GO Committee #1
June 18, 2015
Worksession

MEMORANDUM

TO: Government Operations & Fiscal Policy Committee

FROM: Justina J. Ferber, Legislative Analyst

SUBJECT: Executive Regulation 16-13AM, Comprehensive Amendments to 2001 Montgomery County Personnel Regulations

The Government Operations and Fiscal Policy (GO) Committee will consider Executive Regulation No. 16-13AM, the Executive's proposed comprehensive amendments to the 2001 Montgomery County Personnel Regulations (MCPR). The majority of amendments affect non-bargaining employees; a few amendments affect bargaining unit employees. OHR's summary of Executive Regulation 16-13 is attached at ©170-179.

Executive Regulation 16-13 was advertised in the October 2014 issue of the *Montgomery County Register*. The proposed regulation was reviewed by the Merit System Protection Board (MSPB) and copies of the correspondence between the Board and OHR is attached at ©159-169. The fiscal impact statement is at ©155-158 and estimates that the proposed regulation does not have any material fiscal impact over the next six fiscal years.

The Executive submitted ER 16-13AM on June 4, 2015, an amended version of ER 16-13. Many of the proposed changes codify existing practices, clarify language, or remove provisions that have become obsolete. Council Staff prepared a chart at ©181-195 delineating significant amendments for Committee discussion and review of ER 16-13AM. The amendments changing punctuation or grammar, re-number sections, correct typos or add clarifying language are not included in the chart.

This packet contains:	Circle #
Regulation 16-13AM, bracketed and underlined	1
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MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	16-13AM
ORIGINATING DEPARTMENT	**EFFECTIVE DATE**
Office of Human Resources	

Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations

Executive Regulation No. 16-13
COMCOR No. 33.07.01
Issued by: County Executive
Supersedes: Executive Regulation No. 1200AM, in part,
and Executive Regulation 26-07AM
Authority: Montgomery County Code, 2004, §33-7(b)
Council review: Method 1

Montgomery County Register Volume 31, Issue 10
Comment deadline: October 31, 2014

Effective date: _____

Summary: This regulation includes amendments to Sections 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 26, 27, 30, 31, 32, 33, 34, 35, and 36 of the 2001 Montgomery County Personnel Regulations. These amendments resulted from a comprehensive review of the Personnel Regulations by the Office of Human Resources.

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

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

Please use the key below when reading this regulation:

Boldface	*Heading or defined term.*
Underlining	*Added to existing regulation by proposed regulation.*
[Single boldface brackets]	*Deleted from existing regulation by proposed regulation.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing or proposed regulation by amendment.*
* * *	*Existing language unchanged by executive regulation.*

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Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	16-13AM
ORIGINATING DEPARTMENT	**EFFECTIVE DATE**
Office of Human Resources	

SECTION 2. GENERAL PROVISIONS

* * *

2-12. Effective date. These Regulations are effective on October 7, 2001.

2-13. Sunset date. These Regulations expire on [January 1, 2016] March 1, 2020.

* * *

SECTION 4. RECORDS

* * *

4-3. Employee records.

(a) **Official personnel file, department operating record, and supervisory file.** A non-medical employee record is confidential and is available on a need-to-know basis to:

* * *

(6) A department head or designee who is considering offering the employee a position.

(b) Department operating record.

* * *

(1) A department director may maintain employee records necessary for program level operations.

(2) A department director may maintain a department operating record in an electronic format.

[(2)]
(3) An operating record must not contain any medical or psychological records of an employee.

[(3)]
(4) A department director must limit the documents in the operating record to:

* * *

[(4)]

(5) A department director must maintain records of an employee's training, including selection for training or apprenticeship, for the entire period of an employee's employment and must keep the records for 6 months after the employee leaves County employment. If an employee transfers to another department, the department director must give the employee's training records to the new department.

[(5]
(6) If an employee transfers to another department, the department director must send a copy of the operating record to the employee's new department.

* * *

SECTION 5. EQUAL EMPLOYMENT OPPORTUNITY

* * *

5-4. EEO complaints.

(a) An individual who believes that he or she has been subjected to employment discrimination or harassment in violation of this policy, or any person acting on behalf of such an individual, may file a complaint with one or more of the following:

(1) the individual's supervisor or department director, if the individual is a County employee;

(2) the County's EEO Officer;

(3) the [Human Relations Commission] Office of Human Rights; or

(4) a State or Federal enforcement agency.

* * *

(f) The complaint processes of the [Human Relations Commission] Office of Human Rights and of State and Federal enforcement agencies are independent of the County EEO Officer's complaint process. Complaints filed with the County EEO Officer are not automatically filed with the [Human Relations Commission] Office of Human Rights or State or Federal enforcement agencies. An employee who wishes

to file a complaint with the [Human Relations Commission] Office of Human Rights or a State or Federal enforcement agency must file a separate complaint with one of these agencies, in addition to any complaint filed with the County's EEO Officer.

(g) Time limits for filing a complaint with the [Human Relations Commission] Office of Human Rights or with a State or Federal enforcement agency are not extended or suspended while the EEO Officer investigates a complaint under subsection (e).

* * *

(j) The County EEO Officer's decision on an EEO complaint is final and an employee may not file an appeal of the decision with the MSPB. An investigation or decision by the EEO Officer does not affect an employee's right to file a complaint on the same matter with the [Human Relations Commission] Office of Human Rights or a State or Federal enforcement agency.

SECTION 6. RECRUITMENT AND APPLICATION RATING PROCEDURES

* * *

6-5. Competitive rating process.

* * *

(b) The OHR Director must include in the vacancy announcement in the jobs bulletin on the County Website [or in the printed Montgomery County jobs bulletin] a description of the competitive rating process and rating criteria that will be used to create the eligible list.

* * *

MONTGOMERY COUNTY EXECUTIVE REGULATION

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Office of Human Resources	

SECTION 7. APPOINTMENTS, PROBATIONARY PERIOD, AND PROMOTIONAL PROBATIONARY PERIOD

* * *

7-2. Probationary period; promotional probationary period.

(a) ***Purpose of probationary period and promotional probationary period.***

(1) A person appointed to a full-time or part-time merit system position must serve a probationary period as a continuation of the rating process to demonstrate proper attitude and ability for the position.

(2) A person in a non-merit position appointed to a full-time or part-time merit system position must serve a probationary period.

[(2)]
(3) A person appointed to a temporary position does not serve a probationary period.

[(3)]
(4) An employee promoted to a full-time or part-time merit system position must serve a promotional probationary period, as defined in Section [1-60] 1-63, in order to demonstrate that the employee is able to perform the duties of the new job satisfactorily.

[(4)]
(5) A County employee with merit system status who [transfers] is appointed to a position as a Firefighter/Rescuer Recruit, Police Officer Candidate, Deputy Sheriff Candidate, or Correctional Officer I/Private must serve a new probationary period of at least 12 months in the new position. If the employee is unable to successfully complete the new probationary period, the OHR Director must place the employee in an available vacant position for which the employee is qualified at the same grade as the employee had before the transfer.

[(5)]
(6) An individual appointed to a full-time or part-time merit system position, other than a position enumerated in [(a)(4)] (a)(5) above, based on priority consideration under Section 6-10 (a) (1), (2) or (3) does not serve a probationary period.

* * *

(e) ***Termination during probation of a probationary employee.***

(1) A department director may immediately terminate a probationary employee at any time during the probationary period.

(2) A department director who terminates a probationary employee must ensure that the employee receives severance pay as required under Section 10-22(a)(1) of these Regulations.

* * *

(f) ***Reassignment of a merit system employee during the promotional probationary period.***

(1) The OHR Director [may] must reassign a merit system employee who has been promoted if the employee's performance in the new position has been inadequate during the promotional probationary period. The OHR Director must reassign the employee to a position at the same grade as the employee had before the employee was promoted. The OHR Director must not reduce the grade of, or terminate, another employee to reassign the employee who was promoted.

* * *

SECTION 8. MEDICAL EXAMINATIONS AND REASONABLE ACCOMMODATION

* * *

8-4. Medical standards and guidelines for medical examinations and pre-employment inquiries.

* * *

(b) ***Federal standards and guidelines.*** The EME must comply with the applicable provisions of the following Federal statutes and regulations:

* * *

(8) The Health Insurance Portability and Accountability Act of 1996 (HIPAA);

[(8)]
(9) Federal Transit Administration (FTA) regulations (49 CFR Parts 653 and 654, as amended);

[(9)]
(10) U.S. Department of Transportation (DOT) regulations (49 CFR Part 40, as amended); and

[(10)]
(11) Federal Motor Carrier Safety Administration (FMCSA) regulations (49 CFR Parts 382 and 391.41;

* * *

8-6. Required medical examinations of applicants; actions based on results of required medical examinations.

(a) ***Medical and physical requirements for job applicants.***

* * *

(3) An applicant must undergo a medical evaluation before being placed in a County position if the applicant is:

* * *

(B) a former County employee offered reemployment in the same position after an absence of more than 6 months[;].

[(C) a County employee who is reassigned, transferred, demoted, or promoted to a position with a more extensive medical exam protocol than the employee's previous position.]

* * *

8-7. Required medical examinations of employees; actions based on results of required medical examinations.

(a) ***Conditions under which an employee must participate in a medical examination.***

* * *

(2) An employee who is reassigned, transferred, demoted, or promoted on a temporary or permanent basis [to a position with a different medical exam protocol than the employee's current position] must undergo a pre-placement medical evaluation, <u>excluding a medical history review, if:</u> [.]

(A) <u>the employee has been in the previous position for more than 5 years; or</u>

(B) <u>the new position requires a more extensive medical exam protocol than the employee's previous position;</u>

* * *

SECTION 9. CLASSIFICATION

9-1. Definitions.

(a) ***Administrative review:*** The review of a <u>final</u> classification decision to downgrade an employee's position or class.

* * *

(f) ***Classification plan:*** The classification plan consists of:

* * *

(5) standards for <u>allocating</u> [the allocation of] classes to pay grades or pay bands; and

* * *

(i) [***Position Profile Form or PPF***] <u>***Oracle Position Transaction Approval Process:***</u> This [form] <u>process</u> is used to <u>document and track</u>:

(1) [create a position, abolish a position, or change information about the position in the position control data base] position creations, abolishments, reclassifications, transfers, and miscellaneous changes to positions; and

(2) [document that a position was created or abolished or that the classification of a position was changed] Office of Management and Budget and Office of Human Resources approval of changes to positions prior to the above actions taking place.

9-2. Policy on classification. The OHR Director must:

(a) classify positions [on the basis of] based on the assigned duties and responsibilities and minimum qualifications required; and

* * *

9-3. Classification plan.

* * *

(b) ***Class creation.***

* * *

(3) Except for MLS designated classes [included in the MLS], the OHR Director must notify the MSPB of a proposed new class and give the MSPB reasonable opportunity to review and comment before [creating] the class is created.

(c) ***Class abolishment.*** The OHR Director may abolish an occupational class [if the class] that is no longer needed.

(d) ***Allocation of a class to a pay grade or pay band.***

(1) ***Review of a class.***

(A) Pay for the classes on the salary schedules listed below is not determined by [the use of] using a job evaluation system. Instead,

pay is determined [through the mechanism indicated] by using the following mechanisms:

* * *

(B) Before [allocating] a class in the classification plan is allocated to a pay grade or pay band, the OHR Director must use an objective job evaluation system adopted in these Regulations to evaluate if the class [if it] is assigned to the:

(i) [g]General salary schedule (GSS);

* * *

(D) Guidelines for using the quantitative evaluation and broadbanding systems are outlined in [included in these Regulations as] Appendices E and F of these Regulations[, respectively].

(2) ***Job evaluation system.*** A job evaluation system used by the OHR Director must:

* * *

(D) require the review of the following critical job elements; [, such as:]

(E) include, [as] when appropriate, a review of written job content documentation, organization charts, and information from a selected site visit, desk audit, or discussion with a supervisor.

(3) ***Consideration of other relevant factors in class allocation.*** In allocating a class to a pay grade or pay band, the OHR Director may also consider [other] the following relevant factors [such as]:

(A) current salary rates for similar occupational classes in the public and private sectors to assure the County's pay is competitive [comparability and competitiveness] in the labor market; and

(B) the County's [employee] recruitment and retention experience.

(4) ***Responsibility of OHR Director.***

* * *

(B) The OHR Director must review and evaluate, as necessary, an occupational class assigned to the [g]General salary schedule or OPT/SLT salary schedule to ensure that the appropriate grade is assigned to the class [is appropriate].

* * *

(5) ***Request for review of an occupational class.***

* * *

(B) The department director must submit the request during the month of June. If the last day of June falls on a Saturday, a Sunday, or an official County holiday, then the department director may submit the request on the next working day.

(C) The department director must include with the request factual evidence of:

* * *

(iii) major and significant change in the work of the class due to technological changes or other unforeseen factors that have significantly impacted [on the] work.

(D) Within 30 calendar days after receiving a request for review of an occupational class [is received], the OHR Director must accept or reject the request and respond in writing [give a written response] to the department director who requested the review.

(6) ***Responsibility of department director.*** At the conclusion of the OHR Director's review of an occupational class in a department, the department director must:

(A) distribute the OHR Director's findings and recommendations to affected department employees [in the department] for their review and written comment;

* * *

(C) submit the written comments of the department director, supervisors, and affected employees to the OHR Director within 30 calendar days from the date the department director receives [after] the OHR Director's report of findings and recommendations [is received]; and

(D) [after receiving the OHR Director's final decision,] distribute the OHR Director's final decision to affected employees.

(e) ***Reallocation of a class.*** The OHR Director may reallocate a class from one pay grade or pay band to another if:

* * *

(3) the OHR Director determines [that] the change is necessary to maintain [the] internal equity in [of] the classification plan.

(f) ***Publication of classification information.*** The OHR Director must:

* * *

(2) post, within 30 days, any changes to the classification plan [within 30 days] in all departments and offices that have employees affected by the change.

(g) ***Effective date of classification plan changes.*** The effective date of a class creation, class abolishment, or class reallocation is the beginning of the pay period after the date when the OHR Director [approves] approved the action.

* * *

9-4. Position classification.

(a) ***Position creation.*** The OHR Director, subject to budget limitations and with the Office of Management and Budget's approval [of the Office of Management and Budget], may create a position [as needed] to enable a department to complete work and fulfill its responsibilities [assigned to the department].

(1) Prior to creating a merit system position, a [A] department director must submit a completed position description to OHR for review [prior to the creation of a merit system position], unless the OHR Director determines that a position description is not needed.

(2) A department director need not submit a position description when creating [for the creation of] a temporary position, unless the OHR Director requests a position description.

* * *

(b) ***Request for review of the classification of a position.***

(1) The incumbent of a position, the incumbent's supervisor, or the incumbent's department director may ask the OHR Director to review the classification assignment of a particular position during the month of June. If the last day of June falls on a Saturday, a Sunday, or an official County holiday, then the incumbent, supervisor, or department director may submit the request on the next working day.

(2) The party who submits a request for an individual position classification study must submit the following information to support the request:

* * *

(B) a current position description, completed and signed by the employee, the employee's immediate supervisor, division chief, and department director, that includes the following:

* * *

(iii) a statement from the department director concurring that the position's duties and responsibilities have changed substantially; and

(iv) a statement from the department director indicating agreement or disagreement with the employee's request for reclassification. [; and]

[(C) the current Position Profile Form for the position.]

* * *

(4) If the department director does not agree with the employee's description of the duties and responsibilities performed by the employee, then the department director may submit an alternative description of the employee's duties and responsibilities to the OHR Director with the request for an individual position classification study.

* * *

(d) ***Responsibility of department director.*** At the conclusion of the OHR Director's review of the classification assignment of a particular position, the department director must:

(1) distribute the OHR Director's findings and recommendations to the affected employee;

* * *

(3) submit the employee's written comments and the department director's own comments within 15 calendar days from the date the department director receives [after receiving] the OHR Director's recommendation; and

(4) [after receiving the OHR Director's final classification study decision,] share the OHR Director's final classification study decision with affected employees.

(e) ***Date of completion of a classification study.***

The study of the classification of an individual position is complete on the date [of] the OHR Director['s] issues a final classification decision affecting that position.

(f) ***Reclassification.***

* * *

(3) A department director should ensure that the new and existing duties and responsibilities[, and duties and responsibilities that must be] of an abolished or transferred position are reassigned [when a position is abolished or

transferred, are assigned] to employees in positions performing work of a similar nature and grade level.

* * *

(5) If the OHR Director determines that the upward reclassification [upward] of a position would have the effect of circumventing the competitive promotional process, the OHR Director must inform the department director, in writing, that the position will not be reclassified. In such a case, the department director may:

* * *

(g) ***Effect of reclassification on position incumbent.***

* * *

(2) An employee who is reclassified downward is eligible for a noncompetitive promotion under Section 27-3(b)(2) of these Regulations.

(h) ***Effective date of an individual position reclassification.***

(1) An upward reclassification of a position [reclassification upward] is normally effective at the beginning of the first pay period after whichever date comes first: [the OHR Director's or CAO's classification decision or 12 months from the date OHR received all information necessary to conduct the study, whichever occurs first.]

(A) the date of the OHR Director's or CAO's classification decision; or

(B) 12 months from the date when OHR received all information necessary to conduct the study.

(2) A downward reclassification of a position [reclassification downward] is normally effective at the beginning of the first pay period after the OHR Director's or CAO's classification decision.

* * *

(j) ***Management Leadership Service.***

(1) ***Assignment of a position to the MLS.*** The OHR Director must assign a position to the MLS if the position, prior to its inclusion in the MLS, was either:

(A) [was]classified under the quantitative evaluation system at grade 27 or higher and the duties of the position include all of the following;

* * *

(B) [the position was] classified under the quantitative evaluation system at grade 30 or higher and the duties of the position include developing and promoting public policy for major programs and management functions that are:

* * *

(2) ***Inclusion of a legislative branch position in MLS classes.*** The County Council must determine if a position in the legislative branch that meets the MLS requirements [must] will be included in the MLS.

9-5. Special classification studies.

* * *

(b) The CAO or the OHR Director may direct that special classification studies of occupational classes or individual positions be conducted before [without waiting for] the prescribed month of June.

(c) The CAO or OHR Director may authorize a special classification study of:

* * *

(2) an individual position or occupational class if there is reason to believe that the current classification assignment is [not] incorrect and immediate review is appropriate; and

* * *

9-6. Administrative review.

[(a) ***Review of proposed classification action.*** Before the CAO or OHR Director makes a classification decision on an individual position or an occupational class, the OHR

Director must give the position incumbent and supervisor an opportunity to provide written comments.]

[(b)]

(a) ***Review of a classification decision to downgrade.***

* * *

(2) An employee who objects to a classification decision that downgrades the employee's position or class may file a request for an administrative review with the OHR Director. The employee must file the request [and] with any additional information within 10 working days after receiving the OHR Director's [notice of the] final decision to downgrade a position and must provide a copy to the employee's immediate supervisor and department director.

* * *

(B) The OHR Director may consolidate two or more requests for administrative review. The OHR Director's decision to consolidate requests may be based on one or more of the following factors or other similar factors:

* * *

(iii) the dates when [on which] OHR received [receives] the requests.

* * *

(4) The supervisor of the employee requesting administrative review, or the supervisor of an employee assisting another employee in the administrative review, may grant the employee up to 4 hours of administrative leave to prepare information [for the record] to submit with the request for administrative review. The employee must request and receive approval for the administrative leave in advance.

(5) The employee's immediate supervisor and department director have 5 days from the date of receiving the employee's comments to submit any comments concerning the employee's request for administrative review to the OHR Director. [within 5 calendar days of receiving the employee's request.] The supervisor and department director must provide copies of their comments to the employee.

(6) The OHR Director must arrange within 30 calendar days for an independent professionally qualified classifier to conduct a fact-finding review.

* * *

(B) The independent classifier must review [determine] the methods that the County or County designated classifier used [classifier uses] to conduct the study.

(C) The independent classifier must conduct an independent review of the employee's position or occupational class.

[(C)]
(D) The independent classifier may request a meeting with the employee during the employee's normal workday.

(7) Within 30 calendar days after the independent classifier receives the documents, the independent classifier must file a written report of findings and recommendations with the CAO. The CAO must provide the employee or the employee's representative with a copy of the report.

(A) The employee or the employee's representative must provide any written comments to the OHR Director within 10 calendar days [after] from the date the employee or employee's representative [receives] received the independent classifier's report.

(B) The OHR Director must provide:

(i) the CAO with any written comments[, if any,] within 10 calendar days of receiving the independent classifier's report;

* * *

(9) The OHR Director may extend [a time limit included] any time deadlines set forth in Section 9-6 at the request of the employee or upon notice to the employee.

(c) ***Effective date*** **[Date]** ***of completion of an administrative review.*** An administrative review is complete on the effective date of the CAO's classification decision affecting that position.

9-7. Appeal of CAO's classification decision.

* * *

(b) An employee may not file a grievance or appeal [over] position classification decisions, except as stated in (a) above or for an alleged violation of due process.

SECTION 10. EMPLOYEE COMPENSATION

* * *

10-3. Uniform salary plan.

(a) The uniform salary plan consists of salary schedules authorized in Code Section 33-11(b) for:

* * *

(8) employees in positions in the Management Leadership Service (MLS); and

(9) a General [general] salary schedule (GSS) for all other employees.

(b) The Council must approve the uniform salary plan and any amendments [by] adopted by Council resolution.

* * *

(e) The salary rate or range for each pay grade or pay band on an approved salary schedule must remain in effect until a change to the salary schedule is approved by the County Council.

(f) The CAO must base a recommendation to amend a salary schedule on the factors outlined [specified] in Section 33-11 of the County Code.

* * *

10-4. Payroll policies.

(a) ***Pay period.*** The CAO must pay employees for work performed in a two-week pay period[s].

(b) ***Work year.*** The CAO must compute salaries under the County pay schedules on the basis that one work year is equal to [of] 52 weeks which could consist of [for a work year of not more than]:

(1) 2,184 or 2,496 hours for uniformed fire/rescue employees; or

(2) 2,184 hours for certain police executives; or

[(2)]
(3) 2,080 hours for all other employees.

* * *

(d) ***Recovery of overpayment or employee debt.***

* * *

(2) ***Recovery of employee debt to County.*** The CAO may set off a debt that an employee or former employee owes to the County and deduct the amount owed from unpaid salary, accrued annual leave or compensatory time[, or retirement contributions] owed to the employee. The CAO must give the employee or former employee written notice of the deduction and an opportunity to respond.

* * *

(f) ***Effective date of a salary change.*** The effective date of a salary change is the beginning of the pay period in which the change was [is] made, unless the CAO specifies a different date.

(g) ***Direct deposit.*** An employee [hired on or after July 1, 2004,] must, as a condition of employment, agree to have the County deposit the employee's biweekly pay directly in the employee's account at a bank, credit union, or other comparable government-regulated financial institution. If an employee is delayed in providing the County with direct deposit information, the County will deposit the employee's bi-weekly pay on a payroll card until such time as the employee provides direct deposit information.

10-5. Salary-setting policies.

(a) ***General.*** A department director must ensure that an employee's base salary does not exceed the pay rate or range for [of] the pay grade or pay band assigned to the employee's class, unless the department director:

* * *

(b) ***Salary on appointment and reappointment for employees on the General Salary Schedule and Management Leadership Service Salary Schedule.*** A department director must set the base salary of a newly appointed or reappointed employee within the applicable pay grade or pay band under these Regulations and guidance established by the OHR Director and CAO.

(1) Departments and agencies have the authority to negotiate and determine salaries for candidates equal to or less than the midpoint of the salary range or pay band.

(2) A department director may submit a request to the OHR Director for approval to hire a candidate at a salary that is above the midpoint of the salary range or pay band. The director should include in the memorandum:

(A) the reason the candidate should be hired above the midpoint of the salary range;

(B) a copy of the candidate's resume;

(C) proof of the candidate's prior or current salary (i.e. most recent pay slip, W-2, 1099 or other wage documentation); and

(D) the names of other incumbents in the same class in the department with their salaries.

(3) OHR will review the information submitted by the department director to compare the candidate's proposed salary to the salaries of existing employees in the same class within the department in order to determine if the proposed salary will create a pay inequity.

(4) The candidate's knowledge, skills and abilities will be reviewed in comparison with those same requirements in the official class specification. Consideration will also be given to the department's "preferred criteria" documented in the recruitment posting in the review and approval process of the candidate's proposed salary.

(5) If the candidate submits documentation of his/her current salary (pay advice/stub, W-2 or 1099, and the department is requesting a salary that may be higher than the department's incumbents in the same class, then the department's proposed salary for the candidate may be approved, even if the candidate has less experience, education, etc. than existing employees in the same class.

(6) If there is evidence of recruitment and retention issues for the position (i.e. the existing candidate pool is minimal) and if the candidate's proposed salary will give the candidate a higher salary than the salaries of existing employees, then the proposed salary may be approved even if the candidate has less experience, education, etc. than existing employees.

(7) If there is evidence that the candidate has specialized or unique skills, certifications, licensing, and/or experience and the evidence is used to support a higher salary than the salaries of existing employees, those factors must be reflective of the official class specifications or the department's preferred criteria for the current recruitment, and then the proposed salary may be approved even if the candidate has less experience and education than existing employees.

(8) If there is no evidence of recruitment and retention issues, the candidate's specialized or unique skills, certifications, licensing, and/or experience, or of the candidate's higher salary in a former position, and the proposed salary of the candidate will create an inequity with existing employees, then the

proposed salary should be denied and the candidate's salary should be set lower than the salaries of existing employees. If the candidate does not accept the offer of employment at the lower salary, then the department should consider the next candidate on the hiring list.

(9) The OHR Director will approve or deny the department director's request.

(10) A department director may appeal the OHR Director's denial of a department's request to hire a candidate at a salary that is above the midpoint of the salary range or pay band to the CAO.

(11) The department director cannot communicate the requested salary to the candidate prior to approval, in writing, from the OHR Director.

(c) ***Salary on promotion.***

(1) ***Compensation for a regular (non-temporary) promotion.***

* * *

(D) In addition to the non-discretionary 5 percent increase provided for in (B) above, a department director may [recommend and the OHR Director may] approve an additional increase in base salary of up to 5 percent [up to a maximum of 10 percent] for a single promotion, or a total increase not to exceed 10 [15] percent.

(E) In addition to the maximum 10 percent increase in base salary for a single promotion that a department director may approve under (D) above, a department director may recommend and the OHR Director may approve an additional increase in base salary of 5 percent for a single promotion, or a total increase not to exceed 15 percent.

(F) A department director should consider the following factors when recommending to the OHR Director an additional 5 percent salary increase for a single promotion under (E) above, which would constitute a total increase of 15 percent:

(i) whether the employee being promoted received an "Exceptional" overall performance rating prior to the promotion; or

(ii) whether the position that the employee is being promoted to is a difficult position for which to recruit and retain employees.

(G) A department director's recommendation to the OHR Director for a maximum increase of 15 percent in base salary for a single promotion must:

(i) document that the promotional increase requested is consistent with the department's pay practices and policies;

(ii) provide justification for the request.

[(E)]
(H) In extraordinary circumstances, the department director may recommend and the OHR Director may approve a total increase of not to exceed 20 percent of base salary. Extraordinary circumstances means:

(i) a promotion of at least 3 grades; or

(ii) a promotion to a supervisory position after which the employee's salary would be less than that of the employees supervised.

(I) The CAO may approve a total increase in base salary greater than 20% in extraordinary circumstances (as defined in section 10-5(c)(1)(H)) based upon the factors identified in section 10-5(b) where a promotion arises from a competitive promotion that was open to the general public and at least one non-County employee was either in the highest rating category or was interviewed for the vacancy.

(2) ***Compensation for a temporary promotion.***

* * *

(B) An employee working under a Position and Career Education (PACE) contract [has] is not considered [been] temporarily promoted and, therefore is not entitled to a pay increase.

* * *

(d) ***Salary on demotion.***

(1) ***Voluntary demotion.*** A department director may allow an employee who has had a voluntary demotion to keep the employee's prior [current] base salary after a voluntary demotion as long as [but must ensure that] the employee's salary is:

* * *

(2) In a voluntary demotion, when the employee's prior base salary is above the maximum salary of the new pay grade or pay band, the employee's salary must equal the maximum salary of the new pay grade or pay band.

[(2)]
(3) ***Disciplinary demotion or demotion resulting from unsatisfactory performance.***

* * *

[(3)]
(4) ***Demotion resulting from reduction-in-force or disability.***

(A) If a[n] General salary schedule (GSS) or an MLS employee is demoted as a result of reduction-in-force [or disability] to a class that is non-bargaining unit, the department director must allow the employee to retain the salary received [immediately prior to the effective date] at the time of the demotion. If the demoted employee's salary exceeds the maximum for the new pay grade or pay band, the department director must allow the employee to retain the salary for 2 years after the demotion.

* * *

(C) If an employee in a non-bargaining unit position is demoted as a result of disability, then the employee retains his or her salary indefinitely, even if the salary is above the maximum of the grade.

[(C)]
(D) If the CAO reclassifies a demoted employee's position upward during the 2-year period following the demotion, the department director

must not increase the employee's salary unless a salary increase is needed [required] to bring the employee's salary to the minimum salary of the new pay grade or pay band.

(e) ***Salary on reassignment during the promotional probationary period.*** If [a department director reassigns a promoted employee to a position at the employee's former pay grade because] the promoted employee has a less than satisfactory annual or interim performance rating relating to [failed to perform] the duties of the new position [adequately] during the promotional probationary period, then the department director must reassign the promoted employee to a position at the employee's former pay grade and must reduce the employee's salary after the reassignment by the amount [that it was increased because] of the promotional increase.

(f) ***Salary on reclassification or reallocation.***

(1) The reclassification or reallocation of a position to a higher or lower pay grade or pay band is not a promotion or a demotion.

(2) A department director must not increase the salary of an employee whose position is reclassified or reallocated to a higher pay grade or pay band, except as indicated in Section 12-2(c) [©]of these Regulations, or to ensure that the employee's salary is at the minimum for the new pay grade or pay band.

[(3) The reclassification or reallocation of a position to a lower pay grade or pay band is not a demotion.]

[(4)]
(3) A department director must ensure that an employee whose position is reclassified or reallocated to a lower pay grade:

(A) retains [keeps] the salary the employee received the day [immediately] before the effective date of the reclassification or reallocation; and

(B) receives the same [a] general wage adjustment given to [that] other employees in the same occupational class and [covered by the same] salary schedule regardless of whether or not [receive even though it

results in] the employee's salary exceeds [exceeding] the maximum salary for the pay grade or pay band assigned to the position.

