

[[Expedited]] Bill No. 37-08  
 Concerning: Personnel — Disability  
Retirement - Amendments  
 Revised: May 12, 2009 Draft No. 11  
 Introduced: December 9, 2008  
 Enacted: May 12, 2009  
 Executive: May 20, 2009  
 Effective: August 19, 2009  
 Sunset Date: None  
 Ch. 11, Laws of Mont. Co. 2009

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Andrews and Councilmember Trachtenberg

### AN [[EXPEDITED]] ACT to:

- (1) make disability retirement procedures consistent for all employees;
- (2) [[create a partial incapacity disability retirement benefit;
- (3) create a total incapacity disability retirement benefit;
- (4) create a Medical Review Panel;
- (5) create a Disability Review Board;]]
- [[6]] prohibit certain applications for service connected disability retirement due to an accident filed more than a certain time after separation from County service [[or the date of the accident]] or after the date of the accident;
- [[7]] [[prohibit]] [[limit the amount of the service connected disability pension for an employee who commits certain offenses [[from retiring on a service connected disability]];
- (8)]] (3) require an independent medical examination for a disability retirement;
- [[9]] (4) require an independent medical examination or a medical certificate for certain retirees; and [[modify the appeal procedures for disability retirement; and
- (10)]] (5) generally amend the law regarding disability retirement.

By amending

Montgomery County Code  
 Chapter 33, Personnel and Human Resources  
 Sections 33-38A, 33-43, 33-51, 33-128, 33-129, 33-135, and 33-138

<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:*

*Clerk's Note:*

*Line 115, "(2) The" are an existing law. Removed underlining.*

*Line 161, Removed underlining on the period.*

*Line 172, Moved the period after the word section and put it at the end of Line 176.*

*Line 455, Added double brackets before the colon.*

*Line 456, Added double brackets after Roman Numeral (i).*

*Line 461, Removed the underlining on the period.*

*Lines 498-506, Added back existing law that was mistakenly omitted in error.*

1           **Sec. 1. Sections 33-38A, 33-43, 33-51, 33-128, 33-129, and 33-135 are**  
2 **amended as follows:**

3 **33-38A. Deferred Retirement Option Plans.**

4           The Chief Administrative Officer must establish Deferred Retirement  
5 Option Plans, or DROP plans, that allow any employee who is a member of a  
6 specified membership group or bargaining unit and who meets the eligibility  
7 requirements to elect to retire but continue to work. Pension payments must not be  
8 paid to the member while the member participates in the DROP Plan. When the  
9 member's participation in the DROP Plan ends, the member must stop working for  
10 the County, draw a pension benefit based on the member's credited service and  
11 earnings as of the date that the member began to participate in the DROP Plan, and  
12 receive the value of the DROP Plan payoff.

13           (a) *DROP Plan for Group F members.* "Discontinued Retirement Service  
14           Program" or "DRSP" means the DROP program for Group F  
15           members.

16   \*                                 \*                                 \*

17           (7) *Disability retirement.* An employee may apply for disability  
18           retirement prior to the termination of the employee's  
19           participation in the program. [[An employee who receives a]]

20           (A) A DRSP participant who is eligible for a service-  
21           connected disability retirement [[will receive the balance  
22           in the DRSP account less an amount equal to the full  
23           actuarial value of the credited service which the  
24           employee would have received if the employee had not  
25           participated in the program. If an employee's  
26           participation in the program ends before a final decision  
27           is made on the disability retirement application, the

28 balance of the DRSP account will not be distributed until  
29 a final decision is made.]] must choose either:

30 (i) the retirement benefit under the DRSP and the  
31 DRSP account balance; or

32 (ii) the service-connected disability retirement benefit  
33 that the employee would have received if the  
34 employee had continued as an active employee and  
35 had not elected to participate in the DRSP, and no  
36 DRSP account balance.

