

Resolution No.: 16-751
Introduced: October 21, 2008
Adopted: October 21, 2008

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Proposed Regulation 26-07AM, *Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations*

Background

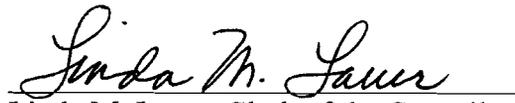
1. Section 402 of the County Charter provides that “[t]he County Executive is responsible for adopting personnel regulations for the administration and implementation of the merit system law...” and that the regulations “shall be adopted in the manner provided for by law. The Chief Administrative Officer, under the direction of the County Executive and subject to merit system laws and regulations, shall be responsible for administering the County’s merit system.” County Code Section 33-7(b) requires the County Executive to adopt personnel regulations under method (1) of Code Section 2A-15 and specifies the subjects the regulations must cover, including “similar personnel matters as may be provide by law.” Code Section 2A-16 provides that “[a]n administrative procedure must not be adopted to implement...Chapter 33,” the County personnel law.
2. On March 21, 2008, the Council received proposed Regulation 26-07, *Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations*. Under method (1), the proposed regulation takes effect only after the Council approves it. The proposed regulation is intended to supersede the *Montgomery County Personnel Regulations of 2001*, as amended, and several related administrative procedures.
3. Under Section 404 of the County Charter, implemented by Code Section 33-7, the Merit System Protection Board must have an opportunity to comment on any proposed changes in the merit system law or regulations. The Merit System Protection Board provided written comments on October 22, 2007.
4. The Council’s Management and Fiscal Policy Committee held worksessions on the proposed regulations on July 21, 2008 and October 6, 2008. The Committee recommended certain amendments to proposed Regulation 26-07.
5. The Executive revised the proposed regulation to incorporate the Committee’s recommendations and reissued it as proposed Regulation 26-07AM, which the Council received on October 10, 2008.

Action

The County Council for Montgomery County, Maryland approves the following regulation:

Regulation 26-07AM, *Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations*, is approved.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	Number 26-07AM
Originating Department Office of Human Resources	Effective Date October 21, 2008

Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations

Executive Regulation No. 26-07AM

Issued by: County Executive

Supersedes: Executive Regulation No. 12-00AM, in part

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

Council review: Method 1

Montgomery County Register Volume 25, Issue 1

Comment deadline: January 31, 2008

Effective date: October 21, 2008

Summary: This regulation includes amendments to Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22, 25, 29, 30, 31, 32, 33, 34, 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.

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

This is a clean copy of the regulation that shows how it will appear after the amendments are incorporated. Use the key below when reading this regulation:

Boldface

* * *

Heading or defined term.

Existing language unchanged by executive regulation.



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SECTION 1. DEFINITIONS

* * *

1-26. Full-time position: A career position, including a term position, that:

- (a) for employees who work 12-hour shifts, requires employment on a continuing year-round or school-year basis for 40 or more regularly scheduled hours per week during one week of the pay period and 36 or more regularly scheduled hours per week during the other week of the pay period; or
- (b) for employees who do not work 12-hour shifts, requires employment for 40 or more regularly scheduled hours per week on a continuing year-round or school-year basis.

* * *

1-31. Immediate family: As used in these Regulations, includes only the employee's:

* * *

- (n) other relative not living with the employee, if approved by the OHR Director because of extenuating circumstances.

* * *

1-67. Seasonal position: A type of temporary position that:

- (a) does not involve year-round employment; and
- (b) may be used indefinitely to perform work usually associated with a particular season, such as removing snow or collecting fallen leaves.

1-68. Step salary schedule: * * *

1-69. Supervisor: * * *

1-70. Temporary employee: * * *

1-71. Temporary position: A non-career position, classified and filled under merit system principles, that may be used as described in Section 7-3.

1-72. Temporary promotion: * * *



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- 1-73. *Term employee:* * * *
- 1-74. *Term position:* * * *
- 1-75. *Transfer:* * * *
- 1-76. *Uniformed fire/rescue employee:* * * *
- 1-77. *Unrepresented employee:* An employee whose position is not included in any bargaining unit.
- 1-78. *USERRA:* * * *
- 1-79. *Workday:* * * *
- 1-80. *Working day:* * * *
- 1-81. *Workweek or work period:* * * *

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 5, 2014.

SECTION 3. ETHICS, DISCLOSURE OF ILLEGAL OR IMPROPER ACTS, EMPLOYMENT OF RELATIVES, DISCRIMINATION ON THE BASIS OF POLITICAL AFFILIATION, OUTSIDE EMPLOYMENT, AND SEXUAL OR ROMANTIC RELATIONSHIPS IN THE WORKPLACE

- 3-2. **Disclosure of illegal or improper acts in County government.**

(c) (1) The Office of the Inspector General (OIG) has a Fraud Hotline operated 24 hours per day and 7 days per week by an independent contractor that



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provides employees and vendors with a confidential way to report illegal or improper activities.

(2) The Hotline can receive complaints in more than 150 languages and is accessible by telephone or email.

(3) The OIG is interested in receiving information about:

- (A) theft of County funds or property;
- (B) abuse in government activities;
- (C) contract or procurement fraud;
- (D) Worker's Compensation fraud;
- (E) kickbacks or bribery;
- (F) fraudulent travel or other reimbursement claims;
- (G) significant waste of County funds; and
- (H) retaliation against any person for filing a complaint with the OIG.

(4) Employees should not use the Hotline to deal with the following:

- (A) routine issues between managers and employees;
- (B) EEO complaints;
- (C) issues that are covered by the County grievance procedure or a grievance procedure in a collective bargaining agreement;
- (D) questions or concerns about benefits or compensation; or
- (E) issues that are the responsibility of other government agencies.

(d) An individual to whom an employee reports an illegal or improper act must not reveal the identity of the employee who filed the report or a County employee or official who is the subject of the report, unless:

- (1) each party waives confidentiality in writing; or
- (2) Section 19A-10 of the County Code expressly authorizes revealing a party's identity.



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- (e) The MSPB, Ethics Commission, or Inspector General must refer the report to the government agency, including the MSPB, Ethics Commission, or Inspector General, that is responsible for investigating or addressing the inappropriate or unlawful conduct alleged in the report. The government agency must then investigate the conduct alleged in the report.
- (f) The role of the MSPB in investigating allegations of illegal or improper acts is described in Sections 35-20 through 35-26 of these Regulations.

* * *

3-5. Outside employment.

- (a) An employee must:
 - (1) apply for and obtain approval of the Ethics Commission for other employment;
 - (2) comply with any conditions imposed by the Ethics Commission on the approval of other employment; and
 - (3) comply with executive regulations on outside employment issued by the Ethics Commission.
- (b) An employee may download an outside employment request form from the Ethics Commission web page on the County website.

* * *

3-8. Political activity.

- (a) An employees may participate in political causes and campaigns on the employee's own time.
- (b) An employee must not use County equipment, supplies, or other property for a political cause or campaign.



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- (c) An employee must not disrupt or interfere with the work of another County employee while participating in activities associated with a political cause or campaign.
- (d) A County employee must not direct, coerce, or otherwise pressure or obligate another County employee to contribute to a political cause or campaign or to perform work or provide services of any type to a political cause or campaign.
- (e) A County employee must not wear a County uniform, identification card, or other clothing or insignia that identifies the individual as a County employee while engaging in or attending a political activity of any kind, including a political rally, employee demonstration, caucus, campaign, fund raiser, and political speech, unless they have been directed to do so by a County supervisor.
- (f) A County employee must not use a County vehicle that is marked or identifiable as a County vehicle while engaged in political activities such as setting up a sign or attending a rally, caucus, promotional event, or fund raiser.
- (g) A County employee must not place a bumper sticker, decal, insignia, banner, or placard on County property or a County vehicle unless it is provided or authorized by the department.
- (h) A County employee must not wear an unauthorized pin, button, placard, or other article associated with a political cause or campaign while wearing a County uniform or while on duty.
- (i) A County employee may wear a County uniform, identification card, or other County clothing or insignia while voting at the employee's assigned polling place.

* * *

SECTION 4. RECORDS

* * *

4-3. Employee records.



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* * *

(c) **Supervisory file.**

* * *

(3) A supervisor may maintain a supervisory file in an electronic format.

(d) **Medical record.**

(1) The Manager of Occupational Medical Services is the custodian of employee medical records and must maintain the medical record of each employee.

(2) The Manager of Occupational Medical Services must limit the medical record of an employee to:

* * *

(4) Medical records are confidential. The Manager of Occupational Medical Services must maintain medical records in a secure location apart from other employee records.

* * *

4-6. **Access to employee records.**

* * *

(b) **Medical record.**

* * *

(3) If an evaluation of an individual's medical or physical condition is reasonably necessary to determine if reasonable accommodation is available for the individual or if the individual is employable, eligible for continued employment, or eligible for a benefit for which the employee has applied, the Manager of Occupational Medical Services or designee may provide or make available an employee's relevant non-psychological medical records (with the exception of genetic information) to the



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following persons only, and only if the persons are participating in one of the above-referenced decision making processes:

* * *

- (4) If an applicant or employee has filed a grievance, filed an appeal to the MSPB, applied for a disability retirement, filed a claim for Workers' Compensation benefits, or otherwise filed a claim or complaint against the County in which the employee has made an issue of the employee's physical or medical condition, the Manager of Occupational Medical Services or designee may provide or make available an employee's relevant non-psychological medical records (with the exception of genetic information) to the following persons only, and only if the persons are participating in the litigation or consideration of the claim or complaint:

* * *

- (6) An employee's or applicant's psychological records are confidential. If an evaluation of an individual's mental health is reasonably necessary to determine if reasonable accommodation is available for the individual or if the individual is employable or eligible for continued employment, the Manager of Occupational Medical Services or designee may provide or make available an employee's psychological records (with the exception of genetic information) to the following persons only, and only if the persons are participating in one of the above-referenced decision making processes:

* * *

- (7) If an employee has filed a grievance, filed an appeal to the MSPB, applied for a disability retirement, filed a claim for Workers' Compensation benefits, or otherwise filed a claim or complaint against the County in



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which the employee has made an issue of the employee's mental health, the Manager of Occupational Medical Services or designee may provide or make available an employee's relevant psychological records (with the exception of records of genetic information) to the following persons only, and only if the persons are participating in the litigation or consideration of the claim or complaint:

* * *

4-7. Release and review of employee records.

* * *

(b) *Employee review of records.*

- (1) At the request of an employee or designee of the employee, the custodian of the records must allow the employee or designee to review the employee's official personnel file, department operating record, supervisory file, or medical records at a time and place mutually convenient to the custodian and the employee or designee. An employee or designee may submit a request in writing, by telephone or email, or in person.
- (2) The custodian of the employee record must:
 - (A) verify the identity of the employee or designee before allowing the employee or designee to review the record; and
 - (B) document for the employee record that the employee or designee reviewed the record on the indicated date.
- (3) The custodian of the employee record may require the employee or designee to pay a fee for copies of more than 10 pages of employee records.

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SECTION 5. EQUAL EMPLOYMENT OPPORTUNITY

* * *

5-4. EEO complaints.

* * *

- (b) (1) An individual who believes this policy has been violated may not file a grievance under Section 34 of these Regulations or an appeal under Section 35, unless the alleged violation is related to a disciplinary action, termination, or involuntary resignation.
- (2) If an individual files an EEO complaint and a grievance over the same action, such as an involuntary transfer or failure to be promoted, but the grievance does not allege discrimination or harassment in violation of this Section, the OHR Director must ensure that:
 - (A) the complaint is processed first; and
 - (B) the grievance is held and processed only after the complaint is investigated and decided by the EEO Officer or County Attorney's Office.

* * *

SECTION 6. RECRUITMENT AND APPLICATION RATING PROCEDURES

* * *

6-2. Announcement of open jobs.

- (a) The OHR Director:
 - (1) must announce and electronically post notice of vacant positions that are open for competition among qualified candidates;

* * *

6-3. Employment application deadline.



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- (a) The OHR Director may establish a reasonable deadline of not less than two weeks for receipt of applications for announced vacancies. The OHR Director may shorten the two-week announcement period.

* * *

6-4. Reference and background investigation requirements; Review of applications.

- (a)
 - (1) The CAO may establish reference and investigation requirements for County positions to verify prior work performance, experience, and job-related personal characteristics of applicants and employees.
 - (2) The CAO must ensure that all reference checks, background investigations, and criminal history records checks of employees and applicants are conducted as required under County, State, and Federal laws or regulations.
 - (3) All applicants and employees must comply with established reference and investigation requirements.
- (b) The OHR Director must review and evaluate an application submitted to determine if the applicant is eligible for the announced vacancy. The OHR Director may disqualify an applicant at any point in the hiring process if:
 - (1) the applicant lacks required minimum qualifications such as education, experience, a license, or a certification;
 - (2) the applicant submits inaccurate or false information in the application or associated forms;
 - (3) the applicant was separated from prior County service for cause or is not eligible for re-hire;
 - (4) the applicant has prior unsatisfactory work performance relevant to the position applied for;



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- (5) there is evidence of a job-related factor that would hinder or prohibit the applicant's satisfactory performance of the duties and responsibilities of the position; or
- (6) the applicant fails to comply with established procedures or reference and investigatory requirements.

6-5. Competitive rating process.

- (a) The OHR Director must establish a competitive rating process to create an eligible list for employment or promotion, unless the OHR Director determines that a non-competitive process is appropriate under Section 6-6 or 27-2(b) of these Regulations.

* * *

6-6. Examinations.

- (a) The OHR Director must maintain the security of testing and examination materials and control the release of examination records.
- (b) The OHR Director must not release the following unless required by the Maryland Public Information Act, or by a court order or arbitration award:
 - (1) testing and examination materials used solely to determine individual qualifications, and
 - (2) test material, including test plans, item analysis data, criterion instruments, and other material if the disclosure of the material would compromise the objectivity or integrity of the testing process.
- (c) An employee entrusted with test material must protect the confidentiality of that material and release materials only as required to conduct an examination authorized by the OHR Director.
- (d) An applicant or employee who takes an examination may review a written test, and his or her own answers in a written test, but only after the test has been



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graded, and only in the presence of an OHR employee or in the presence of an employee of another department designated by OHR.

- (e) The OHR Director may release information concerning the results of examinations to:
- (1) the applicant or employee who took the examination;
 - (2) an individual explicitly designated by the applicant or employee who took the examination; and
 - (3) appropriate department representatives.

6-7. Noncompetitive rating process. * * *

6-8. Invalidation of rating process. * * *

6-9. Eligible list. * * *

6-10. Priority eligible list.

