

GO/PS COMMITTEE #1  
January 15, 2015  
**Worksession**

**MEMORANDUM**

January 13, 2015

TO: Government Operations and Fiscal Policy Committee  
Public Safety Committee

FROM: Essie McGuire, Senior Legislative Analyst 

SUBJECT: **Worksession – Inspector General Report #OIG-15-002, Sick Leave Usage, Montgomery County Fire and Rescue Service**

Today the Government Operations and Fiscal Policy Committee and the Public Safety Committee will hold a worksession to review Inspector General Report #OIG-15-002, *Sick Leave Usage in Montgomery County Fire and Rescue Service* (MCFRS). The following individuals are expected to participate in today's discussion:

- Edward Blansitt, Montgomery County Inspector General
- John Hummel, Office of the Inspector General
- Fariba Kassiri, Acting Director of the Office of Human Resources
- Bonnie Kirkland, Assistant Chief Administrative Officer
- Marc Hansen, County Attorney
- Division Chief Diane Zuspan, Administrative Services, MCFRS
- Edward Radcliffe, Assistant Chief, Labor Relations, MCFRS

**Report Background**

The Inspector General issued this report, attached on circles 7-19, on October 27, 2014, in response to a complaint received regarding alleged misuse of sick leave prior to retirement. The OIG investigated this complaint to assess the validity of the complaint and to determine whether sick leave usage increases in MCFRS as employees approach retirement.

The investigation identified one employee who conspicuously “burned” sick leave prior to retirement and announced this on his Facebook page. The report also determined that in 13 of 14 similar cases reviewed the MCFRS employee had higher than average sick leave use prior to retirement. The report states that while MCFRS policy and the bargaining agreement provide some enforcement mechanisms related to sick leave abuse, medical documentation does not appear to have been required when employees do not return to duty status prior to retirement.

The report issues four recommendations, found on circle 16. In summary, the recommendations are that MCFRS should enforce its policies and hold accountable both employees and managers who misuse or inappropriately authorize sick leave; that current policy be expanded to specifically address sick leave approaching retirement; and that steps be pursued to recover losses attributable to abuse of sick leave.

### **Chief Administrative Officer's response**

Appendix B of the report (circle 20) is the Chief Administrative Officer's (CAO) response to the report. The CAO agreed with the first three enforcement and policy recommendations, and stated that the County will take the steps necessary to implement those recommendations. The CAO stated that the Office of the County Attorney would review the legal issues associated with the fourth recommendation to recover associated losses.

Committee Chairs Navarro and Elrich sent a memorandum on November 19 (circle 20) requesting that the CAO provide additional information for this worksession as to what specific steps the Executive Branch has taken or initiated to address the IG's recommendations.

The CAO's response is on circle 21 and states very briefly that employees and managers are being held accountable for sick leave use and authorization, and that policy revisions are under consideration. The response also states that a "top to bottom" review of sick leave usage in MCFRS was conducted in the fall.

**The Committee may want to ask Executive Branch representatives to provide more specific information on the steps taken thus far to ensure accountability. Some questions include:**

- What was result of the "top to bottom" review in MCFRS? To what extent were other cases of sick leave abuse identified?
- What specific steps are being taken to hold MCFRS supervisors accountable? In addition to prospective application of accountability measures, are any measures being taken to discipline or address supervisors or employees for past actions?
- The CAO's response references the possible need to negotiate some of the potential changes to sick leave enforcement. What accountability and enforcement measures are possible to enact within current policy, and what kinds of changes need to be negotiated regarding sick leave in MCFRS?
- Sick leave abuse may present unique operational and cost problems in public safety departments such as MCFRS because of the need to backfill employees who are on sick leave with overtime pay to another employee to fill that shift. The Committee may want MCFRS to comment on whether overtime is used for extended sick leave in examples such as these or if there is an operational mechanism to backfill without the additional overtime expense if it is known that an employee will not return.
- The bargaining agreement for MCFRS employees with the International Association of Fire Fighters (IAFF) contains a provision that establishes a sick leave bank for employees. Any sick leave

forfeited by an MCFRS bargaining unit employee upon leaving County employment is placed in this sick leave bank for use by other employees suffering occupational illness or injury (circle 28). MCFRS may want to comment on the current status of this sick leave bank and the possible effect of lower amounts of leave being placed in it.

**Sick Leave Abuse in Other Departments**

The IG’s report on MCFRS raises the related question of whether similar sick leave abuse patterns exist in other County departments. Council staff reviewed the sick leave provisions in each bargaining agreement and in the County personnel regulations; the relevant provisions are attached at circles 22-31. Each set of provisions defines allowable use of sick leave and specifies what documentation is necessary to enforce appropriate use. All the agreements and regulations also reference forfeit of unused sick leave on retirement, anticipating that not all sick leave may be used.

In preparation for this worksession, the Office of Legislative Oversight (OLO) conducted a review of sick leave use in the last two months of active employment prior to retirement for all County employees who retired between January 2012 and November 2014. The OLO analysis is attached on circles 32-34. While this analysis raises some additional questions, it is a useful initial approach in gathering the data to understand sick leave patterns in other departments.

The conclusions, on circle 34, indicate that 6 percent of all employees reviewed used 200 or more hours of sick leave in their last two months prior to retirement, which represents 58% of an individual’s work hours. The analysis does not seem to indicate a clear systemic pattern among departments. At the same time, however, it points to potential episodic issues, particularly in some departments, that could mirror the experience identified by the IG in MCFRS.

**The Committees may want to ask the Executive Branch to comment on whether there are any plans to review sick leave use in other departments in light of the IG’s report.**

Sick Leave Usage  
Montgomery County Fire and Rescue Service

Report issued on October 27, 2014

IG Report 15-002  
January 15, 2015



MONTGOMERY COUNTY MARYLAND

OFFICE OF THE INSPECTOR GENERAL

MONTGOMERY COUNTY MARYLAND  
OFFICE OF THE INSPECTOR GENERAL

Sick Leave Usage  
Montgomery County Fire and Rescue Service

**MCFRS Sick Leave Policy**

*Employees do not "have the right to use sick leave for any personal reasons not related to a bona fide medical condition."*

-MCFRS Policies and Procedures No. 508.2, Dec. 10, 1991, *Procedures-Sick Leave*, Section 4.1



Sick Leave Usage  
Montgomery County Fire and Rescue Service

*Finding 1:*

**After MCFRS Battalion Chief A reported on Facebook that he would be burning leave prior to retirement, he had no hours in working status for 8 pay periods, roughly 5 months, immediately preceding his retirement.**

Sick Leave Usage  
Montgomery County Fire and Rescue Service

*Today was my "unofficial" last day of work with MCFRS. From this point, I'll be burning leave to the very end. It is soon to be the greatest 26 year ride ever! Thanks for the memories. Johns Hopkins Public Safety Leadership Program, here I come! I must be outta my ... mind! - December 19, 2013*

*Sun and sand for a few - at Baie Nettle, St Martin - Netherlands Antilles - April 11, 2014*

*...was at Oyster Bay Beach Resort St Maarten - April 13, 2014*

*Last night in St. Marteen. Having grilled lobster at Bistro due la Mer - at Port De Marigot, St. Martin - April 16, 2014*

*Well it's official. I received my first pension statement for May 1<sup>st</sup>. I'm retired from MCFRS. Thanks for the memories. New ones forthcoming. - April 30, 2014*

*Left Job at Montgomery County Fire and Rescue Services. May 1 - Retired Battalion Chief... - May 1, 2014*

**Battalion Chief A's Public Facebook Page**

Sick Leave Usage  
Montgomery County Fire and Rescue Service

**Battalion Chief A's Sick Leave Usage**

Pay Date	1/10/14	1/24/14	2/7/14	2/21/14	3/7/14	3/21/14	4/4/14	4/18/14	5/2/14	5/16/14
Hours Worked	50	10	0	0	0	0	0	0	0	0
Annual Leave	30	30	0	0	0	0	0	0	0	0
Sick Leave	0	40	80	80	80	70	80	80	80	70
Administrative Leave	0	0	0	0	0	10	0	0	0	0

*\*Battalion Chief A received a lump sum payment on May 30, 2014*

Sick Leave Usage  
Montgomery County Fire and Rescue Service

*Finding 2:*

**In 13 of 14 cases we examined, MCFRS employees used sick leave at an above average rate in the fiscal year of retirement, suggesting they may be "burning" sick leave at significant cost to the County.**