[(5)]
(4) A department director must ensure that the salary of a position that was reclassified downward [downgraded] reverts to the salary range for the pay grade or pay band reassigned to the position after the employee who occupied the position at the time of the downward reclassification [downgrade] leaves the position.

(g) ***Salary during a within-grade salary reduction.***

(1) A department director may reduce an employee's bi-weekly salary by giving the employee a within-grade salary reduction outlined [described] in Section 33-3(d).

(2) The department director must give the employee written notice of the amount of the reduction and the number of pay periods covered by [that] the reduction [will cover].

10-6. Overtime policy.

(a) The assignment of overtime work is an exercise of management discretion reserved to supervisors. An employee is not entitled to [has no entitlement to be assigned] overtime work assignments, unless such a right is expressly stated in a regulation or written agreement.

(b) A department director:

* * *

(3) must keep overtime work to a minimum and [not] approve overtime work [unless] when the department's workload [of the department] cannot be accomplished without it;

* * *

(5) must exclude [not compensate] an MLS employee from receiving [for overtime work with] overtime pay or compensatory time.

(c) A supervisor may assign overtime work to an employee who does or does not volunteer[s] for the overtime assignment [or to an employee who does not volunteer for the assignment], but the supervisor should attempt to equally distribute the overtime work assignments among the employees who are qualified to perform the work.

(d) Except in an emergency, a supervisor should make every effort to schedule overtime work assignments in advance and no later than the end of the workday before the day of the overtime assignment.

* * *

10-7. Overtime compensation.

* * *

Normal Overtime Compensation Thresholds for County Employees			
Type of position	**Threshold during regular workday**	**Threshold during regular workweek**	**Threshold if employee must work on holiday, in general emergency, or on employee's day off**
Non-exempt employee	8-12 hours, depending on number of hours in normal workday	40 hours	40 hours
Exempt employee, grade 24 or below	8-12 hours, depending on number of hours in normal workday	40 hours	40 hours
Police officer at rank of sergeant or below	8-10 hours, depending on number of hours in normal workday	40 hours	40 hours
Firefighter/ rescuer at rank of captain or below	number of hours in regular workday for full-time employee	48 hours or number of hours in regular workweek for full-time employee	48 hours or number of hours in regular workweek for full-time employee

Deputy Sheriff at rank of lieutenant or below	8-12 hours, depending on number of hours in normal workday	40 hours	40 hours
Correctional officer at the rank of correctional shift commander (lieutenant) or below	8-12 hours, depending on number of hours in normal workday	40 hours	40 hours
Exempt employee, grade 25 or above	8-12 hours, depending on number of hours in normal workday	40 [45] hours, [but effective January 6, 2008] such employees should be compensated for the hours worked [between 40 and 45] above 40 hours per week by altering the employee's regularly scheduled workweek on an hour for hour basis within the pay period when the excess hours were worked or if that is not possible the employee should be granted compensatory time on an hour for hour basis.	40 hours
Police officer at rank of lieutenant or above	13-15 hours, depending on number of hours in normal workday	[45] 40 hours	40 hours
Firefighter/ rescuer at rank of battalion chief or above	number of hours in regular workday for full-time employee, plus 5 hours	53 hours or number of hours in regular work-week for full-time employee plus 5 hours	48 hours or number of hours in regular workweek for full-time employee
Deputy sheriff at the rank of captain or above	13-17 hours, depending on number of hours in normal workday	[45] 40 hours	40 hours

(c) ***Normal overtime pay rates***

(1) ***For a bargaining unit employee.*** The County must compensate a bargaining unit employee for overtime work at the rate stated in the appropriate labor agreement.

(2) ***For a non-exempt unrepresented employee.*** The County must compensate a non-exempt employee who is not in a bargaining unit position at the rate of [1 ½ times] time and a half the employee's regular hourly salary for each hour in a pay status beyond the overtime threshold. The regular hourly salary must include pay differentials that apply to the overtime hours worked.

(3) ***For an exempt employee.*** When an exempt employee is eligible for overtime compensation under these Regulations, the County must compensate the employee as follows:

(A) an exempt employee at [grade] grades 24 and under [or below] must be compensated at the rate of [1 ½ times] time and a half the employee's regular hourly salary for each hour in a pay status greater than [beyond] the overtime threshold; and

(B) an exempt employee at [grade] grades 25 and higher [or above] must be compensated on an hour for hour basis [at the employee's regular hourly salary] for every hour in a pay status greater than [beyond] the overtime threshold.

(d) ***Exception to normal overtime pay rates.***

(1) If the overtime work is scheduled, the County must not compensate the employee at the overtime rate except when [unless] the employee was in a work status greater [more] than 8 hours of the employee's regularly scheduled workday[, but at least 8 hours;].

(2) If an employee has an unscheduled absence the day after having worked an overtime work assignment, then the County must compensate the employee at the regular (straight time) pay rate for the number of hours of the unscheduled absence, [unless] except when the FLSA requires such

employee to receive overtime compensation at the time and a half [1 ½] rate. A scheduled absence, for the purpose of this section, is leave that is:

(A) requested and approved during the employee's work period preceding the day of the requested time off; or

(B) requested while the employee is working on the day after [following the day in which] the overtime work assignment was completed [worked], and was approved subject to workload requirements as determined by the employee's supervisor.

(3) If an employee is in a public safety class that is not on the general salary schedule, a department director must compensate the employee as follows:

(A) as stipulated in [under] the appropriate labor agreement if the employee is in a public safety class that is in a bargaining unit;

(B) an exempt [as if the employee was an exempt] employee in pay [grade] grades 24 and under who [or below if the employee] is:

* * *

(C) an exempt [as if the employee was an exempt] employee in pay grades 25 and higher who [or above if the employee] is:

* * *

(e) ***Rounding of overtime.***

* * *

[(2) An employee who submits a paper time sheet must round overtime as follows before recording it on the timesheet:

(A) no compensation for 0-15 minutes;

(B) one half-hour of compensation for 16-45 minutes; and

(C) one hour of compensation for 46-60 minutes.]

(f) ***Form of overtime compensation.*** A department director must provide compensation to employees for eligible overtime work performed [that is eligible for overtime compensation]. A director must provide overtime compensation at the specified rate in the form of overtime pay or compensatory time earned at the overtime rate.

(1) A department director must pay a non-exempt employee overtime pay for completed overtime work except when [unless]:

(A) the employee requests to receive compensatory time in lieu of pay and the supervisor approves the request [compensatory time]; or

* * *

(2) A department director must compensate an exempt employee for overtime work that is eligible for overtime compensation. The employee must be compensated with compensatory time at the appropriate overtime rate instead of with overtime pay unless the department director determines that:

* * *

(B) the amount of overtime work needed is so great that the employee would not be able to use the compensatory time earned during the current leave year.

10-8. Compensatory time.

* * *

(b) ***Use of compensatory time.***

(1) An employee must apply, in advance, to use compensatory time [in advance] unless the employee could not anticipate the need to use the compensatory time.

(2) An employee must not use compensatory time until it is credited by the payroll system and approved for use by the employee's supervisor [approves the use].

* * *

(c) ***Limits on accrual of compensatory time.***

(1) ***Compensatory time carryover.*** The CAO must allow an employee to carry over either a maximum of 80 hours of compensatory time to the next leave year or a prorated amount of compensatory time if the employee's regular work schedule consists of more than 80 hours per pay period.

(2) ***Excess compensatory time.***

(A) An employee's unused compensatory time that exceeds 80 hours at the end of the leave year is excess compensatory time, unless the employee's regular work schedule consists of more than 80 hours per pay period. For a work schedule of more than 80 hours per pay period, the hours in excess of the prorated maximum carryover amount are considered excess compensatory time.

* * *

(4) ***Limits on accrual for an exempt employee.***

(A) The CAO must convert an exempt employee's excess compensatory time to sick leave at the beginning of the next leave year, unless the CAO grants an exception under Section 10-8(c)(4)(B) [below].

* * *

(d) ***Disposition of compensatory time at separation.***

* * *

(2) ***At separation of an exempt employee.*** If an exempt employee leaves County employment, the County must:

* * *

(B) convert the hours for which an employee is not paid unused compensatory time to sick leave.

* * *

(f) ***Disciplinary deduction of accrued compensatory time.***

(1) Under Section 33-3(c) of these Regulations, a department director may deduct up to 80 hours of compensatory time from an exempt employee's accumulated compensatory time for disciplinary reasons. An employee may file a grievance over such [the] disciplinary action and the deducted amount [of the deduction] under Section 34 of these Regulations.

* * *

10-9. Pay differentials. The CAO may authorize a pay differential if the County Council approves the differential.

* * *

(c) ***Multilingual pay differentials.***

* * *

(2) ***Role of department director***

* * *

(D) A department director should periodically review the multilingual pay differentials approved for employees within a department, division, or work unit after:

(i) a program change or reorganization occurred that affected [affects] the County's need for multilingual skills;

* * *

(3) ***OHR certification of multilingual employees.***

(A) To have an employee's language skills certified, a department director must provide the following information on the language certification form and submit it [submitted] to OHR:

* * *

(B) After receiving a completed language certification form from a department, the OHR Director must:

* * *

(iv) add the name of the newly-certified employee to the Countywide Interpreter List, unless the department director has requested that the employee's name not be included on the List and the OHR Director has approved such [the] request.

(C) If the employee fails the examination, the employee may submit a request to be retested within 6 months of the date of the initial examination date. If the employee has not passed the examination within 6 months of the initial examination, the department must submit a new language certification form for the employee to be tested again.

(4) ***Countywide Interpreter List.***

(A) The OHR Director must maintain a list of County employees who have been certified as having multilingual skills and make the list available to all County departments on the County internet website. The list must include the following information;

* * *

(iii) language in which the employee is certified; and

(iv) employee's level of proficiency.

* * *

(5) ***Payment and amount of multilingual pay differentials.***

* * *

(E) The County must not pay a multilingual pay differential to an employee who leaves the position designated for the differential, except when [unless] the employee is transferred or reassigned to another position for which the same multilingual skills are approved.

(F) If a department uses an employee on the Countywide Interpreter List from another department to provide interpreter services for 4 or more hours in a pay period, the department director of the using department must reimburse the employing department at the employee's [for the] hourly salary rate [of the employee] for the hours [that] the employee spent providing interpreter services [to or] for the using department.

* * *

(7) ***Renewal of an employee's multilingual certification.***

* * *

(C) An employee who fails the multilingual recertification examination to renew the multilingual certification must take and pass the recertification examination within 3 months of the first renewal examination or the employee will lose the certification and the multilingual pay differential. The OHR Director may grant an extension for up to one month for extenuating circumstances.

(8) ***Stopping a multilingual pay differential.***

(A) A department director must ensure that the County stops paying the multilingual differential to a certified employee who:

* * *

(iii) is no longer needed by a department to [fill the role of providing] provide a specific language skill [generally needed in the department];

* * *

(D) If an employee refuses or fails to provide requested multilingual services in a satisfactory manner, this should be reflected in the employee's performance evaluation and may be grounds for disciplinary action including removing [or other action to remove] the employee from the designated position.

(9) ***Appeal of decisions on multilingual pay.*** The following decisions on multilingual pay are not grievable matters:

* * *

(D) stopping the payment of a multilingual pay differential under subsection (8)[above].

* * *

10-10. Performance-based pay.

(a) ***Performance-based pay for MLS employees.*** An MLS employee is not eligible to receive service increments, but may receive performance-based pay as described in this subsection.

* * *

(2) ***Eligibility for performance-based pay.***

(A) ***Career employee.*** An MLS employee with merit system status is eligible to receive performance-based pay. In order to receive a compensation adjustment, an employee must have a performance evaluation on record for the previous fiscal year.

(B) ***Probationary employee.*** A probationary employee with less than 6 months <u>of</u> service is not eligible for performance-based pay.

* * *

(b) ***Performance-based pay for employees on the <u>General</u> [general] salary schedule.*** An employee whose position is on the general salary schedule may be eligible to receive a lump-sum performance-based pay award as described in this subsection.

* * *

(c) ***Administration of performance-based pay.***

(1) ***Role of department director.***

(A) ***For MLS Employees.***

(i) A department director must recommend the individual award amount for an MLS employee in the department and must recommend individual award amounts that are consistent with, and do not exceed, the award amounts in the table in Section 10-10(a)(2)(C)(i) [above].

(ii) A department director must notify OHR prior to the first pay period of the fiscal year if a [g]General wage adjustment will be denied to [for] an MLS employee [will be denied], based on the pending overall performance rating given the employee. The department director must give the employee written notice of the denial and include in the notice information about the employee's right to appeal the denial to the MSPB and the time limit for filing an appeal.

(B) ***For General [general] salary schedule employees.*** The department director must submit to the OHR Director:

* * *

(3) ***Role of Office of Management and Budget (OMB) and Office of Human Resources (OHR).***

* * *

(B) In no case will employees' performance-based pay be limited by available appropriation. Any insufficiency of appropriation must be addressed through:

(i) an executive transfer;

(ii) a request for a supplemental appropriation; or

(iii) any other means used to ensure adequate funding for employees' performance-based pay.

(C) Performance-based pay must be allocated based on performance, not department size or other non-performance criteria. Funds dedicated to this purpose must be identified in the recommended operating budget in a non-departmental account for performance-based pay.

OMB must not move the funds appropriated by the County Council for MLS performance-based pay out of the non-departmental account unless the spending conditions in the appropriation resolution for each fiscal year expressly authorize moving the funds to the individual departments after that department's performance evaluations and pay awards decisions [on pay awards] are completed.

* * *

(4) ***Effective date of compensation awards.***

* * *

(B) A performance-based pay award for an employee on the general salary schedule must be effective at the beginning of the first full pay period following the end of the review period for which the employees who received an overall performance rating of *Exceptional Performance* or *Highly Successful Performance*. [The County must begin paying performance-based pay awards for review periods that end on or after June 30, 2006.]

(5) ***Appeals of performance-based pay decisions.***

* * *

(B) An MLS employee who is denied a general wage adjustment may file a grievance under Section 34 of these Regulations.

* * *

10-11. Stand-by pay.

* * *

(b) A department director must pay an employee stand-by pay [to an employee] for the entire period that the employee is in stand-by status until:

* * *

(c) An employee is eligible to receive stand-by pay compensation if the employee's supervisor notifies the employee to remain available for [to] work during a specified period of time beyond the employee's assigned work hours.

* * *

(e) An MLS employee is not eligible to receive [earn] stand-by pay [compensation].

(f) A supervisor who places an employee in stand-by status should tell the employee:

* * *

(2) the location where [to which] the employee must report if called into work[, if applicable]; and

* * *

(g) To cancel stand-by status, the supervisor or other designated [responsible] department representative must contact the employee and tell the employee that the employee's stand-by status has been [is] cancelled.

* * *

(j) An employee in stand-by status is responsible for:

(1) ensuring that the device [telephone or pager] by which the employee [is to be contacted] will be contacted is turned on and in good working order [and is turned on]; and

(2) promptly providing [notifying] the supervisor or other designated department representative with an alternative point of communication if the employee can not be contacted on the primary device [must be contacted on a different telephone number or pager number].

10-12. On-call status. An employee who is on call:

* * *

(d) must be compensated under the overtime pay provisions in this section only if:

(1) the employee is contacted by a supervisor or designee; and

(2) actually performs the overtime work.

10-13. Call-back pay.

* * *

(b) ***Form of compensation for call-back assignment.*** The County should compensate an employee who performs a call-back work assignment with call-back pay and not with compensatory time, [unless] except when the department director determines that compensatory time must be used due to [be given because of] budget limitations.

(c) ***Call-back pay rate.*** The County must pay an employee for all time worked [spent] on a call-back assignment at a rate equal to [1 ½ times] time and a half the employee's regular hourly rate.

* * *

10-14. Compensation of employees during a declared general emergency.

(a) For a declared general emergency period, the County must:

(1) compensate an essential employee who worked during the general emergency period with the following:

(A) the employee's regular pay for the total number of hours worked during the general emergency period; plus

(B) general emergency pay at the regular hourly rate for the total number of hours worked during the general emergency period;

(2) compensate a non-essential employee whose supervisor requires such [the] employee to work during the general emergency period with the following:

(A) the employee's regular pay for the hours worked during the general emergency period; plus

(B) general emergency pay at the regular hourly rate for the total number of hours such [that the] employee was [is] required to work during the general emergency period;

(3) compensate an essential employee or a non-essential employee whose supervisor requires the employee to work during a general emergency period that occurs on the employee's scheduled day off with the following:

(A) the employee's regular pay at the overtime rate or compensatory time at the overtime rate, as outlined in [appropriate under] Section 10-7(f), for the total number of hours worked during the general emergency period; plus

(B) general emergency pay or compensatory time at the regular hourly rate for the total number of hours worked during the general emergency period;

(4) compensate an essential employee, or a non-essential employee whose supervisor requires the employee to work, for work performed beyond the normal workday of at least 8 [or 10] hours with:

(A) additional pay at the overtime rate or compensatory time at the overtime rate, as outlined in [appropriate under] Section 10-7(f), for the total number of hours worked during the general emergency period that exceed the employee's normal workday; plus

* * *

10-16. Special within-grade pay increase.

* * *

(b) A department director or the OHR Director must [may] not approve [or the OHR Director approve] a within-grade increase for a newly-hired employee or for an employee whose salary is at the maximum of the pay grade.

(c) The OHR director must review the following [appropriate] information to determine whether to approve a special within-grade pay [if the] increase [should be approved, such as]:

(1) the salaries of other department employees in the same occupational class and in other occupational classes that may be affected [impacted] by the increase; and

(2) if the within-grade pay increase is used to keep an employee in an occupational class to which it is difficult to attract new or retain existing employees by analyzing the following metrics:

(A) the turnover rate, number of vacant positions; and length of time it [takes] took to fill vacant positions in the occupational class;

(B) the number of qualified applicants in the local labor pool; and

(C) salaries paid to members of the occupational class by local employers in the private and public sectors [employers].

* * *

(e) The OHR Director may not approve a special within-grade pay increase that is greater [of more] than 10 percent except in extraordinary cases.

(f) An employee who receives a special within-grade pay increase may also receive a service increment and a [or] general wage adjustment if the employee is [otherwise] eligible under these Regulations.

10-17. Recruitment and retention incentives.

(a) A department director, with the written approval of the OHR Director, may give a [lump-sum] recruitment or retention incentive in the form of one lump-sum payment to:

(1) a[n applicant] candidate for a County position in an occupational class for which it is difficult to recruit [the County has had difficulty finding] qualified applicants due to [because of] labor market conditions; or

(2) an employee in a position in an occupational class for [in] which [the County has had difficulty retaining] it is difficult to retain experienced employees.

(b) A department director may give a[n] recruitment or retention incentive to an applicant or employee only when [if] the OHR Director has determined that the applicable occupational class is eligible for such [the] incentive.

(c) Before recommending a retention incentive, a department director must consider the following:

(1) whether one employee, some employees, or all employees in the occupational class should be given [an] the retention incentive;

(2) the effect on employees who do not receive the incentive if such [an] incentive is not given to each employee in the occupational class; and

* * *

(d) The OHR Director must determine which occupational classes are eligible for the incentive by reviewing the following [appropriate] indicators[such as]:

(1) the turnover rate, number of vacant positions; and length of time it took [takes] to fill vacant positions in the occupational class;

(2) the number of qualified applicants in the local labor pool; and

(3) the salaries paid to individuals in the occupational class employed by local employers in the private [sector] and public sectors [sector employers].

* * *

(g) An applicant or employee who receives a recruitment or retention incentive must agree to remain a County employee for at least 2 years after receiving the first incentive payment and must agree to repay a prorated amount of the total incentive if the employee separates from the County before the end of [does not stay for] the [entire] 2-year period. The employee will not have to repay the recruitment or retention incentive if the employee dies or the County terminates the individual's employment. The OHR Director may waive repayment in other extenuating circumstances.

10-18. Court time compensation. The County must compensate an employee assigned to a facility that is open 24-hours a day 7 days per week as follows, if the employee is required by the employer to attend court or a Motor Vehicle Administration (MVA) hearing on the employee's day off or during times that are not the employee's regularly scheduled work hours:

* * *

(b) if the employee works longer than 3 hours, the employee must be compensated for the total number of [all] hours spent in court or in an MVA hearing at a rate equal to one and a half [1½] times the employee's regular hourly rate; and

(c) if the employee is required to appear in court 2 or more times within [during] the initial 3-hour period, then the employee is not eligible to [will not] receive additional court time compensation for a second or subsequent [later] appearance unless such appearances occurred [until] 3 hours after the time of [have elapsed since] the employee's initial court appearance [initially appeared in court that day].

10-19. Automotive Service Excellence (ASE) incentive pay.

(a) ***Purpose of ASE incentive pay program.*** The purpose of the ASE incentive pay program is to encourage all eligible employees in the Division of Fleet Management Services, [Department of Public Works and Transportation,] Department of General Services, and the Fire and Rescue Service to increase their knowledge and application of the latest technology in [the field of] vehicle maintenance by compensating [them] such employees for obtaining ASE certifications, recertifications, and master certifications.

(b) ***Eligibility for ASE incentive pay.*** An employee [of] who works for the Division of Fleet Management Services, Department of General Services, [Department of Public Works and Transportation,] or the Fire and Rescue Service is eligible to receive the ASE incentive pay [described in paragraph (c)] if:

(1) the employee takes and passes an ASE administered examination [administered by ASE] and obtains either a certification or recertification that is relevant to the employee's job duties or the employee obtains a master certification by obtaining the required number of certifications;

(2) the employee:

(A) is directly responsible for maintaining or supervising employees [works on or supervises those] who maintain [work on] County vehicles and equipment;

(B) trains or supports employees [those] who maintain [work on] County vehicles and equipment;

(C) inspects County vehicles and equipment; or

(D) provides technical expertise, quality assurance, or warranty administration for [on] County vehicles and equipment; and

(3) the employee's job performance and job-related conduct are satisfactory.

(c) ***Amount of ASE certification pay.*** The County may compensate an eligible employee with ASE certification pay according to the following table [as follows]:

* * *

10-20. Rewarding Excellence Bonus Incentive Awards Program/Gain Sharing Program. The CAO should establish a gain sharing program to reward employees for making suggestions that improve efficiency, increase productivity, reduce costs, or streamline operations. Under this program, if the employees' suggestion is adopted, the employees would receive a portion of the cost savings. An employee cannot grieve or appeal any decision by the Review Panel or the Chief Administrative Officer relating to the Rewarding Excellence Bonus Incentive Awards Program.

10-21. Line of Duty Funeral Expenses. In the event an employee's death is caused by or directly related to performing the employee's [performance of] job duties, then the County will pay up to $10,000 to cover [toward] the employee's funeral expenses.

10-22. Severance pay.

(a) ***Severance pay for a probationary employee whose employment is terminated.***

(1) A department director who terminates a probationary employee must ensure that the employee receives severance pay as follows:

(A) three weeks if the employee's probationary period lasted more than 12 months;

[(A)]
(B) [2] two weeks if the employee's probationary period lasted for at least [9] nine months;

[(B)]
(C) one week if the employee's probationary period lasted for at least [3] three months; or

[(C)]
(D) not withstanding the foregoing provisions, no severance pay **[none]** under these Regulations, in the following instances [if]:

(i) the employee's probationary period lasted for less than [3] three months; or

(ii) the department director terminated the employee for materially falsifying information on his/her [the] employment application, [or] a document associated with the employment application, or for committing gross misconduct, such as a violation of the County Charter, Code, regulations, or procedures, State or Federal laws, or a conviction for a criminal offense. [; or]

[(D) as required under the provisions of the Retirement Savings Plan if the employee is a member of the Retirement Savings Plan and the employee's probationary period lasted for more than one year.]

(2) An employee who is eligible to receive severance pay under Section (a)(1)(A), (B) or (C) above is not eligible to receive severance pay under the Retirement Savings Plan or the Guaranteed Retirement Income Plan. [is not eligible to receive severance pay under Section (a)(1)(A), or (B) above.]

(b) ***Severance pay for Merit System Employees in the Retirement Savings Plan or Guaranteed Retirement Income Plan [participants].***

(1) Under COMCOR 33.140.01, *Severance Pay for Certain Retirement Savings Plan Participants*, the County must pay severance pay as shown in the table

below to an eligible employee who participates in the Retirement Savings Plan or the [g]Guaranteed Retirement Income Plan:

Severance Pay for Merit System Employees in the RSP or GRIP Retirement Savings Plans [Participants]	
Years of service completed:	**Severance benefit:**
0 to 1	none
over one to 5	6 weeks of employee's final earnings
over 5 to 7	8 weeks of employee's final earnings
over 7 to 9	10 weeks of employee's final earnings
over 9	12 weeks of employee's final earnings

(2) The employee is eligible for severance pay if the employee:

(A) was not terminated during the probationary period;

[(A)]
(B) lost the employee's job through affirmative administrative action of the County;

[(B)]
(C) was not dismissed for cause; and

[(C)]
(D) did not resign, retire, or otherwise voluntarily leave County service.

* * *

SECTION 11. PERFORMANCE PLANNING AND EVALUATION

11-1. Definitions.

(a) ***Coaching:*** * * *

(b) ***Competency:*** A performance [standard] success criteria listing a cluster of the knowledges, skills, abilities, and job-related behaviors that collectively contribute to successful performance of one or more job functions. A competency includes a definition and collection of observable behavior statements or behavioral indicators grouped together under a central theme, and represents successful performance for that theme.

(c) ***Conduct:*** * * *

(d) ***Interim evaluation:*** * * *

(e) ***Multi-source feedback:*** * * *

(f) ***Performance [expectations] objectives and [standards] success criteria:*** The criteria by which an employee or team is rated. A performance [expectation or standard] objective or success criteria is a written description of the quality, quantity, or characteristics of the work performance or results that the employee or team is expected to accomplish.

(g) ***Performance management:*** The systematic process by which an organization involves its employees in improving the organization's effectiveness and accomplishing the organization's mission and goals. It covers the entire process of establishing [expectations] objectives, monitoring progress, and providing employees and teams with feedback and ratings on the level of performance achieved.

(h) ***Performance plan:*** The document that records performance [expectations and standards] objectives and success criteria and is the basis for assessment of the employee's job performance.

(i) ***Performance planning and evaluation:*** The total process in which a supervisor develops performance [expectations and standards] objectives and success criteria; observes, reviews and appraises individual work performance; recognizes exceptional performance; and identifies areas for improvement.

(j) ***Progress discussion:*** A supervisor's verbal assessment of an employee's performance in relation to the [expectations] objectives in the performance plan.

(k) ***Reviewing official:*** * * *

(l) ***Team:*** A directed or self-directed work group with one or more formally assigned and shared work [expectations] objectives for which all members of the group are responsible.

(m) ***Team member or peer:*** * * *

(n) ***Team rating:*** A rating given to all members of a team on one or more formally assigned and shared work [expectations] objectives for which all members of the group are held responsible.

11-2. Objectives of performance planning and evaluation. The objectives of performance planning and evaluation are to:

* * *

(c) inform an employee about performance [expectations and standards] objectives and success criteria for the job;

(d) provide an assessment by the employee's supervisor as to whether the employee is meeting those [expectations] objectives;

* * *

11-3. Responsibility for performance planning and evaluation.

(a) The CAO must:

(1) establish mandatory performance [expectations] objectives for the MLS; and

* * *

(b) Each department director must:

* * *

(4) ensure that department supervisors use a performance planning and evaluation form that includes the following:

* * *

(J) signatures or electronic acknowledgements of supervisor and employee, as applicable, to establish plan;

(K) signatures or electronic date stamps to document progress discussion, as applicable;

(L) signatures or electronic date stamps by [of] supervisor and employee

to finalize performance appraisal;

(M) signature or electronic date stamp of the reviewing official;

(N) list of performance [expectations] objectives, ratings, and narrative comments;

* * *

(d) An immediate supervisor must:

* * *

(4) sign or electronically acknowledge the plan and evaluation to indicate approval;

* * *

(10) give the employee an opportunity to review, discuss, comment on, and sign or electronically acknowledge the evaluation.

11-4. Performance management. Performance management is the responsibility of the supervisor and includes:

(a) developing the performance [expectations] objectives for an employee or team at the beginning of a review period;

* * *

11-5. The performance plan.

* * *

(b) ***Annual review period.***

* * *

(2) The review period may be linked to an employee's increment date, the anniversary of the employee's hire date if the employee does not receive increments, or the fiscal [or program] year.

* * *

(c) ***Substance of a performance plan.***

(1) Each employee's performance plan must state the performance [expectations and standards] objectives and success criteria for the employee or team during the review period. Performance [expectations and standards] objectives and success criteria must describe, at a minimum, the performance level of "Successful Performance" in terms that allow reasonably objective assessment.

(2) Performance [expectations and standards] objectives and success criteria may be stated as a goal, outcome or result expected, numerical criteria, competency to be demonstrated, task to be accomplished or performed, acceptable conduct, or other expectation appropriate to the job classification and position.

(3) The performance plan for a supervisor must include an [expectation] objective that the supervisor must:

* * *

(5) A performance [expectation or standard] objective or success criteria may be developed for an individual, a team, or both.

* * *

(9) If an employee receives a multilingual pay differential, the employee's supervisor must include a performance [expectation] objective that the employee will provide multilingual services as required.

11-6. Performance planning process.

(a) ***Establishing the plan.***

(1) A supervisor and employee formally establish the performance plan by signing it or by electronic acknowledgement. The employee's signature or electronic acknowledgement indicates only that the employee has seen the plan, and does not indicate that the employee agrees with the plan.

* * *

(b) ***Employee refusal to sign the plan.***

(1) If an employee refuses to sign <u>or date stamp</u> a performance plan, the supervisor must refer the plan to the reviewing official.

* * *

11-7. Performance evaluation.

* * *

(b) ***Progress discussion.*** After approximately half of the review period has passed, a supervisor should conduct a comprehensive progress discussion with the employee that covers all elements of the performance plan. The supervisor and employee should sign and date <u>or electronically date stamp</u> the evaluation form to document a comprehensive progress discussion. The supervisor must document the substance of the progress discussion if the discussion resulted in a change to the performance plan or if specific performance issues were brought to the employee's attention.

* * *

(h) ***Substance of a performance evaluation.***

(1) A supervisor must record in the written performance evaluation the performance rating of the employee in relation to the performance [expectations and standards] <u>objectives and success criteria</u> established in the performance plan.

