

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Executive Regulation 5-10AM, Furloughs

Management and Fiscal Policy Committee recommended (3-0) approval.

Background

Executive Regulation 5-10 was submitted for Method 1 Council review on May 5, 2010. See ©1. The Executive transmitted ER 5-10AM to the Council on May 13, 2010. See ©2. The Management and Fiscal Policy Committee reviewed this regulation on May 7 and again on May 17. ER 5-10AM would amend the current Personnel Regulations governing furloughs. ER 5-10AM would only apply to unrepresented employees. The primary purpose of ER 5-10AM is to permit the use of furloughs in hour increments instead of day increments. The County has a significant number of employees who work alternative schedules that differ from the standard 8-hour workday for 5 days each week. Using hour increments would permit the equitable distribution of a furlough to employees without regard to alternative schedules.

ER 5-10AM would also amend the current provision on eligibility for holiday leave, §24-4. An employee must be on a pay status on the last regularly scheduled workday before a holiday and the first regularly scheduled work day after a holiday to be eligible for holiday leave. Since an employee is on a temporary, non-pay status during a furlough, an employee who takes a furlough on the day before or after a holiday would not be paid for the holiday. ER 5-10AM would amend §24-4 to permit an employee to retain eligibility for holiday leave when taking a furlough on the day before or after a holiday.

Under Method 1, the Council must approve a regulation before it is adopted, and there is no deadline for Council action. The Council can approve, disapprove, or ask the Executive to amend it. The Council cannot amend the regulation. ER 5-10 was advertised in the April 2010 issue of the *Montgomery County Register*. The fiscal impact statement estimates that ER 5-10 would have no fiscal or economic impact. See ©11.

May 7 Worksession

The Committee reviewed ER 5-10 amending the current personnel regulation governing furloughs, but took no action. The Executive Branch representatives agreed to resubmit a revised regulation clarifying the intent of §24-4.

May 17 Worksession

The Committee recommended (3-0) approval of ER 5-10AM.

Issues

1. Does the Executive's proposed amendment to the holiday leave provision accomplish its stated purpose?

Section 24-4, as it would be amended in ER 5-10, states:

- (c) An employee may receive holiday leave if the employee is in pay status on the last regularly scheduled workday before and the first regularly scheduled workday after the holiday. This provision does not apply to an employee who, with supervisory approval, uses furlough hours on the last regularly scheduled workday before and/or the first regularly scheduled workday after the holiday.

This amendment would not accomplish the stated purpose of permitting an employee who is on furlough either the day before or after to be paid for a holiday. **Council staff recommendation:** request the Executive to amend this language as follows:

[[This provision does not apply to an]] An employee who, with supervisory approval, uses furlough hours on the last regularly scheduled workday before and/or the first regularly scheduled workday after [[the]] a holiday may receive holiday leave.

The Executive transmitted ER 5-10AM to the Council on May 13, 2010. See ©2-9. ER 5-10AM modifies the proposed amendment to §24-4 consistent with Council staff's recommendation.

2. Should the regulation be amended to accommodate a progressive furlough?

Council staff, at the request of the Committee, provided different furlough alternatives, including a progressive furlough that would provide for a larger number of furlough hours for employees with a higher annual salary. ER 5-10AM would not need to be amended to accommodate a progressive furlough alternative because it does not mandate all employees be furloughed the same number of hours.

However, §30-4(e) would require the number of furlough hours to be pro rated for "a part-time employee, a new hire, an employee who separates from County service before the end of the furlough period or a school-based employee working a 10-month schedule."

Should the progressive furlough be based upon annual salary or full-time equivalent annual salary? If the number of furlough hours is based upon annual salary, a highly paid part-time employee would be placed in a lower furlough classification and still have furlough hours

reduced as a part-time employee. If the number of furlough hours is based upon full-time equivalent annual salary, a highly paid part-time employee would be placed in the higher furlough classification and still have furlough hours reduced as a part-time employee.

