

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Executive Regulation 3-10, Hiring Preference for Persons with Disabilities

Management and Fiscal Policy Committee recommended (2-0, Council Vice President Ervin absent) approval.

Background

Executive Regulation 3-10 was submitted for Method I Council review on June 23, 2010. See ©1. The Management and Fiscal Policy Committee reviewed the regulation at a worksession on July 15, 2010.

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 3-10 would amend the current Personnel Regulations to establish and maintain a hiring preference for disabled veterans and persons with disabilities who apply for initial appointment to a County merit position. This regulation was required by Bill 46-09, Personnel – Regulations – Persons with Disabilities – Hiring Preference, signed into law on February 16, 2010. The regulation would establish a hiring preference for a qualified person with a disability applying for an initial appointment to a County merit system position who is among the highest rating category in a normal competitive process.

The regulation would define a person with a disability as one with a developmental disability, severe physical disability, or a psychiatric disability as defined in Federal regulations for non-competitive hiring to Federal merit positions. A person would need to be certified as disabled by the Maryland Department of Education, Division of Rehabilitation Services or an equivalent agency outside of Maryland.

The regulation would also modify the definition of a veteran for purposes of the hiring preference by removing the following current requirements:

- a. be a Maryland resident for 5 years;
- b. receive an honorable discharge after at least 180 days of active military duty that ended within 5 years of the date of application; and
- c. not receive a normal retirement from the US armed services.

The County Attorney's Office has concluded that these additional requirements for veteran's preference are unenforceable under the decision of the Supreme Court in *Attorney General of NY v. Soto-Lopez et al*, 476 US 898 (1986) and current Maryland law.

OMB estimates that this regulation would require \$10,000 to \$35,000 to customize the online application system. See ©12.

The regulation would implement Bill 46-09 in a reasonable manner. A proposed Council resolution approving the regulation is at ©11. **Committee recommendation (2-0, Council Vice President Ervin absent):** approve the regulation as introduced.

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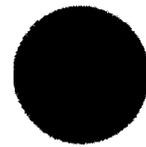
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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 21, 2010



TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Executive Regulation No. 3-10, Hiring Preference for Persons with Disabilities METHOD 1

2010 JUN 21 11:47
MONTGOMERY COUNTY

I am submitting Executive Regulation No. 3-10 for the Council's review and approval. This regulation implements Bill No. 46-09 enacted by the Council on February 2, 2010. The regulation amends Section 6 of the 2001 Montgomery County Personnel Regulations to establish and maintain a hiring preference for disabled veterans and persons with disabilities who apply for initial appointment to County merit positions in a normal competitive process and are among the highest rating category.

Executive Regulation No. 3-10 was advertised in the May 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 over the five year Maryland residency requirement for veteran's credit currently required under Section 6-12(a) of the Personnel Regulations, we asked the County Attorney's Office to examine the issue. The County Attorney's Office has concluded that based on the decision of the United States Supreme Court in *Attorney General of New York v. Soto-Lopez et al.*, 476 U.S. 898 (1986), the residency requirement is unconstitutional. Moreover, the County Attorney's Office has found that several other requirements for veteran's credit contained in Section 6-12(b) and (c) of the Personnel Regulations, namely that the veteran's honorable discharge from a branch of the United States armed services must be "after at least 180 days of active military duty that ended within 5 years of the date of application" and that the veteran "was not granted a normal retirement from the United States armed services" violate Maryland state law. The County Attorney's Office believes that the County cannot place restrictions on the definition of veteran contained in the state law. Based on the recommendation of the County Attorney's Office, for purposes of eligibility for veteran's credit, we are defining a veteran as a person who "was honorably discharged from a branch of the United States armed services."

A fiscal impact statement for the regulation is also included.

Should you have any questions about Executive Regulation No. 3-10, please contact Stuart Weisberg, the Labor Relations Advisor in the Office of Human Resources, at (240) 777-5154.

