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SECTION 1. DEFINITIONS

(As amended March 5, 2002, October 22,2002, December 10,2002, March 4,2003, April 8, 2003, October 21, 2008, November 3, 2009, May 20, 2010, February 8, 2011, July 12, 2011, December 11, 2012, February 23, 2016 and July 17, 2018)

1-1. ADA*:* The Americans with Disabilities Act, a Federal law enacted to address discrimination against individuals with disabilities.

1-2. Administrative leave*:* Unearned paid leave granted to an employee or group of employees for reasons determined to be in the best interest of the County.

1-3. Appointment*:* The formal assignment or promotion of an eligible applicant or employee to a full-time, part-time, term, or temporary position by a department director.

1-4. Base hourly salary*:* The base hourly salary for an employee is an amount equal to the annual salary for the employee's position, divided by the number of work hours per year normally assigned to the position. Base hourly salary is calculated on the basis of full-time salary and full-time work hours per year for a given position. The base hourly salary includes only pay differentials that apply even if the employee is not in work status, as, for example, if the employee is on paid leave. The base hourly salary does not include overtime or differentials, such as shift differentials, that are paid only if an employee is in work status.

1-5. Biweekly base salary*:* An employee's biweekly base salary is calculated by multiplying the employee's base hourly salary by the number of hours that the employee is normally scheduled to work in a pay period. (The use of an hourly salary to calculate the biweekly base salary of an FLSA-exempt employee does not imply that the employee is an hourly employee.)

1-6. Budget-level class*:* The highest-graded occupational class in an occupational series to which an employee may be promoted noncompetitively.

1-7. CAO*:* The Chief Administrative Officer or designee.

1-8. Career position*:* A full-time, part-time, or term merit system position.

1-9. Certified representative*:* An employee organization recognized under County law as the exclusive bargaining agent of employees in a bargaining unit.

1-10. Class specification*:* A written description of an occupational class that includes:

(a) the class title and pay grade or pay band;

(b) a summary of significant aspects of the work and supervisory relationships;

(c) examples of duties;

(d) minimum qualifications required to perform the work;

(e) medical requirements; and

(f) date established and revised.

1-11. Counseling*:* A discussion between an employee and supervisor to resolve the employee's conduct or performance problems.

1-12. Customized Employment Public Interns: Individuals with significant disabilities hired non-competitively on a short-term temporary basis to perform tasks for departments through the County that match the individual's interest, skills, and competencies with the department's needs.

1-13. Day*:* A period of 24 hours beginning at midnight.

1-14. Demotion*:* The formal assignment of an employee to a position:

(a) in a lower-graded occupational class; or

(b) on a different salary schedule at a lower salary.

A position reclassification or reallocation to a lower-graded occupational class under Section 9 of these Regulations is not a demotion.

1-15. Department*:* A department, principle office, or office of the County government, as described in Sections IA-201 and 203 of the County Code.

1-16. Department director*:* The administrative head of a department, principal office, or office of the County government, or designee, who serves as the appointing authority.

1-17. Disciplinary action*:* One of the following adverse personnel actions taken by a supervisor against an employee:

(a) oral admonishment;

(b) written reprimand;

(c) forfeiture of annual leave or compensatory time;

(d) within-grade salary reduction;

(e) suspension;

(f) demotion; or

(g) dismissal.

1-18. Domestic partner*:* A person who qualifies as a domestic partner of a County employee under County statute.

1-19. Due process*:* The right of a County employee to be afforded those procedural

protections expressly established by applicable provisions of the Charter, merit system law, and regulations in any matter affecting terms or conditions of employment.

1-20. Eligible list*:* The official list of applicants eligible for appointment or promotion to a vacant position.

1-21. Employee Medical Examiner or EME*:* A licensed physician who performs the following functions on behalf of the County:

(a) evaluates the functional abilities and limitations of an applicant or employee in relation to the individual's ability to perform essential job functions;

(b) acts as the medical review officer under drug and alcohol testing programs; and

(c) supervises clinical and administrative functions of the County's occupational medical programs and provides advice on medical issues.

1-22. Essential employee*:* An employee in a designated occupational class or position who must report to work during a period of general emergency or liberal leave.

1-23. Exempt employee*:* Incumbent of a position that is not eligible for overtime pay under the Fair Labor Standards Act (FLSA) because of an exemption in the law.

1-24. Family and Medical Leave Act leave or FMLA leave*:* Paid or unpaid leave granted to eligible employees under the Federal Family and Medical Leave Act (FMLA) of 1993 and the Montgomery County Employee Benefits Equity Act of 1999.

1-25. FLSA*:* The Fair Labor Standards Act.

1-26. Full-time employee*:* Incumbent of a full-time position.

1-27. 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.

1-28. Furlough*:* A temporary, non-pay status for hours when an employee is normally scheduled to work but does not work for the County or receive pay from the County due to a lack of funds or work, as determined by the CAO.

1-29. General emergency*:* A period declared by the County Executive or CAO during which government offices are closed and public services are temporarily limited or not available

because of severe weather or other extraordinary conditions.

1-30. Genetic status*:* Discrimination based on genetic status includes discrimination based on:

(a) genetic information; or

b) the actual or perceived genetic condition of an employee or the employee's relative.

1-31. Grievance*:* A formal complaint of a merit system employee arising from a misunderstanding or disagreement between the employee and supervisor over a term or condition of employment.

1-32. Immediate family*:* As used in these Regulations, includes only the employee's:

(a) parent;

(b) stepparent;

(c) spouse or domestic partner;

(d) brother;

(e) sister;

(f) daughter or son;

(g) stepdaughter, stepson, or domestic partner's daughter or son;

(h) spouse's or domestic partner's parent;

(i) grandparent;

(j) spouse's or domestic partner's grandparent;

(k) granddaughter or grandson; and

(l) legal guardian.

1-33. Leave without pay or LWOP*:* An employee's approved unpaid absence from work.

1-34. Leave year*:* The annual period designated for leave accrual and use that begins with the first full payroll period of a calendar year and ends with the payroll period in which December 31 falls.

1-35. Liberal leave period*:* A period that is declared by the County Executive or *CAO* because of inclement weather or an emergency and during which most non-essential employees may use unscheduled annual leave, *PTO,* LWOP, or compensatory time without prior supervisory approval.

1-36. Local emergency*:* An emergency closing of a facility declared by the County Executive or *CAO* that:

(a) is caused by severe weather or an unusual condition such as a utility outage;

(b) is limited to a particular service or building; and

(c) causes specific government offices to close and specific public services to be temporarily limited or not available.

1-37. Management Leadership Service (MLS)*:* A program for merit system employees in high level positions who have responsibility for managing County programs and services or developing and promoting public policy for major programs and management functions, or both, that includes a broadband classification system, performance-based pay, and professional development opportunities.

1-38. Merit system employee*:* A person employed by the County in a full-time or part time career position, except those excluded by Section 2-2 of these Regulations.

1-39. Merit system position*:* A career position in the executive or legislative branch of the County government, the Office of the County Sheriff, or another position designated by County or State statute, except those excluded by Section 2-2 of these Regulations.

1-40. Merit system status*:* The condition achieved by a merit system employee who satisfactorily completes the required probationary period and is entitled to the rights and privileges described in these Regulations.

1-41. Montgomery County Employee Benefits Equity Act*:* A statute that provides benefits to a County employee's domestic partner to the same extent as an employee's spouse.

1-42. MSPB*:* The Merit System Protection Board.

1-43. Non-essential employee*:* An employee in an occupational class or position that is not designated as essential and who is usually not required to work during a general emergency or liberal leave period.

1-44. Non-exempt employee*:* An incumbent of a position that is eligible for overtime pay under the FLSA.

1-45. Occupational Medical Services or OMS. An organizational unit of the Office of Human Resources under the medical supervision of the Employee Medical Examiner with responsibility

for conducting medical evaluations of County employees and applicants for County jobs and providing other services related to the health and welfare of County employees.

1-46. OHR*:* The Office of Human Resources.

1-47. Overall rating*:* A summary rating in the employee's performance evaluation that best describes the employee's overall level of performance during the period covered by a performance plan.

1-48. Paid time off (PTO*):* A type of leave granted to MLS employees in the Retirement Savings Plan that may be used as sick or annual leave.

1-49. Part-time employee*:* An incumbent of a part-time position.

1-50. Part-time position*:* A career position, including a term position that:

(a) requires employment for 20 to 39 regularly scheduled hours per week on a continuing year-round or school-year basis; or.

(b) is specially designated by the CAO and requires regular employment for 10 to 20 hours per week on a continuing year-round or school-year basis and approval by the Merit System Protection Board (MSPB).

1-51. Pay period*:* The official 2-week reporting period for time and attendance that determines the employee's biweekly compensation.

1-52. Performance evaluation*:* A supervisor's written evaluation of an employee's performance in relation to the expectations in the employee's performance plan. An evaluation may be an interim or annual evaluation. An interim evaluation may be conducted at any time during the review period.

1-53. Personnel action: An act or omission by a supervisor which has a significant adverse impact on the employee, or a change in the employee's duties or responsibilities which is inconsistent with the employee's grade and salary. It does not include an act or omission by a supervisor that is not subject to review by the Merit System Protection Board under Section 33-12 of the Montgomery County Code.

1-54. Police Leadership Service (PLS): A program for merit system employees in Police Lieutenant and Captain ranks who have responsibility for managing County Police Department programs and services or developing and promoting public policy for major programs and management functions, or both, that includes a broadband classification system, performance-based pay, public safety pay, Police Department pay and professional development opportunities.

1-55 Position: A grouping of duties and responsibilities identified by a specific position number and assigned by the department director to be performed by an individual. The grouping of duties and responsibilities may be:

(a) career, term, or temporary; and

(b) full-time or part-time.

1-56. Position description*:* A document signed by the employee's department director that provides basic data for the classification of a position, including a list of the duties and responsibilities assigned to the position.

1-57. Priority consideration*:* Consideration of a candidate for appointment, reassignment, or promotion to a vacant position before others are considered. It does not guarantee that the candidate will be selected for appointment, reassignment, or promotion.

1-58. Priority eligible list*:* The official list of applicants who have priority consideration and are eligible for reassignment or reemployment to a vacant position.

1-59. Probationary employee*:* A person who has not completed the required probationary period and gained merit system status and who is:

(a) a new employee recently hired into a full-time or part-time County position; or

(b) a former temporary employee recently appointed to a full-time or part-time County position.

1-60. Probationary period*:* The initial period after employment during which an employee must demonstrate proper attitude and ability in order to be granted merit system status.

1-61. Professional improvement leave or PIL*:* Administrative leave or leave without pay for the purpose of attending work-related conferences, training, or courses of study.

1-62. Project SEARCH Interns: A one-year job training program for young adults with intellectual and developmental disabilities who are either in their last year of high school or recent graduates in which these individuals serve as interns in County Departments and acquire marketable job skills.

1-63. Promotion*:* The formal assignment of an employee to a position:

(a) in a higher-graded occupational class; or

(b) on a different salary schedule accompanied by an increase in salary. The reclassification or reallocation of a position to a higher-graded occupational class under Section 9 of these Regulations is not a promotion.

1-64. Promotional probationary period*:* A period immediately following the promotion of an employee during which the employee must demonstrate the ability to perform the duties of the new position in order to remain in that position.

1-65. QUEST (Quality, Understanding, Excellence, Success, and Training) Interns: A

partnership program between the County and the Maryland Department of Education Division of Rehabilitation Services (DORS) in which County residents with disabilities serve as volunteer interns in County Departments and work on special projects that help them develop marketable job skills.

1-66. Rating categories*:* The 4 descriptive terms used to characterize the overall level of an employee's performance: "Exceptional Performance", "Highly Successful Performance", "Successful Performance", and "Does Not Meet Expectations".

1-67. Reduction-in-force or RIF*:* The elimination of a position because of:

(a) lack of funds;

(b) change in an approved work program or plan;

(c) administrative reorganization; or

(d) technological change that affects staffing needs.

1-68. Regular hourly salary*:* The regular hourly salary for an employee is an amount equal to the annual salary for the employee's position, divided by the number of work hours per year normally assigned to the position. Regular hourly salary is calculated on the basis of full-time salary and full-time work hours per year for a given position. Regular hourly salary must include all pay differentials that apply.

1-69. Relative*:* As used in these Regulations, includes:

(a) the employee's immediate family as defined under Section 1 of these Regulations;

(b) the employee's aunt, uncle, niece, nephew, or first cousin;

(c) a sibling or grandchild of the employee's spouse or domestic partner; and

(d) the spouse of a member of the employee's immediate family.

1-70. Review period*:* The time period during which an employee's performance is reviewed and for which an overall rating is prepared.

1-71. Salary schedule*:* A series of pay grades or pay bands and the salary rate or range for each pay grade or pay band approved by the County Council under Code Section 33-11 (b).

1-72. 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.

1-73. Social Worker Interns at HHS - Educational program at the Department of Health and Human Services for graduate students currently enrolled in a Master's in Social Work (MSW) program at a university school of social work.

1-74. Step salary schedule*:* A salary schedule consisting of a number of fixed salary levels or "steps" for each grade. An employee's pay is advanced from one fixed step on the schedule to the next upon the occurrence of an established event such as the employee's increment date.

1-75. Supervisor*:* The CAO and subordinate personnel who are authorized to perform supervisory functions.

1-76. Temporary employee*:* An incumbent of a temporary position.

1-77. Temporary position*:* A non-career position classified and filled under merit system principles.

1-78. Temporary promotion*:* The short-term, non-permanent assignment of an employee to:

(a) a vacant position with a higher grade;

(b) a vacant position on a different salary schedule at a higher salary; or

(c) a higher-level position while the employee in the position is absent on extended leave.

1-79. Term employee*:* An incumbent of a term position.

1-80. Term position*:* A type of full-time or part-time career merit system position that is created for a special term, project, or program, or a position in which the incumbent's employment terminates at the expiration of a specified period of time or term.

1-81. Transfer*:* The movement or detail of an employee from one position or task assignment to another position or task assignment at the same grade or salary either within a department or office or between departments and offices that involves at least one of the following changes:

(a) from one merit system position to another;

(b) from one salary schedule to another;

(c) in the physical location of the employee's job or position; or

(d) in duty assignment within the same occupational class.

1-82. Uniformed fire/rescue employee*:* A uniformed employee of the Montgomery County Fire and Rescue Service who occupies a full-time or part-time merit system position.

1-83. Unrepresented employee*:* An employee whose position is not included in any bargaining

unit.

1-84. USERRA*:* The 1994 Uniformed Services Employment and Reemployment Rights Act.

1-85. Volunteer Firefighter or Rescuer: A person who qualifies as a volunteer firefighter or rescuer as defined in Section 21-1 of the County Code.

1-86. Workday*:* A day on which the employee works or is scheduled to work.

1-87. Working days*:* All days except Saturdays, Sundays, and official or special County holidays.

1-88. Workweek or work period*:* Any repeating seven-day work schedule.

SECTION 2. GENERAL PROVISIONS

(As amended September 19, 2006, October 21, 2008, July 27, 2010, and June 30, 2015)

2-1. Authority to issue Personnel Regulations. The County Executive must issue Personnel Regulations (these Regulations) under the Montgomery County Charter, Section 402 and Montgomery County Code, 1994, Section 33-7(b).

2-2. Applicability of Personnel Regulations. The Personnel Regulations apply to all merit system positions and all employees of the County government except:

(a) members of the County Council;

(b) the County Executive;

(c) the CAO;

(d) the County Attorney;

(e) the directors of County departments and principal offices as defined by statute;

(f) one confidential aide for each member of the County Council;

(g) 2 senior professional staff positions for the Council as a whole chosen by the County Council;

(h) 3 special assistant positions in the Office of the County Executive chosen by the County Executive;

(i) special legal counsel employed under provisions of the Charter;

(j) members of boards and commissions;

(k) hearing officers authorized by statute to serve in a quasi-judicial capacity;

(l) employees excluded from the merit system by County or Maryland State statute; and

(m) employees of independent agencies or corporations (other than Local Fire and Rescue Departments) supported in whole or in part with Montgomery County general or special tax funds, unless authorized by statute to be members of the Montgomery County merit system. The Personnel Regulations apply to the employees of Local Fire and Rescue Departments except as expressly modified by Executive regulations adopted under the authority of Section 21-16 (a) of the County Code.

2-3. Interpretations of Personnel Regulations.

(a) ***Responsibility for interpretation of Personnel Regulations.*** The CAO may issue written interpretations of these Regulations as necessary to provide guidance for the administration of these Regulations.

(b) ***Request for interpretation of Personnel Regulations.*** An employee may request an interpretation of these Regulations by the CAO. The employee must submit a written request for interpretation to the CAO and identify the relevant facts, the specific question to be addressed, and the specific Regulation section to be interpreted.

(c) CAO response to a request for interpretation.

(1) The CAO must issue an interpretation in writing within 60 calendar days of receiving the request with copies to interested County departments, offices, employees, or employee groups.

(2) An employee may not grieve or appeal a written CAO interpretation issued under (1) above. An employee may, however, file a grievance under Section 34 of these Regulations or file an appeal with the MSPB under Section 35 over an action taken on the basis of a CAO interpretation if another provision of these Regulations allows the employee to grieve or appeal the action.

(3) The MSPB is not bound by the CAO's interpretation of these Regulations.

2-4. Responsibility for administration of the merit system.

(a) ***Responsibility of the CAO.*** The CAO must administer the County's merit system under merit system statutes and regulations and must:

(1) as necessary, recommend to the County Executive amendments to the Personnel Regulations for adoption under Method (1) to implement the County's merit system;

(2) interpret and enforce the Personnel Regulations;

(3) direct and supervise all administrative activities involving County human resources management, including providing resources to advise, assist and train managers and supervisors to carry out their human resources management responsibilities;

(4) maintain a classification and compensation plan;

(5) establish as appropriate, supervise, and evaluate human resources programs, including recruitment, employment, promotion, diversity and

equal employment opportunity, training, health, employee assistance, and general employee welfare programs to improve employee effectiveness;

(6) maintain personnel records; and

(7) advise management on personnel matters.

(b) Delegation of authority.

(1) The CAO may:

(A) delegate authority in writing to implement provisions of the merit system statutes or these Regulations; or

(B) withdraw a delegation of authority in writing.

(2) An official with authority to take an action under these Regulations may further delegate that authority in writing unless a statute or regulation specifically precludes further delegation.

2-5. Computation of time under Personnel Regulations. Time limits for filing actions are expressed in these Regulations as either calendar days or working days. In either case the following applies:

(a) the day of the act or event is not counted;

(b) the last day of the time period is counted unless it is a Saturday, Sunday, legal holiday, or a day on which the County government or relevant County office is closed;

(c) if the last day of the time period is a Saturday, Sunday, legal holiday, or a day on which the County government or relevant County office is closed, the time period runs until the end of the next business day on which the County government or relevant County office is open; and

(d) a period of time under these Regulations must be based on calendar days for uniformed fire/rescue employees.

2-6. Shortening or extending time requirements under Personnel Regulations. The CAO may shorten or lengthen a time period specified by the Personnel Regulations or an executive regulation, except for time limits established by the MSPB, upon receipt of a written request. The decision of the CAO on the request is final. The CAO may:

(a) shorten the period of time with the consent of both parties;

(b) extend the period of time in the following circumstances:

(1) if the CAO receives the written request for an extension before the end of the period originally established; or

(2) if the CAO receives the written request within 30 calendar days of the expiration date of the period originally established, the failure to act within the specified time period was the result of extenuating circumstances established by the person requesting the extension, and the interest of justice is served by an extension.

2-7. Citation of Personnel Regulations. The Personnel Regulations should be cited as "Montgomery County Personnel Regulations, 2001, Section_____" or "MCPR, 2001, Section____."

2-8. Severability. If a court of final appeal holds that part of these Regulations are invalid, the invalidity does not affect other parts of these Regulations.

2-9. Conflict between a collective bargaining agreement and the Personnel Regulations. If a provision of these Regulations is inconsistent with a collective bargaining agreement, the agreement applies to any employee in the bargaining unit.

2-10. Disclaimer. "Editor's Notes" that appear in this compilation of the Regulations have not been approved by the County Council and are intended only as cross references for the convenience of the reader. An editor's note has no substantive effect and must not be considered in any interpretation of these Regulations.

2-11. Conflict between Personnel Regulations and other statute or regulation. If these Regulations are in conflict with an applicable State or Federal statute or regulation, the State or Federal statute or regulation prevails.

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

2-13. Sunset date. These Regulations expire on March 1, 2020.

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

(As amended October 21, 2008 and February 8, 2011)

3-1. Ethics. A County employee must not engage in any conduct, employment, private business, or profession that violates:

(a) Article 4, "Merit System and Conflicts of Interest", of the Charter of Montgomery County, Maryland (Appendix A);

(b) Section 33-10 of the Montgomery County Code 1994 (Appendix B and Sections 3-2 and 35-20 through 35-26 of these Regulations);

(c) Chapter 19A, "Ethics", of the Montgomery County Code 1994, as amended (Appendix C); or

(d) any other law governing the conduct of a County employee.

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

(a) An employee should report an illegal or improper act in County government.

(b) An employee should report an illegal or improper act to the individual responsible for investigating the act or taking corrective action, such as:

(1) the employee's immediate supervisor or higher level supervisor;

(2) the employee's department director;

(3) the CAO or County Executive for executive branch employees;

(4) the County Council for legislative branch employees;

(5) the Inspector General, in matters of fraud, waste, or abuse; or

(6) the MSPB or Ethics Commission, when an employee believes this is appropriate, such as in cases involving coercion or retaliation.

(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

(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.

(5) It is unlawful for any person to retaliate against, penalize, or threaten with retaliation or penalty, an employee for providing information to, cooperating with, or in any way assisting the Inspector General or the Office of Legislative Oversight.

3-3. Discrimination on the basis of political affiliation.

(a) Section 33-9 of the County Code prohibits a County supervisor from taking any personnel action on the basis of an applicant's or employee's political affiliation.

(b) An applicant for County employment or an employee who alleges discrimination on the basis of political affiliation may file an appeal with the MSPB.

3-4. Work during official hours. An employee must devote all working hours to the performance of the employee's official duties.

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.

3-6. Employment of relatives. An employee must not supervise, appoint, employ, promote, advance, or otherwise participate in any personnel action affecting an individual who lives with the employee, is a relative or domestic partner of the employee, or has a sexual or romantic relationship with the employee.

3-7. Sexual or romantic relationships in the workplace.

(a) To avoid harassment or real or apparent preferential treatment of an employee by the employee's supervisor, a supervisor and an employee under the supervisor's direct or indirect supervision who are involved in a sexual or romantic relationship must immediately report the relationship to the department director.

(b) The department director may reassign the employee or the supervisor to another work unit.

(c) A department director may take disciplinary action, up to and including dismissal, against a supervisor:

(1) who fails to report having such a relationship; or

(2) who engages in harassment, favoritism, unfair bias, or preferential treatment because of the supervisor's relationship with the employee.

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.

(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.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to secondary employment**
Firefighter/Rescuer	22, Prevailing Rights
OPT/SLT	9, Working Conditions 50, Legal Defense and Representation
Police	27, Secondary Employment
	Articles of current agreements with references to discrimination on the basis of political affiliation
Firefighter/Rescuer	None
OPT/SLT	38, Non-discrimination
Police	26, Non-discrimination
	Articles of current agreements with references to sexual or romantic relationships in the workplace
Firefighter/Rescuer	None
OPT/SLT	None
Police	15, Hours and Working Conditions

SECTION 4. RECORDS

(As amended December 10, 2002, October 21, 2008, and June 30, 2015)

4-1. Establishment of personnel records.

(a) The CAO must establish and maintain personnel records that are required by law, necessary for administration of the merit system, or both.

(b) Personnel records may include applicant files, examination records, classification files, employee files and related materials, and medical records. Investigatory files are not personnel records.

(c) The County may retain and store records in various formats, including as electronically imaged documents.

4-2. Ownership of personnel records. All personnel records of County government employees and all other records and materials relating to administration of the County's merit system are the property of the County. The CAO's decision on the use, maintenance, and disposition of personnel records is final, subject to relevant State and Federal laws and regulations.

4-3. Employee records.

(a) ***Official personnel file.*** The Office of Human Resources (OHR) must keep the County's official personnel file for each employee. The official personnel file must not contain any information about an employee's medical or psychological condition. OHR must limit the documents in the official personnel file to:

(1) application that resulted in appointment, reappointment, promotion, transfer, or demotion;

(2) employment history, including personnel action documents affecting appointment, reappointment, promotion, transfer, demotion, salary change, or other personnel action;

(3) employee identifying information and emergency contact information;

(4) payroll withholding documents;

(5) insurance, retirement, and other records related to employee benefits;

(6) documents submitted by the employee with the employee's application for employment or promotion to show that the employee has a degree, license, or certificate required for the current job or desired job, but not routine training records, such as verification of a class or conference attended;

(7) performance evaluations from the last 5 years;

(8) disciplinary actions other than written reprimands;

(9) commendations; and

(10) written reprimands from the last 12 months.

(b) Department operating record.

(1) A department director may maintain employee records necessary for program level operations.

(2) A department director may maintain a department operating record in an electronic format.

(3) An operating record must not contain any medical or psychological records of an employee.

(4) A department director must limit the documents in the operating record to:

(A) home address and phone number;

(B) current job information, which may include the job description and location;

(C) employee emergency contact information;

(D) training records;

(E) timesheet and leave data necessary to verify payroll;

(F) leave records from the last 5 years;

(G) performance evaluations and supporting documentation from the last 5 years;

(H) commendations from the last 5 years;

(I) disciplinary actions and written reprimands from the last 5 years;

(J) notices received from the Employee Medical Examiner during the last 5 years concerning the employee's duty status, work restrictions, and recommended accommodations; and

(K) notes from health care providers submitted by employees during the last 2 years to confirm medical appointments, excuses from work, duty status, returns to work, and work restrictions.

(5) A department director must maintain records of an employee's training, including selection for training or apprenticeship, for the entire period of an employee's employment and must keep the records for 6 months after the employee leaves County employment. If an employee transfers to another department, the department director must give the employee's training records to the new department.

(6) If an employee transfers to another department, the department director must send a copy of the operating record to the employee's new department.

(c) Supervisory file.

(1) A supervisor may maintain a file for each employee supervised that contains documents related to the previous 2 years only.

(2) The supervisor may include in the supervisory file:

(A) copies of records contained in the department operating record;

(B) commendations and complaints from customers concerning the employee's job performance or conduct;

(C) notes made by the supervisor during a performance review or other counseling sessions with the employee;

(D) copies of the employee's completed work assignments, draft documents, or work in progress; and

(E) written communications between the employee and the supervisor concerning performance or conduct issues.

