

MEMORANDUM

April 29, 2016

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 16-16, Personnel – Benefits for Domestic Partner of Employee - Repeal

Bill 16-16, Personnel – Benefits for Domestic Partner of Employee - Repeal, sponsored by Lead Sponsor Councilmember Leventhal, was introduced on April 19, 2016. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for May 4, 2016 at 2:00 p.m.

Bill 16-16 would repeal the law requiring the County to provide domestic partner benefits to eligible County employees.

Background

Bill 28-99, Personnel – Benefits for Employee’s Domestic Partner, enacted on November 30, 1999 and signed into law on December 3, 1999, extended health and insurance benefits to a same-sex domestic partner of an employee. According to the legislative history, sponsors and supporters of Bill 28-99 argued that the law was needed to correct an inequity in benefits provided to gay and lesbian County employees, compared to other employees. They argued that it is unfair to provide benefits for an employee’s spouse but not for the partner of an employee in a long-term, committed, same-sex relationship. This benefits inequity conflicted with the County’s longstanding law and policies against discrimination based on sexual orientation.¹ Bill 28-99 was a civil rights law that was enacted outside of the collective bargaining process.

Bill 25-01, Personnel – Retirement – Amendments, extended opposite sex domestic partner benefits to members of the police bargaining unit on November 1, 2001. Bill 30-10, Personnel – Equal Benefits – Fire and Rescue Employees, extended opposite sex domestic partner benefits to members of the fire and rescue bargaining unit. Each of these laws was enacted at a time when same-sex marriage was prohibited in Maryland. Maryland began to recognize same-sex marriage on January 1, 2013.

¹ The County first prohibited discrimination based on sexual orientation in 1984.

The legalization of same-sex marriage in Maryland created a new inequity for employers who provided domestic partner benefits to same-sex couples only. Governor O'Malley resolved this inequity by eliminating all domestic partner benefits for State employees soon after the State legalized same-sex marriages. Although Maryland began recognizing same-sex marriages in 2013, many States did not. Last year, the U.S. Supreme Court held that the right to marry is a fundamental right that must be provided to same-sex couples in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). Speaking for the Court, Justice Kennedy said:

These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. 135 S.Ct. at 2604-2605.

The *Obergefell* case again changed the legal framework underlying the County's domestic partner benefits law. Except for members of the police and fire bargaining units, a County employee with a same-sex domestic partner can obtain health and insurance benefits for a partner without marriage and an employee with a domestic partner of the opposite sex must marry his or her domestic partner to obtain these benefits. The original purpose of the domestic partner benefits law no longer applies because same-sex couples are guaranteed the right to marry in all States.

Many States have reacted to this change in law by eliminating all domestic partner benefits. See the *Stateline* article reviewing these reactions at ©8-13. In addition to the State of Maryland, the Montgomery County Board of Education eliminated all domestic partner benefits for its employees after same-sex marriage was legalized in Maryland. Howard County did the same for its employees. Prince George's County never provided domestic partner benefits for its employees.² In contrast to this trend to eliminate domestic partner benefits, the Executive submitted a Bill to the Council, introduced as Bill 13-16 on April 12, that would provide opposite sex domestic partner benefits to employees represented by MCGEO and unrepresented employees. Bill 16-16 would resolve this inequity by eliminating domestic partner benefits for all County employees. The Bill would permit an employee or retiree who is receiving or has applied for domestic partner benefits on or before April 19, 2016 to continue to receive these benefits.

Lead Sponsor Councilmember Leventhal explained his reasons for introducing this Bill and related Bill 17-16 repealing the equal benefits law for County contractors in an April 13 memorandum at ©7.

Council Resolution No. 18-461

On April 26, 2016, the Council adopted Resolution No. 18-461 indicating its intent to approve or reject provisions of the MCGEO collective bargaining contract subject to Council review. The Council indicated its intent to reject the provision in the MCGEO agreement that would require the expansion of domestic partner benefits to opposite sex couples. See ©14-16.

² The District of Columbia continues to provide domestic partner benefits for its employees, including opposite sex domestic partner benefits.

