

Resolution No.: 17-42
Introduced: February 8, 2011
Adopted: February 8, 2011

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation No. 13-10AM, Amendments to Montgomery County Personnel Regulations, Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government

Background

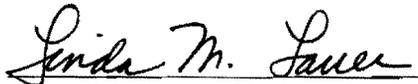
1. On October 14, 2010, the County Council received Executive Regulation 13-10 to amend Section 35 and other sections of the 2001 Personnel Regulations to provide a right of appeal to the Merit System Protection Board (MSPB) for County employees who allege a personnel action was taken in retaliation for the employee's good faith disclosure of illegal or improper actions in County government.
2. The Regulation implements Bill 2-10, Personnel, Contracts - Retaliation, enacted by the County Council on March 16, 2010.
3. Executive Regulation 13-10 was considered by the Government Operations and Fiscal Policy Committee on January 24, 2011, and the Committee recommended amendments to the proposed regulation. The regulation was resubmitted as Executive Regulation 13-10AM as amended by the Committee.
4. Executive Regulation 13-10AM is processed under Method 2 and takes effect upon adoption of the Council resolution approving it or on a later date specified in the regulation.
4. The Government Operations and Fiscal Policy Committee unanimously recommended approval of the amended regulation.

Action

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

Executive Regulation No. 13-10AM, Amendments to Montgomery County Personnel Regulations, Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government is approved.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date February 8, 2011

Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government

Executive Regulation No. 13-10AM

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 9

Comment deadline: September 30, 2010

Effective date: February 8, 2011

Summary: This regulation implements Bill No. 2-10 enacted by the Council on March 16, 2010. The regulation amends Section 35 of the 2001 Montgomery County Personnel Regulations to provide an appeal to the Merit System Protection Board for County employees who allege retaliation for disclosure of illegal or improper actions in County government.

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

Please use the key below when reading this regulation:

Boldface

* * *

Heading or defined term.

Existing language unchanged by executive regulation.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

SECTION 1. DEFINITIONS

* * *

1-52. **Personnel action:** An act or omission by a supervisor which has a significant adverse impact on the employee, or a change in the employee's duties or responsibilities which is inconsistent with the employee's grade and salary. It does not include an act or omission by a supervisor that is not subject to review by the Merit System Protection Board under Section 33-12 of the Montgomery County Code.

1-53. **Position:** * * *

1-54. **Position description:** * * *

1-55. **Priority consideration:** * * *

1-56. **Priority eligible list:** * * *

1-57. **Probationary employee:** * * *

1-58. **Probationary period:** * * *

1-59. **Professional improvement leave or PIL:** * * *

1-60. **Promotion:** * * *

1-61. **Promotional probationary period** * * *

1-62. **Rating categories:** * * *

1-63. **Reduction-in-force or RIF:** * * *

1-64. **Regular hourly salary:** * * *

1-65. **Relative:** * * *



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

- 1-66. Review period: * * *
- 1-67. Salary schedule: * * *
- 1-68. Seasonal position: * * *
- 1-69. Step salary schedule: * * *
- 1-70. Supervisor: * * *
- 1-71. Temporary employee: * * *
- 1-72. Temporary position: * * *
- 1-73. Temporary promotion: * * *
- 1-74. Term employee: * * *
- 1-75. Term position: * * *
- 1-76. Transfer: * * *
- 1-77. Uniformed fire/rescue employee: * * *
- 1-78. Unrepresented employee: An employee whose position is not included in any bargaining unit.
- 1-79. USERRA: * * *
- 1-80. Volunteer Firefighter or Rescuer: * * *
- 1-81. Workday: * * *
- 1-82. Working days: * * *
- 1-83. Workweek or work period: * * *



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

SECTION 3. ETHICS, DISCLOSURE OF ILLEGAL OR IMPROPER ACTS, EMPLOYMENT OF RELATIVES, DISCRIMINATION ON THE BASIS OF POLITICAL AFFILIATION, OUTSIDE EMPLOYMENT, AND SEXUAL OR ROMANTIC RELATIONSHIPS IN THE WORKPLACE

* * *

3-2. Disclosure of illegal or improper acts in County government.

- (a) An employee should report an illegal or improper act in County government.
- (b) An employee should report an illegal or improper act to the individual responsible for investigating the act or taking corrective action, such as:
 - (1) the employee's immediate supervisor or higher level supervisor;
 - (2) the employee's department director;
 - (3) the CAO or County Executive for executive branch employees;
 - (4) the County Council for legislative branch employees; or
 - (5) the Inspector General, in matters of fraud, waste, or abuse.
- (c) * * *
 - (5) It is unlawful for any person to retaliate against, penalize, or threaten with retaliation or penalty, an employee for providing information to, cooperating with, or in any way assisting the Inspector General or the Office of Legislative Oversight.

* * *



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS

* * *

35-2. Right of appeal to MSPB.

* * *

(g) An employee with merit status may file an appeal with the MSPB alleging a personnel action in retaliation for:

- (1) refusing to obey an instruction involving an illegal or improper action; or
- (2) disclosing to a Federal, State, or County official or employee, information concerning illegal or improper action in County government with a reasonable good-faith belief that the information disclosed is accurate.

35-3. Appeal period.