- (a) The OHR Director may establish a priority eligible list to provide priority consideration in the following order to an employee who:
- (1) is unable to perform the employee's job because of a disability or injury under the ADA;
 - (2) is subject to reduction-in-force;
 - (3) was granted a temporary disability retirement under the Employees' Retirement System or an initial or temporary disability benefit of any type under the Retirement Savings Plan but is no longer eligible for such a temporary disability retirement or benefit; or
 - (4) has veteran's credit.
- (b) An employee who is eligible for priority consideration under (a)(3) because the employee is no longer eligible for an initial or temporary disability retirement or benefit, may apply for vacant positions in the department where the employee was previously employed. The employee is eligible for priority consideration for



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positions at or below the grade level that the employee held before the initial or temporary disability retirement or benefit was granted and must meet the minimum qualifications for any position for which the employee applies. If no position for which the employee is qualified is available in the previous department at or below the previous grade level, the employee may apply for vacant positions in other departments. The OHR Director should establish the salary for the position in which the individual is reemployed by considering the individual's salary history with the County and past work experience that is relevant to the new position.

6-11. Selection process. A department director may, in consultation with the OHR Director, use any selection process that meets the department's needs and is consistent with these Regulations.

6-12. Veteran's credit. * * *

6-13. Appeals by applicants. * * *

* * *

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.***

* * *

(3) 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, in order to demonstrate that the employee is able to perform the duties of the new job satisfactorily.



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(4) A County employee with merit system status who transfers 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.

* * *

(c) ***Extension of the probationary period or promotional probationary period.***

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(3) Under Section 12-6(a)(1), a department director must reassign the increment date of an employee whose probationary period is extended.

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

* * *

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

* * *

SECTION 8. MEDICAL EXAMINATIONS AND REASONABLE ACCOMMODATION

* * *

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

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

* * *



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(9) If a current applicant had previously applied for a County position and tested positive for illegal drugs or illegal use of prescription drugs or refused a pre-employment drug test at that time, the EME as part of the current medical evaluation must require the applicant to either:

- (A) provide proof that the applicant:
 - (i) was referred to a healthcare provider for evaluation;
 - (ii) was evaluated for a substance abuse problem by the healthcare provider; and
 - (iii) successfully completed a treatment plan, if one was recommended by the healthcare provider; or
- (B) provide a written statement, on the letterhead of the evaluating healthcare provider, that the applicant exhibits no problem with drugs or alcohol and no education or treatment is required.

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(b) **Medical exam protocols.**

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(2) **Types of medical exam protocols.**

* * *

* * *

SECTION 9. CLASSIFICATION

* * *

9-3. **Classification plan.**

* * *

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

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



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(A) Pay for the classes on the salary schedules listed below is not determined by the use of a job evaluation system. Instead, pay is determined through the mechanism indicated:

* * *

(iii) sworn police managers – criteria in County Code Section 33-11(b)(8);

* * *

(h) ***Merit System Protection Board***

* * *

(2) ***Independent audit of classification and compensation plan.***

(A) At least once every 5 years, the MSPB must have a consultant who is a specialist in the field and independent of the County government conduct an objective audit of the entire classification and compensation plan and procedures. The County Council may direct the MSPB to instruct the consultant to address specific topics or questions as part of the audit.

* * *

9-4. Position classification.

* * *

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

(1) A position reclassification upward is normally effective at the beginning of the first pay period after 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.

* * *



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SECTION 10. EMPLOYEE COMPENSATION

10-1. Definitions.

* * *

- (c) **Control point:** A point established at 90 percent of the salary range that is used to control an employee's progression through the pay range associated with an MLS class. An employee's base salary may advance within the salary range beyond the control point only if the employee's performance is ranked as "Highly Successful Performance" or "Exceptional Performance". The control point is calculated by using the following formula:

$$\begin{aligned} &\text{Salary range maximum} - \text{Salary range minimum} = \text{Salary range dollars} \\ &\text{Salary range dollars multiplied by } 0.9 + \text{Salary range minimum} = \text{Control point.} \end{aligned}$$

* * *

- (q) **Timecard:** An electronic document on which an employee records time worked and leave taken for a particular pay period.
- (r) **Timesheet:** A paper document on which an employee records time worked and leave taken for a particular pay period.

- (s) **Work status:** * * *

10-5. Salary-setting policies.

* * *

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

* * *



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- (E) In extraordinary circumstances, the department director may recommend and the OHR director may approve an increase of up to 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.

* * *

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

* * *

- (C) A non-MLS employee who is temporarily promoted to an MLS position:
 - (i) is not eligible for performance-based pay under MLS guidelines; and
 - (ii) remains eligible to earn compensation, such as overtime pay, compensatory time, and holiday premium pay, for which an MLS employee is ineligible.
- (D) An employee in a position that is not on the general salary schedule who is temporarily promoted to a position on the general salary schedule:
 - (i) is not eligible for performance-based pay under the program for general salary schedule positions; but
 - (ii) remains eligible to earn other types of compensation for which the employee was eligible before the temporary promotion.



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(E) An employee who is temporarily promoted to a position with a higher grade, salary band, or salary range, remains eligible to receive compensation such as overtime pay, compensatory time, or holiday premium pay that is authorized for the position from which the employee was promoted.

(d) **Salary on demotion.**

(1) **Voluntary demotion.** A department director may allow an employee to keep the employee's current base salary after a voluntary demotion but must ensure that the employee's salary is:

- (A) not increased;
- (B) not less than the minimum or more than the maximum salary of the new pay grade or pay band; and
- (C) not decreased by more than 20 percent of base salary unless the employee's current salary must be decreased by more than 20 percent to reach the maximum salary of the new grade.

* * *

10-7. Overtime compensation.

* * *

(b) **Applicable overtime compensation thresholds.** The applicable overtime compensation thresholds for County positions are reflected in the table below:

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



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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	45 hours but such employees should be compensated for the hours worked between 40 and 45 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 hours	40 hours
Firefighter/ rescuer at rank of district chief or above	number of hours in regular workday for full-time employee, plus 5 hours	53 hours or number of hours in regular workweek for full-time employee plus 5 hours	48 hours or number of hours in regular workweek for full-time employee



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Deputy sheriff at the rank of captain or above	13-17 hours, depending on number of hours in normal workday	45 hours	40 hours
Correctional officer at the rank of correctional unit commander (captain) or above	13-17 hours, depending on number of hours in normal workday	45 hours	40 hours

* * *

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

* * *

(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:

* * *

(B) as if the employee was an exempt employee in pay grade 24 or below if the employee is:

- (i) a police officer at the rank of sergeant or below;
- (ii) a firefighter/rescuer at the rank of lieutenant or captain or below;
- (iii) a deputy sheriff at the rank of lieutenant or below; or
- (iv) a correctional officer at the rank of correctional shift commander (lieutenant) or below; and

(C) as if the employee was an exempt employee in pay grade 25 or above if the employee is:

- (i) a police officer at the rank of lieutenant or above;
- (ii) a firefighter/rescuer at the rank of district chief or above;
- (iii) a deputy sheriff at the rank of captain or above; or
- (iv) a correctional officer at the rank of correctional unit commander (captain) or above.



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* * *

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

* * *

(c) **Multilingual pay differentials.**

(1) **Eligibility for multilingual pay.** To be eligible to receive a multilingual pay differential, an employee must be fluent in English and:

* * *

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

(A) When recruiting to fill a vacant position by initial appointment or promotion, a department director may include a specific language skill as a qualification or a preferred qualification.

(B) If a position is designated as requiring multilingual skills and the incumbent employee does not have the required multilingual skills, the department director must:

(i) exempt the position from the requirement until the incumbent employee leaves the position; or

(ii) transfer the employee to an equivalent position that does not require multilingual skills, with the same salary, benefits, and working conditions.

(C) A department director should review the approval of a multilingual pay differential if:

(i) a certified multilingual employee is promoted, demoted, or transferred to a different position; or

(ii) the performance evaluation of a certified multilingual employee indicates that the employee did not use, or



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seldom used, the multilingual skills during the rating period.

(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 that affects the need for multilingual skills;
- (ii) a change in client characteristics that indicates that the identified language skill may no longer be needed; or
- (iii) the performance evaluations of employees who are certified in a particular language indicate that the employees did not use, or seldom used, the multilingual skills during the rating period.

(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 submitted to OHR:

- (i) the language skill needed;
- (ii) the level of proficiency needed (basic or advanced); and
- (iii) the name of the employee whose language skills need to be certified.

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

- (i) schedule the employee for a language test;
- (ii) conduct the examination;



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- (iii) notify the employee and department of the examination results and the effective date of the certification if the employee passed the language examination; and
- (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 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. 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.

* * *

10-11. Stand-by pay.

* * *

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

- (1) the employee is contacted to perform unscheduled work and has reported to work or has started to perform the work remotely by working on a laptop computer or other device;

* * *

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

* * *

- (2) the location to which the employee must report if called, if applicable; and

* * *



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- (i) An employee in stand-by status must not go so far away from the worksite that the employee's response time is unreasonably increased if the employee is called back to work. This may not apply if the employee can perform the work remotely by working on a laptop computer or other device.

* * *

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 overtime work.

* * *

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) 2 weeks if the employee's probationary period lasted at least 9 months;
 - (B) one week if the employee's probationary period lasted for at least 3 months; or
 - (C) none under these Regulations, if:
 - (i) the employee's probationary period lasted less than 3 months; or
 - (ii) the department director terminated the employee for materially falsifying information on the employment application or a document associated with the application



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or for 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 the Retirement Savings Plan is not eligible to receive severance pay under Section (a)(1)(A) or (B) above.

(b) **Severance pay for Retirement Savings 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:

Severance Pay for RSP 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) lost the employee's job through affirmative administrative action of the County;
- (B) was not dismissed for cause; and
- (C) did not resign, retire, or otherwise voluntarily leave County service.



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- (3) The County must calculate the employee's final earnings based on the employee's regular weekly earnings, not including overtime, as of the last day of active service.

* * *

SECTION 11. PERFORMANCE PLANNING AND EVALUATION

* * *

11-3. Responsibility for performance planning and evaluation.

* * *

- (b) Each department director must:

* * *

- (4) ensure that department supervisors use a performance planning and evaluation form that includes the following:
 - (A) employee's name;
 - (B) employee's identification number;
 - (C) department;
 - (D) division/team;
 - (E) employee's job title;
 - (F) supervisor's name;
 - (G) reviewing official's name;
 - (H) review period beginning and ending dates;
 - (I) list or indication of additional feedback sources, if applicable;
 - (J) signatures of supervisor and employee, as applicable, to establish

plan;

appraisal;

- (K) signatures to document progress discussion, as applicable;
- (L) signatures of supervisor and employee to finalize performance



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- (M) signature of the reviewing official
- (N) list of performance expectations, ratings, and narrative comments;
- (O) career development goal;
- (P) overall rating;
- (Q) employee comments, as applicable; and

* * *

11-5. The performance plan.

- (a) *Frequency and timing of performance planning.* A performance plan should be established within 45 days after an employee begins work in a new position. A new plan should be established for the next review period within 45 days after the review period begins.

* * *

11-10. Appeals of performance ratings.

* * *

- (b) An employee may not grieve the employee's performance rating or any other element of the performance evaluation process unless:
 - (1) the employee received the lowest overall performance rating; and
 - (2) the supervisor who rated the employee failed to follow established procedures.

* * *

SECTION 12. SERVICE INCREMENTS

* * *

12-6. Reassignment of increment date.

* * *

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



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- (1) to prevent or resolve pay inequities;
- (2) to serve the best interest of the County, provided that the action will not adversely affect the employee; or
- (3) in conjunction with a disciplinary action.

* * *

SECTION 13. PERFORMANCE AWARDS

13-1. Policy on employee performance awards.

* * *

- (d) An MLS employee is not eligible for a monetary award under this section.

* * *

13-2. Monetary awards.

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

* * *

- (b) *Department Recognition Award.*

* * *

- (c) *Annual Leave Award.*

* * *

SECTION 14. EMPLOYEE DEVELOPMENT

14-1. OHR-administered training. The OHR Director administers a centralized employee development and tuition assistance program for County employees to facilitate their professional and personal development.

* * *

- (c) *Employee tuition assistance.*

* * *

- (10) The following do not qualify for tuition assistance:



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* * *

- (C) if the tuition assistance benefit would duplicate benefits received for the same educational activity under other programs such as scholarships, veterans benefits, and the Maryland State Fire Association;
- (D) courses in which credit is obtained solely by taking an examination; and
- (E) examination fees.

* * *

14-2. Department employee development.

* * *

- (b) **Approval criteria.** Department-funded training is subject to the conditions summarized in the table below:

Approval Criteria for Department-Funded Training		
Amount funded per fiscal year	Recommendation and approval required	Required employee commitment
\$200 or less	Approval: Immediate supervisor	<ul style="list-style-type: none"> • Successful completion of training
\$201 – 3,000	Approval: Immediate supervisor	<ul style="list-style-type: none"> • Successful completion of training • Remain a County employee for 1 year after completion
\$3,001 – 6,000	Recommendation: Immediate supervisor Approval: Department director	<ul style="list-style-type: none"> • Successful completion of training • Remain a County employee for 2 years after completion
\$6,001 - \$9,000 (maximum)	Recommendation: Department director Approval: CAO	<ul style="list-style-type: none"> • Successful completion of training • Remain a County employee for 3 years after completion

* * *

- (d) **Obligations of employee who receives department-funded training.**

An employee who receives department-funded training of more than \$200 and up



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to and including \$9,000 in a fiscal year for tuition and other costs directly related to training must:

- (1) successfully complete the course or reimburse the County for all costs paid by the County; and
 - (2) agree to remain a County employee for the period indicated in the table in Section 14-2(b) above or repay a prorated amount of the tuition and related costs to the County.
- (e) **Obligations of employee who receives department-funded training required by the department.** If the department directs the employee to take the training, the employee:
- (1) is required to successfully complete the course or reimburse the County for all costs paid by the County;
 - (2) is not required to remain a County employee for the period indicated in the table in Section 14-2(b) above or repay a prorated amount of the tuition and related costs to the County.

* * *

SECTION 15. WORK SCHEDULES, ATTENDANCE, HOURS OF WORK

* * *

15-3. Workday and workweek.

* * *

(b) **Normal workweek.**

- (1) The normal workweek for a full-time County employee, other than an employee who works 12-hour shifts, is at least 40 hours worked between 12:00 a.m. Sunday to 11:59 p.m. Saturday.

* * *



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- (4) The normal workweek for a full-time employee who works 12-hour shifts is 48 hours in one week of the pay period and 36 hours in the other week of the pay period.