This packet contains:

Bill 16-16

Legislative Request Report

Councilmember Leventhal April 13 Memorandum

Stateline, September 11, 2015

Resolution No. 18-461

Circle #

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F:\LAW\BILLS\1616 Personnel - Benefits For Domestic Partner - Repeal\PH Memo.Docx

Bill No. 16-16
Concerning: Personnel – Benefits for
Domestic Partner of Employee -
Repeal
Revised: April 19, 2016 Draft No. 3
Introduced: April 19, 2016
Expires: October 19, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Leventhal and Co-Sponsor: Councilmember Katz

AN ACT to:

- (1) repeal the law requiring the County to provide domestic partner benefits for certain employees; and
- (2) generally amend the law regarding benefits for domestic partners.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-22

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

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

1 **Sec. 1. Section 33-22 is amended as follows:**

2 **33-22. [Benefits for Domestic Partner of Employee.] Reserved.**

3 [(a) *Findings and purpose.* The County has a longstanding policy, in law
4 and practice, against employment discrimination based on sexual
5 orientation. The County believes it is unfair to treat employees
6 differently based solely on whether the employee’s partner is legally
7 recognized as a spouse.

8 The County finds that many private and public employees provide or
9 plan to provide benefits for the domestic partners of their employees.
10 Providing domestic partner benefits will significantly enhance the
11 County’s ability to recruit and retain highly qualified employees and
12 will promote employee loyalty and workplace diversity.]

13 [(b) *General rule.* Any benefit the County provides for the spouse
14 (including “widow” or other equivalent term) of a County employee or
15 the spouse’s dependents must be provided, in the same manner and to
16 the same extent, for the domestic partner of a County employee and the
17 partner’s dependents, respectively. Benefits provided to an employee’s
18 domestic partner or partner’s dependent must include benefits
19 equivalent to those available for an employee’s spouse or spouse’s
20 dependent under the Consolidated Omnibus Budget Reconciliation Act
21 of 1985 (COBRA), the federal Family and Medical Leave Act, and
22 other federal laws that apply to County employment benefits.]

23 [(c) *Requirements for domestic partnership.* To establish a domestic
24 partnership, the employee and the employee’s partner must either:

25 (1) satisfy all of the following requirements:

- 26 (A) be the same sex, unless the employee is a member of the
- 27 police bargaining unit or the fire and rescue employee
- 28 bargaining unit;
- 29 (B) share a close personal relationship and be responsible for
- 30 each other's welfare;
- 31 (C) have shared the same legal residence for at least 12
- 32 months;
- 33 (D) be at least 18 years old;
- 34 (E) have voluntarily consented to the relationship, without
- 35 fraud or duress;
- 36 (F) not be married to, or in a domestic partnership with, any
- 37 other person;
- 38 (G) not be related by blood or affinity in a way that would
- 39 disqualify them from marriage under State law if the
- 40 employee and partner were (or, for members of the police
- 41 bargaining unit or the fire and rescue services bargaining
- 42 unit, are) opposite sexes;
- 43 (H) be legally competent to contract; and
- 44 (I) share sufficient financial and legal obligations to satisfy
- 45 subsection (d)(2); or
- 46 (2) legally register the domestic partnership, if:
- 47 (A) a domestic partnership registration system exists in the
- 48 jurisdiction where the employee resides; and
- 49 (B) the Director of Human Resources determines that the legal
- 50 requirements for registration are substantially similar to
- 51 the requirements of this Section.]

52 [(d) Evidence of domestic partnership. The employee must provide, in a
53 form acceptable to the Office of Human Resources, the following:

54 (1) either:

55 (A) an affidavit signed by both the employee and the
56 employee's partner under penalty of perjury declaring that
57 they satisfy the requirements of subsection (c)(1); or

58 (B) an official copy of the domestic partnership registration
59 described in subsection (c)(2); and

60 (2) evidence that the employee and partner share items described in
61 at least 2 of the following subparagraphs:

62 (A) a joint housing lease, mortgage, or deed;

63 (B) joint ownership of a motor vehicle;

64 (C) a joint checking or credit account;

65 (D) designation of the partner as a primary beneficiary of the
66 employee's life insurance, retirement benefits, or residuary
67 estate under a will; or

68 (E) designation of the partner as holding a durable power of
69 attorney for health care decisions regarding the employee.