(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:

(A) County medical examination records;

(B) records obtained or received from a health care provider about the fitness of an employee or applicant or a request for disability retirement;

(C) a medical waiver or release signed by the employee;

(D) a request by the employee's supervisor or department director for an additional or special medical examination and the record of an action taken in response to the request;

(E) result of a medical test, examination, or procedure including psychological examination or report; and

(F) information provided by the employee or other person that relates to the health or health care of the employee.

(3) An employee's psychological or genetic records:

(A) are subject to special restrictions on disclosure; and

(B) must be maintained in the employee's medical record.

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

4-4. Supervisor's addition of documents to employee record.

(a) ***Addition of documents to official personnel file and department operating record.*** A supervisor must provide to an employee a copy of any document that the supervisor places in the official personnel file or department operating record and allow the employee to submit a rebuttal to any adverse document. The supervisor must have the employee's rebuttal placed in the file.

(b) Addition of documents to supervisory file.

(1) A supervisor may place a document in the supervisory file without providing a copy to the employee.

(2) A supervisor must permit an employee to:

(A) review the supervisory file upon request as provided under these Regulations; and

(B) provide a rebuttal to any document in the supervisory file and have it placed in the file.

4-5. Maintenance of employee records. A County official designated as a custodian of an employee record should review the record periodically to assure compliance with these Regulations. A custodian who removes a document from a record under this section must destroy the document.

4-6. Access to employee records.

(a) ***Official personnel file, department operating record, and supervisory file.*** A non-medical employee record is confidential and is available on a need-to-know basis to:

(1) the employee's department director, a person who supervises the work of the individual, or another person who is authorized by the Maryland Public Information Act to inspect the record;

(2) the CAO or designee;

(3) the OHR Director and staff;

(4) the County Attorney and staff; and

(5) members and staff of the Merit System Protection Board (MSPB).

(6) A department head or designee who is considering offering the employee a position.

(b) Medical record.

(1) An applicant's or employee's medical record is confidential.

(2) Access to all genetic information, as defined in Section 27-18 of the County Code, is restricted to the Employee Medical Examiner and supporting medical staff.

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

(A) the CAO or designee;

(B) the OHR Director and designated staff;

(C) the County Attorney and designated staff;

(D) members and designated staff of the MSPB;

(E) the Disability Review Panel;

(F) the Disability Arbitration Board or Police Disability Arbitration Board; and

(G) Workers' Compensation administrators.

(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:

(A) the CAO or designee;

(B) the OHR Director and designated staff;

(C) the County Attorney and designated staff;

(D) members and designated staff of the MSPB;

(E) the Disability Review Panel;

(F) the Disability Arbitration Board or Police Disability Arbitration Board; and

(G) County Workers' Compensation administrators, when relevant to a Workers' Compensation claim.

(5) The Employee Medical Examiner or designee may disclose relevant, limited medical information to department first-aid and safety personnel if an immediate disclosure is necessary to provide for the emergency health care of an employee.

(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:

(A) the CAO or a selected designee;

(B) the OHR Director and select designated staff; and

(C) the County Attorney and select designated staff.

(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 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:

(A) the CAO or a selected designee;

(B) the OHR Director and select designated staff;

(C) the County Attorney and select designated staff;

(D) members and designated staff of the MSPB;

(E) members and designated staff of the Disability Review Panel;

(F) members and designated staff of the Disability Arbitration Board or Police Disability Arbitration Board; and

(G) County Workers' Compensation administrators, when relevant to a Workers' Compensation claim.

4-7. Release and review of employee records.

(a) ***Release of official personnel file***. Except for verification of employment and current salary and unless otherwise permitted by law, an employee must provide a

signed authorization for the release of information concerning the employee to anyone not listed in Section 4-6 above.

(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.

(c) Release and review of psychological records.

(1) At the request of an employee or designee of the employee, the Employee Medical Examiner must allow the employee or designee to review the employee's psychological records at a time and place mutually convenient to the custodian and the employee or designee, unless the Employee Medical Examiner believes disclosure of any part of the employee's psychological records to be injurious to the health of the employee.

(2) If the Employee Medical Examiner believes disclosure of any part of the employee's psychological records to be injurious to the health of the employee, the Employee Medical Examiner may refuse to disclose that portion of the records to the employee. At the written request of the employee, the Employee Medical Examiner must:

(A) make available to the employee or designee a summary of the undisclosed portion of the psychological records and place a copy of the summary in the employee's medical records; and

(B) permit a health care provider to examine and copy the psychological records if the health care provider is authorized to

treat the employee for the condition that is the subject of the sensitive records.

(3) If an employee has been the subject of a psychological test, the Employee Medical Examiner must disclose the portion of the employee's psychological records relating to the psychological test to a licensed psychologist or psychiatrist designated by the employee, if the employee requests the disclosure in writing.

(4) If a mental health evaluation of an individual is performed to determine if the individual is employable or eligible for continued employment and if the evaluation is performed for one of the reasons described in subsection (5) below, the Employee Medical Examiner must provide a copy of the medical record developed from the mental health evaluation to:

(A) the individual;

(B) a person authorized to consent to health care for the individual; or

(C) an attorney appointed in writing by the individual.

(5) The Employee Medical Examiner must provide a copy of the medical record developed from the mental health evaluation to an individual identified in subsection (4) above only if the evaluation is performed:

(A) at the written request of the County;

(B) at the request of the County in connection with a civil action initiated by, or on behalf of, the individual; or

(C) at the request of the County in connection with a U. S. Equal Employment Opportunity Commission complaint initiated by, or on behalf of, the individual

4-8. Supervisory notes. A supervisor may maintain informal notes regarding performance or other information about an employee under the supervision of that supervisor. Supervisory notes are not considered official employee records and are not subject to review by the employee or others.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to records
Firefighter/Rescuer	10, Disability Leave 26, Personnel Files/Records 38, Contract Grievance Procedure
OPT/SLT	26, Termination 28, Disciplinary Actions 32, Tools and Uniforms 34, Safety and Health 41, Retirement 46, Records Appendix IX, Performance Planning and Evaluation procedures for Bargaining Unit Employees
Police	15, Hours and Working Conditions 24, Insurance Coverage and Premiums 43, Discipline 51, Personnel Files 57, Retirement

SECTION 5. EQUAL EMPLOYMENT OPPORTUNITY

(As amended October 21, 2008 and June 30, 2015)

5-1. Definitions.

(a) **EEO complaint**: A verbal or written report or charge of employment discrimination or harassment.

(b) **EEO Officer**: An employee whose primary function, as delegated by the CAO, is the development of the County's equal employment opportunity policy and the administration and oversight of related programs.

(c) **Employment discrimination**: A policy, practice, or procedure that limits or adversely affects employment, promotion, transfer opportunities, or other working conditions on the basis of race, color, religion, national origin, ancestry, sex, marital status, age, disability, sexual orientation, or genetic status.

(d) **Harassment**: Inappropriate written, verbal, or physical conduct, including the dissemination or display of written or graphic material, based on one's race, color, religion, national origin, ancestry, sex, sexual orientation, marital status, age, disability, or genetic status, that unreasonably interferes with one's work performance or creates an intimidating, hostile, or offensive working environment. This includes sexual harassment, which may include:

(1) an unwelcome sexual advance;

(2) a request for physical conduct of a sexual nature; or

(3) written, verbal, or physical conduct of a sexual nature or conduct based on one's gender, including gender stereotyping or animus, when:

(A) submission to the conduct is explicitly or implicitly a term or condition of an individual's employment;

(B) submission to or rejection of the conduct by an individual is a basis for employment decisions affecting the individual; or

(C) the conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

(e) **Retaliation**: A form of sanction or adverse treatment against a person because that person:

(1) asserted or assisted another person to assert a discrimination complaint in either a formal or informal manner with the County or with a State or Federal enforcement agency; or

(2) testified, assisted, or participated in an investigation or proceeding related to a discrimination complaint.

5-2. Policy on equal employment opportunity.

(a) Montgomery County is an equal employment opportunity employer committed to workforce diversity.

(b) Montgomery County must:

(1) enforce Federal, State, and local laws that prohibit employment discrimination in the workplace;

(2) conduct all employment activities in a manner that ensures equal employment opportunity for all persons without regard to race, color, religion, national origin, ancestry, sex, marital status, age, disability, sexual orientation, or genetic status; and

(3) fairly and expeditiously investigate and resolve complaints.

(c) Supervisors and managers must ensure that employees are provided with a work environment free from discrimination and harassment of any kind.

(d) Each County supervisor must attend training on the County's equal employment opportunity policy.

(e) An employee must not:

(1) discriminate against or harass another employee on the basis of race, color, religion, national origin, ancestry, sex, marital status, age, disability, sexual orientation, or genetic status;

(2) subject another employee, contractor, consultant, citizen, applicant, customer, or client to harassment on the basis of any of the causes listed in (1) above; or

(3) retaliate against a complainant or other person who has testified, assisted, or participated in any manner in an investigation under this policy.

(f) The County may take disciplinary action up to and including dismissal against an employee who discriminates, harasses, retaliates, or engages in behavior that tends to create a hostile working environment.

5-3. Applicability of equal employment opportunity policy.

(a) This policy applies to:

(1) all individuals currently employed by the County, seeking County employment, or conducting business with the County; and

(2) all employment practices including recruitment, hiring, promotion, demotion, transfer, reduction-in-force, termination, compensation, classification, benefits, training, or other working conditions.

(b) A supervisor or manager must ensure that employees are informed of and comply with the policy.

5-4. EEO complaints.

(a) An individual who believes that he or she has been subjected to employment discrimination or harassment in violation of this policy, or any person acting on behalf of such an individual, may file a complaint with one or more of the following:

(1) the individual's supervisor or department director, if the individual is a County employee;

(2) the County's EEO Officer;

(3) the Office of Human Rights; or

(4) a State or Federal enforcement agency.

(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.

(c) The County encourages employees to seek administrative remedies provided through the County EEO Officer.

(d) An individual should file a complaint as soon as possible after the event that gives rise to the complaint. An individual who files a complaint with the County EEO Officer must file the complaint within a year of the most recent act that is alleged to have violated the County's policy stated in Section 5-2 of these Regulations.

(e) The County EEO Officer must establish and administer a complaint-processing procedure, conduct investigations, and issue findings.

(f) The complaint processes of the Office of Human Rights and of State and Federal enforcement agencies are independent of the County EEO Officer's complaint process. Complaints filed with the County EEO Officer are not automatically filed with the County Office of Human Rights or State or Federal enforcement agencies. An employee who wishes to file a complaint with the Office of Human Rights or a State or Federal enforcement agency must file a separate complaint with one of these agencies, in addition to any complaint filed with the County's EEO Officer.

(g) Time limits for filing a complaint with the Office of Human Rights or with a State or Federal enforcement agency are not extended or suspended while the EEO Officer investigates a complaint under subsection (e).

(h) Records of EEO investigations are confidential. The County EEO Officer must treat a complaint investigation with discretion to protect the privacy of those involved, as required by law.

(i) The County EEO Officer may forward a complaint filed by an individual against the OHR Director or OHR staff to the County Attorney's Office for investigation.

(j) The County EEO Officer's decision on an EEO complaint is final and an employee may not file an appeal of the decision with the MSPB. An investigation or decision by the EEO Officer does not affect an employee's right to file a complaint on the same matter with the Office of Human Rights or a State or Federal enforcement agency.

5-5. Equal Employment Opportunity and Diversity Action Plan. The CAO must develop, as necessary, a plan to achieve and maintain equal employment opportunity and to promote diversity. The plan may include:

(a) a statement of purpose;

(b) a method to identify problem areas and factors to be used in determining whether a racial, ethnic, or gender group is significantly underutilized in an occupational group;

(c) the development of action-oriented programs designed to correct identified problems, to assure equal employment opportunity for all members of the available labor pool, and to promote upward mobility for employees;

(d) the criteria for establishment of goals and timetables; and

(e) designation of responsibility for dissemination, implementation, compliance and audit of the plan.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to equal employment opportunity**
Firefighter/Rescuer	None
OPT/SLT	38, Non-discrimination
Police	26, Non-discrimination

SECTION 6. RECRUITMENT AND APPLICATION RATING PROCEDURES

(As amended January 18, 2005, July 31, 2007, October 21, 2008, July 20, 2010 July 12, 2011, July 24, 2012, December 11, 2012, June 25, 2013, June 30, 2015, February 2, 2016, and February 23, 2016.)

6-1. Recruitment and application rating. The CAO must administer a recruitment and application rating process for all merit system positions.

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;

(2) must include in a vacancy announcement information about job duties, minimum qualifications, any multilingual requirements, the rating process including the rating criteria, and other requirements for the position;

(3) may announce a vacancy to the general public or may restrict the vacancy to some or all County employees;

(4) must allow a Fire and Rescue Service merit system employee of a local fire and rescue department, or an active fire and rescue volunteer as defined in Section 21-21(a) of the County Code, to apply for vacancy announcements that are limited to County employees only. To be eligible, a fire and rescue volunteer must have achieved active status in the prior calendar year by accumulating at least 50 points under Code Section 21-21(k), and the volunteer's name must be transmitted to OHR on a master list compiled by the Fire and Rescue Service from certified lists of active volunteers prepared by the local fire and rescue departments; and

(5) QUEST Intern, Project SEARCH Intern, or Customized Employment Public Intern or a former QUEST Intern, Project SEARCH Intern, or Customized Employment Public Intern within 24 months of completion of the internship to apply for vacancy announcements that are limited to County employees only. This does not negate the right of a QUEST Intern, Project SEARCH Intern, or Customized Employment Public Intern who is eligible under Section 6-11 of these Regulations to apply for priority consideration for initial appointment to a County merit system position to receive priority consideration.

(6) must allow an active Social Worker Intern at HHS with a minimum of six months of service to apply for a Public Administration Associate (PAA)/Social Worker vacancy announcement in Child Welfare Services at HHS that is limited to County employees only.

(b) A department director may determine if and when a vacant position will be announced.

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. The OHR Director may shorten the two-week announcement period

(b) The OHR Director may designate certain positions for open continuous or open until filled recruitment.

(c) The OHR Director must not accept an application submitted after an announced application deadline**.**

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;

(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 6-7 or 27-2(b) of these Regulations.

(b) The OHR Director must include in the vacancy announcement in the jobs bulletin on the County Website a description of the competitive rating process and rating criteria that will be used to create the eligible list.

(c) The OHR Director, or designee, may order applications to be re-rated or take other remedial action to remedy an oversight or error in the rating process.

(1) The competitive rating process may include:

(A) a written or oral examination;

(B) a demonstration of a job-related physical ability or skill;

(C) an evaluation of an applicant's training, experience, and education; or

(D) another professionally acceptable assessment technique that fairly evaluates an applicant's qualifications, fitness, and ability.

(2) The competitive rating process must:

(A) result from a job analysis that documents the knowledges, skills, and abilities required to perform essential functions of the job;

(B) assess the employee's ability to perform important aspects of the job;

(C) be administered in good faith and without discrimination; and

(D) be properly and accurately conducted.

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.

6-7. Noncompetitive rating process. The OHR Director may establish an eligible list for employment or promotion on a noncompetitive basis for positions involving unskilled manual labor and for other classes of work if a competitive process is impractical.

6-8. Invalidation of rating process. The CAO must invalidate a rating process in whole or in part if an improper act occurred or if the rating process was not job-related or was discriminatory.

6-9. Eligible list. After the rating process is complete, OHR must establish an eligible list with the names of all qualified individuals grouped in appropriate rating categories. The OHR Director must determine the length of time that an eligible list will be in effect and may extend or abolish an eligible list for good cause. If an eligible list is abolished before the expiration date on the eligible list, OHR must notify in writing all individuals whose names appear on the list.

6-10. Priority eligible list.

(a) The OHR Director must 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.

(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 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. Priority consideration for initial appointment to a County merit system position.

(a) Definitions

(1) Person with a disability: A person who:

(A) has a developmental disability, severe physical disability, or a psychiatric disability within the meaning of 5 C.F.R. 213.3102(u), the criteria for disability used by the Federal Office of Personnel

Management for noncompetitive appointment to Federal merit system positions under its special hiring authority; and

(B) has been certified by the Maryland Department of Education Division of Rehabilitation Services or by an equivalent out-of-state vocational rehabilitation agency as meeting the definition of disability contained in (A) above.

(2) Veteran with a disability: A person who:

(A) meets the definition of veteran contained in (3) below; and

(B) is rated by the Department of Veterans Affairs with a compensable service-connected disability of 30 percent or more;

(3) Veteran without a disability: A veteran who:

(A) was honorably discharged from a branch of the United States armed services; and

(B) has not already used veteran's credit to receive priority consideration for appointment to a Montgomery County position.

(b) Subject to persons who must be given priority under Section 6-10, the OHR Director must give priority consideration in the following order to persons who apply for initial appointment to a County merit system position in a normal competitive process and who are rated and placed in the highest rating category on the eligible list:

(1) a veteran with a disability;

(2) an equal preference for a veteran without a disability and for a person with a disability.

(c) To receive priority consideration under 6-11(b), an eligible applicant must apply for the preference on the application form and must provide the necessary certification or documentation within 14 calendar days after it is requested by OHR.

6-12. Hiring preference points for initial appointment to a County merit uniformed public safety position.

(a) Definitions

(1) ***Hiring preference points:*** Numeric points that are added to the passing examination score, or interview rating total, of eligible applicants who apply for County merit positions as uniformed public safety officers in a normal competitive process. When the scoring system for examinations and interviews provides for a maximum score of other than 100, the numeric points to be added will be based on a percentage of the maximum

score. This will enable the preference points to carry equal weight regardless of the position applied for.

(2) ***Uniformed public safety position:*** Police officer, firefighter/rescuer, or correctional officer.

(3) ***Veteran :*** A person who:

(A) was honorably discharged or released from a branch of the United States armed services after at least 180 days of active military duty other than for training;

(B) was not granted a normal retirement from the United States armed services; and

(C) has not already used veteran's credit to receive priority consideration or preference points for appointment to a County merit position.

(4) ***Veteran with a disability:*** A person who:

(A) meets the definition of veteran contained in (3) above; and

(B) is rated by the Department of Veterans Affairs with a compensable service-connected disability of 30 percent or more**.**

(b) To receive hiring preference points for a uniformed public service position under this section, an eligible applicant must apply for the preference on the application form and must provide the necessary certification or documentation within 14 calendar days after it is requested by OHR.

(c) Allocation of hiring preference points

(1) veterans with disabilities receive 10 points or 10 percent, whichever is is applicable; and

(2) veterans without disabilities receive 5 points or 5 percent, whichever is applicable; and

(d) Application of hiring preference points to selection process

(1) Hiring preference points under this section may be used by an applicant to apply for multiple County uniformed public safety positions. If an applicant obtains an appointment to a County uniform public safety merit position using the preference points, the points cannot be used again.

(2) Preference points cannot be used to help an applicant meet the minimum qualifications for a uniformed public safety merit position.

(3) Preference points cannot be used to help an applicant achieve a passing score on an examination. If a written or oral examination is required for the position, an applicant must achieve a passing score before any preference points can be added.

(4) Where the department selection process is based solely on a written or oral examination score, the points are added to the applicant's passing examination score.

(5) Where the department selection process requires an applicant to take a pass/fail examination and all applicants who pass the exam are then

interviewed, the points are added to the interview score.

6-13. 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.

6-14. Appeals by applicants. Under Section 33-9 of the County Code, a non-employee or employee applicant for a merit system position may file an appeal directly with the MSPB alleging that the decision of the CAO on the individual's application was arbitrary and capricious, illegal, based on political affiliation or other non-merit factors, or that the announced examination and scoring procedures were not followed.

6-15. Noncompetitive Appointment of Persons with Severe Disabilities to County Merit Positions

(a) A department director may noncompetitively appoint a qualified person to a County merit position if the individual:

(1) has a severe developmental, physical, or psychiatric disability within the meaning of 5 C.F.R. 213.3102(u), the criteria for disability used by the Federal Office of Personnel Management for noncompetitive appointment to Federal merit system positions under its special hiring authority; and

(2) has been certified by the Maryland Department of Education Division of Rehabilitation Services or by an equivalent out-of-state vocational rehabilitation agency as meeting the definition of disability contained in (a) (1) above based upon medical evidence.

(3) meets the minimum qualifications for the position;

(4) is able to perform the essential duties of the job with or without reasonable accommodation;

(5) passes a background check, if required for the position; and

(6) passes a physical examination, if required for the position.

(b) A department director may noncompetitively appoint an individual to a County merit position under section (a) above in the following circumstances:

(1) for the seamless and expeditious transition of QUEST, Project SEARCH, and Customized Employment Public Interns into permanent merit system positions without advertising the positions; or

(2) to fill a position designated by the OHR Director as appropriate for the noncompetitive appointment of persons with severe disabilities without advertising the position; or

(3) where a merit position has been advertised competitively and a qualified applicant who meets the eligibility requirement in (a) above applies for the position, a department director may hold the competitive process in abeyance and noncompetitively appoint the applicant with a severe disability.

(c) Noncompetitive appointment under this section applies only to the initial appointment of a qualified person with a severe disability to a merit system position.

(d) The department director must obtain the OHR Director's written approval of any noncompetitive appointment.

(e) An individual noncompetitively appointed under this section must successfully complete the appropriate probationary period for the position in order to receive merit system status.

(f) Noncompetitive appointment under this section is the prerogative of management and not a right or entitlement of a person with a severe disability. An individual may not file a grievance or appeal the denial of a noncompetitive appointment or nonselection to the Merit System Protection Board.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to recruitment or application rating procedures
Firefighter/Rescuer	12, Leave Without Pay 28, Transfers 29, Promotions 48, Job Sharing Program
OPT/SLT	8, Seniority 9, Working Conditions 22, Transfer 23, Promotion Appendix VIII, Reasonable Accommodation
Police	15, Hours and Working Conditions 25, Transfers 44, Promotions 55, Job Sharing

SECTION 7. APPOINTMENTS, PROBATIONARY PERIOD, AND PROMOTIONAL PROBATIONARY PERIOD

(As amended February 15, 2005, October 21, 2008, March 9, 2010, July 23, 2013, and June 30, 2015)

7-1. Use of eligible list. If a department director determines that a vacant position should be announced as open for competition among qualified applicants, the department director must select an individual for appointment or promotion from an eligible list.

(a) Consistent with equal employment opportunity policies, the department director may choose any individual from the highest rating category.

(b) The department director must be able to justify the selection and must comply with priority consideration provisions in Sections 6-9, 6-10, and 30-4 of these Regulations.

(c) If the department director selects an individual from a lower rating category, the department director must justify the selection in writing. In cases where an individual from a higher rating category is bypassed, the department director's selection is not final unless it is approved by the CAO.

7-2. Probationary period; promotional probationary period.

(a) Purpose of probationary period and promotional probationary period.

(1) A person appointed to a full-time or part-time merit system position must serve a probationary period as a continuation of the rating process to demonstrate proper attitude and ability for the position.

(2) A person in a non-merit position appointed to a full-time or part-time merit system position must serve a probationary period.

(3) A person appointed to a temporary position does not serve a probationary period.

(4) An employee promoted to a full-time or part-time merit system position must serve a promotional probationary period, as defined in Section 1-63, in order to demonstrate that the employee is able to perform the duties of the new job satisfactorily.

(5) A County employee with merit system status who is appointed 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 at the same grade as the employee had before the transfer.

(6) An individual appointed to a full-time or part-time merit system position, other than a position enumerated in (a)(5) above, based on priority consideration under Section 6-10 (a) (1), (2) or (3) does not serve a probationary period.

(b) ***Length of probationary period***.

(1) The probationary period is 12 months for an employee newly appointed to a full-time or part-time position, unless the employee is appointed to an OPT/SLT bargaining unit position or is a police officer or deputy sheriff.

(2) The probationary period for an employee appointed to a full-time or part-time OPT/SLT bargaining unit position is 6 to 12 months, unless the employee is a deputy sheriff.

(3) The probationary period for a police officer or deputy sheriff continues for 12 months after the employee has sworn status.

(4) The promotional probationary period is 6 months for an employee newly promoted to a full-time or part-time position.

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

(1) The CAO may approve an extension of the probationary period or promotional probationary period for a person appointed or promoted to a full-time or part-time merit system position, up to 50 percent of the original probationary period.

(2) In extraordinary circumstances the CAO may approve a further extension not to exceed an additional 6 months. Extraordinary circumstances may include the employee's inability to complete the required probationary period within 18 months because of a medical condition that affects the employee's ability to perform the essential functions of the job.

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

(d) ***Evaluation and counseling during the probationary period or promotional probationary period.*** During the probationary period or promotional probationary period, a supervisor must observe an employee's work performance and explain to an employee whose work performance is marginal or inadequate the areas that need improvement and specific problems that the employee must resolve.

(e) Termination during probation of a probationary employee.

(1) A department director may immediately terminate a probationary employee at any time during the probationary period.

(2) A department director who terminates a probationary employee must ensure that the employee receives severance pay as required under Section 10-22 (a)(1) of these Regulations.

(3) A probationary employee who is terminated may not grieve or appeal the termination or a supervisor's failure to inform the employee that the employee's work performance was marginal or inadequate.

(f) ***Reassignment of a merit system employee during the promotional probationary period***.

(1) The OHR Director must reassign a merit system employee who has been promoted if the employee's performance in the new position has been inadequate during the promotional probationary period. The OHR Director must reassign the employee to a position at the same grade as the employee had before the employee was promoted. The OHR Director must not reduce the grade of, or terminate, another employee to reassign the employee who was promoted.

(2) A department director should notify the OHR Director at least 30 calendar days before the end of the employee's promotional probationary period that the employee's performance in the promoted position is inadequate.

(3) The department director must give the employee at least 30 calendar days written notice of the employee's removal from the promoted position.

(4) A merit system employee who is reassigned during the promotional probationary period may file a grievance under Section 34 of these Regulations.

(g) Merit system status.

(1) OHR must notify the department director 60 calendar days before the end of a newly appointed employee's probationary period.

(2) The department director may grant merit system status to an employee after the employee completes the required probationary period if the employee's performance, attendance, and conduct were satisfactory during the probationary period.

(3) At the expiration of an employee's probationary period, a department director must:

(A) grant merit system status;

(B) extend the probationary period; or

(C) terminate the employee's appointment.

7-3. Use of temporary employees.

(a) Temporary employees other than short-term employees.