IL:sw

Attachments



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Hiring Preference for Persons with Disabilities	Number 3-10
Originating Department Office of Human Resources	Effective Date

Hiring Preference for Persons with Disabilities

Executive Regulation No. 3-10

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 27, Issue 5

Comment deadline: May 31, 2010

Effective date: _____

Summary: This regulation implements Bill No. 46-09 enacted by the Council on February 2, 2010. The regulation amends Section 6 of the 2001 Montgomery County Personnel Regulations to establish and maintain a hiring preference for disabled veterans and persons with disabilities who apply for initial appointment to County merit positions in a normal competitive process and are among the highest rating category.

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 Hiring Preference for Persons with Disabilities	Number 3-10
Originating Department Office of Human Resources	Effective Date

SECTION 6. RECRUITMENT AND APPLICATION RATING PROCESS

* * *

6-10. Priority eligible list.

- (a) The OHR Director [may] must establish a priority eligible list to provide priority consideration in the following order to an employee who:
- (1) is unable to perform the employee's job because of a disability or injury under the ADA;
 - (2) is subject to reduction-in-force;
 - (3) was granted a temporary disability retirement under the Employees' Retirement System or an initial or temporary disability benefit of any type under the Retirement Savings Plan but is no longer eligible for such a temporary disability retirement or benefit.]; or
 - (4) has veteran's credit.]

* * *

6-11. Priority consideration for initial appointment to a County merit system position.

(a) Definitions

- (1) Person with a disability: A person who:
 - (A) has a developmental disability, severe physical disability, or a psychiatric disability within the meaning of 5 C.F.R. 213.3102(u), the criteria for disability used by the Federal Office of Personnel Management for noncompetitive appointment to Federal merit system positions under its special hiring authority; and
 - (B) has been certified by the Maryland Department of Education Division of Rehabilitation Services or by an equivalent out-of-state



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject	Hiring Preference for Persons with Disabilities	Number	3-10
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vocational rehabilitation agency as meeting the definition of disability contained in (A) above.

- (2) *Veteran with a disability:* A person who:
 - (A) meets the definition of veteran contained in (3) below; and
 - (B) is rated by the Department of Veterans Affairs with a compensable service-connected disability of 30 percent or more;
- (3) *Veteran without a disability:* A veteran who:
 - (A) was honorably discharged from a branch of the United States armed services; and
 - (B) has not already used veteran's credit to receive priority consideration for appointment to a Montgomery County position.

(b) Subject to persons who must be given priority under Section 6-10, the OHR Director must give priority consideration in the following order to persons who apply for initial appointment to a County merit system position in a normal competitive process and who are rated and placed in the highest rating category on the eligible list:

- (1) a veteran with a disability;
- (2) an equal preference for a veteran without a disability and for a person with a disability.

(c) To receive priority consideration under 6-11(b), an eligible applicant must apply for the preference on the application form and must provide the necessary certification or documentation within 14 calendar days after it is requested by OHR.

[6-11]



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Hiring Preference for Persons with Disabilities	Number 3-10
Originating Department Office of Human Resources	Effective Date

6-12. Selection process. A department director may, in consultation with the OHR Director, use any selection process that meets the department's needs and is consistent with these Regulations.

[6-12. Veteran's credit. The OHR Director must give priority consideration to an eligible veteran who applies for initial appointment to a County merit system position and who is rated and placed in the highest rating category on the eligible list. An eligible veteran is an applicant who is a Maryland resident and who:

- (a) was a Maryland resident for at least 5 consecutive years immediately before submitting the employment application;
- (b) was honorably discharged from a branch of the United States armed services after at least 180 days of active military duty that ended within 5 years of the date of application;
- (c) was not granted a normal retirement from the United States armed services;
- (d) has not already used veteran's credit to receive priority consideration for appointment to a Montgomery County position; and
- (e) applied for veteran's credit by completing the required form and ensuring that it was received in OHR by the closing date of the announced vacancy.]