(2) If a performance [expectation] <u>objective</u> was assigned but not made a part of the employee's established performance plan, the supervisor should assess the employee's accomplishment of the performance [expectation] <u>objective</u> as part of the performance evaluation. A supervisor must document that the employee was given adequate notice of the [expectation or standard] <u>objective or success criteria</u>.

* * *

(5) If performance [expectations] objectives are jointly shared by members of a team, the supervisor may give each member sharing the [expectation] objective a team rating. A supervisor must apply competency or job-related behavior ratings only to an individual employee.

* * *

(i) ***Overall rating.*** The supervisor must give an employee an overall rating using one of the following 5 rating categories as indicated below:

(1) ***Exceptional Performance.***

(A) This rating indicates that the employee:

* * *

(iv) was rated "Exceptional Performance" on the majority of performance [expectations and standards] objectives and success criteria.

* * *

(C) A supervisor must not give an overall rating of "Exceptional Performance" to an employee who received a rating of "Does Not Meet Expectations" on any single [expectation] objective.

(2) ***Highly Successful Performance.***

(A) This overall rating category indicates that the employee:

* * *

(iv) was rated as having "Highly Successful Performance" on the majority of performance [expectations and standards] objectives and success criteria.

(B) A supervisor must not give an overall rating of "Highly Successful" to an employee who received a rating of "Does Not Meet Expectations" on any single [expectation] objective.

(3) ***Successful Performance.***

(A) This overall rating category indicates that the employee:

(i) met the majority of performance [standards and expectations] <u>success criteria and objectives</u>;

* * *

(4) ***Below Expectations***

* * *

[(D) Effective date – The "Below Expectations" rating category shall go into effect July 1, 2008.]

(5) ***Does Not Meet Expectations.***

(A) This overall rating category indicates that the employee has not met the basic requirements of the job as evidenced by:

(i) receiving a rating of "Does Not Meet Expectations" on a majority of the performance [expectations and standards] <u>objectives and success criteria</u> listed in the performance plan; or

* * *

(j) ***Performance evaluation procedures.***

* * *

(2) An immediate supervisor must allow an employee to sign <u>or electronically date stamp</u> and comment on the evaluation.

(3) The employee's signature <u>or electronic date stamp</u> indicates only that the employee has seen the evaluation and does not indicate that the employee agrees with the evaluation.

(4) If an employee refuses to sign or electronically date stamp a performance evaluation, the supervisor must make a notation on the evaluation to indicate that the employee refused to sign the evaluation.

* * *

(5) (A) * * *

(B) The employee must submit the request in writing to the department director or other appropriate management official within 15 calendar days after the employee receives the completed evaluation form signed or electronically date stamped by the reviewing official. The employee must indicate the specific areas of the performance evaluation that the employee does not agree with.

* * *

SECTION 12. SERVICE INCREMENTS

* * *

12-2. Eligibility for service increment.

(a) An employee with merit system status is eligible to receive [for] a service increment if:

(1) the employee's performance rating during the rating period is higher than the [above a] "Does Not Meet Expectations" performance rating; and

(2) the employee's salary is below the maximum salary in [for] the employee's pay grade.

(b) An employee without merit system status is eligible to receive [for] a service increment if the employee is:

(1) a probationary police officer or deputy sheriff whose [for whom the] department director has approved a service increment under Section 12-5(e); or

(2) a temporary employee whose [for whom the] department director has approved a service increment under Section 12-5(f).

(c) Any [An] employee [with or without merit system status] who is eligible to receive a service increment and whose position is reclassified or reallocated to a higher pay grade is still eligible to receive [for] a service increment on the effective date of the position's reclassification or reallocation. In this case, the [The] OHR Director must change the employee's service increment date to the effective date of the reclassification or reallocation of the employee's position. [This provision is retroactive to July 1, 2001.]

12-3. Effective date of a service increment. A service increment must be effective on the first day of the pay period in which the employee's increment date falls.

12-4. Amount of service increment.

(a) The CAO must establish the percentage or amount of the service increment pay increase [for a service increment].

(b) [If an] An eligible employee's salary cannot [would] exceed the maximum salary for the employee's pay grade. In cases where a service increment would make an eligible employee's salary greater than the maximum salary of his/her pay grade, [if the employee received the full pay increase associated with the service increment,] the OHR Director must give the employee a reduced service increment pay increase that would make [brings] the employee's salary equal to the maximum salary for [of] the employee's pay grade.

12-5. Policy on service increments.

(a) A department director must approve a service increment for an eligible employee, unless the department director notifies the OHR Director that the employee should not receive the service increment at least 15 calendar days before the beginning of the pay period that contains [in which] the employee's assigned increment date [falls].

(b) A department director must notify an employee when [that the] a service increment is [was granted or was not granted] denied[, and, if granted, the amount of the increment].

(c) The OHR Director must take appropriate action to ensure that an eligible employee receives a service increment unless a department director notifies the OHR Director that the employee should be denied [not receive] the service increment.

(d) An MLS employee is not eligible to receive [for] a service increment, but is eligible to receive a performance-based pay increase if recommended by an Executive Branch department director [may recommend] and the CAO approves a performance-based pay increase for an eligible MLS Executive Branch employee [in the Executive Branch] and if a Legislative Branch department director [may] approves a performance-based pay increase for an eligible MLS Legislative Branch employee [in the Legislative Branch].

(e) The OHR Director must give a service increment to a probationary police officer or deputy sheriff if recommended by the department director [recommends it].

(f) The OHR Director must give a service increment to a temporary employee if recommended by the department director [recommends it after determining that it is] and is determined to be in the County's best interest [of the County].

(g) The OHR Director must give service credit toward a service increment to a former temporary employee who [for the time spent as a temporary employee if the employee] was appointed to a full-time or part-time position without a break in service [and continued to perform the same duties that the employee had been performing as a temporary employee]. The increment date must be the employee's next anniversary date with the County.

12-6. Reassignment of a service increment date.

(a) A department director must assign an employee a new service increment date if the employee's:

* * *

(3) service increment date occurs during a period of within-grade salary reduction described in subsection 33-3(d) or during a suspension described in subsection 33-3(e);

(4) leave without pay (LWOP) exceeds 10 consecutive workdays, excluding LWOP for FMLA, parental leave, military service, professional improvement

or used under Section 23-7(a) and (c) by an employee who is a member of the Maryland General Assembly; or

* * *

(b) If the employee's probationary period for merit status is extended, the new service increment date is the date when the employee's [that] merit system status is granted.

(c) If a service increment is delayed, the employee's new service increment date is the date when [on which] the delayed service increment is finally granted.

(d) If the employee's position is reclassified or reallocated to a higher pay grade, the employee's new service increment date is the effective date of the reclassification or reallocation.

(e) A department director may reassign an employee's service increment date for the following reasons:

(1) to prevent or resolve pay inequities;

(2) to serve the County's best interest [of the County], provided that the reassignment [action] will not adversely affect the employee; or

(3) in conjunction with a disciplinary action.

(f) An employee's reassigned service increment date becomes effective only with the OHR Director's approval [if approved by the OHR Director].

(g) The OHR Director must assign a new service increment date to an employee in an MLS position who is promoted, demoted, or reassigned to a non-MLS position.

(1) If the County employee was in a non-MLS position [in the County] and had a service increment date before taking the MLS position, the OHR Director must assign as the new service increment date the last service increment date that the employee had before becoming an MLS employee.

(2) If the employee was not in a non-MLS position before taking the MLS position, the OHR Director must assign a [as the] new service increment date as the date when [on which] the employee was first employed [by the

County] in a County merit system position.

12-7. Delay of a service increment.

(a) A supervisor should promptly provide to the department director [submit] a [timely] written recommendation [to the department director] to delay an employee's service increment for any employee who has a less than satisfactory [if the employee's latest] annual or interim performance rating [was less than satisfactory] or unsatisfactory [the employee's] performance, attendance, or conduct [has been unsatisfactory].

(b) To delay an eligible employee's service increment, a department director must:

(1) provide the OHR director [give] written documentation of the decision and the reason for the delay [to the OHR Director] at least 15 calendar days before the beginning of the pay period that contains [in which] the employee's assigned increment date [falls and] in order to obtain the OHR Director's approval for the delay;

(2) give written notice to the employee before the beginning of the pay period [in which] that contains the employee's increment date [falls];

(3) include in the written notice to the employee:

(A) [a statement of] the reasons for the delay;

(B) the next date on which the employee's performance will be reviewed and the service increment may be granted if the employee's performance or attendance has improved; and

(C) whether [if] the employee may file a grievance over the decision and, if so, the deadline [time limit] for filing such a grievance.

(c) A department director may delay an employee's service increment if the employee's performance was unsatisfactory during the rating period or if the employee was absent for more than 50 percent of the work year, excluding periods of compensatory time, annual leave, parental leave, disability leave, military leave, or LWOP for political purposes under Section 23-7(c).

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	16-13AM
ORIGINATING DEPARTMENT	**EFFECTIVE DATE**
Office of Human Resources	

* * *

12-8. Twenty-year longevity increment for police, fire, sheriff or correction management.

(a) A department director must award a twenty-year longevity increment to an employee who has: [in a position covered by the police management, fire management, sheriff management, or correction management salary schedule if the employee has completed twenty years of active service.]

(1) completed twenty years of active service (excluding temporary service); and

(2) is in a position on the police, fire, sheriff, and correction management salary schedules; and

(b) The employee's annual base salary does not have to be at the maximum of the respective pay range to receive the twenty-year longevity increment.

[(b)]
(c) The CAO must determine the amount of the longevity increment.

12-9. Twenty-year longevity/performance increment.

(a) A 20-year longevity/performance increment is a one-time increase to an employee's base salary.

(b) A department director must award a one-time 20-year longevity/performance increment of 2 percent of base salary to an employee in a position on the General [general] salary schedule if [the employee's salary is at the top of the pay range and] the employee has:

(1) a base salary equal to the maximum salary of the pay range; and

[(1)]
(2) [has] 20 years of actual County service; and

[(2)]
(3) received an annual overall performance rating of *Highly Successful Performance* or *Exceptional Performance* for the 2 most recent consecutive years.

(c) An employee is eligible to [may] receive only one 20-year longevity/performance increment.

(d) Awarding longevity/performance increments to promoted employees.

(1) When an employee is promoted from a non-bargaining unit position to another non-bargaining unit position:

(A) the 20-year longevity increment is added to the employee's prior base salary before the promotional increase is added; or,

(B) if (A) does not apply, then the employee may be eligible to receive a 2% longevity/performance increment as outlined in Section 12-9 (b); however,

(C) whether (A) or (B) applies, the employee's new base salary cannot exceed the maximum salary of the new pay range.

(2) When an employee receives a promotion from a non-bargaining unit position to a bargaining unit position:

(A) the 20-year longevity/performance increment is added to the employee's base salary before the promotional increase is added;

(B) the new base salary cannot exceed the maximum salary of the new pay range; however,

(C) if the employee's new base salary is equal to the maximum salary of the new pay range, then the employee may be eligible to receive a bargaining unit longevity increment as stipulated in the respective collective bargaining agreement.

(3) When an employee receives a promotion from a bargaining unit position to a non-bargaining unit position:

(A) the 20-year longevity increment is added to the employee's base salary before the promotional increase is added;

(B) the employee is eligible to receive a 2% longevity/performance increment under Section 12-9 (b); and,

(C) the employee's new base salary cannot exceed the maximum salary of the new pay range.

(e) An employee who has a 20 year longevity/performance increment and who:

(1) transfers from a non-bargaining unit position to another non-bargaining unit position, the longevity/performance increment remains the same;

(2) transfers from a non-bargaining unit position to a bargaining unit position is eligible to receive a bargaining unit 20-year longevity increment as provided in the respective collective bargaining agreement; or,

(3) transfers from a bargaining unit position to a non-bargaining unit position:

(A) the longevity/performance increment is added to the employee's base salary except when the employee's base salary exceeds the maximum salary of the non-bargaining unit pay range; then,

(B) the employee's base salary must be reduced to the maximum salary of the pay range.

[d]
(f) A department director must not give an employee a lump-sum award and a 20-year longevity/performance increment for the same annual overall performance rating.

[(e) A department director must submit to the OHR Director a written statement that:

(1) identifies each department employee who meets the requirements for a 20-year longevity/performance increment; and

(2) states the basis for awarding the increment.]

[(f)]
(g) [A 20-year longevity/performance increment under this Section must be based on 2 consecutive annual overall ratings for review periods that end after June 30, 2006, except for the first year of implementation. After the first year of implementation,

the] The effective date of all longevity/performance increments must be the beginning of the first pay period after the review period ends.

[(g) During the first year of implementation (July 1, 2006, through June 30, 2007), an employee in a position on the general salary schedule who has, or reaches, 20 years of actual service and who is at the top of the salary schedule is eligible to receive a 20-year longevity/performance increment if the employee receives an *Exceptional* or *Highly Successful* annual overall rating for a review period that ends between June 30, 2005, and June 30, 2007.]

[(h) The effective date for a 20-year longevity/performance increment approved during the first year of implementation must be the beginning of the first pay period after:

(1) July 1, 2006, for an eligible employee with an *Exceptional* or *Highly Successful* annual overall rating for a review period that ends on or before June 30, 2006; and

(2) the end of the review period, for an eligible employee with an *Exceptional* or *Highly Successful* annual overall rating for a review period that ends after June 30, 2006.]

12-10. Appeal of a reassignment of service increment date or of a delay of service increment pay increase. An employee with merit system status may appeal a department director's decision to reassign an employee's service increment date or to delay an employee's service increment by filing a grievance under Section 34 of these Regulations. [if the department director:

(a) reassigns the employee's increment date; or

(b) delays the employee's service increment.]

SECTION 13. PERFORMANCE AWARDS

13-1. Policy on employee performance awards.

(a) The CAO may grant an award to a merit system employee for noteworthy or extraordinary performance under the [standards] criteria [established] outlined in this section.

* * *

(d) An MLS employee is not eligible for a monetary award under this section except with approval of the CAO or as outlined in [under] Section 13-2(d).

13-2. Monetary awards.

(a) ***Department Employee of the Year Award.***

(1) ***Award type.*** The Department Employee of the Year Award is a lump sum cash award.

* * *

(4) ***Limitations.*** A department director must not award more than $500 [$250 net pay] per employee in a fiscal year.

* * *

(b) ***Department Recognition Award.***

(1) ***Award type.*** The Department Recognition Award is a:

(A) lump sum cash award; or

(B) non-cash award such as a restaurant gift certificate or theater tickets.

* * *

(3) ***Award criteria.*** Criteria include:

* * *

(A) noteworthy performance;

(B) special effort that results in a significant product, action or efficiency improvement; or

(C) [another] any employee action, activity, or product that is valued and appreciated by the department.

(4) ***Limitations.***

(A) A department director must not grant more than $200 [$100 net pay] to an employee in a fiscal year.

(B) A department director must not grant non-cash awards with a cost or value of more than $100 to an employee in a fiscal year.

(5) ***Nomination procedure.*** A division chief must provide [make] a written recommendation to the department director documenting the reason for the award.

(c) ***Annual Leave Award.***

* * *

(3) ***Award criteria.*** Criteria include:

* * *

(C) any [other] actions, activities, or products of importance and value to the department.

* * *

(5) ***Nomination procedure.*** A division chief must provide [make] a written recommendation to the department director documenting the reason for the award.

(d) ***Paid Time Off or Annual Leave Award for MLS Employees.***

(1) ***Award type.*** The Paid Time Off Award is an amount of paid time off for MLS employees who are members of the Retirement Savings Plan or Guaranteed Retirement Income Plan. The Annual Leave Award is an amount of annual leave for MLS employees who are members of a defined benefit pension plan and who earn annual leave and sick leave instead of Paid Time Off.

(2) ***Eligibility.*** MLS employees are eligible.

(3) ***Award criteria.*** A Paid Time Off or Annual Leave Award for an MLS employee is neither ordinary nor usual but may be appropriate to recognize:

* * *

(C) working a substantial number of uncompensated hours during an emergency (i.e. general emergency, local emergency, and liberal leave periods).

* * *

(5) ***Nomination and approval procedure.*** A department director must make a written recommendation to the CAO documenting the reason for the award. The CAO must determine whether to approve [to grant] a Paid Time Off Award or an Annual Leave Award to an MLS employee.

13-3. Procedures for monetary awards.

(a) A department director must:

(1) recommend to the CAO a departmental employee who deserves to receive an Outstanding Performance Increment [for an employee in the department], and if granted by the CAO, must prepare the documentation for processing;

(2) recommend to the CAO an MLS employee who deserves to receive a Paid Time Off Award or an Annual Leave Award [for an MLS employee] and document the reason for the award;

(3) for all other monetary awards:

(A) review and evaluate all awards recommended for the department, ensuring that the award type and amount [of award] are commensurate with the performance or product being recognized;

* * *

(b) The OHR Director must:

* * *

(3) collect from departments information about all awards granted by the department in a fiscal year; and

* * *

(c) The CAO must determine whether to [grant] approve an Outstanding Performance Increment [for] to an employee or to approve a Paid Time Off Award or an Annual Leave Award [for] to an MLS employee.

* * *

13-5. Gifts or awards from a civic group or similar organization.

* * *

(c) An employee should direct a question about whether it is permissible to accept a gift from civic groups or similar organizations [may be accepted] to the Ethics Commission.

* * *

SECTION 15. WORK SCHEDULES, ATTENDANCE, HOURS OF WORK

15-1. Definitions.

* * *

(c) ***Display period:*** The display part of the employee's electronic timecard. Typically, the display reads Sunday through Saturday. For employees below Grade 25, whether Non-exempt or Exempt, on compressed work schedules, the display period may be altered to either a Monday through Sunday or Friday through Thursday.

[(c)]

(d) ***Flex hours:*** * * *

[(d)]
(e) ***Flextime.*** * * *

[(e)]
(f) ***Job Sharing:*** * * *

[(f)]
(g) ***Modified liberal leave:*** * * *

(h) ***Reporting period:*** The reporting period part of the employee's electronic timecard. Typically the reporting period is Sunday through Saturday. For employees below Grade 25, whether Non-exempt or Exempt, on compressed work schedules, the display period may be altered to either a Monday noon through Monday noon or Friday noon through Friday noon reporting period for purpose of compliance with the Fair Labor Standards Act (FLSA).

[(g)]
(i) ***Severe Weather:*** * * *

15-4. Alternate work schedules.

(a) ***Alternate work schedules for religious observance.***

* * *

(3) ***Requirements for an alternate work schedule for religious observance.***

* * *

(B) ***For an exempt employee.*** An exempt employee may work additional hours for compensatory time in order to use the earned compensatory time to cover work absences for religious observance. The compensatory time may be earned before[, after, or both before and after] the absence for religious observance [but must be earned over no more than 8 pay periods] or during the same pay period as the absence for religious observance.

* * *

(C) ***For an MLS employee.*** An MLS employee may request an alternate work schedule during the same pay period to equal the amount of time taken off for religious observances.

* * *

(b) ***Compressed work schedule and flextime.*** A compressed work schedule and flextime are types of alternate work schedules that are intended to enable employees to better balance their work lives and personal lives.

(1) ***Requirements for employees on compressed work schedules.***

(A) An employee on a compressed work schedule must work one of the following 4 established compressed work schedules and may select either alternate Mondays or Fridays off:

(i) Schedule A, Reporting period is from 12:01 p.m. Monday through 12:00 noon Monday [with the first Monday off during the two-week pay period];

Display period for Non-Exempt and Exempt Below Grade 25 is

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Total
Week 1	OFF	9	9	9	9			36
Week 2	8	9	9	9	9			44

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		OFF	9	9	9	9		36
Week 2		8	9	9	9	9		44

(ii) Schedule B, Reporting period is from 12:01 p.m. Monday through 12:00 noon Monday[, with the second Monday off during the two-week pay period];

Display period for Non-Exempt and Exempt Below Grade 25 is

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Total
Week 1	8	9	9	9	9			44
Week 2	OFF	9	9	9	9			36

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		8	9	9	9	9		44
Week 2		OFF	9	9	9	9		36

(iii) Schedule C, Reporting period is from 12:01 p.m. Friday through 12:00 noon Friday[, with the first Friday off during the two-week pay period; or];

Display period for Non-Exempt and Exempt Below Grade 25 is

	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Total
Week 1	8			9	9	9	9	44
Week 2	OFF			9	9	9	9	36

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		9	9	9	9	OFF		36
Week 2		9	9	9	9	8		44

(iv) or Schedule D, Reporting period is from 12:01 p.m. Friday through 12:00 noon Friday[, with the second Friday off during the two-week pay period].

Display period for Non-Exempt and Exempt Below Grade 25 is

	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Total
Week 1	OFF			9	9	9	9	36
Week 2	8			9	9	9	9	44

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		9	9	9	9	8		44
Week 2		9	9	9	9	OFF		36

(B) An employee must work the scheduled number of hours each day as required by the fixed schedule.

[(C) On the 8-hour Monday or Friday, an employee must work 4 hours before 12:00 noon and 4 hours after 12:00 noon in order to avoid creating overtime liability for the County. This is because, for compressed work schedules A and D, the 8-hour Monday or Friday is split between 2 workweeks and hours worked before 12:00 noon are in one workweek while hours worked after 12:00 noon are in the next workweek. On compressed work schedules B and C, the hours on the 8-hour day are split between 2 different pay periods.]

[(D)]
(C) An employee must adhere to the schedule on the 8 hour day and must not change the 8-hour day to another day during the pay period.

[(E)]
(D) If an employee uses annual or sick leave for the entire day on a day on which the employee is scheduled to work 9 hours, the employee must record 9 hours of annual or sick leave on the timesheet for that day.

Similarly, an employee must record 8 hours of leave on the timesheet for a day on which the employee is scheduled to work 8 hours.

* * *

(6) Requesting a compressed work schedule or flextime.

(A) An employee who is interested in working a compressed work schedule must submit a completed *Compressed Work Schedule Agreement* (Appendix H - revised) to the employee's supervisor. The employee must specify either a Monday or Friday as the fixed day off in each pay period. The employee may need to work a transition period before starting the Compressed Work Schedule and may be required to use four to eight hours of leave. Department of Finance MCtime personnel will provide guidance on an appropriate transition schedule.

* * *

(B) An employee who is interested in working flextime must submit a completed *Flextime Agreement* (Appendix I) to the employee's supervisor. The employee must specify the core hours to be worked and the manner of scheduling flex hours.

(7) ***Review of employee request for compressed work schedule or flextime.***

* * *

(H) The employee's supervisor or department must submit the appropriate schedule change form to the MCtime Team to enter the employee's schedule change in the Time and Attendance module.

(8) ***Transition to or from a compressed work schedule.***

(A) Transitioning on or off of a compressed work schedule may be complicated by factors such as the FLSA Exempt Status and pay grade of the employee and the scheduling system used by the department. Therefore, MCtime staff must be consulted to determine the appropriate transition schedule for each employee

transitioning on or off a compressed schedule.

[(A)]
(B) An employee must change to a compressed work schedule at the start of a pay period.

[(B)]
(C) An employee below grade 25, whether FLSA exempt or non-exempt, who changes to a compressed work schedule no longer has a Sunday to Saturday workweek and must work a special transition work schedule during the first pay period of the compressed work schedule. The transition pay period may require the use of eight (8) or four (4) hours of annual or compensatory leave. The charts below illustrate the considerations that come into play in determining the transition schedule. If the original schedule is other than a Monday through Friday regular 8 hours schedule, additional considerations must be applied.

For Non-Exempt and Exempt Employee, below Grade 25, when transition is from a M-F regular eight hour schedule:

Pay period* *except Police Department	Transition to Schedule A Monday – Sunday	Transition to Schedule B Monday – Sunday	Transition to Schedule C Friday - Thursday	Transition To Schedule D Friday - Thursday
Leave required for Transition	0	4 or 8 hours	8 hours	4 hours
Impact of use of Personal Leave	Yes	Yes	Yes	Yes
Impact of Holiday in Pay period	Yes	Yes	Yes	Yes

For Exempt Employee, Grade 25 and above, when transition is from a M-F Regular Eight hour schedule:

	Transition to Schedule A	Transition to Schedule B	Transition to Schedule C	Transition to Schedule D
Pay period	Sunday – Saturday	Sunday – Saturday	Sunday – Saturday	Sunday – Saturday
Leave required for Transition	None	none	None	None
Impact of use of Personal Leave	No	No	No	No
Impact of Holiday In Pay Period	No	No	No	No

[(C) An employee changing to compressed work schedule A will have a Monday to Monday workweek and must work the following transition schedule:

(i) during the 1st week, takes Monday off and works 9 hours each day on Tuesday through Friday;

(ii) works 8 hours on Monday (4 hours in the 1st week and 4 hours in the 2nd week); and

(iii) during the 2nd week, works 9 hours each day on Tuesday through Friday.

(D) An employee changing to compressed work schedule B will have a Monday to Monday workweek and must work the following transition schedule:

(i) during the 1st week, takes Monday off and works 10 hours each day on Tuesday through Friday or, with the supervisor's approval, works 8 or 9 hours each day on Tuesday through Friday and uses one or 2 hours of annual leave or compensatory time each day as appropriate to total 10 hours each day;

(ii) during the 2nd week, takes Monday off and works 9 hours each day on Tuesday through Friday;

(iii) during the 3rd week, works 8 hours on the 1st Monday in the pay period (4 hours in the preceding pay period and 4 hours in the current pay period) and works 9 hours each day on Tuesday through Friday; and

(iv) during the 4th week, takes Monday off and works 9 hours each day on Tuesday through Friday.

(E) An employee changing to compressed work schedule C will have a Friday to Friday workweek and must work the following transition schedule:

(i) during the 1st week, works 10 hours each day on Monday through Thursday and takes Friday off or, with the supervisor's approval, works 8 or 9 hours each day on Monday through Thursday and uses one or 2 hours of annual leave or compensatory time each day as appropriate to total 10 hours each day; and

(ii) during the 2nd week, works 9 hours each day on Monday through Thursday and works 8 hours on Friday (4 hours in the current pay period and 4 hours in the next pay period).

(F) An employee changing to compressed work schedule D will have a Friday to Friday workweek and must work the following transition schedule:

(i) during the 1st week, works 8 hours each day on Monday through Thursday but must use one hour of annual leave or compensatory time each day to be paid for 80 hours in the pay period;

(ii) works 8 hours on Friday (4 hours in the 1st week and 4 hours in the 2nd week); and

(iii) during the 2nd week, works 9 hours each day on Monday through Thursday and takes Friday off.]

(9) ***Limits on availability of alternate work schedules.***

* * *

(10) ***Withdrawal from an alternate work schedule.***

* * *

(C) An employee below grade 25, whether FLSA exempt or non-exempt, who withdraws from a compressed work schedule must work a special transition work schedule during the first pay period of the new work schedule. The transition pay period may require "time off" without the use of leave or the use of four (4) hours of annual or compensatory leave, depending on the prior compressed work schedule.

* * *

SECTION 16. ANNUAL LEAVE

* * *

16-2. Eligibility for annual leave.

* * *

(b) The OHR Director must credit a former temporary employee with up to 60 hours of annual leave prorated to the time spent as a temporary employee if the employee:

(1) had previously filled a temporary position; and

(2) was appointed, without a break in service, to a full-time or part-time position [doing the same work as the employee did while a temporary employee].

* * *

16-4. Change in annual leave accrual rate.

(a) An annual leave accrual rate change is effective on the first day of the pay period in which the employee completes 3 years or 15 years of County service, except when the employee has used more than 4 consecutive weeks of LWOP as described in Section 23-8(a)(2).

(b) The initial employment date for the purpose of annual leave accrual and the maximum annual leave carryover limit is the date on which the employee was first employed in a merit system career position.

(c) An employee in a merit system career position who separates from County service and later returns to County service in the same or different merit system career position is entitled to the same annual leave accrual rate that the employee enjoyed previously based on years of service.

* * *

SECTION 17. SICK LEAVE

* * *

17-2. Eligibility for sick leave.

* * *

(b) The OHR Director must credit a former temporary employee with up to 60 hours of sick leave prorated to the time spent as a temporary employee if the employee:

(1) had previously filled a temporary position; and

(2) was appointed, without a break in service, to a full-time or part-time position [doing the same work as the employee did while a temporary employee].

* * *

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	16-13AM
ORIGINATING DEPARTMENT	**EFFECTIVE DATE**
Office of Human Resources	

17-10. Sick Leave Donor Program. The Sick Leave Donor Program allows County employees to give additional sick leave, annual leave, or PTO to eligible employees who have exhausted all types of accrued leave.

(a) ***Employee eligibility to receive sick leave, annual leave, or PTO donations.***

(1) An employee is eligible to receive a sick leave, annual leave or PTO donation after the employee:

(A) has been [a County merit system employee for at least 12] <u>employed by the County in a merit system position for at least 6</u> consecutive months;

* * *

(E) has <u>caused to be</u> submitted the following to the department director (or another has submitted the following on the employee's behalf):

(i) a *Sick Leave Donor Program Authorization Form* (Appendix K), with the appropriate portions completed;

(ii) a completed *Sick Leave or PTO Donation Request Form* (Appendix L) that lists the names of the employees who are willing to donate sick leave or PTO and the amount of leave to be donated by each; <u>however, in accordance with Ethics Commission Waiver No. 14-10-004 (October 8, 2014), any solicitation for donated leave must be conducted so that the employee (and any representative of the employee) does not learn the identity of any person who is willing to donate leave;</u> and

* * *

(2) In extenuating circumstances, the department director <u>or the employee</u> may submit a written request to the OHR Director to waive the 7-day waiting period for <u>sick leave donations</u> for an employee [or the requirement that an employee has been a merit system employee for at least 12 consecutive months]. Extenuating circumstances may include an employee:

(A) [having worked for the County for less than 12 months but] having exhausted all accrued sick leave, annual leave, personal leave, and compensatory time in connection with [used all the employee's leave for] the employee's or a family member's (spouse, domestic partner, or child's) serious health condition; or

(B) having changed from a full-time position to a part-time position because of the employee's serious illness or injury that required long-term treatment, if the serious illness or injury later prevents the employee from performing any work.

(3) In extenuating circumstances, the department director or the employee may submit a written request to the OHR Director to waive the requirement that an employee has been employed by the County in a merit system position for at least 6 consecutive months. Extenuating circumstances under this section generally relate to employment with the County rather than the medical condition giving rise to the waiver request. Extenuating circumstances may include an employee:

(A) having been a County merit status employee in the past or having previously worked for the County in a temporary position; or

(B) how close the employee is to meeting the 6-month requirement.