37 (B) A DRSP participant who is eligible for a non-service-  
38 connected disability retirement benefit must receive the  
39 non-service-connected disability retirement benefit under  
40 Section 33-43(h), with the benefit calculated as of the  
41 member's DRSP exit date, plus the DRSP account  
42 balance.

43 \* \* \*

44 **33-43 Disability retirement.**

45 (a) *Applicability.* This Section applies to[[:(1)]] an application for  
46 disability benefits filed [[on or after March 1, 2000, by a member who  
47 is also a member of the Police Bargaining Unit; (2) an application for  
48 disability benefits after May 18, 1995,]] by any [[other]] member[[;]]  
49 or [[(3)]] a medical reevaluation of a disability retiree under  
50 subsection (g) [[, regardless of when an application for disability  
51 benefits was filed]].

52 (b) *Definitions.* In this Section, the following words and phrases have the  
53 following meanings:

54           [[(1)]] *Applicant* means any member [[defined in subsection (a)]] who  
55 has filed an application for disability retirement under subsection  
56 (d)(1).

57           [[(2)]] *Certified representative* means an employee organization  
58 certified under Section 33-79, 33-106, or 33-151 to represent a  
59 bargaining unit.

60           [[(3)]] *Disability Arbitration Board* or *Board* means one of the 3  
61 panels designated under subsection (m)(1) to review an appeal of the  
62 Chief Administrative Officer's final decision regarding an application  
63 for disability benefits filed by any member except a member of the  
64 Police Bargaining Unit.

65           [[(4)]] *Disability Review Panel* or *Panel* means the [[3]] 4 medical  
66 doctors appointed as Panel members by the Chief Administrative  
67 Officer [[in accordance with]] under subsection (c).

68           [[(5)]] *Medical doctor* means a doctor of medicine or osteopathy who  
69 [has] graduated from a medical school accredited by the American  
70 Medical Association and [[who]] is licensed to practice medicine in  
71 [[the State of]] Maryland.

72           [[(6)]] *Medical specialty* means a field of medicine, such as  
73 orthopedic surgery or neurology, which requires specialized training  
74 and certification.

75           *Occupational medicine* means a medical specialty which focuses on  
76 the health of workers, including the ability to perform work; the  
77 physical, chemical, biological, and social environments of the  
78 workplace; and the health outcomes of environmental exposures.  
79 Practitioners of occupational medicine address the promotion of

80 health in the work place and the prevention and management of  
 81 occupational and environmental injury, illness, and disability.

82 ~~[[ (7) ]]~~ *Police Disability Arbitration Board* or *Police Board* means the  
 83 3 persons designated under subsection (m)(1) to review an appeal of a  
 84 decision by the Chief Administrative Officer affecting a member of  
 85 the Police Bargaining Unit's right to disability benefits.

86 ~~[[ (8) ]]~~ *Residual functional capacity* means what the individual can  
 87 still do, despite the individual's impairment. The County must give  
 88 the term residual functional capacity the same meaning as the term is  
 89 given by the U.S. Social Security Administration.

90 ~~[[ (9) ]]~~ *Substantial gainful activity* means ~~[[the ability to perform a~~  
 91 ~~substantial level of paid work that exists in significant numbers in the~~  
 92 ~~national economy]]~~ a level of productive work that requires  
 93 significant physical or mental duties, or a combination of both,  
 94 performed for pay or profit on a full-time or part-time basis. An  
 95 individual is able to perform a substantial level of work if the  
 96 individual is able to earn more than the U.S. Social Security  
 97 Administration's current monthly earnings limit ~~[[that applies to the~~  
 98 ~~individual's impairment]]~~ for a disabled person. The County must  
 99 give the term substantial gainful activity the same meaning as the term  
 100 is given by the U.S. Social Security Administration.

