

Worksession

MEMORANDUM

TO: Government Operations and Fiscal Policy Committee

FROM: Justina J. Ferber,  Legislative Analyst

SUBJECT: **Executive Regulation 11-16, Amendments to Montgomery County Personnel Regulations, Sick Leave Donations**

The Committee will consider the Executive's proposed amendments to the Montgomery County Personnel Regulations (MCPR) to amend Sections 17 and 20 – Sick Leave Donations – to:

- allow sick leave donations to be used to care for a parent with a serious health condition;
- allow a maximum of 120 hours of sick leave donations to be used as parental leave to bond with a newborn or newly adopted child;
- provide that an employee is not entitled to accrue annual or sick leave while using donated leave; and
- change the eligibility for parental leave from merit status to having been employed by the County in a merit system position for at least 6 consecutive months.

The Executive's transmittal memorandum notes that the regulation was advertised in the July 2016 issue of the *Montgomery County Register* and comments from employee Robert Cobb are attached at ©22-24. Also, the Merit System Protection Board (MSPB) reviewed the regulation and provided comments at ©19-20. A fiscal impact statement indicating a minimal increase in cost to the County is at ©2-4 and the analysis of cost is at ©2.

BACKGROUND

During deliberations on the Comprehensive Amendments to the Personnel Regulations in June 2015, Executive staff was asked by the GO Committee to submit an amendment to the personnel regulations to address issues related to parental leave and donated leave. Also, in the course of discussing family leave policies, Committee members expressed interest in employee use of sick leave to care for a parent with a serious health condition.

STAFF COMMENTS

Council staff believes there should be additional amendments to ER 11-16 to reduce confusion between parental leave to care for a newborn/newly adopted child and the use of sick leave donations for an extended illness, injury or temporary disability related to pregnancy, miscarriage or childbirth. Staff recommends the Committee consider amendments to Executive Regulation 11-16.

Employee eligibility in Section 17-10 (a) (1) on ©6 should include *illness, injury and temporary disability related to pregnancy, miscarriage or childbirth*. This change would move Section 17-10 (d) (5) to the eligibility section which defines who may use donated leave. Subsequently this phrase may need to be used in other Sections to clarify usage. Add “as parental leave to bond with or care for a newborn child or newly adopted child of the employee” to the eligibility section.

Staff Recommendation: Include employee’s illness, injury or temporary disability related to pregnancy, miscarriage or childbirth in the eligibility section by moving Section 17-10(d)(5) to the eligibility section..

17-10. Sick Leave Donor Program. (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:

* * *

(B) (1) has an extended illness or injury including an illness, injury or temporary disability related to pregnancy, miscarriage or childbirth, that causes the employee to be unable to work for more than 7 consecutive calendar days or to care for [when the employee is the primary caretaker of] the employee’s spouse, domestic partner [or] child, or parent who has a serious health condition; or

(2) is granted parental leave to bond with or care for a newborn child or newly adopted child of the employee; and donated

(C) has requested leave and received approval for the period for which sick leave or PTO donations are sought [because of the extended illness, or injury].

The definition of Parental Leave in Section 20-1 should be amended to include “donated leave”.

Staff Recommendation: Include “donated leave” in the Parental Leave Definition:

20-1. Definition. Parental Leave: An eligible employee’s use of accrued paid leave, compensatory time, donated leave or unpaid leave [,or compensatory time] granted at the time of the birth or adoption of a child.

Staff Recommendation: Clarify the use of sick leave as parental leave is separate from illness, injury or temporary disability related to pregnancy, miscarriage or childbirth by adding language to Section 20-6.

20-6. Use of sick leave as parental leave.

* * *

(b) An employee may not use more than 120 hours of donated sick leave or donated PTO in a leave year for an absence taken as parental leave, except when the employee is on parental leave and has an illness or injury or temporary disability related to pregnancy, miscarriage or childbirth that causes the employee to be unable to work for more than 7 consecutive calendar days.