* * *

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.

* * *

- (iii) An exempt employee should use the earned religious leave on the dates indicated in the written request to work an alternate work schedule approved by the employee's supervisor. The religious leave earned will expire after 12 months if it is not used.

* * *

SECTION 16. ANNUAL LEAVE

* * *



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16-3. Accrual rates for annual leave.

- (a) A full-time employee who works 40 regularly scheduled hours per week or who works 12-hour shifts earns annual leave at the following rates:
- (1) 120 hours per year through the completion of the first 3 years of service;
 - (2) 160 hours per year from the beginning of the 4th year through the end of the 15th year of service; and
 - (3) 208 hours per year from the beginning of the 16th year of service.

* * *

SECTION 17. SICK LEAVE

* * *

17-13. Lump sum sick leave death benefit.

- (a) If an employee dies, the County must pay the employee's designated beneficiary, less any debt owed to the County, a lump sum payment for accrued sick leave at the current pay rate, as follows:
- (1) 50 percent of the total value if the death results from a non-service connected accident or illness; or
 - (2) 100 percent of the total value if the death results from a service connected accident or illness.

* * *

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

* * *

SECTION 19. FAMILY AND MEDICAL LEAVE

* * *

19-8. Supervisor's responsibility for designating leave as FMLA leave.



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* * *

- (c) **Information that a supervisor must give to an employee.** Within 2 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):

* * *

19-9. Use of FMLA leave.

* * *

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

* * *

- (2) A supervisor should require an employee to submit a County *Certification of Health Care Provider* form (Appendix P) to support a request for leave for a serious health condition, if:

* * *

19-13. Relation of FMLA leave to other benefits.

- (a) An employee who uses LWOP under this section must keep all health and life insurance benefits for the entire period of LWOP.
- (b) After the employee returns from FMLA leave, the employee must repay the County for the employee's share of the cost of the insurance if the employee did not pay for insurance during the LWOP.
- (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 share of insurance premiums for periods of unpaid leave, unless the employee does not return to work because of:



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- (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.
- (d) If an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition, the County may require medical certification of the employee's or the family member's serious health condition. If the County requests such certification, the employee must provide medical certification within 30 calendar days from the date of the County's request. If the employee does not provide such certification within 30 calendar days or the reason for not returning to work does not meet the test of "other circumstances beyond the employee's control", the County may recover the employee's share of the cost of the insurance premiums paid during the period of unpaid FMLA leave.
- (e) If an employee fails to return to work, any insurance premiums that the County is entitled to recover from the employee are a debt owed by the non-returning employee to the County. The County may recover the costs through deduction from any sums due to the employee such as unpaid wages, annual leave, or



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retirement contributions, provided that such deductions do not otherwise violate applicable Federal or State laws.

* * *

19-16. Rights under FMLA of an employee after military leave.

- (a) To determine if an employee who has returned from military leave has met the FMLA eligibility requirement of a total of 12 months of County employment, the County must count each month of military service as a month of active County employment.
- (b) To determine if an employee who has returned from military leave has met the County FMLA eligibility requirement of at least 1040 hours of paid work, not including paid leave, during the previous 12 months, the County must include the hours that the employee would have worked for the County during the previous 12 months if the employee had not been on military leave.

* * *

SECTION 21. ADMINISTRATIVE LEAVE

* * *

21-2. Limits on administrative leave for bereavement.

* * *

- (b) For each occasion, the maximum amount of administrative leave that an employee may use as bereavement leave is:
 - (1) 3 calendar days within 15 days of the death for a firefighter who works 24-hour shifts; and
 - (2) 3 workdays within 15 days of the death for any other employee.

* * *

SECTION 22. MILITARY LEAVE

* * *



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22-2. Military leave for active duty.

- (a) **Military leave under County law.** Under County Code Section 33-21, a full-time or part-time employee (other than an elected official) who is involuntarily ordered to active duty in the armed forces of the United States or the National Guard during a national emergency or under Presidential authority, except for active duty for training:

* * *

- (3) must receive County salary for the period of active duty plus 10 working days after release from active duty, but the County salary paid must be reduced by:

* * *

22-5. Military leave for training.

- (a) **For an employee member of the Maryland organized militia.**

- (1) Under Md. Ann. Code art. 65, §42, a department director must grant administrative leave as follows to a County employee who is a member of the Maryland organized militia and who must report for inactive duty military training:

* * *

- (b) **For an employee who is not a member of the Maryland organized militia.**

- (1) An employee who must report for inactive duty military training and who is not a member of the Maryland organized militia may use the same amount of administrative leave as stated in 22-5(a) above and the use of administrative leave is subject to the same conditions.

* * *



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SECTION 25. PERSONAL LEAVE DAYS

* * *

25-4. Personal leave days and compensatory time for employees in units that require 24-hour coverage.

- (a) In Transit Services or an operational unit that requires 24-hour shift coverage, a department director at the beginning of the leave year must grant an employee one personal leave day and compensatory time instead of 2 personal leave days as shown in the table below.

Personal Leave and Compensatory Time for Employees in Units that Require 24-Hour Coverage	
If employee's regular work schedule is:	Employee receives 1 personal leave day and the following amount of compensatory time for 2 personal leave days:
8 hours	22
9 hours	24
10 hours	26
12 hours	30
Part-time	Prorated personal leave day and prorated compensatory time based on the formula in Section 25-2(e)

* * *

SECTION 29. TERMINATION

* * *

29-3. Management responsibility for termination.

- (a) Before a department director terminates the employment of an employee with merit system status for the reason described in Section 29-2(a)(6) (failure to perform assigned duties in a satisfactory manner), the director must:
- (1) give the employee advance written notice of the problem;
 - (2) counsel the employee on corrective action to take; and
 - (3) allow the employee adequate time to improve or correct the employee's



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performance or attendance.

- (b) Before a department director terminates the employment of an employee with merit system status for the reason described in Section 29-2(a)(7) (failure to return to work within 30 calendar days of exhausting all paid leave), the director must send written notice of the possible termination to the employee at the most recent home address given by the employee at least 10 calendar days in advance of the issuance of a notice of proposed termination.
- (c) A department director must not terminate a qualified employee with a physical or mental disability under 29-2(a)(9) above unless efforts at reasonable accommodation as described in Section 8 of these Regulations are unsuccessful.

* * *

SECTION 31. DEMOTION

* * *

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.



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SECTION 32. PREVENTION OF PROHIBITED DRUG USE AND ALCOHOL MISUSE BY SAFETY-SENSITIVE TRANSIT EMPLOYEES UNDER FEDERAL TRANSIT ADMINISTRATION REGULATIONS

* * *

32-3. Drug and alcohol prohibitions.

* * *

(d) **Refusal to submit to drug or alcohol testing.** 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 or an alcohol test with an alcohol concentration of 0.04 or higher:

* * *

- (5) failing to arrive, or arrive in a timely manner, for a required test;
- (6) failing to remain at the testing site until the testing process is complete, but an employee who leaves the testing site before the testing process begins for a pre-employment test has not refused to test;
- (7) failing to undergo a medical evaluation as required by the Medical Review Officer or as directed by the County as part of the verification process;
- (8) in the case of a directly observed or monitored collection in a drug test, failing to permit the observation or monitoring of the provision of a specimen;
- (9) failing to sign the certification at Step 2 of the Alcohol Testing Form;
- (10) failing or declining to take an additional test that the employer or collector directs the employee to take; or



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- (11) submitting an adulterated or substituted specimen, if this is verified by the MRO.

* * *

32-6. Retesting of employees; collecting a new specimen after a dilute test result.

* * *

(c) **Collecting a new specimen from an applicant or employee after a dilute test result.**

- (1) If the MRO reports that an applicant or employee had a verified dilute positive test, the County must treat it as a positive test result.
- (2) If the MRO reports a dilute negative test result that requires collection of another specimen for testing, the County must immediately notify the applicant or employee of the need to collect another specimen and that it must be provided within no more than 48 hours from the time of notification. If the employee is on duty, the employee must be accompanied to the collection site immediately for collection of the second specimen. If the applicant or employee fails to report for specimen collection within 48 hours and has not provided a valid reason for the delay, the County must treat it as a refusal to test.
- (3) The MRO will direct whether the new specimen is to be collected under observation or not.

* * *

SECTION 33. DISCIPLINARY ACTIONS

* * *

33-3. Types of disciplinary actions.

* * *



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(e) **Suspension.**

* * *

(2) A department director may not:

* * *

(B) suspend an employee for more than 30 days, unless:

- (i) a longer suspension is imposed by a court or quasi-judicial body; or
- (ii) the employee agrees to the longer suspension as part of a settlement agreement.

* * *

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 established policy or procedure;

* * *

(y) solicits an endorsement for employment or promotion from an individual who is or may be engaged in doing business with the County Government;

(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.



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SECTION 34. GRIEVANCES

* * *

34-3. Policy on grievances.

* * *

(k) **Limit on relief.**

- (1) A grievant must not receive relief in a grievance from a date more than one year before the grievance was filed.
- (2) If a grievance involves a continuing violation, the grievant is only entitled to relief going back 30 days before the grievance was filed.
- (3) The above restrictions on relief are not intended to limit the remedial authority of the MSPB under Section 33-14(c) of the County Code.

* * *

34-8. Alternative dispute resolution (ADR).

- (a) **Forms of ADR.** The forms of ADR that are described below are available to the parties to a grievance.

* * *

- (3) **Peer resolution panel.** In this form of ADR, a panel of no more than 3 trained Montgomery County is chosen by the grievant and the OHR Director. The grievant picks the 1st panel member, the OHR Director picks the 2nd member, and both pick the 3rd. The panel members may use one or more of the following to develop a recommendation to resolve the grievance:

* * *

- (b) **Ground rules for using ADR.**



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- (1) In any form of ADR, each party to a dispute must voluntarily agree to participate. The OHR Director must determine if the County will participate.

* * *

- (5) A grievant may use only one form of ADR.
- (6) Each party is limited to a 15-minute presentation before a settlement conference committee or peer resolution panel.
- (7) If a grievant elects to use an ADR process, the time limits in the grievance procedure are stayed until the ADR process is completed or the grievant chooses to end ADR.
- (8) A party to ADR may accept or reject a recommended resolution to the dispute.

34-9. Grievance procedure.

(a) *Time limit for filing a grievance.*

- (1) A grievance may be dismissed by the OHR Director if it is not filed within 30 calendar days after:

* * *

(b) *Technical and procedural review of grievances.*

- (1) An employee must submit a written grievance on the OHR-approved grievance form (Appendix Q) and must provide the information requested on the form.

* * *

- (7) A department director may use Appendix R to respond to the grievance.
- (8) The OHR Director or CAO may reconsider issues of timeliness or grievability at any stage of the grievance process.

* * *



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(e) **Steps of the grievance procedure.** The following table shows the 3 steps of the grievance procedure, the applicable time limits, and the responsibilities of the parties at each step.

STEPS OF THE GRIEVANCE PROCEDURE		
Step	Individual	Responsibility of individual*
1	Employee	Present job-related problem informally to immediate supervisor.
		If unable to resolve the problem, submit a written grievance on appropriate grievance form to immediate supervisor and department director within 30 calendar days.
		If the grievance is based on an action taken or not taken by OHR, submit the written grievance to the OHR Director.
	Department Director	Give the employee a written response within 7 calendar days after the written grievance is received.
2	Employee	If not satisfied with the department director's response, may file the grievance with the CAO by submitting it to the Labor/Employee Relations Team of OHR within 10 calendar days after receiving the department's response.
	CAO's Designee	Must meet with the employee, employee's representative, and department director's designee within 30 calendar days to attempt to resolve the grievance.
	Employee and Dept. Director	Present information, arguments, and documents to the CAO's designee to support their positions.
	CAO's Designee	If unable to resolve the grievance, must provide the CAO with a report that includes background information, issue, the position and arguments of each party, a summary of relevant facts, and a recommended disposition.
	CAO	Must give the employee and department a written decision within 45 calendar days after the Step 2 meeting
3	Employee	If not satisfied with the CAO's response, may submit an appeal to the MSPB within 10 working days (10 calendar days for a uniformed fire/rescue employee) after the CAO's decision is received.
	MSPB	Must review the employee's appeal under Section 35 of these Regulations.
* At each step of the grievance procedure, the parties to a grievance should consider ADR methods to resolve the dispute.		

(f) **Request for a transcript of the Step 2 meeting.**

- (1) An employee may request a verbatim transcript of the Step 2 meeting by submitting a written request for a transcript to the OHR Director at least 10 calendar days before the date of the Step 2 meeting.

* * *



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(g) **Step 2 meeting.**

- (1) If the OHR Director issues the decision on the grievance at the Step 1 level, the CAO must appoint a designee who is not a subordinate of the OHR Director to conduct the Step 2 meeting.
- (2) An employee may file a grievance directly with the CAO (at Step 2) over an action taken by the County to recover a debt owed by the employee to the County.
- (3) The Step 2 meeting is an informal discussion between the parties of the issues raised by the grievance. The meeting is not an administrative hearing or a trial and formal rules of evidence do not apply. The CAO's designee does not entertain motions. Although persons who speak at a grievance meeting in support of a party's position may be witnesses in a practical sense, they are not considered witnesses in the sense of participants in a formal proceeding such as a trial.
- (4) At the Step 2 meeting, the grievant and the grievant's representative may present facts, documents, and arguments supporting the grievance. Other employees may speak at the meeting in support of the grievant's position.
* * *
- (9) The CAO must give the parties to the grievance a written decision within 45 calendar days after the Step 2 meeting.
* * *

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS

* * *

35-11. Prehearing procedure in appeal; motions; requests for reconsideration of preliminary matters; conduct of hearing; continuances.



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(a) ***Prehearing procedure in appeal.***

(1) In all cases where the MSPB conducts an evidentiary hearing, the County must submit the following information to the MSPB or hearing officer and to any other party at least 20 calendar days before the prehearing conference:

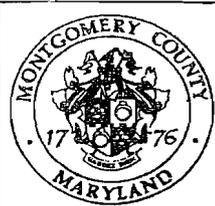
- (A) complete list of charges;
- (B) copy of all written reports, documents, photographs, charts, letters, or any other material to be introduced or used at the hearing;
- (C) names and addresses of all prospective witnesses and a summary of their anticipated testimony;
- (D) names and addresses of witnesses, documents, and records requiring service of a subpoena; and,
- (E) estimated time required for presentation of the case.

(2) The Appellant must submit the same information except for a complete list of charges to the MSPB or hearing officer and the County at least 10 calendar days before the prehearing conference.