101 (c) *Selection of the Disability Review Panel.*

102 (1) The Chief Administrative Officer must appoint ~~[[the 3]]~~ 4  
 103 members of the Disability Review Panel from a list of at least  
 104 10 impartial, unbiased medical doctors willing and able to serve  
 105 ~~[[agreed upon by the certified representatives and the County]]~~  
 106 provided by one or more impartial medical organizations

107 retained by the Chief Administrative Officer. If the list of  
 108 doctors provided by the impartial medical organization is not  
 109 agreed to by the certified representatives and the County, the  
 110 certified representatives [[may collectively]] must strike 3  
 111 names from the list and the County [[may]] must strike 3 names  
 112 from the list by alternating strikes. The Chief Administrative  
 113 Officer must appoint a member from the remaining 4 names on  
 114 the list.

115 (2) The Chief Administrative Officer must [[ensure that no 2  
 116 members of the Panel practice in the same medical specialty]]  
 117 appoint members who are either:

118 (A) certified by the American Board of Preventive Medicine  
 119 (or a successor organization) as a specialist in  
 120 occupational medicine; or

121 (B) certified in a different medical specialty and have at least  
 122 10 years of experience practicing occupational medicine.

123 (3) (A) The Chief Administrative Officer must appoint members  
 124 under subsection (c)(1) for staggered 3-year terms. To  
 125 implement the staggered terms, the Chief Administrative  
 126 Officer must appoint the first member to a 3-year term,  
 127 the second member to a one-year term, and the third and  
 128 fourth [[member]] members to a 2-year term. After these  
 129 initial appointments, the Chief Administrative Officer  
 130 must appoint all members to 3-year terms, except for any  
 131 member appointed under subsection (c)(6) to fill a  
 132 vacancy [[created by a Panel member's death, disability,  
 133 resignation, non-performance of duty or other cause]].

- 134 (B) After the Chief Administrative Officer appoints or  
135 reappoints a Panel member, the Chief Administrative  
136 Officer must promptly ~~[[provide]]~~ send each certified  
137 representative ~~[[with]]~~ a copy of the document  
138 confirming the appointment.
- 139 (4) ~~[[At the expiration of]]~~ When a Panel member's term expires,  
140 the Panel member ~~[[is eligible for reappointment]]~~ may be  
141 reappointed to a new 3-year term unless, at any time within 30  
142 days to 60 days prior to the expiration of the term, a certified  
143 representative notifies the County and the other certified  
144 representatives or the County notifies the certified  
145 representatives that it objects to the reappointment of the Panel  
146 member. If there is no objection, the Panel member is eligible  
147 to serve an additional term or terms.
- 148 (5) ~~[[In the event]]~~ If a Panel member declines to be reappointed to  
149 the Panel, ~~[[a new medical doctor must be appointed by]]~~ the  
150 Chief Administrative Officer must appoint a new Panel member  
151 from a list of ~~[[5]]~~ at least 10 medical doctors ~~[[agreed upon by~~  
152 ~~the certified representatives and the County]]~~ as provided for in  
153 subsection (c)(1).
- 154 (6) If a vacancy on the Panel is created by a Panel member's death,  
155 disability, resignation, non-performance of duty, or other cause,  
156 the Chief Administrative Officer must appoint a medical doctor  
157 to complete the Panel member's term~~[[. The Chief~~  
158 ~~Administrative Officer must appoint the Panel member]]~~ from a  
159 list of ~~[[5]]~~ at least 10 medical doctors ~~[[agreed upon by the~~



160 certified representatives and the County]] as provided for in  
161 subsection (c)(1).

162 (7) The County must pay the impartial medical organization  
163 retained by the County and each Panel member reasonable  
164 compensation, as determined by the Chief Administrative  
165 Officer, for [[his or her]] services rendered.

166 (d) *Disability retirement procedures.*

167 \* \* \*

168 (6) The Panel must meet [[as a body]] in person and review and  
169 consider all evidence submitted to it no later than 60  
170 [[calendar]] days after the application is filed. A majority vote  
171 [[on a decision]] of 3 members is required to take any action  
172 [[in accordance with the provisions of]] under this Section [will  
173 prevail. [[If only 2 Panel members participate in the decision-  
174 making process, the vote on a decision to take any action must  
175 be unanimous. No action may be taken upon a decision made  
176 by one Panel member]].