70 This paragraph does not apply to a qualified, registered domestic
71 partnership under subsection (c)(2).]

72 [(e) Termination of domestic partnership. An employee must notify the
73 Director of Human Resources within 30 days after:

74 (1) termination of the domestic partnership by death or dissolution;

75 or

76 (2) any other change in circumstances that disqualifies the
77 relationship as a domestic partnership under this Section.

78 When the domestic partnership ends, the Director must terminate or
79 continue any benefit in the same manner and to the same extent that the
80 County terminates or continues, respectively, the benefit for a former
81 spouse in equivalent circumstances (such as dissolution of a partnership
82 and divorce).]

83 [(f) Application to retirees. In this Section, "employee" includes both
84 active and retired employees.]

85 **Sec. 2. Transition.**

86 The amendments to Section 33-22 made in Section 1 do not apply to an
87 employee or retiree who is receiving domestic partner benefits or has applied for
88 domestic partner benefits before April 19, 2016.

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90 *Approved:*

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Nancy Floreen, President, County Council Date

93 *Approved:*

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Isiah Leggett, County Executive Date

95 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council Date

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LEGISLATIVE REQUEST REPORT

Bill 16-16

Personnel – Benefits for Domestic Partner of Employee - Repeal

DESCRIPTION: Bill 16-16 would repeal the law requiring the County to provide domestic partner health and retirement benefits for all County employees.

PROBLEM: The domestic partner benefit law was intended as a civil rights law to provide a County employee with the right to add a same-sex domestic partner to the County group health and retirement benefits in an era when same-sex marriage was not recognized in Maryland. Same-sex marriage is now recognized in all 50 States pursuant to a recent decision of the U.S. Supreme Court.

GOALS AND OBJECTIVES: Eliminate domestic partner benefits for County employees.

COORDINATION: Office of Human Resources and Finance

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Office of Finance

EVALUATION: N/A

EXPERIENCE ELSEWHERE: Maryland and the MCPS have eliminated domestic partner benefits for their employees.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

April 13, 2016

GEORGE LEVENTHAL
COUNCILMEMBER
AT-LARGE

TO: Councilmembers

FROM: George L. Leventhal *GL*

SUBJECT: Bills for introduction re: domestic partner benefits

Dear Colleagues,

I will be introducing the two attached bills and welcome your co-sponsorship.

At the request of the County Executive, legislation was introduced this week to extend domestic partner benefits to all county employees. I can't go along with this in 2016. The county has provided health benefits to members of the police union who register as non-married domestic partners (regardless of whether they are straight or gay or lesbian) since 2001, and to members of the firefighters' union since 2010. This bill would expand the benefit to members of MCGEO, the Montgomery County Government Employee Organization.

I strongly support marriage equality, and it makes perfect sense to me that when marriage became legal in Maryland for gays and lesbians, former Governor O'Malley eliminated domestic partner benefits for all state employees, and Montgomery County Public Schools eliminated them for MCPS employees. Mr. Leggett's bill, which I oppose, goes in the opposite direction, extending health benefits to non-married employees who live together at an estimated cost to taxpayers of \$4.8 million over the next six years.

Domestic partner benefits made sense when marriage was illegal for gays and lesbians, but they don't make sense today. We should recognize that times have changed and taxpayers should not have to continue paying the cost of an historic artifact. I am strongly committed to universal access to health care but this can be achieved through other means, including getting married!

The first of the two bills would repeal domestic partner benefits for county employees. The second bill would repeal the law requiring a county contractor to provide same-sex domestic partner benefits to its employees.

Please let me know if you have questions or would like to co-sponsor either or both bills.