(1) A department director may use a temporary employee for up to 40 regularly scheduled hours per week for a maximum period of 12 months.

(2) The CAO may approve an extension of a temporary appointment for an additional 6 months.

(3) A department director may use a temporary employee indefinitely on an intermittent, seasonal, or substitute basis.

(b) ***Short-term County employees.*** Short-term employees are a category of temporary employees authorized by Section 33-20 of the County Code.

(1) A department director may hire a short-term employee:

(A) when necessary to promote the efficient operation of the department; and

(B) without using an eligible list if the employee meets the minimum qualifications for the position and it is impractical to hire from an eligible list.

(2) A department director must not employ a short-term employee for:

(A) more than 900 hours in a 12-month period; or

(B) more than 2 12-month periods.

(3) The salary of a short-term employee must not exceed the hourly rate for the maximum salary of a grade 5 on the general salary schedule or a comparable pay grade.

(c) ***Use of a temporary position to avoid paying benefits.*** A department director must not use a temporary position instead of a full-time or part-time position solely to avoid paying benefits to an employee.

7-4. Noncompetitive reappointment.

(a) A department director may noncompetitively reappoint a former County employee if the individual:

(1) is reappointed to a position, including a temporary position at the same or lower grade level than the employee held at the time of separation;

(2) meets the requirements for the position;

(3) passes a physical examination, if required for the position;

(4) completed the probationary period before separation;

(5) was in good standing at the time of separation and is eligible for reemployment; and

(6) applies for reappointment within 5 years after the date of separation.

(b) The department director must obtain the OHR Director's approval of the noncompetitive reappointment.

(c) Noncompetitive reappointment is the prerogative of management and not a right or entitlement of a former employee. A former employee may not file a grievance or appeal the denial of a non-competitive reappointment**.**

7-5. Probationary period for noncompetitive reappointment.

(a) Noncompetitive reappointment to the same position.

(1) A former County employee reappointed noncompetitively under Section 7-4 to the same position that the employee held prior to separation from County service within one year of separation does not serve a probationary period.

(2) A former County employee reappointed noncompetitively under Section 7-4 to the same position that the employee held prior to separation from County service more than one year after separation must serve a probationary period for a length of time discussed in Section 7-2(b).

(b) Noncompetitive reappointment to a different position.

(1) A former County employee reappointed noncompetitively under Section 7-4 to a position different from the position the employee held prior to separation must serve a probationary period for a length of time discussed in Section 7-2(b) regardless of the length of the separation period.

Editor's note – The subjects covered in this section of the Personnel Regulations are

addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to probationary period or promotional probationary period**
Firefighter/Rescuer	29, Promotions
OPT/SLT	12, Probationary Period for New Appointments and Promoted Employees
Police	12, Seniority 43, Discipline 52, Termination

SECTION 8. MEDICAL EXAMINATIONS AND REASONABLE ACCOMMODATION

(As amended October 22, 2002, December 11, 2007, October 21, 2008, July 24, 2012, and June 30, 2015)

8-1. Definitions.

(a) ***Applicant:*** In this section, applicant means an individual who has received a conditional job offer for a County merit system position.

(b) ***Conditional offer:*** An offer of County employment that the OHR Director may withdraw if the applicant fails to meet the medical requirements for the position.

(c) ***Direct threat:*** A significant risk to the health or safety of the applicant or employee or others that cannot be eliminated by reasonable accommodation.

(d) ***Disability:*** A physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such an impairment, or being regarded as having such an impairment.

(e) ***Essential functions:*** Job tasks that are fundamental, critical, and not marginal to the position an individual holds or seeks.

(f) ***Fitness-for-duty evaluation:*** A medical evaluation of an employee to determine if the employee has a physical or psychological condition that affects the employee's ability to perform the essential functions of the employee's job.

(g) ***Individual with a disability:*** A person who is considered to have a disability under the Americans with Disabilities Act (ADA).

(h) ***Job analysis:*** As used in this section, a systematic procedure for determining the physical demands, working conditions, workplace hazards, and essential functions of an occupational class.

(i) ***Light duty:*** A temporary assignment of alternative work that an employee is qualified and able to perform when the employee is temporarily unable to perform the essential functions of the employee's job because of the employee's medical condition.

(j) ***Light Duty Review Committee:*** A committee composed of OPT and SLT bargaining unit and management employees that recommends light duty assignments for disabled employees when the employees' departments cannot find light duty assignments for them.

(k) ***Medical exam protocol:*** The types of medical screening and medical tests that the EME requires to determine if an applicant or employee is medically suited for a particular occupation or position.

(l) ***Periodic health assessment:*** A medical exam administered by the EME on a regular basis to an employee in a public safety, safety-sensitive, or physically demanding position to determine if the employee remains fit for duty.

(m) ***Physical abilities:*** The expected physical demands placed on an employee or the functions that an employee must be able to perform in a particular position or occupation that dictate the medical requirements for the position or occupation.

(n) ***Qualified individual with a disability:*** An individual with a disability who has the skill, experience, education, and other qualifications required for the job and who can perform the essential functions of the job with or without reasonable accommodation.

(o) ***Reasonable accommodation:*** A term that means a modification or adjustment:

(1) to a job application process that enables a qualified applicant with a disability to be considered for the position the qualified applicant desires;

(2) to the work environment or to the manner or circumstances under which the position held or desired is customarily performed that enables a qualified individual with a disability to perform the essential functions of that position; or

(3) that enables a qualified County employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated County employees without disabilities.

(p) ***Workplace hazards:*** Biological, chemical, or physical agents associated with an employee's duties or the environment where the employee performs the duties that may threaten the employee's health.

8-2. Application of this Section. The County's intent is that this Section be:

(a) used to implement the ADA and any other applicable Federal, State, or County statute that gives greater rights or protections than the ADA to applicants or employees; and

(b) construed in a manner consistent with the ADA and any other applicable Federal, State, or County statute that gives greater rights or protections than the ADA to applicants or employees.

8-3. Medical requirements for employment.

(a) An applicant who is selected for a County position must meet the medical requirements for the position before the applicant is appointed to the position.

(b) An employee must be able to perform the essential functions of the employee's job.

(c) If a department director transfers, promotes, or demotes an employee to a different position, the employee must meet the medical requirements for the new position.

8-4. Medical standards and guidelines for medical examinations and pre-employment inquiries.

(a) Policy on medical standards and guidelines.

(1) The CAO must establish, consistent with the ADA:

(A) medical standards for positions and occupations; and

(B) guidelines for medical examinations and pre-employment inquiries.

(2) Medical standards and guidelines for medical examinations and pre-employment inquiries must be:

(A) job-related and used to determine if the applicant or employee can perform essential functions of the job with or without accommodation; and

(B) applied uniformly and consistently to all applicants and employees who are offered employment or employed in the same job class or occupational class.

(3) When performing medical examinations or inquiries, the EME must conduct an individualized assessment of an individual's current health status and functional capabilities:

(A) in relation to the essential functions, physical and psychological demands, working conditions, and workplace hazards of a particular occupation or position; and

(B) under appropriate occupational health guidelines and practices that are consistent with applicable Federal, State, and local statutes and regulations.

(4) The EME may refer an applicant or employee to another health care provider for an independent medical evaluation as necessary.

(5) The EME must not conduct medical examinations and pre-employment inquiries to determine if an applicant or employee has a disability or the nature or severity of the disability unless the examination or inquiry is job-related and consistent with business necessity.

(6) The EME must:

(A) maintain records of medical equipment maintenance and calibration;

(B) comply with regulatory medical testing requirements;

(C) educate Occupational Medical Services (OMS) staff in proper examination and testing procedures; and

(D) use certified laboratories for applicant and employee testing.

(b) ***Federal standards and guidelines.*** The EME must comply with the applicable provisions of the following Federal statutes and regulations:

(1) Occupational Safety and Health Act;

(2) Civil Rights Act of 1964; Title VII;

(3) Drug Testing in the Workplace Act of 1988;

(4) Americans with Disabilities Act of 1990;

(5) Pregnancy Discrimination Act of 1978;

(6) Family Medical Leave Act of 1993.

(7) Occupational Safety and Health Administration (OSHA) regulations;

(8) The Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(9) Federal Transit Administration (FTA) regulations (49 CFR Parts 653 and 654, as amended);

(10) U.S. Department of Transportation (DOT) regulations (49 CFR Part 40, as amended); and

(11) Federal Motor Carrier Safety Administration (FMCSA) regulations (49 CFR Parts 382 and 391.41;

(c) ***Maryland State standards and guidelines.*** The EME must comply with the applicable provisions of the following Maryland State statutes and regulations:

(1) Workers' Compensation Act;

(2) Fair Employment Practices Act;

(3) Maryland Occupational Safety and Health Act;

(4) Maryland public health statutes; and

(5) Maryland motor vehicle statutes and regulations.

(d) ***County standards and guidelines.*** The EME must:

(1) comply with Montgomery County Code Chapters 27 and 33, these Regulations, and other applicable Montgomery County statutes, regulations, policies, and labor agreements; and

(2) review annually and update medical guidelines and medical exam protocols to maintain consistency with current professional standards and guidelines, legal and regulatory requirements, current occupational health practices, and scientific knowledge and technology.

(e) ***Consultant's guidelines.*** The EME may rely on guidelines recommended by professional occupational and environmental health consultants under contract with the County who assist in the development of medical standards for County occupations.

8-5. Reasonable accommodation.

(a) If the Employee Medical Examiner (EME) finds that an applicant or employee is a qualified individual with a disability that impairs the individual's ability to perform the essential functions of the job, the OHR Director must determine if the employee or applicant can be reasonably accommodated.

(b) Reasonable accommodation may include such modifications as:

(1) making existing facilities used by employees readily accessible to and usable by a qualified individual with a disability;

(2) job restructuring;

(3) changing a work schedule or allowing part-time work;

(4) reassigning to a vacant position;

(5) acquiring or modifying equipment or devices;

(6) adjusting or modifying examinations, training materials, or policies;

(7) providing qualified readers or interpreters; and

(8) providing other similar accommodations for an individual with a disability.

(c) Reasonable accommodation does not include recommended equipment, medical appliances, or prostheses such as wheelchairs, eyeglasses, contact lens, or hearing aids that have general use for work and outside of work.

(d) Disability case management program.

(1) OMS staff members administer the County's disability case management program. The program helps employees with disabilities to maintain or return to County employment.

(2) Disability case management program staff members assist employees with disabilities to obtain reasonable accommodation, light duty, alternative placement, sick leave donations, and information about the disability retirement process.

(3) An employee with a disability who needs help should report a disability to the employee's supervisor or to OMS staff. An employee or the employee's supervisor may request assistance at any time during the reporting of the employee's illness or injury, recovery, or the return-to-work process.

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

(a) Medical and physical requirements for job applicants.

(1) The OHR Director may condition a job offer on the satisfactory result of a post-offer medical examination or inquiry required of all entering employees in the same job or occupational class.

(2) An applicant who receives a conditional offer of employment in a County position must:

(A) submit a completed medical history form to OMS; and

(B) undergo other medical examinations or tests as required by the medical exam protocol that the EME has determined is appropriate for the County position.

(3) An applicant must undergo a medical evaluation before being placed in a County position if the applicant is:

(A) offered initial County employment;

(B) a former County employee offered reemployment in the same position after an absence of more than 6 months.

(4) An applicant for a Police Officer, Deputy Sheriff, or Correctional Officer position must undergo job-related pre-placement physical ability testing as part of the medical evaluation process.

(5) An applicant for a Firefighter/Rescuer position must undergo job-related pre-placement physical ability testing conducted by the Fire & Rescue Service.

(6) If an applicant is not appointed to the position offered within 90 days after completing the pre-placement medical evaluation, an OMS staff member must review the medical information with the applicant to determine if any information has changed. An applicant who is not appointed within 12 months after completing the pre-placement medical evaluation must undergo another complete medical evaluation before appointment.

(7) The County may use the results of a pre-placement medical evaluation to:

(A) determine the individual's current ability to perform essential functions of the offered position without significant threat to the health and safety of the individual or others;

(B) medically certify the individual's need for a work restriction or reasonable accommodation;

(C) establish baseline health information on an employee that may be used to monitor changes over time; and

(D) detect health problems in the individual that need follow-up.

(8) The EME must base the determination of whether an individual is medically fit for a position on the medical history and findings that directly reflect on the individual's ability to perform the essential job

duties under the expected conditions. The EME must consider only medical findings that:

(A) affect the individual's current ability to perform the essential job duties under the expected conditions; or

(B) indicate that the individual poses a direct threat to the health or safety of the individual or others.

(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.

(b) Medical exam protocols.

(1) How medical exam protocols are established.

(A) The EME must establish a medical exam protocol for each County occupational class. The EME may include a medical history review, a physical evaluation, medical or physical tests, and consultations in a medical exam protocol.

(B) The EME may require additional medical evaluations not included in the assigned medical exam protocol or may apply a different medical exam protocol, as appropriate:

(i) if one or more of the duties of a particular position or the conditions under which the duties are performed present risks or hazards not present in the duties assigned to other positions in the occupational class; or

(ii) if necessary to determine the applicant's ability to perform the essential functions of the job with or without accommodation.

(C) For vision and hearing tests that are part of a medical exam protocol, the EME must use guidelines that are relevant to essential job duties, working conditions, and work hazards that are based on:

(i) a validated job analysis and the consensus opinion of experts;

(ii) applicable Federal and State regulations; or

(iii) standards or recommendations of national or state professional associations.

(2) Types of medical exam protocols.

(A) ***Medical History Review.*** An applicant subject to this protocol must complete a medical history form. The form is reviewed by OMS medical staff. This protocol is for:

(i) applicants for positions in occupational classes that are sedentary and that do not require drug screening, significant driving, or exposure to significant workplace hazards; and

(ii) applicants for temporary positions expected to last for 6 months or less.

(B) ***Limited Core Exam.*** This protocol includes a medical history review, vision and hearing tests if the employee's position requires driving, and a drug test, if required for the position. Depending on the risks associated with the applicant's job, other tests and a hepatitis B vaccination may be required. This protocol is for applicants for positions in occupational classes that are subject to pre-employment drug screening and which:

(i) are sedentary, but driving is a recurring and significant duty; or

(ii) involve significant exposure to communicable diseases.

(C) ***Core Exam.*** This protocol includes the same requirements as the limited core exam, but also includes a physical examination by a physician, urinalysis, EKG, additional blood tests, and additional

tests for communicable diseases. A rabies vaccination may be required depending on the risks associated with the job. This protocol is for applicants for positions in occupational classes that involve:

(i) moderate or heavy physical demands;

(ii) significant exposure to potentially aggressive or combative people;

(iii) emergency communications; or

(iv) frequent shift rotation.

(D) ***Core I Exam.*** The elements of the Core I Exam may include the elements of the Core Exam and an exercise treadmill test, a test to determine blood type, and a respiratory function test. Physical ability testing is required for Police Officer, Deputy Sheriff, and Correctional Officer applicants. A Core I Exam is required for public safety classes that require formal medical monitoring under OSHA regulations or periodic health assessments to insure continued fitness for duty in occupations that involve high risks or occupations that require confined space entry and use of self-contained breathing apparatuses.

(E) ***Core II Exam.*** The elements of the Core II Exam may include the elements of the Core I Exam and a hepatitis B vaccination and tetanus booster if medically indicated. It does not include physical ability testing or a treadmill test. This exam is required for occupational classes, other than public safety classes, with significant exposure to mixed hazards such as chemicals, noise, asbestos, dust, and respirator use and that require formal medical monitoring under OSHA regulations.

(c) Pre-placement physical ability testing guidelines.

(1) An applicant for a Police Officer, Deputy Sheriff, or Correctional Officer position must pass physical ability tests conducted by OMS that are related to the job duties of the position. An applicant for a Firefighter/Rescuer position must undergo job-related pre-placement physical ability testing conducted by the Fire & Rescue Service. The tests for a Police Officer, Deputy Sheriff, Correctional Officer, or Firefighter/ Rescuer position may include:

(A) measurements of strength, endurance, coordination, equilibrium, agility, and flexibility; and

(B) work simulations when appropriate and feasible.

(2) A physical ability test used by the County must be:

(A) based on a job analysis that indicates that the physical ability is required to perform an essential job function;

(B) a valid and reliable measure of the required physical ability;

(C) applied to all applicants entering the same occupational class; and

(D) conducted with the use of passing scores that:

(i) are consistent with the results of a job analysis;

(ii) indicate if the job applicant is able to perform the job in a safe and efficient manner;

(iii) predict reliably the likelihood that the applicant will be able to perform a job duty in a manner that meets or exceeds the minimum standards for performing the duty; and

(iv) are consistent with the level of ability or proficiency that is considered acceptable for an employee in the current workforce.

(3) The OHR Director or the department director must:

(A) notify an applicant of physical testing requirements in advance; and

(B) give the applicant an opportunity to obtain training advice for the test and at least one opportunity to be re-tested.

(d) Application of ADA and reasonable accommodation.

(1) The EME must determine if the applicant is a qualified individual with a disability under the ADA when the Employee Medical Examiner finds that an applicant has a medical condition that impairs the individual's ability to perform the essential functions of the job or would be a direct threat to the health or safety of the applicant or others.

(2) If the EME finds that an applicant is a qualified individual with a disability under the ADA, the department director must provide a

reasonable accommodation, unless the OHR Director determines that accommodation would impose an undue hardship on the County.

(3) The OHR Director may withdraw the conditional job offer and not consider the applicant for employment in that job, if:

(A) the EME finds that the applicant with a medical impairment is not a qualified individual with a disability under the ADA; or

(B) the applicant is a qualified individual with a disability under the ADA but the OHR Director has determined that reasonable accommodation would impose an undue hardship on the County.

(e) ***Consequences if applicant refuses or fails to participate in a required medical examination.*** If an applicant refuses or fails to participate in a required medical examination that is given under established standards and guidelines, refuses or fails to provide medical records, or submits inaccurate or falsified medical forms or records, the OHR Director may withdraw the conditional job offer and not consider the applicant for employment for that job.

(f) ***Required notice to applicant of medical problem.*** If the EME finds after an examination or evaluation of an applicant that the individual has a medical problem, the EME must notify the individual of the problem.

8-7. Required medical examinations of employees; actions based on results of required medical examinations.

(a) Conditions under which an employee must participate in a medical examination.

(1) An employee must participate in a medical examination if required by the OHR Director to:

(A) determine the employee's ability to safely perform the essential functions of the employee's job;

(B) comply with State or Federal law;

(C) determine whether the employee currently meets the medical requirements for a particular job; or

(D) properly evaluate the employee's request for reasonable accommodation.

(2) An employee who is reassigned, transferred, demoted, or promoted on a temporary or permanent basis must undergo a pre-placement medical evaluation, excluding a medical history review, if:

(A) the employee has been in the previous position for more than 5 years; or

(B) the new position requires a more extensive medical exam protocol than the employee's previous position;

(b) Medical monitoring.

(1) Employees in positions with significant exposure to hazardous materials or noise must participate in regular medical monitoring as required by State or Federal regulations.

(2) The EME must determine the scope and frequency of medical monitoring based on the specific hazards to which the employee is exposed on the job.

(3) The EME and the Risk Management Division of the Finance Department must determine which occupational classes, worksites, or individuals are included in a medical monitoring program under applicable State or Federal criteria.

(4) Department directors of affected employees must ensure that designated employees are scheduled for required medical exams or tests.

(5) The EME must comply with Section 8-10 of these Regulations when conducting any type of medical monitoring.

(c) Periodic health assessment.

(1) Employees in public safety; safety-sensitive, safety-sensitive transit, and certain occupational classes with physically demanding or hazardous duties must participate in periodic health assessments conducted by the EME.

(2) The EME must determine which occupational classes or individuals require periodic health assessments and the content and frequency of assessments after considering the physical abilities required for the job, working conditions, workplace hazards, the individual's age and medical history, and the requirements of labor agreements.

(3) Department directors of affected employees must ensure that designated employees are scheduled for required periodic health assessments.

(d) Return-to-work clearance.

(1) When an employee returns to work after an absence caused by a medical condition that made the employee unable to perform the essential functions of the employee's job, the department director may require the employee to report to the EME to determine if the employee can safely perform the employee's essential job duties. The EME must evaluate the employee and advise the department director if the employee is medically able to perform the essential functions of the employee's job.

(2) If a department director allows an employee with a confirmed positive drug or alcohol test result to return to work, the employee must undergo a return-to-work assessment by the EME.

(e) Fitness-for-duty evaluation.

(1) A department director should request a fitness-for-duty evaluation of an employee if the employee indicates that the employee's decreased performance or performance problem has a medical basis.

(2) A department director may request a fitness-for-duty evaluation of an employee if the employee's observed behavior indicates the employee may be physically incapable of performing the full range of the employee's job duties. This should only be done in unusual circumstances and after consulting with the OHR Director.

(3) A department director may request a fitness-for-duty evaluation of an employee if the employee's observed behavior indicates the employee may be mentally incapable of performing the full range of the employee's job duties. A department director should do this only in unusual circumstances and after obtaining the concurrence of the OHR Director.

(4) The OMS disability case management program staff may recommend a fitness-for-duty evaluation of an employee.

(5) A department director must request a fitness-for-duty evaluation in writing and send a copy of the request to the employee. The department director must also provide the following information to the EME in writing:

(A) name and position of the referred employee;

(B) reason why the request is being made, with as many specific examples as possible of the employee's behaviors that prompted the request or examples of job-related problems that pose a direct threat to the employee or others;.

(C) description of the essential functions of the employee's job or other information pertinent to the job; and

(D) a contact person and the person's phone number.

(6) After the EME completes the evaluation, the EME must give the department director a written recommendation on whether the employee is fit for duty. The EME must give a copy of the recommendation to the employee.

(f) Evaluation for commercial driver's license.

(1) OMS must ensure that employees who are assigned duties involving driving or the operation of motorized vehicles meet applicable medical standards.

(2) OMS must determine if employees are medically qualified to operate commercial motor vehicles in interstate commerce under FMCSA regulations. OMS evaluates these employees every 2 years unless the driver has a medical condition that requires more frequent monitoring.

(g) Application of ADA and reasonable accommodation.

(1) If the EME finds that an employee has a medical condition that impairs the individual's ability to perform the essential functions of the job or would be a direct threat to the health or safety of the employee or others, the EME must determine if the employee's impairment is:

(A) short-term, meaning temporary, non-chronic, or expected to be of short duration; or

(B) long-term, meaning permanent, chronic, or expected to be of long duration.

(2) The department director may take the following actions when the EME determines that the employee's disability is likely to be short-term:

(A) allow the employee to use appropriate leave; or

(B) temporarily place the employee in a light duty assignment.

(3) If the EME finds that an employee's inability to safely perform the essential functions of the job is long term, the EME must determine if the employee is an individual with a disability.

(4) The department director must first try to reasonably accommodate an employee with a disability in the employee's current job unless the OHR Director determines that accommodation in the current job would impose an undue hardship on the County. An employee who is not disabled is not entitled to reasonable accommodation.

(5) If the employee is an individual with a disability who cannot perform the essential functions of the current job with or without accommodation or if accommodation would impose an undue hardship on the County, the department director may:

(A) reassign the employee through a voluntary transfer or demotion to a vacant position for which the employee is qualified, with essential duties that the employee can perform with or without accommodation; or

(B) terminate the employee's County employment, if the employee is not reassigned to a vacant position.

(h) Light duty evaluation; duration of light duty assignment.

(1) Light duty evaluation.

(A) An employee or department director may ask the EME to evaluate an employee for light duty if the employee's healthcare provider recommends that the employee's job duties or working conditions be temporarily modified because of the employee's health condition.

(B) After completing the evaluation, the EME must provide a written health status report to the employee and department director that indicates the recommended restrictions and the expected duration of the restrictions.

(C) The EME must approve an employee's return to full duty.

(2) ***Duration of light duty assignment.*** A department director must not allow an employee's light duty assignment to last longer than 6 months.

(i) ***Work restrictions.*** If the EME finds that the employee, because of the employee's medical condition, can perform some or most of the essential functions of the employee's job but cannot perform certain job functions or must be restricted in the manner that the employee performs certain job functions, the EME must inform the employee and the department director in writing of:

(1) the nature of the restriction;

(2) whether the restriction is short-term or long-term;

(3) the expected duration of the restriction; and

(4) whether the employee must be re-evaluated in the future.

(j) ***Consequences if an employee refuses or fails to participate in a required medical examination.*** If an employee refuses or fails to participate in a medical examination or a fitness-for-duty evaluation, refuses or fails to provide medical records, or submits inaccurate or falsified medical forms or records, the department director may take disciplinary action against the employee or may terminate the employee's employment with the County.

(k) ***Required notice to employee of medical problem.*** If the EME finds after an examination or evaluation of an employee that the individual has a medical problem, the EME must notify the individual of the problem.

8-8. Medical reports on applicant or employee fitness. After a required medical examination, the EME must:

(a) prepare a written report of the medical findings and a determination of the individual's fitness for the position;

(b) maintain this report as part of the individual's official medical record; and

(c) advise the applicant or employee in writing if the EME finds the individual to be medically unqualified, the reason for the disqualification, and the manner in which the individual may appeal the decision.

8-9. Voluntary medical services offered to employees.

(a) Policy on medical services offered to employees.

(1) The OHR Director, through programs administered by the EME or by other community health organizations, may conduct voluntary medical examinations, offer medical advice, conduct tests, administer treatments or preventive therapies, and monitor various health conditions as part of an employee health or wellness program made available to employees. An employee's participation in these programs is voluntary.

(2) Results or records of voluntary medical examinations, tests, or treatments must be provided only to the employee.

(3) The EME must not maintain records related to voluntary medical examinations, tests, or treatments unless:

(A) the EME is required to maintain records under Federal, State, or local statutes or regulations; or

(B) the employee provides the EME with a copy of such a record and requests in writing that the record be maintained as part of the employee's medical records.

(b) Communicable disease program.

(1) OMS must offer free voluntary preventive immunizations, as required by OSHA, to employees at significant risk for life-threatening or disabling communicable diseases because of their occupations or job assignments.

(2) The EME must determine which occupational classes or job assignments involve significant risk for communicable disease exposure and what preventive measures must be taken by:

(A) following the guidelines recommended by the Centers for Disease Control and Prevention and applicable State and Federal regulations; and

(B) reviewing the job duties and hazards of County employees.

(3) OMS and the Risk Management Division, Finance Department, must assist department directors in identifying and training employees at risk for communicable disease exposure and in selecting protective equipment for these employees to use.