ACTION

Council staff recommends the Committee request amendments to Executive Regulation 11-16 as discussed above. Further amendments may be needed after the Committee discussion of Chair Navarro's August 29 memo.

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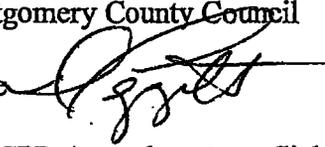
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

September 19, 2016

TO: Nancy Floreen, President, Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Executive Regulation 11-16, MCPR Amendments on Sick Leave Donations

I am transmitting Executive Regulation No. 11-16, MCPR Amendments on Sick Leave Donations, for approval. This regulation amends Sections 17 and 20 of the Montgomery County Personnel Regulations to allow sick leave donations to be used to care for a parent with a serious health condition; to allow a maximum of 120 hours of sick leave donations to be used as parental leave to bond with a newborn or newly adopted child; to provide that an employee is not entitled to accrue annual or sick leave while using donated leave; and to change the eligibility for parental leave from merit status to having been employed by the County in a merit system position for at least 6 consecutive months.

Executive Regulation No. 11-16 was advertised in the April 2016 issue of the *Montgomery County Register*. One comment was received in response to this advertisement. Copies of that comment from an employee and the response from the Office of Human Resources (OHR) are attached. The proposed regulation has been reviewed by the Merit System Protection Board. Copies of the memos between the MSPB and OHR relating to Executive Regulation No. 11-16 are attached. I am also attaching the fiscal impact statement for this regulation.

Executive Regulation 11-16 was re-advertised in the July 2016 issue of the *Montgomery County Register* as a result of an additional amendment changing the eligibility for parental leave. No comments were received in response to the re-advertisement.

Attachments

Fiscal Impact Statement

Executive Regulation 11-16 – MCPR Amendments on Sick Leave Donations

1. Executive Regulation Summary

This regulation amends MCPR Sections 17 and 20 to allow sick leave donations to be used to care for a parent with a serious health condition; to allow an employee to use a maximum of 120 hours of sick leave donations in a leave year as parental leave to bond with or care of a newborn child or newly adopted child, to provide that an employee is not entitled to accrue annual or sick leave while using donated sick leave; and to change the eligibility requirement for parental leave from merit system status to after an employee has been employed by the County in a merit position for at least 6 consecutive months.

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.

The increased cost to the County as a result of this change is minimal. Through the sick leave bank, the County has provided for employees who have exhausted all their leave. Of the 8,944 employees who have been employed more than 6 months, and are eligible to apply to either the sick leave bank or for donated sick leave, 262 (2.9 percent) have fewer than 40 hours of leave (and are likely to be eligible), while 35 have zero (or below) leave balances.

The annual rate at which the workforce currently uses FMLA for parental leave is estimated at 1.5 percent (138 employees per year). Of those 138 employees, 4 are likely to have exhausted all their leave. If those four employees each took the full 120 hours of parental leave, and their positions were backfilled by other employees at the overtime rate, the total cost to the County would be up to \$27,400.

The annual rate at which the workforce currently uses FMLA to care for ill parents is estimated at 1.6 percent (146 employees). Of those 146 employees, 4 are likely to have exhausted all their leave. If those four employees each took the average number of hours of donated sick leave used each year (193), and their positions were backfilled by other employees at the overtime rate, the total cost to the County would be up to \$46,600. In total, the two changes to the regulation covering the administration of donated sick leave are projected to cost the County up to \$74,000 per year. Assuming the FY17 use is prorated by an October 1, 2016 implementation date, the estimated 6 year cost to the County is \$425,500.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See #2

4. **An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.**

Not applicable

5. **An estimate of expenditures related to the County's information technology (IT) systems, including Enterprise Resources Planning (ERP) systems.**

De minimis

6. **Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

See #2

7. **An estimate of the staff time needed to implement the regulation.**

The Office of Medical Services (OMS) will likely be required to certify a larger number of employees who would be eligible to use donated sick leave for parental leave or to care for an ill parent.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

Initially, OMS will utilize existing staff to absorb the additional workload.