* * *

(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 calendar days from the date of the motion to respond to the motion before the Board rules on the motion.

(5) ***Requests for reconsideration of MSPB decisions on preliminary matters.*** Any request to the MSPB to reconsider its ruling on a preliminary matter must be in writing and must be filed within 5



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calendar days from the date of the ruling. The opposing party has 5 calendar days from the date of the request for reconsideration to respond to the request before the Board issues a written decision on the request. This preliminary ruling by the Board is not a final decision for purposes of judicial review and appeal.

* * *

- (c) **Continuances.** A party must submit a request for continuance in writing to the MSPB or hearing officer with a copy to the opposing party at least 5 calendar days before the hearing date. The MSPB or hearing officer may grant the request for a continuance where good cause is shown. The MSPB, on its own motion, may decide to continue a hearing less than 5 calendar days before the hearing date if it determines a continuance is in the interest of justice.

* * *

35-17. Request for rehearing or reconsideration of MSPB final decisions.

- (a) A party may submit a written request to the MSPB for rehearing or reconsideration of a final decision within 10 calendar days after the MSPB's final decision is issued. After the 10-day period, the MSPB must not grant reconsideration except in a case of fraud, mistake, or irregularity.
- (b) A party must submit a request for rehearing or reconsideration in writing with supporting reasons and must provide a copy to any opposing party or the opposing party's representative. The opposing party may respond to the request for rehearing or reconsideration. Any response must be filed within 5 calendar days from receipt of the request.
- (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



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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.

* * *

Approved: *Isiah Leggett* (acting)
Isiah Leggett, County Executive

10/9/2008
Date

Approved as to form and legality:

Edward Katter
Office of the County Attorney

10/7/08
Date



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APPENDIX O

MONTGOMERY COUNTY GOVERNMENT Response To Employee Request For FMLA Leave

Date: _____

TO: _____

FROM: _____

SUBJECT: Request for Family & Medical Leave (FMLA Leave)

On _____, you notified us of your need to take FMLA leave because of:
(date)

- the birth of a child, or the placement of a child with you for adoption or foster care;
- a serious health condition that makes you unable to perform the essential functions of your job; or
- a serious health condition affecting your
 - spouse
 - domestic partner
 - minor child
 - adult child incapable of self-care
 - parent.

You indicated that you need this leave to begin on _____ and that you expect it
(date)
to continue until _____.
(date)

Except as explained below:

- you have a right under the FMLA to use up to 12 weeks of any combination of paid or unpaid leave in a leave year for the reasons listed above;
- your health benefits must be maintained during any period of unpaid FMLA leave under the same conditions as if you had continued to work; and
- you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave.

If you do not return to work following FMLA leave, you must reimburse the County for the County share of health insurance premiums paid on your behalf during your FMLA leave, unless the reason for your failure to return is:

- the continuation, reoccurrence, or onset of a serious health condition which would entitle you to FMLA leave; or
- other circumstances beyond your control



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Response to Employee Request for FMLA Leave Page 2

This is to further inform you that:

1. You are eligible not eligible for FMLA leave.
2. The leave you requested will will not be counted against your FMLA leave entitlement.
3. You will will not be required to furnish medical certification of a serious health condition to support your request for FMLA leave. If required, you must furnish certification by _____ . (This date must be at least 15 days after you are notified of the requirement for medical certification.) If you do not submit the required certification, the approval of your leave may be delayed until it is received.
4. Unless you elect not to maintain your health insurance coverage during a period of unpaid FMLA leave or make other arrangements to pay your share of your health benefit premium during any period of unpaid FMLA leave, the County will continue to pay the entire premium until your return to a pay status. After your return, the County will recover the cost of your share of the premiums.
5. If you are absent from work for 15 or more consecutive workdays for your own serious health condition, you will be required to present a return-to-work authorization from your physician upon your return.
6. While on leave, you will will not be required to furnish periodic reports of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated in this letter, you will will not be required to notify us prior to your return to work.
7. You will will not be required to furnish us with re-certification (additional medical certifications) relating to your serious health condition or that of your immediate family member. Re-certification cannot be required any more frequently than every 30 days, unless there is a significant change in the circumstances that justified the original approval of FMLA leave.
8. I have attached:
 - further information about FMLA
 - a definition of "serious health condition"
 - a medical certification form

Attachments

Office of Human Resources



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APPENDIX P



Montgomery County Government Medical Certification Form (Family and Medical Leave Act of 1993)

(When completed, return this form to the employee.)

1. Employee's Name	2. Employee's Job Title
3. Patient's Name (If different from employee)	4. Patient's Relationship to Employee

5. Page 4 of this form describes what is meant by a "serious health condition" under the Family and Medical Leave Act (FMLA). Does the patient's condition¹ qualify under any of the categories described on page 4? If so, please check the applicable category. (1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____, or none of the above _____
6. Describe the **medical facts** that support your certification and include a brief statement about how the medical facts meet the criteria of one of the categories described on page 4. Please do not include a diagnosis or other confidential medical information.
7. a. State the approximate **date** the condition began and how long you expect it to last. Also state how long the patient's present **incapacity**² will last, if different:
- b. Will it be necessary for the employee to work only **intermittently** or to work on a **less than full-time schedule** as a result of the condition (or as a result of treatment for the condition as described in Item 8 below)? If yes, give the probable duration:
- c. If the condition is a **chronic condition** (see condition #4 on page 4) or **pregnancy**, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity :

Medical Certification Form, Page 1 of 4

Montgomery County Office of Human Resources

¹ Here and elsewhere on this form, the information requested relates **only** to the condition for which the employee is taking FMLA leave.

² "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for the serious health condition, or recovery from a serious health condition or its treatment.



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8. a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments.

b. If the patient will be absent from work or other daily activities on an **intermittent** or **part-time** basis because of treatment, also provide an estimate of the probable number treatments; the interval between such treatments; the actual or estimated dates of treatment, if known; and the period required for recovery from treatments, if any:

c. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

d. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

9. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform work** of any kind?

b. If able to perform some work, is the employee **unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should give you information about the employee's essential job functions)? If yes, please list the essential functions the employee is unable to perform:

c. If neither a. nor b. applies, is it necessary for the employee to be **absent from work for treatment**?



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10. a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

Signature of Health Care Provider:

Type of Practice:

Address:

Telephone Number:

Date:

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature

Date



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A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
2. Absence Plus Treatment. A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - (a) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment⁴ under the supervision of the health care provider.
3. Pregnancy. Any period of incapacity due to pregnancy, or for prenatal care.
4. Chronic Conditions Requiring Treatments. A chronic condition that:
 - (a) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - (c) May cause episodic rather than a continuing period of incapacity of more than three consecutive calendar days (e.g., asthma, diabetes, epilepsy, etc.).
5. Permanent/Long-term Conditions Requiring Supervision. A period of incapacity of more than three consecutive calendar days that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
6. Multiple Treatments (Non-Chronic Conditions). Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

This form should be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second or third opinions and recertification.

THE COMPLETED FORM GOES TO THE EMPLOYEE.

Medical Certification Form, Page 4 of 4

Montgomery County Office of Human Resources

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.



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APPENDIX Q



Montgomery County, Office of Human Resources Grievance Form for County Grievance Procedure

FILING INSTRUCTIONS – For more information about the County Grievance Procedure, contact the Labor/Employee Relations Team on 240-777-5114, review Section 34 of the County Personnel Regulations, or go to <http://www.montgomerycountymd.gov/content/ohr/ResourceLibrary/files/MCPR0134.pdf>.

1. Complete this form and give a copy, along with any supporting documentation, to both your supervisor and to your department director. Send one copy and any attachments to the Office of Human Resources, Labor/Employee Relations Team, 101 Monroe, Street, Rockville, Md. 20850.

2. Do/Will you have representation? If so, please provide:

name: _____ phone no.: _____

mailing address: _____

3. Would you be interested in Alternative Dispute Resolution? Yes No

Failure to provide complete information may delay the processing of your grievance.

FILING INFORMATION: (Please Print Clearly)

Employee's Name: _____ Position Title: _____ Grade: _____

Department/Division/Section: _____ Immediate Supervisor: _____

Home Address: _____

Phone: Home: _____ Work: _____ E-mail address: _____

GRIEVANCE STATEMENT - You must cite the specific written policy, regulation, or treatment in which you believe a violation or inequity occurred. Please attach additional information if more space is needed. Failure to provide complete information may delay the processing your grievance.

RELIEF REQUESTED

Employee's Signature: _____ Date: _____

DEPARTMENT/SUPERVISOR INFORMATION In order to respond to the employee's grievance, please complete the Grievance Response Form, which can be obtained from OHR, Labor Relations Team or online at the OHR Resource Library.



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APPENDIX R



Montgomery County, Office of Human Resources DEPARTMENT/SUPERVISOR GRIEVANCE RESPONSE FORM

You are required to complete this form because an employee you supervise has filed a grievance.

For more information about the County Grievance Procedure contact the Labor/Employee Relations Team on 240-777-5114, review Section 34 of the Montgomery County Personnel Regulations, or go to the following website: <http://www.montgomerycountymd.gov/content/ohr/ResourceLibrary/files/MCPR0134.pdf>.

SUPERVISOR'S RESPONSE: Date Received _____

Supervisor's Name and Signature _____ Date _____

RESOLVED: Yes No

DEPARTMENT/AGENCY HEAD'S RESPONSE: Date Received _____

Department Agency Head's Name and Signature _____ Date _____

Employee's Signature _____ Date _____

RESOLVED: Yes No (If not resolved, employee has five calendar days upon receipt of response to appeal to next step.)

OHR DIRECTOR'S RESPONSE: Date Received _____

OHR Director's Signature _____ Date _____

Employee's Signature _____ Date _____

RESOLVED: Yes No (If not resolved, employee has five calendar days upon receipt of response to appeal to next step.)

CHIEF ADMINISTRATIVE OFFICER'S RESPONSE: Date Received _____

Chief Administrative Officer's Signature _____ Date _____

RESOLVED: Yes No

A grievance may be appealed to the Merit System Protection Board within 10 working days of receipt of the Chief Administrative Officer's response.



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Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations

Executive Regulation No. 26-07AM

Issued by: County Executive

Supersedes: Executive Regulation No. 12-00AM, in part

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

Council review: Method 1

Montgomery County Register Volume 25, Issue 1

Comment deadline: January 31, 2008

Effective date: _____

Summary: This regulation includes amendments to Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22, 25, 29, 30, 31, 32, 33, 34, 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.

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



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SECTION 1. DEFINITIONS

* * *

1-26. Full-time position: A career position, including a term position, that:

- (a) for employees who work 12-hour shifts, requires employment on a continuing year-round or school-year basis for 40 or more regularly scheduled hours per week during one week of the pay period and 36 or more regularly scheduled hours per week during the other week of the pay period; or
- (b) for employees who do not work 12-hour shifts, requires employment for 40 or more regularly scheduled hours per week on a continuing year-round or school-year basis.

* * *

1-31. Immediate family: As used in these Regulations, includes only the employee's:

* * *

- (n) other relative not living with the employee, if approved by the [CAO] OHR Director because of extenuating circumstances.

* * *

1-67. Seasonal position: A type of temporary position that:

- (a) does not involve year-round employment; and
- (b) may be used indefinitely to perform work usually associated with a particular season, such as removing snow or collecting fallen leaves.

[1-67.]

1-68. Step salary schedule: * * *

[1-68.]

1-69. Supervisor: * * *

[1-69.]

1-70. Temporary employee: * * *



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[1-70.]

1-71. Temporary position: A non-career position, classified and filled under merit system principles, that may be used as described in Section 7-3.

[1-71.]

1-72. Temporary promotion: * * *

[1-72.]

1-73. Term employee: * * *

[1-73.]

1-74. Term position: * * *

[1-74.]

1-75. Transfer: * * *

[1-75.]

1-76. Uniformed fire/rescue employee: * * *

1-77. Unrepresented employee: An employee whose position is not included in any bargaining unit.

[1-76.]

1-78. USERRA: * * *

[1-77.]

1-79. Workday: * * *

[1-78.]

1-80. Working day: * * *

[1-79.]

1-81. Workweek or work period: * * *

* * *



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SECTION 2. GENERAL PROVISIONS

* * *

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

2-13. **Sunset date.** These Regulations expire on [October 7, 2008] January 5, 2014.

SECTION 3. ETHICS, DISCLOSURE OF ILLEGAL OR IMPROPER ACTS, EMPLOYMENT OF RELATIVES, DISCRIMINATION ON THE BASIS OF POLITICAL AFFILIATION, OUTSIDE EMPLOYMENT, AND SEXUAL OR ROMANTIC RELATIONSHIPS IN THE WORKPLACE

* * *

3-2. **Disclosure of illegal or improper acts in County government.**

* * *

- (c) (1) The Office of the Inspector General (OIG) has a Fraud Hotline operated 24 hours per day and 7 days per week by an independent contractor that provides employees and vendors with a confidential way to report illegal or improper activities.
- (2) The Hotline can receive complaints in more than 150 languages and is accessible by telephone or email.
- (3) The OIG is interested in receiving information about:
 - (A) theft of County funds or property;
 - (B) abuse in government activities;
 - (C) contract or procurement fraud;
 - (D) Worker's Compensation fraud;
 - (E) kickbacks or bribery;
 - (F) fraudulent travel or other reimbursement claims;
 - (G) significant waste of County funds; and



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(H) retaliation against any person for filing a complaint with the OIG.

(4) Employees should not use the Hotline to deal with the following:

(A) routine issues between managers and employees;

(B) EEO complaints;

(C) issues that are covered by the County grievance procedure or a grievance procedure in a collective bargaining agreement;

(D) questions or concerns about benefits or compensation; or

(E) issues that are the responsibility of other government agencies.

[(c)]

(d) An individual to whom an employee reports an illegal or improper act must not reveal the identity of the employee who filed the report or a County employee or official who is the subject of the report, unless:

(1) each party waives confidentiality in writing; or

(2) Section 19A-10 of the County Code expressly authorizes revealing a party's identity.

[(d)]

(e) The MSPB, Ethics Commission, or Inspector General must refer the report to the government agency, including the MSPB, Ethics Commission, or Inspector General, that is responsible for investigating or addressing the inappropriate or unlawful conduct alleged in the report. The government agency must then investigate the conduct alleged in the report.

[(e)]

(f) The role of the MSPB in investigating allegations of illegal or improper acts is described in Sections 35-20 through 35-26 of these Regulations.

* * *

3-5. Outside employment.