(4) OMS must:

(A) provide a 24-hour hot line with information about first aid and referral for employees exposed to blood-borne pathogens;

(B) offer consultation; and

(C) maintain medical records required under Federal and State regulations.

8-10. Collection and use of genetic information on employees.

(a) The EME may use genetic information about an employee and consider the employee's genetic status to evaluate whether a disease, medical condition, or disability that is currently present is preventing the employee from performing the essential functions of the employee's position, if:

(1) the genetic information is given to the employee, in writing, as soon as the information is available;

(2) the genetic information is not disclosed to any other person (including the County as employer or the OHR Director and designees) without the employee's voluntary, written consent;

(3) the genetic information is maintained as part of the employee's medical record, which is kept separate from the employee's other employment records; and

(4) no other law prohibits the EME from collecting or using the genetic information or the County from considering the disease or disability or the employee's genetic status.

(b) The EME may conduct genetic monitoring of biological effects of toxic substances in the workplace if:

(1) the employee has provided prior voluntary, informed consent in writing to participate in the monitoring;

(2) the employee receives the results of the monitoring, including both aggregate information and any information regarding the specific employee as soon as the results are available;

(3) the monitoring complies with all other laws, such as laws protecting human subjects in research; and

(4) the County receives results of the monitoring only in aggregate terms that do not disclose the identity of any specific employee.

8-11. Appeals by applicants and grievance rights of employees.

(a) A non-employee applicant or employee applicant who is disqualified from consideration for a position or rated as medically unfit for appointment to a position may file an appeal directly with the MSPB under Section 35 of these Regulations.

(b) An employee with merit system status who is adversely affected by an alleged improper, unfair, or inequitable application of the County's regulations on medical examinations and reasonable accommodation may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to medical examinations, disability, reasonable accommodation, or light duty
Firefighter/Rescuer	10, Disability Leave
OPT/SLT	5, Wages, Salary and Employee Compensation 33, Light Duty 34, Safety and Health Appendix VIII, Reasonable Accommodation
Police	11, Chronic Incapacity 17, Disability Leave and Injury on the Job 23, Maintenance of Standards/Retention of Benefits and Conditions 35, Vehicles 37, Special Medical Examinations

SECTION 9. CLASSIFICATION

(As amended October 22, 2002, April 27, 2004, July 12, 2005, June 27, 2006, December 11, 2007, October 21, 2008, July 12, 2011, and June 30, 2015)

9-1. Definitions.

(a) ***Administrative review:*** The review of a final classification decision to downgrade an employee's position or class.

(b) ***Allocation:*** A classification assignment.

(c) ***Broadbanding:*** A classification and compensation system that is used to:

(1) group jobs into broad, generic occupational classes or pay bands based on their common functions, responsibilities, and delegation of authority; and

(2) consolidate 2 or more pay grades into a broad pay band.

(d) ***Class or occupational class:*** One or more positions assigned to the same classification.

(e) ***Classification:*** The assignment or allocation of:

(1) a position to an occupational class; and

(2) an occupational class to a pay grade or pay band on an approved salary schedule.

(f) ***Classification plan:*** The classification plan consists of:

(1) the official list of occupational classes;

(2) the assigned pay grade or pay band of each class;

(3) the class specification for each class;

(4) the arrangement of classes into occupational series;

(5) standards for allocating classes to pay grades or pay bands; and

(6) approved salary schedules.

(g) ***Job evaluation:*** A systematic and objective procedure used to analyze an occupational class and allocate it to a pay grade or pay band on an approved salary schedule.

(h) ***Pay grade or pay band:*** The salary range on an approved salary schedule to which an occupational class is allocated.

(i) ***Oracle Position Transaction Approval Process:*** This process is used to document and track:

(1) position creations, abolishments, reclassifications, transfers, and miscellaneous changes to positions; and

(2) Office of Management and Budget and Office of Human Resources approval of changes to positions prior to the above actions taking place.

9-2. Policy on classification. The OHR Director must:

(a) classify positions based on the assigned duties and responsibilities and minimum qualifications required; and

(b) assign positions within the same salary schedule that require work of substantially equal value to occupational classes at comparable grade levels.

9-3. Classification plan.

(a) ***Responsibility for classification plan.*** The CAO and OHR Director must develop, maintain, and administer the County's classification plan according to the County Code and these Regulations.

(b) Class creation.

(1) The OHR Director may create a new occupational class when the duties and responsibilities of one or more positions are not appropriately described in an authorized class in the classification plan.

(2) The OHR Director must assign a new class to an appropriate pay grade or pay band on an approved salary schedule under guidelines contained in these Regulations.

(3) Except for MLS designated classes, the OHR Director must notify the MSPB of a proposed new class and give the MSPB reasonable opportunity to review and comment before the class is created.

(c) ***Class abolishment.*** The OHR Director may abolish an occupational class that is no longer needed.

(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 using a job evaluation system. Instead, pay is determined by using the following mechanisms:

(i) police bargaining unit, deputy sheriffs in the OPT bargaining unit, and the firefighter/rescuer bargaining unit – collective bargaining;

(ii) minimum wage/seasonal – Federal minimum wage is key reference for salary schedule structure;

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

(iv) uniformed fire/rescue managers - criteria in County Code Section 33-11(b)(9);

(v) sworn deputy sheriff managers – criteria in County Code Section 33-11(b)(10);

(vi) uniformed correctional managers – criteria in County Code Section 33-11(b)(11); and

(vii) medical doctors – criteria in County Code Section 33-11(b)(12).

(B) Before a class in the classification plan is allocated to a pay grade or pay band, the OHR Director must use an objective job evaluation system adopted in these Regulations to evaluate if the class is assigned to the:

(i) General salary schedule (GSS);

(ii) Office, Professional, and Technical/Service, Labor, and Trades (OPT/SLT) salary schedule; or

(iii) MLS salary schedule.

(C) The OHR director must use:

(i) a quantitative job evaluation system to evaluate a class on the general salary schedule or the Office, Professional, and Technical/Service, Labor, and Trades (OPT/SLT) salary schedule; and

(ii) a broadbanding system to evaluate a class on the MLS salary schedule.

(D) Guidelines for using the quantitative evaluation and broadbanding systems are outlined in Appendices E and F of these Regulations.

(2) ***Job evaluation system.*** A job evaluation system used by the OHR Director must:

(A) be approved by the CAO and adopted by the County Council in these Regulations;

(B) be objective;

(C) be consistent with merit system principles; and

(D) require the review of the following critical job elements:

(i) knowledge, skills, abilities required;

(ii) physical and mental effort required;

(iii) complexity and scope of duties;

(iv) degree of autonomy and level of responsibility;

(v) personal contacts;

(vi) working conditions; and

(vii) supervision of others.

(E) include, when appropriate, a review of written job content documentation, organization charts, and information from a selected site visit, desk audit, or discussion with a supervisor.

(3) ***Consideration of other relevant factors in class allocation.*** In allocating a class to a pay grade or pay band, the OHR Director may also consider the following relevant factors:

(A) current salary rates for similar occupational classes in the public and private sectors to assure the County's pay is competitive in the labor market; and

(B) the County's recruitment and retention experience.

(4) Responsibility of OHR Director.

(A) The OHR Director must review and evaluate an occupational class as necessary to ensure that the information in the class specification is appropriate.

(B) The OHR Director must review and evaluate, as necessary, an occupational class assigned to the General salary schedule or OPT/SLT salary schedule to ensure that the appropriate grade is assigned to the class.

(C) The OHR Director must review and evaluate MLS classes as necessary to ensure that the pay bands and compensation for the classes are appropriate.

(5) ***Request for review of an occupational class*.**

(A) A department director may submit a request for review of an occupational class assigned to the general salary schedule, OPT/SLT salary schedule, or MLS salary schedule.

(B) The department director must submit the request during the month of June. If the last day of June falls on a Saturday, a Sunday, or an official County holiday, then the department director may submit the request on the next working day.

(C) The department director must include with the request factual evidence of:

(i) difficulty in recruiting applicants to the class at the normal entry salary;

(ii) excessive turnover in the class; or

(iii) major and significant change in the work of the class due to technological changes or other unforeseen factors that have significantly impacted work.

(D) Within 30 calendar days after receiving a request for review of an occupational class, the OHR Director must accept or reject the request and respond in writing to the department director who requested the review.

(6) ***Responsibility of department director.*** At the conclusion of the OHR Director's review of an occupational class in a department, the department director must:

(A) distribute the OHR Director's findings and recommendations to affected department employees for their review and written comment;

(B) review all employee comments and provide additional written comments as necessary;

(C) submit the written comments of the department director, supervisors, and affected employees to the OHR Director within 30 calendar days from the date the department director receives the OHR Director's report of findings and recommendations; and

(D) distribute the OHR Director's final decision to affected employees.

(e) ***Reallocation of a class.*** The OHR Director may reallocate a class from one pay grade or pay band to another if:

(1) a job evaluation indicates that the reallocation is appropriate;

(2) the salary range of the pay grade or pay band is no longer competitive in the labor market; or

(3) the OHR Director determines the change is necessary to maintain internal equity in the classification plan.

(f) ***Publication of classification information.*** The OHR Director must:

(1) publish annually the official list of classes, the assigned pay grade or pay band of each class, and approved salary schedules; and

(2) post, within 30 days, any changes to the classification plan in all departments and offices that have employees affected by the change.

(g) ***Effective date of classification plan changes.*** The effective date of a class creation, class abolishment, or class reallocation is the beginning of the pay period after the date when the OHR Director approved the action.

(h) Merit System Protection Board.

(1) ***MSPB review of classification actions.*** The MSPB may conduct a review or audit of classification actions as it determines necessary to assure the accuracy and integrity of the classification plan. The MSPB must obtain comments from the OHR Director concerning its review or audit.

(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.

(B) The MSPB must submit the results of the audit and the Board's recommendations to the County Executive, CAO, and County Council for appropriate action.

(C) The MSPB may postpone the independent audit with the approval of the County Council.

9-4. Position classification.

(a) ***Position creation.*** The OHR Director, subject to budget limitations and with the Office of Management and Budget's approval, may create a position to enable a department to complete work and fulfill its responsibilities.

(1) Prior to creating a merit system position, a department director must submit a completed position description to OHR for review, unless the OHR Director determines that a position description is not needed.

(2) A department director need not submit a position description when creating a temporary position, unless the OHR Director requests a position description.

(3) The OHR Director must determine the classification of each new position.

(b) Request for review of the classification of a position.

(1) The incumbent of a position, the incumbent's supervisor, or the incumbent's department director may ask the OHR Director to review the classification assignment of a particular position during the month of June. If the last day of June falls on a Saturday, a Sunday, or an official County holiday, then the incumbent, supervisor, or department director may submit the request on the next working day.

(2) The party who submits a request for an individual position classification study must submit the following information to support the request:

(A) an organization chart that reflects the organizational location of the position and its reporting relationships;

(B) a current position description, completed and signed by the employee, the employee's immediate supervisor, division chief, and department director, that includes the following:

(i) an explanation of how and why the position's duties and responsibilities have changed and are no longer consistent with the position's current classification assignment;

(ii) an explanation of where the new duties and responsibilities originated;

(iii) a statement from the department director concurring that the position's duties and responsibilities have changed substantially; and

(iv) a statement from the department director indicating agreement or disagreement with the employee's request for reclassification.

(3) The incumbent employee, the incumbent's supervisor, and the department director must cooperate to provide the above information regardless of which party submits the request for an individual position classification study.

(4) If the department director does not agree with the employee's description of the duties and responsibilities performed by the employee, then the department director may submit an alternative description of the employee's duties and responsibilities to the OHR Director with the request for an individual position classification study.

(5) The OHR Director may return a request for review of the classification assignment of a particular position if the individual who requested the review:

(A) failed to submit the required information;

(B) submitted an untimely request;

(C) submitted a request that is appropriate for review as an occupational class study instead of an individual position study;

(D) submitted a request to review a position of an employee who is filling the position on a temporary, short-term, or acting basis; or

(E) submitted a request to review the same person in the same position within 12 months after an individual position classification study affecting that position was completed.

(c) ***Responsibility of OHR Director.*** The OHR Director must review the classification of an individual position by referring to class specifications to determine whether or not the position's duties and responsibilities are properly assigned and classified.

(d) ***Responsibility of department director.*** At the conclusion of the OHR Director's review of the classification assignment of a particular position, the department director must:

(1) distribute the OHR Director's findings and recommendations to the affected employee

(2) review employee comments and provide additional written comments as necessary;

(3) submit the employee's written comments and the department director's own comments within 15 calendar days from the date the department director receives the OHR Director's recommendation; and

(4) share the OHR Director's final classification study decision with affected employees.

(e) Date of completion of a classification study.

The study of the classification of an individual position is complete on the date the OHR Director issues a final classification decision affecting that position.

(f) Reclassification.

(1) Subject to subsection (2) below, the OHR Director may reclassify a position if a study of the position or the occupational class that includes the position indicates a significant change in the:

(A) type of work performed;

(B) difficulty and complexity of duties;

(C) level of responsibility; or

(D) knowledge, skills, and abilities required.

(2) The OHR Director must not approve an upward reclassification of a position between July 1 and December 31 of a year in which the County Executive is elected unless the CAO determines by a written finding that the reclassification is necessary for the efficient and effective operation of the County government. The OHR Director must give written notice to the County Council of each upward reclassification that the CAO approves during this time period.

(3) A department director should ensure that the new and existing duties and responsibilities of an abolished or transferred position are reassigned to employees in positions performing work of a similar nature and grade level.

(4) A department director may assign higher level duties or responsibilities to an employee if necessary. However, a department director must not assign higher level duties or responsibilities to an employee in a manner that circumvents the competitive promotional process.

(5) If the OHR Director determines that the upward reclassification of a position would have the effect of circumventing the competitive promotional process, the OHR Director must inform the department director, in writing, that the position will not be reclassified. In such a case, the department director may:

(A) reassign the higher-graded duties to an employee in a higher-graded position; or

(B) request the creation of a higher-graded position in the department to perform the higher-graded duties.

(g) ***Effect of reclassification on position incumbent.***

(1) The OHR Director must place the incumbent of a reclassified position in the new class if the incumbent meets the minimum qualifications for the class.

(2) An employee who is reclassified downward is eligible for a noncompetitive promotion under Section 27-3(b)(2) of these Regulations.

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

(1) An upward reclassification of a position is normally effective at the beginning of the first pay period after whichever date comes first:

(A) the date of the OHR Director's or CAO's classification decision; or

(B) 12 months from the date when OHR received all information necessary to conduct the study.

(2) A downward reclassification of a position is normally effective at the beginning of the first pay period after the OHR Director's or CAO's classification decision.

(3) A position reclassification resulting from reorganization is normally effective at the beginning of the first pay period after the OHR Director's or CAO's classification decision.

(i) ***Position abolishment.*** The OHR Director may authorize:

(1) the abolishment of a vacant position; or

(2) the abolishment of a position under subsection 9-3(c) or Section 30 of these Regulations.

(j) Management Leadership Service.

(1) ***Assignment of a position to the MLS.*** The OHR Director must assign a position to the MLS if the position, prior to its inclusion in the MLS, was either:

(A) classified under the quantitative evaluation system at grade 27 or higher and the duties of the position include all of the following;

(i) directing the work of an organizational unit of a department, such as a division, section, or team;

(ii) supervising at least 2 full-time employees, or the equivalent of 2 full-time employees;

(iii) assuming responsibility for the success of one or more significant County programs, functions, or services; and

(iv) influencing County policy in the assigned area; or

(B) classified under the quantitative evaluation system at grade 30 or higher and the duties of the position include developing and promoting public policy for major programs and management functions that are:

(i) directly related to the broad mission of the County government; and

(ii) in direct support the County Executive or CAO, or both, or other elected or appointed official.

(2) ***Inclusion of a legislative branch position in MLS classes.*** The County Council must determine if a position in the legislative branch that meets the MLS requirements will be included in the MLS.

9-5. Special classification studies.

(a) The OHR Director may accept a request for a classification study of an occupational class or individual position during a month other than June if a department director requests the study because of extraordinary circumstances that justify a special classification study. The department director must submit a written description of the extraordinary circumstances that prompted the request.

(b) The CAO or the OHR Director may direct that special classification studies of occupational classes or individual positions be conducted before the prescribed month of June.

(c) The CAO or OHR Director may authorize a special classification study of:

(1) an individual position or occupational class affected by reorganization;

(2) an individual position or occupational class if there is reason to believe that the current classification assignment is incorrect and immediate review is appropriate; and

(3) an occupational class affected by adjustments to the quantitative job evaluation system.

9-6. Administrative review.

(a) Review of a classification decision to downgrade.

(1) The OHR Director must notify each affected employee of the employee's right to request administrative review of a classification decision that downgrades the employee's position or class.

(2) An employee who objects to a classification decision that downgrades the employee's position or class may file a request for an administrative review with the OHR Director. The employee must file the request with any additional information within 10 working days after receiving the OHR Director's final decision to downgrade a position and must provide a copy to the employee's immediate supervisor and department director.

(A) An employee who is filling a position on a temporary, short-term, or acting basis, or an employee whose request for an individual position classification study was returned under Section 9-4(b)(4), may not request administrative review.

(B) The OHR Director may consolidate two or more requests for administrative review. The OHR Director's decision to consolidate requests may be based on one or more of the following factors or other similar factors:

(i) the similarity of the classification assignments of the positions;

(ii) the organizational relationships of the positions; and

(iii) the dates when OHR received the requests.

(3) The employee requesting administrative review may be represented by anyone except an employee of OHR or the MSPB. The employee is responsible for the cost of such representation.

(4) The supervisor of the employee requesting administrative review, or the supervisor of an employee assisting another employee in the administrative review, may grant the employee up to 4 hours of administrative leave to prepare information to submit with the request for administrative review. The employee must request and receive approval for the administrative leave in advance.

(5) The employee's immediate supervisor and department director have 5 days from the date of receiving the employee's comments to submit any comments concerning the employee's request for administrative review to the OHR Director. The supervisor and department director must provide copies of their comments to the employee.

(6) The OHR Director must arrange within 30 calendar days for an independent professionally qualified classifier to conduct a fact-finding review.

(A) The OHR Director must provide copies of all classification study file documents and other relevant documents to the independent classifier and must make these documents available to the employee or the employee's representative for review.

(B) The independent classifier must review the methods that the County or County designated classifier used to conduct the study.

(C) The independent classifier must conduct an independent review of the employee's position or occupational class.

(D) The independent classifier may request a meeting with the employee during the employee's normal workday.

(7) Within 30 calendar days after the independent classifier receives the documents, the independent classifier must file a written report of findings and recommendations with the CAO. The CAO must provide the employee or the employee's representative with a copy of the report.

(A) The employee or the employee's representative must provide any written comments to the OHR Director within 10 calendar days from the date the employee or employee's representative received the independent classifier's report.

(B) The OHR Director must provide:

(i) the CAO with any written comments within 10 calendar days of receiving the independent classifier's report;

(ii) the CAO with a copy of the written comments of the employee or the employee's representative; and

(iii) the employee with a copy of the OHR Director's comments to the CAO.

(8) The CAO must issue a classification decision within 15 calendar days of receiving the independent classifier's report and any comments from the OHR Director, employee, or employee's representative concerning the report. The CAO may assign a higher grade, a lower grade, or the same grade to the affected position or class.

(9) The OHR Director may extend any time deadlines set forth in Section 9-6 at the request of the employee or upon notice to the employee.

(c) **Effective date *of completion of an administrative review.*** An administrative review is complete on the effective date of the CAO's classification decision affecting that position.

9-7. Appeal of CAO's classification decision.

(a) An employee may appeal the CAO's classification decision to downgrade a position or class to the MSPB only if there is a violation of the procedures described in Section 9-6 of these Regulations.

(b) An employee may not file a grievance or appeal position classification decisions, except as stated in (a) above or for an alleged violation of due process.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to classification
Firefighter/Rescuer	5, Management Rights
OPT/SLT	2, Management Rights 5, Wages, Salary and Employee Compensation 9, Working Conditions
Police	42, Management and Employee Rights

SECTION 10. EMPLOYEE COMPENSATION

(As amended December 10, 2002, March 4, 2003, April 8, 2003, January 18, 2005, February 15, 2005, July 12, 2005, February 14, 2006, June 27, 2006, December 11, 2007, October 21, 2008, March 9, 2010, July 12, 2011, July 23, 2013, June 30, 2015 and July 17, 2018)

10-1. Definitions.

(a) ***Advanced multilingual skills:*** Those skills required for written and oral communication and comprehension in a language other than English.

(b) ***Basic multilingual skills:*** Those skills primarily required for signing or for oral communication and comprehension, such as those used in conversation with clients and citizens, in a language other than English.

(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 or a PLS rank. 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:

Salary range maximum – Salary range minimum = Salary range dollars
Salary range dollars multiplied by 0.9 + Salary range minimum = Control point.

(d) ***Excess compensatory time:*** Compensatory time hours earned by an employee that exceed the maximum number of hours that the employee may carry over from one leave year to the next.

(e) ***General emergency pay:*** Additional pay or compensatory time earned by an employee at the regular hourly rate if the employee is required to work during a period of general emergency. General emergency pay is given to the employee in addition to regular pay for the normal hours worked during the declared emergency period.

(f) ***General wage adjustment:*** An across-the-board pay increase of the same amount or the same percentage given to each employee in a particular group.

(g) ***Multilingual pay differential:*** Additional compensation given by the County to a County government employee who:

(1) has been designated to fill a general department need for specific language skills or occupies a position that has been designated to provide multilingual services;

(2) is certified by OHR as having basic or advanced multilingual skills; and

(3) provides multilingual services in the course of the employee's County government employment.

(h) ***On-call:*** The status of an employee who may be contacted and offered the opportunity to perform overtime work or provide telephone assistance.

(i) ***Overtime compensation threshold:*** The point after which the County must compensate an employee for performing overtime work.

(j) ***Overtime work:*** Duties performed by an employee outside of a normal workday of at least 8 hours or a normal workweek of at least 40 hours.

(k) ***Pay status:*** Time during which an employee is paid for performing work, using paid leave, or both.

(l) ***Performance-based pay:*** Additional pay awarded to an eligible employee based on the employee's annual performance rating. There are 2 types of performance-based pay awards:

(1) an addition to base salary award, which is a salary increase added to an employee's base salary; and

(2) a lump-sum award, which is a pay award distributed as a single payment that is not added to base salary.

(m) ***Shift-pay differential:*** Extra pay given to an employee who works a shift that begins at a specified time of day or during a specified time period during the day.

(n) ***Special pay differential:*** Extra pay given to an employee for performing specified duties that require or involve additional education, training, effort, risk, or responsibility.

(o) ***Stand-by pay:*** The compensation given to an eligible employee assigned to stand-by status.

(p) ***Stand-by status:*** The condition of an employee who has been officially designated by the employing department to remain ready to perform work when contacted and asked to do so.

(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:*** Time during which an employee is paid only for performing work.

10-2. General compensation policy. The County must provide a total compensation system designed to recruit and retain a high quality workforce. The CAO must periodically compare the compensation of County employees with the appropriate labor market and other area compensation systems to maintain a standard of comparability.

10-3. Uniform salary plan.

(a) The uniform salary plan consists of salary schedules authorized in Code Section 33-11(b) for:

(1) employees represented by certified employee organizations;

(2) minimum wage/seasonal employees;

(3) sworn police managers in the Police Leadership Service (PLS);

(4) uniformed fire/rescue managers;

(5) sworn deputy sheriff managers;

(6) uniformed correctional managers;

(7) medical doctors;

(8) employees in positions in the Management Leadership Service (MLS); and

(9) a General salary schedule (GSS) for all other employees.

(b) The Council must approve the uniform salary plan and any amendments adopted by Council resolution.

(c) The CAO must issue approved salary schedules for employee groups with salary rates or a salary range for each pay grade or pay band.

(d) The CAO must assign an occupational class to an appropriate pay grade or pay band on an approved salary schedule in the uniform salary plan.

(e) The salary rate or range for each pay grade or pay band on an approved salary schedule must remain in effect until a change to the salary schedule is approved by the County Council.

(f) The CAO must base a recommendation to amend a salary schedule on the factors outlined in Section 33-11 of the County Code.

(g) The CAO must ensure that all occupational classes that require comparable experience and have comparable duties, responsibilities, and authority are paid

comparable salaries that reflect the relative value of the services performed, except for occupational classes on the following salary schedules:

(1) police bargaining unit;

(2) fire/rescue bargaining unit;

(3) deputy sheriffs in the OPT bargaining unit;

(4) minimum wage/seasonal;

(5) sworn police managers;

(6) uniformed fire/rescue managers;

(7) sworn deputy sheriff managers;

(8) uniformed correctional managers;

(9) medical doctors; and

(10) Management Leadership Service.

(h) Collective bargaining agreements may supersede the comparable pay for comparable work standard for some salary schedules.

10-4. Payroll policies.

(a) ***Pay period.*** The CAO must pay employees for work performed in a two-week pay period.

(b) ***Work year***. The CAO must compute salaries under the County pay schedules on the basis that one work year is equal to 52 weeks which could consist of:

(1) 2,184 or 2,496 hours for uniformed fire/rescue employees; or

(2) 2,184 hours for certain police executives; or

(3) 2,080 hours for all other employees.

(c) ***Payroll deductions.*** The CAO must determine appropriate deductions from an employee's pay under Federal, State, or County statutes and regulations.

(d) Recovery of overpayment or employee debt.

(1) Recovery of overpayment to employee.

(A) If the County overpays an employee, the CAO may deduct money from the employee's pay to recover the overpayment. The CAO must give the employee notice and an opportunity to respond before deducting the amount of the overpayment from the employee's pay.

(B) An employee will not be required to repay the portion of overpayments which has extended beyond a 3-year period.

(C) An employee who is overpaid by the County has a duty to promptly notify the department director of the overpayment.

(D) A department director may take disciplinary action against an employee who knew about the overpayment but failed to notify the department director.

(2) ***Recovery of employee debt to County.*** The CAO may set off a debt that an employee or former employee owes to the County and deduct the amount owed from unpaid salary, accrued annual leave or compensatory time owed to the employee. The CAO must give the employee or former employee written notice of the deduction and an opportunity to respond.

(3) ***Employee's right to appeal the County's recovery of an overpayment or debt.*** An employee may file a grievance under Section 34 of these Regulations over a deduction to recover an overpayment or a debt from the employee.

(e) Payroll certification.