9. **An estimate of costs when an additional appropriation is needed.**

See #2

10. **A description of any variable that could affect revenue and cost estimates.**

Any change to the rate of use of sick leave donations will affect cost estimates.

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

Given these new categories of allowable use, the rate of use of sick leave donations in the future.

12. **If a regulation is likely to have no fiscal impact, why that is the case.**

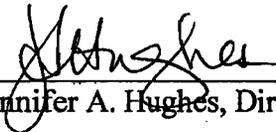
Not applicable

13. **Other fiscal impacts or comments.**

None

14. The following contributed to and concurred with this analysis:

Karen Plucinski, Office of Human Resources
Lori O'Brien, Office of Human Resources
Johnna DeVaul, Office of Human Resources
Stuart Weisberg, Office of Human Resources
Corey Orlosky, Office of Management and Budget



Jennifer A. Hughes, Director

9/15/16

Date



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject MCPR Amendments on Sick Leave Donations	Number 11-16
Originating Department Office of Human Resources	Effective Date

MCPR Amendments on Sick Leave Donations

Executive Regulation No. 11-16

COMCOR No. 33.07.01

Issued by: County Executive

Supersedes: Executive Regulation 12-00AMII, in part

Authority: Montgomery County Code, 2004, §33-7(b)

Council review: Method 1

Montgomery County Register Volume 33 Issue 7

Comment deadline: July 31, 2016

Effective date: _____

Summary: This regulation amends MCPR Sections 17 and 20 to allow sick leave donations to be used to care for a parent with a serious health condition; to allow an employee to use a maximum of 120 hours of sick leave donations in a leave year as parental leave to bond with or care for a newborn child or newly adopted child; to provide that an employee is not entitled to accrue annual or sick leave while using donated sick leave; and to change the eligibility requirement for parental leave from merit system status to after an employee has been employed by the County in a merit system position for at least 6 consecutive months.

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

Staff contact: Stuart Weisberg, 240-777-5154, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject MCPR Amendments on Sick Leave Donations	Number 11-16
Originating Department Office of Human Resources	Effective Date

.SECTION 17. SICK LEAVE

* * *

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 employed by the County in a merit system position for at least 6 consecutive months;
- (B) has an extended illness or injury that causes the employee to be unable to work for more than 7 consecutive calendar days or to care for [when the employee is the primary caretaker of] the employee's spouse, domestic partner, [or] child, or parent who has a serious health condition; and
- (C) has requested leave and received approval for the period for which sick leave or PTO donations are sought because of the extended illness or injury;
- (D) has used all accrued annual leave, sick leave, personal leave, and compensatory time or all accrued PTO, personal leave, and compensatory time if the employee receives PTO instead of annual and sick leave; and

* * *

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



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- (1) If an employee who earns sick leave receives a leave donation from an employee who receives PTO, the donated PTO will be credited as sick leave. If an employee who receives PTO receives a leave donation from an employee who earns sick leave, the donated sick leave will be credited as PTO.
- (2) An employee must have the approval of the employee’s supervisor to use donated sick leave or PTO.
- (3) An employee who receives a sick leave or PTO donation must use it for an absence caused by the extended illness or injury for which the leave was donated.
- (4) An employee who earns sick and annual leave instead of PTO does not [continues to] earn or accrue sick and annual leave while the employee is using donated sick leave. An employee who uses donated PTO will continue to be credited with PTO as required under Section 16-12(a) and (b) of these Regulations.
- (5) An employee may receive sick leave or PTO donations to cover complications of pregnancy, complications of childbirth, or complications of recovery from childbirth, when any of these complications make the employee unable to work.
- (6) An employee may use up to 120 hours of sick leave or PTO donations in a leave year as parental leave to bond with or care for a newborn child or a newly adopted child of the employee.
- (7) An employee may apply for additional sick leave or PTO for the same extended illness or injury before an earlier donation has been exhausted.
- [(7) An employee must use all leave that the employee accrued while using donated leave before the employee may use donated leave approved by the department director at a later date].
- (8) An employee must not use donated sick leave, annual leave, or PTO:



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(A) for a medical or dental appointment that is unrelated to the extended illness or injury for which the leave was donated; or

(B) to care for a family member other than the employee's spouse, domestic partner, [or] child, or parent who has a serious health condition[; or

(C) to care for a well child after the child is born or adopted.]