Sick Leave Usage  
 Montgomery County Fire and Rescue Service

**Retiring Employees' Sick Leave Usage**

Pay Date	1/19/2014	1/24/2014	2/7/2014	2/21/2014	3/7/2014	3/21/2014	4/4/2014	4/18/2014	5/2/2014	5/16/2014	5/30/2014	6/13/2014	TOTAL
Employee 1	0	16	8	0	0	0	0	0	40	60	60	60	244
Employee 2	0	20	0	0	0	0	0	0	0	0	0	0	20
Employee 3	0	0	24	24	24	0	24	0	0	0	53	96	245
Employee 4	24	24	24	24	48	24	0	48	24	0	45.07	6.33	291
Employee 5	0	24	0	23.5	0	0	24	0	24	24	0	24	143
Employee 6	48	0	48	24	24	72	24	24	24	48	0	24	360
Employee 7	0	0	24	0	24	10	0	8	31.5	15	17	21	150
Employee 8	24	48	0	0	0	0	0	24	120	72	96	103.08	487
Employee 9	24	24	24	0	24	24	24	24	0	48	96	79.87	391
Employee 10	0	0	0	0	0	0	0	0	0	0	80	54	134
Employee 11	0	0	0	24	24	24	24	0	0	0	0	48	144
Employee 12	0	0	0	0	0	24	0	24	24	72	24	52	220
Employee 13	0	0	24	0	64	0	0	0	0	48	96	96	328
FRS Average	5 hours x 12 pay periods												60

On average, an MCFRS employee utilized 124 hours of sick leave in FY2104. (Approximately 5 hours/pay period)  
 Chart reflects all retiring MCFRS employees who received a lump sum payment on June 27, 2014. (Last pay date in FY2014)

Sick Leave Usage  
 Montgomery County Fire and Rescue Service

**Finding 3:**

**Current MCFRS practice unfairly favors retiring employees who misuse sick leave.**

Sick Leave Usage  
Montgomery County Fire and Rescue Service

***The Current MCFRS Union Agreement***

- Allows a maximum of 72 hours of sick leave usage during a single incident before the employee "must obtain medical documentation from a physician or other licensed healthcare provider."
- Allows a maximum of 4 incidents of undocumented sick leave, after which the employee will be counseled "that additional sick leave without the appropriate documentation...may result in sick leave restriction."
- Allows the employer, if the employee is placed on leave restriction, to "refuse to approve additional sick leave without the appropriate medical documentation" and "charge the employee AWOL for the time the employee was absent from work."
- States that medical documentation will be submitted "upon the employee's return to work."



Sick Leave Usage  
Montgomery County Fire and Rescue Service

***MCFRS Managerial Challenges***

- MCFRS senior staff stated that it is their practice and policy that medical documentation must be submitted upon return to work. If an employee retires following a period of sick leave without returning to work, no medical documentation is requested from the employee.
- According to a MCFRS senior staff member, managers are reluctant to counsel employees or place them on leave restriction in the months immediately preceding retirement. There is a perception that this is a pointless effort as the employee will have left by the time any discipline can be enacted.

Sick Leave Usage  
Montgomery County Fire and Rescue Service

**Recommendations**

MCFRS should take those steps necessary to ensure that:

1. Employees who use sick leave in a way that is contrary to policy are counseled, placed on leave restriction, and disciplined as outlined in policy and the current MCFRS Union Agreement.
2. Managers who inappropriately approve sick leave without confirming a legitimate medical need are held accountable.
3. Current policy is expanded to specifically address sick leave abuse as an employee approaches retirement. New policy should clearly outline an effective methodology to hold employees and managers accountable for lengthy and repetitive undocumented incidents of sick leave usage immediately preceding retirement.
4. To the extent possible, losses attributable to abuse of sick leave are recovered.

Sick Leave Usage  
Montgomery County Fire and Rescue Service

**Chief Administrative Officer's Response**

*"We agree with the report's recommendations 1-3, and will take all the steps necessary to ensure that those three recommendations are fully analyzed and implemented. With respect to recommendation 4, the Office of the County Attorney is working with the Montgomery County Fire and Rescue Service to explore legal options."*

# Final Report

Sick Leave Usage  
Montgomery County  
Fire and Rescue Service

Report # OIG-15-002

October 27, 2014

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Montgomery County Maryland  
Office of the Inspector General



# Sick Leave Usage

## Montgomery County Fire and Rescue Service

### Introduction

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In January 2014, the Office of the Inspector General (OIG) received a complaint from a Montgomery County employee alleging that allowing employees to use up or “burn” sick leave at the end of their careers has become common practice in the Montgomery County Fire and Rescue Service (MCFRS). The complainant further stated that a MCFRS Battalion Chief collected months of compensation for unused sick leave without any medical certification and had recently posted the following message on his Facebook page:

*Today was my “unofficial” last day of work with MCFRS. From this point, I’ll be burning leave to the very end. It is soon to be the greatest 26 year ride ever! Thanks for the memories. Johns Hopkins Public Safety Leadership Program, here I come!*

### Objectives, Scope, and Methodology

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The objectives of our inquiry were to:

- Identify the Battalion Chief quoted in the complaint and assess the validity of the complainant’s allegations against the Battalion Chief;
- Determine whether sick leave usage increases as MCFRS personnel near retirement.

In our search for the Battalion Chief described in the complaint, we reviewed the FY2014 pay records and sick leave usage for 14 MCFRS employees who retired near the end of FY2014. Our findings are detailed in the body of this report.

Our inquiry was conducted in July 2014 in accordance with the standards contained in *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency (January 2012).

## Background

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MCFRS policies and procedures state that employees do not “have the right to use sick leave for any personal reasons not related to a bona fide medical condition.”<sup>1</sup> Additionally, the current MCFRS Union Agreement defines sick leave as earned, paid leave granted to eligible employees for absences because of personal illness, injury, medical quarantine, medical, dental or optical treatments, or for temporary disability related to pregnancy, miscarriage, or child birth for the employee or an employee’s immediate family member.<sup>2</sup> Employees are also permitted to use sick leave for parental leave related to the birth or adoption of a child.<sup>3</sup> MCFRS employees are required to provide medical documentation for frequent<sup>4</sup> or extended<sup>5</sup> sick leave usage. MCFRS management is free to issue and enforce rules, policies, and regulations necessary to carry out managerial functions, including administration of the sick leave program, as long as they do not conflict with law or the current MCFRS Union Agreement.<sup>6</sup>

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<sup>1</sup> Policies and Procedures, Department of Fire & Rescue Services, Montgomery County, MD, No. 508.2, Dec. 10, 1991, *Procedures - Sick Leave*, Section 4.1.

<sup>2</sup> Agreement Between Montgomery County Career Firefighters Association International Association of Firefighters Local 1664, AFL-CIO and Montgomery County Government Montgomery County, Maryland for the years July 1, 2013 – June 30, 2016 (Current MCFRS Union Agreement), Section 7.1(A-D).

<sup>3</sup> *Ibid.*, Section 7.1(C).

<sup>4</sup> Policies and Procedures, Department of Fire & Rescue Services, Montgomery County, MD, No. 508.2, Dec. 10, 1991, *Procedure - Sick Leave Abuse (Misuse)*, Section 7.8 and 7.9 states that once an employee on a 24/48 work schedule has 3 incidents of family or personal sick leave without medical documentation, the Senior Career Officer must counsel the employee that additional sick leave will not be approved without documentation. When the employee uses sick leave for the fourth time without submitting documentation, management must charge the employee with Leave Without Pay (LWOP) for the time they were absent and prepare a statement of charges for a Written Reprimand. Similar restrictions may be imposed after 4 incidents for an employee on a 42 hour work week and 5 incidents for those on a 40 hour work week. The Current MCFRS Union Agreement, Section 7.7(A)-2 allows an employee on the 24/48 hour work schedule 4 incidents of undocumented sick leave prior to counseling and states that employees on all work schedules may be restricted after 5 incidents of undocumented sick leave.

<sup>5</sup> *Ibid.*, *Procedure - Sick Leave Use and Authorization*, Section 6.7, “2496 hour employees who are unable to report to work for more than 48 consecutive work hours, 2184 hour employees who are unable to report to work for 42 consecutive work hours, or 2080 hour employees who are unable to report to work for 40 consecutive work hours must obtain a medical certificate from their physician confirming a medical condition which prohibited the employee from working. This will also apply to absences for immediate family sick leave.” The Current MCFRS Union Agreement, Section 7.7(A) allows up to 72 hours consecutive sick leave, depending on the employee’s work schedule, before they must obtain medical documentation confirming an illness.