[(3)]

(4) In a leave year, a full-time employee may receive up to 1040 hours of donated leave and a part-time employee may receive a prorated amount of donated leave.

[(4)]

(5) An employee is not eligible to receive a leave donation:

(A) if the employee resigns or is separated from County employment;

(B) during a period of suspension; or

(C) during a leave of absence that is unrelated to an extended illness or injury.

[(5)]

(6) An employee who is eligible for, or is currently receiving, disability leave or another benefit under a federal, County, or State program that provides income maintenance payments for illness or injury is not eligible to receive a sick leave donation. However, if the benefit from the federal, County, or State program covers medical expenses only and does not provide compensation for lost wages, the employee may receive a sick leave donation.

* * *

(c) ***Program administration.***

(1) ***Responsibilities of department director.*** The department director or designee must:

(A) review and approve an application for leave donations for an employee who is eligible under Section 17-10(a) to receive donated sick leave or PTO, unless the department director has reason to question the validity of the medical certification <u>or has reason to suspect sick leave abuse</u>;

* * *

(D) as necessary, if the department director has reason to question the validity of the medical certification submitted by the employee <u>or has reason to suspect sick leave abuse</u>, send the medical information submitted by the employee to the Employee Medical Examiner for review;

* * *

(2) ***Responsibilities of OHR Director.*** The OHR Director must:

(A) respond within 5 working days to a <u>request from a</u> department director['s] <u>or from an</u> employee [request] for a waiver of the required 7-day waiting period or the [12] <u>6</u> months of continuous service;

* * *

(d) ***Use of sick leave, annual leave, or PTO donations.***

* * *

(5) An employee may receive sick leave or PTO donations to cover complications of pregnancy, complications of [or] childbirth, or complications of [and] recovery from childbirth, when any of these complications [that] make[s] the employee unable to work.

* * *

SECTION 18. [DISABILITY LEAVE] SALARY CONTINUATION BENEFIT FOR WORKERS' COMPENSATION DISABILITY LEAVE

18-1. Definitions.

[*Disability leave:* Pay provided by the County instead of Workers' Compensation benefits paid to an employee who is temporarily disabled by an accidental injury or illness resulting directly from the performance of the employee's work.]

[18-2. Disability Leave]

(a) **Salary Continuation Benefit**: Pay provided by the County instead of Workers' Compensation benefits paid to an employee during the period of Workers' Compensation Disability Leave. [The CAO must ensure that an employee is paid the employee's biweekly base salary instead of Workers' Compensation benefits, if the employee is:]

(b) **Workers' Compensation Disability Leave (Disability Leave):** The period of time the employee is:

(1) temporarily disabled by accidental injury or illness resulting directly from performance of the employee's [while performing] County work; and

(2) (A) unable to perform normal duties, as determined by the Workers' Compensation Commission or by the County using Workers' Compensation Commission guidelines; or

(B) unable to perform alternative duties[;] as determined by the Employee Medical Examiner.

MONTGOMERY COUNTY EXECUTIVE REGULATION

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SUBJECT	NUMBER
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ORIGINATING DEPARTMENT	**EFFECTIVE DATE**
Office of Human Resources	

18-2. Salary Continuation Benefit

(a) The CAO must ensure that an employee's wage or salary is continued (salary continuation benefit) during the period of disability leave.

(b) The County's payment of the employee's biweekly [base] salary must:

(1) include special pay differentials but not shift pay differentials or overtime[;], and will be subject to all taxes and deductions and will be in the same amount and appear the same, and be paid in the same schedule as the normal wage or salary payment;

(2) continue for a maximum of 18 months if the employee uses the County-established network of physicians, Pharmacy Benefit Management (PBM) program, and participates in the Nurse Case Management (NCM) programs; or

(3) continue for a maximum of 12 months if the employee chooses to receive care from a physician who is not included in the County-established network of physicians or refuses participation in the PBM or NCM programs.

(c) An employee who is medically able to perform an alternative or light duty work assignment is not eligible for [disability leave] the salary continuation benefit if the employee:

(1) performs an alternative or light duty work assignment offered by the County;

(2) refuses an alternative or light duty work assignment offered by the County; or

(3) elects to use FMLA leave instead of performing an alternative or light duty assignment.

(d) After the employee's [disability leave] salary continuation benefit ends, the employee may use accrued sick leave, annual leave, PTO, or compensatory time to make up the difference between [the employee's base pay and] the Workers' Compensation benefit and the employee's gross pay (supplemental amount) as described in (b)(1) above. The supplemental amount is subject to all taxes and deductions. A priority of deductions, as determined by the Department of Finance, will apply if the supplemental amount is insufficient to cover all deductions.

Deductions not taken from the supplemental amount will be billed to the employee as determined by the Department of Finance.

(e) If an employee files an application for disability retirement before the employee's eligibility period for [disability leave] salary continuation benefit ends, the CAO must continue to pay [disability leave] the salary continuation benefit until the CAO makes a decision on the employee's disability retirement application, even if this means that the period of [disability leave] salary continuation benefit payments will continue for longer than 12 or 18 months, as appropriate under Section 18-5(a) or (b) below.

(f) If the CAO denies an employee's application for disability retirement, the employee may file an appeal of the CAO's decision with the Disability Arbitration Board under Section 33-43(l) of the County Code. The CAO must not pay [disability leave] salary continuation benefit payments to the employee while the appeal is pending.

18-3. Disability leave as FMLA leave.

(a) A supervisor must designate [d]Disability [l]Leave as FMLA leave, even if the employee did not request FMLA leave, if:

(1) the leave is taken for an FMLA-qualifying reason described in Section 19 of these Regulations;

(2) the employee is eligible for FMLA leave; and

(3) the employee has not already exhausted the FMLA leave entitlement for the leave year.

(b) An employee on [d]Disability [l]Leave who is eligible to use FMLA leave and who is medically capable of performing an alternative or light duty work assignment may choose to:

(1) take an alternative or light duty work assignment offered by the County; or

(2) use FMLA leave.

18-4. Managed care for job-related injury or illness. The County must provide an employee who has incurred a job-related injury or illness the opportunity, and communicate such opportunity

and impact under Section 18-5, to obtain medical care through a County-provided managed care program in which:

(a) network physicians provide initial medical care to an employee at no cost, even if the employee's claim is later denied;

(b) the managed care provider must:

(1) coordinate benefits with group health providers; and

(2) review the employee's utilization of the treatment plan.

18-5. Selection and use of physician and impact on eligibility period for [disability leave] salary continuation benefit. An employee may select a physician to provide medical treatment for the employee's job-related illness or injury.

(a) If the employee selects a physician from the network of physicians established under the County-provided managed care program and participates in the Pharmacy Benefit Management (PBM) and the Nurse Case Management (NCM) program, the employee may receive [disability benefits] salary continuation benefits for a maximum of 18 months.

(b) If the employee selects a physician who is not included in the County-established network of physicians, or refuses to participate in the PBM or NCM programs, the employee may receive [disability benefits] salary continuation benefits for a maximum of 12 months.

18-6. Subrogation for reimbursement of [disability leave] salary continuation benefit payments.

(a) If an employee [is granted disability leave for] receives salary continuation benefits as a result of a job-related injury or illness caused by a third party who is legally liable for the injury or illness, the County has the right of subrogation against the third party.

(b) If the legally liable third party reimburses the employee in whole or part for the value of the [disability leave] salary continuation benefits, the employee must promptly reimburse the County for the [disability leave] salary continuation benefit, less the attorney's fees the employee incurred to obtain the reimbursement, according to

current workers' compensation regulations.

(c) If the employee does not reimburse the County after receiving reimbursement from a third party, the County may initiate disciplinary action against the employee, up to and including dismissal.

18-7. Refund of [disability leave] salary continuation benefit overpayment.

(a) An employee must promptly refund to the County a [disability leave] salary continuation benefit payment to which the employee was not entitled.

(b) If the employee does not refund the payment to the County, the County may initiate disciplinary action against the employee, up to and including dismissal.

(c) If the employee does not refund the [disability leave] salary continuation benefit payment to the County, the County may also consider the payment to be a debt owed to the County.

18-8. Appeal of [disability leave] salary continuation benefit decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on [disability leave] salary continuation benefit may file a grievance under Section 34 of these Regulations.

SECTION 19. FAMILY AND MEDICAL LEAVE

19-1. Definitions.

* * *

(e) ***FMLA Program Manager.*** Person in OHR/OMS who administers the County's FMLA Program, reviews requests and medical certifications submitted by employees for FMLA leave, determines eligibility issues in consultation with the OHR Director and the County Attorney's Office when necessary, and provides assistance to employees and supervisors on FMLA.

[(e)]
(f) ***Health care provider:*** * * *

[(f)]
(g) ***Next of kin:*** * * *

[(g)]
(h) ***Parent:*** * * *

[(h)]
(i) ***Serious health condition:*** * * *

* * *

19-4. Amount of FMLA leave.

(a) [A supervisor must allow a] An eligible employee [to] may use up to 12 workweeks of FMLA leave in a leave year as defined in Section 1-34.

(b) A workweek for FMLA purposes is a week that includes the average number of hours that an employee works in a week and includes any holiday that occurs during the week.

(c) If an employee uses FMLA leave intermittently or as part of a reduced workweek, the employee's FMLA leave entitlement is calculated based on hours instead of weeks.

[(d) A supervisor must not count time that an employee spends performing light duty work as FMLA leave.]

19-5. Types of leave that may be used as FMLA leave.

* * *

(b) [A supervisor] The FMLA Program manager must allow an eligible employee to use LWOP, annual leave, or personal leave days for any FMLA purpose.

* * *

19-7. Application for FMLA leave and notice required of employee.

(a) ***Application for leave.*** An employee must apply for FMLA leave [under] by completing a County *Employee Request for FMLA Leave Form* (Appendix U) and submitting the form to the [employee's supervisor] FMLA Program Manager.

* * *

19-8. [Supervisor's r] Responsibility for [designating leave as] Handling FMLA leave.

(a) ***FMLA Program Manager's Responsibility***

(1) The FMLA Program Manager must determine within 5 working days after an employee submits a request for leave for a FMLA purpose whether or not to approve the request.

(2) The FMLA Program Manager may require an employee to submit a County *Medical Certification of Employee's Serious Health Condition Form* (Appendix P-1) or a County *Medical Certification of Family Member's Serious Health Condition Form* (Appendix P-2) completed by the health care provider treating the serious health condition to support a request for leave for a serious health condition.

(3) The FMLA Program Manager may make a provisional designation of leave as FMLA leave if the FMLA Program Manager asked the employee to submit medical certification for the requested leave but the employee has not submitted the medical certification yet.

(4) Upon receiving written authorization from an employee, the FMLA Program Manager or the Employee Medical Examiner (EME) may directly contact the employee's health care provider to clarify or better understand responses on the FMLA Medical Certification or Recertification form.

(5) Under 29 CFR 825.307, the U.S. Department of Labor's FMLA Regulations, if an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear.

(6) ***Information that the FMLA Program manager must give to an employee.*** Within 5 working days after an employee requests leave for a FMLA purpose, the FMLA Program Manager must inform the employee of the following and may use *Response to Employee Request for FMLA Leave* (Appendix O):

(A) whether the requested leave will be counted against the employee's annual FMLA entitlement;

(B) whether the employee must submit medical certification to support the request for leave and the consequences if the employee fails to submit a required certification;

(C) what type of paid leave may be used as FMLA leave, depending on the reason for the requested leave;

(D) whether the employee must pay for health insurance during any period of leave without pay and the obligation of the employee to repay the County for health insurance payments made by the County;

(E) whether the employee must present a fitness-for-duty certification from the employee's health care provider upon return from FMLA leave;

(F) the amount of notice the employee must give before using the leave;

(G) whether the employee must report periodically to the employee's supervisor during the period of leave; and

(H) other specific information requested by the employee or indicated by the employee's leave request.

(7) ***Recertification.*** The FMLA Program Manager may request a new medical certification by a health care provider of an employee's serious health condition or a serious health condition of a family member:

(A) each calendar year for a medical condition that lasts longer than one year;

(B) in less than 30 days in any of the following situations:

(i) employee requests an extension of FMLA leave;

(ii) circumstances described by the previous certification have changed significantly (e.g. the duration or frequency of the absence, the nature or severity of the illness, complications);

(iii) employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of original certification;

(C) no more often than every 30 days and only in connection with an absence by the employee.

(8) An employee has 15 calendar days after a request by the FMLA Program Manager to submit the medical recertification to the FMLA Program Manager.

(9) Any recertification requested by the FMLA Program Manager shall be at the employee's expense.

(10) While no second or third medical opinions may be requested in connection with a recertification, the FMLA Program manager or the EME may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

[(a)]
(b) ***Supervisor's [initial designation of leave] Responsibility.***

(1) A supervisor must designate a period of leave [used for an FMLA purpose] as FMLA leave even if the employee [does] did not request FMLA leave, if: [.]

(A) the leave is taken for a FMLA-qualifying reason under Section 19-6;

(B) the employee is eligible for FMLA leave; and

(C) the employee has not already exhausted the FMLA leave entitlement for the leave year.

(2) A supervisor must base the designation on information received from the employee or from another person authorized to speak for the employee.

(3) A supervisor must designate a period of disability leave as FMLA leave, even if the employee did not request FMLA leave, if:

(A) the leave is taken for a FMLA-qualifying reason under Section 19-6;

(B) the employee is eligible for FMLA leave; and

(C) the employee has not already exhausted the FMLA leave entitlement for the leave year.

(4) A supervisor who designates a period of disability leave as FMLA leave cannot require the employee to take a light duty assignment until the employee has exhausted the employee's FMLA leave.

(5) A supervisor must not count time that an employee spends performing light duty work as FMLA leave.

[(2)]
(6) A supervisor must designate leave by telling the employee orally or in writing that the leave has been designated as FMLA leave and confirming an oral designation in writing [under subsection (b)].

[(3) A supervisor must designate leave as FMLA leave within 5 working days after an employee requests leave for an FMLA purpose.]

[(4) A supervisor must base the designation on information received from the employee or from another person authorized to speak for the employee if the employee is unable to communicate.]

[(5) A supervisor may make a provisional designation of leave as FMLA leave if the supervisor asked the employee to submit medical certification for the requested leave but the employee has not submitted the medical certification yet.]

[(6)]

(7) If a supervisor has information from an employee on leave to indicate that the employee is using leave for an FMLA purpose, but the supervisor did not designate the leave before the leave began or within 2 working days of the request, the supervisor may designate the entire period of leave as FMLA leave, unless:

(A) the employee did not know that the leave already used before the supervisor designated it as FMLA leave would be considered FMLA leave; and

(B) the employee shows that the employee would have taken less FMLA leave or used intermittent FMLA leave if the employee had received the designation earlier.

[(b) ***Supervisor's confirmation of designation.***

(1) If a supervisor designated the leave orally, the supervisor must confirm it by giving the employee a written designation by:

(A) the following payday if the payday is a week or more after the employee requested leave; or

(B) the 2nd payday after the employee requested leave if the request is made less than a week before a payday.

(2) A supervisor may designate the leave in writing with any type of written communication, including a simple notation on the employee's leave request or timesheet.]

[(c) ***Information that a supervisor must give to an employee.*** Within 5 working days after an employee requests leave for an FMLA purpose, the supervisor must inform the employee of the following and may use *Response to Employee Request for FMLA Leave* (Appendix O):

(1) whether the requested leave will be counted against the employee's annual FMLA entitlement;

(2) whether the employee must submit medical certification to support the request for leave and the consequences if the employee fails to submit a required certification;

(3) what type of paid leave may be used as FMLA leave, depending on the reason for the requested leave;

(4) whether the employee must pay for health insurance during any period of leave without pay and the obligation of the employee to repay the County for health insurance payments made by the County;

(5) whether the employee must present a fitness-for-duty certification from the employee's health care provider upon return from FMLA leave;

(6) the amount of notice the employee must give before using the leave;

(7) whether the employee must report periodically to the supervisor during the period of leave; and

(8) other specific information requested by the employee or indicated by the employee's leave request.]

19-9. Use of FMLA leave.

* * *

(b) ***FMLA leave taken for a serious health condition.***

* * *

[(2) A supervisor may require an employee to submit a County *Medical Certification of Employee's Serious Health Condition Form* (Appendix P-1) or a County *Medical Certification of Family Member's Serious Health Condition Form* (Appendix P-2) completed by the health care provider treating the serious health condition to support a request for leave for a serious health condition.

(3) A supervisor must designate a period of disability leave as FMLA leave, even if the employee did not request FMLA leave, if:

(A) the leave is taken for an FMLA-qualifying reason described in this section of these Regulations;

(B) the employee is eligible for FMLA leave; and

(C) the employee has not already exhausted the FMLA leave entitlement for the leave year.]

* * *

19-11. Application for military family leave.

(a) ***Application for leave for a qualified exigency.*** [A supervisor] The FMLA Program Manager may require an employee requesting FMLA leave due to a qualifying military exigency to submit a County *Certification of Qualifying Exigency For Military Family Leave Form* (Appendix S). The certification should include the following information:

* * *

(b) **Application for military caregiver leave.**

(1) [A supervisor] The FMLA Program Manager may require an employee who requests FMLA leave to care for a servicemember to submit a County *Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave Form* (Appendix T) indicating that the servicemember has a serious illness or injury incurred in the line of duty on active duty and is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list for the serious illness or injury incurred in the line of duty on active duty.

* * *

(3) The [supervisor] FMLA Program Manager may require confirmation of the employee's family relationship with the servicemember.

(4) The [supervisor] FMLA Program Manager may deny FMLA leave if the employee fails to provide complete certification as required by these Regulations upon request.

* * *

19-15. Relation of FMLA leave to other benefits.

* * *

(c) When an employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or has expired, the employee must repay the County for the [employee's] County's share of insurance premiums for periods of unpaid leave, unless the employee does not return to work because of:

(1) continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member that would otherwise entitle the employee to leave under FMLA; or

(2) other circumstances beyond the employee's control, such as:

(A) the employee chooses to stay home with the employee's newborn child who has a serious health condition;

(B) the employee's spouse is transferred to a job location more than 75 miles from the employee's worksite; or

(C) the employee is needed to provide care for a relative or individual other than an immediate family member with a serious health condition.

* * *

Editor's note – Additional information and frequently asked questions about FMLA leave can be found in HR Topics – FMLA Leave, which is available from the Office of Human Resources.

SECTION 20. PARENTAL LEAVE

* * *

20-2. Eligibility for parental leave.

(a) A department director must allow a full-time or part-time employee to use

parental leave if the employee has completed the probationary period and has merit system status.

(b) An employee who is the parent of a newborn child or a newly adopted child is eligible for parental leave. Grandparents, aunts and uncles, and other relatives are not eligible for parental leave.

* * *

20-4. Use of parental leave.

* * *

(b) An employee may use parental leave to care for a newborn child or a newly adopted child of the employee, [or] and a spouse or domestic partner may use parental leave to attend to the child's mother or other children in the family at the time of the birth or adoption of a child.

* * *

(f) Parental leave generally commences after the birth of a child at a time when the mother and child are both doing well or immediately following the adoption of a child.

[(f)]
(g) [Except for compensatory time, a]All hours used as parental leave [may] must count against the employee's FMLA entitlement of 12 weeks in a leave year[.] unless:

(1) the employee is not eligible for FMLA leave; or

(2) the employee has already exhausted the FMLA leave entitlement for the leave year; or

(3) the employee has used compensatory time as parental leave.

[(g)]
(h) An employee who has used all available parental leave may still be entitled to use up to 12 weeks of FMLA leave in a leave year under Section 19 of these Regulations.

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SECTION 21. ADMINISTRATIVE LEAVE

21-1. Authorized uses of administrative leave. The CAO may grant administrative leave to an employee:

* * *

(k) for up to two hours to vote if the employee's work schedule on the day of an election does not allow at least 2 consecutive hours off while the polls are open; [and]

(l) to serve as an organ donor, under Section 21-4 of these Regulations[.]; and

(m) for an interview for other positions in County Government.

* * *

21-5. Limits on administrative leave for general emergency. An employee will not be eligible for administrative leave for a general emergency if an employee is AWOL on either the employee's last regular workday before or first regular workday after the general emergency, or AWOL on both days.

[21-5]
21-6. Appeal of administrative leave decision. * * *

SECTION 26. TRANSFER

* * *

26-2. CAO's Authority to Transfer an Employee. The CAO may transfer or place an employee in any vacant position for which the employee meets the minimum qualifications:

(a) in order to resolve a grievance, conflict or other problem;

(b) to promote efficient operations in the County; or

(c) under other circumstances where the CAO determines that such action is in the best interests of the County.

26-3. OHR Director's Responsibility to Transfer an Employee. The OHR Director may act on behalf of the CAO to transfer an employee under Section 26-2 above. However, a department director may appeal the OHR Director's decision to transfer or place an employee in a vacant position to the CAO for final determination.

[26-2]
26-4. Temporary transfers between public agencies. * * *

[26-3]
26-5. Transfers between County-funded agencies. * * *

[26-4]
26-6. Access to reciprocal agreements. * * *

[26-5]
26-7. Appeal of transfer. * *

SECTION 27. PROMOTION

* * *

27-2. Types of promotion.

* * *

(c) ***Noncompetitive [T]temporary promotion.***

(1) A department director:

(A) may approve a noncompetitive temporary promotion of an employee for up to 12 consecutive calendar months;

(B) must obtain the approval of the MSPB for a noncompetitive temporary promotion longer than 12 calendar months;

(C) must compensate an employee under Section 10-5(c)(2) for a noncompetitive temporary promotion; and

(D) must not give an employee who was noncompetitively temporarily promoted a priority claim or competitive advantage if the position is later filled on a competitive basis.

(2) In order to effect a noncompetitive temporary promotion, a department director must submit:

* * *

(3) In order to extend a noncompetitive temporary promotion beyond 12 months, a department director must submit a written request to the OHR Director stating the reason for the extension. If the OHR Director believes that the extension request is supported by "exigent or compelling circumstances" as defined by the MSPB, the [The] OHR Director must submit the request to the MSPB with a recommendation on the merits of the request. If the OHR Director, however, concludes that it is unlikely that the MSPB would approve the extension for the reasons given, the OHR Director may deny the extension request by the department director. The department director may appeal the OHR Director's denial to the CAO.

(d) ***Competitive temporary promotion.***

(1) Prior to making the final selection for a competitive temporary promotion, the department director must provide for full and open competition and ensure that an applicant's qualifications are evaluated under the competitive rating process specified in Section 6-5 of these Regulations.

(2) A competitive temporary promotion may extend beyond 12 consecutive calendar months without obtaining the approval of the MSPB.

* * *

SECTION 30. REDUCTION-IN-FORCE [AND FURLOUGH]

30-1. Definitions.

(a) ***Affected class:*** * * *

(b) ***Affected employee:*** * * *

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

(1) the employee is required to work on a fixed furlough day despite the furlough; or

(2) the employee is assigned to a unit or function that is scheduled to be furloughed on a fixed furlough day, but the employee is not normally scheduled to work on the fixed furlough day.]

[(d)]
(c) ***Alternative placement:*** * * *

[(e)]
(d) ***Class:*** * * *

[(f)]
(e) ***Discontinued service retirement:*** * * *

[(g)]
(f) ***Displaced employee:*** * * *

[(h)]
(g) ***Excluded employee:*** * * *

[(i) ***Fixed furlough day:*** A date specified by the CAO on which the offices or work sites of specified employees will be closed to:

(1) the specified employees;

(2) seasonal, substitute, and temporary employees; and

(3) the public.

(j) ***Furlough:*** A temporary, non-pay status for hours when an employee is normally scheduled to work but does not work for the County or receive pay from the County due to a lack of funds or work, as determined by the CAO. A furlough may be comprised of any combination of fixed, alternate, or rolling furlough days.

(k) ***Furlough period:*** The time period specified by the CAO during which affected employees must take all assigned furlough hours and lose the pay attributable to the furlough.

(l) ***Furlough plan:*** The CAO's plan for a specific furlough that states:

(1) the number of furlough hours for which pay must be taken from affected employees;

(2) the furlough period;

(3) the employee groups that will be affected by the furlough; and

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

[(m)]
(h) ***Notice of intent:*** * * *

[(n)]
(i) ***Notification:*** * * *

[(o)]
(j) ***Priority consideration:*** * * *

[(p)]
(k) ***Priority eligible list:*** * * *

[(q)]
(l) ***Qualified:*** * * *

[(r)]
(m) ***Reemployment list:*** * * *

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

[(t)]
(n) ***Seniority:*** * * *

[(u)]

(o) ***Service needs:*** * * *

[(v)]
(p) ***Severance pay:*** * * *

[(w)]
(q) ***Status characteristics:*** * * *.

30-2. Policy on RIF [and furlough].

[(a) ***Policy on RIF.***]

[(1)]
(a) The abolishment of a temporary position is not a RIF. The abolishment of a term position created for a specified period of time or term is not a RIF if the position is abolished at the end of the term. However, a term employee is treated the same as any other merit system employee subject to RIF if:

[(A)]
(1) the employee's position was not created for a specified time or term; or

[(B)]
(2) the employee's term is not completed.

[(2)]
(b) If RIF is necessary, a department director must base the transfer, demotion, or termination of an employee on one or more of the following:

[(A)]
(1) service needs;

[(B)]
(2) seniority; or

[(C)]
(3) performance.

[(3)]
(c) If a position is abolished in a department or office, only the employees in the same occupational class and department as the abolished position are subject to the RIF.

[(4)]

(d) A department director may not remove an employee with merit system status if there is:

[(A)]
(1) a temporary employee in the same class in the department;
[(B)]
(2) a probationary employee in the same class in the department.

[(5)]
(e) A department director should exhaust the following alternatives to RIF before instituting a RIF if the alternative is reasonable under the circumstances:

[(A)]
(1) effective position management;
[(B)]
(2) employee placement;
[(C)]
(3) reducing employee work hours;
[(D)]
(4) changing the status of employees from full-time to part-time or from part-time to full-time
[(E)]
(5) restructuring positions; and
[(F)]
(6) retraining incumbent employees.

[(6)]
(f) A department director must conduct a RIF in a manner that:

[(A)]
(1) reduces the negative impact on employees to the greatest extent that is reasonable under the circumstances; and
[(B)]
(2) is consistent with the County's commitment to equal employment opportunity and diversity.

[(7)]
(g) When conducting a RIF, a department director must make every effort to maintain or restore, but not to improve, the employment status of affected employees.

[(b) ***Policy on furlough.***

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

(2) A furlough is a permanent loss of an employee's work hours. A department director or supervisor must not allow an employee to make up the hours lost by working additional hours at another time.

(3) The County must ensure that the following are not adversely affected when an employee takes a furlough:

(A) the employee's accrual of annual and sick leave or the crediting of PTO;

(B) life insurance;

(C) retirement benefits; and

(D) seniority.

(4) The County must not pay an employee's regular County salary to an employee who is on disability leave on a furlough day.

(5) For the purpose of calculation of service increments, awards, salary upon promotion or demotion, or other salary amounts based on the employee's base salary, the figure representing base salary must not be reduced by the salary loss resulting from a furlough.

(6) If a supervisor requires an employee on a fixed furlough day or alternate furlough day or rolling furlough day to return to work to perform unanticipated work assignments of an emergency nature, the department must give the employee call-back pay under Section 10-13 of these Regulations. The supervisor must ensure that the employee takes alternate furlough hours to replace the hours on which the employee was to be furloughed on the furlough day.]

30-3. Pre-RIF alternatives.

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[30-4. Conducting a furlough.

(a) The CAO must develop a furlough plan for each furlough that identifies the employees who will be furloughed, the number of hours of furlough and the number of fixed furlough days, rolling furlough days, or a combination of fixed and rolling furlough days on which the employees will be furloughed.

(b) The CAO may choose to spread the salary loss due to a furlough over multiple pay periods or confine the salary loss to the same pay period in which the furlough is actually taken.

(c) The department director must notify affected employees of fixed furlough days at least 30 days before the furlough day.

(d) To ensure compliance with the furlough plan, the department director must monitor the scheduling, accrual, and reporting of furlough hours.

(e) A department director must ensure that a furlough period is pro rated for a part-time employee, a new hire, an employee who separates from County service before the end of the furlough period or a school-based employee working a 10-month schedule.

(f) The department director and the Director of the Public Information Office must notify the public in advance if work sites are closed or public services are limited because of a furlough.

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

[30-5]
<u>30-4.</u> Conducting a RIF.

* * *

[30-6]
<u>30-5.</u> Calculation of seniority in a RIF.

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[30-7]
30-6. Service needs exception.

* * *

[30-8]
30-7. Use of discontinued service retirement in a RIF.

* * *

[30-9]
30-8. Notification of termination resulting from RIF.

* * *

[30-10]
30-9. Priority consideration resulting from RIF; reinstatement of displaced employees.

* * *

(b) ***Eligibility for priority consideration.***

* * *

(4) The OHR Director must determine if an affected employee is qualified for the position upon reviewing the individual's experience, education, and training.

* * *

(g) ***Order of priority in filling vacant positions.***

* * *

(6) The OHR Director must ensure that an affected employee who is placed on a priority eligible list receives priority consideration in the order described in Section [6-9] 6-10 of these Regulations.

* * *

[30-11]
30-10. Salary considerations.

* * *

[30-12]
30-11. Effect of RIF on benefits.

* * *

[30-13]
30-12. Effect of RIF on probationary period.

* * *

[30-14]
30-13. Noncompetitive reappointment or promotion of employees affected by RIF.

* * *

[30-15]
30-14. Appeal of RIF [or furlough]. [(a)] An employee with merit system status who is demoted or whose employment is terminated due to RIF may appeal under Section 34 or 35 of these Regulations.

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

SECTION 31. FURLOUGH

31-1. Definitions.

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

(1) the employee is required to work on a fixed furlough day despite the furlough; or

(2) the employee is assigned to a unit or function that is scheduled to be furloughed on a fixed furlough day, but the employee is not normally scheduled to work on the fixed furlough day.

(b) ***Fixed furlough day:*** A date specified by the CAO on which the offices or work sites of specified employees will be closed to:

(1) the specified employees;

(2) seasonal, substitute, and temporary employees; and

(3) the public.

(c) ***Furlough:*** A temporary, non-pay status for hours when an employee is normally scheduled to work but does not work for the County or receive pay from the County due to a lack of funds or work, as determined by the CAO. A furlough may be comprised of any combination of fixed, alternate, or rolling furlough days.