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- (a) An employee must:
 - (1) apply for and obtain approval of the Ethics Commission for other employment;
 - (2) comply with any conditions imposed by the Ethics Commission on the approval of other employment; and
 - (3) comply with executive regulations on outside employment issued by the Ethics Commission.
- (b) An employee may download an outside employment request form from the Ethics Commission web page on the County website.

* * *

3-8. Political activity.

- (a) An employees may participate in political causes and campaigns on the employee's own time.
- (b) An employee must not use County equipment, supplies, or other property for a political cause or campaign.
- (c) An employee must not disrupt or interfere with the work of another County employee while participating in activities associated with a political cause or campaign.
- (d) A County employee must not direct, coerce, or otherwise pressure or obligate another County employee to contribute to a political cause or campaign or to perform work or provide services of any type to a political cause or campaign.
- (e) A County employee must not wear a County uniform, identification card, or other clothing or insignia that identifies the individual as a County employee while engaging in or attending a political activity of any kind, including a political rally, employee demonstration, caucus, campaign, fund raiser, and political speech, unless they have been directed to do so by a County supervisor.



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- (f) A County employee must not use a County vehicle that is marked or identifiable as a County vehicle while engaged in political activities such as setting up a sign or attending a rally, caucus, promotional event, or fund raiser.
- (g) A County employee must not place a bumper sticker, decal, insignia, banner, or placard on County property or a County vehicle unless it is provided or authorized by the department.
- (h) A County employee must not wear an unauthorized pin, button, placard, or other article associated with a political cause or campaign while wearing a County uniform or while on duty.
- (i) A County employee may wear a County uniform, identification card, or other County clothing or insignia while voting at the employee's assigned polling place.

* * *

SECTION 4. RECORDS

* * *

4-3. Employee records.

* * *

(c) ***Supervisory file.***

* * *

- (3) A supervisor may maintain a supervisory file in an electronic format.

(d) ***Medical record.***

- (1) The [OHR Director] Manager of Occupational Medical Services is the custodian of employee medical records and must maintain the medical record of each employee.
- (2) The [OHR Director] Manager of Occupational Medical Services must limit the medical record of an employee to:

* * *



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(4) Medical records are confidential. [OHR] The Manager of Occupational Medical Services must maintain medical records in a secure location apart from other employee records.

* * *

4-6. Access to employee records.

* * *

(b) *Medical record.*

* * *

(3) If an evaluation of an individual's medical or physical condition is reasonably necessary to determine if reasonable accommodation is available for the individual or if the individual is employable, eligible for continued employment, or eligible for a benefit for which the employee has applied, the [Employee Medical Examiner] Manager of Occupational Medical Services or designee may provide or make available an employee's relevant non-psychological medical records (with the exception of genetic information) to the following persons only, and only if the persons are participating in one of the above-referenced decision making processes:

* * *

(4) If an applicant or employee has filed a grievance, filed an appeal to the MSPB, applied for a disability retirement, filed a claim for Workers' Compensation benefits, or otherwise filed a claim or complaint against the County in which the employee has made an issue of the employee's physical or medical condition, the [Employee Medical Examiner] Manager of Occupational Medical Services or designee may provide or make available an employee's relevant non-psychological medical records



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(with the exception of genetic information) to the following persons only, and only if the persons are participating in the litigation or consideration of the claim or complaint:

* * *

- (6) An employee's or applicant's psychological records are confidential. If an evaluation of an individual's mental health is reasonably necessary to determine if reasonable accommodation is available for the individual or if the individual is employable or eligible for continued employment, the [Employee Medical Examiner] Manager of Occupational Medical Services or designee may provide or make available an employee's psychological records (with the exception of genetic information) to the following persons only, and only if the persons are participating in one of the above-referenced decision making processes:

* * *

- (7) If an employee has filed a grievance, filed an appeal to the MSPB, applied for a disability retirement, filed a claim for Workers' Compensation benefits, or otherwise filed a claim or complaint against the County in which the employee has made an issue of the employee's mental health, the [Employee Medical Examiner] Manager of Occupational Medical Services or designee may provide or make available an employee's relevant psychological records (with the exception of records of genetic information) to the following persons only, and only if the persons are participating in the litigation or consideration of the claim or complaint:

* * *

4-7. Release and review of employee records.

* * *



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(b) **Employee review of records.**

- (1) At the request of an employee or designee of the employee, the custodian of the records must allow the employee or designee to review the employee's official personnel file, department operating record, supervisory file, or medical records at a time and place mutually convenient to the custodian and the employee or designee. An employee or designee may submit a request in writing, by telephone or email, or in person.
- (2) The custodian of the employee record must:
 - (A) verify the identity of the employee or designee before allowing the employee or designee to review the record; and
 - (B) document for the employee record that the employee or designee reviewed the record on the indicated date.
- (3) The custodian of the employee record may require the employee or designee to pay a fee for copies of more than 10 pages of employee records.

* * *

SECTION 5. EQUAL EMPLOYMENT OPPORTUNITY

* * *

5-4. EEO complaints.

* * *

- (b) (1) An individual who believes this policy has been violated may not file a grievance under Section 34 of these Regulations or an appeal under Section 35, unless the alleged violation is related to a disciplinary action, termination, or involuntary resignation.



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(2) If an individual files an EEO complaint and a grievance over the same action, such as an involuntary transfer or failure to be promoted, but the grievance does not allege discrimination or harassment in violation of this Section, the OHR Director must ensure that:

(A) the complaint is processed first; and

(B) the grievance is held and processed only after the complaint is investigated and decided by the EEO Officer or County Attorney's Office.

* * *

SECTION 6. RECRUITMENT AND APPLICATION RATING PROCEDURES

* * *

6-2. Announcement of open jobs.

- (a) The OHR Director:
 - (1) must announce and [distribute] electronically post notice of vacant positions that are open for competition among qualified candidates;

* * *

6-3. Employment application deadline.

- (a) The OHR Director may establish a reasonable deadline of not less than two weeks for receipt of applications for announced vacancies. [In unusual circumstances, the] The OHR Director may shorten the two-week announcement period.

* * *

6-4. Reference and background investigation requirements; Review of applications.

- (a) (1) The CAO may establish reference and investigation requirements for County positions to verify prior work performance, experience, and job-related personal characteristics of applicants and employees.



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(2) The CAO must ensure that all reference checks, background investigations, and criminal history records checks of employees and applicants are conducted as required under County, State, and Federal laws or regulations.

(3) All applicants and employees must comply with established reference and investigation requirements.

(b) The OHR Director must review and evaluate an application submitted to determine if the applicant is eligible for the announced vacancy. The OHR Director may disqualify an applicant at any point in the hiring process if:

- [(a)] (1) the applicant lacks required minimum qualifications such as education, experience, a license, or a certification;
- [(b)] (2) the applicant submits inaccurate or false information in the application or associated forms;
- [(c)] (3) the applicant was separated from prior County service for cause or is not eligible for re-hire;
- [(d)] (4) the applicant has prior unsatisfactory work performance relevant to the position applied for;
- [(e)] (5) there is evidence of a job-related factor that would hinder or prohibit the applicant's satisfactory performance of the duties and responsibilities of the position; or
- [(f)] (6) the applicant fails to comply with established procedures or reference and investigatory requirements.

6-5. Competitive rating process.

- (a) The OHR Director must establish a competitive rating process to create an eligible list for employment or promotion, unless the OHR Director determines



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that a non-competitive process is appropriate under Section 6-6 or 27-[3]2(b) of these Regulations.

* * *

6-6. Examinations.

- (a) The OHR Director must maintain the security of testing and examination materials and control the release of examination records.
- (b) The OHR Director must not release the following unless required by the Maryland Public Information Act, or by a court order or arbitration award:
 - (1) testing and examination materials used solely to determine individual qualifications, and
 - (2) test material, including test plans, item analysis data, criterion instruments, and other material if the disclosure of the material would compromise the objectivity or integrity of the testing process.
- (c) An employee entrusted with test material must protect the confidentiality of that material and release materials only as required to conduct an examination authorized by the OHR Director.
- (d) An applicant or employee who takes an examination may review a written test, and his or her own answers in a written test, but only after the test has been graded, and only in the presence of an OHR employee or in the presence of an employee of another department designated by OHR.
- (e) The OHR Director may release information concerning the results of examinations to:
 - (1) the applicant or employee who took the examination;
 - (2) an individual explicitly designated by the applicant or employee who took the examination; and
 - (3) appropriate department representatives.



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[6-6.]

6-7. Noncompetitive rating process. * * *

[6-7.]

6-8. Invalidation of rating process. * * *

[6-8.]

6-9. Eligible list. * * *

[6-9.]

6-10. Priority eligible list.

(a) The OHR Director may establish a priority eligible list to provide priority consideration in the following order to an employee who:

[(a)] (1) is unable to perform the employee's job because of a disability or injury under the ADA;

[(b)] (2) is subject to reduction-in-force; [or]

(3) was granted a temporary disability retirement under the Employees' Retirement System or an initial or temporary disability benefit of any type under the Retirement Savings Plan but is no longer eligible for such a temporary disability retirement or benefit; or

[(c)] (4) has veteran's credit.

(b) An employee who is eligible for priority consideration under (a)(3) because the employee is no longer eligible for an initial or temporary disability retirement or benefit, may apply for vacant positions in the department where the employee was previously employed. The employee is eligible for priority consideration for positions at or below the grade level that the employee held before the initial or temporary disability retirement or benefit was granted and must meet the minimum qualifications for any position for which the employee applies. If no position for which the employee is qualified is available in the previous



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department at or below the previous grade level, the employee may apply for vacant positions in other departments. The OHR Director should establish the salary for the position in which the individual is reemployed by considering the individual's salary history with the County and past work experience that is relevant to the new position.

6-11. Selection process. A department director may, in consultation with the OHR Director, use any selection process that meets the department's needs and is consistent with these Regulations.

[6-10.]

6-12. Veteran's credit. * * *

[6-11.]

6-13. Appeals by applicants. * * *
* * *

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.***

* * *

(3) 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, in order to demonstrate that the employee is able to perform the duties of the new job satisfactorily.

(4) A County employee with merit system status who transfers to a position as a Firefighter/Rescuer Recruit, Police Officer Candidate, Deputy Sheriff



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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.

* * *

(c) ***Extension of the probationary period or promotional probationary period.***

* * *

(3) Under Section 12-6(a)(1), a department director must reassign the increment date of an employee whose probationary period is extended.

* * *

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

* * *

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

[(A) 2 weeks if the employee's probationary period lasted at least 9 months;

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

(C) none under these Regulations, if:

(i) the employee's probationary period lasted less than 3 months;

(ii) the department director terminated the employee for materially falsifying information on the employment



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application or a document associated with the application or for 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

- (iii) the employee is a member of the Retirement Savings Plan and the employee's probationary period lasted at least one year, in which case the employee is eligible to receive severance pay under COMCOR 33.140.01, *Severance Pay for Certain Retirement Savings Plan Participants.*]

* * *

SECTION 8. MEDICAL EXAMINATIONS AND REASONABLE ACCOMMODATION

* * *

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

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

* * *

(9) If a current applicant had previously applied for a County position and tested positive for illegal drugs or illegal use of prescription drugs or refused a pre-employment drug test at that time, the EME as part of the current medical evaluation must require the applicant to either:

- (A) provide proof that the applicant:
 - (i) was referred to a healthcare provider for evaluation;
 - (ii) was evaluated for a substance abuse problem by the healthcare provider; and
 - (iii) successfully completed a treatment plan, if one was recommended by the healthcare provider; or



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(B) provide a written statement, on the letterhead of the evaluating healthcare provider, that the applicant exhibits no problem with drugs or alcohol and no education or treatment is required.

* * *

(b) *Medical exam protocols.*

* * *

(2) *Types of medical exam protocols.*

* * *

[(F) **Core III Exam.** The elements of the Core III Exam may include the elements of the Core II Exam, but the Core III Exam does not require a hepatitis B vaccination or tetanus booster. It is required for occupational classes that involve significant exposure to dust, asbestos, or chemicals and that require formal medical monitoring.]

* * *

SECTION 9. CLASSIFICATION

* * *

9-3. **Classification plan.**

* * *

(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 a job evaluation system. Instead, pay is determined through the mechanism indicated:

* * *



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(iii) sworn police managers – criteria in County Code Section 33-11(b)(8); [and]

* * *

(h) **Merit System Protection Board**

* * *

(2) **Independent audit of classification and compensation plan.**

(A) At least once every 5 years, the MSPB must have a consultant who is a specialist in the field and independent of the County government conduct an objective audit of the entire classification and compensation plan and procedures. The County Council may direct the MSPB to instruct the consultant to address specific topics or questions as part of the audit.

* * *

9-4. Position classification.

* * *

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

(1) A position reclassification upward is normally effective at the beginning of the first pay period after the OHR Director's or CAO's classification decision or [6] 12 months from the date OHR received all information necessary to conduct the study, whichever occurs first.

* * *

SECTION 10. EMPLOYEE COMPENSATION

10-1. Definitions.

* * *

(c) **Control point:** A point established at 90 percent of the salary range that is used to control an employee's progression through the pay range associated with an



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MLS class. An employee's base salary may advance within the salary range beyond the control point only if the employee's performance is ranked as "Highly Successful Performance" or "Exceptional Performance". The control point is calculated by using the following formula:

$$\begin{aligned} & \text{Salary range maximum} - \text{Salary range minimum} = \text{Salary range dollars} \\ & \text{Salary range dollars multiplied by } 0.9 + \text{Salary range minimum} = \text{Control point.} \end{aligned}$$

* * *

(q) Timecard: An electronic document on which an employee records time worked and leave taken for a particular pay period.

(r) Timesheet: A paper document on which an employee records time worked and leave taken for a particular pay period.

[(q)]

(s) **Work status:** * * *
* * *

10-5. Salary-setting policies.

* * *

(c) **Salary on promotion.**

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

* * *

(E) In extraordinary circumstances, the department director may recommend and the [CAO] OHR Director may approve an increase of up to 20 percent of base salary. Extraordinary circumstances means:

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



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

* * *

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

* * *

(C) A non-MLS employee who is temporarily promoted to an MLS position [is]:

- (i) is not eligible for performance-based pay under MLS guidelines; and
- (ii) remains eligible to earn compensation, such as overtime pay, compensatory time, and holiday premium pay, for which an MLS employee is ineligible.

(D) An employee in a position that is not on the general salary schedule who is temporarily promoted to a position on the general salary schedule:

- (i) is not eligible for performance-based pay under the program for general salary schedule positions; but
- (ii) remains eligible to earn other types of compensation for which the employee was eligible before the temporary promotion.