<sup>6</sup> Current MCFRS Union Agreement, Article 5 (S) – *Management Rights*.

Regulations and the current MCFRS Union Agreement require that sick leave be forfeited upon separation from County service, except that an employee in the Employees' Retirement System (ERS) may use accumulated sick leave, up to a maximum of 4,136 hours (or 24 months), as credited service for retirement purposes under the ERS.<sup>7</sup>

## Findings

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**Finding 1:** After MCFRS Battalion Chief A reported on Facebook that he would be burning leave prior to retirement, he had no hours in working status for 8 pay periods, roughly 5 months, immediately preceding his retirement.

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We accessed payroll records for MCFRS Battalion Chiefs with 24-28 years of service or known to be retiring near the end of FY2014<sup>8</sup> and identified one employee (Battalion Chief A) who consistently recorded 80 hours of leave per pay period, nearly all of which was sick leave. A review of pay records for Battalion Chief A indicates that he reported no hours in working status after the pay period ending December 28, 2013. After that pay period, Battalion Chief A was on a combination of Annual Leave, Administrative Leave, and Sick Leave until he received his last paycheck on May 16, 2014. (See Figure 1.) During that 5 month period, Battalion Chief A was paid predominately from sick leave (660 out of 710 hours), despite the fact that information on his public Facebook page suggests he was not actually sick or disabled in any way.

During the same period, Battalion Chief A posted information on his public Facebook page stating that he planned to "burn" leave from December 19, 2013 until retirement. He later used Facebook to report his retirement date as May 1, 2014. Additionally, his Facebook page included the quote submitted by the complainant. (See Appendix A for a listing of Battalion Chief A's relevant Facebook page postings.)

Based on posts on the Facebook page, Battalion Chief A was out of the country in St. Maarten from April 11, 2014 – April 16, 2014. MCFRS policies and procedures state that, "Any employee

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<sup>7</sup> MCPFR, 2001, Section 17-12, *Disposition of accumulated sick leave at separation from County service* and the Current MCFRS Union Agreement, Section 7.9, *Disposition of Accumulated Sick Leave at Separation from County Service*.

<sup>8</sup> The complaint indicated that the MCFRS Battalion Chief had 26 years of service, so 24-28 years was used. A newspaper article identified an individual with 29 years of service who intended to retire who was also included in the data mining efforts.

requesting to remain away from home for any period of time... while on sick leave or on medical leave of absence must submit a request through channels to the Director of DFRS for approval.”<sup>9</sup> Battalion Chief A violated policy in that he failed to inform MCFRS that he intended to leave the Country while on sick leave. MCFRS reported that had he requested permission to leave the Country for a vacation in the Caribbean, he would have been denied. MCFRS has previously permitted overseas travel while on sick leave for the purposes of undergoing a medical procedure.<sup>10</sup>

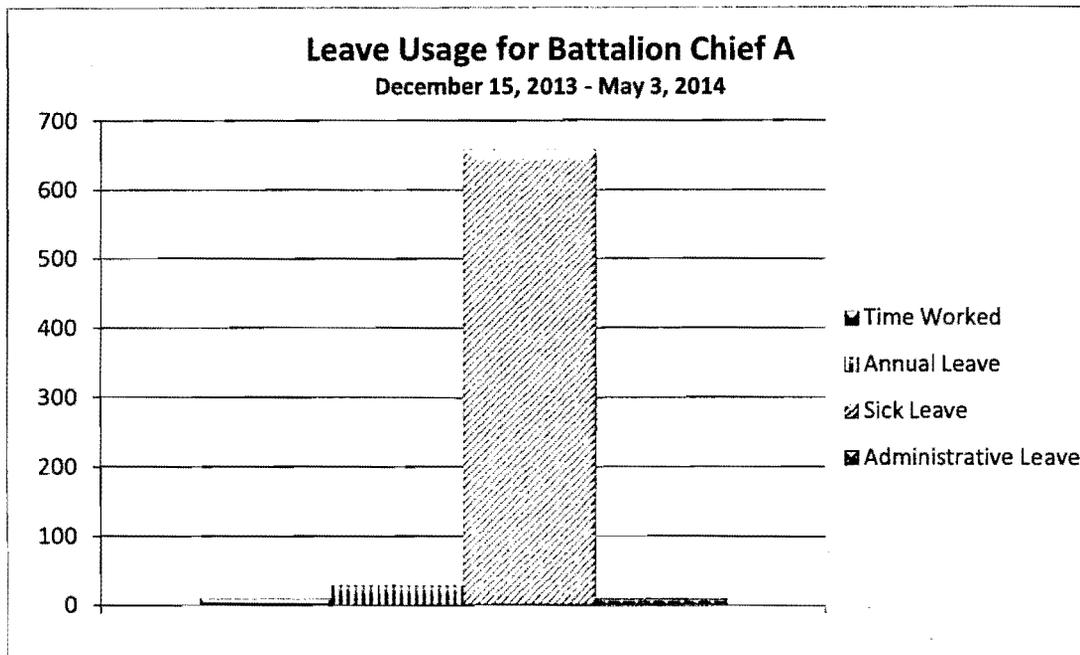


Figure 1

MCFRS reported that Battalion Chief A did not submit any medical documentation confirming a medical condition which prohibited the employee from working. MCFRS senior staff stated that it is their practice and policy<sup>11</sup> that medical documentation must be submitted upon return to work. If an employee retires following a period of sick leave without returning to work, no medical documentation is requested from the employee. Similarly, the current MCFRS Union Agreement states that medical documentation for extended absence “must be submitted upon the employee’s return to work.”<sup>12</sup> However, the current MCFRS Union Agreement also allows MCFRS to require an employee to provide medical certification if they have reasonable

<sup>9</sup> Policies and Procedures, Department of Fire & Rescue Services, Montgomery County, MD, No. 508.2, Dec. 10, 1991, *Procedure - Sick Leave Abuse (Misuse)*, Section 7.10(c).

<sup>10</sup> MCFRS previously permitted an employee to utilize sick leave to travel to Peru for a liver transplant.

<sup>11</sup> Policies and Procedures, Department of Fire & Rescue Services, Montgomery County, MD, No. 508.2, Dec. 10, 1991, Sections 6.7 and 7.8(c).

<sup>12</sup> Agreement Between Montgomery County Career Firefighters Association International Association of Firefighters Local 1664, AFL-CIO and Montgomery County Government Montgomery County, Maryland for the years July 1, 2013 – June 30, 2016, Section 7.7(A).

cause to believe that an employee is misusing/abusing sick leave. This passage does not specifically stipulate that the documentation will be provided upon return to work, although other portions of the same passage do contain this language.<sup>13</sup>

**Finding 2: In 13 of 14 cases we examined, MCFRS employees used sick leave at an above average rate in the fiscal year of retirement, suggesting they may be “burning” sick leave at significant cost to the County.**

We analyzed payroll records for Battalion Chief A and all MCFRS employees who were eligible for retirement and received a lump sum payment on June 27, 2014.<sup>14</sup> Of the 14 sampled MCFRS employees, 13 had sick leave usage in FY2014 that exceeded the average MCFRS employee. (See Figure 2.) The average MCFRS employee utilized 129 hours of sick leave per year in FY2014. Six of the sampled employees used more than 530 hours of sick leave, which is at least 4 times the rate of the average MCFRS employee.