(d) ***Furlough period:*** The time period specified by the CAO during which affected employees must take all assigned furlough hours and lose the pay attributable to the furlough.

(e) ***Furlough plan:*** The CAO's plan for a specific furlough that states:

(1) the number of furlough hours for which pay must be taken from affected employees;

(2) the furlough period;

(3) the employee groups that will be affected by the furlough; and

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

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

31-2. Policy on furlough.

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

(b) A furlough is a permanent loss of an employee's work hours. A department director or supervisor must not allow an employee to make up the hours lost by working additional hours at another time.

(c) The County must ensure that the following are not adversely affected when an employee takes a furlough:

(1) the employee's accrual of annual and sick leave or the crediting of PTO;

(2) life insurance;

(3) retirement benefits; and

(4) seniority.

(d) The County must not pay an employee's regular County salary to an employee who is on disability leave on a furlough day.

(e) For the purpose of calculation of service increments, awards, salary upon promotion or demotion, or other salary amounts based on the employee's base salary, the figure representing base salary must not be reduced by the salary loss resulting from a furlough.

(f) If a supervisor requires an employee on a fixed furlough day or alternate furlough day or rolling furlough day to return to work to perform unanticipated work assignments of an emergency nature, the department must give the employee call-back pay under Section 10-13 of these Regulations. The supervisor must ensure that the employee takes alternate furlough hours to replace the hours on which the employee was to be furloughed on the furlough day.

31-3. Conducting a furlough.

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

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

(b) The CAO may choose to spread the salary loss due to a furlough over multiple pay periods or confine the salary loss to the same pay period in which the furlough is actually taken.

(c) The department director must notify affected employees of fixed furlough days at least 30 days before the furlough day.

(d) To ensure compliance with the furlough plan, the department director must monitor the scheduling, accrual, and reporting of furlough hours.

(e) A department director must ensure that a furlough period is pro rated for a part-time employee, a new hire, an employee who separates from County service before the end of the furlough period or a school-based employee working a 10-month schedule.

(f) The department director and the Director of the Public Information Office must notify the public in advance if work sites are closed or public services are limited because of a furlough.

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

31-4. Appeal of furlough. An employee with merit system status who is furloughed may grieve under Section 34 of these Regulations if the County fails to follow the procedures in this Section. A grievance cannot challenge the CAO's determination as to a lack of work or funds necessitating a furlough.

[SECTION 31. DEMOTION

31-1. Voluntary demotion.

(a) A department director may demote an employee who requests a demotion or consents in writing to a demotion.

(b) An employee may request or accept a voluntary demotion:

(1) to avoid termination in a RIF;

(2) to remain employed if the employee is unable to perform the essential functions of the employee's job because of a physical or mental impairment; or

(3) for other personal reasons.

(c) A voluntary demotion must not adversely reflect on the employee's work record or affect the employee's opportunity for promotion to a position for which the employee is qualified.

31-2. Involuntary demotion.

(a) A department director may involuntarily demote an employee if:

(1) the employee is not able to perform the duties assigned to the employee's position because of a physical or mental incapacity;

(2) the employee receives a less than satisfactory performance evaluation following a written warning, counseling, and at least 3 months opportunity to improve;

(3) the employee is not able to perform the duties assigned to the employee's position for a reason unrelated to a physical or mental incapacity, such as failing to maintain a license or certification that is required for the employee's position; or

(4) the demotion is for disciplinary reasons under Section 33 of these Regulations.

(b) A department director must not demote an employee with a physical or mental disability under Section 31-3(a)(1) above unless efforts at reasonable accommodation within the employee's position as described in Section 8 of these Regulations are unsuccessful and the employee is not transferred to another position.

(c) The director must give a written notice of the demotion to the employee at least 5 working days prior to the effective date of the demotion and must state in the notice:

(1) the reason for the demotion;

(2) the effective date; and

(3) if the employee may appeal the demotion and the time limit for filing an appeal.

31-3. Salary after a demotion. A department director must compensate an employee after a demotion as described in Section 10-5(d).

31-4. Appeal of involuntary demotion.

(a) An employee with merit system status may appeal an involuntary demotion and the amount of the salary reduction associated with the demotion by filing a grievance under Section 34 of these Regulations or by filing a direct appeal with the MSPB under Section 35.

(b) A temporary or probationary employee may appeal a disciplinary demotion and the salary reduction by filing a grievance under Section 34.]

SECTION 32. EMPLOYEE DRUG AND ALCOHOL USE AND DRUG AND ALCOHOL TESTING

* * *

32-2. Definitions.

* * *

(t) ***Designated Employer Representative:*** An individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the County.

[t]
(u) ***Dilute specimen:*** * * *

[u]
(v) ***Disabling damage:*** * * *

[v]
(w) ***Driver:*** * * *

[w]
(x) ***Employee Assistance Program or EAP:*** * * *

(y) ***Employee Medical Examiner or EME:*** A licensed physician who performs the following functions on behalf of the County:

(1) evaluates the functional abilities and limitations of an applicant or employee in relation to the individual's ability to perform essential job functions;

(2) acts as the medical review officer under drug and alcohol testing programs; and

(3) supervises clinical and administrative functions of the County's occupational medical programs and provides advice on medical issues.

[x]
(z) ***Evidential Breath Testing Device or EBT:*** * * *

[y]
(aa) ***High Potential Risk or HPR position:*** A drug/alcohol designation that the County assigns to a position if:

(1) the position is not a Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position; and

[z]
(bb) ***Illegal drug:*** * * *

[aa]
(cc) ***Initial drug test:*** * * *

[bb]
(dd) ***Initial validity test:*** * * *

[cc]

(ee) ***Invalid result:*** * * *

[dd]

(ff) ***Laboratory:*** * * *

[ee]

(gg) ***Low Potential Risk or LPR position:*** * * *

[ff]

(hh) ***Medical Review Officer or MRO:*** * * *

[gg]

(ii) ***Non-negative specimen:*** * * *

[hh]

(jj) ***Over-the-counter or OTC drug:*** * * *

[ii]

(kk) ***Performing a safety-sensitive function:*** * * *

[jj]

(ll) ***Public Safety position:*** * * *

[kk]

(mm) **FMCSA** ***Safety-Sensitive position:*** A drug/alcohol designation that the County assigns to a position that:

[ll]

(nn) **FTA** ***Safety-Sensitive Transit position:*** A drug/alcohol designation that the County assigns to a position that: * * *

[mm]

(oo) ***Screening Test Technician:*** * * *

[nn]

(pp) ***Split Specimen:*** * * *

[oo]

(qq) ***Split Specimen Test:*** * * *

[pp]
(rr) ***Substance Abuse Professional:*** * * *

[qq]
(ss) ***Substituted specimen:*** * * *

[rr]
(tt) ***Under the influence or impaired:*** * * *

[ss]
(uu) ***Verified test:*** * * *

32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.

(a) ***Drug and alcohol prohibitions that apply to job applicants and County employees.***

(1) An applicant for an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position must not:

* * *

(3) An employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position must not:

* * *

(d) ***Employee responsibilities when using a prescription or OTC drug while on duty.***

(1) Before taking a prescription or OTC drug, an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position should:

* * *

(2) An employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position must report to the employee's supervisor if the employee took before duty, or intends to take while on duty, a

prescription or OTC drug that may affect the employee's performance. This must be done as soon as possible after reporting for duty or taking the drug.

(3) A supervisor of an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive Transit position must:

* * *

(e) ***Allowing employees to consume alcohol at County events or functions.***

* * *

(4) Even if employees in other positions are allowed to consume alcohol at a County event, an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position must not consume alcohol if the employee:

* * *

(f) ***Drug/alcohol designations of County positions.***

(1) The OHR Director must give each County position one of the following drug/alcohol designations:

* * *

(D) FMCSA Safety-Sensitive; or

(E) FTA Safety-Sensitive [Transit].

* * *

(3) The OHR Director must designate a position as HPR if the position is not a Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position and involves:

* * *

(6) A position that is subject to drug and alcohol testing under the regulations of the U.S. DOT and FMCSA is [a] an FMCSA Safety-Sensitive position. Section 32-4 of these Regulations lists Safety-Sensitive positions.

(7) A position that is subject to drug and alcohol testing under the regulations of the U.S. DOT and FTA is [a] an FTA Safety-Sensitive [Transit] position. Section 32-5 of these Regulations lists FTA Safety-Sensitive [Transit] positions.

(8) A position may meet the definition of more than one designation. In such a case, the OHR Director must designate the position as follows:

(A) if a position meets the definitions of HPR and Safety-Sensitive, it must be designated as Safety-Sensitive;

(B) if a position meets the definitions of HPR and FTA Safety-Sensitive [Transit], it must be designated as FTA Safety-Sensitive [Transit]; and

(C) if the position meets the definitions of Public Safety and FMCSA Safety-Sensitive, it must be designated as FMCSA Safety-Sensitive.

(g) ***Required check on the drug and alcohol testing records of applicants for FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] positions.***

* * *

(3) If the applicant or employee refuses to provide written consent, the County must not employ the applicant in, or transfer the employee to, [a] an FMCSA Safety-Sensitive or FTA Safety-Sensitive [Transit] position.

* * *

(8) The County must also ask the applicant or employee if he or she has tested positive, or refused to test, on any pre-employment drug or [pre-duty] pre-assignment alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by U.S. DOT drug and alcohol testing rules during the past 2 years. If the applicant or employee admits that he or she had a positive test or a refusal to test, the County must not use the applicant or employee to perform safety-sensitive functions until and unless the applicant or employee documents successful completion of the return-to-duty process as required under U.S. DOT regulations.

* * *

(h) ***Drug and alcohol testing of job applicants and employees.***

* * *

(3) ***Pre-employment drug testing.***

(A) Under Federal regulations, the County must conduct drug tests on all applicants for FMCSA Safety-Sensitive or FTA Safety-Sensitive [Transit] positions before employment or before the employees first perform safety-sensitive duties.

* * *

(4) ***[Pre-duty] Pre-Assignment alcohol testing.***

(A) Federal regulations permit employers to test employees covered by Federal regulations for alcohol immediately before the employees perform safety-sensitive duties for the first time, provided that the employer performs [pre-duty] pre-assignment testing on all covered employees.

(B) The County conducts [pre-duty] pre-assignment alcohol testing on all employees newly hired or assigned to FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] positions.

(5) ***Probable cause or reasonable suspicion drug and alcohol testing.***

* * *

(B) ***For employees in FMCSA Safety-Sensitive positions.*** When the County conducts reasonable suspicion drug and alcohol testing of employees in FMCSA Safety-Sensitive positions under the authority of DOT Regulations, the County must conduct the testing under Section 32-4 of these Regulations.

(C) ***For employees in FTA Safety-Sensitive [Transit] positions.*** When the County conducts reasonable suspicion drug and alcohol testing of

employees in FTA Safety-Sensitive [Transit] positions under the authority of DOT Regulations, the County must conduct the testing under Section 32-5 of these Regulations.

* * *

(F) ***Requirement for supervisors to record observations.***

* * *

(ii) The supervisor of [a] an FMCSA Safety-Sensitive or FTA Safety-Sensitive [Transit] employee must comply with record-keeping requirements in Sections 32-4 and 32-5, as appropriate.

* * *

(6) ***Post-accident testing.***

(A) The County must conduct post-accident drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) and 32-5 (FTA Safety-Sensitive [Transit]).

* * *

(7) ***Random drug and alcohol testing.***

* * *

(B) The County conducts random drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) and 32-5 (FTA Safety-Sensitive [Transit]).

(8) ***Return-to-duty drug and alcohol testing.***

(A) ***Return-to-duty testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] positions.*** The County must conduct return-to-duty drug and alcohol testing of employees in FMCSA

Safety-Sensitive [and Safety-Sensitive Transit] positions under the procedures in Section[s] 32-4 (FMCSA Safety-Sensitive) [and 32-5 (Safety-Sensitive Transit)].

* * *

(9) ***Follow-up drug and alcohol testing.***

(A) ***Follow-up testing of employees in FMCSA Safety-Sensitive [and Safety-Sensitive Transit] positions.*** The County must conduct follow-up drug and alcohol testing of employees in FMCSA Safety-Sensitive [and Safety-Sensitive Transit] positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) [and 32-5 (Safety-Sensitive Transit)].

* * *

(10) ***Guidance on drug and alcohol testing.*** For further guidance on drug and alcohol testing, supervisors should contact [OMS or OHR] OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email OMSTeam@montgomerycountymd.gov.

* * *

(12) ***Collection of specimens for drug testing.***

(A) OMS or a collection site/agent authorized by OMS must ensure that specimen collection is conducted:

* * *

(iv) under direct observation for return-to-duty and follow-up testing of FMCSA Safety-Sensitive [and Safety-Sensitive Transit employees]; and

* * *

(C) OMS must ensure that specimen collection for required testing of FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] employees or job applicants under U.S. DOT regulations is conducted as required under those regulations.

* * *

(14) ***Substances tested.***

(A) For drug testing conducted under U.S. DOT regulations, the laboratory must test specimens obtained from FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] applicants and employees for the substances indicated in Sections 32-4 and 32-5.

* * *

(C) If information available to the department or OMS indicates that it is appropriate, OMS may ask the laboratory to test a specimen for any controlled dangerous substance included on the schedules in Section 5-101 of the Criminal Law Article of the Maryland Annotated Code. This does not apply to testing of FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] employees that is conducted under U. S. DOT regulations.

* * *

(15) ***Drug test results.***

* * *

(F) OMS must report to the [department director] Designated Employer Representative (DER) and to the applicant or employee if the test results are verified positive, or indicate a refusal to test because of adulteration or substitution. [For post-accident testing of employees,] OMS must report both negative and positive test results to the DER for post-accident, reasonable suspicion, return to duty, and follow-up testing of employees.

(16) ***Retesting of employee after a canceled drug test.***

* * *

(C) If a drug test for an employee is canceled, the County must drug test the employee again and receive a negative result before the employee is:

(i) transferred or reassigned to an HRP, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position; or

(ii) allowed to return to HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] duties, because of the possible use of illegal drugs, prohibited alcohol use, or refusal to take a required drug or alcohol test.

* * *

(18) ***Refusal to take a drug or alcohol test.***

(A) Any of the following on the part of an employee is considered a refusal to submit to drug or alcohol testing and is considered to be the same as a verified positive drug test result or an alcohol test with an alcohol concentration of 0.02 or higher:

* * *

(iii) failing to provide a urine specimen for a drug test or a breath [or saliva] sample for an alcohol test, but this does not apply to an applicant who leaves the testing site before the testing process begins for a pre-employment drug test;

* * *

(v) failing to provide enough urine for a drug test or adequate breath [or saliva] for an alcohol test when directed if it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure;

* * *

(C) If an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive [Transit] position refuses to be tested for drugs or alcohol as required under these Regulations, the department director:

* * *

(19) **Consequences of a verified positive drug test result or an alcohol test result of 0.02 or higher.**

* * *

(C) OMS must refer [a] an FMCSA Safety-Sensitive or FTA Safety-Sensitive [Transit] employee who has a verified positive drug test result or an alcohol test result of 0.04 or higher to a Substance Abuse Professional for evaluation. OMS must refer a County employee in any other type of position who has a verified positive drug test result or an alcohol test result of 0.02 or higher to a healthcare provider for evaluation and recommended treatment. The department director may take adverse action against the employee under County and department regulations.

(D) A supervisor of [a] an FMCSA Safety-Sensitive employee who has a confirmed alcohol test result of at least 0.02 but less than 0.04 must not allow the employee to operate a vehicle or heavy or dangerous machinery or equipment for at least 24 hours after the test. A supervisor of [a] an FTA Safety-Sensitive [Transit] employee who has a confirmed alcohol test result of at least 0.02 but less than 0.04 must not allow the employee to perform safety-sensitive functions for at least 8 hours after the test, unless the employee is tested again with a result of less than 0.02.

* * *

(G) A department director [may] must take adverse action under County and department regulations against [a] an FMCSA Safety-Sensitive [or Safety-Sensitive Transit] employee who has an alcohol test result of 0.04 or higher, or who has a verified positive drug test result.

(H) A department director must not allow an employee in an HPR, Public Safety, or FMCSA Safety-Sensitive [or Safety-Sensitive Transit] position who has a verified positive drug test result or an alcohol test result of 0.02 or higher to perform the duties of the employee's position until the employee has been evaluated by a Substance Abuse Professional for employees covered by U.S. DOT regulations or by a medical provider for other employees and:

* * *

(20) ***Rights of job applicants and employees subject to drug or alcohol testing.***

* * *

(C) (i) If the MRO has verified a drug test result as positive or as a refusal to test because of adulteration or substitution, [OMS] the MRO must notify the applicant or employee of the applicant's or employee's right to have a test conducted on the split specimen, as appropriate, by a different laboratory at the employee's expense.

(ii) [OMS] The MRO must tell [the] a DOT covered applicant or employee how to request the split specimen test and give him or her [the applicant or employee, if covered by U.S. DOT regulations,] at least 72 hours to request the test. Applicants or employees not covered by U.S. DOT regulations are given 10 days to request the test.

* * *

(i) ***Required referral, evaluation, and treatment.***

* * *

(2) ***Referral, evaluation, and treatment for employees covered by U.S. DOT regulations.***

(A) If an employee has a verified positive drug test result, engaged in prohibited alcohol use, or refused to take a drug or alcohol test, and if

the employee hasn't been dismissed or terminated as a result of such conduct, the employee's supervisor must:

* * *

(iii) ensure that, before the employee returns to FMCSA Safety-Sensitive[, or Safety-Sensitive Transit] duties, the employee has complied with the appropriate referral and evaluation provisions and takes, as appropriate:

* * *

(k) ***Employees Who Refer Themselves for Treatment.***

* * *

(2) If an employee tells a supervisor that he or she needs help to resolve a problem associated with prohibited drug use or alcohol misuse:

(A) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:

* * *

(vi) after a confirmed positive drug test result or a confirmed alcohol test result with an alcohol concentration of 0.02 or greater, or in the case of [a] an FMCSA Safety-Sensitive or FTA Safety-Sensitive [Transit] employee, an alcohol concentration of 0.04 or greater;

* * *

(l) ***Education and training programs.***

* * *

(3) The County must ensure that all new and existing employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive [Transit] positions receive at least 60 minutes of training on the effects and consequences of prohibited drug use

[and alcohol misuse] on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use or alcohol misuse.

(4) The County must ensure that supervisors of HPR, Public Safety, FMCSA Safety-Sensitive, and FTA Safety-Sensitive [Transit] employees who may make reasonable suspicion determinations receive at least:

* * *

(m) ***Maintenance of Records.***

(1) Drug and alcohol test results will be maintained by the Occupational Medical Section of OHR [as part of an applicant or employee's medical records]. They will be treated as confidential medical information and will be disclosed only to the following individuals:

* * *

(n) ***For further information.*** For further information about drug and alcohol testing, an employee may contact the staff of:

(1) [OMS; and] OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email OMSTeam@montgomerycountymd.gov.

[(2) Labor/Employee Relations, OHR.]

32-4. Prevention of Prohibited Drug Use and Alcohol Misuse by FMCSA Safety-Sensitive Employees under Federal Motor Carrier Safety Administration Regulations.

* * *

(b) ***Safety-Sensitive positions.*** The following County positions are Safety-Sensitive positions:

* * *

(6) any other position that:

* * *

(C) is not [a] an FTA Safety-Sensitive [Transit] position.

* * *

(g) ***Types of drug and alcohol testing.*** Under FMCSA regulations, a Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. An applicant for such a position must submit to pre-employment drug testing as described in (1) below.

(1) ***Pre-employment and [pre-duty] pre-assignment testing.***

* * *

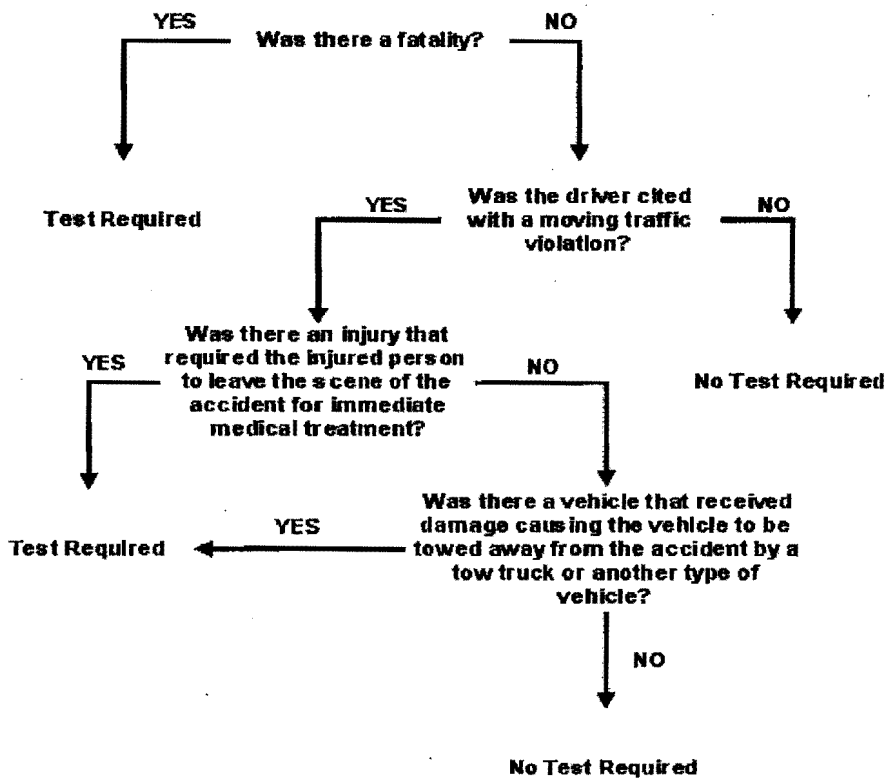
(C) An employee newly hired or assigned to a Safety-Sensitive position must take a [pre-duty] pre-assignment alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time.

* * *

(2) ***Post-accident testing.***

* * *

[WHEN POST-ACCIDENT TESTING IS REQUIRED		
If the accident involved	**Was a citation issued to the driver**	**Drug and alcohol testing of driver is required**
Human fatality	Yes	Yes
	No	Yes
Bodily injury with immediate medical treatment away from scene of accident	Yes	Yes
	No	No
Disabling injury to motor vehicle involved in accident requiring vehicle to be towed away	Yes	Yes
	No	No]



* * *

32-5. Prevention of Prohibited Drug Use and Alcohol Misuse by FTA Safety-Sensitive [Transit] Employees Under Federal Transit Administration Regulations

(a) ***Application of section.*** This Section applies to any employee assigned to [a] an FTA Safety-Sensitive [Transit] position on a full-time, part-time, temporary, or intermittent basis.

(b) ***Safety-sensitive functions.*** An employee of the Departments of General Services or Transportation who performs any of the following safety-sensitive functions at any time is in [a] an FTA Safety-Sensitive [Transit] position:

* * *

(c) ***FTA Safety-Sensitive [Transit] positions.*** The following are FTA Safety-Sensitive [Transit] positions if the employee must have a CDL or operates, dispatches, controls, or maintains Montgomery County transit vehicles and operations:

* * *

(d) ***Supervisor as FTA Safety-Sensitive [Transit] employee.*** A supervisor is [a] an FTA Safety-Sensitive [Transit] employee only if the supervisor actually performs [S]safety sensitive functions.

(e) ***Drug and alcohol prohibitions.***

(1) ***Prohibitions for FTA Safety-Sensitive [Transit] employees.*** In addition to the prohibitions of Section 32-3, [a] an FTA Safety-Sensitive [Transit] employee must not:

* * *

(H) refuse to submit to any of the following types of drug or alcohol testing, if required under FTA regulations:

(i) [pre-duty] pre-assignment alcohol testing;

* * *

(2) ***Prohibitions for supervisors.*** A supervisor must not permit [a] an FTA Safety-Sensitive [Transit] employee to perform or continue to perform safety-sensitive functions if the supervisor has actual knowledge that the employee:

* * *

(f) ***Drug and alcohol testing.***

* * *

(5) ***Times when an employee is subject to testing.*** The County may require [a] an FTA Safety-Sensitive [Transit] employee to submit to testing required under FTA regulations at the following times:

* * *

(g) ***Types of drug and alcohol testing.*** Under FTA regulations, [a] an FTA Safety-Sensitive [Transit] employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. A non-employee applicant for such a position must submit to pre-employment drug testing as described in (1)(A) below.

(1) ***Pre-employment and [pre-duty] pre-assignment drug testing.***

(A) An applicant for [a] an FTA Safety-Sensitive [Transit] position must produce a negative drug test result before employment.

(B) An employee transferred or temporarily assigned to [a] an FTA Safety-Sensitive [Transit] position must produce a negative drug test result before performing safety-sensitive functions.

(C) An employee newly hired or assigned to [a] an FTA Safety-Sensitive [Transit] position must take a [pre-duty] pre-assignment alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time.

* * *

(3) ***Post-accident testing.***

* * *

(F) The County may consider it a refusal to submit to testing if [a] an FTA Safety-Sensitive [Transit] employee who is subject to post-accident testing:

* * *

(4) ***Random testing.***

(A) The County must randomly select enough FTA Safety-Sensitive [Transit] employees for drug testing and for alcohol testing during each calendar year to equal an annual rate for each type of testing that is not less than the minimum annual percentage rates for random drug testing and for random alcohol testing determined by the FTA.

* * *

(C) Every employee in [a] an FTA Safety-Sensitive [Transit] position must be in a pool of employees subject to random drug and alcohol testing. Each employee must have an equal chance of selection for testing and must remain in the pool subject to testing even after being tested.

* * *

(G) If an employee or applicant for [a] an FTA Safety-Sensitive [Transit] position has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason and has not been in the random selection pool during that time, the County must ensure that the employee or applicant takes a pre-employment drug test with a verified negative result before allowing the employee or applicant to perform safety-sensitive functions.

[(5) ***Return-to-duty testing.***

(A) ***After prohibited drug use or refusal to take a drug test.*** If the County does not dismiss or terminate an employee who refuses to submit to a drug test or has a verified positive drug test result, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:

(i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation and refers the employee for appropriate education and treatment;

(ii) a Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations; the employee takes a return-to-duty alcohol test with a verified negative result; and

(iii) the employee takes a return-to-duty drug test under direct observation with a verified negative result; and

(iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(B) ***After prohibited alcohol use or refusal to take an alcohol test.*** If the County does not dismiss or terminate an employee who engages in prohibited alcohol use or refuses to submit to a required alcohol test, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:

(i) The County refers the employee to a Substance Abuse Professional who conducts an evaluation and refers the employee for appropriate education and treatment;

(ii) the Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;

(iii) the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; and

(iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty drug test under direct observation with a verified negative result.]

[(6) ***Follow-up testing.*** The County must ensure that an employee who returns to duty after a required evaluation by a Substance Abuse Professional under Section 32-5(j)(2) is subject to unannounced follow-up drug testing, alcohol testing, or both, as follows:

(A) the employee must take at least 6 unannounced follow-up tests during the first 12 months after the employee returns to duty and is subject to follow-up testing for a period of one to 5 years;

(B) the Substance Abuse Professional must determine, based on the Substance Abuse Professional's assessment of the employee's unique situation and recovery progress, the frequency and duration of follow-up testing beyond the minimums that will deter or detect a relapse;

(C) the County must conduct the collection process for return-to-duty drug testing under direct observation; and

(D) follow-up testing, performed under direct observation, is in addition to random, post-accident, reasonable suspicion, and return-to-duty testing.]

(h) ***Retesting of employees; collecting a new specimen after a dilute test result.***

* * *

(2) ***Retesting of employee after a canceled drug test.***

* * *

(C) If an employee's drug test is canceled, the County must require the employee to take another drug test with a verified negative result before the employee is:

(i) transferred or reassigned to [a] <u>an</u> <u>FTA</u> Safety-Sensitive [Transit] position; or

* * *

(i) ***Consequences for an employee of prohibited drug use, alcohol misuse, or refusal to take a drug or alcohol test.***

(1) ***Consequences under FTA regulations.*** Under FTA regulations, the following are the required consequences for an employee who has a verified positive drug test result, violates the alcohol misuse prohibitions, or who refuses to be tested:

* * *

[(C) if the employee is not terminated, return-to-duty testing and follow-up testing as directed by the Substance Abuse Professional.]

(2) ***Consequences under County authority.***

(A) Under County authority not derived from the FTA regulations, a [department director may take disciplinary action, up to and including dismissal, against an employee who uses prohibited drugs, misuses alcohol, or refuses to take a required drug or alcohol test. A] department director must dismiss [a] an FTA Safety-Sensitive [Transit] employee with merit system status or terminate [a] an FTA Safety-Sensitive [Transit] probationary employee who:

* * *

(B) [Even if the department director proposes to dismiss or terminate an employee who uses prohibited drugs, misuses alcohol, or refuses to take a required drug or alcohol test, the] FTA regulations require the County to refer the dismissed employee to a Substance Abuse Professional for evaluation and treatment.

(C) If [a] an FTA Safety-Sensitive [Transit] employee tells a supervisor that he or she needs help to resolve a problem associated with prohibited drug use or alcohol misuse:

* * *

(ii) the supervisor must refer the employee to a Substance Abuse Professional for evaluation, treatment, return-to-duty testing, and follow-up testing. These tests will be conducted under County authority and not under direct observation.

* * *

SECTION 33. DISCIPLINARY ACTIONS

* * *

33-5. Causes for disciplinary action. The following, while not all-inclusive, may be cause for a disciplinary action by a department director against an employee who:

* * *

(c) violates [Administrative Procedure No. 6-1, "Use of the County-Provided Internet, Intranet, and Electronic Mail Services" or any other] <u>any</u> established policy or procedure;

* * *

(z) fails to cooperate or provide information when questioned as a witness during an investigation; [or]

(aa) fails to cooperate or provide information when the employee is the subject of an investigation, unless the employee invokes the Fifth Amendment right against self-incrimination or refuses to give information that the employee is ethically or legally prohibited from revealing, such as attorney-client privileged material or mental health records[.]<u>; or</u>

<u>(bb) violates the Health Insurance Portability and Accountability Act of 1996 (HIPAA).</u>

* * *

SECTION 34. GRIEVANCES

* * *

34-9. Grievance procedure.

