

**MEMORANDUM**

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Expedited Bill 42-10, Personnel – Retirement – Furlough – Imputed Compensation – Represented Employees

Expedited Bill 42-10, Personnel – Retirement – Furlough – Imputed Compensation – Represented Employees, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on July 20, 2010. A public hearing is tentatively scheduled for September 21 at 1:30 p.m.

Bill 42-10 would amend the definition of regular earnings and final earnings under the employees' retirement system and the retirement savings plan to include imputed compensation not received due to a furlough for calculating retirement contributions and benefits for represented employees.

Expedited Bill 18-10, Personnel – Retirement – Furlough–Imputed Compensation, enacted on May 20, 2010 and signed into law on May 29, 2010, provided this benefit for both unrepresented and represented employees who are furloughed. Article 50 of the recently negotiated out-of-cycle collective bargaining agreement between the Fraternal Order of Police (FOP) and the County Executive provides that if a police bargaining unit employee is required to take any furlough, regular earnings for retirement purposes must include any amount the employee would have received had the employee not been furloughed. This Bill would implement this provision of the agreement by clarifying current law to include represented employees.

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Expedited Bill No. 42-10  
Concerning: Personnel - Retirement -  
Furlough - Imputed Compensation -  
Represented Employees  
Revised: July 12, 2010 Draft No. 1  
Introduced: July 20, 2010  
Expires: January 20, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN EXPEDITED ACT** to:

- (1) amend the definition of regular earnings and final earnings under the employees' retirement system and the retirement savings plan to include certain imputed compensation not received due to a furlough for certain represented employees; and
- (2) generally amend the law regarding the employees' retirement system and the retirement savings plan.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-35, 33-113 and 33-128

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

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



28 pick-up plan under Section 414 of the Internal Revenue Code. Gross pay must be  
29 used to determine benefits even if a member has agreed to a reduction in earnings  
30 under:

31 (a) the County's deferred compensation plan under Section 457 of the  
32 Internal Revenue Code; or

33 (b) any statutory fringe benefit program sponsored by the County and  
34 permitted by the Internal Revenue Code.

35 \* \* \*

36 **33-113. Definitions.**

37 In this Division the following words and phrases have the following  
38 meanings:

39 \* \* \*

40 (p) Regular earnings means gross pay for actual hours worked,  
41 including paid leave, but not including overtime, without  
42 reduction for participant contributions that are picked up under  
43 Section 33-116(a), or contributions to any County deferred  
44 compensation plan or statutory fringe benefit program. If a  
45 participant is required to take any furlough, as defined in  
46 personnel regulations under Section 33-7(b) or a collective  
47 bargaining agreement, regular earnings must include any  
48 amount the participant would have received if the participant  
49 had not been required to take any furlough.

50 \* \* \*

51 **33-128. Definitions.**

52 In this Division, the following words and phrases have the following  
53 meanings:

54 \* \* \*  
55 *Final earnings* means the annual average of the regular salary of an employee less  
56 any shift pay differential for the 18-month period immediately before the disability  
57 or any period of 18 consecutive months, whichever is greater. If a participant is  
58 required to take any furlough, as defined in personnel regulations adopted under  
59 33-7(b) or a collective bargaining agreement, final earnings must include amounts  
60 the participant would have received if the participant had not been required to take  
61 any furlough.

62 \* \* \*

63 **Sec. 2. Expedited Effective Date.** The Council declares that this Act is  
64 necessary for the immediate protection of the public interest. This Act takes effect  
65 on July 1, 2010.

66 *Approved:*

67  
68 \_\_\_\_\_  
Nancy Floreen, President, County Council Date

69 *Approved:*

70 \_\_\_\_\_  
Isiah Leggett, County Executive Date

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

72 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council Date

# LEGISLATIVE REQUEST REPORT

Expedited Bill 42-10

Personnel – Retirement – Furlough – Imputed Compensation – Represented Employees

**DESCRIPTION:** The requested legislation amends the definition of regular earnings and final earnings under the employees' retirement system and the retirement savings plan to include certain imputed compensation not received due to a furlough for represented employees.

**PROBLEM:** Article 50 of the recently negotiated collective bargaining agreement between the Fraternal Order of Police and the County provides that if a police bargaining unit employee is required to take any furlough, regular earnings for retirement purposes must include any amount the employee would have received had the employee not been furloughed.

**GOALS AND OBJECTIVES:** To implement a provision of the collective bargaining agreement with the FOP.

**COORDINATION:** Office of Human Resources

**FISCAL IMPACT:** Office of Management and Budget

**ECONOMIC IMPACT:** Fiscal impact statement to be provided at a later date

**EVALUATION:** n/a



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

June 24, 2010

TO: Nancy Floreen, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Legislation to Ensure No Loss of Retirement Benefits When Sworn Police Officers Are Furloughed

2010 JUN 25 AM 11:08

HONORABLE COUNTY EXECUTIVE  
MONTGOMERY COUNTY

Article 50 of the recently negotiated collective bargaining agreement between the County and the Fraternal Order of Police, Montgomery County Lodge No. 35, INC (FOP) provides that regular earnings for retirement purposes must include any amount the employee would have received had the employee not been furloughed.

I am attaching for Council introduction a bill to implement this provision of the agreement. The bill would amend the definition of regular earnings under the employees' retirement system and the retirement savings plan to include compensation not received by sworn police officers due to any furlough.

This bill is similar in purpose to Bill 18-10, Personnel – Retirement – Furloughs – imputed compensation, which was enacted by the Council on May 20, 2010. That bill generally amended the definition of regular earnings under the employees' retirement system and the retirement savings plan to include compensation not received due to any furlough. Bill 18-10, however, defined the term “furlough” by reference to the Montgomery County Personnel Regulations (MCPR).

The provisions of the MCPR generally do not apply to FOP bargaining unit members unless specifically referenced in the collective bargaining agreement. The FOP was concerned that because Bill 18-10 defined a furlough by reference to the personnel regulations, it might be construed in the future as somehow binding the FOP to the furlough provisions of the MCPR as interpreted by the Merit System Protection Board rather than the collective bargaining agreement which is interpreted by an arbitrator. Therefore, the FOP sought this clarifying language during collective bargaining and the County agreed in Article 50 to amend the retirement law so as to eliminate any confusion in the future.

Attachments

cc: Joseph Adler, Director, Office of Human Resources  
J. Thomas Manger, Police Chief