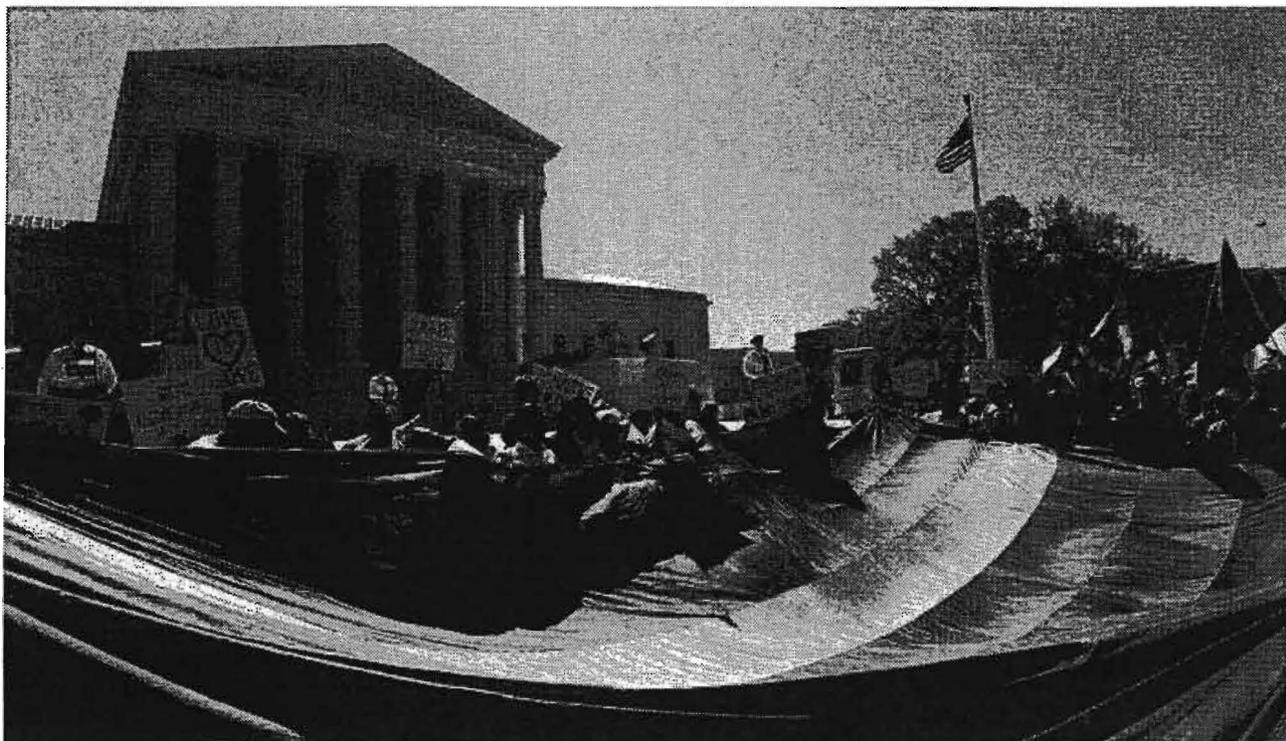
The Pew Charitable Trusts / Research & Analysis /
Stateline / After Same-Sex Marriage Ruling, States
Reconsider Domestic Partner Benefits

STATELINE

After Same-Sex Marriage Ruling, States Reconsider Domestic Partner Benefits

September 11, 2015

By Rebecca Beitsch



The U.S. Supreme Court ruling legalizing same-sex marriage has some state and local governments reconsidering their domestic partner benefits.

Now that the U.S. Supreme Court has legalized same-sex marriage nationwide, some states that offer health and retirement benefits to their employees' domestic partners are considering changing those policies, in large part to save money or avoid discrimination lawsuits.

Before the ruling, 34 percent of state and local governments allowed unmarried same-sex couples to receive health care benefits, while 28 percent did so for domestic partners of the opposite sex, according to a study of public sector benefits by the Bureau of Labor Statistics.

Based on what happened in states that legalized gay marriage on their own, those numbers are about to dwindle.

Maryland ended domestic partner benefits for state employees, which it offered only to same-sex couples, just a few months after it legalized same-sex marriage in 2013. Arizona did the same after its legalization in 2014. Alaska still offers same-sex domestic partner benefits to the roughly 6,000 state employees it covers, but it is now reviewing that policy. The majority of Alaska state employees get their health insurance through state-funded union health trusts, and the state's largest union, the Alaska State Employees Association, ended same-sex domestic partner benefits for the more than 8,500 state and municipal employees it covers.