(a) An employee has 10 working days to file an appeal with the MSPB in writing after the employee:

- (1) receives a notice of disciplinary action over an involuntary demotion, suspension, or dismissal;
- (2) receives a notice of termination;
- (3) receives a written final decision on a grievance;
- (4) resigns involuntarily; or
- (5) knows or should have known of a personnel action.

* * *

35-20. MSPB audits, investigations, and inquiries.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

- (a) The MSPB has the responsibility and authority to conduct audits, investigations or inquiries to assure that the administration of the merit system complies with County law and these Regulations.
- (b) County employees must not be expected or required to obey instructions that involve an illegal or improper action and may not be penalized for disclosure of such actions. County employees are expected and authorized to report instances of alleged illegal or improper actions to the individual responsible for appropriate action as set forth in Section 3-2 of these Regulations.

35-21. Prohibited practices; protections for employees.

- (a) *Prohibited practices.* It is unlawful for any person to:
 - (1) coerce or attempt to coerce any merit system employee into taking an illegal or improper action;
 - (2) retaliate against or penalize an employee, or threaten an employee with retaliation or penalty because of that employee's:
 - (A) refusal to obey an instruction involving an illegal or improper action;
 - (B) disclosure of information to a Federal, State, or County official or employee concerning illegal or improper action in County government with a good faith belief that the information disclosed is accurate; or
 - (C) providing information to, cooperating with, or in any way assisting the Inspector General or the Office of Legislative Oversight.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

(b) *Protection for employee.*

- (1) The MSPB must protect a merit system employee from any retaliatory or coercive action for:
 - (A) refusing to obey an instruction involving an illegal or improper action; or
 - (B) disclosing information to a Federal, State, or County official or employee concerning illegal or improper action in County government that the employee had a reasonable good-faith belief:
 - (i) was accurate; and
 - (ii) concerned an illegal or improper action.
- (2) The MSPB must not protect the employee if it is determined that:
 - (A) the employee's actions were frivolous, unreasonable, and without foundation, even though not brought in bad faith;
 - (B) the employee, without good cause, did not comply with applicable regulations concerning the making of such disclosures; or
 - (C) the employee was the subject of an otherwise proper personnel action that would have been taken regardless of the employee's disclosure of information concerning illegal or improper action in County Government.

35-22. Due process protections.

- (a) If the MSPB determines that an investigation pursuant to Section 35-20 of these Regulations is warranted, the MSPB must prepare a memorandum before the start



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

of the investigation stating the legal authority, scope, and beginning date of the investigation.

- (b) At least 5 working days before an employee is expected to participate as a witness, custodian of records, or possible subject, the MSPB or a special personnel investigator appointed by the MSPB must give the employee a written request to participate that includes the following:
- (1) date of the request;
 - (2) name of the employee whose participation is requested;
 - (3) whether the employee is requested to participate as a witness, custodian of records, or possible subject of the investigation;
 - (4) name of the investigative authority;
 - (5) name of the individual conducting the investigation;
 - (6) law or regulation authorizing the investigation and the request for participation;
 - (7) subject areas to be covered in the investigation;
 - (8) if the employee is a possible subject, a clear and detailed statement of all allegations of misconduct;
 - (9) notice that the employee has the right to be assisted by legal counsel; and
 - (10) signature of the chairperson of the MSPB certifying that the MSPB has officially initiated an investigation and requested the employee's participation.

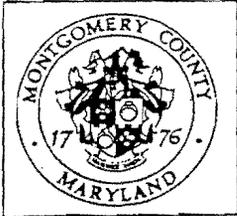


MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

- (c) Within 30 days after the employee's participation, the MSPB or a special personnel investigator appointed by the MSPB must provide the employee with a copy of:
- (1) a transcript or recording of all questions asked to the employee and the employee's responses;
 - (2) a complete set of notes of all questions asked to the employee and the employee's responses, if there is no verbatim transcript or recording; and
 - (3) all documents that the employee has been asked to identify or review.
- (d) Within 90 days after the employee's participation, the MSPB must, if applicable, serve the employee with written notice of intent to take an action that may adversely affect the employee's terms and conditions of employment. The written notice must include a statement of appeal rights and the time limit for filing an appeal.
- (e) After the investigation is finished, the MSPB must deliver to each employee requested to participate:
- (1) a statement that the investigation is finished; and



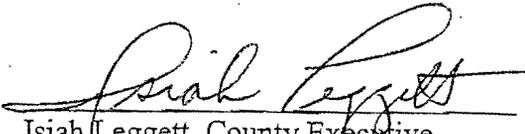
MONTGOMERY COUNTY EXECUTIVE REGULATION

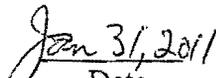
Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Retaliation Against County Employees for Disclosing Illegal or Improper Actions in County Government	Number 13-10AM
Originating Department Office of Human Resources	Effective Date

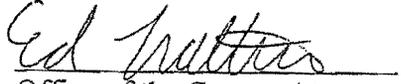
- (2) a complete description of all actions taken or planned that may adversely affect the employee's employment.

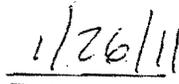
Approved:


Isiah Leggett, County Executive


Date

Approved as to form and legality:


Office of the County Attorney


Date