177 \* \* \*

178 (8) (A) [[If]] Before making its recommendation, the Panel [[is  
179 unable to make a determination based on the evidence  
180 presented to it, the Panel may]] must:

181 (i) direct the applicant to undergo [[a]] an  
182 independent medical examination (including all  
183 relevant medical tests) by a medical doctor who is  
184 not a member of the Disability Review Panel,  
185 unless the Panel finds that a medical examination

- 186                   is unnecessary because of the nature and severity  
 187                   of the injury or illness; and
- 188                   (ii) if required for the Panel to make a  
 189                   recommendation [[under Section 33-43(i)(2)]] as  
 190                   to residual functional capacity or substantial  
 191                   gainful capacity, request an independent vocational  
 192                   assessment.
- 193                   (B) The County must pay the cost of the examination and  
 194                   assessment. The results of the examination, including  
 195                   findings, conclusions, medical opinions and diagnoses,  
 196                   must be given to the applicant or the applicant's  
 197                   representative immediately after the County or the Panel  
 198                   receives it.
- 199                   (C) The Panel must issue its written recommendation within  
 200                   30 [[calendar]] days after the Panel receives the later of:  
 201                   (i) the full report from the medical doctor who  
 202                   conducted the examination; or  
 203                   (ii) the full report of the results of the independent  
 204                   vocational assessment.
- 205   \*                   \*                   \*
- 206                   (11) For a Group F or Group G member, the amount of any lump  
 207                   sum retroactive disability retirement benefit must be reduced by  
 208                   the total amount of any temporary total disability, temporary  
 209                   partial disability, or permanent partial disability payments that  
 210                   the County [[made]] paid to the employee under the Workers  
 211                   Compensation laws after [[the effective date of]] the disability  
 212                   retirement took effect.

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\* \* \*

(f) *Service-connected disability retirement.*

(1) A member may be retired on a service-connected disability retirement if:

\* \* \*

(E) For an accidental injury that does not cause mental impairment, the member:

(i) reports the claimed accidental injury as soon as practicable, but no later than one year after the applicant knew or should have known that the injury is likely to be disabling; or

(ii) submits a claim for Workers' Compensation benefits for the accidental injury that is not dismissed as untimely.

(F) The time periods for reporting in subparagraphs (i) and (ii) do not begin while the member is unable to report because of incapacitating injuries.

(G) For an accidental injury that occurs after July 1, 2009, the member must apply for disability benefits:

(i) within one year after separation from County service or before July 1, 2010, whichever is later; and

(ii) if the applicant is a member of Group F, within 5 years after the date of the accident causing the impairment or before July 1, 2014, whichever is later, unless the member is in a chronic incapacity duty assignment.

240 (2) A Group F member who otherwise satisfies the requirements of  
 241 subsection (f)(1) must not be denied a disability retirement  
 242 because the member is able to perform a chronic incapacity  
 243 duty assignment.