Connecticut and Delaware never offered domestic partner benefits to their workers, but they did allow those in civil unions to add their partners to their health and retirement plans. The two states scrapped those benefits once same-sex couples could marry.

Of the 13 states that prohibited same-sex marriage before the Supreme Court's June ruling (Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee and Texas), only Michigan offered anything similar to domestic partner benefits, as employees could add to their plan one adult they were not related to. Matthew Fedorchuk with the Michigan Civil Service Commission, which oversees state benefits, said the fate of those benefits could be hashed out in ongoing labor negotiations.

Government workers are likely to see more changes than those in the private sector.

Bruce Elliott, manager of compensation and benefits for the Society for Human Resource Management (SHRM), cited a survey of 153 companies by Mercer, a health care advocacy group, which found that although some companies had plans to get rid of their domestic partner benefits, many were not planning changes. Of the 19 percent that offered domestic partner benefits to same-sex couples, 23 percent said they would drop the option in the next year, while another 23 percent said they would do so over the next two or three years. The majority of companies offered domestic partner benefits to both homosexual and heterosexual couples, and 62 percent of those said they were not planning any changes.

Elliott said domestic partner benefits may be more vulnerable within state and local government, where competition over employees isn't as fierce as in the private sector and where leaders have been under pressure to keep finances in check since the recession.

A Question of Fairness

Cathryn Oakley, senior legislative counsel for the Human Rights Campaign, a gay rights advocacy group, said the group is encouraging public and private employers to keep offering domestic partner benefits. But she said employers that offer domestic partner

benefits exclusively to same-sex couples should extend them to heterosexual couples to avoid discrimination lawsuits.

That risk is part of the reason the capital city of Annapolis, Maryland, decided to end its domestic partner benefit program.

“We had added it because the law didn’t treat people equally,” Paul Rensted, former human resources manager for the city, said of the program, created in 2010. Now all city employees must be married to add an adult to their benefits package, and Rensted said couples were given six months’ notice, with four employees ultimately marrying.

Many in the gay rights community say keeping domestic partner benefits would continue to benefit some in the gay community as well as other non-traditional families. But straight couples would continue to be the biggest user of the benefits, they say.

“Millennials are waiting longer to get married, but that doesn’t mean they’re not living together—they’re not all living with mom and dad,” said SHRM’s Elliott.

Nancy Polikoff, a family law professor at American University Washington College of Law, said she likes “plus one” policies that allow employees to take care of their families, whether it be a spouse, a partner or an aging relative.

“The purpose of providing benefits is to help employees fund the financial and emotional obligations in their homes, and marriage is not always a part of that,” she said.

She pointed to Salt Lake City’s plan as a model. City employees can add any adult to their plan as long as they live together.

Jodi Langford, who oversees the benefits program for the city, said it has been used to cover parents, siblings and unmarried children older than 26 who would otherwise age out of their parents’ health insurance plans. Of the 60 people on the plan before same-

sex marriage was made legal, only about 10 have switched to spousal benefits.

"If we stop, we would have parents, siblings, boyfriends and girlfriends who would be without benefits," Langford said. While the program is secure for now, she said there's been some talk about reviewing it within the next year.

In Florida, public universities are planning to review their domestic partner benefits. Because only spouses are eligible for state-funded benefits, state universities had to come up with creative solutions to offer benefits to gay employees' domestic partners. It was an anonymous gift that covered the additional cost of adding an adult beneficiary to a health plan at Florida State University (FSU) starting in 2014, while the University of North Florida (UNF) began covering the additional cost to employees through its fundraising foundation in 2006.

Spokesmen for both universities said the programs played a role in attracting talent. UNF is winding down its program, which had only been offered to same-sex couples, said Vice President and Chief of Staff Tom Serwatka.

"When we went to this, we did so on the basis that heterosexual couples had a choice whether they wanted to marry and understood the full implication of that choice. Homosexual couples didn't have that choice." Now that they do, Serwatka said, it makes less sense for the university to raise private funds to pay for the benefits.