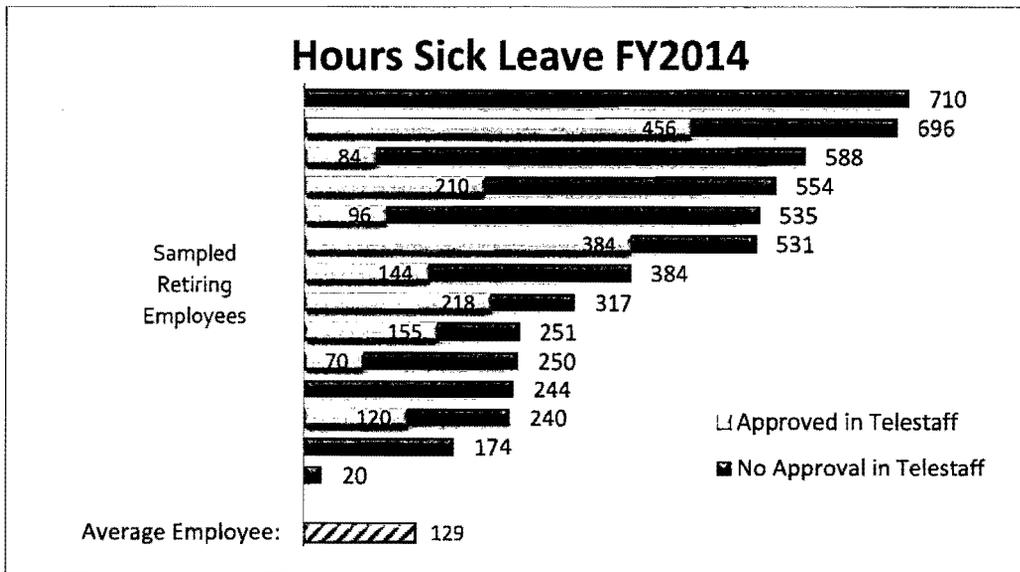


Figure 2

<sup>13</sup> Ibid. Section 7.7(A)-5, “Reasonable cause means that the Employer has obtained information or has observed that the employee is abusing/misusing sick leave.”

<sup>14</sup> 13 employees had more than 20 years of service and received a lump sum payment for unused leave on June 27, 2014. The 14<sup>th</sup> employee was Battalion Chief A who received his lump sum payment on May 3, 2014.

Management is expected to use Telestaff, the MCFRS scheduling program used to track employee leave, to recode leave from "sick leave" to "approved-sick leave" when medical documentation is submitted by the employee. Management is expected to maintain a copy of the documentation in the employee's supervisory file to support the coding change. For the purposes of this analysis, we assumed that instances cited in Telestaff as "approved" sick leave evidenced that the sick leave usage was documented.<sup>15</sup>

Based on information obtained from Telestaff, only 2 of the 14 employees' sick leave usage was adequately supported by medical documentation or fell below the levels which require documentation.

**a. Seven of the 14 sampled employees had a lengthy incident of sick leave usage<sup>16</sup> immediately preceding retirement.**

The employees in this group averaged close to 7 weeks<sup>17</sup> of sick leave usage at the end of their careers. After that period, none returned to work or submitted any medical documentation supporting an illness. This information suggests that retiring employees may be taking advantage of the current MCFRS Union Agreement which allows a maximum of 72 hours of sick leave usage during a single incident before medical documentation is required but also states that the documentation "must be submitted upon the employee's return to work."<sup>18</sup> While it is possible that the previously mentioned "reasonable cause" criterion would allow a manager to request documentation during the absence, this is not the current practice within MCFRS.

**b. For the 7 employees who did not take a large chunk of sick leave immediately preceding retirement, 5 incurred 5 or more undocumented incidents of sick leave usage, should have been placed on notice, and could have been placed on subsequent leave restriction.**

MCFRS employees are allowed a maximum of 4 incidents of undocumented sick leave before they are counseled "that additional sick leave without the appropriate documentation...may result in sick leave restriction." Employees with a fifth incident of undocumented sick leave may be placed on leave restriction and given LWOP for additional undocumented sick leave. MCFRS reported that only one of the employees was counseled and none were placed on leave restriction. According to a MCFRS senior staff member, managers are reluctant to counsel employees or place them on leave restriction in the months immediately preceding retirement.

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<sup>15</sup> We requested copies of medical documentation for a sample of sick leave instances and were told that, the supervisory files for the requested employees were destroyed after they left the Department and that any documentation would have been in those files.

<sup>16</sup> The employees used between 120 and 660 hours of sick leave during one incident immediately preceding retirement. The average amount used was 298 hours. MCFRS reported that 2 of these employees were injured in the line of duty and permitted to use undocumented sick leave until retirement in lieu of working a light duty position.

<sup>17</sup> Only sick leave hours were used for analysis purposes. Some employees comingled sick leave, with other types of leave such as annual and compensatory leave, resulting in a longer absence immediately preceding retirement.

<sup>18</sup> Agreement Between Montgomery County Career Firefighters Association International Association of Firefighters Local 1664, AFL-CIO and Montgomery County Government Montgomery County, Maryland for the years July 1, 2013 – June 30, 2016, Section 7.7.

The staff member told us there is a perception that this is a pointless effort as the employee will have left by the time any discipline can be imposed.

**Sick Leave Cost**

On average, MCFRS spent \$3,819 per employee on sick leave pay in FY2014. In total, our 14 sampled MCFRS employees received \$241,065 in sick pay in FY2014, averaging \$15,290 per person. Based on our analysis, the average sampled retiring MCFRS employee's sick pay cost was 4 times the average MCFRS employee's. (See Figure 3.)

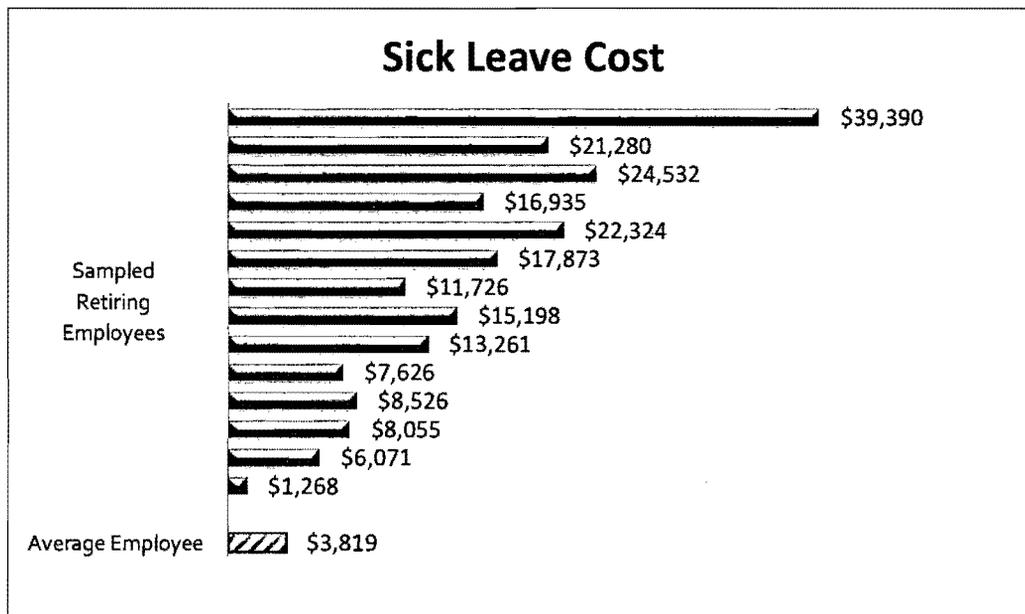


Figure 3

During FY2014, 108 MCFRS employees, representing 8.6% of the departmental workforce<sup>19</sup> separated from service. We did not determine how many of those employees separated due to retirement. However, approximately 25 percent of the employees had more than 20 years of service and were eligible to retire. Further analysis would be required to determine how many separating employees retired and whether their use of sick leave increased as they approached retirement. Based on our analysis and current policy constraints, it appears likely that the practice of "burning" sick leave extends beyond what is reflected in our small sample.

Additionally, "burning" sick leave by employees as they approach retirement is costly for reasons other than what is reflected in the employee's payroll records. By policy, MCFRS has

<sup>19</sup> 108 separated/ 1251 total = 8.6 percent

minimum staffing levels, requiring certain positions to be filled around the clock. The majority of MCFRS employees occupy emergency first response field operation positions, which require the position to be filled by another employee, likely on overtime, anytime the employee is out.<sup>20</sup> Therefore, MCFRS may not only be incurring sick leave pay costs for retiring employees "burning" sick leave but in many cases may be paying other employees time and a half in order to keep their positions adequately staffed.

**Finding 3: Current MCFRS policy and practice unfairly favors retiring employees who misuse sick leave.**

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As previously stated, only one of the 14 sampled employees' FY2014 sick leave usage fell below average. That same employee forfeited over 1700 hours of sick leave upon retirement. At the same time, 7 of the other 13 employees used every hour of sick leave prior to retirement.