The salary information provided by the Executive Branch and used in the Office of Legislative Oversight analysis of furlough alternatives was already classified by full-time equivalent annual salary. If the Council decides to adopt a progressive furlough based upon an employee's full-time equivalent annual salary, this can be accomplished through the adoption of the budget without amending the personnel regulation. **Council staff recommendation:** no amendment necessary to accommodate a progressive furlough.

Committee recommendation (3-0): approve Executive Regulation 5-10AM by adopting the proposed Resolution at ©10.

<u>This packet contains</u>	<u>Circle</u>
Executive's transmittal memo for ER 5-10	1
Executive's May transmittal memo for ER 5-10AM	2
Proposed Executive Regulation 5-10AM showing changes	3
Proposed Resolution	10
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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

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MEMORANDUM

May 5, 2010

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Executive Regulation No. 5-10, Furloughs

Method 1

2010 MAY -5 PM 4:09

RECEIVED
MONTGOMERY COUNTY
COUNCIL

I am submitting Executive Regulation No. 5-10 for the Council's review and approval. This regulation amends Sections 1, 24 and 30 of the 2001 Montgomery County Personnel Regulations to update the provisions relating to furloughs in order to facilitate its application to employees who normally work other than eight-hour days such as four ten-hour days or compressed schedules.

Executive Regulation No. 5-10 was advertised in the April 2010 issue of the *Montgomery County Register*. The proposed regulation has been reviewed by the Merit System Protection Board and the Board has no objection. In response to concerns voiced that an employee's use of furlough hours, a non-pay status, on the last regularly scheduled workday before a holiday or the first regularly scheduled workday after a holiday would result in the employee not receiving pay for the holiday, Section 24-4(c) has been amended to allow employees to use furlough hours on days adjacent to a holiday.

A fiscal impact statement for the regulation is also included. Should you have any questions about Executive Regulation No. 5-10, please contact Stuart Weisberg, the Labor Relations Advisor in the Office of Human Resources, at (240) 777-5154.

IL:sw

Attachments



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 13, 2010

2010 MAY 13 PM 3:21
MONTGOMERY COUNTY
CORPORATE

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Executive Regulation No. 5-10AM, Furloughs.

This regulation amends Sections 1, 24 and 30 of the 2001 Montgomery County Personnel Regulations to update the provisions relating to furloughs in order to facilitate its application to employees who normally work other than eight hour days such as four ten hour days or compressed schedules.

At the Management and Fiscal Policy Committee worksession on May 7, 2010, Council staff recommended an amendment to Section 24 to clarify that an employee who, with supervisory approval, uses furlough hours on the last regularly scheduled workday before and/or the first regularly scheduled workday after a holiday may receive holiday leave. Accordingly, I am resubmitting Executive Regulation 5-10, Furloughs, with this amendment for your review and approval.

IL:sw

Attachments



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject	Furloughs	Number	5-10AM
Originating Department	Office of Human Resources	Effective Date	

Furloughs

Executive Regulation No. 5-10AM

Issued by: County Executive

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

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

Council review: Method 1

Montgomery County Register Volume 27, Issue 4

Comment deadline: April 30, 2010

Effective date: _____

Summary: This regulation amends Sections 1, 24 and 30 of the 2001 Montgomery County Personnel Regulations to update the provisions relating to furloughs in order to facilitate its application to employees who normally work other than eight hour days such as four ten hour days or compressed schedules.

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

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface	<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>



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Furloughs	Number 5-10AM
Originating Department Office of Human Resources	Effective Date

SECTION 1. DEFINITIONS

* * *

1-27. **Furlough:** A temporary, non-pay status [and absence from normally scheduled duty required by the CAO due to lack of funds or work] for hours when an employee is normally scheduled to work but does not work for the County or receive pay from the County due to a lack of funds or work, as determined by the CAO.

* * *

SECTION 24. HOLIDAY LEAVE AND COMPENSATION

* * *

24-4. **Eligibility for holiday leave.**

* * *

(c) An employee may receive holiday leave if the employee is in pay status on the last regularly scheduled workday before and the first regularly scheduled workday after the holiday. [[This provision does not apply to an]] An employee who, with supervisory approval, uses furlough hours on the last regularly scheduled workday before and/or the first regularly scheduled workday after [[the]] a holiday may receive holiday leave.