(1) A department director must not place a person in a merit system position or on the payroll of a County department or office, authorize the payment of salary or wages, authorize a change in salary or wages, or authorize the removal of any person from a payroll unless the act is consistent with the Personnel Regulations and is approved in writing by the CAO or the OHR Director.

(2) A department director must give the CAO or OHR Director all time, attendance, and payroll records requested.

(3) The CAO may require the OHR Director to certify that:

(A) a merit system employee whose name appears on a payroll was appointed under the provisions of the Charter of Montgomery County and the Personnel Regulations and performed service during the period for which compensation is claimed; and

(B) the employee's salary or compensation is at the appropriate rate indicated in official employee records.

(f) ***Effective date of a salary change.*** The effective date of a salary change is the beginning of the pay period in which the change was made, unless the CAO specifies a different date.

(g) ***Direct deposit.*** An employee must, as a condition of employment, agree to have the County deposit the employee's biweekly pay directly in the employee's account at a bank, credit union, or other comparable government-regulated financial institution. If an employee is delayed in providing the County with direct deposit information, the County will deposit the employee's bi-weekly pay on a payroll card until such time as the employee provides direct deposit information.

10-5. Salary-setting policies.

(a) ***General.*** A department director must ensure that an employee's base salary does not exceed the pay rate or range for the pay grade or pay band assigned to the employee's class, unless the department director:

(1) demoted the employee because of reduction-in-force or disability under Section 10-5(d); or

(2) reclassified or reallocated the employee's position to a lower pay grade or pay band under Section 10-5(f).

(b) ***Salary on appointment and reappointment for employees on the General Salary Schedule and Management Leadership Service Salary Schedule.*** A department director must set the base salary of a newly appointed or reappointed employee within the applicable pay grade or pay band under these Regulations and guidance established by the OHR Director and CAO.

(1) Departments and agencies have the authority to negotiate and determine salaries for candidates equal to or less than the midpoint of the salary range or pay band.

(2) A department director may submit a request to the OHR Director for approval to hire a candidate at a salary that is above the midpoint of the salary range or pay band. The director should include in the memorandum:

(A) the reason the candidate should be hired above the midpoint of the salary range;

(B) a copy of the candidate's resume;

(C) proof of the candidate's prior or current salary (i.e. most recent pay slip, W-2, 1099 or other wage documentation); and

(D) the names of other incumbents in the same class in the department with their salaries.

(3) OHR will review the information submitted by the department director to compare the candidate's proposed salary to the salaries of existing employees in the same class within the department in order to determine if the proposed salary will create a pay inequity.

(4) The candidate's knowledge, skills and abilities will be reviewed in comparison with those same requirements in the official class specification. Consideration will also be given to the department's "preferred criteria" documented in the recruitment posting in the review and approval process of the candidate's proposed salary.

(5) If the candidate submits documentation of his/her current salary (pay advice/stub, W-2 or 1099, and the department is requesting a salary that may be higher than the department's incumbents in the same class, then the department's proposed salary for the candidate may be approved, even if the candidate has less experience, education, etc. than existing employees in the same class.

(6) If there is evidence of recruitment and retention issues for the position (i.e. the existing candidate pool is minimal) and if the candidate's proposed salary will give the candidate a higher salary than the salaries of existing employees, then the proposed salary may be approved even if the candidate has less experience, education, etc. than existing employees.

(7) If there is evidence that the candidate has specialized or unique skills, certifications, licensing, and/or experience and the evidence is used to support a higher salary than the salaries of existing employees, those factors must be reflective of the official class specifications or the department's preferred criteria for the current recruitment, and then the proposed salary may be approved even if the candidate has less experience and education than existing employees.

(8) If there is no evidence of recruitment and retention issues, the candidate's specialized or unique skills, certifications, licensing, and/or experience, or of the candidate's higher salary in a former position, and the proposed salary of the candidate will create an inequity with existing employees, then the proposed salary should be denied and the candidate's salary should be set lower than the salaries of existing employees. If the candidate does not accept the offer of employment at the lower salary, then the department should consider the next candidate on the hiring list.

(9) The OHR Director will approve or deny the department director's request.

(10) A department director may appeal the OHR Director's denial of a department's request to hire a candidate at a salary that is above the midpoint of the salary range or pay band to the CAO.

(11) The department director cannot communicate the requested salary to the candidate prior to approval, in writing, from the OHR Director.

(c) Salary on promotion.

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

(A) A department director must ensure that an employee's base salary following promotion is not less than the minimum or more than the maximum salary for the new pay grade or pay band.

(B) A department director must give a merit system employee who is promoted at least a 5 percent increase in base salary, except as provided in (C) below.

(C) A department director must not give a salary increase upon promotion to an employee who took a voluntary demotion in the past but did not lose salary, unless:

(i) a salary increase is necessary to restore the employee to the salary that the employee would have had if the employee had not been demoted; or

(ii) the employee is promoted to a higher-graded position than the position from which the employee was demoted.

(D) In addition to the non-discretionary 5 percent increase provided for in (B) above, a department director may approve an additional increase in base salary of up to 5 percent for a single promotion, or a total increase not to exceed 10 percent.

(E) In addition to the maximum 10 percent increase in base salary for a single promotion that a department director may approve under (D) above, a department director may recommend and the OHR Director may approve an additional increase in base salary of 5 percent for a single promotion, or a total increase not to exceed 15 percent.

(F) A department director should consider the following factors when recommending to the OHR Director an additional 5 percent salary increase for a single promotion under (E) above, which would constitute a total increase of 15 percent:

(i) whether the employee being promoted received an “Exceptional” overall performance rating prior to the promotion; or

(ii) whether the position that the employee is being promoted to

is a difficult position for which to recruit and retain employees.

(G) A department director's recommendation to the OHR Director for a maximum increase of 15 percent in base salary for a single promotion must:

(i) document that the promotional increase requested is consistent with the department's pay practices and policies;

(ii) provide justification for the request.

(H) In extraordinary circumstances, the department director may recommend and the OHR Director may approve a total increase of not to exceed 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.

(I) The CAO may approve a total increase in base salary greater than 20% in extraordinary circumstances (as defined in section 10-5(c)(1)(H)) based upon the factors identified in section 10-5(b) where a promotion arises from a competitive promotion that was open to the general public and at least one non-County employee was either in the highest rating category or was interviewed for the vacancy.

(2) Compensation for a temporary promotion.

(A) A department director who temporarily promotes an employee for more than 10 consecutive calendar days must give the employee a pay increase retroactive to the first day the employee was temporarily promoted. The amount of the pay increase must be consistent with subsection (1) above.

(B) An employee working under a Position and Career Education (PACE) contract is not considered temporarily promoted and therefore is not entitled to a pay increase.

(C) A non-MLS or PLS employee who is temporarily promoted to an MLS or a PLS position:

(i) is not eligible for performance-based pay under MLS

or PLS 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.

(d) Salary on demotion.

(1) ***Voluntary demotion.*** A department director may allow an employee who has had a voluntary demotion to keep the employee's prior base salary after a voluntary demotion as long as 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..

(2) In a voluntary demotion, when the employee's prior base salary is above the maximum salary of the new pay grade or pay band, the employee's salary must equal the maximum salary of the new pay grade or pay band.

(3) ***Disciplinary demotion or demotion resulting from unsatisfactory performance.*** If an employee is demoted for cause or for unsatisfactory performance, the department director must reduce the employee's salary by:

(A) no more than 20 percent of base salary; or

(B) more than 20 percent, if necessary to bring the employee's salary to the maximum salary of the new pay grade or pay band.

(4) Demotion resulting from reduction-in-force or disability.

(A) If a General salary schedule (GSS), MLS or a PLS employee is demoted as a result of reduction-in-force to a class that is non-bargaining unit, the department director must allow the employee to retain the salary received at the time of the demotion. If the demoted employee's salary exceeds the maximum for the new pay grade or pay band, the department director must allow the employee to retain the salary for 2 years after the demotion.

(B) A department director must not approve a salary increase for an employee whose base salary exceeds the maximum salary for the pay grade. At the end of the 2-year salary retention period, the department director must reduce the employee's base salary to the maximum for the pay grade of the employee's position.

(C) If an employee in a non-bargaining unit position is demoted as a result of disability, then the employee retains his or her salary indefinitely, even if the salary is above the maximum of the grade.

(D) If the CAO reclassifies a demoted employee's position upward during the 2-year period following the demotion, the department director must not increase the employee's salary unless a salary increase is needed to bring the employee's salary to the minimum salary of the new pay grade or pay band.

(e) ***Salary on reassignment during the promotional probationary period.*** If the promoted employee has a less than satisfactory annual or interim performance rating relating to the duties of the new position during the promotional probationary period, then the department director must reassign the promoted employee to a position at the employee's former pay grade and must reduce the employee's salary after the reassignment by the amount of the promotional increase.

(f) Salary on reclassification or reallocation.

(1) The reclassification or reallocation of a position to a higher or lower pay grade or pay band is not a promotion or a demotion.

(2) A department director must not increase the salary of an employee whose position is reclassified or reallocated to a higher pay grade or pay band, except as indicated in Section 12-2(c) of these Regulations, or to ensure

that the employee's salary is at the minimum for the new pay grade or pay band.

(3) A department director must ensure that an employee whose position is reclassified or reallocated to a lower pay grade:

(A) retains the salary the employee received the day before the effective date of the reclassification or reallocation; and

(B) receives the same general wage adjustment given to other employees in the same occupational class and salary schedule regardless of whether or not the employee's salary exceeds the maximum salary for the pay grade or pay band assigned to the position.

(4) A department director must ensure that the salary of a position that was reclassified downward reverts to the salary range for the pay grade or pay band reassigned to the position after the employee who occupied the position at the time of the downward reclassification leaves the position.

(g) Salary during a within-grade salary reduction.

(1) A department director may reduce an employee's bi-weekly salary by giving the employee a within-grade salary reduction outlined in Section 33-3(d).

(2) The department director must give the employee written notice of the amount of the reduction and the number of pay periods covered by the reduction.

10-6. Overtime policy.

(a) The assignment of overtime work is an exercise of management discretion reserved to supervisors. An employee is not entitled to overtime work assignments, unless such a right is expressly stated in a regulation or written agreement.

(b) A department director:

(1) may require an employee to perform overtime work;

(2) must authorize an overtime assignment before the employee is given the assignment or performs the work, and may delegate to subordinate supervisors the authority to assign overtime work;

(3) must keep overtime work to a minimum and approve overtime work when the department's workload cannot be accomplished without it;

(4) must ensure that expenditures for overtime are kept within budget limitations, unless compensatory time is used to compensate employees for overtime work; and

(5) must exclude an MLS employee from receiving overtime pay or compensatory time.

(c) A supervisor may assign overtime work to an employee who does or does not volunteer for the overtime assignment, but the supervisor should attempt to equally distribute the overtime work assignments among the employees who are qualified to perform the work.

(d) Except in an emergency, a supervisor should make every effort to schedule overtime work assignments in advance and no later than the end of the workday before the day of the overtime assignment.

(e) An employee who fails to perform an overtime assignment may be subject to disciplinary action.

(f) An employee must not file a grievance under these Regulations to enforce Federal or State wage and hour statutes that are enforceable by filing a claim with the appropriate Federal or State agency.

10-7. Overtime compensation.

(a) ***Overtime compensation threshold.*** A department director must compensate an employee with overtime pay or compensatory time if the employee's total hours in a pay status during a workday or workweek exceed the overtime compensation threshold.

(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
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	40 hours, such employees should be compensated for the hours worked above 40 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	40 hours	40 hours
Firefighter/ rescuer at rank of battalion chief or above	number of hours in regular workday for full-time employee, plus 5 hours	53 hours or number of hours in regular work-week for full-time employee plus 5 hours	48 hours or number of hours in regular workweek for full-time employee
Deputy sheriff at the rank of captain or above	13-17 hours, depending on number of hours in normal workday	40 hours	40 hours

(c) Normal overtime pay rates

(1) ***For a bargaining unit employee.*** The County must compensate a bargaining unit employee for overtime work at the rate stated in the appropriate labor agreement.

(2) ***For a non-exempt unrepresented employee.*** The County must compensate a non-exempt employee who is not in a bargaining unit position at the rate of time and a half the employee's regular hourly salary for each hour in a pay status beyond the overtime threshold. The regular hourly salary must include pay differentials that apply to the overtime hours worked.

(3) ***For an exempt employee.*** When an exempt employee is eligible for overtime compensation under these Regulations, the County must compensate the employee as follows:

(A) an exempt employee at grades 24 and under must be compensated at the rate of time and a half the employee's regular hourly salary for each hour in a pay status greater than the overtime threshold; and

(B) an exempt employee at grades 25 and higher must be compensated on an hour for hour basis for every hour in a pay status greater than the overtime threshold.

(d) Exception to normal overtime pay rates.

(1) If the overtime work is scheduled, the County must not compensate the employee at the overtime rate except when the employee was in a work status greater than 8 hours of the employee's regularly scheduled workday.

(2) If an employee has an unscheduled absence the day after having worked an overtime work assignment, then the County must compensate the employee at the regular (straight time) pay rate for the number of hours of the unscheduled absence, except when the FLSA requires such employee to receive overtime compensation at the time and half rate. A scheduled absence, for the purpose of this section, is leave that is:

(A) requested and approved during the employee's work period preceding the day of the requested time off; or

(B) requested while the employee is working on the day after the overtime work assignment was completed, and was approved subject to workload requirements as determined by the employee's supervisor.

(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:

(A) as stipulated in the appropriate labor agreement if the employee is in a public safety class that is in a bargaining unit;

(B) an exempt employee in pay grades 24 and under who 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) an exempt employee in pay grades 25 and higher who is:

(i) a police officer at the rank of lieutenant or above;

(ii) a firefighter/rescuer at the rank of battalion 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.

(e) Rounding of overtime.

(1) An employee who submits an electronic timesheet must total overtime work for each workweek and record it on the time sheet without rounding.

(f) ***Form of overtime compensation.*** A department director must provide compensation to employees for eligible overtime work performed. A director must provide overtime compensation at the specified rate in the form of overtime pay or compensatory time earned at the overtime rate.

(1) A department director must pay a non-exempt employee overtime pay for completed overtime work except when:

(A) the employee requests to receive compensatory time in lieu of pay and the supervisor approves the request; or

(B) the department director determines that the cost of overtime pay cannot be accommodated within the department's existing budget appropriations and the FLSA does not require the department director to give overtime pay.

(2) A department director must compensate an exempt employee for overtime work that is eligible for overtime compensation. The employee must be compensated with compensatory time at the appropriate overtime rate

instead of with overtime pay unless the department director determines that:

(A) the cost of overtime pay can be accommodated within the department's existing budget appropriations; and

(B) the amount of overtime work needed is so great that the employee would not be able to use the compensatory time earned during the current leave year.

10-8. Compensatory time.

(a) ***Payment of compensatory time.*** The County must pay an employee for compensatory time at the employee's pay rate at the time that the compensatory time is used or paid off.

(b) Use of compensatory time.

(1) An employee must apply, in advance, to use compensatory time unless the employee could not anticipate the need to use the compensatory time.

(2) An employee must not use compensatory time until it is credited by the payroll system and approved for use by the employee's supervisor.

(3) A department director should ensure that an employee schedules and has the opportunity to use the employee's accrued compensatory time.

(4) A department director may:

(A) restrict an employee's use of compensatory time during certain periods of the year;

(B) require the use of compensatory time in amounts of 8 hours or more.

(c) Limits on accrual of compensatory time.

(1) ***Compensatory time carryover.*** The CAO must allow an employee to carry over either a maximum of 80 hours of compensatory time to the next leave year or a prorated amount of compensatory time if the employee's regular work schedule consists of more than 80 hours per pay period.

(2) Excess compensatory time.

(A) An employee's unused compensatory time that exceeds 80 hours at the end of the leave year is excess compensatory time, unless the employee's regular work schedule consists of more than 80 hours per pay period. For a work schedule of more than 80 hours per pay

period, the hours in excess of the prorated maximum carryover amount are considered excess compensatory time.

(B) The CAO must not allow an employee to carry over excess compensatory time to the next leave year unless an exception is granted under subsection (c)(3) or (c)(4).

(3) ***Limits on accrual for a non-exempt employee.*** The CAO must pay a non-exempt employee for excess compensatory time hours at the end of the leave year unless the employee gives written notice to the OHR Director that the employee wants to carry over the excess compensatory time for one year.

(4) Limits on accrual for an exempt employee.

(A) The CAO must convert an exempt employee's excess compensatory time to sick leave at the beginning of the next leave year, unless the CAO grants an exception under Section 10-8(c)(4)(B).

(B) The CAO may allow an exempt employee to carry over some or all of the employee's excess compensatory time to the next leave year if the employee did not use the excess compensatory time because of special circumstances or workload demands. The employee must use the excess by the end of the next leave year.

(d) Disposition of compensatory time at separation.

(1) ***At separation of a non-exempt employee***. The County must pay a non-exempt employee who leaves County employment for all unused compensatory time.

(2) ***At separation of an exempt employee.*** If an exempt employee leaves County employment, the County must:

(A) pay the employee for up to 80 hours of unused compensatory time or a larger prorated amount if the employee's regular work schedule includes more than 80 hours per pay period; and

(B) convert the hours for which an employee is not paid unused compensatory time to sick leave.

(3) ***At death of an employee.*** If an employee dies, the County must pay the employee's beneficiary or estate for all unused compensatory time.

(e) Withholding or adjustment of accumulated compensatory time.

(1) If an employee is indebted to the County, the County may deduct the amount due from the employee's accumulated compensatory time, after giving the employee written notice of the deduction and an opportunity to respond.

(2) If the employee objects to the deduction, the employee may file a grievance under Section 34 of these Regulations.

(f) Disciplinary deduction of accrued compensatory time.

(1) Under Section 33-3(c) of these Regulations, a department director may deduct up to 80 hours of compensatory time from an exempt employee's accumulated compensatory time for disciplinary reasons. An employee may file a grievance over such disciplinary action and the deducted amount under Section 34 of these Regulations.

(2) The FLSA prohibits a department director from taking accumulated compensatory time from a non-exempt employee for disciplinary reasons.

(g) Use of compensatory time as FMLA leave.

(1) An employee must not use compensatory time as FMLA leave.

(2) A supervisor must not designate compensatory time as FMLA leave.

(h) Use, carryover, and disposition of compensatory time by an MLS employee.

(1) An MLS employee may not earn compensatory time, but may keep, use, and carry over the compensatory time that the employee had accrued at the time the employee became an MLS member.

(2) The County must pay an MLS employee for up to 80 hours of compensatory time when the employee leaves County employment.

(3) An MLS employee is subject to the provisions of these Regulations on the use, carryover, and disposition of compensatory time by exempt employees.

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

(a) ***Shift pay differentials.***

(1) The CAO may establish shift pay differentials for evening work and determine the amount paid for the differential.

(2) A department director must pay a shift pay differential to an employee who begins the employee's assigned shift during a period covered by the differential.

(3) An employee is not eligible for shift pay differential for hours of leave or for short periods of additional work that do not constitute a shift.

(4) A department director must not pay a shift pay differential to an MLS employee.

(b) ***Special pay differentials.*** A department director must pay a special pay differential to an employee who:

(1) is appointed, transferred, promoted, or demoted to a position associated with a special pay differential; and

(2) performs the duties associated with 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:

(A) be certified by OHR as having basic or advanced multilingual skills;

(B) be assigned to a position designated for a multilingual pay differential or be an employee designated to fill a general department need for specific language skills; and

(C) actually provide or be available to provide multilingual services in the course of the employee's County government employment.

(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 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.

(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 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 occurred that affected the County's 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 and submit it 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;

(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 such 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 date. 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.

(4) Countywide Interpreter List.

(A) The OHR Director must maintain a list of County employees who have been certified as having multilingual skills and make the list available to all County departments on the County internet website. The list must include the following information;

(i) employee's name and department;

(ii) employee's work phone number and e-mail address;

(iii) language in which the employee is certified; and

(iv) employee's level of proficiency.

(B) The OHR Director may approve a request from a department director that a certified employee's name not be included on the Countywide Interpreter List if the demand for the employee's certified multilingual skills within the department and the nature of the employee's job duties would make the employee unavailable for interpreter assignments in other departments.

(C) A department director must advise the OHR Director promptly when:

(i) a certified employee leaves County employment or the designated position; or

(ii) a certified employee will be unavailable for interpreter assignments for an extended period of time for any reason.

(D) An employee whose name is on the Countywide Interpreter List must:

(i) make a reasonable effort to provide interpreter services at the request of other departments; and

(ii) must obtain the approval of the employee's supervisor before accepting assignments from other departments.

(E) A department manager who requests the services of an employee on the List from another department must:

(i) give reasonable notice to the certified employee of the need for interpreter services;

(ii) not subject the employee to hazardous conditions or place the employee in potentially dangerous situations; and

(iii) if required, provide the employee with transportation to the location where the interpreter services are needed or reimburse the employee for travel and other appropriate expenses.

(5) Payment and amount of multilingual pay differentials.

(A) The County must pay a higher multilingual pay differential to an employee who is certified at the advanced level than an employee certified at the basic level.

(B) The amount of multilingual pay differentials for unrepresented employees is determined by the CAO and approved by the Council. The amount of the differentials for bargaining unit employees is determined through collective bargaining and is subject to Council approval.

(C) The County must pay the multilingual pay differential to a certified employee only for the hours worked and not for hours of paid leave or holidays.

(D) The County must not pay more than one multilingual pay differential to an employee even if the employee is certified in more than one language.

(E) The County must not pay a multilingual pay differential to an employee who leaves the position designated for the differential,

except when the employee is transferred or reassigned to another position for which the same multilingual skills are approved.

(F) If a department uses an employee on the Countywide Interpreter List from another department to provide interpreter services for 4 or more hours in a pay period, the department director of the using department must reimburse the employing department at the employee's hourly salary rate for the hours the employee spent providing interpreter services for the using department.

(6) ***Performance evaluation of employee receiving multilingual pay.*** The supervisor of an employee who receives multilingual pay must:

(A) include the use of multilingual skills as a performance expectation of the employee's performance plan; and

(B) rate the employee's performance in using the multilingual skills.

(7) Renewal of an employee's multilingual certification.

(A) An employee must periodically renew the employee's multilingual certification if the employee wishes to continue to receive the pay differential associated with the certification.

(B) The OHR Director must:

(i) establish the period after which a certified employee must renew the multilingual certification by passing another certification examination;

(ii) notify the employee, in writing, of the requirement to renew the employee's multilingual certification;

(iii) schedule and administer the examination.

(C) An employee who fails the multilingual recertification examination to renew the multilingual certification must take and pass the recertification examination within 3 months of the first renewal examination or the employee will lose the certification and the multilingual pay differential. The OHR Director may grant an extension for up to one month for extenuating circumstances.

(8) Stopping a multilingual pay differential.

(A) A department director must ensure that the County stops paying the multilingual differential to a certified employee who:

(i) transfers to, or assumes, a position for which the multilingual skills are not approved;

(ii) was certified to provide multilingual services that are no longer needed;

(iii) is no longer needed by a department to provide a specific language skill;

(iv) is no longer able to provide the multilingual services;

(v) no longer wishes to provide the multilingual services;

(vi) refuses or fails to provide requested multilingual services in a satisfactory manner; or

(vii) fails to renew the multilingual certification as required.

(B) The department director must notify the certified employee and the OHR and OMB Directors of a decision to stop paying a multilingual differential to a certified employee and the reasons for stopping the differential.

(C) If multilingual skills are a requirement for a designated position and the incumbent employee no longer wishes to provide the multilingual skills, the department director must determine if the employee's request can be accommodated by means such as transferring the employee or relying on the multilingual skills of other employees. If the director determines that the request cannot be accommodated, the department director may deny the employee's request.

(D) If an employee refuses or fails to provide requested multilingual services in a satisfactory manner, this should be reflected in the employee's performance evaluation and may be grounds for disciplinary action including removing the employee from the designated position.

(9) ***Appeal of decisions on multilingual pay.*** The following decisions on multilingual pay are not grievable matters:

(A) eligibility of languages or positions for multilingual designation;

(B) the content of language proficiency examinations;

(C) the certification or non-certification of an employee's eligibility for multilingual pay; and

(D) stopping the payment of a multilingual pay differential under subsection (8).

(d) Disposition of pay differentials.

(1) A department director must not pay a shift pay differential to an employee who is transferred, promoted, or demoted away from a shift associated with a shift pay differential to a shift not associated with a shift pay differential.

(2) A department director must not pay a special pay differential to an employee who is transferred, promoted, or demoted from a position associated with a special pay differential to a position not associated with the differential.

(3) The County has discontinued the practice of approving educational salary differentials for employees who earn degrees or complete educational credits. However, an employee with an educational salary differential approved before July 31, 1978, may keep the differential until the employee leaves County employment.

10-10. Performance-based pay.

(a) ***Performance-based pay for MLS or PLS employees.*** An MLS or PLS employee is not eligible to receive service increments, but may receive performance-based pay as described in this subsection.

(1) Eligibility for general wage adjustment.

(A) ***Career employee.*** An MLS or PLS employee with merit system status who receives a performance rating of *Below Expectations*, *Successful Performance*, *Highly Successful Performance*, or *Exceptional Performance* for the prior review period receives the general wage adjustment awarded to other unrepresented County employees during the current fiscal year. An employee with a rating of *Does Not Meet Expectations* for the prior review period does not receive the general wage adjustment for the current fiscal year.

(B) ***Probationary employee.*** A probationary MLS or PLS employee is eligible for the general wage adjustment provided to permanent employees.

(2) Eligibility for performance-based pay.

(A) ***Career employee.*** An MLS or PLS employee with merit system status is eligible to receive performance-based pay. In order to receive a compensation adjustment, an employee must have a

performance evaluation on record for the previous fiscal year.

(B) ***Probationary employee.*** A probationary employee with less than 6 months of service is not eligible for performance-based pay.

(C) Eligibility based on performance rating.

(i) An employee with a performance rating of *Successful Performance*, *Highly Successful Performance*, or *Exceptional Performance* is eligible to receive performance-based pay as indicated in the table below. However, the salary of an employee who receives an addition to base salary award must not exceed the maximum of the assigned pay band.