* * *

(d) ***Burden of proof.***

(1) The County has the burden of proof in a grievance on:

* * *

(F) an involuntary demotion under Section [31] <u>36</u>; and

* * *

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	16-13AM
ORIGINATING DEPARTMENT	**EFFECTIVE DATE**
Office of Human Resources	

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

35-1. Definitions.

* * *

(b) ***Appellant:*** The County employee, applicant for employment, <u>or</u> volunteer firefighter or rescuer [, or Local Fire and Rescue Department employee] who files an appeal with the MSPB.

* * *

35-2. Right of appeal to MSPB.

(a) Except as provided in Section 29-7 of these Regulations, an employee with merit system status [or a Local Fire and Rescue Department employee] has the right of appeal and a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal, or involuntary resignation and may file an appeal directly with the MSPB.

(b) An employee with merit system status [or a Local Fire and Rescue Department Employee] may file an appeal with the MSPB over other matters after receiving an adverse final decision on a grievance from the CAO. After the development of a written record, the MSPB must review the appeal. The MSPB may grant a hearing or refer the appeal to a hearing officer if the MSPB believes that the record is incomplete or inconsistent and requires oral testimony to clarify the issues. If the MSPB does not grant a hearing, the MSPB must render a decision on the appeal based on the written record.

* * *

35-4. Appeal filing requirements.

(a) An [appeal is a simple written statement that the appellant wants the MSPB to review the action.] <u>employee or applicant must file an appeal with the MSPB in writing, providing the following information:</u>

[(b) After the MSPB acknowledges receipt of intent to appeal an action, the appellant must be given 10 working days to submit the following information in writing:]

(1) appellant's name, signature and date;

(2) home address, [and] telephone number, and email address;

(3) title of position;

(4) department, agency, or office, if applicable;

(5) concise description of the action or decision being appealed;

(6) reason why the appellant disagrees with the action or decision; and

(7) relief requested, subject to later modification by the appellant.

(b) Alternatively, an employee or applicant may complete the MSPB Appeal Form (Appendix V) and provide the information requested on the Form.

(c) An employee or applicant may instead choose to file an appeal electronically by completing the MSPB Appeal Form found on the MSPB County website.

(d) Depending on the nature of the appeal, an employee or applicant must include the following documentation with the appeal:

(1) If the employee is contesting a disciplinary action, a copy of the Notice of Disciplinary Action must be provided to the Board;

(2) If the employee is contesting a decision by the Chief Administrative Officer (CAO), a copy of the CAO's decision must be provided to the MSPB; or

(3) If the employee or applicant is contesting a nonselection/nonpromotion decision, a copy of the notification of nonselection/nonpromotion must be provided.

* * *

35-7. Dismissal of an appeal.

(a) The MSPB may dismiss an appeal if the appellant did not submit the appeal within the time limits specified in Section 35-3.

(b) The MSPB may dismiss an appeal if the appellant fails to prosecute the appeal or comply with established appeal procedures. The MSPB must give the County and the appellant prior notice of its intent to dismiss for lack of prosecution or compliance with an MSPB rule or order.

(c) The MSPB must dismiss an appeal if it determines it lacks jurisdiction.

(d) The MSPB may dismiss an appeal if the appeal becomes moot.

(e) The MSPB may dismiss an appeal based on the appellant's failure to exhaust administrative remedies.

(f) The MSPB may dismiss an appeal for any other reason in compliance with applicable laws, rules and regulations.

35-8. Notification, response and submission of record in appeal.

* * *

(b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and Local Fire and Rescue Department in writing that a volunteer firefighter or rescuer [or one of the Local Fire and Rescue Department's employees] filed an appeal and provide the County Attorney, the OHR Director and the head of the Local Fire and Rescue Department with a copy of the appeal.

* * *

(d) The OHR Director and County Attorney must respond to an appeal filed by a County merit system employee within [15 working] 30 calendar days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(e) The OHR Director and County Attorney must respond to an appeal filed by a volunteer firefighter or rescuer challenging an action taken by the Fire Chief within [15 working] 30 calendar days and forward a copy of the action or decision appealed

and all relevant reports, papers, and documents to the MSPB. In all other appeals filed by a volunteer firefighter or rescuer, the Local Fire and Rescue Department must respond within [15 working] 30 calendar days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

[(f) The OHR Director and County Attorney must respond to an appeal filed by a Local Fire and Rescue Department employee of an adverse final decision on a grievance from the CAO if the grievance:

(1) disputed or challenged an action or decision of the OHR Director;

(2) was based on an action taken or a failure to act by OHR within OHR's exclusive control; and

(3) was not based on an action taken or a failure to act by the Local Fire and Rescue Department.

The OHR Director and County Attorney must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB.]

[(g) In all other appeals filed by a Local Fire and Rescue Department employee of an adverse final decision on a grievance from the CAO or from a demotion, suspension, termination, dismissal, or involuntary resignation, the Local Fire and Rescue Department must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.]

* * *

35-10. Appellant's right to review; right to hearing.

* * *

(c) The appealing party, the County Attorney, and the OHR Director must be served with a written notice of the time, date, and place of the [pre-hearing] prehearing conference.

* * *

(f) The MSPB or hearing officer may:

(1) administer oaths;

(2) issue subpoenas for witnesses and documents enforceable by injunction by the party requesting the subpoena(s) in a court of competent jurisdiction;

* * *

35-11. Prehearing procedure in appeal; motions; requests for reconsideration of preliminary matters; conduct of hearing; continuances.

(a) ***Prehearing procedure in appeal.***

* * *

(3) Requests, after stated deadlines, to call witnesses or to use documentation not contained in the [pre-hearing] prehearing submission may be granted only on good cause shown.

(4) ***Motions.*** Any motion to the MSPB seeking a determination of a preliminary matter including, but not limited to, motions to compel discovery, motions to exclude evidence (motions in limine), and motions to quash subpoenas, must be in writing. The opposing party has [5] 10 calendar days from the date of the motion to respond to the motion before the Board rules on the motion.

* * *

35-12. Testimony of witnesses at hearing; interrogatories and depositions.

* * *

(b) ***Interrogatories and depositions.*** The MSPB or hearing officer may accept a statement of a witness taken by written interrogatory or a deposition made under oath. This does not preclude a party from taking a deposition or interrogatory of a witness prior to the hearing for impeachment or discovery purposes as authorized by

the Montgomery County Code, Chapter 2A, Administrative Procedures Act, Section 2A-7(b). A party must file a true copy of an interrogatory, answer, or deposition with the MSPB or hearing officer.

* * *

35-15. MSPB may enforce settlement agreements.

(a) If a settlement agreement is before the MSPB in connection with an appeal, the MSPB may interpret and enforce the agreement.

(b) If the parties settle a case while in proceedings before the MSPB, the parties may agree to enter the settlement agreement into the record. If requested to enter the agreement into the record, the MSPB will retain jurisdiction to enforce the terms of the agreement.

* * *

35-16. MSPB decisions.

(a) The MSPB may decide an appeal in any manner deemed necessary and appropriate, under County Code Section 33-14(c), *Hearing Authority of MSPB*. The MSPB may order appropriate relief, which includes but is not limited to the following:

(1) retroactive appointment, promotion or reclassification with or without back pay;

* * *

(b) The MSPB must:

* * *

(3) send a copy of each decision to:

(A) the appellant or appellant's counsel of record;

(B) the CAO;

(C) the County Attorney;

(D) the OHR Director; [and]

(E) the department director[.] ; and/or

(F) the Fire Chief and the local fire and rescue department in a case where the appellant is a volunteer firefighter and rescuer.

* * *

35-17. Request for rehearing or reconsideration of MSPB final decisions.

* * *

(c) A party's timely request for reconsideration stays the time for any further judicial appeal until the MSPB makes a decision on the request.[.] A request for rehearing or reconsideration does not stay the operation of any order in the MSPB's final decision unless the MSPB so states. The MSPB must issue a written decision on the request. If the MSPB does not grant a reconsideration request within 10 calendar days after it receives the request, the request is deemed denied.

* * *

SECTION 36. DEMOTION

36-1. Voluntary demotion.

(a) A department director may demote an employee who requests a demotion or consents in writing to a demotion.

(b) An employee may request or accept a voluntary demotion:

(1) to avoid termination in a RIF;

(2) to remain employed if the employee is unable to perform the essential functions of the employee's job because of a physical or mental impairment; or

(3) for other personal reasons.

(c) A voluntary demotion must not adversely reflect on the employee's work record or affect the employee's opportunity for promotion to a position for which the

employee is qualified.

36-2. Involuntary demotion.

(a) A department director may involuntarily demote an employee if:

(1) the employee is not able to perform the duties assigned to the employee's position because of a physical or mental incapacity;

(2) the employee receives a less than satisfactory performance evaluation following a written warning, counseling, and at least 3 months opportunity to improve;

(3) the employee is not able to perform the duties assigned to the employee's position for a reason unrelated to a physical or mental incapacity, such as failing to maintain a license or certification that is required for the employee's position; or

(4) the demotion is for disciplinary reasons under Section 33 of these Regulations.

(b) A department director must not demote an employee with a physical or mental disability under Section 36-2(a)(1) above unless efforts at reasonable accommodation within the employee's position as described in Section 8 of these Regulations are unsuccessful and the employee is not transferred to another position.

(c) The director must give a written notice of the demotion to the employee at least 5 working days prior to the effective date of the demotion and must state in the notice:

(1) the reason for the demotion;

(2) the effective date; and

(3) if the employee may appeal the demotion and the time limit for filing an appeal.

36-3. Salary after a demotion. A department director must compensate an employee after a demotion as described in Section 10-5(d).

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	16-13AM
ORIGINATING DEPARTMENT	**EFFECTIVE DATE**
Office of Human Resources	

36-4. Appeal of involuntary demotion.

(a) An employee with merit system status may appeal an involuntary demotion and the amount of the salary reduction associated with the demotion by filing a grievance under Section 34 of these Regulations or by filing a direct appeal with the MSPB under Section 35.

(b) A temporary or probationary employee may appeal a disciplinary demotion and the salary reduction by filing a grievance under Section 34.

Approved: _____ June 3, 2015

Isiah Leggett, County Executive — Date

Approved as to form and legality:

Marc Hansen — 6/3/15

Office of the County Attorney — Date

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
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ORIGINATING DEPARTMENT	**EFFECTIVE DATE**
Office of Human Resources	

MCPR, 2001 APPENDIX H, COMPRESSED WORK SCHEDULE AGREEMENT

MONTGOMERY COUNTY GOVERNMENT
COMPRESSED WORK SCHEDULE AGREEMENT

Employee's Role. A full-time employee who wishes to work a compressed work schedule should review the information on this form, specify the compressed work schedule to be worked below, including a fixed day off, and give the form to the employee's supervisor.

The work schedule must not be less than 80 regularly scheduled hours in a pay period. A compressed schedule changes the reporting period from a Sunday to Saturday pattern to either a Monday to Sunday (Schedules A & B) or a Friday to Thursday (Schedules C& D) pattern. As such, please populate the appropriate ten days of the new pattern below.

WEEK 1

DAY	Start Time	Stop Time
Friday (payday)		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		

WEEK 2

DAY	Start Time	Stop Time
Monday		
Tuesday		
Wednesday		
Thursday		
Friday (payday)		
Monday		

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

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Office of Human Resources	

The above schedule is compressed work schedule (A, B, C, or D) _____. (See [the other side of this] MCtime form and Section 15-4(b) of the Personnel Regulations for more information.)

Standards for Approving a Compressed Work Schedule. The supervisor and department director must evaluate the compressed work schedule agreement under the following standards:

- Operational requirements must be met;
- Service to clients or the public must be maintained or improved;
- Costs to the County must not increase;
- Each office or operation must have enough staff on duty during the normal period of public service, and
- The compressed work schedule must not diminish the ability of the department to assign responsibility and accountability to the employee for providing County services and performing the employee's official duties.

Supervisor's Role. The supervisor must review this form and meet with the employee to discuss the request. The supervisor should suggest to the employee any adjustments to the schedule necessary to maintain the effectiveness of the work unit. If the supervisor agrees with the terms of the request as stated in the form, the supervisor and the employee must sign the form and forward it to the department director.

If the supervisor and the employee do not agree to the terms stated on the form, the supervisor must forward a copy of the form and a summary of the points on which the supervisor and the employee agreed and disagreed to the department director.

Department Director's Role. The department director must review the compressed work schedule request and:

- Approve it
- Disapprove it, or
- Suggest changes in the terms for consideration by the employee and the supervisor to help them reach agreement

If the request is not approved, the department director must give the employee the reason. The decision of the department director is final.
The department director must:

- Complete a MCtime Compressed Schedule Request Form and receive a 2 week transition schedule.
- Give a copy of the approved or disapproved request to the employee
- Ensure that a copy is placed in the employee's department operating file, and
- Send a copy to the Director, Office of Human Resources

Important Information About Compressed Work Schedules

These are 4 compressed reporting [work] schedules as follows:

- **Schedule A,** from 12:01 [p] a.m. Monday through 12:00 [noon Monday,] midnight Sunday, [the] with the first Monday off during the two-week pay period;
- **Schedule B,** from 12:01[p] a.m. Monday through 12:00 [noon Monday,] midnight Sunday, [the] with the second Monday off during the two-week pay period;
- **Schedule C,** from 12:01 [p] a.m. Friday through 12:00 [noon Friday,] midnight Thursday, [the] with the first Friday off (payday) during the two-week pay period; or
- **Schedule D,** from 12:01 [p] a.m. Friday through 12:00 [noon Friday,]midnight Thursday, [the] with the second Friday (mid payperiod) off during the two-week pay period;

An employee must work the scheduled number of hours each day as required by the fixed schedule. Alterations to the schedule should be minimal.

On the 8-hour Monday or Friday, an employee must work 4 hours before 12:00 noon and 4 hours after 12:00 noon in order to avoid creating overtime liability for the County. This is because, for compressed work schedules A and D, the 8-hour Monday or Friday is split between 2 workweeks and hours worked before 12:00 noon are in one workweek while the hours worked after 12:00 noon are in the next workweek. On compressed work schedules B and C, the hours on the 8-hour day are split between two different pay periods.

An employee must adhere to the schedule on the 8-hour day and must not change the 8-hour day to another day during the pay period. The employee must not work on the scheduled day off, and is not permitted to alter the scheduled day off to another day during the pay period.

If an employee uses annual or sick leave for the entire day on a day on which the employee is scheduled to work 9 hours, the employee must record 9 hours of annual or sick leave on the timesheet for that day. Similarly, an employee must record 8 hours of leave on the timesheet for a day on which the employee is scheduled to work 8 hours.

An employee must change to a compressed work schedule at the start of a pay period. Additionally, at least 2 weeks should be allowed for a transition schedule.

An employee who changes to a compressed work schedule no longer has a Sunday to Saturday workweek and must work a special transition work schedule during the first pay period of the compressed work schedule. See Section 15-4 of the Personnel Regulations for more information on transition schedules.

Working a compressed work schedule will not affect the employee's salary, benefits, job responsibilities, or eligibility for overtime compensation.

The employee may terminate this agreement at any time and return to a traditional work schedule by giving notice to the supervisor. At least two weeks should be allowed for a transition schedule.

The supervisor may require the employee to modify the compressed work schedule temporarily to address operational requirements, workload fluctuations, or problems with the employee's performance or attendance. The supervisor must give the employee reasonable advance notice of any temporary schedule change.

MONTGOMERY COUNTY EXECUTIVE REGULATION

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A supervisor may require an employee to stop working a compressed work schedule if the supervisor determines that the standards for approving a compressed work schedule request stated above are not being met. The supervisor must give the employee notice and a reasonable opportunity to correct the problem.

A department director may:

- Exclude employees in an organizational unit, position, or class of positions from working compressed work schedules if the operation does not lend itself to such schedules
- Limit an employee to a particular compressed schedule with a specific day off if the department director determines that it is consistent with operational requirements, and
- Exclude an employee with a performance or attendance problem from working a compressed work schedule.

Approved:

Employee's signature _____ date _____

Supervisor's signature _____ date _____

Department Director's signature _____ date _____

Disapproved/Reason:

Supervisor's signature _____ date _____

Department Director's signature _____ date _____

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
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ORIGINATING DEPARTMENT: Office of Human Resources	EFFECTIVE DATE

APPENDIX V

Merit System Protection Board Appeal Form

* indicates required form fields

- General Information
- First Name *
- Middle Name
- Last Name *
- Home Phone * ### - ### - ####
- Work Phone ### - ### - ####
- Email. *
- Mailing Address
- Street Address 1 *
- City *
- Street Address 2
- State
  Maryland
- Zip Code *
-

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	16-13AM
ORIGINATING DEPARTMENT: Office of Human Resources	EFFECTIVE DATE

- Are you a current county employee? *

  Yes No
- Title/Position:
- Grade
- Name of the Department that took the action or made the decision you are appealing *

  Select
- Type of personnel action or decision you are appealing*
- (Please check the one that applies.) *
- Disciplinary Action
- Date you recieved the Department's Statement of Charges * MM / DD / YYYY
- Date you responded to the Statement of Charges * MM / DD / YYYY
- Date you received the Department's Notice of Action * MM / DD / YYYY
- Effective date of the Department action or decision * MM / DD / YYYY
- Denial Of Employment
- Date you received the Department's Notice of denial * MM / DD / YYYY
- CAO Denial of grievance

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

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ORIGINATING DEPARTMENT Office of Human Resources	**EFFECTIVE DATE**

- Date you received the Chief Administrative Officer(CAO)'s decision *
  MM / DD / YYYY
- Explain briefly why you think the Department was wrong in taking this action or making this decision *
- What action would you like the Board to take in this case (i.e, what is the relief/remedy you are requesting)? *
- Do you wish to designate an attorney to represent you in this proceeding before the Board? (You may designate a representative at any time. However, the processing of your appeal will not normally be delayed because of any difficulty you may have in obtaining a representative.) *

  Yes No

- Representative's Information
- Representative's First Name *
- Middle Name

MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT	NUMBER
Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	16-13AM
ORIGINATING DEPARTMENT Office of Human Resources	**EFFECTIVE DATE**

- Last Name *
- Phone Number * ### - ### - ####
- Fax
- Email *
- Mailing Address
- Street Address 1 *
- City *
- Street Address 2
- State
- Zip Code *
- Certification

By clicking on this submit button you are certifying that all of the statements made in this form are true, complete and correct to the best of your knowledge and belief. Upon clicking the submit button, the MSPB will receive this appeal and a copy of this appeal will automatically be sent to the Office of the County Attorney, in accordance with Section 35-5(a) of the Montgomery County Personnel Regulations.

- Submit

File Rep

JF
CC
SBF
LL
DMR

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

M E M O R A N D U M

February 26, 2015

Method 1

TO: George Leventhal, President, Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Executive Regulation No. 16-13, Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations.

I am submitting Executive Regulation No. 16-13 for the Council's review and approval. These amendments resulted from an extensive review of the Personnel Regulations by the Office of Human Resources. I am attaching a Summary of the proposed changes.

Executive Regulation No. 16-13 was advertised in the October 2014 issue of the *Montgomery County Register*. One comment, relating to Section 17-10(d)(5), was received in response to this advertisement. The proposed regulation has been reviewed by the Merit System Protection Board. Copies of the correspondence relating to the Board's comments and suggestions on the proposed regulation and the response by the Office of Human Resources are attached for your information. A fiscal impact statement for the regulation is also included.

IL:sw

Attachments
- Executive Regulation 16-13 - bracketed copy
- Executive Regulation 16-13 – clean copy
- Summary for Council of Executive Regulation 16-13
- Fiscal Impact Statement from OMB
- Correspondence between MSPB and OHR on Executive Regulation 16-13.

RECEIVED
MONTGOMERY COUNTY
COUNCIL

2015 MAR -2 PM 3:37

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 3, 2015

TO: George Leventhal, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

RE: Executive Regulation 16-13AM, Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations

I am transmitting for Council approval an amendment to Executive Regulation 16-13, Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations.

It has recently come to my attention that Section 13-1, which grants the Chief Administrative Officer (CAO) authority to grant a monetary award for extraordinary performance expressly excludes the ability of the CAO to grant a monetary award to an MLS employee. With respect to recognizing extraordinary performance under Section 13, I believe that MLS employees should be treated the same way as other employees.

I understand this regulation has been scheduled before the GO Committee on June 18.

IL:tjs

Enclosure

Fiscal Impact Statement
Executive Regulation 16-13, Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations

1. Executive Regulation Summary.

   This regulation includes amendments to Sections 4, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 26, 27, 30, 32, and 35 of the 2001 Montgomery County Personnel Regulations. These amendments resulted from a comprehensive review of the Personnel Regulations by the Office of Human Resources.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

   Most of the proposed changes to the Personnel Regulations codify existing practices or clarify language; these changes have no fiscal impact. Other proposed changes remove provisions of the Personnel Regulations that have become obsolete. Proposed changes that impact a policy and/or procedure are noted below.

   Section 8. ***Medical Examinations and Reasonable Accommodation***
   The change to this section would require a new drug and alcohol test for an employee with 5 or more years of service who is reassigned, transferred, demoted, or promoted to a position requiring a drug and alcohol test to undergo the exam prior to placement. The fiscal impact of this is a small cost. OHR estimates that the impact on employees would be up to $1,500 annually for 71 employees.

   Section 10. ***Employee Compensation***
   Changes to Section 10-4 would eliminate the grandfather provision for employees to receive paper paychecks and requires all employees to receive compensation through direct deposit, and enables deposits to be made to a paycard where banking information is not yet provided. Finance indicates that there would be a small fiscal savings from this change, up to $2,200 annually for non-represented due to no longer mailing 83 employees paychecks.

   Changes to Section 10-5(b)(10) would expand the criteria that would permit hiring a new employee above the midpoint of the salary range. The fiscal impact of this is indeterminate. There is the potential for an increase in the starting pay of General Salary Service and Management Leadership Service employees, however, the degree to which they may increase and what the impact will be on departments is uncertain. Starting salaries will vary with market conditions, with the salary ranges of vacant positions, the salaries of incumbents and other positions in the hiring department, the qualifications of candidates, and a candidate's prior or current salary at the time the employment offer is made.

   Changes to Section 10-5(d)(4) would prospectively resolve an inequity between represented and non-represented employees who are demoted as a result of a disability,

allowing for indefinite retention of pre-disability salary over the current two year limitation. The fiscal impact of this change would be a small cost. OHR estimates that only one case per year occurs, resulting in a cost for the additional years retaining pre-disability salary.

The change to Section 10-22(a) would limit severance pay for a probationary employee terminated during a probation lasting more than 12 months. Currently, this employee would receive six weeks of severance pay. This change would limit it to three weeks. This would result in a small fiscal savings. OHR reports that six non-represented employees received severance in FY14, of which three were employed for more than 12 months. Under this proposed change, the County would have saved approximately $16,100 in FY14.

Section 13. ***Performance Awards***
The change to this section would slightly increase the value of department monetary awards, and clarify that the awards are gross pay instead of net pay. The fiscal impact of this change is a small cost, as the revised language would increase the amount given for employee of the year and recognition awards to $500 and $200 respectively. Based on FY14 data, this would have an impact of $30,000 countywide.

Section 15. ***Work Schedules, Attendance, Hours of Work***
The changes to this section would eliminate a provision allowing advance leave usage by exempt employees prior to earning the leave. Finance estimates that there would be no fiscal impact of this change, and estimates this change would impact approximately 20 employees.

Section 16. ***Annual Leave***
The revised language would allow an employee rehired by the County to accrue annual leave at the same rate as they earned when they left County service. The revised language would also provide a credit of annual leave of up to 60 hours to temporary employees who become permanent employees in a different job classification. The impact of this depends on how many of these appointments occur. The fiscal impact of both of these are indeterminate, and would vary depending on how a department chooses to staff absences, the salaries paid in the department, and the degree to which the policy creates a higher leave balance for an employee to cash out upon separation.

Section 17. ***Sick Leave***
The changes to section 17-2 would provide a credit of sick leave of up to 60 hours to temporary employees who become permanent employees in a different job classification. The impact of this depends on how many appointments of this kind occur. The fiscal impact of this is indeterminate, and would vary depending on how a department chooses to staff absences, and the salaries paid in the department.

The changes to section 17-10 would allow an employee to access sick leave donations after six consecutive months of employment, rather than the previous 12. The fiscal impact of this is minimal, as in extreme cases, this could result in increased sick leave

utilization and a decrease in leave without pay utilization. However, in FY14, the value of donated sick leave for the one person this policy may have affected was approximately $7,000.

Section 18. ***Disability Leave***
The changes to this section reduce the salary continuation benefit from 18 to 12 months if employees choose not to participate in the Pharmacy Benefit Management (PBM) and the Nurse Case Management (NCM) program. Finance's Division of Risk Management reports that dating back to 2010, they have not dealt with any cases for non-represented employees. There is expected to be a positive impact in the form of a cost savings from promoting increased participation in PBM and NCM programs, although Finance states estimates of these savings do not exist at this time.

Section 19. ***Family and Medical Leave***
The change to Section 19-15 clarify that an employee who fails to return to work after FMLA leave exhaustion or expiration must repay the County for the County's share of insurance premiums during unpaid leave, correcting from the previously stated employee's share. OHR estimates the fiscal impact of this to be a minimal cost savings, as the frequency of this occurring is expected to be low.

Section 21. ***Administrative Leave***
The changes to Section 21-5 clarify whether or not an employee is entitled to General Emergency Administrative Leave while Absent Without Leave. OHR believes instances of situations where this would apply are expected to be infrequent as MCTime received only one inquiry during general emergencies in FY14 and noted this was unaddressed in the personnel regulations. The fiscal impact of these situations is estimated to be a minimal cost savings due to fewer days of General Emergency Administrative Leave paid.

Section 35. ***Merit System Protection Board Appeals, Hearings, and Investigations***
The change to Section 35-4 would remove the requirement for the appellant to provide requested information solely in written format, and allow electronic submission of materials. OHR estimates that this would result in a small cost savings due to filing electronically.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

   The proposed regulation does not have any material fiscal impact over the next 6 fiscal years.

4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.

   Not applicable.

5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.

   The proposed regulation does not authorize future spending.

6. An estimate of the staff time needed to implement the regulation.

   Not applicable.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

   Not applicable.

8. An estimate of costs when an additional appropriation is needed.

   Not applicable

9. A description of any variable that could affect revenue and cost estimates.

   Variables that could affect cost estimates are described in the response to question 2.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

    Not applicable.

11. If a regulation is likely to have no fiscal impact, why that is the case.

    Most of the proposed changes to the Personnel Regulations codify existing practices or clarify language; these changes have no fiscal impact. Other proposed changes remove provisions of the Personnel Regulations that have become obsolete. Changes that do have a fiscal impact are minimal, as described above.

12. Other fiscal impacts or comments.

    None

13. The following contributed to and concurred with this analysis (enter name and dept.)

    Stuart Weisberg, Office of Human Resources
    Lori O'Brien, Office of Human Resources
    Karen Hawkins, Department of Finance
    Corey Orlosky, Office of Management and Budget

Jennifer A. Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

9/22/14
Date

MERIT SYSTEM PROTECTION BOARD

MEMORANDUM

December 01, 2014

TO: Joseph Adler, Director
Office of Human Resources

THRU: Robyn C. Scates, Executive Director
Merit Systems Protection Board R Scates

FROM: Raul E. Chavera, Jr., Chairman
Merit System Protection Board RC

SUBJECT: Comprehensive Review of the Personnel Regulations

Pursuant to your request, the Merit System Protection Board (MSPB or Board) has reviewed the proposed changes to the Personnel Regulations and provides the following comments:

1. **Section 8. Medical Examinations and Reasonable Accommodation**

The Board is currently investigating Procedures for Establishing Medical Protocol on Various Positions. The Board has concerns as detailed in October 20, 2014 letter to OHR. The Board is also particularly concerned about Medical History Review for applicants for positions in occupational classes that are sedentary and that do not require drug screening, significant driving, or exposure to significant workplace hazards, per Section 8-6(b)(2)(A)(i). The Board is further concerned that proposed amendment to Section 8-7(a)(2) will require any employee who changes position after more than 5 years in previous position to have a new medical evaluation. The Board questions the County's reasons for these intrusive inquiries into the medical privacy of office workers.

2 **Section 10. Employee Compensation**

In regards to Section 10-4(g), the Board has concerns about payroll cards which may violate the Fair Labor Standards Act which requires that employees must receive all their wages in full, and Maryland Wage Payment and Collection Law Section 3-502 which provides that "any agreement to work for less than the wage required under this subtitle is void," and requires payment by U.S. currency or check unless direct deposit or payroll card is authorized by the employee. It is improper to condition County employment on the employee's waiver of his/her right to be paid in full. Many payroll cards charge substantial fees which cut into employees' wages and result in less than full

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payment of wages. This is not the same as fees charged by a bank. In 2013, the Consumer Financial Protection Bureau issued a bulletin to employers reminding them of the law and warning them that the bureau intends to use its enforcement power to stop violations. http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf

3. **Section 10-5 Salary-setting policies.**

Section 10-5(d)(1) has been revised to replace "current base salary" with "prior base salary." In order to be consistent with this proposed change, the Board recommends that Section 10-5(d)(2) be revised to replace "current salary" with "prior salary."

4. **Section 10-16. Special within-grade pay increase.**

Section 10-16(b) states, "A department director or OHR Director may..." This is inconsistent with the regulations consistent use of the word "must" throughout the regulations. The Board notes that this is the only place in the regulations where the word "may" is used. The Board recommends that the County revise this wording to be consistent with the other parts of the regulations.

5. **Section 10-16. Special within-grade pay increase.**

Section 10-16(c)(1) states, "...other occupational classes that may be "effected." The word "effected" should be changed to "affected."

6. **Section 10-22. Severance pay.**

The Board recommends the following amendment to Section 10-22 paragraph (d) "not withstanding the foregoing provisions, no severance pay under these Regulations,..."

7. **Section 11-7. Performance evaluation.**

The Board notes that Section 11-7(h)(2) is inconsistent with an employee having a performance plan and inconsistent with the procedures for changing the performance plan.

8. **Section 13-2 Monetary awards.**

Based on the language in Section 13-2(d)(5), it is unclear whether the County meant to take away the CAO's discretion to approve paid time off awards or annual leave awards.

9. **Section 13-3. Procedures for monetary awards.**

The Board recommends that the word "all" is substituted for the word "the" in Section 13-3(b)(3).

10. **Section 17-10. Sick Leave Donor Program**

The Board recommends that the County provide guidance surrounding what a director needs to have to constitute reasonable sick leave abuse in regards to Section 17-10(c)(1)(A).

