disciplinary action against an employee who knew about the overpayment but failed to notify the department director.

\* \* \*

## 10-5. Salary-setting policies.

\* \* \*

### (c) *Salary on promotion.*

#### (1) *Compensation for a regular (non-temporary) promotion.*

(A) A department director must ensure that an employee's base salary following promotion is not less than the minimum or more than the maximum salary for the new pay grade or pay band.

(B) A department director must give a merit system employee who is promoted at least a 5 percent increase in base salary, except as provided in (C) below.

(C) A department director must not give a salary increase upon promotion to an employee who took a voluntary demotion in the past but did not lose salary, unless:

- (i) a salary increase is necessary to restore the employee to the salary that the employee would have had if the employee had not been demoted; or



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(ii) the employee is promoted to a higher-graded position than the position from which the employee was demoted.

(D) In addition to the non-discretionary 5 percent increase provided for in (B) above, [A] a department director [may give an employee who is promoted an] may recommend and the OHR Director may approve an additional increase in base salary up to [a maximum of] 10 percent for a single promotion, or a total increase not to exceed 15 percent.

(E) In extraordinary circumstances, the department director may recommend and the OHR Director may approve [an] a total increase [of up] not to exceed 20 percent of base salary.

Extraordinary circumstances means:

- (i) a promotion of at least 3 grades; or
- (ii) a promotion to a supervisory position after which the employee's salary would be less than that of the employees supervised.

\* \* \*

## SECTION 13. PERFORMANCE AWARDS

### 13-1. Policy on employee performance awards.

\* \* \*

- (d) An MLS employee is not eligible for a monetary award under this section except for a Paid Time Off Award under Section 13-2 (d).

### 13-2. Monetary awards.



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(c) *Annual Leave Award.*

- (1) *Award type.* The Annual Leave Award is an amount of annual leave [or paid time off for employees who receive paid time off].
- (2) *Eligibility.* Merit system employees are eligible.
- (3) *Award criteria.* Criteria include:
  - (A) sustained or unusual effort on a special project;
  - (B) outstanding or noteworthy performance on a sustained basis or for a special project.
  - (C) other actions, activities, or products of importance and value to the department.
- (4) *Limitations.* A department director may grant up to a maximum of 40 hours of leave per employee in a fiscal year.
- (5) *Nomination procedure.* A division chief must make a written recommendation to the department director documenting the reason for the award.

(d) *Paid Time Off Award for MLS Employees.*

- (1) *Award type.* The Paid Time Off Award is an amount of paid time off.
- (2) *Eligibility.* MLS employees are eligible.
- (3) *Award criteria.* A Paid Time Off Award is neither ordinary or usual but may be appropriate to recognize:
  - (A) exceptional performance for an extended period of time;



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(B) completion of a major special project requiring unusual skill and effort and working a substantial number of uncompensated hours;

or

(C) working a substantial number of uncompensated hours during an emergency.

(4) Limitations. A department director may grant up to a maximum of 40 hours of paid time off per employee in a fiscal year.

(5) Nomination and approval procedure. A department director must make a written recommendation to the CAO documenting the reason for the award. The CAO must determine whether to grant a Paid Time Off Award.

### 13-3. Procedures for monetary awards.

(a) A department director must:

(1) recommend to the CAO an Outstanding Performance Increment for an employee in the department, and if granted, prepare the documentation for processing;

(2) recommend to the CAO a Paid Time Off Award for an MLS employee and document the reason for the award;

(3) for all other monetary awards:

(A) review and evaluate all awards recommended for the department, ensuring that the type and amount of award are commensurate with the performance or product being recognized;

(B) determine which awards to approve; and

(C) provide all required award information to OHR.



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(b) The OHR Director must:

\* \* \*

(4) report to the CAO at the end of a fiscal year a department's total:

(A) cash awards;

(B) non-cash awards with an individual value of more than \$50; and

(C) hours of annual leave or paid time off granted as awards.

(c) The CAO must determine whether to grant an Outstanding Performance Increment for an employee or a Paid Time Off Award for an MLS employee.

\* \* \*

## SECTION 15. WORK SCHEDULES, ATTENDANCE, HOURS OF WORK

\* \* \*

### 15-4. Alternate Work Schedules

(a) *Alternate work schedules for religious observance.*

\* \* \*

(4) *Appeal of denial of request for alternate work schedule for religious observance.*

(A) An employee with merit system status may file a grievance under Section 34 of these Regulations if the employee's supervisor denies the employee's request for an alternate work schedule for religious observance.