6-13. Appeals by applicants. Under Section 33-9 of the County Code, a non-employee or employee applicant for a merit system position may file an appeal directly with the MSPB alleging that the decision of the CAO on the individual's application was arbitrary and capricious, illegal, based on political affiliation or other non-merit factors, or that the announced examination and scoring procedures were not followed.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Hiring Preference for Persons with Disabilities	Number 3-10
Originating Department Office of Human Resources	Effective Date

Approved: _____
Isiah Leggett, County Executive

Date

Approved as to form and legality:

Anne T. W. Widdie 6/14/10
Office of the County Attorney Date



MONTGOMERY COUNTY EXECUTIVE REGULATION

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MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Hiring Preference for Persons with Disabilities	Number 3-10
Originating Department Office of Human Resources	Effective Date

SECTION 6. RECRUITMENT AND APPLICATION RATING PROCESS

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6-10. Priority eligible list.

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* * *

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- (a) *Definitions*
 - (1) *Person with a disability:* A person who:
 - (A) has a developmental disability, severe physical disability, or a psychiatric disability within the meaning of 5 C.F.R. 213.3102(u), the criteria for disability used by the Federal Office of Personnel Management for noncompetitive appointment to Federal merit system positions under its special hiring authority; and
 - (B) has been certified by the Maryland Department of Education Division of Rehabilitation Services or by an equivalent out-of-state



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 - (A) meets the definition of veteran contained in (3) below; and
 - (B) is rated by the Department of Veterans Affairs with a compensable service-connected disability of 30 percent or more;
- (3) ***Veteran without a disability:*** A veteran who:
 - (A) was honorably discharged from a branch of the United States armed services; and
 - (B) has not already used veteran's credit to receive priority consideration for appointment to a Montgomery County position.

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MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Hiring Preference for Persons with Disabilities	Number 3-10
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6-13. **Appeals by applicants.** Under Section 33-9 of the County Code, a non-employee or employee applicant for a merit system position may file an appeal directly with the MSPB alleging that the decision of the CAO on the individual's application was arbitrary and capricious, illegal, based on political affiliation or other non-merit factors, or that the announced examination and scoring procedures were not followed.

Approved:

Isiah Leggett
Isiah Leggett, County Executive

6/22/10
Date

Approved as to form and legality:

Rune T. Winder
Office of the County Attorney

6/14/10
Date

Resolution No. _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 3-10, Hiring Preference for Persons with Disabilities

Background

1. The Montgomery County Code §33-7(b) authorizes the County Executive to adopt personnel regulations under Method 1.
2. On June 23, 2010, the County Council received Executive Regulation 3-10, Hiring Preference for Persons with Disabilities.
3. Executive Regulation 3-10 would implement the hiring preferences established in Bill 46-09, enacted on February 2, 2010 and signed into law on February 18, 2010.
4. The Council reviewed the regulation under Method (1) of County Code §2A-15.
5. Under Method (1), the Council must approve a regulation before it is adopted, and there is no deadline for Council action.
6. On July 12, 2010, the Management and Fiscal Policy Committee reviewed Executive Regulation 3-10, Hiring Preference for Persons with Disabilities and recommended approval.

Action

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

The Council approves Executive Regulation 3-10, Hiring Preference for Persons with Disabilities.

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

June 16, 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 3-10, Hiring Preferences for Persons with Disabilities

REGULATION SUMMARY

This regulation implements Bill No. 46-09 enacted by the Council on February 2, 2010. The regulation amends Section 6 of the 2001 Montgomery County Personnel Regulations. It establishes and maintains a hiring preference for disabled veterans and persons with disabilities who apply for initial appointment to County merit positions in a normal competitive process and are among the applicants in the highest rating category.

FISCAL AND ECONOMIC SUMMARY

This executive regulation will have a fiscal impact on the County. The implementation of this hiring preference will require that adjustments be made to the new iRecruitment on-line employment application that is scheduled to be launched by the Office of Human Resources (OHR) in January 2011 through Enterprise Resource Planning (ERP). OHR estimates that the cost of this customization to be \$10,000 to \$35,000, based on other recently developed program customizations to ERP.

The regulation will not have any material financial or economic impact on the County.

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

JFB:lob