(9) Donated sick leave or PTO that is used by an employee is credited service that counts towards vesting and retirement eligibility. An employee must not use sick leave or PTO that is donated by another employee, but not used by the recipient, to obtain credit towards retirement.

(10) If an employee dies while receiving leave donations, the County must not:

(A) include donated sick leave in the lump sum sick leave death benefit described in Section 17-13; or

(B) pay an employee's beneficiary or estate for donated PTO under Section 16-12(e).

(11) If an employee resigns or is separated from County employment, the County must not pay the employee for donated PTO.

* * *

SECTION 20. PARENTAL LEAVE

20-1. Definition.

Parental leave: An eligible employee's use of accrued paid leave, compensatory time, or unpaid leave[, or compensatory time] granted at the time of the birth or adoption of a child.



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20-2. Eligibility for parental leave.

- (a) A department director must allow a full-time or part-time employee to use parental leave [if] after the employee has [completed the probationary period and has merit system status] been employed by the County in a merit system position for at least 6 consecutive months.
- (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.
- (c) 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 and may include an employee:
 - (1) having been a County merit status employee in the past or having previously worked for the County in a temporary position; or
 - (2) how close the employee is to meeting the 6-month requirement.

20-3. Amount of parental leave.

- (a) A full-time employee may use up to 720 hours of parental leave during a 24-month period.
- (b) A full-time employee who works more than 40 regularly scheduled hours per week is entitled to use a prorated amount of parental leave.
- (c) A part-time employee who works less than 40 regularly scheduled hours per week is entitled to use a prorated amount of parental leave.

20-4. Use of parental leave.



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- (a) An employee may use any combination of sick leave, annual leave, compensatory time, personal leave or leave without pay as parental leave.
- (b) An employee may use parental leave to care for a newborn child or a newly adopted child of the employee, 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.
- (c) Parental leave must be used within 12 months of the birth of the child or placement of the child with the employee for adoption. If the employee does not use the entire amount of parental leave within the 12-month period following the birth or placement of the child, the balance will remain available to the employee and may be used for a subsequent birth or adoption within the original 24-month period.

* * *

20-6 Use of sick leave as parental leave.

* * *

- (b) An employee may not use more than 120 hours of donated sick leave or donated PTO in a leave year for an absence taken as parental leave.

Approved:

Isiah Leggett

 Isiah Leggett, County Executive

Sept 17, 2016

 Date

Approved as to form and legality:

Anne T. Winder *8/10/16*
 _____ _____
 Office of the County Attorney Date



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject MCPR Amendments on Sick Leave Donations	Number 11-16
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Council review: Method 1

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Summary: This regulation amends MCPR Sections 17 and 20 to allow sick leave donations to be used to care for a parent with a serious health condition; to allow an employee to use a maximum of 120 hours of sick leave donations in a leave year as parental leave to bond with or care for a newborn child or newly adopted child; to provide that an employee is not entitled to accrue annual or sick leave while using donated sick leave; and to change the eligibility requirement for parental leave from merit system status to after an employee has been employed by the County in a merit system position for at least 6 consecutive months.

