



MONTGOMERY COUNTY ETHICS COMMISSION

Kenita V. Barrow
Chair

Mark L. Greenblatt
Vice Chair

October 8, 2014

Waiver No. 14-10-004

Montgomery County's Personnel Regulation (MCPR) 17-10 provides a mechanism for employees who have exhausted their accrued leave accounts to seek for themselves, or through others on their behalf, donations of leave from other County employees in connection with an extended illness or injury that causes the employee to be unable to work for more than 7 consecutive calendar days.

The policy has been effectuated through a robust set of personnel regulations and through the use of detailed forms. The policy and implementing documents contemplate that the employee who is seeking leave due to a medical condition will circulate or make available a form in which donors will identify how much leave they are donating to the employee in need. The policy also permits another employee (for purposes of this opinion -- the employee's "representative") to circulate the form on behalf of the employee in need.

An employee or employee's representative will submit "a completed *Sick Leave or PTO Donation Request Form* . . . that lists the names of the employees who are willing to donate sick leave or PTO and the amount of leave to be donated by each." MCPR 17-10(a)(1)(E)(ii). As a practical matter, in order to submit such a form, the employee or the employee's representative will have to make available to fellow employees the opportunity to contribute leave – meaning that the employee seeking leave donations, or the employee's representative, will effectively be soliciting a gift from other employees.

The Public Ethics Law includes a broad prohibition on the solicitation of a gift to the employee or another person during official work hours, or at a County agency, while identifiable as a public employee, or for the employee's own benefit. 19A-16(a)(2), (3), and (4). A gift is defined to mean "the transfer of anything of economic value," which the Commission finds includes donated leave. See 19A-4(h). While the solicitation prohibition contains a number of exceptions, there is no exception for a solicitation for a donation of leave.

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Although the leave donation policy is clearly designed to benefit County employees, it does not reference the County's Public Ethics Law or reconcile its apparent inconsistency with the County's gift prohibitions. (The policy does at MCPR 17-10(c)(1)(F)(ii) prohibit the use of intimidation or coercion to obtain donated leave, one of the many concerns the gift solicitation prohibition addresses.)

Pursuant to 19A-8(a), the Ethics Commission may grant to an employee or a class of public employees a waiver of the prohibitions of the Public Ethics Law if it finds that:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

The Ethics Commission believes that the leave donation policy serves the best interests of the County.¹ The policy recognizes the hardship of employees facing the prospect of unpaid leave as a result of medical circumstances, and the Commission believes the policy is beneficial in addressing those circumstances.

The Ethics Commission believes that the implementation of a procedural mechanism that shields the recipient of donated leave, or the employee's representative, from information about individual contributions of leave will mitigate any potential pressure that may have been associated with such requests. With the pressure on donation mitigated, the Commission believes the potential harm of any conflict of interest would be outweighed by the benefits of the leave donation program.

As to the concern for unfair economic advantage, no competitive circumstance involving an employee or class of employees gaining an economic benefit over other employees or the public is present. While employees receiving donations gain a benefit from other donating employees, the waiver is not granting an unfair economic benefit over other employees; the benefit is derived from the voluntary action of individual employees who are electing to transfer the benefit of leave to other employees in need.

Accordingly, the Ethics Commission finds that issuing a class waiver for solicitations of donated leave is in the best interests of the County; that the importance of having employees engage in the conduct outweighs any conflict of interest; and that granting the waiver will not give a public employee an economic advantage over other employees or members of the public. The Commission conditions the class waiver on the use of an arrangement whereby the recipient of

¹ From an ethics standpoint, the Commission believes that a leave bank, which operates like the one established by the County's primary employee union MCGEO for unionized employees, would be preferable to a policy that involves solicitation of donations for individual employees.

donated leave and the employee's representative, if any, is shielded from information about individual contributions of leave.

For The Commission:



Kenita V. Barrow, Chair