11. **Section 18-5. Selection and use of physician and impact on eligibility period for salary continuation benefit.**

The Board recommends that the County add a notification requirement to employees at the time of their injury stating that their salary continuation benefits will be based on the physician an employee selects to treat their job-related illness or injury.

12. **Section 19-8. Supervisor's responsibility for handling FMLA leave.**

The Board finds the language in Section 19-8(a)(10) to be overly broad.

13. **Section 30-2. Policy on RIF.**

Section 30-2(f)(2) is redundant to Section 5-3(a)(2). The Board recommends that the County delete this paragraph.

14. **Section 32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.**

Section 32-3(h)(20)(C)ii currently states the following updated language: "split specimen test and give them…"

The Board recommends the following changes: "split specimen test and give him or her…" or it could state "…split specimen test and give employee…"

15. **Section 33.5. Causes for disciplinary action.**

The Board finds that Section 33.5(c) is vague and overly broad. Due to this vagueness, the provision does not provide any meaningful guidance to employees or the Board. The Board recommends that the County revise for clarity purposes.

16. **Section 35 Merit System Protection Board Appeals, Hearings, and Investigations**

The Board notes that Section 35 is inconsistent with the updates to the Montgomery County Code Section 21-7(a) in regards to the rights of volunteer fire department employees. The Code provides that "the Merit System Protection Board must hear and decide each appeal filed by a volunteer firefighter or rescuer aggrieved by an adverse final action of the Chief or a local fire and rescue department involving the

removal, demotion, or suspension of, or other disciplinary action applied specifically to, that individual as if the individual were a County merit system employee." This section does not apply to volunteer fire department employees. In order to be in compliance with the County Code, the following sections need to be updated to remove all reference to volunteer fire department employees' rights to a hearing before the Board:

Section(s) 35-1(b); 35-2(a); 35-2(b), 35-8(b), 35-8(g) and 35-8(f).

17. **Section 35-7. Dismissal of an appeal.**

The Board is requesting that the following provision be added to this section:

"Section 35-7(f) -The MSPB may dismiss an appeal for any other reason in compliance with applicable laws, rules and regulations."

cc: Board Members

OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

January 5, 2015

TO: Raul E. Chavera, Jr., Chairman
Merit System Protection Board

FROM: Joseph Adler, Director
Office of Human Resources

SUBJECT: ER 16-13, Comprehensive Review of the Personnel Regulations

Thank you for the Board's thorough review of the proposed changes to the Personnel Regulations and for the Board's constructive comments and suggestions. I will address each of the Board's remarks below.

1. Section 8. Medical Examinations and Reasonable Accommodation

The Board is currently investigating Procedures for Establishing Medical Protocol on Various Positions. The Board has concerns as detailed in October 20, 2014 letter to OHR. The Board is also particularly concerned about Medical History Review for applicants for positions in occupational classes that are sedentary and that do not require drug screening, significant driving, or exposure to significant workplace hazards, per Section 8-6(b)(2)(A)(i). The Board is further concerned that proposed amendment to Section 8-7(a)(2) will require any employee who changes position after more than 5 years in previous position to have a new medical evaluation. The Board questions the County's reasons for these intrusive inquiries into the medical privacy of office workers.

Response: As noted in OHR's response dated November 20, 2014 to MSPB's information request relating to procedures for establishing medical protocol on various positions, the medical protocol established by the Employee Medical Examiner may include a medical history review, a physical evaluation, medical or physical tests (such as vision, hearing, drug and alcohol tests), and consultations, citing Section 8-6(b)(1)(A) of the Personnel Regulations.

The catalyst for the proposed changes to Section 8 of the Personnel Regulations was a recent situation which arose when a County employee was promoted and the new position, like the employee's former position, required a drug and alcohol test as part of the medical exam protocol. Under Sections 8-6(a)(3)(C) and 8-7(a)(2) of the Personnel Regulations, however, since the medical exam protocol for the new position was not more extensive than (but rather the same as) the prior position the employee could not be required to take a new drug and alcohol test. Even though many

years had passed since the employee had been required to undergo a drug and alcohol test, there is no authority currently for retesting. We decided to err on the side of safety (the safety of the employee, co-workers, and the public) and amend the regulations to provide that a County employee who has been in his or her position for more than 5 years and is reassigned, transferred, demoted, or promoted must undergo the requisite medical exam evaluation before being placed in the new position.

The MSPB questions the reasons for requiring employees who after more than 5 years change positions in occupational classes that are sedentary and do not require drug screening, significant driving, or exposure to significant workplace hazards to have a new medical evaluation. While an updated medical history may be beneficial in evaluating a future worker's compensation claim, and although we don't share the MSPB's view that requiring an employee who changes jobs after 5 years to submit an updated medical questionnaire constitutes an intrusive inquiry into the medical privacy of office workers, nevertheless, we will defer to the MSPB. Accordingly, we have amended Section 8-7(a)(2) to exclude the medical history protocol.

2. **Section 10. Employee Compensation**

In regards to Section 10-4(g), the Board has concerns about payroll cards which may violate the Fair Labor Standards Act which requires that employees must receive all their wages in full, and Maryland Wage Payment and Collection Law Section 3-502 which provides that "any agreement to work for less than the wage required under this subtitle is void," and requires payment by U.S. currency or check unless direct deposit or payroll card is authorized by the employee. It is improper to condition County employment on the employee's waiver of his/her right to be paid in full. Many payroll cards charge substantial fees which cut into employees' wages and result in less than full payment of wages. This is not the same as fees charged by a bank. In 2013, the Consumer Financial Protection Bureau issued a bulletin to employers reminding them of the law and warning them that the bureau intends to use its enforcement power to stop violations. http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf

Response: We believe that the MSPB's concerns about the program are unfounded for the following reasons: The employee pays no periodic fee for having the card (e.g. no monthly or annual fees). The employee is allowed two free ATM/Bank Teller withdrawals per pay period free of charge. Thus, if an employee wanted to treat the pay card as a check and "cash out" his or her whole paycheck amount on pay day, he or she can free of charge. The employee is not charged any fees for the two withdrawals. However, a fee is charged for any ATM or Bank Teller withdrawal after the initial two per pay period. The employee pays no fee to inquire on the balance of his or her card via phone or online. The pay card is also an electronic form of payment. The employee pays no fee to use the card as a debit card when purchasing goods and services at merchants that accept the card including receiving cash back at these merchants. In short, the pay card is as easy and convenient as direct deposit.

It should be noted that all Montgomery County Government employees hired after July 1, 2004 are required to be on direct deposit as a condition of their employment. Two of the County's three major unions, MCGEO and IAFF, have agreed in collective bargaining that direct deposit is in the best interest of their employees. FOP,

the one union that does not have direct deposit as part of their collective bargaining agreement, has almost all its members on direct deposit. Only 11 of its members are not on direct deposit.

Finally, it is the opinion of the County Attorney's Office that the pay card program, which is an interim way of paying employees until the County receives correct direct deposit banking information from them, does not violate the Fair Labor Standards Act and that the Maryland Wage Payment and Collection Law, Maryland Code Annotated, Labor and Employment Article, Section 3-502, does not apply to the County.

3. **Section 10-5 Salary-setting policies.**

Section 10-5(d)(1) has been revised to replace "current base salary" with "prior base salary." In order to be consistent with this proposed change, the Board recommends that Section 10-5(d)(2) be revised to replace "current salary" with "prior salary."

Response: The requested change has been made.

4. **Section 10-16. Special within-grade pay increase.**

Section 10-16(b) states, "A department director or OHR Director may..." This is inconsistent with the regulations consistent use of the word "must" throughout the regulations. The Board notes that this is the only place in the regulations where the word "may" is used. The Board recommends that the County revise this wording to be consistent with the other parts of the regulations.

Response: The requested change has been made.

5. **Section 10-16. Special within-grade pay increase.**

Section 10-16(c)(1) states, "...other occupational classes that may be "effected." The word "effected" should be changed to "affected."

Response: The requested change has been made.

6. **Section 10-22. Severance pay.**

The Board recommends the following amendment to Section 10-22 paragraph (d) "not withstanding the foregoing provisions, no severance pay under these Regulations,..."

Response: The requested change has been made in paragraph (D).

7. **Section 11-7. Performance evaluation.**

The Board notes that Section 11-7(h)(2) is inconsistent with an employee having a performance plan and inconsistent with the procedures for changing the performance plan.

Response: The proposed changes to Section 11-7(h)(2) are stylistic in nature rather than substantive. Performance "expectation" was changed to "objective" and performance "standard" was changed to "success criteria." Section 11-7(h)(2) reflects the reality that sometimes new projects arise and are assigned to an employee in mid-appraisal year. This section provides that the supervisor must document that the employee was given adequate notice of this new objective or success criteria.

8. **Section 13-2 Monetary awards.**

Based on the language in Section 13-2(d)(5), it is unclear whether the County meant to take away the CAO's discretion to approve paid time off awards or annual leave awards.

Response: We note that the language in Section 13-2(d)(5) is consistent with the language in Section 13-3(c) that it is the CAO who determines whether to grant a Paid Time Off Award or an Annual Leave Award to an MLS employee. A department director can recommend to the CAO a Paid Time Off Award or an Annual Leave Award for an MLS employee and document the reason for the award but it is the CAO who determines whether to approve the award. In an effort to clear up any confusion we have changed "grant" to "approve" in both Section 13-2(d)(5) and Section 13-3(c).

9. **Section 13-3. Procedures for monetary awards.**

The Board recommends that the word "all" is substituted for the word "the" in Section 13-3(b)(3).

Response: The requested change has been made.

10. **Section 17-10. Sick Leave Donor Program**

The Board recommends that the County provide guidance surrounding what a director needs to have to constitute reasonable sick leave abuse in regards to Section 17-10(c)(1)(A).

Response: It should be noted initially that application of the standard "has reason to suspect sick leave abuse" arises much more frequently in terms of placing an employee on sick leave restriction (Section 17-1(h) and 17-9) and requiring an employee to provide medical certification (Section 17-8(c)(2)) than with respect to denying a request for donated sick leave. We have not provided guidance on this standard because any list of examples would not be inclusive. Generally, suspected misuse or abuse of sick leave is based on a pattern or practice of sick leave absences on Mondays or Fridays or before or after a holiday. Sometimes it can be based on a pattern of excessive absences. In some instances, it can be based on a single sick leave absence where, for example, the employee requested annual leave and the request was denied because other employees had previously requested that day off, and the employee calls in sick that morning. The MCGEO collective bargaining agreement similarly uses the standard "any time misuse/abuse [of sick leave] is suspected without providing guidance.

11. Section 18-5. Selection and use of physician and impact on eligibility period for salary continuation benefit.

The Board recommends that the County add a notification requirement to employees at the time of their injury stating that their salary continuation benefits will be based on the physician an employee selects to treat their job-related illness or injury.

Response: The County has added the following language to Section 18-4: "and communicate such opportunity and impact under Section 18-5." Please note that the Department of Finance, Risk Management, is currently working on two initiatives to better communicate this information to injured employees. First, a brochure is being prepared for distribution to injured employees that contain a variety of information about the process, including the impact of physician selection on the salary continuation period. Second, the contract with the third party administrator (TPA) will shortly be rebid, and the requirement for mandatory communication to employees regarding the impact of physician selection on the salary continuation period is planned to be included in the request for proposals.

12. Section 19-8. Supervisor's responsibility for handling FMLA leave.

The Board finds the language in Section 19-8(a)(10) to be overly broad.

Response: The language in Section 19-8(a)(10), Responsibility for handling FMLA leave follows the U.S. Department of Labor FMLA regulations and guidance.

13. Section 30-2. Policy on RIF.

Section 30-2(f)(2) is redundant to Section 5-3(a)(2). The Board recommends that the County delete this paragraph.

Response: While Section 30-2(f)(2) may be redundant to Section 5-3(a)(2), we believe that it is important to remind department directors of the need to conduct a reduction in force (RIF) in a manner that is consistent with the County's commitment to equal employment opportunity and diversity. When conducting a RIF a department director often focuses exclusively on requirements contained in the RIF section of the Personnel Regulations.

14. Section 32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.

Section 32-3(h)(20)(C)ii currently states the following updated language: "split specimen test and give them..."

The Board recommends the following changes: "split specimen test and give him or her..." or it could state "...split specimen test and give employee..."

Response: The requested change to "him or her" has been made.

15. **Section 33.5. Causes for disciplinary action.**

The Board finds that Section 33.5(c) is vague and overly broad. Due to this vagueness, the provision does not provide any meaningful guidance to employees or the Board. The Board recommends that the County revise for clarity purposes.

Response: Section 33-5, Causes for disciplinary action, currently reads:
The following, while not all-inclusive, may be cause for a disciplinary action by a department director against an employee who:

(c) violates Administrative Procedure No. 6-1, "Use of the County-Provided Internet, Intranet, and Electronic Mail Services" or any other established policy or procedure;

In the proposed change, we simply deleted the reference to Administrative Procedure No. 6-1, "Use of the County-Provided Internet, Intranet, and Electronic Mail Services" on the ground that there is no justification to single out or highlight the County's Internet policy over other established County policies. In addition, most departments have established policies and procedures that employees are bound to follow. If a department seeks to discipline an employee for violating any County or departmental established policy or procedure, the policy or procedure violated is detailed in the Statement of Charges

16. **Section 35 Merit System Protection Board Appeals, Hearings, and Investigations**

The Board notes that Section 35 is inconsistent with the updates to the Montgomery County Code Section 21-7(a) in regards to the rights of volunteer fire department employees. The Code provides that "the Merit System Protection Board must hear and decide each appeal filed by a volunteer firefighter or rescuer aggrieved by an adverse final action of the Chief or a local fire and rescue department involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to, that individual as if the individual were a County merit system employee." This section does not apply to volunteer fire department employees. In order to be in compliance with the County Code, the following sections need to be updated to remove all reference to volunteer fire department employees' rights to a hearing before the Board: Section(s) 35-1(b); 35-2(a); 35-2(b), 35-8(b), 35-8(g) and 35-8(f).

Response: The requested changes to Sections 35-1(b). 35-2(a), 35-2(b), 35-8(b), 35-8(f) and 35-8(g) have been made to remove references to volunteer fire department employees.

17. **Section 35-7. Dismissal of an appeal.**

The Board is requesting that the following provision be added to this section:

"Section 35-7(f) -The MSPB may dismiss an appeal for any other reason in compliance with applicable laws, rules and regulations."

Response: The requested addition has been made.

Summary for County Council of Executive Regulation 16-13, Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations

Introduction

In anticipation of the expiration of the 2001 Montgomery County Personnel Regulations (MCPR) on January 5, 2014[1], the Office of Human Resources conducted an extensive review of the current regulations. OHR invited suggestions on how the regulations could better meet the needs of the County workforce and the departments, correct any unintended effects of the language used in the current regulations, and improve the administration of the merit system from unrepresented employees, supervisors, managers, and department directors as well as from OHR and County Attorney staff who apply and work with the regulations on a daily basis. OHR also requested input and suggestions from Council staff, the Inspector General, and the Merit System Protection Board (MSPB). Following review and approval by the Chief Administrative Officer and County Executive, the proposed amendments were transmitted to the Merit System Protection Board for review and comment. Executive Regulation 16-13 was advertised in the October 2014 issue of the *Montgomery County Register*. It is now being submitted to the County Council for review and approval.

The following is a summary of the most significant proposed changes in terms of changing the status quo, and implications for County business processes, as well as the rationale for each proposed change.

Section 4. *Records*

1. A new Section 4-3(b)(2) was added to correct an oversight. This new section provides that department operating records may be maintained in an electronic format. Currently only personnel records and the supervisory file can be maintained in an electronic format.

Section 7. *Appointments, Probationary Period, and Promotional Probationary Period*

2. Section 7-2 of the Personnel Regulations is silent as to whether an employee in a non-merit position who is appointed to a merit system position must serve a probationary period. This

[1] Temporary Regulation 17-13T extended the sunset date of the Montgomery County Personnel Regulations for 90 days from January 5, 2014 to April 5, 2014. In Executive Regulation 4-14, approved by the Council on March 25, 2014, the sunset date was extended until March 1, 2015. In Executive Regulation 5-15, approved by the Council on February 24, 2015, the sunset date was extended until January 1, 2016.

issue arose recently when a County employee, who had been in a merit position for several years and had served a probationary period in that position, moved to a non-merit position for five years, and then was appointed to another merit system position. OHR concluded that the basic language of Section 7-2(a)(1) suggested that a person appointed to a full-time or part-time position must serve a probationary period governed and that in the absence of a specific exception, this employee must serve a probationary period in the new merit position. OHR has codified its interpretation and provided guidance on this issue as part of the Comprehensive Review of the Personnel Regulations by adding Section 7-2(a)(2).

Section 8. ***Medical Examinations and Reasonable Accommodation***

3. Recently, an issue arose when a County employee was promoted and the new position, like the employee's former position, required a drug and alcohol test as part of the medical exam protocol. Under Sections 8-6(a)(3)(C) and 8-7(a)(2) of the Personnel Regulations, however, since the medical exam protocol for the new position was not more extensive than (but rather the same as) the prior position the employee could not be required to take a new drug and alcohol test. Even though many years had passed since the employee had been required to undergo a drug and alcohol test, there is no authority currently for retesting. It was decided to err on the side of safety and amend the regulations to provide that a County employee who has been in his or her position for more than 5 years and is reassigned, transferred, demoted, or promoted must undergo the requisite medical exam evaluation before being placed in the new position. At the request of the MSPB, we have excluded the medical history protocol from this new requirement.

Section 9. ***Classification***

4. In Section 9-4(h) we clarify that the effective date of an upward reclassification of an individual position is either the date of the OHR Director's or the CAO's classification decision or 12 months from the date when OHR received all the information necessary to conduct the study, whichever date occurs first.

Section 10. ***Employee Compensation***

5. Under Section 5.22 of the MCGEO contract, if a bargaining unit employee is demoted as a result of disability, the employee retains his or her salary indefinitely, even if the salary is above the maximum of the grade. Under the Personnel Regulations, however, if an unrepresented employee is demoted as a result of disability the employee retains his or her salary for two years. We have amended Section 10-5(d)(4) so that bargaining unit and non-bargaining unit employees are treated the same.

We have amended Section 10-4(g), Direct Deposit, to eliminate the grandfather provision for employees hired prior to July 1, 2004, and to require all employees to provide the County with direct deposit information. It also authorizes the County to deposit an employee's bi-weekly

pay on a payroll card until such time as the employee provides the County with direct deposit information. This change will enable the County to implement consistent processes among all unrepresented employee groups and will create an incentive for new employees to timely provide the County with direct deposit information.

Department directors have the authority to negotiate and determine salaries for new employees equal to or less than the midpoint of the salary range or pay band. Salaries for new employees above the midpoint, however, must be approved by the OHR Director. We have expanded the criteria in Section 10-5(b) that may warrant hiring a new employee above the midpoint of the salary range or pay band beyond recruitment and retention issues. Other factors that may be considered include specialized or unique skills, certifications, licensing, knowledge and abilities, and the department's "preferred criteria" in the recruitment posting. In Section 10-5(b)(10), we allow a department director to appeal the OHR Director's denial of a department's request to hire an employee at a salary that is above the midpoint to the CAO.

Section 10-5(c) was recently amended in ER 23-12 to clarify and eliminate confusion with respect to salary on promotion. We have further amended this language to make it more user friendly and also to provide guidance on factors that should be considered when recommending a maximum 15 percent increase for a single promotion.

Section 10-5(c)(1)(I) was added to allow the CAO to approve a total increase in base salary on promotion greater than 20 percent: (a) in extraordinary circumstances (as defined in section 10-5(c)(1)(H)), (b) based upon the factors identified in section 10-5(b), (c) involving a competitive promotion that was open to the general public, and (d) at least one non-County employee was either in the highest rating category or was interviewed for the vacancy.

Section 10-22(a) of the regulations currently provides that a probationary employee whose employment is terminated during the probationary period receives 2 weeks of severance pay if the employee's probationary period lasted for at least 9 months, and 1 week of severance if the employee's probationary period lasted at least 3 months. However, if an employee's probationary period lasts more than 12 months, the severance pay is determined under a separate table in Section 10-22(b) for employees who are participants in the Retirement Savings Plan or GRIP Plan and the employee receives 6 weeks of severance pay. We believe that 6 weeks of severance pay under such circumstances is excessive and creates inequities. For example, a probationary employee terminated during a probationary period lasting more than 12 months receives 6 weeks of severance pay, or three times as much as a probationary employee terminated after 12 months or less. Moreover, the probationary employee terminated after 12 months receives the same 6 weeks of severance pay as a merit employee who has worked for the County for just under 5 years and loses their job as a result of a Reduction in Force (RIF). Therefore, we are proposing to amend Sections 7 and 10 of the regulations to provide that a probationary employee terminated during a probationary period lasting more than 12 months will receive 3 weeks of severance pay.

In Section 10-17, we have provided further guidance to departments on recruitment and retention incentives.

Section 12. ***Service Increments***

6. We have clarified Section 12-9 and provided additional guidance on awarding longevity increments to promoted employees.

Section 13. ***Performance Awards***

7. We propose increasing the Department Employee of the Year Award from "$250 net pay" to "$500 gross" and increasing Department Recognition Awards from "$100 net pay" to "$200 gross."

Section 15. ***Work Schedules, Attendance, Hours of Work***

8. The changes relating to compressed work schedules in Section 15, while mostly technical in nature, correct some errors and modernize the regulations to conform to the reporting period in the electronic time sheets currently being used by employees. Appendix H, the Compressed Work Schedule Agreement, has also been updated.

Under Section 15-3(d)(1), an MLS employee is expected to work the hours required to complete assigned work but not less than 80 hours per pay period for a full-time employee. Section 10-6(b)(5) provides that a department director must not compensate an MLS employee for overtime work with overtime pay or compensatory time. While MLS employees are not eligible for compensatory time, in practice, however, some MLS employees have been allowed to earn compensatory time in the form of religious leave for overtime work. This creates an inequity between MLS employees based on religion. For example, a department requires two of its MLS employees to work 4 hours of overtime on a Tuesday evening to complete a specific project. MLS employee #1 is credited with 4 hours of religious leave that the employee may use any time during the year. MLS employee #2 receives no benefit for performing the same overtime work. MLS employees are credited with ample PTO hours (280 hours or 7 weeks) that can be used for religious leave and there is no justification for them to earn compensatory time/religious leave. Instead, we are amending Section 15-4(a)(3) to allow MLS employees to request an alternate work schedule during the same pay period to equal the amount of time taken off for religious reasons. This approach does not conflict with the prohibition on MLS employees earning compensatory time.

Currently, under Section 15-4(a)(3)(B), Requirements for an alternate work schedule for religious observance, an employee exempt under the Fair Labor Standards Act may work additional hours for compensatory time in order to use the earned compensatory time to cover work absences for religious observance and the compensatory time "may be earned before, after, or both before and after the absence for religious observance but must be earned over no more than 8 pay periods. In contrast, a non-exempt employee who is absent from work for religious observance must work the additional hours during the same workweek to equal the amount of time taken off for religious reasons.

This provision allowing for advance leave usage by exempt employees prior to earning the leave is eliminated. The Department of Finance notes that: (1) only a small group of employees – unrepresented and exempt – are allowed to utilize the "use before accrued" aspect of this benefit; (2) it is not often utilized; (3) religious leave is the only leave type, tracked and accumulated in a separate "bucket" in the payroll system which is allowed to be used before it is accrued and the auto stop feature in MCtime, which prevents an employee from using more leave than the employee has available within a leave bucket, cannot be utilized; and (4) since religious observances are constant, known, and predictable, it is not unreasonable that an employee could plan for them.

Section 16. Annual Leave

9. This amendment clarifies that an employee in a merit system career position who separates from County service and later returns to County service is entitled to the same annual leave accrual rate that the employee enjoyed previously based on years of service. There is no requirement that the years of service for purposes of leave accrual rate be consecutive. For example, an employee works for the County for 4 years and accrues annual leave at the rate of 160 hours per year. The employee separates from County service and returns 5 years later. The employee will continue to accrue annual leave at the rate of 160 hours per year rather than the lower rate of 120 hours per year that new employees accrue annual leave through the completion of the first 3 years of service.

Under Section 14.2 of the MCGEO contract, a temporary employee who subsequently becomes a full-time or part-time employee without a break in service is credited, on a prorated basis, with not more than 60 hours of annual leave retroactive to the date hired as a temporary employee. Under the Personnel Regulations, however, in order to be credited with pro-rated annual leave, the temporary employee must be appointed to a full-time or part-time position "doing the same work as the employee did while a temporary employee." We don't believe that this difference in treatment is justified and have amended Section 16-2(b) of the Personnel Regulations.

Section 17. Sick Leave

10. Under the current Personnel Regulations, eligibility to receive sick leave donations from other employees flows from merit status. The probationary period that must be completed to gain merit status for bargaining unit positions is 6 months whereas the probationary period is 12 months for non-bargaining unit positions. Thus, there exists a significant inequity between bargaining unit and unrepresented employees with respect to eligibility for sick leave donations. It was determined to level the eligibility field by shifting from merit status to continuous employment in a County merit position as the yardstick for eligibility for sick leave donations and lowering the requirement for unrepresented employees from 12 months to 6 months.

The language relating to requests to the OHR Director for waivers of the 7-day waiting period for sick leave donations and for waivers of the eligibility period is confusing. It has been amended into two separate provisions with separate examples of extenuating circumstances. This

codifies the OHR Director's current practice of determining whether a requested waiver is warranted.

Under Section 15.2 of the MCGEO contract, a temporary employee who subsequently becomes a full-time or part-time employee without a break in service is credited, on a prorated basis, with not more than 60 hours of sick retroactive to the date hired as a temporary employee. Under the Personnel Regulations, however, in order to be credited with pro-rated sick leave, the temporary employee must be appointed to a full-time or part-time position "doing the same work as the employee did while a temporary employee." We don't believe that this difference in treatment is justified and have amended Section 17-2(b) of the Personnel Regulations.

Section 17-10(a)(1)(E)(ii) was changed to conform to Ethics Commission Waiver No. 14-10-004 issued on October 8, 2014. The Commission determined that the Public Ethics Law's broad prohibition on the solicitation of a gift to the employee during official work hours, or at a County agency, applies to a solicitation for a donation of sick leave. The Commission issued a class waiver for solicitations of donated sick leave as being in the best interests of the County. The Commission, however, conditioned the class waiver on the use of an arrangement whereby the recipient of donated sick leave and the employee's representative, if any, is shielded from information about individual contributions of leave.

Section 17-10(d)(5) was amended to clarify that an employee may receive donated sick leave for complications of pregnancy, complications of childbirth, or complications of recovery from childbirth, when any of those complications make the employee unable to work.

Section 18 – Disability Leave

11. Section 18 is changed from "Disability Leave" to "Salary Continuation Benefit for Workers' Compensation Disability Leave." The proposed changes are the result of efforts by a committee comprised of Finance (Risk Management, Payroll/Controller Division, and Director's Office), OHR/Labor Relations, Office of the County Attorney, and the Board of Investment Trustees to identify and resolve any current or potential operational inconsistencies with federal and state laws as well as with disability processes for unrepresented employees.

Section 19. Family and Medical Leave

12. In the fall of 2012, OHR centralized the Family and Medical Leave (FMLA) and Parental Leave approval process in its Office of Medical Services and appointed a FMLA Program Manager to administer the program. We have amended Section 19 to comport with this new centralized FMLA approval process. We have delineated the responsibilities of the FMLA Program Manager and the employee's supervisor under the new system. We have also provided guidance on when the FMLA Program Manager can require recertification (a new medical certification by a health care provider) in conformity with U.S. Department of Labor FMLA regulations.

Section 20. Parental Leave

13. Parental Leave was carved out of FMLA by the Council and expanded to allow an eligible full-time employee (one who has completed the probationary period and has merit status) to use up to 720 hours or 18 weeks of parental leave. In contrast, FMLA provides for up to 480 hours or 12 weeks of leave. Parental Leave gives the parents of the newborn child or adopted child an opportunity to bond and care for the child for up to 18 weeks. An employee who is the parent of a newborn child or a newly adopted child is eligible for parental leave. In the revisions to the Personnel Regulations we clarify that grandparents, aunts and uncles, and other relatives are not eligible for parental leave. A spouse or domestic partner may use parental leave to attend to the child's mother or other children in the family at the time of the birth or adoption of a child.

We clarify that Parental Leave and FMLA generally run concurrently. In other words, all hours used as Parental Leave count against the employee's FMLA entitlement of 12 weeks in a leave year, with certain exceptions (e.g. when an employee uses compensatory time; when an employee is not eligible for FMLA; and when an employee has already exhausted the FMLA leave entitlement for the year).

Section 21. Administrative Leave

14. The addition of Section 21-1 (m) codifies the current practice of providing administrative leave to County employees for time spent interviewing for other County government positions.

During a recent weather related General Emergency, an issue came to the attention of OHR relating to an employee who had been Absent Without Leave (AWOL) for several days prior to the February 13-14, 2014 closing and for several days after the closing. The question was whether the employee was entitled to receive General Emergency Administrative Leave for those two days. While the employee was not entitled to Holiday benefits under Section 24-4(c) for the Presidents Day holiday on Monday, February 17 because the employee was not in pay status, the Personnel Regulations are silent with respect to eligibility for General Emergency Administrative Leave. Therefore, Section 21-5 is being amended to address this situation by providing that if an employee is AWOL on either the employee's last regular workday before or first regular workday after a General Emergency, the employee will not be eligible for General Emergency Administrative Leave.

Section 26. Transfer

15. There have been situations where in order to resolve a grievance or conflict it has been necessary for the OHR Director to transfer or place an employee in a vacant position in another department. A few departments on occasion have resisted such efforts and questioned the OHR Director's actions. This provision clarifies that the OHR Director may act on behalf of the CAO to transfer or place an employee in any vacant position for which the employee meets the

minimum qualifications: (a) in order to resolve a grievance, conflict or other problem; (b) to promote efficient operations in the County; or (c) under other circumstances where the CAO determines that such action is in the best interests of the County. However, a department director may appeal the OHR Director's decision to transfer or place an employee in a vacant position to the CAO for final determination.