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

Staff contact: Stuart Weisberg, 240-777-5154, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

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Existing language unchanged by executive regulation.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject MCPR Amendments on Sick Leave Donations	Number 11-16
Originating Department Office of Human Resources	Effective Date

.SECTION 17. SICK LEAVE

* * *

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 employed by the County in a merit system position for at least 6 consecutive months;
- (B) has an extended illness or injury that causes the employee to be unable to work for more than 7 consecutive calendar days or to care for the employee's spouse, domestic partner, child, or parent who has a serious health condition; and
- (C) has requested leave and received approval for the period for which sick leave or PTO donations are sought because of the extended illness or injury;
- (D) has used all accrued annual leave, sick leave, personal leave, and compensatory time or all accrued PTO, personal leave, and compensatory time if the employee receives PTO instead of annual and sick leave; and

* * *

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

(1) If an employee who earns sick leave receives a leave donation from an



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employee who receives PTO, the donated PTO will be credited as sick leave.
 If an employee who receives PTO receives a leave donation from an employee who earns sick leave, the donated sick leave will be credited as PTO.

- (2) An employee must have the approval of the employee’s supervisor to use donated sick leave or PTO.
- (3) An employee who receives a sick leave or PTO donation must use it for an absence caused by the extended illness or injury for which the leave was donated.
- (4) An employee who earns sick and annual leave instead of PTO does not earn or accrue sick and annual leave while the employee is using donated sick leave. An employee who uses donated PTO will continue to be credited with PTO as required under Section 16-12(a) and (b) of these Regulations.
- (5) An employee may receive sick leave or PTO donations to cover complications of pregnancy, complications of childbirth, or complications of recovery from childbirth, when any of these complications make the employee unable to work.
- (6) An employee may use up to 120 hours of sick leave or PTO donations in a leave year as parental leave to bond with or care for a newborn child or a newly adopted child of the employee.
- (7) An employee may apply for additional sick leave or PTO for the same extended illness or injury before an earlier donation has been exhausted.
- (8) An employee must not use donated sick leave, annual leave, or PTO:
 - (A) for a medical or dental appointment that is unrelated to the extended illness or injury for which the leave was donated; or
 - (B) to care for a family member other than the employee’s spouse, domestic partner, child, or parent who has a serious health condition.



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- (9) Donated sick leave or PTO that is used by an employee is credited service that counts towards vesting and retirement eligibility. An employee must not use sick leave or PTO that is donated by another employee, but not used by the recipient, to obtain credit towards retirement.
- (10) If an employee dies while receiving leave donations, the County must not:
- (A) include donated sick leave in the lump sum sick leave death benefit described in Section 17-13; or
 - (B) pay an employee's beneficiary or estate for donated PTO under Section 16-12(e).
- (11) If an employee resigns or is separated from County employment, the County must not pay the employee for donated PTO.

* * *

SECTION 20. PARENTAL LEAVE

20-1. Definition.

Parental leave: An eligible employee's use of accrued paid leave, compensatory time, or unpaid leave granted at the time of the birth or adoption of a child.

20-2. Eligibility for parental leave.

- (a) A department director must allow a full-time or part-time employee to use parental leave after the employee has been employed by the County in a merit system position for at least 6 consecutive months.
- (b) An employee who is the parent of a newborn child or a newly adopted child



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is eligible for parental leave. Grandparents, aunts and uncles, and other relatives are not eligible for parental leave.

(c) 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 and may include an employee:

- (1) having been a County merit status employee in the past or having previously worked for the County in a temporary position; or
- (2) how close the employee is to meeting the 6-month requirement.

20-3. Amount of parental leave.

- (a) A full-time employee may use up to 720 hours of parental leave during a 24-month period.
- (b) A full-time employee who works more than 40 regularly scheduled hours per week is entitled to use a prorated amount of parental leave.
- (c) A part-time employee who works less than 40 regularly scheduled hours per week is entitled to use a prorated amount of parental leave.

20-4. Use of parental leave.

- (a) An employee may use any combination of sick leave, annual leave, compensatory time, personal leave or leave without pay as parental leave.
- (b) An employee may use parental leave to care for a newborn child or a newly adopted child of the employee, 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.
- (c) Parental leave must be used within 12 months of the birth of the child or placement of



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the child with the employee for adoption. If the employee does not use the entire amount of parental leave within the 12-month period following the birth or placement of the child, the balance will remain available to the employee and may be used for a subsequent birth or adoption within the original 24-month period.