(E) An employee who is temporarily promoted to a position with a higher grade, salary band, or salary range, remains eligible to receive compensation such as overtime pay, compensatory time, or holiday premium pay that is authorized for the position from which the employee was promoted.



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(d) **Salary on demotion.**

(1) **Voluntary demotion.** A department director may allow an employee to keep the employee's current base salary after a voluntary demotion but must ensure that the employee's salary is:

- (A) not increased;
- (B) not less than the minimum or more than the maximum salary of the new pay grade or pay band; and
- (C) not decreased by more than 20 percent of base salary unless the employee's current salary must be decreased by more than 20 percent to reach the maximum salary of the new grade.

* * *

10-7. **Overtime compensation.**

* * *

(b) **Applicable overtime compensation thresholds.** The applicable overtime compensation thresholds for County positions are reflected in the table below:

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



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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
<u>Deputy Sheriff at rank of lieutenant or below</u>	<u>8-12 hours, depending on number of hours in normal workday</u>	<u>40 hours</u>	<u>40 hours</u>
<u>Correctional officer at the rank of correctional shift commander (lieutenant) or below</u>	<u>8-12 hours, depending on number of hours in normal workday</u>	<u>40 hours</u>	<u>40 hours</u>
Exempt employee, grade 25 or above	[13-17] <u>8-12</u> hours, depending on number of hours in normal workday	45 hours but [effective January 6, 2008] such employees should be compensated for the hours worked between 40 and 45 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 hours	40 hours
Firefighter/ rescuer at rank of district chief or above	number of hours in regular workday for full-time employee, plus 5 hours	53 hours or number of hours in regular workweek for full-time employee plus 5 hours	48 hours or number of hours in regular workweek for full-time employee
<u>Deputy sheriff at the rank of captain or above</u>	<u>13-17 hours, depending on number of hours in normal workday</u>	<u>45 hours</u>	<u>40 hours</u>



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<u>Correctional officer at the rank of correctional unit commander (captain) or above</u>	<u>13-17 hours, depending on number of hours in normal workday</u>	<u>45 hours</u>	<u>40 hours</u>
---	--	-----------------	-----------------

* * *

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

* * *

(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:

* * *

(B) as if the employee was an exempt employee in pay grade 24 or below if the employee is:

- (i) a police officer at the rank of sergeant or below;
- (ii) a firefighter/rescuer at the rank of lieutenant or captain or below; [or]
- (iii) a deputy sheriff at the rank of lieutenant or below; or
- (iv) a correctional officer at the rank of correctional shift commander (lieutenant) or below; and

(C) as if the employee was an exempt employee in pay grade 25 or above if the employee is:

- (i) a police officer at the rank of lieutenant or above; [or]
- (ii) a firefighter/rescuer at the rank of district chief or above;
- (iii) a deputy sheriff at the rank of captain or above; or
- (iv) a correctional officer at the rank of correctional unit commander (captain) or above.

* * *



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

* * *

(c) **Multilingual pay differentials.**

(1) **Eligibility for multilingual pay.** To be eligible to receive a multilingual pay differential, an employee must be fluent in English and:

* * *

[(2) **Designation of a position, occupational class, or occupational series as requiring multilingual skills; identification of a general need for multilingual skills.**

(A) With the approval of the OHR and OMB Directors, a department director may:

(i) designate a position, occupational class, or occupational series as requiring the ability to communicate in American Sign Language, a language other than English, or several languages other than English; or

(ii) identify a specific language skill (e.g., Spanish, Farsi) that is generally needed within a department, division, or work unit but which language skill is not otherwise related to the duties of a particular position, occupational class, or occupational series.

(B) The department director must provide the following information to the OHR and OMB Directors in writing:

(i) the specific language skill needed;



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- (ii) the client population or program that would benefit from an employee's ability to communicate in the language identified;
 - (iii) whether basic or advanced multilingual skills are needed;
 - (iv) how often the identified language skill is needed; and
 - (v) how many employees with the language skill are needed to meet the needs of the department, division, or work unit.
- (C) A department director may, with the approval of the OHR and OMB Directors, change the language previously identified to a different language or change the level of proficiency needed. The department director must provide the OHR Director and OMB Director with a written justification for the change.
- (D) The OHR and OMB Directors must take the following into consideration when reviewing a request for a multilingual designation of a position, occupational class, or occupational series or the identification of a specific language skill generally needed within a department, division, or work unit:
- (i) the department's reason for the request; and
 - (ii) the total number of employees in the department and the County government who have the language skill identified by the department; and
 - (iii) whether the department's need could be met by other employees in the department or County government who are already certified to provide the required language skill.]

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

[(E)]



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(A) When recruiting to fill a vacant position by initial appointment or promotion, a department director may include a specific language skill as a qualification or a preferred qualification [if the OHR and OMB Directors have approved the department director's request for a multilingual designation of the position or the occupational class or occupational series that includes the position].

[(F)]

(B) If a position is designated as requiring multilingual skills and the incumbent employee does not have the required multilingual skills, the department director must:

- (i) exempt the position from the requirement until the incumbent employee leaves the position; or
- (ii) transfer the employee to an equivalent position that does not require multilingual skills, with the same salary, benefits, and working conditions.

[(G)]

(C) A department director [must] should review the approval of a multilingual [designation of a position] pay differential [after] if:

- (i) a certified multilingual employee [leaves the position through promotion, transfer, or separation] is promoted, demoted, or transferred to a different position; or
- (ii) the performance evaluation of a certified multilingual employee indicates that the employee did not use, or seldom used, the multilingual skills during the rating period.

[(H)]



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(D) A department director should periodically review the multilingual [designation of an occupational class or occupational series or the identification of a specific language skill generally needed] pay differentials approved for employees within a department, division, or work unit after:

- (i) a program change or reorganization that affects the need for multilingual skills;
- (ii) a change in client characteristics that indicates that the identified language skill may no longer be needed; or
- (iii) the performance evaluations of employees who are certified in a particular language indicate that the employees did not use, or seldom used, the multilingual skills during the rating period.

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

[(A) To have an employee's language skills certified, a department director must submit the following to OHR:

- (i) the OHR and OMB approval of the designation of the position, occupational class, or occupational series as requiring multilingual skills or approval of the identification of a specific language skill generally needed within a department, division, or work unit; and
- (ii) a completed language certification form.]

[(B)]

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



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- (i) the language skill needed;
- (ii) the level of proficiency needed (basic or advanced); and
- (iii) the name of the employee whose language skills need to be certified.

[(C)]

(B) After receiving [the OHR and OMB approvals and] a completed language certification form from a department, the OHR Director must:

- (i) schedule the employee for a language test;
- (ii) conduct the examination;
- (iii) notify the employee and department of the examination results and the effective date of the certification if the employee passed the language examination; and
- (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 the request.

[(D)]

(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. 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.

* * *

10-11. Stand-by pay.



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* * *

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

- (1) the employee is contacted to perform unscheduled work and has reported to work or has started to perform the work remotely by working on a laptop computer or other device;

* * *

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

* * *

- (2) the location to which the employee must report if called, if applicable; and

* * *

(i) An employee in stand-by status must not go so far away from the worksite that the employee's response time is unreasonably increased if the employee is called back to work. This may not apply if the employee can perform the work remotely by working on a laptop computer or other device.

* * *

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 overtime work [or provides telephone assistance].

* * *

10-22. Severance pay.

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



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- (1) A department director who terminates a probationary employee must ensure that the employee receives severance pay as follows:
 - (A) 2 weeks if the employee’s probationary period lasted at least 9 months;
 - (B) one week if the employee’s probationary period lasted for at least 3 months; or
 - (C) none under these Regulations, if:
 - (i) the employee’s probationary period lasted less than 3 months; or
 - (ii) the department director terminated the employee for materially falsifying information on the employment application or a document associated with the application or for 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 the Retirement Savings Plan is not eligible to receive severance pay under Section (a)(1)(A) or (B) above.
- (b) **Severance pay for Retirement Savings 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:



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Severance Pay for RSP 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) lost the employee's job through affirmative administrative action of the County;
 - (B) was not dismissed for cause; and
 - (C) did not resign, retire, or otherwise voluntarily leave County service.
- (3) The County must calculate the employee's final earnings based on the employee's regular weekly earnings, not including overtime, as of the last day of active service.

* * *

SECTION 11. PERFORMANCE PLANNING AND EVALUATION

* * *

11-3. Responsibility for performance planning and evaluation.

* * *

- (b) Each department director must:

* * *

- (4) ensure that department supervisors use a performance planning and evaluation form that [is consistent with the format of the *Performance Planning and Evaluation Form* included in Appendix G to these Regulations, although the department may make minor variations in the



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design of the form to address automation requirements without prior OHR approval] includes the following:

- (A) employee's name;
- (B) employee's identification number;
- (C) department;
- (D) division/team;
- (E) employee's job title;
- (F) supervisor's name;
- (G) reviewing official's name;
- (H) review period beginning and ending dates;
- (I) list or indication of additional feedback sources, if applicable;
- (J) signatures of supervisor and employee, as applicable, to establish

plan;

- (K) signatures to document progress discussion, as applicable;
- (L) signatures of supervisor and employee to finalize performance

appraisal;

- (M) signature of the reviewing official
- (N) list of performance expectations, ratings, and narrative comments;
- (O) career development goal;
- (P) overall rating;
- (Q) employee comments, as applicable; and

* * *

11-5. The performance plan.

- (a) ***Frequency and timing of performance planning.*** A performance plan should be established within 45 days after an employee begins work in a new



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position. A new plan should be established for the next review period within [30] 45 days after the review period begins.

* * *

11-10. Appeals of performance ratings.

* * *

(b) An employee may not grieve the employee's performance rating or any other element of the performance evaluation process unless:

- (1) the employee received the lowest overall performance rating; and
- (2) the supervisor who rated the employee failed to follow established procedures.

* * *

SECTION 12. SERVICE INCREMENTS

* * *

12-6. Reassignment of increment date.

* * *

(e) A department director may [allow an employee to keep an increment date that would otherwise be changed or] reassign an employee's increment date for the following reasons:

- (1) to prevent or resolve pay inequities;
- (2) to serve the best interest of the County, provided that the action will not adversely affect the employee; or
- (3) in conjunction with a disciplinary action.

* * *

SECTION 13. PERFORMANCE AWARDS

13-1. Policy on employee performance awards.

* * *



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(d) An MLS employee is not eligible for a monetary award under this section.

* * *

13-2. Monetary awards.

[(a) *Employee Performance Award.*

- (1) **Award type.** The Employee Performance Award is a lump sum cash award.
- (2) **Eligibility.** Merit system employees who meet the criteria are eligible.
- (3) **Award criteria.** Criteria are:
 - (A) outstanding performance during a 12-month period; or
 - (B) work of exceptional quality on a special project.
- (4) **Limitations.** The following limitations apply to this award:
 - (A) a department director must not grant more than a maximum of 2-4 percent of base salary to an employee in a fiscal year; and
 - (B) a department director may grant this award to a maximum of 6 percent of department employees, but small departments may grant a maximum of 2 awards even if that would exceed 6% of employees in the department.
- (5) **Nomination procedure.** A division chief must make a written recommendation to the department director documenting the reason for the award.

(b) *Special Recognition Award.*

- (1) **Award type.** The Special Recognition Award is a lump-sum cash award.
- (2) **Eligibility.** MLS employees are eligible.
- (3) **Award criteria.** Extraordinary public service provided during an emergency such as a natural disaster or extended period of severe weather.



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- (4) **Limitations.** A Special Recognition Award must be funded by the employee's department and not from the money appropriated for performance-based pay.
- (5) **Nomination procedure.** The award must be recommended by the employee's department director and approved by the CAO. It may be approved in addition to an increase to base salary or a lump-sum award based on the employee's overall performance during the prior rating period.]

[(c)]

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

* * *

[(d)]

(b) **Department Recognition Award.**

* * *

[(e)] **Outstanding Performance Increment.**

- (1) **Award type.** The Outstanding Performance Increment is a:
 - (A) 1-3 percent addition to the annual base salary of an employee whose position is assigned to a salary schedule with a minimum and maximum salary for the grade; or
 - (B) one-step increase for an employee assigned to a step salary schedule.
- (2) **Eligibility.** A merit system employee who meets the criteria and whose salary is not at the maximum of the pay grade is eligible.
- (3) **Award criteria.** The criterion is sustained outstanding performance during 2 consecutive 12-month periods that demonstrates a quantity or quality of work significantly exceeding requirements.



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- (4) **Limitations.** The following limitations apply:
 - (A) the employee must have received the highest possible performance rating for the 2 consecutive 12-month periods;
 - (B) an employee may only receive one outstanding performance award in a 24-month period, unless an exception is approved by the CAO;
 - (C) the employee's salary may not exceed the maximum for the employee's grade.
- (5) **Nomination procedure.** A department director must make a written recommendation to the CAO documenting the reason for the award.]

[(f)]

(c) **Annual Leave Award.**

* * *

SECTION 14. EMPLOYEE DEVELOPMENT

14-1. OHR-administered training. The OHR Director administers a centralized employee development and tuition assistance program for County employees to facilitate their professional and personal development.

* * *

(c) **Employee tuition assistance.**

* * *

(10) The following do not qualify for tuition assistance:

* * *

- (C) if the tuition assistance benefit would duplicate benefits received for the same educational activity under other programs such as scholarships, veterans benefits, and the Maryland State Fire Association;



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(D) courses in which credit is obtained solely by taking an examination; and

(E) examination fees.

* * *

14-2. Department employee development.

* * *

(b) **Approval criteria.** Department-funded training is subject to the conditions summarized in the table below:

Approval Criteria for Department-Funded Training		
Amount funded per fiscal year	Recommendation and approval required	Required employee commitment
\$200 or less	Approval: Immediate supervisor	<ul style="list-style-type: none"> Successful completion of training
[\$3,000 or less] \$201 – 3,000	Approval: Immediate supervisor	<ul style="list-style-type: none"> Successful completion of training Remain a County employee for 1 year after completion
\$3,001 – 6,000	Recommendation: Immediate supervisor Approval: Department director	<ul style="list-style-type: none"> Successful completion of training Remain a County employee for 2 years after completion
\$6,001 - \$9,000 (maximum)	Recommendation: Department director Approval: CAO	<ul style="list-style-type: none"> Successful completion of training Remain a County employee for 3 years after completion

* * *

(d) **Obligations of employee who receives department-funded training [up to \$3,000].** An employee who receives department-funded training [up to and including \$3,000] of more than \$200 and up to and including \$9,000 in a fiscal year for tuition and other costs directly related to training must:

- (1) successfully complete the course or reimburse the County for all costs paid by the County; and



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(2) agree to remain a County employee for the period indicated in the table in Section 14-2(b) above or repay a prorated amount of the tuition and related costs to the County.