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(B) An employee may file an EEO complaint under the process described in Section 5-4 of these Regulations. [Under Section 27-21 of the County Code, an employee who files a complaint with the Montgomery County Human Relations Commission over a denial of a request for alternate work schedule for religious observance may not file a grievance on the same issue under Section 34 of these Regulations.]

\* \* \*

## SECTION 19. FAMILY AND MEDICAL LEAVE

\* \* \*

### 19-9. Use of FMLA leave.

(b) *FMLA leave taken for a serious health condition.*

\* \* \*

(2) A supervisor may require an employee to submit a County *Medical Certification of Employee's Serious Health Condition Form* (Appendix P-1) or a County *Medical Certification of Family Member's Serious Health Condition Form* (Appendix P-2) completed by the health care provider treating the serious health condition to support



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a request for leave for a serious health condition.

\* \* \*

Approved:   
 Isiah Leggett, County Executive

Dec 20, 2017  
 Date

Approved as to form and legality:

Anne T. Winkler      12/6/12  
 Office of the County Attorney      Date



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Authority: Montgomery County Code, 2004, §33-7(b)

Council review: Method 1

*Montgomery County Register* Volume 29, Issue 11

Comment deadline: November 30, 2012

**Summary:** This regulation amends Sections 7, 10, 13, 15, and 19 of the 2001 Montgomery County Personnel Regulations to clarify and update certain provisions.

**Address for comments** Office of Human Resources, Executive Office Building, 7th Floor  
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**Staff contact:** Stuart Weisberg, 240-777-5154, or [stuart.weisberg@montgomerycountymd.gov](mailto:stuart.weisberg@montgomerycountymd.gov)

Please use the key below when reading this regulation:

**Boldface**

\* \* \*

*Heading or defined term.*

*Existing language unchanged by executive regulation*



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## SECTION 7. APPOINTMENTS, PROBATIONARY PERIOD, AND PROMOTIONAL PROBATIONARY PERIOD

\* \* \*

### 7-4. Noncompetitive reappointment.

- (a) A department director may noncompetitively reappoint a former County employee if the individual:
  - (1) is reappointed to a position, including a temporary position, at the same or lower grade level than the employee held at the time of separation;
  - (2) meets the requirements for the position;

\* \* \*

## SECTION 10. EMPLOYEE COMPENSATION

\* \* \*

### 10-4. Payroll policies.

\* \* \*

- (d) *Recovery of overpayment or employee debt.*
  - (1) *Recovery of overpayment to employee.*
    - (A) If the County overpays an employee, the CAO may deduct money from the employee's pay to recover the overpayment. The CAO must give the employee notice and an opportunity to respond before deducting the amount of the overpayment from the employee's pay.
    - (B) An employee will not be required to repay the portion of overpayments which has extended beyond a 3-year period.



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- (C) An employee who is overpaid by the County has a duty to promptly notify the department director of the overpayment.
- (D) A department director may take disciplinary action against an employee who knew about the overpayment but failed to notify the department director.

\* \* \*

## 10-5. Salary-setting policies.

\* \* \*

### (c) *Salary on promotion.*

#### (1) *Compensation for a regular (non-temporary) promotion.*

- (A) A department director must ensure that an employee's base salary following promotion is not less than the minimum or more than the maximum salary for the new pay grade or pay band.
- (B) A department director must give a merit system employee who is promoted at least a 5 percent increase in base salary, except as provided in (C) below.
- (C) A department director must not give a salary increase upon promotion to an employee who took a voluntary demotion in the past but did not lose salary, unless:
  - (i) a salary increase is necessary to restore the employee to the salary that the employee would have had if the employee had not been demoted; or



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(ii) the employee is promoted to a higher-graded position than the position from which the employee was demoted.

(D) In addition to the non-discretionary 5 percent increase provided for in (B) above, a department director may recommend and the OHR Director may approve an additional increase in base salary up to 10 percent for a single promotion, or a total increase not to exceed 15 percent.

(E) In extraordinary circumstances, the department director may recommend and the OHR Director may approve a total increase not to exceed 20 percent of base salary. Extraordinary circumstances means:

- (i) a promotion of at least 3 grades; or
- (ii) a promotion to a supervisory position after which the employee's salary would be less than that of the employees supervised.

\* \* \*

## SECTION 13. PERFORMANCE AWARDS

### 13-1. Policy on employee performance awards.

\* \* \*

- (d) An MLS employee is not eligible for a monetary award under this section except for a Paid Time Off Award under Section 13-2 (d).