* * *

20-6 Use of sick leave as parental leave.

* * *

(b) An employee may not use more than 120 hours of donated sick leave or donated PTO in a leave year for an absence taken as parental leave.

* * *

Approved:

Isiah Leggett
Isiah Leggett, County Executive

Sept 19, 2016
Date

Approved as to form and legality:

Aune T. Winkler *8/9/16*
Office of the County Attorney Date



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

MEMORANDUM

Shawn Y. Stokes
Director

May 19, 2016

TO: Michael Kator, Chairman
Merit System Protection Board

FROM: Shawn Y. Stokes, Director 
Office of Human Resources

SUBJECT: Executive Regulation 11-16 – Sick Leave Donations

Thank you for reviewing ER 11-16 and for the Board's comments which are generally supportive of the proposed regulation. The Board, however, expressed concern about the provision that denies non-management employees accrual rights for sick and annual leave while using donated sick leave.

By way of background, Article 7.14(C) of the recently negotiated collective bargaining agreement between the County and the International Association of Firefighters, Local 1664 (IAFF) provides that an employee using donated leave from the Sick Leave Donor Program is not entitled to accrue annual or sick leave while using the donated sick leave. For the reasons discussed below, we decided to apply this provision to unrepresented non-management employees.

The primary purpose of the Sick Leave Donor Program is to allow employees who have exhausted all their leave to continue to receive their salary and benefits during an extended absence resulting from illness. Under the current regulations, an employee who uses 12 weeks of donated sick leave would, in addition to being paid his or her regular salary, receive a windfall of as much as one week of annual leave and almost 27 hours of sick leave. This might encourage employees to exhaust all their leave so as to be eligible for donated sick leave. In contrast, the Federal government does not allow for donated annual or sick leave to its employees but instead will "advance" the employee leave that will need to be repaid in full.

Michael Kator, Chairman
May 19, 2016
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The Board points to an apparent inequity between unrepresented non-management employees who accrue annual and sick leave each pay period and management employees who receive Paid Time Off (PTO) biannually in a lump sum of 140 PTO hours at the beginning of the leave year and 140 PTO hours at the beginning of the 14th pay period. PTO has proven to be a valuable recruitment tool for management employees. It allows new managers to take time off early on during their County employment (e.g. for a family vacation) without having to work for several months in order to accrue that leave. Also, a manager who separates from County employment receives a lump sum payment up to 600 hours of accrued PTO while there is no pay out to other employees for accrued sick leave. While it is true that an employee who uses donated PTO will continue to be credited with full semi-annual lump sum PTO that PTO flows not from the "use" of donated PTO but from the PTO crediting requirements.

At a time when the use of donated sick leave is increasing, we believe eliminating the benefit of leave accrual while using donated sick leave not only saves valuable funds but gives the County a tool to stem the rising tide of donated sick leave.

SYS/sw

cc: Bruce Martin, Executive Secretary, MSPB



MERIT SYSTEM PROTECTION BOARD

MEMORANDUM

May 3, 2016

TO: Shawn Y. Stokes, Director
Office of Human Resources

FROM: Michael Kator, Chairman
Merit System Protection Board

SUBJECT: Executive Regulation 11-16 - Sick Leave Donations

This is in response to your memorandum, dated April 4, 2016, concerning amendments to the Montgomery County Personnel Regulations (MCPR) to allow sick leave donations to be used to care for a parent with a serious health condition, and up to 120 hours of such donations to be used as parental leave to bond with a newborn or newly adopted child. The proposed amendments also provide that an employee is not entitled to accrue annual or sick leave while using donated sick leave.

The Board fully supports the goal of permitting employees to receive and use sick leave donations to care for an ill parent or to bond with a newborn or newly adopted child and has no comments or issues with that portion of the proposed amendment to the personnel regulations.