(e) ***Obligations of employee who receives department-funded training [of more than \$3,000] required by the department.*** [An employee who receives department-funded training of \$3,001 up to and including \$9,000 in a fiscal year for tuition and other costs directly related to training must sign an agreement stating that the employee will:] If the department directs the employee to take the training, the employee:

- (1) is required to successfully complete the course or reimburse the County for all costs paid by the County; [and]
- (2) is not required to remain a County employee for the period indicated in the table in Section 14-2(b) above or repay a prorated amount of the tuition and related costs to the County.

* * *

SECTION 15. WORK SCHEDULES, ATTENDANCE, HOURS OF WORK

* * *

15-3. Workday and workweek.

* * *

(b) ***Normal workweek.***

- (1) The normal workweek for a full-time County employee, other than an employee who works 12-hour shifts, is at least 40 hours worked between 12:00 a.m. Sunday to 11:59 p.m. Saturday.

* * *



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(4) The normal workweek for a full-time employee who works 12-hour shifts is 48 hours in one week of the pay period and 36 hours in the other week of the pay period.

* * *

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.

* * *

(iii) An exempt employee should use the earned religious leave on the dates indicated in the written request to work an alternate work schedule approved by the employee's supervisor. The religious leave earned will expire after 12 months if it is not used.

* * *

SECTION 16. ANNUAL LEAVE

* * *



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16-3. Accrual rates for annual leave.

- (a) A full-time employee who works 40 regularly scheduled hours per week or who works 12-hour shifts earns annual leave at the following rates:
- (1) 120 hours per year through the completion of the first 3 years of service;
 - (2) 160 hours per year from the beginning of the 4th year through the end of the 15th year of service; and
 - (3) 208 hours per year from the beginning of the 16th year of service.

* * *

SECTION 17. SICK LEAVE

* * *

17-13. Lump sum sick leave death benefit.

- (a) If an employee dies, the County must pay the employee's designated beneficiary, less any debt owed to the County, a lump sum payment for accrued sick leave at the current pay rate, as follows:
- (1) 50 percent of the total value if the death results from a non-service connected accident or illness; or
 - (2) 100 percent of the total value if the death results from a service connected accident or illness.

* * *

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

* * *

SECTION 19. FAMILY AND MEDICAL LEAVE

* * *

19-8. Supervisor's responsibility for designating leave as FMLA leave.



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* * *

- (c) **Information that a supervisor must give to an employee.** Within 2 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):

* * *

19-9. Use of FMLA leave.

* * *

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

* * *

- (2) A supervisor should require an employee to submit a [medical certification] County Certification of Health Care Provider form (Appendix P) to support a request for leave for a serious health condition, if:

* * *

19-13. Relation of FMLA leave to other benefits.

- (a) An employee who uses LWOP under this section must keep all health and life insurance benefits for the entire period of LWOP.
- (b) After the employee returns from FMLA leave, the employee must repay the County for the employee's share of the cost of the insurance if the employee did not pay for insurance during the LWOP.
- (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 share of insurance premiums for periods of unpaid leave, unless the employee does not return to work because of:



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- (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.

(d) If an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition, the County may require medical certification of the employee's or the family member's serious health condition. If the County requests such certification, the employee must provide medical certification within 30 calendar days from the date of the County's request. If the employee does not provide such certification within 30 calendar days or the reason for not returning to work does not meet the test of "other circumstances beyond the employee's control", the County may recover the employee's share of the cost of the insurance premiums paid during the period of unpaid FMLA leave.

(e) If an employee fails to return to work, any insurance premiums that the County is entitled to recover from the employee are a debt owed by the non-returning employee to the County. The County may recover the costs through deduction from any sums due to the employee such as unpaid wages, annual leave, or



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retirement contributions, provided that such deductions do not otherwise violate applicable Federal or State laws.

* * *

19-16. Rights under FMLA of an employee after military leave.

- (a) To determine if an employee who has returned from military leave has met the FMLA eligibility requirement of a total of 12 months of County employment, the County must count each month of military service as a month of active County employment.
- (b) To determine if an employee who has returned from military leave has met the County FMLA eligibility requirement of at least 1040 hours of paid work, not including paid leave, during the previous 12 months, the County must include the hours that the employee would have worked for the County during the previous 12 months if the employee had not been on military leave.

* * *

SECTION 21. ADMINISTRATIVE LEAVE

* * *

21-2. Limits on administrative leave for bereavement.

* * *

- (b) For each occasion, the maximum amount of administrative leave that an employee may use as bereavement leave is:
 - (1) 3 [consecutive] calendar days within 15 days of the death for a firefighter who works 24-hour shifts; and
 - (2) 3 [consecutive] workdays within 15 days of the death for any other employee.

* * *



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SECTION 22. MILITARY LEAVE

* * *

22-2. Military leave for active duty.

- (a) ***Military leave under County law.*** Under County Code Section 33-21, a full-time or part-time employee (other than an elected official) who is involuntarily ordered to active duty in the armed forces of the United States or the National Guard during a national emergency or under Presidential authority, except for active duty for training:

* * *

- (3) must receive County salary for the period of active duty plus 10 [calendar] working days after release from active duty, but the County salary paid must be reduced by:

* * *

22-5. Military leave for training.

- (a) ***For an employee member of the Maryland organized militia.***
- (1) Under Md. Ann. Code art. 65, §42, a department director must grant administrative leave as follows to a County employee who is a member of the Maryland organized militia and who must report for inactive duty military training:
- * * *
- (b) ***For an employee who is not a member of the Maryland organized militia.***
- (1) An employee who must report for inactive duty military training and who is not a member of the Maryland organized militia[, is not entitled to] may use the same amount of administrative leave [but is entitled to the



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following under USERRA:] as stated in 22-5(a) above and the use of administrative leave is subject to the same conditions.

- [(A) an approved leave of absence (38 USC §4316(b)(1)(A)); and
- (B) the use of LWOP or accrued annual leave and compensatory time (38 USC §4316(d)).

- (2) An employee must apply for the appropriate type of leave for military training as soon as the employee receives orders for training.]

* * *

SECTION 25. PERSONAL LEAVE DAYS

* * *

25-4. Personal leave days and compensatory time for employees in units that require 24-hour coverage.

- (a) In Transit Services or an operational unit that requires 24-hour shift coverage, a department director at the beginning of the leave year must grant an employee one personal leave day and compensatory time instead of 2 personal leave days as shown in the table below.

Personal Leave and Compensatory Time for Employees in Units that Require 24-Hour Coverage	
If employee's regular work schedule is:	Employee receives 1 personal leave day and the following amount of compensatory time for 2 personal leave days:
8 hours	22
9 hours	24
10 hours	26
<u>12 hours</u>	<u>30</u>
Part-time	Prorated personal leave day and prorated compensatory time based on the formula in Section 25-2(e)

* * *



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SECTION 29. TERMINATION

* * *

29-3. Management responsibility for termination.

(a) Before a department director terminates the employment of an employee with merit system status for the reason described in Section 29-2(a)(6) (failure to perform assigned duties in a satisfactory manner)[or Section 29-2(a)(7) (failure to return to work within 30 calendar days of exhausting all paid leave)], the director must:

- (1) give the employee advance written notice of the problem;
- (2) counsel the employee on corrective action to take; and
- (3) allow the employee adequate time to improve or correct the employee's performance or attendance.

(b) Before a department director terminates the employment of an employee with merit system status for the reason described in Section 29-2(a)(7) (failure to return to work within 30 calendar days of exhausting all paid leave), the director must send written notice of the possible termination to the employee at the most recent home address given by the employee at least 10 calendar days in advance of the issuance of a notice of proposed termination.

[(b)]

(c) A department director must not terminate a qualified employee with a physical or mental disability under 29-2(a)(9) above unless efforts at reasonable accommodation as described in Section 8 of these Regulations are unsuccessful.

* * *

SECTION 31. DEMOTION

* * *

31-2. Involuntary demotion.



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- (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; [or]
 - (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
 - [(3)]
 - (4) the demotion is for disciplinary reasons under Section 33 of these Regulations.

* * *

SECTION 32. PREVENTION OF PROHIBITED DRUG USE AND ALCOHOL MISUSE BY SAFETY-SENSITIVE TRANSIT EMPLOYEES UNDER FEDERAL TRANSIT ADMINISTRATION REGULATIONS

* * *

32-3. Drug and alcohol prohibitions.

* * *

- (d) ***Refusal to submit to drug or alcohol testing.*** 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 or an alcohol test with an alcohol concentration of 0.04 or higher:

* * *

- [(5) refusing to sign the DOT drug or alcohol testing forms;]



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[(6)]

(5) failing to arrive, or arrive in a timely manner, for a required test;

[(7)]

(6) failing to remain at the testing site until the testing process is complete, but an employee who leaves the testing site before the testing process begins for a pre-employment test has not refused to test;

[(8)]

(7) failing to undergo a medical evaluation as required by the Medical Review Officer or as directed by the County as part of the verification process;

[(9)]

(8) in the case of a directly observed or monitored collection in a drug test, failing to permit the observation or monitoring of the provision of a specimen; [or]

[(10)]

(9) failing to sign the certification at Step 2 of the Alcohol Testing Form;

(10) failing or declining to take an additional test that the employer or collector directs the employee to take; or

(11) submitting an adulterated or substituted specimen, if this is verified by the MRO.

* * *

32-6. Retesting of employees; collecting a new specimen after a dilute test result.

* * *

(c) **Collecting a new specimen from an applicant or employee after a dilute test result.**



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- (1) If the MRO reports that an applicant or employee had a verified dilute positive test, the County must treat it as a positive test result.
- (2) If the MRO reports a dilute negative test result that requires collection of another specimen for testing, the County must immediately notify the applicant or employee of the need to collect another specimen and that it must be provided within no more than 48 hours from the time of notification. If the employee is on duty, the employee must be accompanied to the collection site immediately for collection of the second specimen. If the applicant or employee fails to report for specimen collection within 48 hours and has not provided a valid reason for the delay, the County must treat it as a refusal to test.
- (3) The MRO will direct whether the new specimen is to be collected under observation or not.

* * *

SECTION 33. DISCIPLINARY ACTIONS

* * *

33-3. Types of disciplinary actions.

* * *

(e) **Suspension.**

* * *

- (2) A department director may not:

* * *

- (B) suspend an employee for more than 30 days, unless:

- (i) a longer suspension is imposed by a court or quasi-judicial body; or



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(ii) the employee agrees to the longer suspension as part of a settlement agreement.

* * *

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 [an] Administrative Procedure No. 6-1, "Use of the County-Provided Internet, Intranet, and Electronic Mail Services" or any other established policy or procedure;

* * *

(y) solicits an endorsement for employment or promotion from an individual who is or may be engaged in doing business with the County Government; [or]

(z) fails to cooperate or provide information when questioned as a witness during an investigation; or

[(z)]

(aa) fails to cooperate or provide information [during] 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.

* * *

SECTION 34. GRIEVANCES

* * *

34-3. Policy on grievances.

* * *

(k) *Limit on relief.*



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- (1) A grievant must not receive relief in a grievance from a date more than one year before the grievance was filed.
- (2) If a grievance involves a continuing violation, the grievant is only entitled to relief going back 30 days before the grievance was filed.
- (3) [This restriction] The above restrictions on relief [is] are not intended to limit the remedial authority of the MSPB under Section 33-14(c) of the County Code.

* * *

34-8. Alternative dispute resolution (ADR).

- (a) **Forms of ADR.** The forms of ADR that are described below are available to the parties to a grievance.

* * *

- (3) **Peer resolution panel.** In this form of ADR, a panel of no more than 3 trained Montgomery County employees [in the same job classification as the grievant are] is chosen by the grievant [using a random method] and the OHR Director. The grievant picks the 1st panel member, the OHR Director picks the 2nd member, and both pick the 3rd. [These employees] The panel members may use one or more of the following to develop a recommendation to resolve the grievance:

* * *

- (b) **Ground rules for using ADR.**

- (1) In any form of ADR, each party to a dispute must voluntarily agree to participate. The OHR Director must determine if the County will participate.

* * *

- (5) A grievant may use only one form of ADR.



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- (6) Each party is limited to a 15-minute presentation before a settlement conference committee or peer resolution panel.
- (7) If a grievant elects to use an ADR process, the time limits in the grievance procedure are stayed until the ADR process is completed or the grievant chooses to end ADR.
- [(5)]
- (8) A party to ADR may accept or reject a recommended resolution to the dispute.

34-9. Grievance procedure.

(a) ***Time limit for filing a grievance.***

- (1) A grievance may be dismissed by the OHR Director if it is not filed within [20] 30 calendar days after:

* * *

(b) ***Technical and procedural review of grievances.***

- (1) An employee must submit a written grievance on the OHR-approved grievance form (Appendix Q) and must provide the information requested on the form.

* * *

- (7) A department director may use Appendix R to respond to the grievance.

[(7)]

- (8) The OHR Director or CAO may reconsider issues of timeliness or grievability at any stage of the grievance process.

* * *

- (e) ***Steps of the grievance procedure.*** The following table shows the [4] 3 steps of the grievance procedure, the applicable time limits, and the responsibilities of the parties at each step.



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STEPS OF THE GRIEVANCE PROCEDURE

Step	Individual	Responsibility of individual*
1	Employee	Present job-related problem informally to immediate supervisor.
		If unable to resolve the problem, submit a written grievance on appropriate grievance form to immediate supervisor and department director within [20] 30 calendar days.
		If the grievance is based on an action taken or not taken by OHR, submit the written grievance to the OHR Director.
	[Supervisor] Department Director	Give the employee a written response within 7 calendar days after the written grievance is received.
[2]	Employee	If not satisfied with the supervisor's response, may file the grievance with the department director within 5 calendar days after the supervisor's response is received.
	Department Director	Meet with the employee, employee's representative, and other persons, as appropriate, to attempt to resolve the grievance.
		Give the employee a written response to the grievance within 15 calendar days after the grievance is received.
		If the grievance is based on an action taken or not taken by OHR, the OHR Director must give the employee a response within 15 calendar days after the grievance is received]
[3] <u>2</u>	Employee	If not satisfied with the department director's response, may file the grievance with the CAO by submitting it to the Labor/Employee Relations Team of OHR within 10 calendar days after receiving the department's response.
	CAO's Designee	Must meet with the employee, employee's representative, and department director's designee within [35] 30 calendar days to attempt to resolve the grievance.
	Employee and Dept. Director	Present information, arguments, and documents to the CAO's designee to support their positions.
	CAO's Designee	If unable to resolve the grievance, must [prepare a report of grievance findings, allow the parties 10 calendar days to comment on the findings, incorporate the parties' comments, if any, and] provide the CAO with a report that includes background information, issue, the position and arguments of each party, a summary of relevant facts, and a recommended disposition.
	CAO	Must give the employee and department a written decision within [30] 45 calendar days after [the parties' comments on the report of grievance findings are received or 30 days after the deadline for comments on the report of grievance findings has passed.] <u>the Step 2 meeting</u>
[4] <u>3</u>	Employee	If not satisfied with the CAO's response, may submit an appeal to the MSPB within 10 working days (10 calendar days for a uniformed fire/rescue employee) after the CAO's decision is received.
	MSPB	Must review the employee's appeal under Section 35 of these Regulations.
* At each step of the grievance procedure, the parties to a grievance should consider ADR methods to resolve the dispute.		