Eligibility for Performance-Based Pay for MLS and PLS Employees*			
Overall performance rating:	**If employee's salary is below 90 percent of pay band**	**If employee's salary is at or above 90 percent of pay band**	**If employee's salary is at top of pay band**
Exceptional Performance	Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 6 percent of base salary.	Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 4 percent of base salary.	Employee is eligible for a lump-sum award not to exceed 4 percent of base salary.
Highly Successful Performance	Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 4 percent of base salary.	Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 3.5 percent of base salary.	Employee is eligible for a lump-sum award not to exceed 3.5 percent of base salary.
Successful Performance	Employee is eligible for an addition to base salary and lump-sum award. The total of the addition to base salary and lump-sum award must not exceed 3.5 percent of base salary.	Employee is eligible for a lump-sum award not to exceed 2 percent of base salary.	Employee is eligible for a lump-sum award not to exceed 2 percent of base salary.
Below Expectations	Employee is not eligible for performance-based pay.	Employee is not eligible for performance-based pay.	Employee is not eligible for performance-based pay.
Does Not Meet Expectations	Employee is not eligible for performance-based pay.	Employee is not eligible for performance-based pay.	Employee is not eligible for performance-based pay.
* An MLS or PLS employee receives the general wage adjustment granted to other non-bargaining unit employees unless the employee's overall performance rating was *Does Not Meet Expectations*.			

(ii) An MLS or PLS employee does not automatically receive a performance-based pay award of any particular type or amount.

(b) ***Performance-based pay for employees on the General salary schedule.*** An employee whose position is on the general salary schedule may be eligible to receive a lump-sum performance-based pay award as described in this subsection.

(1) Eligibility for performance-based pay.

(A) ***Career employee.*** An employee with merit system status in a position assigned to the general salary schedule is eligible to receive performance-based pay if the employee:

(i) has an annual performance rating on record for the previous rating period;

(ii) satisfies the criteria stated in subsection (2) below; and

(iii) is not eligible to receive a 20-year longevity/performance increment under Section 12-9.

(B) ***Probationary employee.*** A probationary employee is not eligible for performance-based pay.

(2) Eligibility based on performance rating.

(A) An employee with a performance rating of *Exceptional Performance* or *Highly Successful Performance* for a review period of not less than 6 months will receive a lump-sum award as indicated in the table below unless the employee receives a twenty-year longevity/performance increment under Section 12-9 for the same annual overall rating.

Eligibility for Performance-Based Pay for Employees on the General Salary Schedule	
Overall performance rating:	**Employee receives:**
Exceptional Performance	A lump-sum award of 2 percent of base salary
Highly Successful Performance	A lump-sum award of 1 percent of base salary
Successful Performance	No additional pay
Below Expectations	No additional pay
Does Not Meet Expectations	No additional pay

(B) An employee may receive only one lump-sum award in a fiscal year.

(c) Administration of performance-based pay.

(1) Role of department director.

(A) For MLS and PLS Employees.

(i) A department director must recommend the individual award amount for an MLS or PLS employee in the department and must recommend individual award amounts that are consistent with, and do not exceed, the award amounts in the table in Section 10-10(a)(2)(C)(i).

(ii) A department director must notify OHR prior to the first pay period of the fiscal year if a General wage adjustment will be denied to an MLS or PLS employee, based on the pending overall performance rating given the employee. The department director must give the employee written notice of the denial and include in the notice information about the employee's right to appeal the denial to the MSPB and the time limit for filing an appeal.

(B) ***For General salary schedule employees.*** The department director must submit to the OHR Director:

(i) for each employee who is eligible to receive a performance-based pay award, a copy of the employee's performance appraisal stating that the employee received an overall rating of *Exceptional Performance* or *Highly Successful Performance* and is eligible to receive performance-based pay under these Regulations; and

(ii) a statement that the department follows the provisions of Section 11 of these Regulations for all general salary schedule employees.

(C) ***For MLS, PLS and general salary schedule employees.*** A department director must not supplement the amount of a performance-based pay award with funds from the department budget.

(2) Approval of performance-based pay awards.

(A) For Executive branch MLS and PLS positions, the CAO must review each recommendation for an award and determine the amount of each performance-based pay award. The CAO has final discretionary authority to approve performance-based pay awards for MLS and PLS employees in the executive branch.

(B) For legislative branch positions included in MLS, the director or designee of each legislative branch office will have final discretionary authority to approve performance-based pay awards.

(C) For general salary schedule employees, the CAO must:

(i) determine annually for each upcoming budget year, based on budget limitations and the availability of funds, if performance-based pay awards must be reduced or eliminated; and

(ii) ensure that employees in positions on the general salary schedule who receive the same overall performance ratings during the fiscal year receive performance-based pay awards of the same percentage of base pay, regardless of their employing departments.

(D) The approval of performance-based pay awards is subject to availability of funds and appropriation by the County.

(3) Role of Office of Management and Budget (OMB) and Office of Human Resources (OHR).

(A) OMB must recommend funding for compensation increases granted under the performance-based pay system based on actual experience and estimates of the amount of required performance-based pay.

(B) In no case will employees' performance-based pay be limited by available appropriation. Any insufficiency of appropriation must be addressed through:

(i) an executive transfer;

(ii) a request for a supplemental appropriation; or

(iii) any other means used to ensure adequate funding for employees' performance-based pay.

(C) Performance-based pay must be allocated based on performance, not department size or other non-performance criteria. Funds dedicated to this purpose must be identified in the recommended operating budget in a non-departmental account for performance- based pay. OMB must not move the funds appropriated by the County Council for MLS and PLS performance-based pay out of the non- departmental account unless the spending conditions in the appropriation resolution for each fiscal year expressly authorize moving the funds to the

individual departments after that department's performance evaluations and pay awards decisions are completed.

(D) Benefit calculations based on regular salary will not include the value of lump-sum awards.

(E) OHR must provide:

(i) performance evaluation procedures for MLS and PLS employees and employees in positions on the general salary schedule;

(ii) training and technical support to departments implementing the MLS and PLS performance evaluation process and the performance evaluation process in Section 11 of these Regulations for employees in positions on the general salary schedule; and

(iii) technical guidance and support to implement performance-based pay.

(F) For MLS and PLS employees, OHR must report to the CAO and County Council annually the distribution by EEO categories of performance ratings and pay changes.

(4) Effective date of compensation awards.

(A) Performance-based pay for MLS and PLS employees must be awarded on a fiscal year basis and a compensation increase awarded to an MLS or PLS employee under the performance-based pay system must be effective at the beginning of the first full pay period after July 1st of each year.

(B) A performance-based pay award for an employee on the General salary schedule must be effective at the beginning of the first full pay period following the end of the review period for which the employees who received an overall performance rating of *Exceptional Performance* or *Highly Successful Performance*.

(5) Appeals of performance-based pay decisions.

(A) An MLS or PLS employee may not grieve or appeal a recommendation by a department director or a decision by the CAO or director of a legislative branch office to grant or not grant a performance-based pay award, the type of award granted, or the amount of award granted.

(B) An MLS or PLS employee who is denied a general wage

adjustment may file a grievance under Section 34 of these Regulations.

(C) An employee in a position on the general salary schedule may not grieve or appeal a decision by the CAO on the amount of the performance-based pay award assigned to a particular overall performance rating.

10-11. Stand-by pay.

(a) If a department director requires an employee to remain ready during off-duty hours to perform unscheduled and unanticipated work, the County must pay stand-by compensation to the employee at the higher of the following rates:

(1) 15 percent of an employee's regular hourly salary; or

(2) $4.00 per hour.

(b) A department director must pay an employee stand-by pay 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;

(2) the employee's next regularly scheduled work period; or

(3) the employee is contacted and relieved from stand-by status.

(c) An employee is eligible to receive stand-by pay compensation if the employee's supervisor notifies the employee to remain available for work during a specified period of time beyond the employee's assigned work hours.

(d) A department director must not pay stand-by compensation to an employee who is in call-back, overtime, or regular pay status.

(e) An MLS or PLS employee is not eligible to receive stand-by pay.

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

(1) the reason for the stand-by status;

(2) the location where the employee must report if called into work; and

(3) the approximate duration of the stand-by status.

(g) To cancel stand-by status, the supervisor or other designated department representative must contact the employee and tell the employee that the

employee's stand-by status has been cancelled.

(h) An employee in stand-by status must be ready to perform work if contacted and must provide the supervisor or other designated department representative with a telephone number or pager number through which the employee can be promptly contacted.

(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.

(j) An employee in stand-by status is responsible for:

(1) ensuring that the device by which the employee will be contacted is turned on and in good working order; and

(2) promptly providing the supervisor or other designated department representative with an alternative point of communication if the employee can not be contacted on the primary device.

10-12. On-call status. An employee who is on call:

(a) is not required to remain ready and available to perform work;

(b) is not required to remain at or close to a County work site;

(c) may use on-call time to engage in activities unrelated to the employee's job; and

(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 the overtime work.

10-13. Call-back pay.

(a) ***Minimum of 3 hours of call-back pay.*** If a department director requires an employee to return to work to perform an unanticipated and unscheduled work assignment, usually of an emergency nature, the County must pay the employee for a minimum of 3 hours on each occasion when the employee performs a call-back assignment, regardless of how long the call-back assignment lasts.

(b) ***Form of compensation for call-back assignment.*** The County should compensate an employee who performs a call-back work assignment with call-back pay and not with compensatory time, except when the department director determines that compensatory time must be used due to budget limitations.

(c) ***Call-back pay rate.*** The County must pay an employee for all time worked on a call-back assignment at a rate equal to time and a half the employee's regular hourly rate.

(d) ***MLS employees not eligible for call-back pay.*** An employee assigned to an MLS position is not eligible to earn call-back pay.

10-14. Compensation of employees during a declared general emergency.

(a) For a declared general emergency period, the County must:

(1) compensate an essential employee who worked during the general emergency period with the following:

(A) the employee's regular pay for the total number of hours worked during the general emergency period; plus

(B) general emergency pay at the regular hourly rate for the total number of hours worked during the general emergency period;

(2) compensate a non-essential employee whose supervisor requires such employee to work during the general emergency period with the following:

(A) the employee's regular pay for the hours worked during the general emergency period; plus

(B) general emergency pay at the regular hourly rate for the total number of hours such employee was required to work during the general emergency period;

(3) compensate an essential employee or a non-essential employee whose supervisor requires the employee to work during a general emergency period that occurs on the employee's scheduled day off with the following:

(A) the employee's regular pay at the overtime rate or compensatory time at the overtime rate, as outlined in Section 10-7(f), for the total number of hours worked during the general emergency period; plus

(B) general emergency pay or compensatory time at the regular hourly rate for the total number of hours worked during the general emergency period;

(4) compensate an essential employee, or a non-essential employee whose supervisor requires the employee to work, for work performed beyond the normal workday of at least 8 hours with:

(A) additional pay at the overtime rate or compensatory time at the overtime rate, as outlined in Section 10-7(f), for the total number of hours worked during the general emergency period that exceed the employee's normal workday; plus

(B) general emergency pay at the regular hourly rate for the hours worked during the general emergency period that exceed the normal workday;

(5) place a non-essential employee who is not required to work during the general emergency period on administrative leave for the period of the employee's work schedule that coincides with the general emergency period;

(6) compensate a non-essential employee who works during the general emergency period, even though the employee's supervisor did not require the employee to work, with regular pay for the hours worked that coincide with the general emergency period; and

(7) change an employee's paid leave to administrative leave if the employee had scheduled the use of paid leave, such as annual leave, sick leave, PTO, or compensatory time, during the general emergency period.

(b) An employee on a regular day off during a declared general emergency period is not eligible to receive administrative leave or an alternate day off.

(c) An essential or non-essential employee in an MLS position who works during a declared general emergency period is not eligible to earn general emergency pay.

10-15. Compensation of employees during a declared liberal leave period or local emergency.

(a) For a declared liberal leave period, the County must compensate employees who work with regular pay.

(b) During a local emergency at one or more work locations, the County must compensate an employee who works with regular pay.

10-16. Special within-grade pay increase.

(a) A department director may, with the written approval of the OHR Director, increase the base salary of a merit system employee to:

(1) keep an employee in an occupational class or series to which it is difficult to attract or retain employees; or

(2) resolve a pay inequity affecting an employee.

(b) A department director or the OHR Director must not approve a within-grade increase for a newly-hired employee or for an employee whose salary is at the maximum of the pay grade.

(c) The OHR director must review the following information to determine whether to approve a special within-grade pay increase:

(1) the salaries of other department employees in the same occupational class and in other occupational classes that may be affected by the increase; and

(2) if the within-grade pay increase is used to keep an employee in an occupational class to which it is difficult to attract new or retain existing employees by analyzing the following metrics:

(A) the turnover rate, number of vacant positions; and length of time it took to fill vacant positions in the occupational class;

(B) the number of qualified applicants in the local labor pool; and

(C) salaries paid to members of the occupational class by local employers in the private and public sectors.

(d) The director must certify to the OHR Director that:

(1) the employee's job performance is satisfactory; and

(2) the increase will not create pay inequities among other employees.

(e) The OHR Director may not approve a special within grade pay increase that is greater than 10 percent except in extraordinary cases.

(f) An employee who receives a special within-grade pay increase may also receive a service increment and a general wage adjustment if the employee is eligible under these Regulations.

10-17. Recruitment and retention incentives.

(a) A department director, with the written approval of the OHR Director, may give a recruitment or retention incentive in the form of one lump-sum payment to:

(1) a candidate for a County position in an occupational class for which it is difficult to recruit qualified applicants due to labor market conditions; or

(2) an employee in a position in an occupational class for which it is difficult to retain experienced employees.

(b) A department director may give a recruitment or retention incentive to an applicant or employee only when the OHR Director has determined that the applicable occupational class is eligible for such incentive.

(c) Before recommending a retention incentive, a department director must consider the following:

(1) whether one employee, some employees, or all employees in the occupational class should be given the retention incentive;

(2) the effect on employees who do not receive the incentive if such incentive is not given to each employee in the occupational class; and

(3) whether the employee should be given a permanent pay increase through a special within-grade pay increase under Section 10-14 or a temporary pay increase under this subsection.

(d) The OHR Director must determine which occupational classes are eligible for the incentive by reviewing the following indicators:

(1) the turnover rate, number of vacant positions; and length of time it took to fill vacant positions in the occupational class;

(2) the number of qualified applicants in the local labor pool; and

(3) the salaries paid to individuals in the occupational class employed by local employers in the private and public sectiors.

(e) A department director, with the OHR Director's approval:

(1) may award a recruitment or retention incentive of up to 10 percent of the employee's base salary, if the applicant or employee agrees to the terms described in subsection (f) below;

(2) may pay the incentive in one or more lump-sum payments over a 2-year period;

(3) must pay the incentive as lump sum payments and not as an addition to base salary;

(4) must not pay an incentive to an applicant until after the applicant accepts and actually begins County employment; and

(5) must not pay more than 10 percent of the employee's base salary in incentive pay over a 5-year period, except under extraordinary circumstances.

(f) Under extraordinary circumstances, the CAO may approve more than 10 percent of the employee's base salary in incentive pay over a 5-year period.

(g) An applicant or employee who receives a recruitment or retention incentive must agree to remain a County employee for at least 2 years after receiving the first incentive payment and must agree to repay a prorated amount of the total incentive if the employee separates from the County before the end of the 2-year period. The employee will not have to repay the recruitment or retention incentive if the employee dies or the County terminates the individual's employment. The OHR Director may waive repayment in other extenuating circumstances.

10-18. Court time compensation. The County must compensate an employee assigned to a facility that is open 24-hours a day 7 days per week as follows, if the employee is required by the employer to attend court or a Motor Vehicle Administration (MVA) hearing on the employee's day off or during times that are not the employee's regularly scheduled work hours:

(a) the employee must be compensated for at least 3 hours at 1½ times the employee's regular hourly rate, regardless of the actual time spent in court or an MVA hearing;

(b) if the employee works longer than 3 hours, the employee must be compensated for the total number of hours spent in court or in an MVA hearing at a rate equal to one and a half times the employee's regular hourly rate; and

(c) if the employee is required to appear in court 2 or more times within the initial 3-hour period, then the employee is not eligible to receive additional court time compensation for a second or subsequent appearance unless such appearances occurred 3 hours after the time of the employee's initial court appearance.

10-19. Automotive Service Excellence (ASE) incentive pay.

(a) ***Purpose of ASE incentive pay program.*** The purpose of the ASE incentive pay program is to encourage all eligible employees in the Division of Fleet Management Services, Department of General Services, and the Fire and Rescue Service to increase their knowledge and application of the latest technology in vehicle maintenance by compensating such employees for obtaining ASE certifications, recertifications, and master certifications.

(b) ***Eligibility for ASE incentive pay.*** An employee who works for the Division of Fleet Management Services, Department of General Services, or the Fire and Rescue Service is eligible to receive the ASE incentive pay if:

(1) the employee takes and passes an ASE administered examination and obtains either a certification or recertification that is relevant to the employee's job duties or the employee obtains a master certification by obtaining the required number of certifications;

(2) the employee:

(A) is directly responsible for maintaining or supervising employees who maintain County vehicles and equipment;

(B) trains or supports employees who maintain County vehicles and equipment;

(C) inspects County vehicles and equipment; or

(D) provides technical expertise, quality assurance, or warranty administration for County vehicles and equipment; and

(3) the employee's job performance and job-related conduct are satisfactory.

(c) ***Amount of ASE certification pay.*** The County may compensate an eligible employee with ASE certification pay according to the following table:

ASE Certification	Amount of Incentive	Limitation on incentive
Certification or recertification for which employee must take valid examination and receive a passing score	$100 per year for each year that certification is valid	Employee may receive incentive for no more than 20 certifications per year
Master certification for obtaining required number of certifications (no additional examination is required)	$1,000 per year for each year that master certification is valid	Employee may receive incentive for no more than 2 master certifications per year
Total certifications or recertifications and master certifications	---	Employee may receive no more than $4,000 annually in ASE certification pay

10-20. Rewarding Excellence Bonus Incentive Awards Program/Gain Sharing Program. The CAO should establish a gain sharing program to reward employees for making suggestions that improve efficiency, increase productivity, reduce costs, or streamline operations. Under this program, if the employees' suggestion is adopted, the employees would receive a portion of the cost savings. An employee cannot grieve or appeal any decision by the Review Panel or the Chief Administrative Officer relating to the Rewarding Excellence Bonus Incentive Awards Program.

10-21. Line of Duty Funeral Expenses. In the event an employee's death is caused by or directly related to performing the employee's job duties, then the County will pay up to $10,000 to cover the employee's funeral expenses.

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) three weeks if the employee's probationary period lasted more than 12 months;

(B) two weeks if the employee's probationary period lasted for at least nine months;

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

(D) notwithstanding the foregoing provisions, no severance pay under these Regulations in the following instances:

(i) the employee's probationary period lasted for less than three months; or

(ii) the department director terminated the employee for materially falsifying information on his/her employment application, a document associated with the employment application or for committing 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.

(2) An employee who is eligible to receive severance pay under Section (a)(1)(A), (B) or (C) above is not eligible to receive severance pay under the Retirement Savings Plan or the Guaranteed Retirement Income Plan.

(b) Severance pay for Merit System Employees in the Retirement Savings Plan or Guaranteed Retirement Income Plan.

(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 or the Guaranteed Retirement Income Plan:

Severance Pay for Merit System Employees in the RSP or GRIP Retirement Savings Plans	
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) was not terminated during the probationary period;

(B) lost the employee's job through affirmative administrative action of the County;

(C) was not dismissed for cause; and

(D) 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.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to compensation	
Firefighter/Rescuer	13, Rate/Type of Compensation 14, Overtime 15, Call-back Pay 17, Special Duty Differentials 18, Snow Emergency/General Emergency Pay Appendix I, II, III, and IV, Salary Schedules Appendix V, Agreements for Candidates for Paramedic Positions Appendix VI, MOU on Compensation for Working Out of Class	19, Wages 21, Travel 22, Prevailing Rights 48, Job Sharing Program 49, Compensatory Time

OPT/SLT	5, Wages, Salary and Employee Compensation 7, Accelerated Within Grade Advancement 9, Working Conditions 31, Maintenance of Standards 32, Tools and Uniforms 41, Retirement 44, Define Contribution Plan 50, Legal Defense and Representation Appendix I, OPT Unit, Sheriffs Appendix II, OPT Unit, Dept. of Health and Human Services Appendix III, SLT Unit, Dept. of Police Crossing Guards Appendix VI, OPT/SLT Units, DPW&T Appendix VII A, B, and C, Salary Schedules
Police	5, Tech Pay 6, Clothing Allowance 10, Court Time 15, Hours and Working Conditions 21, Compensatory Time 23, Maintenance of Standards/ Retention of Benefits and Conditions 29, Physical Fitness Awards 30, Uniforms and Equipment 33, Labor-Management Relations Committee 36, Wages 41, Shift Differential 55, Job Sharing Program

SECTION 11. PERFORMANCE PLANNING AND EVALUATION

(As amended January 18, 2005, February 14, 2006, December 11, 2007, October 21, 2008, June 30, 2015 and July 17, 2018)

11-1. Definitions.

(a) ***Coaching:*** The ongoing process used by a supervisor to provide guidance and direction to the employee to maximize the employee's knowledge, skills, and abilities and enhance the employee's career development.

(b) ***Competency:*** A performance success criteria listing a cluster of the knowledge, skills, abilities, and job-related behaviors that collectively contribute to successful performance of one or more job functions. A competency includes a definition and collection of observable behavior statements or behavioral indicators grouped together under a central theme, and represents successful performance for that theme.

(c) ***Conduct:*** For this section only, "conduct" is defined as job-related behaviors that are necessary for maintaining an orderly, safe, and productive work environment. This may include behaviors such as attentiveness to work during duty hours, safe and considerate work habits, compliance with procedures and supervisory instructions, and ethical practices. Repeated tardiness or unscheduled absences, frequent personal calls or conversations during work hours, rude or abusive treatment of others, inappropriate language or behavior, and compromising the safety of employees or others are examples of inappropriate conduct.

(d) ***Interim evaluation:*** A performance evaluation conducted by a supervisor at a time between annual performance evaluations to:

(1) monitor a probationary employee; or

(2) address a situation where an employee's current job performance is not at an acceptable level of competence.

(e) ***Multi-source feedback:*** Information from more than one source about the performance of an individual or team. It may include self-appraisal or input from a peer, team member, supervisor, individual supervised, or other person having reliable knowledge of the employee's or team's work product or service.

(f) ***Performance objectives and success criteria:*** The criteria by which an employee or team is rated. A performance objective or success criteria is a written description of the quality, quantity, or characteristics of the work performance or results that the employee or team is expected to accomplish.

(g) ***Performance management:*** The systematic process by which an organization

involves its employees in improving the organization's effectiveness and accomplishing the organization's mission and goals. It covers the entire process of establishing objectives, monitoring progress, and providing employees and teams with feedback and ratings on the level of performance achieved.

(h) ***Performance plan:*** The document that records performance objectives and success criteria and is the basis for assessment of the employee's job performance.

(i) ***Performance planning and evaluation:*** The total process in which a supervisor develops performance objectives and success criteria; observes, reviews and appraises individual work performance; recognizes exceptional performance; and identifies areas for improvement.

(j) ***Progress discussion:*** A supervisor's verbal assessment of an employee's performance in relation to the objectives in the performance plan.

(k) ***Reviewing official:*** The individual who must review the evaluation and ensure that appropriate performance planning and evaluation procedures were followed by the employee's immediate supervisor. A reviewing official should help to resolve disagreements between the supervisor and employee on the plan or evaluation and ensure that:

(1) the plan and evaluation are consistent with this regulation; and

(2) the overall rating is consistent with the individual elements of the plan.

(l) ***Team:*** A directed or self-directed work group with one or more formally assigned and shared work objectives for which all members of the group are responsible.

(m) ***Team member or peer:*** An individual who works with an employee or group of employees in a non-supervisory capacity and who has direct or reliable knowledge of the work performed by the employee or team.

(n) ***Team rating:*** A rating given to all members of a team on one or more formally assigned and shared work objectives for which all members of the group are held responsible.

11-2. Objectives of performance planning and evaluation. The objectives of performance planning and evaluation are to:

(a) improve the management of human resources by maximizing the use of an employee's capabilities;

(b) foster an effective working relationship between a supervisor and an employee;

(c) inform an employee about performance objectives and success criteria for the job;

(d) provide an assessment by the employee's supervisor as to whether the employee is meeting those objectives;

(e) develop an ongoing record of an employee's work performance to support personnel decisions; and

(f) identify and meet an employee's training and career development needs.

11-3. Responsibility for performance planning and evaluation.

(a) The CAO must:

(1) establish mandatory performance objectives for the MLS and PLS; and

(2) establish and administer a performance planning and evaluation process for other employees.

(b) Each department director must:

(1) plan for and ensure that the performance of each full-time, part-time, term, or probationary employee who works in the department is evaluated at least annually;

(2) ensure that each supervisor in the department is evaluated on the supervisor's:

(A) administration of the performance evaluation process; and

(B) compliance with anti-discrimination and equal employment opportunity requirements.

(3) ensure that the department's internal performance management directive or program is consistent with these Regulations and the appropriate collective bargaining agreement;

(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 or electronic acknowledgements of supervisor and employee, as applicable, to establish plan;

(K) signatures or electronic date stamps to document progress discussion, as applicable;

(L) signatures or electronic date stamps by supervisor and employee to finalize performance appraisal;

(M) signature or electronic date stamps of the reviewing official

(N) list of performance objectives, ratings, and narrative comments;

(O) career development goal;

(P) overall rating;

(Q) employee comments, as applicable; and

(5) ensure that a copy of each completed performance evaluation for a department employee is sent to the OHR Director.

(c) A department director may use multi-source feedback as part of the department's performance evaluation program with prior CAO approval.

(d) An immediate supervisor must:

(1) initiate the annual performance planning and evaluation process;

(2) give each employee and, if appropriate, each team an opportunity to review and contribute to the plan;

(3) determine the content of the plan and amend the plan as appropriate;

(4) sign or electronically acknowledge the plan and evaluation to indicate approval;

(5) take appropriate action to improve the employee's and, if appropriate, the team's performance, such as additional coaching, counseling, or establishing a plan to improve the employee's or team's work;

(6) give periodic feedback to the employee or team on performance and conduct progress discussions with the employee or team;

(7) allow the reviewing official to review the written performance evaluation before giving the evaluation to the employee or team;

(8) give each employee a written evaluation of the employee's individual performance at least annually;

(9) if appropriate, give a written performance evaluation of a team to each team member at least annually; and

(10) give the employee an opportunity to review, discuss, comment on, and sign or electronically acknowledge the evaluation.