244 ~~[(2)]~~ (3) \* \* \*

245 ~~[(3)]~~ (4) \* \* \*

246 ~~[(4)]~~ (5) \* \* \*

247 (g) *Medical reexamination of disability retiree.* The Chief Administrative  
 248 Officer ~~[[may]]~~ must require a member receiving disability pension  
 249 payments to undergo either a yearly physical examination or to submit  
 250 a medical doctor's certificate verifying continuation of the disability  
 251 during the ~~[[5-year period following]]~~ 5 years after retirement, and  
 252 once in every ~~[[3-year period]]~~ 3 years thereafter, until age 55 ~~[[if]]~~  
 253 for a member of group B, E, F, or G, or age 60 ~~[[if]]~~ for a member of  
 254 group A or H, unless the Chief Administrative Officer finds that a  
 255 physical examination is unnecessary because of the nature and  
 256 severity of the injury or illness. The Chief Administrative Officer  
 257 must review the findings of the physical examination and take  
 258 appropriate action, which may include submitting the results of the  
 259 evaluation to the Disability Review Panel for a redetermination ~~[[as~~  
 260 ~~to]]~~ whether the individual qualifies for disability benefits in  
 261 accordance with subsection (d). If a member ~~[[refuses to]]~~ does not  
 262 submit to the examination, the Chief Administrative Officer may  
 263 reduce or discontinue any disability pension payments which the  
 264 member receives. The Disability Review Panel may require the  
 265 member to submit to an additional independent medical examination.

266 A member may appeal a decision to reduce or discontinue disability  
 267 pension payments to the appropriate Disability Arbitration Board.

268 \* \* \*

269 (j) *Adjustment or cessation of disability pension payments.*

270 \* \* \*

271 (2) (A) The Chief Administrative Officer may reduce the amount  
 272 of the disability pension payments of a member who:

- 273 (i) has not reached the normal retirement date; and
- 274 (ii) is engaged in, or is able to engage in, an  
 275 occupation that pays more than the difference  
 276 between [[the amount of]] the disability pension  
 277 payments and the current maximum earnings of  
 278 the occupational classification from which the  
 279 [[employee]] member was disabled.

280 (B) [[For]] If a member other than a Group F member  
 281 [[who]] meets the criteria in subparagraph (A), the Chief  
 282 Administrative Officer may reduce the member's  
 283 disability [[person]] pension payments until [[the amount  
 284 of]] the disability pension payments plus the amount that  
 285 the employee earned or is able to earn equals the  
 286 maximum earnings of the occupational class from which  
 287 the member was disabled.

288 (C) [[For]] If a Group F member [[who]] receives a non-  
 289 service connected disability pension and [[who]] meets  
 290 the criteria in subparagraph (A), the Chief Administrative  
 291 Officer may reduce the member's disability pension  
 292 payments until [[the amount of]] the disability pension

293 payments plus the amount the employee earned or is able  
 294 to earn equals 120 percent of the maximum earnings of  
 295 the occupational class from which the employee was  
 296 disabled.

297 (D) If a member receives a disability retirement pension,  
 298 except for a Social Security disability benefit, from  
 299 another employer for the same impairment, the Chief  
 300 Administrative Officer must reduce the member's  
 301 disability pension payments by the amount of the other  
 302 disability retirement pension.

303 \* \* \*

304 (6) For [[those employees]] any employee, except as provided  
 305 below, who enrolled or re-enrolled in the retirement system on  
 306 or after July 1, 1978, the member's disability retirement benefit  
 307 for any month must be integrated with the primary disability  
 308 benefits received from Social Security, and the total benefits  
 309 from both sources must not exceed 100% of the member's  
 310 average final earnings, [[of the member; provided, however,  
 311 that this limitation]] This limit does not apply to [[the]] cost-of-  
 312 living adjustments [[issued pursuant to]] made under Section  
 313 33-44(c). The benefit for a [[Group F]] member who received a  
 314 disability retirement benefit on or after [[July 1, 2002]] January  
 315 1, 2000, must not be integrated with the primary disability  
 316 benefits received from Social Security, and the total benefits  
 317 from both sources may exceed 100% of the member's average  
 318 final earning.

319 (7) The Chief Administrative Officer must not reduce the service-  
 320 connected disability pension payments of a Group F or G  
 321 member by earned income received from [[sources]] any source  
 322 [[other than]] except:  
 323 (A) County Government employment; or  
 324 (B) for a Group F member, employment as a sworn law  
 325 enforcement officer with full powers of arrest and  
 326 authority to carry a firearm in connection with that  
 327 employment.