### 13-2. Monetary awards.

\* \* \*

- (c) *Annual Leave Award.*



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b>	Miscellaneous Amendments to the Montgomery County Personnel Regulations	<b>Number</b>	23-12
<b>Originating Department</b>	Office of Human Resources	<b>Effective Date</b>	

- (1) *Award type.* The Annual Leave Award is an amount of annual leave.
- (2) *Eligibility.* Merit system employees are eligible.
- (3) *Award criteria.* Criteria include:
  - (A) sustained or unusual effort on a special project;
  - (B) outstanding or noteworthy performance on a sustained basis or for a special project.
  - (C) other actions, activities, or products of importance and value to the department.
- (4) *Limitations.* A department director may grant up to a maximum of 40 hours of leave per employee in a fiscal year.
- (5) *Nomination procedure.* A division chief must make a written recommendation to the department director documenting the reason for the award.
- (d) *Paid Time Off Award for MLS Employees.*
  - (1) *Award type.* The Paid Time Off Award is an amount of paid time off.
  - (2) *Eligibility.* MLS employees are eligible.
  - (3) *Award criteria.* A Paid Time Off Award is neither ordinary or usual but may be appropriate to recognize:
    - (A) exceptional performance for an extended period of time;
    - (B) completion of a major special project requiring unusual skill and effort and working a substantial number of uncompensated hours;or



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(C) working a substantial number of uncompensated hours during an emergency.

- (4) *Limitations.* A department director may grant up to a maximum of 40 hours of paid time off per employee in a fiscal year.
- (5) *Nomination and approval procedure.* A department director must make a written recommendation to the CAO documenting the reason for the award. The CAO must determine whether to grant a Paid Time Off Award.

### 13-3. Procedures for monetary awards.

(a) A department director must:

- (1) recommend to the CAO an Outstanding Performance Increment for an employee in the department, and if granted, prepare the documentation for processing;
- (2) recommend to the CAO a Paid Time Off Award for an MLS employee and document the reason for the award;
- (3) for all other monetary awards:
  - (A) review and evaluate all awards recommended for the department, ensuring that the type and amount of award are commensurate with the performance or product being recognized;
  - (B) determine which awards to approve; and
  - (C) provide all required award information to OHR.

(b) The OHR Director must:

\* \* \*



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(4) report to the CAO at the end of a fiscal year a department's total:

- (A) cash awards;
- (B) non-cash awards with an individual value of more than \$50; and
- (C) hours of annual leave or paid time off granted as awards.

(c) The CAO must determine whether to grant an Outstanding Performance Increment for an employee or a Paid Time Off Award for an MLS employee.

\* \* \*

## SECTION 15. WORK SCHEDULES, ATTENDANCE, HOURS OF WORK

\* \* \*

### 15-4. Alternate Work Schedules

(a) *Alternate work schedules for religious observance.*

\* \* \*

(4) *Appeal of denial of request for alternate work schedule for religious observance.*

(A) An employee with merit system status may file a grievance under Section 34 of these Regulations if the employee's supervisor denies the employee's request for an alternate work schedule for religious observance.

(B) An employee may file an EEO complaint under the process described in Section 5-4 of these Regulations.

\* \* \*



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## SECTION 19. FAMILY AND MEDICAL LEAVE

\* \* \*

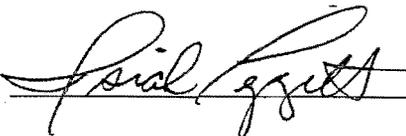
### 19-9. Use of FMLA leave.

(b) *FMLA leave taken for a serious health condition.*

\* \* \*

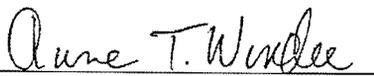
(2) A supervisor may require an employee to submit a County *Medical Certification of Employee's Serious Health Condition Form* (Appendix P-1) or a County *Medical Certification of Family Member's Serious Health Condition Form* (Appendix P-2) completed by the health care provider treating the serious health condition to support a request for leave for a serious health condition.

\* \* \*

Approved:   
Isiah Leggett, County Executive

Dec 20, 2012  
Date

Approved as to form and legality:

      12/16/12  
Office of the County Attorney      Date

## QUESTIONS FROM COUNCIL STAFF ON EXECUTIVE REGULATION 23-12

Which of the amendments in 23-12 affect union employees and have comments been received from the unions?

The Montgomery County Personnel Regulations (MCPR) generally do not apply to bargaining unit employees, only to unrepresented employees. Therefore we do not seek comments from the unions about proposed changes in the Personnel Regulations.

Re 7-4 Do we normally fill a temporary position with competition? If not, why do we need this amendment?

Under Section 1-75 of the MCPR, a temporary position is defined “as a non-career position classified **and filled under merit system principles.**” Yes, temporary positions are filled competitively under merit principles and that is why this amendment is necessary.