It is our view, however, that once leave is donated by one employee to another it should be treated as normal leave and the receiving employee should accrue annual and sick leave. Treating donated leave in this manner would avoid inequity with management employees who receive Paid Time Off (PTO). While we understand that PTO is not accrued on a biweekly basis, and instead is awarded biannually in a lump sum, the regulation specifically provides that an employee who uses donated PTO would continue to be credited with full PTO and thus not be treated in the same manner as an employee who would otherwise accrue sick and annual leave but under the proposed regulation would now have that right rescinded. *See Proposed Amendment to MCPR §17-10(d)(4).*

We note that other government employers in Maryland allow employees on donated leave to continue to accrue leave. For example, the State Personnel Management System also has an employee to employee leave donation program, State Personnel and Pensions Article (SPP), §9-604, but the State program permits employees who receive donated leave to continue to accrue sick and annual leave while utilizing donated leave. *See SPP § 9-103 ("While using leave with pay under this title, an employee: . . . (2) continues seniority and*

Memorandum to Shawn Y. Stokes

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leave accruals based on the employee's regular hours. . ."). This approach is reasonable and fair.

The Board urges you to reconsider denying leave accrual rights to non-management employees on donated leave.

cc: Board Members
Bruce P. Martin, Executive Director, MSPB
Stuart Weisberg, OHR ✓



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Shawn Y. Stokes
Director

MEMORANDUM

May 19, 2016

TO: Robert Cobb, Executive Director
Ethics Commission

FROM: Shawn Y. Stokes, Director
Office of Human Resources 

SUBJECT: Executive Regulation 11-16 – Sick Leave Donations

Thank you for your comments made in your individual capacity as a County employee and manager on Executive Regulation 11-16, Sick Leave Donations.

Section 20, Parental Leave, of the County Personnel Regulations allows an eligible full-time employee (who has completed the probationary period and has merit status) to use up to 720 hours or 18 weeks of parental leave. Parental leave gives the parents of a newborn or newly adopted child an opportunity to bond and care for the child for up to 18 weeks. The amount of parental leave provided by the County is among the most generous of any jurisdiction in the nation.

For over 15 years, the County Personnel Regulations (Section 20-6(h)) has prohibited an employee from using donated sick leave or donated Paid Time Off (PTO) for an absence taken as parental leave. Executive Regulation 11-16 amends the Personnel Regulations to allow a maximum of 120 hours of sick leave donations to be used as parental leave to allow an employee to bond with a newborn or newly adopted child.

While the proposed regulation does not go as far as you would like and does not address other issues that concern you, we believe this regulation represents a positive step in the right direction.

SYS/sw

Weisberg, Stuart

From: Cobb, Robert
Sent: Friday, April 29, 2016 10:13 AM
To: Weisberg, Stuart
Cc: Hansen, Marc P.; Drummer, Bob; Farber, Steve; Ferber, Justina; Navarro, Nancy; Stokes, Shawn Y.; Riemer, Hans; Katz, Sidney; Kassiri, Fariba; Fogel, Adam
Subject: Comment to proposed HR regulations/perpetuation of discriminatory practice

I make this comment as a County employee and manager, not on behalf of the Ethics Commission.

In the County's proposed Executive Regulation amendments to Sections 17 and 20 of the Personnel Manual, the County perpetuates the discriminatory nature of its existing regulations against women recovering from childbirth. It is unclear what the new proposal actually does, but whatever it does, it still treats women in "recovery from childbirth" differently than it treats all other medical conditions when it comes to the benefit of donated leave. (Please refer to my comments, pasted below, from October 16, 2014 to the last prior regulatory proposal concerning this issue.)

Federal law requires equal benefits to women who are recovering from childbirth. 42 U.S.C 2000e(k). A woman who has been told by her doctor to rest for weeks after delivery must be treated the same as any other person with a medical condition that requires absence from work for an extended period. Instead, what both the proposed and current regulations concerning donated leave and parental leave do is treat these women differently from other persons who have been directed by their doctors to take leave to address medical issues.