11-4. Performance management. Performance management is the responsibility of the supervisor and includes:

(a) developing the performance objectives for an employee or team at the beginning of a review period;

(b) establishing and including on the *Performance Planning and Evaluation Form* (Appendix G) at least one career development goal for the employee, if appropriate;

(c) ongoing monitoring of the employee's or team's performance with periodic verbal or written feedback, coaching, training, or other action to enhance performance;

(d) conducting at least one progress discussion with the employee, as described in Section 11-7(b);

(e) preparing an interim evaluation as described in Section 11-7(c) if required for a probationary employee or for an employee with performance problems;

(f) developing plans to improve employee performance as needed; and

(g) evaluating an employee or team on performance of the elements of the performance plan and awarding an overall rating.

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.

(b) Annual review period.

(1) The period covered by the performance plan must be 12 months or less.

(2) The review period may be linked to an employee's increment date, the anniversary of the employee's hire date if the employee does not receive increments, or the fiscal year.

(3) The annual review period for an MLS or PLS employee begins July 1 and ends June 30.

(c) Substance of a performance plan.

(1) Each employee's performance plan must state the performance objectives and success criteria for the employee or team during the review period. Performance objectives and success criteria must describe, at a minimum, the performance level of "Successful Performance" in terms that allow reasonably objective assessment.

(2) Performance objectives and success criteria may be stated as a goal, outcome or result expected, numerical criteria, competency to be demonstrated, task to be accomplished or performed, acceptable conduct, or other expectation appropriate to the job classification and position.

(3) The performance plan for a supervisor must include an objective that the supervisor must:

(A) conduct performance planning and evaluation for subordinate employees; and

(B) comply with anti-discrimination and equal employment opportunity requirements.

(4) A performance plan must be consistent with department work programs and class specifications.

(5) A performance objective or success criteria may be developed for an individual, a team, or both.

(6) If feedback from team members, employees supervised, or peers is used as part of an employee's performance evaluation, this must be stated in the performance plan at the start of the evaluation period.

(7) A supervisor must establish at least one career development goal for a subordinate employee.

(8) An employee in a Management Leadership Service position and the employee's supervisor together must develop at least one career development goal for the fiscal year.

(9) If an employee receives a multilingual pay differential, the employee's supervisor must include a performance objective that the employee will provide multilingual services as required.

11-6. Performance planning process.

(a) Establishing the plan.

(1) A supervisor and employee formally establish the performance plan by signing it or by electronic acknowledgement. The employee's signature or electronic acknowledgement indicates only that the employee has seen the plan, and does not indicate that the employee agrees with the plan.

(2) If more than one individual directly supervises an employee, each should participate fully in the performance planning responsibilities. The supervisors should share this responsibility in a manner consistent with their roles in directing the employee's work.

(3) A supervisor must give an employee a copy of the employee's performance plan within 30 calendar days after the plan is established.

(b) Employee refusal to sign the plan.

(1) If an employee refuses to sign or date stamp a performance plan, the supervisor must refer the plan to the reviewing official.

(2) The reviewing official must review the plan and consult with the employee and the supervisor to determine why the employee refused to sign the plan.

(3) If the employee still refuses to sign the plan after this consultation, the supervisor must note on the plan that the employee saw the plan but refused to sign it.

(c) Revision of the performance plan.

(1) A supervisor may revise the performance plan, but must give prompt notice to the employee that the plan was changed.

(2) An employee may request that the supervisor change the plan, but the supervisor does not have to change the plan unless the supervisor agrees that the plan should be changed as the employee requested.

(3) A supervisor must give an employee a copy of the employee's performance plan within 30 calendar days after the plan is revised.

11-7. Performance evaluation.

(a) ***Supervisor's responsibilities.*** A supervisor should frequently track an employee's performance, and give timely and specific feedback, coaching, and counseling as needed throughout the review period.

(b) ***Progress discussion.*** After approximately half of the review period has passed, a supervisor should conduct a comprehensive progress discussion with the employee that covers all elements of the performance plan. The supervisor and employee should sign and date or electronically date stamp the evaluation form to document a comprehensive progress discussion. The supervisor must document the substance of the progress discussion if the discussion resulted in a change to the performance plan or if specific performance issues were brought to the employee's attention.

(c) ***Interim evaluation.*** A supervisor may give one or more interim evaluations to an employee before the supervisor prepares the annual performance evaluation. It is appropriate for a supervisor to prepare an interim evaluation for a probationary employee or for an employee with performance problems.

(d) ***Multiple supervisors.*** If more than one individual directly supervises an employee, each should participate in the performance evaluation. The supervisors should share this responsibility in a manner consistent with their roles in directing the employee's work.

(e) ***Changed supervisors.*** If an employee's supervisor changes during the review period but the employee is still performing the same duties and responsibilities covered in the performance plan, the prior supervisor may participate in the performance evaluation. If the employee changes jobs and assumes different duties and responsibilities, the prior supervisor should evaluate the employee's performance under the prior plan for the period that the employee was under the plan.

(f) Reviewing official.

(1) An employee's second level supervisor is the reviewing official and must review the employee's performance evaluation.

(2) The CAO or, for legislative branch employees, a legislative branch supervisor designated by the County Council must review a performance evaluation conducted by a department director if the employee or the department director requests it.

(3) The reviewing official may not change an evaluation but may, under exceptional circumstances, withdraw authority to evaluate the employee's performance from the immediate supervisor and reassign the responsibility for conducting a performance evaluation for the employee. In that case, the reviewing official must notify the department director of the action taken.

(g) Frequency and timing of performance evaluation.

(1) A supervisor must give each subordinate employee at least one written performance evaluation in every 12-month period.

(2) A supervisor must conduct the annual evaluation within 60 days after the review period ends.

(3) An annual or interim evaluation may be conducted for an employee who has been working under a performance plan for a reasonable period of time.

(4) A supervisor may conduct an interim evaluation between annual evaluations.

(5) If a supervisor conducts an interim evaluation, the supervisor must also conduct an annual evaluation for the employee at the appropriate time.

(h) Substance of a performance evaluation.

(1) A supervisor must record in the written performance evaluation the performance rating of the employee in relation to the performance objectives and success criteria established in the performance plan.

(2) If a performance objective was assigned but not made a part of the employee's established performance plan, the supervisor should assess the employee's accomplishment of the performance objective as part of the

performance evaluation. A supervisor must document that the employee was given adequate notice of the objective or success criteria.

(3) A supervisor must include in the performance evaluation written comments about the employee's actual performance.

(4) A supervisor may consider feedback from the employee's team members or peers as detailed in the performance plan.

(5) If performance objectives are jointly shared by members of a team, the supervisor may give each member sharing the objective a team rating. A supervisor must apply competency or job-related behavior ratings only to an individual employee.

(6) Accomplishment or progress toward a career development goal must be noted by the supervisor on the *Performance Planning and Evaluation Form*.

(i) ***Overall rating.*** The supervisor must give an employee an overall rating using one of the following 5 rating categories as indicated below:

(1) Exceptional Performance.

(A) This rating indicates that the employee:

(i) consistently achieved additional, significant results beyond established targets;

(ii) achieved a higher level of quality than required;

(iii) was a role model in the demonstration of competencies; and

(iv) was rated "Exceptional Performance" on the majority of performance objectives and success criteria.

(B) Performance at this level is rare. A supervisor must use this rating only if the employee performed at a higher level relative to most other employees performing comparable work.

(C) A supervisor must not give an overall rating of "Exceptional Performance" to an employee who received a rating of "Does Not Meet Expectations" on any single objective.

(2) Highly Successful Performance.

(A) This overall rating category indicates that the employee:

(i) achieved all critical results at or beyond established targets;

(ii) achieved a high level of quality;

(iii) consistently and effectively demonstrated the competencies; and

(iv) was rated as having "Highly Successful Performance" on the majority of performance objectives and success criteria.

(B) A supervisor must not give an overall rating of "Highly Successful" to an employee who received a rating of "Does Not Meet Expectations" on any single objective.

(3) Successful Performance.

(A) This overall rating category indicates that the employee:

(i) met the majority of performance success criteria and objectives;

(ii) achieved a majority of results and demonstrated most competencies successfully; and

(iii) may occasionally exceed expectations.

(B) A supervisor must give an overall rating of "Successful Performance" to an employee with good, solid performance. This rating is appropriate for most employees.

(4) Below Expectations

(A) This overall rating category indicates that the employee has met some job requirements but needs improvement in other job requirements listed in the performance plan.

(B) The performance of an employee who receives this rating is below the level of "Successful Performance: but above that of "Does Not Meet Expectations."

(C) An employee who receives a rating of "Below Expectations" may request that the supervisor provide the employee with a written work improvement plan.

(5) ***Does Not Meet Expectations*.**

(A) This overall rating category indicates that the employee has not met the basic requirements of the job as evidenced by:

(i) receiving a rating of "Does Not Meet Expectations" on a majority of the performance objectives and success criteria listed in the performance plan; or

(ii) failing to produce one or more key results, demonstrating competencies infrequently or ineffectively, or both

(B) An employee who receives this rating has failed to perform the assigned duties on an on-going basis in an acceptable and competent manner.

(C) If the supervisor gives an employee this rating, the supervisor must counsel the employee on what corrective action to take and allow the employee adequate time to improve or correct performance.

(j) ***Performance evaluation procedures.***

(1) Before conducting a performance evaluation, a supervisor must give an employee a reasonable time to demonstrate performance under a performance plan.

(2) An immediate supervisor must allow an employee to sign or electronically date stamp and comment on the evaluation.

(3) The employee's signature or electronic date stamp indicates only that the employee has seen the evaluation and does not indicate that the employee agrees with the evaluation.

(4) If an employee refuses to sign or electronically date stamp a performance evaluation, the supervisor must make a notation on the evaluation to indicate that the employee refused to sign the evaluation.

(5) (A) An employee may request that the department director, or other appropriate management official who was not directly involved in the rating, reconsider the evaluation given by the employee's supervisor.

(B) The employee must submit the request in writing to the department director or other appropriate management official within 15

calendar days after the employee receives the completed evaluation form signed or electronically date stamped by the reviewing official. The employee must indicate the specific areas of the performance evaluation that the employee does not agree with.

(C) The decision of the department head or other appropriate management official regarding the reconsideration of an evaluation is final.

(k) Retention of performance evaluations.

(1) Performance evaluations must be kept in an employee's official personnel file for 5 years.

(2) Performance evaluations and supporting documentation may be kept in a department's operating file for 5 years.

(3) After an employee is transferred to a new department, the former department should give the new department copies of the employee's performance evaluations for the last 2 years.

11-8. Use of performance evaluation rating. A supervisor should consider an employee's performance evaluation rating when making a personnel decision involving the employee on merit system status, selection in a competitive process, compensation, performance awards, reduction-in-force, work assignment, training, termination, demotion, or other adverse actions to resolve performance problems.

11-9. Performance-based pay. An employee whose position is on the general salary schedule and who receives an annual overall performance rating of *Exceptional Performance* or *Highly Successful Performance* may receive performance-based pay under Section 10-10 of these Regulations.

11-10. Appeals of performance ratings.

(a) An employee may not grieve or appeal the employee's performance plan.

(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.

(c) The CAO may dismiss a grievance if the supervisor's failure to follow the established procedures did not affect the employee's overall performance rating.

(d) The CAO's decision on a grievance over an employee's performance rating may

not be appealed to the MSPB.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to performance planning and evaluation
Firefighter/Rescuer	5, Management Rights
OPT/SLT	2, Management Rights 6, Service Increments 24, Demotion 26, Termination 40, Performance Evaluations Appendix IX, Performance Planning and Evaluation for Bargaining Unit Members
Police	11, Chronic Incapacity 53, Performance Evaluation 54, Demotion

SECTION 12. SERVICE INCREMENTS

(As amended January 18, 2005, February 14, 2006, December 11, 2007, October 21, 2008, July 12, 2011, June 30, 2015 and July 17, 2018)

12-1. Definitions.

(a) ***Service increment:*** An increase in base salary granted on an annual basis to an eligible employee whose performance is at least satisfactory.

(b) ***Service increment date:*** An employee's date of employment, unless the increment date has been reassigned to a different date.

12-2. Eligibility for service increment.

(a) An employee with merit system status is eligible to receive a service increment if:

(1) the employee's performance rating during the rating period is higher than the "Does Not Meet Expectations" performance rating; and

(2) the employee's salary is below the maximum salary in the employee's pay grade.

(b) An employee without merit system status is eligible to receive a service increment if the employee is:

(1) a probationary police officer or deputy sheriff whose department director has approved a service increment under Section 12-5(e); or

(2) a temporary employee whose department director has approved a service increment under Section 12-5(f).

(c) Any employee who is eligible to receive a service increment and whose position is reclassified or reallocated to a higher pay grade is still eligible to receive a service increment on the effective date of the position's reclassification or reallocation. In this case, the OHR Director must change the employee's service increment date to the effective date of the reclassification or reallocation of the employee's position.

12-3. Effective date of a service increment. A service increment must be effective on the first day of the pay period in which the employee's increment date falls.

12-4. Amount of service increment.

(a) The CAO must establish the percentage or amount of the service increment pay increase.

12-5. Policy on service increments.

(a) A department director must approve a service increment for an eligible employee, unless the department director notifies the OHR Director that the employee should not receive the service increment at least 15 calendar days before the beginning of the pay period that contains the employee's assigned increment date**.**

(b) A department director must notify an employee when **a** service increment is denied.

(c) The OHR Director must take appropriate action to ensure that an eligible employee receives a service increment unless a department director notifies the OHR Director that the employee should be denied the service increment.

(d) An MLS or PLS employee is not eligible to receive a service increment, but is eligible to receive a performance-based pay increase if recommended by an Executive Branch department director and the CAO approves a performance-based pay increase for an eligible MLS or PLS Executive Branch employee and if a Legislative Branch department director approves a performance-based pay increase for an eligible MLS Legislative Branch employee.

(e) The OHR Director must give a service increment to a probationary police officer or deputy sheriff if recommended by the department director.

(f) The OHR Director must give a service increment to a temporary employee if recommended by the department director and is determined to be in the County's best interest.

(g) The OHR Director must give service credit toward a service increment to a former temporary employee who was appointed to a full-time or part-time position without a break in service. The increment date must be the employee's next anniversary date with the County.

12-6. Reassignment of a service increment date.

(a) A department director must assign an employee a new service increment date if the employee's:

(1) probationary period for merit status is extended;

(2) service increment is delayed;

(3) service increment date occurs during a period of within-grade salary

reduction described in subsection 33-3(d) or during a suspension described in subsection 33-3(e);

(4) leave without pay (LWOP) exceeds 10 consecutive workdays, excluding LWOP for FMLA, parental leave, military service, professional improvement or used under Section 23-7(a) and (c) by an employee who is a member of the Maryland General Assembly; or

(5) position is reclassified or reallocated to a higher pay grade.

(b) If the employee's probationary period for merit status is extended, the new service increment date is the date when the employee's merit system status is granted.

(c) If a service increment is delayed, the employee's new service increment date is the date when the delayed service increment is finally granted.

(d) If the employee's position is reclassified or reallocated to a higher pay grade, the employee's new service increment date is the effective date of the reclassification or reallocation.

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

(1) to prevent or resolve pay inequities;

(2) to serve the County's best interest **[**of the County**]**, provided that the reassignment **[**action**]** will not adversely affect the employee; or

(3) in conjunction with a disciplinary action.

(f) An employee's reassigned service increment date becomes effective only with the OHR Director's approval.

(g) The OHR Director must assign a new service increment date to an employee in an MLS or PLS position who is promoted, demoted, or reassigned to a non-MLS or non-PLS position.

(1) If the County employee was in a non-MLS or non-PLS position and had a service increment date before taking the MLS or PLS position, the OHR Director must assign as the new service increment date the last service increment date that the employee had before becoming an MLS or PLS employee.

(2) If the employee was not in a non-MLS or non-PLS position before taking the MLS or PLS position, the OHR Director must assign a new service increment date as the date when the employee was first employed in a County merit system position.

12-7. Delay of a service increment.

(a) A supervisor should promptly provide to the department director a written recommendation to delay an employee's service increment for any employee who has a less than satisfactory annual or interim performance rating or unsatisfactory performance, attendance, or conduct.

(b) To delay an eligible employee's service increment, a department director must:

(1) provide the OHR director written documentation of the decision and the reason for the delay **[**to the OHR Director**]** at least 15 calendar days before the beginning of the pay period that contains the employee's assigned increment date in order to obtain the OHR Director's approval for the delay;

(2) give written notice to the employee before the beginning of the pay period that contains the employee's increment date;

(3) include in the written notice to the employee:

(A) the reasons for the delay;

(B) the next date on which the employee's performance will be reviewed and the service increment may be granted if the employee's performance or attendance has improved; and

(C) whether the employee may file a grievance over the decision and, if so, the deadline for filing such a grievance.

(c) A department director may delay an employee's service increment if the employee's performance was unsatisfactory during the rating period or if the employee was absent for more than 50 percent of the work year, excluding periods of compensatory time, annual leave, parental leave, disability leave, military leave, or LWOP for political purposes under Section 23-7(c).

12-8. Twenty-year longevity increment for fire, sheriff or correction management.

(a) A department director must award a twenty-year longevity increment to an employee who has:

(1) completed twenty years of active service (excluding temporary service); and

(2) is in a position on the fire, sheriff, and correction management salary schedules.

(b) The employee's annual base salary does not have to be at the maximum of the respective pay range to receive the twenty-year longevity increment.

(c) The CAO must determine the amount of the longevity increment.

12-9. Twenty-year longevity/performance increment.

(a) A 20-year longevity/performance increment is a one-time increase to an employee's base salary.

(b) A department director must award a one-time 20-year longevity/performance increment of 2 percent of base salary to an employee in a position on the General salary schedule if the employee has:

(1) a base salary equal to the maximum salary of the pay range; and

(2) has 20 years of actual County service; and

(3) received an annual overall performance rating of *Highly Successful Performance* or *Exceptional Performance* for the 2 most recent consecutive years.

(c) An employee is eligible to receive only one 20-year longevity/performance increment.

(d) Awarding longevity/performance increments to promoted employees.

(1) When an employee is promoted from a non-bargaining unit position to another non-bargaining unit position:

(A) the 20-year longevity increment is added to the employee's prior base salary before the promotional increase is added; or,

(B) if (A) does not apply, then the employee may be eligible to receive a 2% longevity/performance increment as outlined in Section 12-9 (b); however,

(C) whether (A) or (B) applies, the employee's new base salary cannot exceed the maximum salary of the new pay range.

(2) When an employee receives a promotion from a non-bargaining unit position to a bargaining unit position:

(A) the 20-year longevity/performance increment is added to the employee's base salary before the promotional increase is added;

(B) the new base salary cannot exceed the maximum salary of the new pay range; however,

(C) if the employee's new base salary is equal to the maximum salary of the new pay range, then the employee may be eligible to receive a bargaining unit longevity increment as stipulated in the respective collective bargaining agreement.

(3) When an employee receives a promotion from a bargaining unit position to a non-bargaining unit position:

(A) the 20-year longevity increment is added to the employee's base salary before the promotional increase is added;

(B) the employee is eligible to receive a 2% longevity/performance increment under Section 12-9 (b); and,

(C) the employee's new base salary cannot exceed the maximum salary of the new pay range.

(e) An employee who has a 20 year longevity/performance increment and who:

(1) transfers from a non-bargaining unit position to another non-bargaining unit position, the longevity/performance increment remains the same;

(2) transfers from a non-bargaining unit position to a bargaining unit position is eligible to receive a bargaining unit 20-year longevity increment as provided in the respective collective bargaining agreement; or,

(3) transfers from a bargaining unit position to a non-bargaining unit position:

(A) the longevity/performance increment is added to the employee's base salary except when the employee's base salary exceeds the maximum salary of the non-bargaining unit pay range; then,

(B) the employee's base salary must be reduced to the maximum salary of the pay range.

(f) A department director must not give an employee a lump-sum award and a 20-year longevity/performance increment for the same annual overall performance rating.

(g) The effective date of all longevity/performance increments must be the beginning of the first pay period after the review period ends.

12-10. Appeal of a reassignment of service increment date or of a delay of service increment pay increase. An employee with merit system status may appeal a department director's

decision to reassign an employee's service increment date or to delay an employee's service increment by filing a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to service increments
Firefighter/Rescuer	12, Leave Without Pay 48, Job Sharing Program
OPT/SLT	5, Wages, Salary and Employee Compensation 9, Working Conditions 6, Service Increments 16, Leave Without Pay 7, Accelerated Within Grade Advancement 18, Parental Leave Appendix IX, Performance Planning and Evaluation for Bargaining Unit Members
Police	11, Chronic Incapacity 36, Wages 16, Parental Leave 50, Reduction-in-Force and Furlough 20, Leave Without Pay 55, Job Sharing Program 28, Service Increments

SECTION 13. PERFORMANCE AWARDS

(As amended October 21, 2008, July 23, 2013, June 30, 2015 and July 17, 2018.)

13-1. Policy on employee performance awards.

(a) The CAO may grant an award to a merit system employee for noteworthy or extraordinary performance under the criteria outlined in this section.

(b) The OHR Director must administer monetary and non-monetary employee awards programs.

(c) A department director must administer approved awards programs for a department under these Regulations.

(d) An MLS or PLS employee is not eligible for a monetary award under this section except with approval of the CAO or as outlined in Section 13-2(d).

13-2. Monetary awards.

(a) Department Employee of the Year Award.

(1) ***Award type.*** The Department Employee of the Year Award is a lump sum cash award.

(2) ***Eligibility.*** Merit system employees are eligible.

(3) ***Award criteria.*** Criteria include:

(A) exceptional or noteworthy performance for an extended period of time;

(B) completion of a special project requiring unusual skill or effort; or

(C) similar or comparable achievement.

(4) ***Limitations.*** A department director must not award more than $500 per employee in a fiscal year.

(5) ***Nomination procedure.*** A division chief must make a written recommendation to the department director documenting the reason for the award.

(b) Department Recognition Award.

(1) ***Award type.*** The Department Recognition Award is a:

(A) lump sum cash award; or

(B) non-cash award such as a restaurant gift certificate or theater tickets.

(2) ***Eligibility.*** Merit system employees are eligible.

(3) ***Award criteria.*** Criteria include:

(A) noteworthy performance;

(B) special effort that results in a significant product, action or efficiency improvement; or

(C) any employee action, activity, or product that is valued and appreciated by the department.

(4) Limitations.

(A) A department director must not grant more than $200 to an employee in a fiscal year.

(B) A department director must not grant non-cash awards with a cost or value of more than $100 to an employee in a fiscal year.

(5) ***Nomination procedure.*** A division chief must provide a written recommendation to the department director documenting the reason for the award.

(c) Annual Leave Award.

(1) ***Award type.*** The Annual Leave Award is an amount of annual leave.

(2) ***Eligibility.*** Merit system employees are eligible.

(3) ***Award criteria.*** Criteria include:

(A) sustained or unusual effort on a special project;

(B) outstanding or noteworthy performance on a sustained basis or for a special project.

(C) any actions, activities, or products of importance and value to the department.

(4) ***Limitations.*** A department director may grant up to a maximum of 40 hours of leave per employee in a fiscal year.

(5) ***Nomination procedure.*** A division chief must provide a written recommendation to the department director documenting the reason for the award.

(d) Paid Time Off or Annual Leave Award for MLS or PLS Employees.

(1) ***Award type.*** The Paid Time Off Award is an amount of paid time off for MLS employees who are members of the Retirement Savings Plan or Guaranteed Retirement Income Plan. The Annual Leave Award is an amount of annual leave for MLS and PLS employees who are members of a defined benefit pension plan and who earn annual leave and sick leave instead of Paid Time Off.

(2) ***Eligibility.*** MLS and PLS employees are eligible.

(3) ***Award criteria.*** A Paid Time Off or Annual Leave Award for an MLS or PLS employee is neither ordinary nor usual but may be appropriate to recognize:

(A) exceptional performance for an extended period of time;

(B) completion of a major special project requiring unusual skill and effort and working a substantial number of uncompensated hours; or

(C) working a substantial number of uncompensated hours during an emergency (i.e. general emergency, local emergency, and liberal leave periods).

(4) ***Limitations.*** A department director may grant up to a maximum of 40 hours of paid time off or annual leave per employee in a fiscal year.

(5) ***Nomination and approval procedure.*** A department director must make a written recommendation to the CAO documenting the reason for the award. The CAO must determine whether to approve a Paid Time Off Award or an Annual Leave Award to an MLS or PLS employee.

13-3. Procedures for monetary awards.

(a) A department director must:

(1) recommend to the CAO a departmental employee who deserves to receive an Outstanding Performance Increment, and if granted by the CAO, must prepare the documentation for processing;

(2) recommend to the CAO an MLS or PLS employee who deserves to receive a Paid Time Off Award or an Annual Leave Award and document the reason for the award;

(3) for all other monetary awards:

(A) review and evaluate all awards recommended for the department, ensuring that the award type and amount are commensurate with the performance or product being recognized;

(B) determine which awards to approve; and

(C) provide all required award information to OHR.

(b) The OHR Director must:

(1) record an employee's award information in the employee's official file;

(2) send an employee's award information to the Finance Department's Payroll Section for processing;

(3) collect from departments information about all awards granted by the department in a fiscal year; and

(4) report to the CAO at the end of a fiscal year a department's total:

(A) cash awards;

(B) non-cash awards with an individual value of more than $50; and

(C) hours of annual leave or paid time off granted as awards.

(c) The CAO must determine whether to approve an Outstanding Performance Increment to an employee or to approve a Paid Time Off Award or an Annual Leave Award to an MLS or PLS employee.

13-4. Honorary awards. Honorary awards are non-monetary awards.

(a) Montgomery's Best Honor Awards.

(1) ***Award type.*** Plaques or other tokens of appreciation are given annually for the following awards:

(A) Award for Exceptional Service;

(B) Employee of the Year Award;

(C) Employee Representative of the Year Award;

(D) Customer Service Award;

(E) County Partnership Award;

(F) County Diversity Award; and

(G) Executive's Safety Award.

(2) ***Eligibility.*** Depending on the award, merit system employees, volunteers, residents, private organizations, and employee representatives are eligible.

(3) ***Award criteria.*** The general criterion for these awards is exceptional effort to support the County's programs and guiding principles.

(4) ***Limitations.*** Some awards are limited in number.

(5) ***Nomination procedure.*** All County employees and volunteers may submit written nominations for awards and the reason for the nomination. Peer groups will evaluate the nominations and make the selections.

(b) ***Length of Service Awards.*** The CAO may give length of service awards to recognize longevity in County employment.

(c) ***Other honorary awards.*** The CAO may establish other non-monetary honorary awards.

13-5. Gifts or awards from a civic group or similar organization.