328 \* \* \*

329 **33-51. Reports and audits.**

330 (a) *Annual and quarterly reports.*

331 \* \* \*

332 (5) By March 31 of each year, the Chief Administrative Officer  
 333 must submit to the Council and the Executive an annual report  
 334 on the disability retirement system for the preceding calendar  
 335 year that includes the number of disability retirement  
 336 applications, awards, appeals, and re-examinations of retirees  
 337 for each retirement group. The Council may request the Chief  
 338 Administrative Officer to provide additional information in the  
 339 annual report or in additional reports. The Chief Administrative  
 340 Officer must provide the additional information.

341 \* \* \*

342 **33-128. Definitions.**

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

344 ~~[(a)]~~ *Administrator* means either the Chief Administrative Officer or the  
345 entity that contracts with the County to administer this disability plan.

346 ~~[(b)]~~ *Applicant* means an employee who has filed an application for  
347 benefits under Division 2 of Article VIII, or for whom the Chief  
348 Administrative Officer has filed an application.

349 ~~[(c)]~~ *Certified representative* means an employee organization certified  
350 under Sections 33-79, 33-106, or 33-151 to represent a bargaining unit.

351 ~~[(d)]~~ *Continued non-service-connected disability* means a condition of the  
352 employee that:

- 353 (1) continues after ~~[(the close of)]~~ the period of initial non-service-  
354 connected disability closes;
- 355 (2) makes the employee unable to engage in any available  
356 employment commensurate with the employee's training or  
357 retraining, education, and experience ~~[(of the employee)]~~; and
- 358 (3) is likely to be permanent.

359 ~~[(e)]~~ *Continued service-connected disability for a non-public safety*  
360 *employee* means a condition of a non-public safety employee that:

- 361 (1) continues after ~~[(the close of)]~~ the period of initial service-  
362 connected disability closes;
- 363 (2) makes the employee unable to engage in available employment  
364 commensurate with the employee's training or retraining,  
365 education, and experience ~~[(of the employee)]~~; and
- 366 (3) is likely to be permanent.

367 ~~[(f)]~~ *Continued service-connected disability for a public safety employee*  
368 means a condition of a public safety employee that:

- 369 (1) continues after ~~[(the close of)]~~ the period of initial service-  
370 connected disability closes;



- 371                   (2)    makes the employee unable to:
- 372                               (A)   engage in available employment commensurate with the
- 373                                       employee's training or retraining, education, and
- 374                                       experience ~~[[of the employee]]~~; and
- 375                               (B)   earn substantially similar final earnings; and
- 376                   (3)    is likely to be permanent.

377   ~~[[g)]]~~ *County* means Montgomery County Government and, when

378   applicable, any agency that adopts this plan under an adoption agreement

379   approved by the Chief Administrative Officer.

380   ~~[[h)]]~~ *Disability Arbitration Board or Board* means the 3 persons designated

381   under Section ~~[[33-43A(m)]]~~ 33-43(m) to review an appeal of the final

382   decision of the Administrator regarding an application for disability benefits.

383   ~~[[i)]]~~ *Disability Review Panel or Panel* means the ~~[[3]]~~ 4 medical doctors

384   appointed as Panel members by the Chief Administrative Officer under

385   ~~[[Section 33-43A(c)]]~~ Section 33-43(c).

386   ~~[[j)]]~~ *Employee* means ~~[[an]]~~ a County employee ~~[[of the County]]~~ who:

- 387                   (1)    participates in the retirement savings plan under this Article;
- 388                                       and
- 389                   (2)    is regularly scheduled to work 20 hours or more per week.

390   ~~[[k)]]~~ *Final earnings* means the annual average of the regular salary of an

391   employee less any shift pay differential for the 18-month period immediately

392   before the disability or any period of 18 consecutive months, whichever is

393   greater.