While MCFRS policy clearly outlines the circumstances under which an employee can use sick leave, it does not give adequate consideration to enforcement of the policy as an employee nears retirement. Because management reports they feel unable to ask for documentation from an employee who never returns to work and timely discipline may not be possible near the end of an employee's career, it appears that a retiring employee who utilizes sick leave as outlined in policy may forfeit a great deal of leave, while other retiring employees are able to violate policy and enjoy substantial additional time off without repercussion. This may negatively affect some employees' morale and encourage employees to engage in an inappropriate pattern of sick leave usage.

## Conclusion

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Under current policy, sick leave is not an entitlement<sup>21</sup> and should be utilized only when an employee or a member of the employee's immediate family has a legitimate medical need.

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<sup>20</sup> Montgomery County Office of Legislative Oversight Report Number 2014-2, *Injuries, Injury-Related Leave, and Overtime in the Montgomery County Fire and Rescue Service*, November 26, 2013, page 1.

<sup>21</sup> MCFRS Management reported that prior to January 15, 1988 excess compensatory time was converted to sick leave at the end of the year. Employees who began employment prior to 1988 may have been required to work extra hours which was subsequently converted to sick leave and thus feel greater entitlement to a portion of their sick leave balance.

Current MCFRS policy appears designed to prevent inappropriate use of unscheduled leave during an employee's career but does not adequately address the prevention of leave "burning" as an employee nears retirement. Employees who have a lengthy incident of undocumented sick leave usage and do not return to duty status prior to retirement have not been required to provide appropriate medical documentation. The current MCFRS Union Agreement allows managers to request medical documentation any time they have reasonable cause to believe that the employee is misusing/abusing sick leave<sup>22</sup> and leaves room for managers to require documentation for increased patterns of sick leave usage as an employee approaches retirement.

The current MCFRS Union Agreement provides that in some cases, employees can utilize a significant number of hours<sup>23</sup> of sick leave prior to being required to submit medical documentation. Further research is warranted to determine whether an incentive program could significantly reduce sick leave usage and its associated overtime costs.

## Recommendations

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MCFRS should take those steps necessary to ensure that:

1. Employees who use sick leave in a way that is contrary to policy are counseled, placed on leave restriction, and disciplined as outlined in policy and the current MCFRS Union Agreement.
2. Managers who inappropriately approve sick leave without confirming a legitimate medical need are held accountable.
3. Current policy is expanded to specifically address sick leave abuse as an employee approaches retirement. New policy should clearly outline an effective methodology to hold employees and managers accountable for lengthy and repetitive undocumented incidents of sick leave usage immediately preceding retirement.
4. To the extent possible, losses attributable to abuse of sick leave are recovered.

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<sup>22</sup> Agreement Between Montgomery County Career Firefighters Association International Association of Firefighters Local 1664, AFL-CIO and Montgomery County Government Montgomery County, Maryland for the years July 1, 2013 – June 30, 2016, Section 7.7(A)-5.

<sup>23</sup> Ibid. Section 7.7

Summary of the  
Chief Administrative Officer's Response

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The response from the Montgomery County Chief Administrative Officer (CAO) to the final draft report is included in its entirety in Appendix B. The CAO concurred with our recommendations.

The CAO's response did not cause us to alter our findings or recommendations.

## Appendix A: Relevant Facebook Quotes

The following quotes were obtained from Battalion Chief A's public Facebook page:

*Today was my "unofficial" last day of work with MCFRS. From this point, I'll be burning leave to the very end. It is soon to be the greatest 26 year ride ever! Thanks for the memories. Johns Hopkins Public Safety Leadership Program, here I come! I must be outta my ... mind! - December 19, 2013*

*My wife said this is when she loves me the most. I say, "I'm retired dammit!" – February 25, 2014 (This particular quote was accompanied by photos of Battalion Chief A sleeping in various locations.)*

*Sun and sand for a few – at Baie Nettle, St Martin – Netherlands Antilles – April 11, 2014*

*...was at Oyster Bay Beach Resort St Maarten – April 13, 2014*

*Last night in St. Marteen. Having grilled lobster at Bistro due la Mer – at Port De Marigot, St. Martin – April 16, 2014*

*Well it's official. I received my first pension statement for May 1<sup>st</sup>. I'm retired from MCFRS. Thanks for the memories. New ones forthcoming. – April 30, 2014*

*Left Job at Montgomery County Fire and Rescue Services. May 1 – Retired Battalion Chief... – May 1, 2014*

# Appendix B: Chief Administrative Officer's Response



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett  
County Executive

Timothy L. Firestine  
Chief Administrative Officer

## MEMORANDUM

October 22, 2014

TO: Edward Blansitt, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer *Timothy L. Firestine*

SUBJECT: Final Draft Report, Montgomery County Fire and Rescue Service Sick Leave Usage

I am in receipt of your final draft report sent on September 24, 2014 detailing the audit conducted by your office concerning sick leave usage in Montgomery County Fire and Rescue Service. We thank you for your efforts in reviewing this issue and agree with the report's conclusion that according to our current laws and policies, sick leave should be utilized only when an employee or a member of the employee's immediate family has a legitimate medical need.

We agree with the report's recommendations 1-3, and will take all the steps necessary to ensure that those three recommendations are fully analyzed and implemented. With respect to recommendation 4, the Office of the County Attorney is working with Montgomery County Fire and Rescue Service to explore legal options.

If you have any questions, please feel free to contact Assistant Chief Administrative Officer Fariba Kassiri, who can be reached at (240) 777-2512 or [Fariba.Kassiri@montgomerycountymd.gov](mailto:Fariba.Kassiri@montgomerycountymd.gov).

TLP:ja

cc: Joseph Adler, Director, Office of Human Resources  
Marc Hansen, County Attorney  
Fariba Kassiri, Assistant Chief Administrative Officer  
Bonnie Kirkland, Assistant Chief Administrative Officer  
Steven Lohr, Fire Chief

101 Monroe Street • Rockville, Maryland 20850  
240-777-2500 • 240-777-2544 TTY • 240-777-2518 FAX  
[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)

[montgomerycountymd.gov/311](http://montgomerycountymd.gov/311) 240-773-3556 TTY

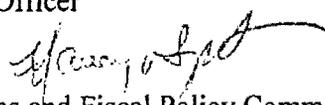


MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

MEMORANDUM

November 19, 2014

TO: Timothy Firestine  
Chief Administrative Officer

FROM: Nancy Navarro, Chair   
Government Operations and Fiscal Policy Committee

Marc Elrich, Chair-Designate   
Public Safety Committee

SUBJECT: Inspector General Report #OIG-15-002, *Sick Leave Usage, Montgomery County Fire and Rescue Service*

On October 31, 2014, the Council received Inspector General Report #OIG-15-002, *Sick Leave Usage, Montgomery County Fire and Rescue Service*. We will hold a joint Government Operations and Fiscal Policy Committee and Public Safety Committee worksession to review this report, tentatively scheduled on January 15, 2015.

We were encouraged to see in your response to the report, included as Appendix B, that you agree with the report's recommendations and will ensure that the first three recommendations are implemented.

We concur with your view that the recommendation regarding recovering related losses requires further legal analysis, and we look forward to understanding the County Attorney's views on this recommendation when they are available.

For the Committee worksession on January 15, we would like to discuss how the Executive Branch has implemented the first three recommendations of the Inspector General's report. We would like to receive a written response from you by January 8 detailing the steps taken or initiated to resolve this issue and enforce County policy.

Thank you for your attention to this request. We look forward to working with you on this important issue.

c: Councilmembers  
Edward Blansitt  
Fire Chief Steve Lohr

# Government Operations and Fiscal Policy Committee & Public Safety Committee

Worksession on January 15, 2015

## **Progress Report on Inspector General Report #OIG-15-002, *Sick Leave Usage, Montgomery County Fire and Rescue Service:***

**IG Recommendation 1** - *Employees who use sick leave in a way that is contrary to policy are counseled, placed on leave restriction, and disciplined as outlined in policy and the current MCFRS Union Agreement. IMPLEMENTED:*

- In October/November 2014, MCFRS conducted top to bottom review of sick leave usage to ensure compliance with all applicable policy, regulation and CBA.
- Employees were placed on sick leave notice or restriction as appropriate.

**IG Recommendation 2** – *Managers who inappropriately approve sick leave without confirming a legitimate medical need are held accountable. IMPLEMENTED:*

- Yes. Managers who fail to comply will be held accountable.