What occurs under the proposed and current regulations is a woman recovering from childbirth with a doctor's direction to take medical leave will have her leave request characterized as "parental leave." (According to MCPR 20-4(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.") Such women are ineligible for any donated leave, even where their doctors directed them to rest for weeks after delivery. The only allowance for donated leave to a woman recovering from childbirth is reflected in 17-10(d)(5) when there is a "complication from recovery from childbirth" as if recovery from childbirth did not itself involve a medical condition worthy of doctor directed rest.

The proposed amendment does not change the entitlement criteria for donated leave established pursuant to 17-10(a)(1) (which is further limited as to women recovering from childbirth in 17-10(d)(5).) What has changed in the new proposed regulation is that the affirmative prohibitions on receiving donated leave while on parental leave have changed. Now the proposed regulations at 17-10(d)(7)(c) state an employee may not use donated leave "in excess of 120 hours annually to care for a well child after the child is born or adopted" and at 20-6(b) that "an employee may not use more than 120 hours of donated sick leave . . . for an absence taken as parental leave." While the prohibitions have changed, there still is no apparent eligibility for obtaining donated leave while on parental leave, whether to take care of oneself or one's well baby; women merely recovering from childbirth (as opposed to having complications from recovery from childbirth) are on the face of the regulations not entitled to donated leave when their doctor orders them to stay home from work for a period such as six weeks (or longer in the case of a

caesarian section.) The absence of a prohibition does not establish entitlement to a benefit. The proposed amendments create a mirage of a potential three week donated leave benefit for employees on parental leave.

Even if the regulations did extend eligibility requirements for three weeks of donated leave to those on "parental leave" the provision would still be discriminatory, as a woman recovering from childbirth with doctor's orders to stay home would not be treated the same as persons with other medical conditions. At most such a woman would be allowed three weeks (120 hours) of donated leave while other persons would be able to receive up to 1040 hours for a qualifying medical circumstance.

email from 10/16/2014 on prior MCPR proposal:

comment to amendments to MCPR

CR

Cobb, Robert

10/16/2014

Weisberg, Stuart;

Hansen, Marc P.;

Adler, Joseph;

Lattner, Edward;

Farber, Steve

Stuart:

Below is my comment to the proposed amendments to the 2001 MCPR. Thank you.

The County proposes to amend its donated leave policy by deleting, as a qualifying reason to use donated leave, "recovery from childbirth" that makes the employee unable to work. The proposed amendment to 17-10 states:

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

* * *

(5) An employee may receive leave donations to cover complications of pregnancy or childbirth [and recovery from childbirth] that makes the employee unable to work.

The proposed amendment to 17-10(d)(5) is made in the context of a recent dispute as to whether a woman who will soon be recovering from childbirth may seek donated leave. County OHR staff insisted that such leave is parental leave not eligible for the donated leave policy, and the proposed amendment would support that position. In resolving the dispute, the office of County Attorney provided advice that makes clear that a woman who will be recovering from child birth and has a medical certification indicating that she will unable to work may seek the benefit of the donated leave policy. If the proposed change to 17-10(d)(5) were allowed, maybe OHR staff would revert to the discriminatory practice of denying the fringe benefit of donated leave to women recovering from childbirth, because that is exactly what the proposed change appears to be intended to accomplish.

Federal discrimination law prohibits discrimination with respect to medical conditions associated with childbirth:

[W]omen affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. . . . : 42 U.S.C. 2000e(k)

Instead of amending OHR policy to codify a discriminatory practice, the MCPR should make clear that an employee who is otherwise eligible for donated leave under 17-10 will not be prevented from seeking donated leave by virtue of the employee's leave being classified as parental leave pursuant to Section 20 of the MCPR. Under 20-6(b), an employee may not use donated leave for an absence taken as parental leave. MCPR 20-6 has been used by OHR staff to require a woman anticipating recovery from childbirth to take parental leave, even where it was not been requested and medical certification was provided stating the employee needed weeks to recover from childbirth. MCPR 20-6 should be amended to reflect that circumstances that qualify for donated leave under 17-10 will not be affected by a parental leave designation.