394   ~~[[l)]]~~ *Initial non-service-connected disability* means a condition of an

395   employee that:

- 396                   (1)    is the natural and proximate result of an accident, illness, or
- 397                                       injury;

- 398 (2) is not due to the employee's willful misconduct or willful  
 399 negligence ~~[[of the employee]]~~;
- 400 (3) makes the employee incapable of performing the job that the  
 401 employee performed immediately before the accident, illness,  
 402 or injury; and
- 403 (4) is not an initial service-connected disability.

404 ~~[[m)]]~~ *Initial service-connected disability* means a condition of an  
 405 employee that:

- 406 (1) is the natural and proximate result of an accident, illness, or  
 407 injury occurring, an occupational disease incurred, or a  
 408 condition aggravated while in the performance of duty as an  
 409 employee;
- 410 (2) is not due to the employee's willful misconduct or willful  
 411 negligence ~~[[of the employee]]~~; and
- 412 (3) makes the employee incapable of performing the job that the  
 413 employee performed immediately before the accident, illness,  
 414 or injury.

415 ~~[[n)]]~~ *Medical doctor* means a doctor of medicine or osteopathy who ~~[[has]]~~  
 416 graduated from a medical school accredited by the American Medical  
 417 Association and ~~[[who]]~~ is licensed to practice medicine in ~~[[the State of]]~~  
 418 Maryland.

419 ~~[[o)]]~~ *Non-public safety employee* means any employee who is not a public  
 420 safety employee.

421 ~~[[p)]]~~ *Plan* means the disability benefits plan established under this  
 422 Division.

423 ~~[[q)]]~~ *Public safety employee* means any employee who is a:

- 424 (1) sworn, ranking officer of the [[Montgomery County]] Police  
425 Department;
- 426 (2) paid firefighter, paid fire officer, or paid rescue service  
427 employee of the [[Montgomery County Department of]] Fire  
428 and Rescue [[Services]] Service;
- 429 (3) sworn deputy sheriff;
- 430 (4) [[Montgomery County]] correctional officer; or
- 431 (5) correctional staff member, if designated as a public safety  
432 employee by the Chief Administrative Officer.

433 **33-129. Disability benefits.**

434 \* \* \*

435 (d) *Initial service-connected disability benefits.* [[If the administrator  
436 determines that an employee has incurred an initial service-connected  
437 disability, the]] An employee [[is entitled to]] may receive disability  
438 benefits for a period of 36 consecutive months, subject to this plan, if  
439 the administrator finds that:

440 (A) the employee has incurred an initial service-connected  
441 disability; and

442 (B) for an accidental injury that does not cause mental  
443 impairment, the employee:

444 (i) reports the claimed accidental injury as soon as  
445 practicable, but no later than one year after the  
446 applicant knew or should have known that the  
447 injury is likely to be disabling; or

448 (ii) submits a claim for Workers' Compensation  
449 benefits for the accidental injury that is not  
450 dismissed as untimely.

451 (C) The time periods for reporting in subparagraphs (i) and  
452 (ii) do not begin while the applicant is unable to report  
453 because of incapacitating injuries.

454 (D) For an accidental injury that occurs after July 1, 2009, the  
455 applicant must apply for disability benefits[[:

456 (i)] within one year after separation from County  
457 service or before July 1, 2010, whichever is later[[;

458 and  
459 (ii) within 5 years after the date of the accident  
460 causing the impairment or before July 1, 2014,  
461 whichever is later]].

462 \* \* \*

463 (f) *Role of the Disability Review Panel.*

464 (1) The Disability Review Panel must consider an application for  
465 disability benefits to determine if the applicant is eligible for  
466 disability benefits under subsection (a), (b), (c), (d), or (e). The  
467 Panel may consider any information or material submitted by  
468 the applicant, the certified representative, or the County.  
469 Within 60 days after the application is filed, the Panel must  
470 meet [[as a body]] in person to [[consider]] review all evidence  
471 submitted to the Panel. An action by the Panel under this  
472 Section requires [[2 votes]] a majority vote of 3 members.