**IG Recommendation 3** – *Current policy is expanded to specifically address sick leave abuse as an employee approaches retirement. New policy should clearly outline an effective methodology to hold employees and managers accountable for lengthy and repetitive undocumented incidents of sick leave usage immediately preceding retirement. IN PROGRESS:*

- Managers are looking for patterns of sick leave abuse for all MCFRS employees as they near retirement.
- If necessary, some changes may need to be negotiations with the IAFF.

## SICK LEAVE PROVISIONS

### I. FOP Agreement

#### Article 19 Sick Leave and Sick Leave Donor Procedure

*Section A. Definition.* Sick leave is earned, paid leave granted to eligible employees for periods of absence because of personal illness, injury, medical quarantine, medical, dental or optical examinations and treatments, or any temporary disability caused or contributed to by pregnancy, miscarriage or childbirth. An employee may also use sick leave for an illness, injury, medical quarantine, medical, dental or optical examinations and treatments in the immediate family, including a domestic partner, or for the purpose of attending to the immediate family at the time of birth or adoption of a child, provided the time used is not for a period more than the amount of sick leave earned in any calendar year. This amount of sick leave limitation does not apply to sick leave taken pursuant to Article 16 Parental Leave of this Agreement.

*Section B. Eligibility.* Full-time and part-time employees earn sick leave. A temporary employee, who becomes a full-time or part-time employee without a break in service, must be credited on a pro-rated basis, but not more than 60 hours sick leave retroactive to date hired as a temporary employee.

*Section C. Leave Year.* The leave year begins with the first full payroll of a calendar year and ends with the payroll period in which December 31st falls.

*Section D. Leave Accounting Period.* The leave accounting period must be established by the chief administrative officer.

*Section E. Accrual Rates.* A full-time employee earns 120 hours of sick leave per leave year. A part-time employee earns a pro-rata amount of sick leave based on a schedule established by the chief administrative officer.

*Section F. Maximum Allowable Accumulation.* Sick leave may be accumulated without limit.

*Section G. Use of Sick Leave and Use of Sick Leave for Family Medical Leave Act Purposes.* Accrued sick leave may be used for the reasons stated in A of this Article, if approved by an employee's supervisor, in accordance with established procedures. Whenever an employee uses excessive or questionable sick leave and abuse is reasonably suspected, a supervisor may request written certification of illness by a physician from the employee who has used sick leave for 40 consecutive work hours or less. The supervisor will advise the employee in writing of the reasons for the certification requirement. Eligible unit members shall be allowed to use accrued sick leave for any FMLA purpose in accordance with Article 59, *Family Medical Leave Act*.

*Section H. Subrogation.*

1. When the accident, injury, or illness for which sick leave is used was caused under circumstances creating a legal liability in a third party, the county has the right of subrogation and the right to enforce the legal liability of the third party.
2. Whenever the employee is reimbursed for sick leave by the legally liable third party, the County must be repaid for all sick leave used, less attorney's fees. Upon repayment of monies, the sick leave used must be re-credited to the employee's leave account.

*Section I. Disposition of Accumulated Sick Leave at Separation From County Service.* Accumulated sick leave must be forfeited upon separation for any purpose other than retirement. Accumulated sick leave is creditable for retirement purposes as provided in the Employees' Retirement System of Montgomery County.

*Section J. Lump Sum Death Benefit.* In the event of an employee's death, the designated beneficiary, beneficiaries or estate, if permissible by law, must receive a lump-sum payment for accrued sick leave at the current pay rate, as follows:

1. If the death is the result of a non-service-connected accident or illness  
-- 75 percent of the total value; and
2. If the death is the result of a service-connected accident or illness  
--100 percent of the total value.

The designated beneficiary must be specified by the employee or as designated under the Employees' Retirement System of Montgomery County, if not named specifically.

*Section K. Reinstatement or Transfer of Accumulated Sick Leave*

1. *Reinstatement.* Employees who apply for reappointment, and are reappointed to County service within two years must be re-credited with the accumulated sick leave forfeited at the time of separation.
2. *Transfer.* An individual who resigns employment with one county or bi-county agency to accept employment with another county or bi-county agency without a break in service may transfer all accumulated sick leave to the new employing agency, subject to limitations that agency may have provided there is a signed agreement of reciprocity between the two agencies.

\* \* \*

## II. MCGEO Agreement

### ARTICLE 15 – SICK LEAVE

#### 15.1 Definition

(a) Sick leave is earned, paid leave granted to eligible employees for periods of absence because of personal illness; injury; medical quarantine; medical, dental, optical, or psychological examinations and treatments; or any temporary disability caused or contributed to by pregnancy, miscarriage or childbirth. Employees may not take leave they have not accrued.

(b) An employee may also use sick leave for an illness; injury; medical quarantine; medical, dental, or optical examinations and treatments to immediate family; and for the purpose of attending to immediate family at the time of birth or adoption of a child, provided the time is not used for a period more than the amount of sick leave earned in any calendar year, except an employee may request a waiver of this limitation from the Chief Administrative Officer or designee.

(c) Parents of a newborn or newly adopted child may use a sick leave amount in excess of that which is earned in any calendar year when such leave is taken in connection with parental leave as provided in Article 18 of this Agreement.

(d) Immediate family is defined in this Article as parent, stepparent, spouse, domestic partner (same or opposite sex), brother or sister, child or stepchild, spouse's or domestic partner's parent, grandparent, or legal guardian. In addition, the Chief Administrative Officer may approve the designation as "immediate family" of an individual residing within the employee's household who is related by blood or affinity and whose close association with the employee is the equivalent of a family relationship.

#### 15.6 Use of Sick Leave

(a) Accrued sick leave may be used for the reasons stated in Section 15.1 of this Agreement, if approved by an employee's supervisor, in accordance with established procedures.

(b) Sick Leave Restriction - whenever employees are placed upon sick leave restriction, notice shall be given in writing to the employee. Employees shall be given the opportunity to respond to the notice.

(c) Whenever supervisors are not available for sick leave calls, the employee shall be permitted to leave a message with a person designated by the supervisor to receive such calls. When leaving a message, employees must provide contact information to allow the supervisor to seek verification.

(d) Supervisors may require medical certification from a licensed physician in the event an employee's absence is in excess of 5 consecutive work days. This is to include absences for family sick leave.

(e) Supervisors may require an employee to provide medical certification from the employee's licensed health care provider any time misuse/abuse is suspected. Employees must be given prior notice as to the requirement to provide certification for future absences. The period for which certification is required will be at the discretion of the supervisor.

15.8 Disposition of Accumulated Sick Leave at Separation from County Service Accumulated sick leave must be forfeited upon separation for any purpose other than retirement. Accumulated sick leave is creditable for retirement purposes as provided in the Employees' Retirement System of Montgomery County.

#### 15.9 Lump Sum Death Benefit

In the event of an employee's death, the designated beneficiary, beneficiaries or estate, if permissible by law, must receive a lump sum payment for accrued sick leave at the current pay rate, as follows:

(a) if the death is the result of a non service-connected accident or illness - 50 percent of the total value; and

(b) if the death is the result of a service-connected accident or illness - 100 percent of the total value.

The designated beneficiary must be specified by the employee or as designated under the Employees' Retirement System of Montgomery County if not named specifically.

#### 15.10 Reinstatement of Accumulated Sick Leave

Employees who return to County service within 2 years must be recredited the accumulated sick leave forfeited at the time of separation.

*15.11 Use of Sick Leave for Family and Medical Leave Act Purposes*

Employees must be allowed to use accrued sick leave for the following Family and Medical Leave Act purposes in accordance with Article 45 of this Agreement:

- (a) to care for the employee's newborn or newly adopted child, provided that the leave qualifies as parental leave under Article 18 of this Agreement;
- (b) to care for the employee's newborn or newly adopted child, if the leave does not qualify as parental leave under Article 18 of this Agreement, subject to the limitations on family sick leave in Section 15.1 of this Article;
- (c) to obtain prenatal care for the employee;
- (d) to care for, or arrange care for, any of the following with a serious health condition: the employee's spouse, a minor child, adult son or daughter incapable of self care, or parent, subject to the limitations on family sick leave in Section 15.1 of this Article; and
- (e) because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position.