Section 27. Promotion

16. Currently, under Section 27-2(c) of the Personnel Regulations, a department director may approve a noncompetitive temporary promotion of an employee for up to 12 consecutive calendar months. Approval by the MSPB, however, is required for a noncompetitive temporary promotion longer than 12 months. In 2009, the MSPB, in disapproving several requests to extend a temporary promotion beyond a period of 12 months, indicated that noncompetitive temporary promotions which span a longer period of time undermine the merit system, which provides for full and open competition. It is the MSPB's position that noncompetitive temporary promotions which last more than a brief period of time gives the employee who has been temporarily promoted a competitive advantage over other employees if the position is later filled on a competitive basis. The MSPB determined that it will not grant extensions of temporary noncompetitive promotions beyond the initial 12-calendar months absent "exigent or compelling circumstances." In an effort to accommodate departmental needs to use temporary promotions to maintain operations without running afoul of merit system principles, and after consultation with the MSPB, OHR developed the option of competitive temporary promotions. Thus, if a department at the outset recognizes that circumstances may exist down the road which would require a temporary promotion to last more than 12 months and in order to maintain continuity, the department may elect to fill the position by means of a competitive temporary promotion. This entails the same process that is used for filling permanent positions and would provide for full and open competition. There is currently no specific subsection in the Personnel Regulations that deals with competitive temporary promotions. These types of promotion would arguably fall within the scope of Section 27-2(a) which relates to temporary promotions. We decided to add Section 27-2(d) to specifically provide for competitive temporary promotions.

Section 30. Reduction-In-Force and Furlough

17. We have moved the furlough provisions to its own separate section of the Personnel Regulations (Section 31) to separate reduction-in-force and furlough provisions. The old Section 31, *Demotion*, has been moved to a new Section 36.

Section 32. Employee Drug and Alcohol Use and Drug and Alcohol Testing

18. The changes to Section 32 were requested by the Maryland Transportation Administration (MTA) as part of its 2013 audit of the County's Drug and Alcohol Program. Most of these amendments are technical in nature such as replacing "Safety-Sensitive position"

with "FMCSA Safety-Sensitive position" or replacing "Safety-Sensitive Transit position" with "FTA Safety-Sensitive position." Some of the amendments, however, clarify policy and correct errors. These include, e.g. Section 32-3(h)(8)(A) (FTA Safety Sensitive positions do not have a second chance policy); Section 32-3(h)(15) (F) (DOT test results are sent to the Designated Employer Representative , not to the department director); Section 32-3(h)(18)(A)(iii) (deleting "saliva sample" because the County does not perform alcohol testing using saliva); and Section 32-3(m)(1) (Drug and alcohol test results are kept separate from employee medical records per DOT Part 40 regulations). The FTA also requested that Section 32 of the Personnel Regulations include contact information, phone number and email address for the OHR OMS Drug and Alcohol Program Coordinator in Sections 32-3(h)(10) and 32-3(m).

Section 35. Merit System Protection Board Appeals, Hearings, and Investigations

19. Most of the amendments to Section 35 were proposed by the Merit System Protection Board. One of the improvements suggested by the MSPB streamlines and simplifies the appeal process by converting the filing of an appeal by an employee or applicant from a two step procedure (a simple written statement that the individual wants the MSPB to review an action + a submission within 10 working days of detailed information relating to the appeal) to a one step procedure (providing the required information or completing the MSPB Appeal Form). The new rules also modernize the appeal process by allowing employees to file appeals with the MSPB electronically. The MSPB Appeal Form, now available on the MSPB's County website, is being added to the Personnel Regulations as Appendix V.

At the request of the MSPB, in order to be consistent with the updates to the Montgomery County Code Section 21-7(a), we have removed references to volunteer fire department employees in Sections 35-1(b), 35-2(a), 35-2(b), 35-8(b), 35-8(f) and 35-8(g).

In one instance, we changed the language suggested by the MSPB. The MSPB proposed adding the following provision as Section 35-7(c): "The MSPB may dismiss an appeal if it determines it lacks jurisdiction over the appeal or the appeal becomes moot." We separated this into two provisions and changed the "may" to "must" dismiss an appeal if it determines it lacks jurisdiction since if the MSPB has no jurisdiction it stands to reason that it has no discretion. We retained the "may" if the appeal becomes moot.

In another instance, we added clarifying language. The MSPB proposed adding Section 35-15(b) which provides that if the parties settle a case while in proceedings before the MSPB, the parties may enter the settlement agreement into the record, and if requested to enter the agreement in the record, the MSPB will retain jurisdiction to enforce the terms of the settlement. Language was added, at the request of the County Attorney's Office, to clarify that the parties "may agree" to enter the settlement agreement in the record.

A few of the MSPB's proposed changes, however, raised some concerns. Section 35-7(a), *Dismissal of an appeal*, of the Personnel Regulations states that "[t]he MSPB may dismiss an appeal if the appellant did not submit the appeal within the time limits specified in Section 35-3. The MSPB suggested adding the following sentence to Section 35-7(a): "The MSPB may waive the time limits for filing an appeal upon a showing of good cause as to why a waiver is

appropriate." This language proposed by the MSPB, however, has not been included in the amendments to Section 35 in Executive Regulation 16-13. Both the Office of the County Attorney and OHR objected to adding this sentence because it is unnecessary and would encourage employees to file appeals well outside the time limits set forth in Section 35-3. Recently, there have been three separate appeals filed by employees that relate to events occurring between two and five years earlier. Memories fade, staff turn over, and it is more difficult and time consuming to respond to a complaint years after the action giving rise to the complaint occurred.

Some of the amendments to Section 35 of the Personnel Regulations were requested by the County Attorney's Office and supported by OHR. With an increase in the number of MSPB appeals, delays in the County Attorney's Office and OHR receiving copies of these appeals, and the need to attach sworn affidavits from employees to the County's Response, 15 working days is no longer a sufficient period of time for the County to adequately respond to an appeal. Accordingly, the period for responding to an appeal has been changed from 15 working days to 30 calendar days in Section 35-8(d), (e), (f) and (g). Similarly, the County Attorney's Office believes that 5 calendar days is not enough time to respond to a motion and has requested that the time period for an opposing party to respond to a motion under Section 35-11(a)(4) be increased from 5 to 10 calendar days.

The Office of the County Attorney also requested that Section 32-12(b), which permits a party to take a deposition or interrogatory of a witness prior to the hearing for impeachment or discovery purposes, be clarified by adding the language "as authorized by the Montgomery County Code, Chapter 2A, Administrative Procedures Act, Section 2A-7(b)."

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Treasurer

MAURIE ROSENBERG
Executive Director

June 15, 2015

Councilmember Nancy Navarro
100 Maryland Avenue
6th Floor
Rockville, MD 20850

Dear Councilmember Navarro:

I hope you are well. Thank you for your service and devotion to all of us who live in Montgomery County. I am writing to you regarding Section 15. Work Schedules, Attendance, Hours of Work,15-4(a)(3)(B).

As Rabbi of an Orthodox Jewish synagogue, I was concerned about the possible employment implications for those in my community. Just as Orthodox Jews are not able to work on Friday after sunset or Saturday during the day we are also restricted during the holidays of Rosh Hashanah, Yom Kippur, Sukkot, Passover, and Shavuot. Though many times these holidays occur on weekends they also could take place on weekdays. The total number of days that an Orthodox Jew could be unable to attend work for religious reasons could be as high as thirteen! These holidays are spread through the year, some days in the Fall, others in the Spring. I am sure you can imagine that an Orthodox Jew who happened to begin employment before a religious holiday might face great difficulty, and might even be precluded from accepting a position.

Thanks very much for your consideration, your service on behalf of every citizen in Montgomery County, and your attention to the unique needs of the Orthodox Jewish community. Please feel free to contact me if you would like to discuss this further.

Sincerely,

Rabbi Dovid Rosenbaum

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EXECUTIVE REGULATION 16-13AM, COMPREHENSIVE AMENDMENTS TO THE 2001 MONGOMERY COUNTY PERSONNEL REGULATIONS
(Sections that provide for technical changes – renumbering, punctuation, grammar and clarifying language – are not included in this chart)

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 2. General Provisions **Section 2-13 Sunset Date** **Page 2**	To extend the sunset date to March 1, 2020	This changes the expiration date of the Personnel Regulations from January 1, 2016 to March 1, 2020.	Support	
Section 4. Records **4-3(a)(6) Employee records** **Page 2**	To allow a department director or designee who is considering offering an employee a position to review that employee's (non-medical) records	This new provision allows departments to do their due diligence prior to offering a position to an employee from another department.	Is this a big change? Can a department director currently see an employee's records now? Support	There has been inconsistency in application. This change was requested by several departments to allow them to perform due diligence. For example, would you offer a transfer to an employee whose overall rating is "Does not meet expectations?"
Section 4. Records **4-3(b)(2)** **Employee records** **Page 2**	To provide that department operating records may be maintained electronically	Currently only personnel records and supervisory files can be in electronic format. This brings the provision up-to-date with technology.	Support	
Section 5. Equal Employment Opportunity **Pages 3-4**	To replace Human Relations Commission with the Office of Human Rights	Updates the Code to "Office of Human Rights".	Support	
Section 6. Recruitment and Application Rating Procedures **6.5 (b) Competitive rating process** **Page 4**	To eliminate the printing of the competitive rating process for a vacancy announcement from the printed County jobs bulletin	The County no longer prints a jobs bulletin. The jobs bulletin is only available on the County Website.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 7. Appointments, Probationary Period, and Promotional Probationary Period 7-2(a)(2) Purpose of probationary period and promotional prob. Period Page 5	To clarify that an employee moving from a non-merit position to a merit position must serve a probationary period	This change codifies current practice and clarifies that a non-merit employee appointed to a merit position must serve a probationary period in the new merit position.	Support	
Section 7. 7-2(a)(5) Purpose of probationary period and promotional probationary period Page 5	To allow an appointee to a public safety position who unsuccessfully completes their new probationary period to be moved and placed in the same grade as the employee had before the transfer	This places the employee who unsuccessfully completes a transfer to a Firefighter/Rescuer Recruit, Police Officer Candidate, Deputy Sheriff Candidate, or Correctional Officer I in the same grade in a vacant position as they had before they transferred.	Support	
Section 7. 7.2 (f)(1) Probationary Period and Promotional Probationary Period Page 6	To state that the OHR Director must reassign a merit system employee if the employee's performance in a new position has been inadequate during the promotional probationary period	Will change the "may" to a "must" in this section.	Support	
Section 8. Medical Examinations and Reasonable Accommodation 8-4(b)(8) Federal Standards and Guidelines Page 7	To add The Health Insurance Portability and Accountability Act of 1996 (HIPAA)	This will add HIPAA to the list of statues and regulations for compliance.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 8. 8-6 and 8-7 Required medical examinations of applicants and employees Pages 7-8	To require a new drug and alcohol test for an employee who has been in a position for more than 5 years and is reassigned, transferred, demoted or promoted to a new position requiring testing	These changes relate to requirements for drug and alcohol testing. Per MSPB request, OHR excluded from the requirements the medical history protocol.	Support	
Section 9. Classification 9-1(i) Definitions Pages 8-9	To change the wording from "Position Profile Form" to "Oracle Position Transaction Approval Process"	To update the requirements from Position Profile Form (paper) to Oracle Position Transaction Approval Process (electronic).	Support	
Section 9. Classification 9-1 Definitions 9-1(i)(2) Page 9	To use the Oracle Position Transaction Approval Process to document and track OMB and OHR approval of changes to positions	This updates the requirements for classification processing and provide for electronic tracking of classification changes.	Support	
Section 9. Classification 9-3 Classification Plan 9-3(d)(3)(A) Consideration of other relevant factors in class allocation Page 10	To rephrase and add "pay is competitive" and to delete "comparability and competitiveness" in the labor market	Will assure the County's pay is competitive in the labor market.	Why was "comparability and competitiveness" deleted? Seems less specific. Support	New language was suggested by OHR Compensation and Classification team. Change is stylistic (makes it clearer) rather than substantive in nature. The County considers how competitive it is by comparing its salaries to other organizations and local governments.
Section 9. Classification 9-4(h)(1)(A)(B) Effective date of an individual position reclassification Page 15	To provide that the effective date of an upward reclassification is the date of the OHR Director's or CAO's classification decision or 12 months from the date when OHR received the information to conduct the study, whichever occurs first	This clarifies the effective date of an upward reclassification.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 9 Classification **9-6 Administrative Review** **9-6(a) Review of proposed classification action** **Pages 16-17**	To change "Review of a proposed classification action" to "Review of a classification decision to downgrade" To eliminate the following: "Before the CAO or OHR director makes a classification decision on an individual position or an occupational class, the OHR Director must give the position incumbent and supervisors an opportunity to provide written comments"	The amendment provides clearer steps for an employee to file a request for administrative review of a classification decision to downgrade.	Don't understand the elimination of 9-6 (a). "OHR Director must give the position incumbent and supervisor an opportunity to provide written comments" Support	9-6 (a) was deleted because it was out of place in that it does not relate to administrative review. An employee has an opportunity to comment before the final decision under Section 9-4(d)(3).
Section 10. Employee Compensation **10-4 Payroll Policies** **10-4(d)(2) Recovery of employee debt to County** **Page 20**	To eliminate retirement contributions from list of recovery deductions for employee debt Deductions listed as annual leave, compensatory time, unpaid salary owed	Conforms to the County Code and defines pay period and work year.	Why the change? Is this conferring to State/Fed law? Support	Under the Internal Revenue Code, a retirement plan must be written and operated according to its terms. The terms of the retirement plans are in the County Code, not the Personnel Regulations, so the Personnel Regulations cannot provide terms that are not in the County Code. An additional reason for the change is that the Retirement Savings Plan does not permit any offset for a County debt.
Section 10. Employee Compensation **10-4(g), Direct Deposit** **Page 21**	To require all unrepresented employees to provide direct deposit information To eliminate grandfather provision to received paper paychecks	Will modernize Direct Deposit provisions to require employees who were grandfathered from this provision (hires prior to 7/1/04) to provide direct deposit information.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 10. Employee Compensation 10-5(b) (1 to 11) Salary on appointment and reappointment for employees on the GSS and MLS salary schedules Pages 21-23	To expand the criteria for hiring a new employee above the midpoint of the salary range and allow a department director to appeal the OHR Director's denial of a salary beyond midpoint to the CAO	This provides criteria to set the salary of a newly appointed or reappointed employee and to avoid creating inequities with existing employees.	Support	
Section 10. Employee Compensation Salary on Promotion 10-5(c)(1)(D to H) Compensation for Regular Promotion Pages 23-24	To clarify salary on promotion and provide guidance on factors to be considered	Will eliminate confusion with respect to salary on promotion.	Support	
Section 10. Employee Compensation Salary on Promotion 10-(c)(1)(I) Compensation for a regular (non-temporary) promotion Page 24	To allow the CAO to approve a total increase in base salary on promotion greater than 20 percent	Provides criteria for extraordinary circumstances to increase a base salary in a competitive promotion.	Support	
Section 10. Employee Compensation 10-5(d)(2) Salary on demotion Page 25	To provide that in a voluntary demotion when the employee's base salary is above the maximum salary of the new pay grade or pay band, the employee's salary must equal the maximum salary of the new pay grade or pay band	Disallows compensation that goes beyond a pay grade or pay band.	How many employees will this affect? Is this the current policy?	New language was suggested by OHR Compensation and Classification team. This is the current policy and the purpose of the new language is to make it clearer.

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 10. Employee Compensation 10-5(d)(4)(C) Salary on demotion Page 25	To allow an unrepresented employee demoted as a result of disability to retain his salary indefinitely (not two years as is the current case)	This amendment will treat bargaining unit and non-bargaining unit employees the same.	Support	
Section 10. Employee Compensation 10.7 Overtime Compensation Threshold Chart Pages 28-29	To change some threshold hours	Changes made to conform to collective bargaining agreements.	Support	
Section 10. Employee Compensation 10-7(e) Overtime Compensation Rounding of overtime Page 31	To eliminate Rounding of Overtime Section	It is no longer necessary to round up to the nearest ½ hour.	Is this eliminated because the current system is more precise? Support	Electronic time sheets allow employees through decimal conversion to record actual overtime worked to the minute. This had previously been agreed to with MCGEO in CBA for when County shifted from paper to electronic time sheets.
Section 10. Employee Compensation 10-19(a) and (b) Automotive Service Excellence (ASC) incentive pay Pages 45-46	To add the Departments of General Services and Fire and Rescue Services to the ASE incentive pay program	Will encourage eligible employees to increase their knowledge and application of the latest technology of vehicle maintenance by compensating them for obtaining ASE certifications.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 10. Employee Compensation **10-22(a) Severance Pay** **Pages 46-47**	To provide that a probationary employee terminated after 12 months will receive 3 weeks of severance	A probationary employee terminated after 12 months receives 6 weeks of severance – 3X as much as an employee terminated after less than 12 months and the same as an employee RIF'd after 5 years.	A terminated probationary currently receives 6 weeks severance? Support	Yes. A probationary employee terminated after 12 months currently receives 6 weeks of severance pay. We propose reducing it from 6 weeks to 3 weeks.
Section 11 **Performance Planning and Evaluation** **Pages 48-56**	To change "expectations and standards" to "objectives and success criteria" and to add electronic acknowledgement and electronic date stamp	This updates Section 11 to describe performance planning and evaluation and provides for electronic acknowledgement or electronic date stamp for signature.	Support	
Section 12. Service Increments and **12-8 Twenty-year longevity increment for police, fire, sheriff or correction management** **Pages 56-61**	To outline when a twenty-year longevity/performance increment can be awarded for police, fire, sheriff or correction management	Will give additional guidance on awarding longevity increments to police, fire, sheriff, or correction management and provides clarifying wording in the service increment section.	Support	
Section 12. Service Increments **12-9 Twenty-year longevity/performance increment** **Pages 61-64**	To outline when a twenty-year longevity/performance increment can be awarded to an employee on the General Salary Schedule	Will provide additional guidance on awarding longevity increments to promoted employees and employees transferring from or to bargaining units or non-bargaining units.	Support	
Section 13. Performance Awards **13.1(d) Monetary Awards** **Pages 64-65**	To add MLS employees to monetary awards with the approval of the CAO	Allows MLS employees to receive monetary awards.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 13. Performance Awards **13.2(a) and (b)(4)** **Monetary Awards** **Pages 65-66**	Increase Department Employee of the Year Award from "$250 next pay" to "$500 gross" and increase Department Recognition Awards from "100 next pay" to "200 gross"	Will increase award pay.	Support	
Section 15. Work Schedules, Attendance, Hours of Work and Appendix H **Page 68-77** **Pages 145-148**	To describe the display part of an employee's electronic timecard for various work schedules and to provide for transitioning schedules for employees going on or off compressed work schedules or flextime (Also to update Appendix H, Compressed Work Schedule Agreement)	Will inform employees transitioning on or office compressed work schedules or flextime that there may be a special transition work schedule and the need to communicate with the MCTime Team and Department of Finance with scheduled changes.	Support	
Section 15. Work Schedules, Attendance, Hours of Work **15-4(a)(3)(B)** **Page 69**	To eliminate the advance leave usage by exempt employees for religious observance Note: The regulations use the terms "exempt employee" or "non-exempt employee." The Fair Labor Standards Act governs whether an employee is exempt from receiving overtime pay.	Changed to provide for earning religious leave in the same pay period. Previously allowed an exempt employee to cover work absences for religious observance before or after the absence with leave earned over no more than 8 pay periods. Non-exempt employees must work additional hours during the same workweek to equal the amount of time taken off for religious reasons.	There could be a circumstance where a new employee needs advance leave for a religious purpose. Does this really need to change? See letter from Rabbi Dovid Rosenbaum, YISE at ©180 asking that the County not make it difficult for employees to use leave for religious observance.	This change was requested by Finance. Generally, the Personnel Regulations do not provide for advance leave. It has to be earned first. The auto stop feature in MCtime (employee electronic time sheets) which prevents an employee from using more leave than the employee has available, is rendered inoperative by the current provision allowing certain employees to use religious leave first and then earn it later.

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 15. Work Schedules, Attendance, Hours of Work 15-4(a)(3)(C) Page 70	To allow MLS employees to request an alternate work schedule (AWS) for religious observances	MLS employees are expected to work not less than 80 hour per pay period for full-time. A department director must not compensate an MLS employee for overtime work; some MLS employees have been allowed to earn compensatory time in the form of religious leave for overtime work creating an inequity between MLS employees based on religion. An AWS does not conflict with the prohibition on MLS employees earning compensatory time.	Can you give me additional info? Support	Some MLS employees were abusing the system by earning and "banking" compensatory time in the form of religious leave for overtime work.
Section 16. Annual Leave 16-2(b)(2) Eligibility for annual leave Page 78	To allow an unrepresented temporary employee who becomes a full or part-time employee (without a break in service) to be credited on a prorated basis with not more than 60 hours of annual leave (the same as a MCGEO employee)	Addresses the difference in treatment of temporary represented and temporary unrepresented employees. An unrepresented employee will no longer have to "be doing the same work" to be credited for annual leave.	Support	
Section 16. Annual Leave 16-4(c) Change in annual leave accrual rate Page 78	To clarify that a merit system career position employee who separates from County service and later returns is entitled to the same annual leave accrual rate that the employee enjoyed previously based on years of service	Puts in regulation what has been practice.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 17. Sick Leave 17-2(b)(2) Eligibility for sick leave Page 78	To allow an unrepresented temporary employee who becomes a full or part-time employee (without a break in service) to be credited on a prorated basis with not more than 60 hours of sick leave (the same as a MCGEO employee)	Addresses the difference in treatment of temporary represented and temporary unrepresented employees.	Support	
Section 17. Sick Leave 17-10(a)(1)(A) Sick Leave Donor Program Page 79	To change eligibility to receive sick leave donations for unrepresented employees from 12 months to 6 months; the same as represented employees	Eliminates the inequity between bargaining and non-bargaining unit employees.	Support	
Section 17. Sick Leave 17-10(a)(l)(E)(ii) Sick Leave Donor Program Page 79	To provide that the recipient of donated sick leave is shielded from information about the individual contributions of leave	Conforms to Ethics Commission Waiver No 14-10-004 regarding sick leave donations.	Support	
Section 17. Sick Leave 17-10(a)(2) Sick Leave Donor Program Employee eligibility to receive sick leave, annual leave or PTO donations Pages 79-80	To codify OHR Director's current practice of determining whether a requested waiver of the 7-day waiting period for sick leave donations is warranted and lists family as spouse, domestic partner or child for family member's serious health condition	Codifies the OHR Director's practice and clears up confusion.	Support	
Section 17. Sick Leave 17-10(a)(3) Sick Leave Donor Program Program Administration Page 80	To provide for extenuating circumstances to waive the requirement to be in a merit system position for 6 consecutive months	Allows flexibility when an employee is close to the six month requirement or the employee has previously worked for the County.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 17. Sick Leave 17-10(c)(1)(D) Sick Leave Donor Program Program Administration Page 81	To add the suspicion of sick leave abuse to question the validity of an application for donated sick leave	Allows a department director to deny an application if there is reason to suspect sick leave abuse.	MSPB suggested providing guidance to directors re sick leave abuse. Support	OHR felt it could not provide guidance because any list of examples would be not be inclusive and that suspected misuse or abuse is based on a pattern or practice of sick leave absences or excessive absences and similar language is used in the MCGEO CBA.
Section 17. Sick Leave 17-10(d)(5) Use of sick leave, annual leave, or PTO donations Page 82	To allow an employee to receive donated sick leave for complications of pregnancy and childbirth	Clarifies that an employee may receive donated sick leave for complications of pregnancy and childbirth when those complications make the employee unable to work.	Support	
Section 18. [Disability] Salary Continuation Benefit for Workers' Compensation Disability Leave Pages 82-86	To change "Disability Leave" to "Salary Continuation Benefit for Workers' Compensation Disability Leave" and outlines the salary continuation benefit program provided by the County instead of Workers' Compensation benefits	Resolves any current or potential operational inconsistencies with federal and state laws for unrepresented employees in providing Workers' Compensation benefits. Reduces salary continuation benefit from 18 to 12 months if an employee chooses not to participate in Pharmacy Benefit Management or Nurse Aide Management Programs.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 19. Family and Medical Leave Pages 86-95	To centralize the Family and Medical Leave (FMLA) and Parental Leave Act responsibility in the Office of Medical Services and provide guidance on FMLA Program Manager responsibilities, supervisor responsibilities, and information that must be provided to employees To clarify that an employee failing to return to work after FMLA leave exhaustion or expiration must repay the County	This delineates the Family and Medical Leave (FMLA) and Parental Leave responsibility in the Office of Medical Services in OHR. The handling of FMLA is the responsibility of the FMLA Program Manager with some responsibilities for the employee's supervisor outlined.	What will OHR do to better inform managers and employees of this change? Support, but feel employees need to be reminded.	In the fall of 2012, OHR centralized the FMLA and Parental Leave process in OMS. A detailed guideline memo informed departments, supervisors and employees of this change. This change to the Personnel Regulations codifies a process that has been in existence and working well for almost three years.
Section 20. Parental Leave 20-2(b) Eligibility for parental leave Page 96	To provide for parental leave/FMLA for parents of a newborn or adopted child for up to 18 weeks	Clarifies that Parental Leave and FMLA generally run concurrently. Clarifies provisions for parental leave and defines that parent does not mean grandparent, aunt, or uncle.	Support	
Section 21. Administrative Leave 21-1(m) Authorized use of Administrative Leave Page 97	To provide administrative leave to County employees to interview for other County jobs	Codifies the current practice	Support	
Section 21. Administrative Leave 21-5 Limits on administrative leave for general emergency Page 97	To provide that an employees who is AWOL before or after a General Emergency, will not be eligible for General Emergency Administrative Leave	Clarifies that an AWOL employee will not receive General Emergency leave.	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 26. Transfer 26.2 CAO's Authority to Transfer an Employee Page 97	To allow the CAO to transfer an employee in any vacant position for which the employee meets the minimum qualifications in order to resolve a grievance, conflict, problem or promote efficient operations or act in the best interests of the County	Clarifies the CAO's authority to transfer or place employees and codifies current practice by the OHR Director and allows department directors to appeal the OHR Director's action to the CAO.	Support	
Section 26. Transfer 26.3 OHR Director's Responsibility to Transfer an Employee Page 98	To allow the OHR Director to act on behalf of the CAO to transfer or place an employee in any vacant position for which the employee meets the minimum qualifications	Clarifies current practice and the OHR Director's authority to transfer an employee. A Department Director may appeal to the CAO on the decision to transfer.	Support	
Section 27. Promotion 27-2(c) Noncompetitive temporary promotion and 27-2(d) Competitive temporary promotion Pages 98-99	To add a new section to allow for competitive temporary promotions when a department anticipates that a temporary promotion will last more than 12 months	Defines noncompetitive temporary promotion to address MSPB concerns that noncompetitive temporary promotions which span a longer period than 12 months undermine the Merit System.	Support	
Section 32. Employee Drug and Alcohol Use and Drug and Alcohol Testing Pages 112-134	To make technical changes, clarify policy, correct errors and define Designated Employer Representative and Employee Medical Examiner (EME) To add FMCSA (Federal Motor Carrier Safety Administration) and FTA (Federal Transit Administration) requirements and provide that tests will be conducted under County authority not under direct observation	Changes to Section 32 were requested by the Maryland Transportation Administration (MTA). Pages 127 and 128 substitute a graphic for the chart "When Post-Accident Testing is Required"	Support	

Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 30. Reduction-In-Force **Section 31. Furlough** **Pages 99-112**	To move furlough provisions to Section 31 To move Old Section 31, Demotion, to new Section 36, Demotion.	This amendment separates the reduction-in-force and furlough provisions.	Support	
Section 33, Disciplinary Action **33-5 (c) and (bb) Causes for Disciplinary Action** **Pages 134-135**	To eliminate reference to County-provided Internet, Intranet and Electronic Mail Services and retain – "violates any established policy or procedure" and adds violations of HIPAA to causes for disciplinary action	Update causes for disciplinary action.	Can you provide more info on the change? Support	OHR believes that there is no reason to single out County computer policy over a myriad of other policy memos. HIPAA was added as a cause for disciplinary action at the request of the HIPAA compliance committee to comply with federal regulations.
Section 35. Merit System Protection Board Appeals, Hearings and Investigations **35-4 Appeal filing requirements** **Pages 136-137**	To remove the requirement for an appellant to provide information solely in written format and allow electronic submission of materials and outline documentation required for an appeal To make other technical and clarification changes to Section 35	Changes the process from a two-step process to a one-step process that can be done electronically and to outline documentation required for an appeal. Requested by the MSPB	Support	
Section 35. Merit System Protection Board Appeals, Hearings and Investigations **Section 35-1(b), 35-2(b), 35-8(b), 35-8(f) and (g)** **Pages 136-139**	To remove references to volunteer fire department employees	The removal of references to volunteer fire department employees is consistent with updates to the County Code. Requested by the MSPB	Support	

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Code Section and Title	Change	Rationale for Change	Council Staff Comments/Questions	OHR Comments
Section 35. Merit System Protection Board Appeals, Hearings and Investigations 35-7(c-f) Dismissal of an appeal Pages 138	To provide that the MSPB "must" dismiss an appeal if it determines it lacks jurisdiction and it "may" dismiss an appeal if it becomes moot and to provide other factors for dismissal	Separates the appeal where there is no discretion from the appeal that becomes moot where there may be discretion. Requested by the MSPB	Support	
Section 35. Merit System Protection Board Appeals, Hearings and Investigations 35.8 (d),(e), 35-11(a)(4) Notifications, Response, Submission Pages 138-140	To increase the number of days for the County to respond to an appeal from 15 working days to 30 calendar days and increase the time period for an opposing party to respond to a motion from 5 to 10 calendar days	The County Attorney's Office requested additional time because 15 working days is no longer sufficient time to respond to an appeal and 5 calendar days is not enough time to respond to a motion. Requested by the County Attorney	Support	
Section 35. Merit System Protection Board Appeals, Hearings and Investigations 32-12(b) Testimony of Witnesses Pages 140-141	To add language "as authorized by the Montgomery County Code, Chapter 2A, Administrative Procedures Act, Section 2A-7(b)" to Section 32-12(b) which permits a party to take a deposition or interrogatory of a witness	This clarifies that the Code authorizes a party to take a deposition or interrogatory of a witness. Requested by the County Attorney	Support	
Section 35. Merit System Protection Board Appeals, Hearings and Investigations 35-15(b) MSPB may enforce settlement agreements Page 141	To give the MSPB jurisdiction to enforce the terms of a settlement if parties agree to enter the settlement agreement in the record	Clarifies that parties "may agree" to enter the settlement agreement in the record. Requested by the MSPB	Support	

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