"The university wasn't trying to change the idea of marriage as the policy for the state, and state funding required marriage," he said.

FSU is reviewing its program, which only paid for health insurance for domestic partners who could not get insurance through their work, said spokesman Dennis Schnittker.

"The gift was made under the belief of the donor that the state would be funding the benefit in the near future," he said.

No Change?

In some states, however, domestic partner benefits are likely to continue.

California's domestic partner benefit statutes remain intact, and in Massachusetts the policy is part of a still-standing executive order. Maine and Vermont, which was the first state to offer domestic partner benefits, are not planning to change their programs.

"We wouldn't just get rid of it because same-sex marriage has come about," said Tom Cheney, deputy commissioner for Vermont's Department of Human Resources. "The state of Vermont has long seen the value in offering domestic partner benefits to couples of all types. It's a useful recruitment and retention tool for the state as an employer."

Elliott believes it's too early to know what most employers—both public and private—will do with domestic partner benefits.

"Once we get past this year into next year's open enrollment, we're going to see some real change. The tea leaves haven't dried yet," he said.

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Business of Government, Justice, Labor, Social Issues

Resolution No.: 18-461
Introduced: April 19, 2016
Adopted: April 26, 2016

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Government Operations and Fiscal Policy Committee

SUBJECT: Collective Bargaining Agreements with Municipal & County Government
Employees Organization

Background

1. Section 511 of the County Charter authorizes the County Council to provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of County Government employees.
2. Chapter 33, Article VII of the County Code implements Section 511 of the Charter and provides for collective bargaining by the County Executive with the certified representatives of County employees and for review of the resulting contract by the County Council.
3. On April 1, 2016, the County Executive submitted to the Council a collective bargaining agreements between the County government and Municipal and County Government Employees Organization effective July 1, 2016 through June 30, 2017. A copy of the Agreement is attached to this Resolution.
4. The Executive has submitted to the Council the terms and conditions of the Agreements that require or may require an appropriation of funds or changes in any County law or regulation.
5. The joint Government Operations and Fiscal Policy Committee and Education Committee considered the Agreements and made recommendations on April 21, 2016.
6. The County Council has considered these terms and conditions and is required by law to indicate on or before May 1 its intention regarding the appropriation of funds or any legislation or regulations required to implement the agreements.

Action

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

The County Council intends to approve the following provisions for FY17:

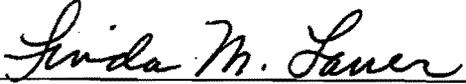
1. 0.5% general wage adjustment payable on the first pay period after July 1, 2016.
2. 0.5% general wage adjustment payable on the first pay period after January 1, 2017.
3. 3.5% service increments for all eligible bargaining unit members on their anniversary date.
4. 3% longevity increment for eligible bargaining unit members.
5. 1% lump sum for each eligible bargaining unit member who is at the top of grade and not eligible for a longevity step, payable on the first pay period after July 1, 2016.
6. Tuition Assistance up to \$150,000.
7. 25 individual and 7 job class classification studies.
8. Inclusion of a Pharmacy Benefit Management Programs.
9. Additional \$0.25 per hour for seasonal employee.

The County Council intends to reject the following provisions for FY17:

1. 3.5% service increment for each bargaining unit member whose service increment was deferred during FY11, FY12, or FY13, and who is otherwise eligible, effective the first pay period after May 1, 2017.
2. Domestic partner benefits for an opposite sex domestic partner, effective January 1, 2017.
3. The Council intends to reject the group insurance benefits in the agreement. The Council intends to approve the group insurance provisions as they were included in the Executive's Recommended FY16 operating budget, including a Medicare Part D Employer Group Waiver Prescription Drug Plan for Medicare-eligible retirees. To the extent that this approval is inconsistent with any provision of the collective bargaining agreement, that provision is disapproved.

The Council intends to approve all other provisions of the Agreement subject to Council review.

This is a correct copy of Council action.


Linda M. Lauer
Linda M. Lauer, Clerk of the Council