\* \* \*

### III. IAFF Agreement

#### ARTICLE 7 - SICK LEAVE

##### Section 7.1 Definition

A. Sick leave is earned, paid leave granted to eligible employees for periods of absence because of personal illness, injury, medical quarantine, medical, dental or optical examinations and treatments, or any temporary disability caused or contributed to by pregnancy, miscarriage, or child-birth.

B. An employee may also use sick leave for an illness, injury, medical quarantine, medical, dental, or optical examinations and treatments in the immediate family or for the purpose of attending to the immediate family at the time of birth or adoption of a child, provided the time used is not for a period more than the amount of sick leave earned in any calendar year, except an employee may request a waiver of this limitation from the Chief Administrative Officer or designee.

C. Parents of a newborn or newly adopted child may use a sick leave amount in excess of that which is earned in any calendar year when such leave is taken in connection with parental leave as provided in Article 8 of this Agreement.

D. Immediate family is defined in this Article as follows:

the parent, stepparent, legal guardian<sup>1</sup>, grandparent, spouse, domestic partner<sup>2</sup>, brother or sister, child or stepchild and,

the parent, grandparent, child, grandchild or legal guardian of the bargaining unit employee's spouse or domestic partner.

The Chief Administrative Officer or designee may approve an employee's use of sick leave to care for an individual who lives with the employee in the employee's residence or for an individual who is either related to the employee by blood or has a close association with the employee equivalent to a family relationship.

\* \* \*

##### Section 7.7 Sick Leave Use

###### A. Procedure

The parties agree that the following sick leave usage procedure will apply.

During any consecutive twelve (12) month period, an employee who is scheduled to work 2,496 hours per year and who is unable, due to illness or injury, to report to work for more than seventy-two (72) consecutive work hours; an employee who is scheduled to work 2,184 hours per year and who is unable, due to illness or injury, to report to work for more than forty-eight (48) consecutive work hours; an employee who is scheduled to work 2,080 hours per year and who is unable, due to illness or injury, to report to work for more than forty (40) consecutive work hours; must obtain documentation from a physician or other licensed healthcare provider<sup>3</sup> confirming the employee was under the physician's or other licensed healthcare provider's care. Such documentation must be submitted upon the employee's return to work.

1. The medical documentation obtained from the physician or other licensed healthcare provider will be forwarded to the Battalion Chief via the Station Officer upon the employee's return to work. The Battalion Chief may require the employee to obtain medical clearance from the Fire Rescue Occupational Medical Section if he or she believes that the employee is not medically fit for full duty. An appointment with the Fire Rescue

Occupational Medical Section will be scheduled via the Battalion Chief. The medical documentation from the Fire Rescue Occupational Medical Section will be forwarded to the Battalion Chief via the Station Officer, when the employee returns to their work site.

2. During any consecutive twelve (12) month period, an employee on a "24/48" work schedule may incur four (4) incidents of sick leave use (family or personal) without obtaining and submitting to the Employer medical documentation from a physician or other licensed healthcare provider. When the employee has reached the above-described limitation on the use of sick leave (family or personal) without obtaining and submitting medical documentation, the Employer agrees that the Battalion Chief will:

a. counsel the employee that additional sick leave without the appropriate documentation from a physician or other licensed healthcare provider may result in the employee being placed on sick leave restriction.

b. If the employee is placed on sick leave restriction, the Employer may:

i. refuse to approve additional sick leave without the appropriate medical documentation.

ii. If the employee uses additional sick leave and fails to obtain and submit the appropriate medical documentation, the Employer may charge the employee AWOL for the time the employee was absent from work.

3. When an employee on a "24/48" work schedule and on sick leave restriction uses sick leave without providing documentation from a physician or other licensed healthcare provider, the employee may be subject to:

a. being charged AWOL for the period of time that the employee was absent from work; and/or,

b. appropriate disciplinary action;

4. An employee on any other shift may be restricted from using sick leave after a like number of incidents uses, absent documentation. (For example: employees assigned to a forty (42)-hour work week may be restricted from further sick leave use after the employee incurs five (5) incidents of sick leave use (family or personal) without obtaining or submitting medical documentation. Employees on a forty (40)-hour work week may be restricted from further sick leave use after the employee incurs five (5) incidents of sick leave use (family or personal) without obtaining or submitting medical documentation.

5. Battalion Chiefs may require an employee to provide medical certification from a physician or other licensed healthcare provider any time the Employer has reasonable cause to believe that an employee is misusing/abusing sick leave. Examples of sick leave misuse/abuse may include:

a. repeated use of sick leave after a request for annual/compensatory leave has been denied;

b. repeated use of sick leave on the shift before or the shift after a Kelly day, holiday or weekend day;

c. use of excessive amounts of sick leave;

d. use of sick leave in excess for that which is earned per calendar year;

e. repeated use of sick leave when the work schedule is heavy, undesirable or involving special projects or functions; or

f. engaging in outside employment activities while using sick leave without prior approval.

\* \* \*

**Section 7.9 Disposition of Accumulated Sick Leave at Separation from County Service**

Accumulated sick leave must be forfeited upon separation for any purpose other than retirement. Accumulated sick leave is creditable for retirement purposes as provided in the employee's retirement system of Montgomery County. Unused sick leave of any employee separated from service that is subject to forfeiture shall be placed in a sick leave donation bank to be maintained by MCCFFA for the use of employees in need of sick leave donations. Any employee who suffers an occupational illness or injury while working either a 2,496-hour or 2,184-hour per year schedule and who is placed on light duty because of that occupational illness or injury shall have his/her sick leave calculated towards his/her retirement benefits as if he/she were still working a 2,496-hour or 2,184-hour per year schedule, as applicable.

\* \* \*

## **IV. Personnel Regulation**

### **33.07.01.17 Sick Leave**

\* \* \*

17-6. Use of sick leave. An employee may use accrued sick leave for the purposes stated below if the employees supervisor approves the leave under established procedures.

- (a) An employee may use sick leave for:
  - (1) personal illness or injury;
  - (2) medical quarantine,
  - (3) medical, dental, or optical examinations and treatments, or
  - (4) a temporary disability related to pregnancy, miscarriage, or childbirth.
- (b) A supervisor must allow an employee to use accrued sick leave for FMLA purposes under Section 19\* of these Regulations, the Montgomery County Employee Benefits Equity Act, and other sections of these Regulations, as appropriate.

17-7. Use of family sick leave.

- (a) An employee may use sick leave when a member of the employees immediate family:
  - (1) is ill, injured, or medically quarantined; or
  - (2) has a medical, dental, or optical examination or treatment.
- (b) The CAO may approve an employees use of sick leave to care for a person who lives with the employee in the employees residence if the person is either related to the employee by blood or marriage or has a close association with the employee that is the equivalent of a family relationship.
- (c) The amount of family sick leave that an employee uses in a leave year must not be more than the amount of sick leave the employee earns in a leave year. An employee may request a waiver of this limitation from the CAO.
- (d) An employee may use family sick leave to attend to the immediate family at the time of birth or adoption of a child.
- (e) An employee who is a parent of a newborn or newly adopted child may use more sick leave than the employee earns in a leave year when sick leave is taken as parental leave under Section 20\* of these Regulations.

17-8. Approval of sick leave.

- (a) An employee must request sick leave under established department procedures or practices.
- (b) An employee who unexpectedly must use sick leave must notify the employees supervisor. If a supervisor is not available, the supervisor must designate another person to approve sick leave.
- (c) A supervisor should require an employee to submit a medical certification to support a request for leave for a serious health condition, if:
  - (1) the employee is absent from work for more than 5 consecutive workdays because of the employees health condition or an immediately family members health condition;
  - (2) the supervisor has a reason to suspect the employee of leave misuse or abuse;
  - (3) the supervisor is not familiar with the employee;
  - (4) the employee requests the leave on a holiday or at a time when the employee would usually not be able to use leave; or

(5) approval of the requested leave would cause a hardship for the work unit or other employees.

17-9. Sick leave restriction.

(a) Before placing an employee on sick leave restriction, the supervisor must give the employee written notice and an opportunity to respond to the notice.

(b) A supervisor may restrict an MLS employees use of PTO as sick leave if the supervisor has reason to suspect the employee of misuse or abuse of PTO as sick leave.

(c) An employee on sick leave restriction must provide medical certification from a licensed health care provider to support the use of sick leave, if the sick leave is not scheduled and approved in advance.

(d) The employee must give the medical certification to the employees supervisor immediately after the employee returns from the use of unscheduled sick leave.