* * *

SECTION 30. REDUCTION-IN-FORCE AND FURLOUGH

30-1. **Definitions.**

* * *

(c) *Alternate furlough day:* A furlough day that is assigned to an employee instead of a fixed furlough day if:



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- (1) the employee is required to work on a fixed furlough day despite the furlough; or
- (2) the employee is assigned to a unit or function that is scheduled to be furloughed on a fixed furlough day, but the employee is not normally scheduled to work on the fixed furlough day. [; or
- (3) no fixed furlough days are declared.]

* * *

- (i) **Fixed furlough day:** A [day] date specified by the CAO on which the offices or work sites of specified employees will be closed to:
 - (1) the specified employees;
 - (2) seasonal, substitute, and temporary employees; and
 - (3) the public.
- (j) **Furlough [day]:** [A day] A temporary, non-pay status for hours when an employee is normally scheduled to work but does not work for the County or receive pay from the County due to a lack of funds or work, as determined by the CAO [for the day because of a furlough]. A furlough may be comprised of any combination of fixed, alternate, or rolling furlough days.
- (k) **Furlough period:** The time period specified by the CAO during which affected employees must take all assigned furlough [days] hours and lose the pay attributable to the furlough [days].
- (l) **Furlough plan:** The CAO's plan for a specific furlough that states:
 - (1) the number of furlough [days] hours for which pay must be taken from affected employees;
 - (2) the furlough period;
 - (3) the employee groups that will be affected by the furlough [days]; and



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(4) the designation of fixed furlough days, if any.

* * *

(s) Rolling furlough day: A day or hour(s) of a day that an employee elects, with supervisor approval, to take assigned furlough hours.

(t)

[(s)] **Seniority**: The total length of time that an individual has been a County employee in full-time and part-time positions. This does not include:

* * *

(u)

[(t)] **Service needs**: Specialized duties or functions that must be performed by an employee in an affected class but which are not performed by all employees in the affected class in the department. Service needs involve knowledge, skills and abilities that are required for satisfactory performance of the specialized duties or functions.

(v)

[(u)] **Severance pay**: Additional compensation granted to certain probationary employees and certain employees in the Retirement Savings Plan whose employment is terminated by a RIF or other administrative action.

(w)

[(v)] **Status characteristics**: The conditions of an individual's County employment as reflected by the employee's grade, salary, merit system status, and number and distribution of work hours.

30-2. Policy on RIF and furlough.

* * *

(b) **Policy on furlough.**

(1) A supervisor must not require or allow an employee to work on the employee's [fixed or alternate] furlough days, except in an emergency as determined by the CAO.



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- (2) A furlough [day] is a permanent loss of an employee's work hours. A department director or supervisor must not allow an employee to make up the hours lost by working additional hours at another time.
- (3) The County must ensure that the following are not adversely affected when an employee takes a furlough [day]:
 - (A) the employee's accrual of annual and sick leave or the crediting of PTO;
 - (B) life insurance;
 - (C) retirement benefits; and
 - (D) seniority.
- (4) The County must not pay an employee's regular County salary to an employee who is on disability leave on a furlough day.
- (5) For the purpose of calculation of service increments, awards, salary upon promotion or demotion, or other salary amounts based on the employee's base salary, the figure representing base salary must not be reduced by the salary loss resulting from a furlough [day].
- (6) If a supervisor requires an employee on a fixed furlough day, [or] alternate furlough day or rolling furlough day to return to work to perform unanticipated work assignments of an emergency nature, the department must give the employee call-back pay under Section 10-13 of these Regulations. The supervisor must ensure that the employee takes alternate furlough hours to replace the hours on which the employee was to be furloughed on the furlough day.

* * *

30-4. Conducting a furlough.

- (a) The CAO must develop a furlough plan for each furlough that identifies the employees who will be furloughed, the number of hours of furlough and the



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number of fixed furlough days, [alternate furlough days] rolling furlough days, or a combination of fixed and [alternate] rolling furlough days on which the employees will be furloughed.