Re 10-5(D) On what basis should a salary be increased more than 5% on a promotion? What factors should a supervisor use to make this decision?

It came to the attention of the Office of Human Resources that there was some confusion by departments in reading Section 10-5(c), and therefore clarification was necessary. The proposed changes clarify that for a regular single promotion a 5 percent increase in base salary is mandatory but that the director has discretion to raise the base salary up to an additional 10 percent. The current regulations do not set forth factors that a director should rely on in determining whether to award up to an additional 10 percent. We considered adding factors (such as the unique skills required for the position and ensuring that the increase does not create an inequity with other employees within the class) but concluded that since this Executive Regulation is technical in nature and clarifies existing language (with the one exception of annual leave awards for MLS employees) we did not want to delay the process by drafting factors. Rather, we decided to consider factors that should be relied upon in determining whether to award up to an additional 10 percent as part of the ongoing comprehensive review of the Personnel Regulations that is discussed below.

Re Section 13 - Most of the amendments seem to clarify existing regulations except for the amendments to Section 13. Re 13-3. What is an Outstanding Performance Increment? Is it an increase to the base salary absent a normal step increase? If so, why are we trying to exclude MLS employees from ever receiving this.

An Outstanding Performance Increment, an award that increased base salary by up to 3 percent, was eliminated in ER 26-07, approved by the Council on October 21, 2008. Departments had not been able to give this award for many years and it was decided then to remove this award from the Personnel Regulations. The references to Outstanding Performance Increment in Sections 13-3(a) and 13-3(c) should have been deleted at the same time. Unfortunately, my predecessor missed those references and they remain. In

anticipation of the expiration of the 2001 Montgomery County Personnel Regulations on January 5, 2014, OHR is in the process of conducting an extensive review of the current regulations. As part of the review, we are reexamining Section 13, Performance Awards, and anticipate making substantive changes in the awards program. At that time, we will also seek to eliminate the references to Outstanding Performance Increment in the current regulations.

An MLS employee is not eligible to receive service increments but may receive performance-based pay as described in Section 10-10 of the Personnel Regulations. The intent of the MLS performance-based pay system was that MLS employees would not be eligible for other cash awards for their job performance.

What is the purpose of the amendment for Paid Time Off Awards for MLS employees? Is the amendment intended to reduce an inequity? If so, please elaborate.

Paid Time Off Awards for MLS employees is an amendment that department directors have requested in order to deal with an inequity. MLS employees are not eligible for either compensatory time or overtime. As an example, during bad weather bargaining unit employees and MLS employees at Highway Services may be needed to work extra shifts and extra hours. Bargaining unit employees are compensated for the overtime worked while MLS employees are not. Paid Time Off Awards for MLS employees would allow department directors to recognize the extra days being worked by MLS employees.

Please explain Paid Time Off for MLS employees including an explanation of the types of leave received by MLS and other merit employees and the differences among these groups. An explanation of the similarities and differences in performance award programs between the MLS and merit employees would also be useful. (One approach to respond to the previous questions could be a chart showing the awards and leave programs of both MLS and other merit employees.)

Paid time off (PTO) is a type of leave granted to MLS employees in the Retirement Savings Plan (RSP) or Guaranteed Retirement Income Plan (GRIP) that may be used as sick or annual leave. Full time MLS employees are credited with 140 PTO hours at the beginning of the leave year and 140 hours at the beginning of the 14<sup>th</sup> pay period, and may accumulate PTO without limit. Upon separation from the County, an MLS employee is paid for no more than a total of 600 PTO hours.

In contrast, full time non-MLS employees accrue 120 hours of annual leave per year through the first 3 years of service (160 hours per year from years 4 through 15 of service, and 208 hours per year from the beginning of the 16<sup>th</sup> year of service) and 120 hours of sick leave per leave year. Non-MLS employees are subject to a maximum amount of annual leave that can be carried over to the next leave year based on initial employment date, as described in the table in Section 16-7 of the Personnel Regulations.

Upon separation from County service, a non-MLS employee in the RSP or GRIP receives a lump sum payment for the total accrued annual leave but derives no benefit from any accrued sick leave.

As noted above, the intent of the MLS performance-based pay system was that MLS employees would not be eligible for other cash awards for their job performance. Accordingly, an MLS employee is not eligible for a monetary performance award described in Section 13-2 of the Personnel Regulations. An MLS employee, however, is eligible for an honorary or non-monetary award under Section 13-4.

Stuart Weisberg  
Labor Relations Advisor  
Office of Human Resources