(e) If the employee fails to provide medical certification as required, the employees supervisor may:

- (1) designate the absence as AWOL; and
- (2) take disciplinary action against the employee.

17-12. Disposition of accumulated sick leave at separation from County service. An employee must forfeit accumulated sick leave upon separation from County service, except that an employee in the Employees Retirement System of Montgomery County (ERS) may use accumulated sick leave as credited service for retirement purposes under the ERS.

17-13. Lump sum sick leave death benefit.

(a) If an employee dies, the County must pay the employees designated beneficiary, less any debt owed to the County, a lump sum payment for accrued sick leave at the current pay rate, as follows:

(1) 50 percent of the total value if the death results from a non-service connected accident or illness; or

(2) 100 percent of the total value if the death results from a service connected accident or illness.

(b) If the employee does not name a beneficiary for sick leave, the County must pay:

(1) the beneficiary designated under the employees retirement plan; or

(2) the employees estate, if the employee did not name a beneficiary under the retirement plan.

(c) If any of the employees sick leave is used to obtain credited service under a County retirement plan, the County must deduct that amount from the sick leave that is paid out to the employees beneficiary or estate.

17-14. Reinstatement of forfeited sick leave or PTO; transfer of accumulated sick leave.

(a) Reinstatement of sick leave or PTO. If an employee returns to County service within 2 years of separation, the County must re-credit the accumulated sick leave or PTO that the employee forfeited at the time of separation.

(b) Transfer of sick leave. An individual who resigns from one County-funded agency to accept employment with another County-funded agency without a break in service may transfer accumulated sick leave to the new employing agency. This transfer of sick leave is subject to limitations the County-funded agency may have and requires a signed agreement of reciprocity between the two agencies. OHR must maintain copies of active reciprocal agreements between County-funded agencies and make them available to employees upon request.

17-15. Incentive program to reduce sick leave use. The CAO may establish programs to reduce sick leave use by a Method (1) regulation.

17-16. Paid time off (PTO) and sick leave. PTO is a type of leave granted to MLS employees who are members of the Retirement Savings Plan.

(a) Use of PTO. PTO may be used for the same reasons as sick leave.

(b) Crediting of PTO. The County must credit PTO to an eligible MLS employee as described under Section 16-12(a) and (b) of these Regulations.

(c) Conversion of sick leave to PTO for certain MLS employees.

(1) For an MLS employee who belongs to the Retirement Savings Plan, the CAO must:

(A) credit the employee with one hour of PTO for each hour of accrued sick leave; and

(B) take away all accrued sick leave.

(2) The CAO must convert the sick leave of an MLS employee who belongs to the Retirement Savings Plan to PTO within 90 calendar days after these Regulations take effect.

(3) If an MLS employee who receives PTO leaves the MLS position and is promoted, demoted, or reassigned to a non-MLS merit system position, the CAO must:

(A) allow the employee to retain and use the unused PTO hours that the employee had accumulated before the current leave year and a prorated share of the unused PTO hours for the current leave year; and

(B) allow the employee to earn sick leave from the effective date of the employees promotion, demotion, or reassignment to a non-MLS position.

17-17. Department sick leave procedures. A department director may establish department sick leave procedures to help ensure that the department is able to meet its service requirements. Department sick leave procedures must be consistent with these Regulations.

\* \* \*

## MEMORANDUM

January 12, 2015

TO: County Council  
FROM: Office of Legislative Oversight

**SUBJECT: Analysis of Sick Leave Use among Retiring Employees**

In October 2014, the County's Inspector General released a report on the use of sick leave among recently retired MCFRS employees. The report found that "MCFRS employees used sick leave at an above average rate in the fiscal year of retirement, suggesting they may be "burning" sick leave at significant cost to the County." The Council asked OLO to review the sick leave use among all County employees prior to retirement for comparison.

For this analysis, OLO reviewed the sick leave use during the last two months of active employment for County retirees. The review included 631 County retirees from the Executive, Legislative, and Judicial branches of government who have retired between January 2012 and November 2014. OLO also analyzed the data by department for departments that had ten or more retirements in the specified time.

It is important to note that with the data in this memo, there is no way to distinguish between employees who may be an employee "burning" sick leave before retirement from employees with illnesses/injuries that require a significant amount of the sick leave.

**A. Sick Leave Use among Retired County Employees in the Last Two Months of Employment**

The median hours of sick leave used, overall, by employees in the last two months of employment was 23 hours. Numerous departments had a similar median (MCPD, FRS, DOT, HHS). Departments with the fewest retirees had the highest and lowest medians by a significant margin – the median sick leave use for DGS and DPS employees was 40 hours while the median for DLC and Libraries was four and eight hours, respectively.

The table on the next page shows the percent of retirees that used various amounts of sick leave in the two months prior to retirement. Overall, about 6% of retirees used over 200 hours of sick leave prior to their retirement, while a majority (64%) used less than a week.

**Sick Leave Use in Last Two Months of Employment for Employees who Retired  
January 2012 – November 2014**

Department	# Retirees	Median Sick Leave Use (Hours)	% of Employees Using Sick Leave in Last Two Months of Employment			
			200+ Hours	100-199 Hours	41-99 Hours	One Week or Less
All	631	23	6%	9%	21%	64%
MCPD	169	24	4%	13%	22%	61%
FRS	147	24	10%	5%	25%	60%
DOT	73	24.5	8%	11%	23%	58%
HHS	64	25	3%	9%	11%	77%
COR	33	18	12%	3%	12%	73%
DGS	23	40	0%	13%	26%	61%
LIB	19	4	5%	5%	5%	84%
DPS	12	40	17%	0%	42%	42%
DLC	11	8	18%	0%	27%	55%

**Retirees using 200 or More Hours of Sick Leave in the Last Two Months of Employment.**

During the time period reviewed, 40 County employees used over 200 hours of sick leave in the two months leading up to their retirement, including 14 FRS employees, seven MCPD employees, and six DOT employees.<sup>1</sup> These 40 employees – 6% of the 631 retirees – accounted for 36% of the total sick leave hours taken by these employees in the two months of employment (11,589 hours out of 32,368 hours). Seventeen of the 40 employees retired with less than a week of sick leave or no sick leave.

**B. Sick Leave Balances among Retired County Employees**

The 631 employees who retired between January 2012 and November 2014 had a median sick leave balance of 349 hours at retirement. The median sick leave balance varied greatly among Executive Branch departments. DLC and DPS employees had the highest median sick leave balances (1,713 hours and 1,055 hours respectively) while Corrections and HHS employees had the lowest median sick leave balances (133 hours and 152 hours, respectively).

The next table summarizes the sick leave balances of employees in departments with ten or more retirees since January 2012. The table includes employees at retirement with balances of over 2,000 hours of sick leave, less than a week of sick leave, and zero hours or a negative balance of sick leave. Overall, 28% of retirees had a sick leave balance of less than a week (including a zero balance).

<sup>1</sup> Two hundred hours of leave represents approximately 58% of an individual's work hours, assuming a 40 hour workweek.

**Sick Leave Balance for Retired County Employees, January 2012-November 2014**

Department	# Retirees	% of Employees at Retirement with Sick Leave Balance		
		2000+ Hours	Less than One Week* (Not Including Balance of Zero)	Zero Hours or Negative Balance
<b>All</b>	<b>631</b>	<b>28%</b>	<b>16%</b>	<b>12%</b>
MCPD	169	18%	9%	5%
FRS	147	20%	14%	10%
DOT	73	43%	26%	12%
HHS	64	27%	27%	13%
COR	33	36%	18%	18%
DGS	23	48%	4%	22%
LIB	19	26%	26%	16%
DPS	12	50%	8%	25%
DLC	11	63%	9%	0%

\* Not all employees work the same number of hours in a “workweek.” Most County Government employees work 40 hours. However, most employees in MCFRS, for example, work a 48-hour workweek. For simplicity, the calculations in this table assume a 40-hours workweek.

**Conclusions.** Overall, OLO found that there were a small number of employees who used a significant number of sick hours in the two months prior to retirement:

- 6% of employees used 200 or more hours of sick leave in their last two months of employment leading up to retirement;
- DLC and DPS had the largest percentages of employees using 200 or more hours of sick leave in the two months prior to retirement – 18% and 17%, respectively. Among the largest departments, FRS and DOT had the largest percentages – 10% and 8%, respectively;
- 28% of employees had less than a week of sick leave remaining at the time of retirement.