- (b) The CAO may choose to spread [should offer alternative plans that allow an employee to choose between spreading] the salary loss due to a furlough [days] over multiple pay periods or [taking] confine the salary loss [in] to the same pay period [as] in which the furlough is actually taken [day].
- (c) The department director must notify affected employees of fixed [or alternate] furlough days at least 30 days before the furlough day.
- (d) To ensure compliance with the furlough plan, the department director must monitor the scheduling, accrual, and reporting of furlough hours.
- (e) A department director must ensure that a furlough [day for an employee is:] period is pro rated for a part-time employee, a new hire, an employee who separates from County service before the end of the furlough period or a school-based employee working a 10-month schedule.
 - [(1) 8 hours for a full-time employee who is regularly scheduled to work 2,080 hours in a work year;
 - (2) 8.4 hours for a full-time employee who is regularly scheduled to work 2,184 hours in a work year;
 - (3) 9.6 hours for a full-time employee who is regularly scheduled to work 2,496 hours in a work year; and
 - (4) determined by dividing the number of hours normally scheduled in the pay period by 10 for a part-time employee or a school-based employee working a 10-month schedule.]
- (f) The department director and the Director of the Public Information Office must notify the public in advance if work sites are closed or public services are limited because of a furlough.



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(g) An employee, with supervisory approval, may elect to take rolling furlough days on a full day or on an hourly basis.

* * *

30-15. Appeal of RIF or furlough.

* * *

(b) An employee with merit system status who is furloughed may grieve under Section 34 of these Regulations[.] if the County fails to follow the procedures in this Section. A grievance cannot challenge the CAO's determination as to a lack of work or funds necessitating a furlough.

Approved: Isiah Leggett
Isiah Leggett, County Executive

May 13, 2010
Date

Approved as to form and legality:
Ed Hultin 5/10/10
Office of the County Attorney Date

Resolution No. _____
Introduced: May 20, 2010
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 5-10AM, Furloughs

Background

1. The Montgomery County Code §33-7(b) authorizes the County Executive to adopt personnel regulations under Method 1.
2. On May 5, 2010, the County Council received Executive Regulation 5-10, Furloughs. The Council received Executive Regulation 5-10AM, Furloughs on May 13, 2010.
3. The Council reviewed the regulation under Method (1) of County Code §2A-15.
4. Under Method (1), the Council the Council must approve a regulation before it is adopted, and there is no deadline for Council action.
5. On May 7 and 17, 2010, the Management and Fiscal Policy Committee reviewed Executive Regulation 5-10AM, Furloughs and recommended approval.

Action

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

The Council approves Executive Regulation 5-10AM, Furloughs.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 30, 2010

TO: Joseph F. Beach, Director
Office of Management and Budget

VIA: Alex Espinosa, Management and Budget Manager

VIA: John Cuff, Management and Budget Specialist

FROM: Lori O'Brien, Management and Budget Specialist

SUBJECT: Executive Regulation 5-10, Furloughs

REGULATION SUMMARY

The Executive Regulation updates the definition and other clarifying information about furloughs. Its primary purpose is to allow for the use of furloughs in hour increments instead of day increments in order to facilitate its application to employees who normally work other than eight-hour days such as four ten-hour days or compressed schedules. Since the definition of a furlough is a "temporary, non-pay status..." the regulation also removes the requirement relative to furloughs that holiday leave is paid only when an employee is in a paid status on the workday before and after a holiday. It alters Sections 1, 24, and 30 of the 2001 Montgomery County Personnel Regulations.

FISCAL AND ECONOMIC SUMMARY

There is no fiscal or economic impact relative to the County Executive's March 15 recommended budget. The proposed changes to the regulation provide more flexibility in the implementation of the furlough policy but do not alter the budgetary savings assumed from the furlough policy.

The following contributed to and concurred with this analysis: Stuart Weisberg, Office of Human Resources, Michael Coveyou, Department of Finance, and Lori O'Brien, Office of Management and Budget.