(f) *Request for a transcript of the Step [3] 2 meeting.*



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- (1) An employee may request a verbatim transcript of the Step [3] 2 meeting by submitting a written request for a transcript to the OHR Director at least 10 calendar days before the date of the Step [3] 2 meeting.

* * *

(g) **Step [3] 2 meeting.**

- (1) If the OHR Director issues the decision on the grievance at the Step [2] 1 level, the CAO must appoint a designee who is not a subordinate of the OHR Director to conduct the Step [3] 2 meeting.
- (2) An employee may file a grievance directly with the CAO (at Step [3] 2) over an action taken by the County to recover a debt owed by the employee to the County.
- (3) The Step [3] 2 meeting is an informal discussion between the parties of the issues raised by the grievance. The meeting is not an administrative hearing or a trial and formal rules of evidence do not apply. The CAO's designee does not entertain motions. Although persons who speak at a grievance meeting in support of a party's position may be witnesses in a practical sense, they are not considered witnesses in the sense of participants in a formal proceeding such as a trial.
- (4) At the Step [3] 2 meeting, the grievant and the grievant's representative may present facts, documents, and arguments supporting the grievance. Other employees may speak at the meeting in support of the grievant's position.

* * *

- [(9) After the Step 3 meeting, the CAO's designee must prepare a report of grievance findings for the parties that includes the following information:



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- (A) background information such as the name, title, and department of the employee who filed the grievance;
 - (B) the issue in the grievance;
 - (C) the position and arguments of each party to the grievance; and
 - (D) a summary of the relevant facts.
- (10) The CAO's designee must provide each party with a copy of the report of grievance findings and allow them 10 calendar days after receiving the grievance findings to submit comments.
- (11) After the deadline for receiving comments has passed, the CAO's designee must:
- (A) consider any comments submitted by the parties;
 - (B) incorporate the comments in the grievance findings as the designee finds appropriate; and
 - (C) provide the CAO with the grievance findings and a recommended disposition of the grievance.
- (12)]
- (9) The CAO must give the parties to the grievance a written decision within [30] 45 calendar days after the Step 2 meeting. [the established deadline date for the parties' comments on the grievance findings. The decision must include the grievance findings of the CAO's designee.]

* * *

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS

* * *

35-11. Prehearing procedure in appeal; motions; requests for reconsideration of preliminary matters; conduct of hearing; continuances.



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(a) ***Prehearing procedure in appeal.***

(1) In all cases where the MSPB conducts an evidentiary hearing, the County must submit the following information to the MSPB or hearing officer and to any other party at least 20 [working] calendar days before the [hearing,] prehearing conference except in cases of dismissal, suspension, demotion, or involuntary resignation that require the information to be submitted at least 15 working days before the hearing]:

- (A) complete list of charges;
- (B) copy of all written reports, documents, photographs, charts, letters, or any other material to be introduced or used at the hearing;
- (C) names and addresses of all prospective witnesses and a summary of their anticipated testimony;
- (D) names and addresses of witnesses, documents, and records requiring service of a subpoena; and,
- (E) estimated time required for presentation of the case.

(2) [Any other party] The Appellant must submit the same information except for a complete list of charges to the MSPB or hearing officer and the County at least 10 calendar days before the [hearing,] prehearing conference.

* * *

(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 calendar days from the date of the motion to respond to the motion before the Board rules on the motion.



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(5) Requests for reconsideration of MSPB decisions on preliminary matters. Any request to the MSPB to reconsider its ruling on a preliminary matter must be in writing and must be filed within 5 calendar days from the date of the ruling. The opposing party has 5 calendar days from the date of the request for reconsideration to respond to the request before the Board issues a written decision on the request. This preliminary ruling by the Board is not a final decision for purposes of judicial review and appeal.

* * *

(c) Continuances. A party must submit a request for continuance in writing to the MSPB or hearing officer with a copy to the opposing party at least 5 [working] calendar days [prior to] before the hearing date. The MSPB or hearing officer may grant the request for a continuance where good cause is shown. The MSPB, on its own motion, may decide to continue a hearing less than 5 calendar days before the hearing date if it determines a continuance is in the interest of justice.

* * *

35-17. Request for rehearing or reconsideration of MSPB final decisions.

- (a) A party may submit a written request to the MSPB for rehearing or reconsideration of a final decision within 10 [working] calendar days after the MSPB's final decision is issued. After the 10-day period, the MSPB must not grant reconsideration except in a case of fraud, mistake, or irregularity.
- (b) A party must submit a request for rehearing or reconsideration in writing with supporting reasons and must provide a copy to any opposing party or the opposing party's representative. The opposing party may respond to the request for rehearing or reconsideration. Any response must be filed within 5 calendar days from receipt of the request.



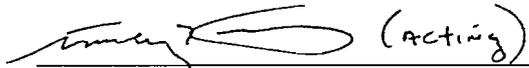
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(c) A party's timely request for reconsideration stays the time for any further judicial appeal until the MSPB makes a decision on the request. A request for rehearing or reconsideration does not stay the operation of any order in the MSPB's final 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 [working] calendar days after it receives the request, the request is deemed denied.

* * *

Approved:  (acting)
Isiah Leggett, County Executive

10/9/2008
Date

Approved as to form and legality:


Office of the County Attorney

10/7/08
Date



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APPENDIX O

MONTGOMERY COUNTY GOVERNMENT Response To Employee Request For FMLA Leave

Date: _____

TO: _____

FROM: _____

SUBJECT: Request for Family & Medical Leave (FMLA Leave)

On _____, you notified us of your need to take FMLA leave because of:
(date)

- the birth of a child, or the placement of a child with you for adoption or foster care;
- a serious health condition that makes you unable to perform the essential functions of your job; or
- a serious health condition affecting your
 - spouse
 - domestic partner
 - minor child
 - adult child incapable of self-care
 - parent.

You indicated that you need this leave to begin on _____ and that you expect it
(date)
to continue until _____.
(date)

Except as explained below:

- you have a right under the FMLA to use up to 12 weeks of any combination of paid or unpaid leave in a leave year for the reasons listed above;
- your health benefits must be maintained during any period of unpaid FMLA leave under the same conditions as if you had continued to work; and
- you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave.

If you do not return to work following FMLA leave, you must reimburse the County for the County share of health insurance premiums paid on your behalf during your FMLA leave, unless the reason for your failure to return is:

- the continuation, reoccurrence, or onset of a serious health condition which would entitle you to FMLA leave; or
- other circumstances beyond your control



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Response to Employee Request for FMLA Leave Page 2

This is to further inform you that:

1. You are eligible not eligible for FMLA leave.
2. The leave you requested will will not be counted against your FMLA leave entitlement.
3. You will will not be required to furnish medical certification of a serious health condition to support your request for FMLA leave. If required, you must furnish certification by _____ . (This date must be at least 15 days after you are notified of the requirement for medical certification.) If you do not submit the required certification, the approval of your leave may be delayed until it is received.
4. Unless you elect not to maintain your health insurance coverage during a period of unpaid FMLA leave or make other arrangements to pay your share of your health benefit premium during any period of unpaid FMLA leave, the County will continue to pay the entire premium until your return to a pay status. After your return, the County will recover the cost of your share of the premiums.
5. If you are absent from work for 15 or more consecutive workdays for your own serious health condition, you will be required to present a return-to-work authorization from your physician upon your return.
6. While on leave, you will will not be required to furnish periodic reports of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated in this letter, you will will not be required to notify us prior to your return to work.
7. You will will not be required to furnish us with re-certification (additional medical certifications) relating to your serious health condition or that of your immediate family member. Re-certification cannot be required any more frequently than every 30 days, unless there is a significant change in the circumstances that justified the original approval of FMLA leave.
8. I have attached:
 - further information about FMLA
 - a definition of "serious health condition"
 - a medical certification form

Attachments

Office of Human Resources



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APPENDIX P



Montgomery County Government Medical Certification Form (Family and Medical Leave Act of 1993)

(When completed, return this form to the employee.)

1. Employee's Name	2. Employee's Job Title
3. Patient's Name (If different from employee)	4. Patient's Relationship to Employee
5. Page 4 of this form describes what is meant by a "serious health condition" under the Family and Medical Leave Act (FMLA). Does the patient's condition ¹ qualify under any of the categories described on page 4? If so, please check the applicable category. (1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____, or none of the above _____	
6. Describe the medical facts that support your certification and include a brief statement about how the medical facts meet the criteria of one of the categories described on page 4. Please do not include a diagnosis or other confidential medical information.	
7. a. State the approximate date the condition began and how long you expect it to last. Also state how long the patient's present incapacity ² will last, if different:	
b. Will it be necessary for the employee to work only intermittently or to work on a less than full-time schedule as a result of the condition (or as a result of treatment for the condition as described in Item 8 below)? If yes, give the probable duration:	
c. If the condition is a chronic condition (see condition #4 on page 4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity:	

Medical Certification Form, Page 1 of 4

Montgomery County Office of Human Resources

¹ Here and elsewhere on this form, the information requested relates only to the condition for which the employee is taking FMLA leave.

² "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for the serious health condition, or recovery from a serious health condition or its treatment.



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8. a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments.

b. If the patient will be absent from work or other daily activities on an intermittent or part-time basis because of treatment, also provide an estimate of the probable number treatments; the interval between such treatments; the actual or estimated dates of treatment, if known; and the period required for recovery from treatments, if any:

c. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

d. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

9. a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should give you information about the employee's essential job functions)? If yes, please list the essential functions the employee is unable to perform:

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment?



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10. a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

Signature of Health Care Provider:	Type of Practice:
Address:	Telephone Number:
	Date:

To be completed by the employee needing family leave to care for a family member:
State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature	Date
--------------------	------



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A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
2. Absence Plus Treatment. A period of incapacity 2 of more than three consecutive calendar days (including any subsequent treatment or period of incapacity 2 relating to the same condition), that also involves:
 - (a) Treatment³ two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment⁴ under the supervision of the health care provider.
3. Pregnancy. Any period of incapacity due to pregnancy, or for prenatal care.
4. Chronic Conditions Requiring Treatments. A chronic condition that:
 - (a) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - (c) May cause episodic rather than a continuing period of incapacity 2 (e.g., asthma, diabetes, epilepsy, etc.).
5. Permanent/Long-term Conditions Requiring Supervision. A period of Incapacity 2 that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
6. Multiple Treatments (Non-Chronic Conditions). Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of Incapacity 2 of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

This form should be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second or third opinions and recertification.

THE COMPLETED FORM GOES TO THE EMPLOYEE.

Medical Certification Form, Page 4 of 4

Montgomery County Office of Human Resources

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	Number 26-07AM
Originating Department Office of Human Resources	Effective Date

MCPR 2008

APPENDIX Q



Montgomery County, Office of Human Resources Grievance Form for County Grievance Procedure

FILING INSTRUCTIONS – For more information about the County Grievance Procedure, contact the Labor/Employee Relations Team on 240-777-5114, review Section 34 of the County Personnel Regulations, or go to <http://www.montgomerycountymd.gov/content/ohr/ResourceLibrary/files/MCPR0134.pdf>.

1. Complete this form and give a copy, along with any supporting documentation, to both your supervisor and to your department director. Send one copy and any attachments to the Office of Human Resources, Labor/Employee Relations Team, 101 Monroe, Street, Rockville, Md. 20850.

2. Do/Will you have representation? If so, please provide:

name: _____ phone no.: _____

mailing address: _____

3. Would you be interested in Alternative Dispute Resolution? Yes No

Failure to provide complete information may delay the processing of your grievance.

FILING INFORMATION: (Please Print Clearly)

Employee's Name: _____ Position Title: _____ Grade: _____

Department/Division/Section: _____ Immediate Supervisor: _____

Home Address: _____

Phone: Home: _____ Work: _____ E-mail address: _____

GRIEVANCE STATEMENT - You must cite the specific written policy, regulation, or treatment in which you believe a violation or inequity occurred. Please attach additional information if more space is needed. Failure to provide complete information may delay the processing your grievance.

RELIEF REQUESTED

Employee's Signature: _____ Date: _____

DEPARTMENT/SUPERVISOR INFORMATION In order to respond to the employee's grievance, please complete the Grievance Response Form, which can be obtained from OHR, Labor Relations Team or online at the OHR Resource Library.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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APPENDIX R



Montgomery County, Office of Human Resources DEPARTMENT/SUPERVISOR GRIEVANCE RESPONSE FORM

You are required to complete this form because an employee you supervise has filed a grievance.

For more information about the County Grievance Procedure contact the Labor/Employee Relations Team on 240-777-5114, review Section 34 of the Montgomery County Personnel Regulations, or go to the following website: <http://www.montgomerycountymd.gov/content/ohr/ResourceLibrary/files/MCPR0134.pdf>.

SUPERVISOR'S RESPONSE: _____ Date Received _____

Supervisor's Name and Signature _____ Date _____

RESOLVED: Yes No

DEPARTMENT/AGENCY HEAD'S RESPONSE: _____ Date Received _____

Department Agency Head's Name and Signature _____ Date _____

Employee's Signature _____ Date _____

RESOLVED: Yes No (If not resolved, employee has five calendar days upon receipt of response to appeal to next step.)

OHR DIRECTOR'S RESPONSE: _____ Date Received _____

OHR Director's Signature _____ Date _____

Employee's Signature _____ Date _____

RESOLVED: Yes No (If not resolved, employee has five calendar days upon receipt of response to appeal to next step.)

CHIEF ADMINISTRATIVE OFFICER'S RESPONSE: _____ Date Received _____

Chief Administrative Officer's Signature _____ Date _____

RESOLVED: Yes No

A grievance may be appealed to the Merit System Protection Board within 10 working days of receipt of the Chief Administrative Officer's response.