473 \* \* \*

474 (5) [[If]] Before making its recommendation, the Panel [[cannot  
475 determine the applicant's eligibility for disability benefits based  
476 on the evidence presented, the Panel may]] must require the  
477 applicant to complete a medical examination, including relevant

478 medical tests, by a medical doctor who is not a member of the  
479 Disability Review Panel, unless the Panel finds that a medical  
480 examination is unnecessary because of the nature and severity  
481 of the injury or illness. The County must pay the cost of the  
482 examination. The results of the examination must be given to  
483 the applicant or the applicant's representative immediately after  
484 the County or the Panel receives it. The Panel must issue its  
485 written recommendation within 30 days after the medical doctor  
486 reports to the Panel.

487 \* \* \*

488 **33-135. Medical examination.**

489 (a) The Administrator ~~[[may]]~~ must require any employee receiving  
490 continued disability payments to undergo annual or less frequent  
491 medical examinations, or to submit a medical doctor's certificate  
492 verifying the continuation of the disability, unless the Administrator  
493 finds that a physical examination in a specific case is unnecessary  
494 because of the nature and severity of the injury or illness. The  
495 Administrator must submit the findings of ~~[[the]]~~ any medical  
496 examination to the Disability Review Panel. The Disability Review  
497 Panel may require the employee to submit to an additional  
498 independent medical examination. The Panel must consider the  
499 findings of the physical examination and any other information  
500 submitted by the employee or the County and recommend in writing  
501 to the Administrator whether the employee still qualifies for disability  
502 benefits. The Administrator must issue a final decision within 20 days  
503 after receiving the Panel's recommendation. An employee may  
504 appeal the Administrator's decision to reduce or discontinue disability

505 pension payments to the appropriate Disability Arbitration Board  
506 under Section 33-138.

507 **Sec. 2. Transition.** A member of the Disability Review Panel when this Act  
508 takes effect may continue to serve until the expiration of the Panel member's term.  
509 All appointments to the Panel made after this Act takes effect, including the re-  
510 appointment of a qualified existing Panel member, must be made pursuant to this  
511 Act.

512 [[**Sec. 3. Partial Disability.** It is the policy of Montgomery County that  
513 public safety employees should have a two-tiered disability system which includes  
514 a separate service-connected disability benefit for an injury or illness that prevents  
515 the employee from continuing as a public safety employee, but does not prevent  
516 the employee from engaging in other substantial gainful employment. It is also the  
517 policy of the County that disability benefits are a mandatory subject of collective  
518 bargaining with the appropriate certified employee representative. The Executive  
519 must negotiate the terms of an appropriate two-tiered disability system with the  
520 certified employee representative of police officers no later than the collective  
521 bargaining agreement that takes effect on July 1, 2010. If the parties are unable to  
522 reach agreement on an appropriate two-tiered system, the parties must submit this  
523 issue for resolution through the applicable impasse procedures under the County's  
524 police collective bargaining law. The Executive must then submit the results of  
525 collective bargaining over this issue to the Council for legislative action.]]

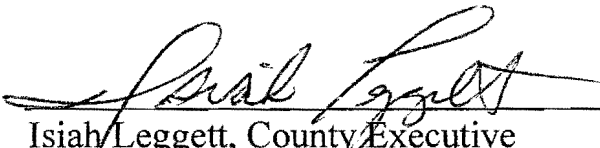
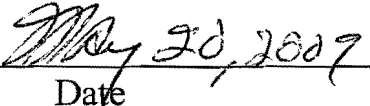
521 *Approved:*

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523    
Philip M. Andrews, President, County Council Date

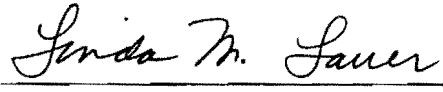
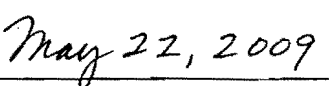
524 *Approved:*

525

526    
Isiah Leggett, County Executive Date

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

528

529    
Linda M. Lauer, Clerk of the Council Date