(a) An employee may accept an honorary award from a civic group or similar organization.

(b) Under Section 19A-16 of the County Code (Appendix C), an employee may not accept a monetary award.

(c) An employee should direct a question about whether it is permissible to accept a gift from civic groups or similar organizations to the Ethics Commission.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to performance awards**
Firefighter/Rescuer	5, Management Rights 33, DFRS Awards Committee
OPT/SLT	2, Management Rights
Police	5, Tech Pay 29, Physical Fitness Awards 49, Awards 50, Reduction-in-Force and Furlough 53, Performance Evaluation 55, Job Sharing Program

SECTION 14. EMPLOYEE DEVELOPMENT

(As amended October 21, 2008 and December 6, 2011)

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.

(a) Policy and objectives of OHR-administered training.

(1) The objective of the County's employee development program is to enhance the delivery of services to County residents, visitors, and organizations by providing employees with the training necessary to continually improve their job performance and enhance their career potential.

(2) The CAO, through the OHR Director and department directors, must ensure that employee development opportunities are provided in an equitable manner.

(3) Employee development activities funded by the County must:

(A) be provided by organizations whose primary purpose is educational;

(B) be directly related to:

(i) the employee's current County work or normal career progression; or

(ii) a field of study that will prepare the employee to make a career change within the County; and

(C) allow the employee to:

(i) obtain education or training towards a certificate, associate degree, baccalaureate degree, or graduate degree; or

(ii) take a credit or non-credit course.

(4) Employees and supervisors are jointly responsible for employee development.

(5) An employee should:

(A) actively improve the employee's job-related competencies and skills;

(B) learn and apply the County's philosophy of continuous development; and

(C) participate in training designated by the employee's supervisor as necessary for the employee's satisfactory performance of the employee's duties.

(6) An employee's supervisor must:

(A) determine what training the employee should attend, based on:

(i) the employee's need for the training;

(ii) the availability of appropriate training;

(iii) available training funds; and

(iv) the employee's workload; and

(B) include at least one developmental goal on the employee's *Performance Planning and Evaluation Form* (Appendix G).

(b) Centralized employee development.

(1) The OHR Director must:

(A) administer the general training activities for County employees;

(B) provide leadership development programs for County managers and supervisors; and,

(C) monitor the use and cost of County employee development activities.

(2) Many employee development and training needs are generic and can be accommodated effectively and efficiently through a centralized program administered by OHR. The following are examples of employee development and training provided through the centralized program developed and administered by OHR:

(A) leadership development (Leadership Institute, advanced seminars);

(B) supervisory development classes;

(C) customer service classes;

(D) professional development classes;

(E) human resources management classes;

(F) performance management classes;

(G) labor relations classes;

(H) skill development classes (examples: writing and communication);

(I) core mandatory classes (examples: sexual harassment prevention, and employee performance and conduct);

(J) information technology classes (examples: desk-top computer software, internet and web software, and core business systems); and,

(K) self-directed study (examples: computer lab, and the audio and video loan library).

(c) ***Employee tuition assistance*.**

(1) The OHR-administered tuition assistance fund is available to help pay the costs of education or training selected by:

(A) County employees; and

(B) employees of the State's Attorney's Office (but not the State's Attorney).

(2) The OHR Director must:

(A) administer the County's tuition assistance program and fund; and

(B) authorize payment of tuition assistance only for eligible employee educational expenses, up to the following for each request:

(i) 100 percent of the cost of the training; or

(ii) for a full-time employee, the maximum amount authorized per employee each fiscal year; or

(iii) for a part-time employee, 50 percent of the maximum amount authorized for a full-time employee.

(3) The total amount of funding available annually for tuition assistance is proposed by the County Executive and appropriated by the County Council.

(4) The OHR Director must establish the amount of annual tuition assistance for an employee who is not a member of a bargaining unit. Funding for represented employees is determined through collective bargaining with the designated employee representatives.

(5) Employee tuition assistance is available to employees with merit system status on a first-come, first-served basis until all funding for the fiscal year has been obligated. Once the tuition assistance funds are depleted for the fiscal year, tuition assistance is not available until the next year.

(6) The OHR Director may approve the use of OHR-administered tuition assistance for an employee currently enrolled in a degree program at an accredited (as determined by an accrediting agency recognized by the U.S. Secretary of Education) college or university, or vocational or business school to pay for a course for which the employee receives credit toward a degree in a field of study:

(A) related to the employee's current County job functions or career ladder in the same job series or profession; or

(B) that will prepare the employee to make a career change to another position within the Montgomery County Government.

(7) The OHR Director may approve the use of OHR-administered tuition assistance funds for employees who are not enrolled in degree programs only when the training or education directly relates to the employee's current job functions or career ladder in the same job series or profession. Such training or education must be provided by an accredited (as determined by an accrediting agency recognized by the U.S. Secretary of Education):

(A) college or university;

(B) vocational or business school;

(C) professional, scientific, or technical institute; or

(D) organization or component of an organization, including a government agency or business, that offers courses or training.

(8) The following are acceptable educational objectives that an employee may pursue with tuition assistance funding, if the training or education meets the requirements of (6) and (7) above:

(A) education or training to obtain a certificate, associate degree, baccalaureate degree, or graduate degree; or

(B) a credit course, non-credit course, or seminar.

(9) Only the cost of tuition is covered by tuition assistance.

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

(A) credit courses taken on an audit (i.e., no grade) basis;

(B) books, supplies, and application fees, or extra fees such as late registration or library book returns, parking, travel, food, lodging, and other costs incidental to the credit courses;

(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) credit by examination courses;

(E) examination fees;

(F) courses taken outside the United States; and

(G) courses which are primarily recreational, or utilize a specific faith-based method as a primary approach to problem solving or treatment.

(11) An employee receiving tuition assistance must participate in the educational activity:

(A) during the employee's off-duty hours; or

(B) on approved leave, other than administrative leave or Professional Improvement Leave (PIL).

(12) An employee receiving tuition assistance must complete the course(s) with a passing grade. Otherwise, the employee must reimburse the County for the amount of the County's tuition assistance. Final grades must be provided to OHR upon completion of the course.

(13) An employee who receives tuition assistance must agree to remain a County employee for at least one year after completing the course. If the employee does not remain employed by the County for the entire one-year period, the employee must repay a prorated amount of the tuition assistance. The tuition assistance does not have to be repaid if the employee dies or retires on a County disability retirement. The OHR Director may waive repayment of tuition assistance in other extenuating circumstances.

(14) The OHR Director may approve tuition assistance for a probationary employee. The OHR Director must not give tuition assistance to the employee until the employee:

(A) pays the tuition;

(B) attains merit system status; and

(C) provides evidence of successful course completion.

(15) An employee must receive written approval from a department director prior to submitting a tuition assistance request to OHR for review.

(16) Subject to (17) below, an employee whose request for tuition assistance is not approved may file a grievance under Section 34. The employee must show that the action was arbitrary and capricious.

(17) The denial by OHR of an employee request for tuition assistance on the basis that all tuition assistance funds for the year have been allocated is not grievable.

14-2. Department employee development.

(a) Policy and objectives of department employee development.

(1) A department director may approve employee developmental activities only when the primary purpose of the training is to provide professional development related to the employee's current position or normal career

progression within the department.

(2) A department director may approve the use of department funds to pay for an employee's college tuition only when the department director determines that the employee's additional education will benefit the effective and efficient operation of the department. An employee may obtain funds from the County's employee tuition assistance program under Section 14-1(c) for courses that will primarily benefit the employee.

(3) A department has a critical role in identifying and facilitating the specific developmental training needs of its employees that cannot be fully addressed by the employee development programs administered by OHR. Needs that cannot be fully addressed by OHR-administered programs include training necessary for:

(A) occupations unique to the department;

(B) state licensing requirements; and

(C) department specific initiatives.

(4) A department's familiarity with its employees enables it to determine the specific types of training that employees need to accomplish their essential job functions.

(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	• Successful completion of training
$201 – 3,000	Approval: Immediate supervisor	• Successful completion of training • Remain a County employee for 1 year after completion
$3,001 – 6,000	Recommendation: Immediate supervisor Approval: Department director	• Successful completion of training • Remain a County employee for 2 years after completion
$6,001 - $9,000 (maximum)	Recommendation: Department director Approval: CAO	• Successful completion of training • Remain a County employee for 3 years after completion

(c) ***Limitations.*** Department-funded training may cover all necessary related expenses, including tuition and fees, is subject to budget limitations, and the following:

(1) the employee's immediate supervisor must approve training with a total cost of $3,000 or less during a fiscal year;

(2) the employee's supervisor must recommend and the employee's department director must approve training with a total cost of $3,001 through $6,000 during a fiscal year; and

(3) the employee's department director must recommend and the CAO must approve training with a total cost of $6,001 up to a maximum of $9,000 during a fiscal year.

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

(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.

(f) ***Responsibilities of OHR Director.*** The OHR Director may waive repayment of up to $9,000 of department-funded training per employee in a fiscal year for reasons deemed appropriate.

(g) ***Use of department funds to pay for college tuition.*** A department director may approve the use of department funds to pay for an employee's college tuition subject to the limitations in Section 14-1(c)(7), (8), (9), and (10).

(h) ***Responsibilities of department director.*** A department director must:

(1) determine the department's employee development requirements and budget for those activities, including:

(A) courses conducted by colleges or universities, professional associations, and approved learning centers and vendors;

(B) conferences and seminars;

(C) apprenticeship or work/study programs for occupations critical to the department, with the prior approval of the OHR director; and

(D) in-house training opportunities;

(2) administer the department's employee development program under the following guidelines established by OHR to ensure that:

(A) employee participation in developmental activities will contribute to the County or department mission;

(B) employees are selected to participate in developmental activities in an equitable and objective manner; and

(C) the department maintains data to respond to OHR reporting requirements on the use and cost of employee development.

(i) ***Responsibilities of managers and supervisors.*** Managers and supervisors must:

(1) identify the developmental needs of their employees, require employees to attend training necessary for the employees to perform their duties, and take into consideration the employee's career development goals;

(2) approve the employee's participation at required training;

(3) schedule the employee's attendance at required training activities during the employee's regularly scheduled work time, if possible;

(4) authorize or recommend the payment by the department of all costs for required training; and,

(j) ***Scheduling of employee training.*** If a supervisor cannot schedule training during the employee's regularly scheduled work time, the supervisor and employee may agree to alter the employee's schedule to accommodate the training. The department director must compensate a non-exempt employee who is required to attend training during non-work time under the FLSA and Section 10 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to training
Firefighter/Rescuer	14, Overtime 22, Prevailing Rights 28, Transfers 29, Promotions 35, Health and Safety 36, Shift Staffing 37, Training Requirement 48, Job Sharing Program
OPT/SLT	9, Working Conditions 21, Benefits 22, Transfer 29, Labor Management Relations Committee (LMRC) 31, Maintenance of Standards 34, Ergonomics Appendix VII, Reasonable Accommodation
Police	15, Hours and Working Conditions 22, Professional Improvement Leave 25, Transfer 30, Uniforms and Equipment 39, Tuition Assistance 53, Performance Evaluation 55, Job Sharing program 60, Career Development Study Committee 62, Sergeants

SECTION 15. WORK SCHEDULES, ATTENDANCE, HOURS OF WORK

(As amended December 11, 2007, October 21, 2008, July 12. 2011, July 23, 2013, June 30, 2015, July 25, 2017 and July 17, 2018)

15-1. Definitions.

(a) ***Compressed work schedule:*** An alternate work schedule that allows an employee to work 80 hours in 9 days with the following fixed schedule:

(1) 8 days at 9 hours a day; and

(2) 1 day at 8 hours a day.

(b) ***Core hours:*** The established hours in a workday that an employee on a flexible work schedule must work. Core hours are established by the department director.

(c) ***Display period:*** The display part of the employee's electronic timecard. Typically, the display reads Sunday through Saturday. For employees below Grade 25, whether Non-exempt or Exempt, on compressed work schedules, the display period may be altered to either a Monday through Sunday or Friday through Thursday.

(d) ***Flex hours:*** The remaining hours in the work schedule that are not core hours for an employee on a flexible work schedule. These hours may be different from the hours worked by other employees in the work unit or the employee's supervisor may allow the employee to vary the times when these hours are worked from day to day or week to week.

(e) ***Flextime.*** A work schedule that requires an employee to work during established core hours but allows the employee to work the remaining hours on a flexible basis.

(f) ***Job Sharing:*** A work arrangement in which 2 employees, each working part-time, equally share the duties, responsibilities, and hours of one full-time position.

(g) ***Modified liberal leave:*** A period declared by the County Executive or CAO in a non-emergency situation, during which a department director should allow as many employees as possible to take leave, after ensuring in advance that minimum staffing requirements are met.

(h) ***Reporting period:*** The reporting period part of the employee's electronic timecard. Typically the reporting period is Sunday through Saturday. For employees below Grade 25, whether Non-exempt or Exempt, on compressed work schedules, the display period may be altered to either a Monday noon through Monday noon or Friday noon through Friday noon reporting period for purpose of compliance with the Fair Labor Standards Act (FLSA).

(i) ***Severe weather:*** An occurrence of atmospheric conditions that lead to unpleasant, dangerous, or destructive environmental conditions such as:

(1) extreme temperatures;

(2) heavy rain, snow, or ice;

(3) violent winds;

(4) flooding; or

(5) tornados, hurricanes, or other violent storms.

(j) ***Telework:*** A work arrangement in which some or all of the work of a County employee is performed at an alternative work site, such as a home or office space near a home.

(k) ***County Telework Manager:*** An employee designated by the Director of the Office of Human Resources who is the primary point of contact between the Office of Human Resources and each County department or office who provides advice to County departments, managers and employees on telework matters.

15-2. Work schedules.

(a) ***Basic work hours.*** The CAO must establish the basic work hours of the County Government.

(b) ***Work schedule records.*** A department director must maintain current work schedule records for employee groups in the department.

(c) ***Authority to change work schedule.*** A supervisor may change the work schedule of an employee who reports to the supervisor. However, an employee must request a compressed work schedule, flextime, or job sharing arrangement under Section 15-4(b) or (c), as appropriate, and only the department director may approve an agreement to change to one of these types of alternate work schedules.

(d) ***Telework.*** A department director may allow an eligible County employee to telework if the employee has met all the requirements for telework under Section 15-11.

15-3. Workday and workweek.

(a) Normal workday.

(1) The normal workday for a full-time County employee is not less than 8 hours or more than 12 hours, except for a uniformed fire/rescue employee.

(2) The normal workday for a full-time uniformed fire/rescue employee is not less than 8 hours or more than 24 hours.

(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.

(2) The CAO may approve a 40-hour workweek based on a different period of 7 consecutive days.

(3) The CAO must establish the normal workweek for uniformed fire/rescue employees.

(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.

(c) ***Days off.*** A department director should grant an employee 2 consecutive days off in each workweek, subject to operational needs.

(d) Workweek for MLS and PLS employees.

(1) An employee assigned to an MLS or PLS position is expected to work the hours required to complete assigned work, but not less than 80 hours per pay period for a full-time employee, or the regularly scheduled number of hours in a part-time employee's pay period.

(2) If an employee in an MLS or PLS position works more than half of the employee's regularly scheduled workday, the employee's supervisor may grant administrative leave to the employee for the remainder of the work day.

(3) The department director may grant administrative leave for more than half of a regularly scheduled work day to an MLS or PLS employee who has worked an unusually large number of hours in the same or any previous pay period.

(e) Alteration to normal workweek.

(1) An employee may request a reasonable alteration to the employee's normally scheduled workday or workweek. An employee must request an alternate work schedule for religious observance under Section 15-4(a), a

compressed work schedule or flextime under Section 15-4(b), or a job sharing arrangement under Section 15-4(c).

(2) A supervisor may grant an employee's request for a short-term alteration to the regular workday or workweek on an hour-for-hour basis, but must not pay overtime to the employee unless overtime pay is required under the FLSA.

15-4. Alternate work schedules.

(a) Alternate work schedules for religious observance.

(1) Policy on alternate schedule for religious observance.

(A) A supervisor must allow an employee to use leave, work an alternate schedule to make up for time taken off for religious observance, or to do both, unless granting the employee's request would impose an undue hardship on the work unit.

(B) Allowing an employee to work an alternate work schedule would be an undue hardship if it would:

(i) cause the work unit to incur additional costs;

(ii) jeopardize the health and safety of others;

(iii) reduce minimum service levels;

(iv) be difficult or impossible for the employee to perform useful work at the same level in an alternate work schedule; or

(v) cause other problems of a similar nature.

(C) An employee who is allowed to work an alternate schedule must:

(i) work at times when the employee is not usually scheduled to work;

(ii) work an equal period of time to the time taken off for religious observance; and

(iii) perform work at the same level as the work normally performed by the employee.

(2) Procedure for establishing an alternate work schedule.

(A) An employee must submit a written request to the employee's supervisor at least 10 working days before the first absence for religious observance or the first date on which the employee proposes to work alternate hours to make up for time off. The written request must include the following information:

(i) purpose of requested time off;

(ii) requested dates of absence for religious observance; and

(iii) the total period of absence on each date.

(B) A supervisor must respond to the employee's request within 5 working days of the date it is received. A supervisor's initial response may be a reasonable request for additional information. If the supervisor denies the employee's request, the supervisor must give the employee a written response.

(3) Requirements for an alternate work schedule for religious observance.

(A) ***For a non-exempt employee.*** A non-exempt employee who is absent from work for religious observance must work additional hours during the same workweek to equal the amount of time taken off for religious reasons.

(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.

(i) An exempt employee below grade 25 must earn compensatory time for this purpose at the employee's regular (straight time) salary rate.

(ii) An exempt employee at grade 25 or above will begin to earn compensatory time for this purpose after 40 hours in a pay status or immediately after completing the normal workweek.

(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.

(C) ***For an MLS or PLS employee.*** An MLS or PLS employee may request an alternate work schedule during the same pay period to equal the amount of time taken off for religious observances

(4) Appeal of denial of request for alternate work schedule for religious observance.

(A) An employee with merit system status may file a grievance under Section 34 of these Regulations if the employee's supervisor denies the employee's request for an alternate work schedule for religious observance.

(B) An employee may file an EEO complaint under the process described in Section 5-4 of these Regulations.

(b) ***Compressed work schedule and flextime.*** A compressed work schedule and flextime are types of alternate work schedules that are intended to enable employees to better balance their work lives and personal lives.

(1) Requirements for employees on compressed work schedules.

(A) An employee on a compressed work schedule must work one of the following 4 established compressed work schedules and may select either alternate Mondays or Fridays off:

(i) Schedule A, Reporting period is from 12:01 p.m. Monday through 12:00 noon Monday;

Display period for Non-Exempt and Exempt Below Grade 25 is

	Mon	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**	**Sun**	**Total**
Week 1	OFF	9	9	9	9			36
Week 2	8	9	9	9	9			44

Display period for Exempt Grade 25 and above is

	Sun	**Mon**	**Tue**	**Wed**	**Thu**	**Fri**	**Sat**	**Total**
Week 1		OFF	9	9	9	9		36
Week 2		8	9	9	9	9		44

(ii) Schedule B, Reporting period is from 12:01 p.m. Monday through 12:00 noon Monday;

Display period for Non-Exempt and Exempt Below Grade 25 is

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Total
Week 1	8	9	9	9	9			44
Week 2	OFF	9	9	9	9			36

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		8	9	9	9	9		44
Week 2		OFF	9	9	9	9		36

(iii) Schedule C, Reporting period is from 12:01 p.m. Friday through 12:00 noon Friday;

Display period for Non-Exempt and Exempt Below Grade 25 is

	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Total
Week 1	8			9	9	9	9	44
Week 2	OFF			9	9	9	9	36

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		9	9	9	9	OFF		36
Week 2		9	9	9	9	8		44

(iv) or Schedule D, Reporting period is from 12:01 p.m. Friday through 12:00 noon Friday;

Display period for Non-Exempt and Exempt Below Grade 25 is

	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Total
Week 1	OFF			9	9	9	9	36
Week 2	8			9	9	9	9	44

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		9	9	9	9	8		44
Week 2		9	9	9	9	OFF		36

(B) An employee must work the scheduled number of hours each day as required by the fixed schedule.

(C) An employee must adhere to the schedule on the 8 hour day and must not change the 8-hour day to another day during the pay period.

(D) If an employee uses annual or sick leave for the entire day on a day on which the employee is scheduled to work 9 hours, the employee must record 9 hours of annual or sick leave on the timesheet for that day. Similarly, an employee must record 8 hours of leave on the timesheet for a day on which the employee is scheduled to work 8 hours.

(2) ***Holidays for employees on compressed work schedules.*** If a holiday falls on an employee's regularly scheduled day off, a department director should schedule an alternative day off for the employee in the pay period in which the holiday falls instead of compensating the employee with compensatory time. A department director must give the employee 9 hours of compensatory time if the employee does not have an alternate day off in the pay period.

(3) ***Requirements for flextime.*** An employee who works a flextime work schedule must work the required number of hours every day, including:

(A) the established core hours; and

(B) the remaining flex hours.

(4) ***Eligibility for compressed work schedule or flextime.*** A full-time employee may work a compressed schedule or flextime if the employee's supervisor and department director approve the employee's request.

(5) Effect of compressed work schedule or flextime on an employee's compensation and job duties.

(A) A compressed work schedule or flextime does not affect an employee's salary, benefits, or job duties and responsibilities.

(B) A department director must not pay overtime compensation to an employee solely because the employee works a compressed work schedule or flextime. However, an employee who works compressed work schedule or flextime is eligible for overtime compensation under Section 10 of these Regulations.

(C) If a supervisor approves flextime for an employee on a compressed work schedule, the supervisor must ensure that the flextime does not cause the employee to work more than 40 hours in a workweek.

(6) Requesting a compressed work schedule or flextime.

(A) An employee who is interested in working a compressed work schedule must submit a completed *Compressed Work Schedule Agreement* (Appendix H - revised) to the employee's supervisor. The employee must specify either a Monday or Friday as the fixed day off in each pay period. The employee may need to work a transition period before starting the Compressed Work Schedule and may be required to use four to eight hours of leave. Department of Finance MCtime personnel will provide guidance on an appropriate transition schedule.

(B) An employee who is interested in working flextime must submit a completed *Flextime Agreement* (Appendix I) to the employee's supervisor. The employee must specify the core hours to be worked and the manner of scheduling flex hours.

(7) Review of employee request for compressed work schedule or flextime.

(A) The supervisor must review the form submitted by the employee and meet with the employee to discuss the request.

(B) The supervisor should suggest to the employee any adjustments to the schedule necessary to maintain the effectiveness of the work unit.

(C) If the supervisor agrees with the terms of the request as stated in the form, the supervisor and employee must sign the form and forward it to the department director.

(D) If the supervisor and employee do not agree to the terms stated on the form, the supervisor must forward a copy of the form and a summary of the points on which the supervisor and employee agreed and disagreed to the department director.

(E) The department director must review the form and:

(i) approve it;

(ii) disapprove it; or

(iii) suggest changes in the terms for consideration by the employee and the supervisor to help them reach agreement on the alternate work schedule.

(F) A department director must review an employee's request for a compressed work schedule or flextime under the following criteria:

(i) operational requirements must be met;

(ii) service to clients or the public must be maintained or improved;

(iii) costs to the County must not increase;

(iv) each office or operation must have enough staff on duty during the normal period of public service, and

(v) the schedule must not diminish the ability of the department to assign responsibility and accountability to the employee for providing County services and performing the employee's official duties.

(G) The department director must give a copy of the approved or disapproved form to the employee, ensure that a copy is placed in the employee's department operating file, and send a copy to the OHR Director. If the request is not approved, the department director must give the employee the reason for not approving the request. The department director's decision is final.

(H) The employee's supervisor or department must submit the appropriate schedule change form to the MCtime Team to enter the employee's schedule change in the Time and Attendance module.

(8) Transition to or from a compressed work schedule.

(A) Transitioning on or off of a compressed work schedule may be complicated by factors such as the FLSA Exempt Status and pay grade of the employee and the scheduling system used by the department. Therefore, MCtime staff must be consulted to determine the appropriate transition schedule for each employee transitioning on or off a compressed schedule.

(B) An employee must change to a compressed work schedule at the start of a pay period.

(C) An employee below grade 25, whether FLSA exempt or non-exempt, who changes to a compressed work schedule no longer has a Sunday to Saturday workweek and must work a special transition work schedule during the first pay period of the compressed work schedule. The transition pay period may require the use of eight (8) or four (4) hours of annual or compensatory leave. The charts below illustrate the considerations that come into play in determining the transition schedule. If the original schedule

is other than a Monday through Friday regular 8 hours schedule, additional considerations must be applied.

For Non-Exempt and Exempt Employee, below Grade 25, when transition is from a M-F regular eight hour schedule:

	Transition to Schedule A	Transition to Schedule B	Transition to Schedule C	Transition To Schedule D
Pay period* *except Police Department	Monday – Sunday	Monday – Sunday	Friday - Thursday	Friday - Thursday
Leave required for Transition	0	4 or 8 hours	8 hours	4 hours
Impact of use of Personal Leave	Yes	Yes	Yes	Yes
Impact of Holiday in Pay period	Yes	Yes	Yes	Yes

For Exempt Employee, Grade 25 and above, when transition is from a M-F Regular Eight hour schedule:

	Transition to Schedule A	Transition to Schedule B	Transition to Schedule C	Transition to Schedule D
Pay period	Sunday – Saturday	Sunday – Saturday	Sunday – Saturday	Sunday – Saturday
Leave required for Transition	None	None	None	None
Impact of use of Personal Leave	No	No	No	No
Impact of Holiday In Pay Period	No	No	No	No

(9) Limits on availability of alternate work schedules.

(A) Because some operations in the County do not lend themselves to compressed work schedules or flextime, a department director may

exclude employees in an organizational unit, position, or class of positions from working such schedules.

(B) A department director may limit an employee to a particular compressed work schedule with a specified day off or to a flextime schedule with specific flex hours if the department director determines that it is consistent with operational requirements.

(C) A department director may exclude an employee with a performance or attendance problem from working a compressed work schedule or flextime.

(D) A supervisor may require an employee to modify an alternate work schedule temporarily to address operational requirements, workload fluctuations, or problems with the employee's performance or attendance.

(10) Withdrawal from an alternate work schedule.

(A) An employee may withdraw from a compressed work schedule or flextime at any time.

(B) A supervisor may require an employee to stop working a compressed work schedule or flextime if the supervisor determines that the criteria stated in (7)(F) above are not being met. The supervisor must give the employee notice and a reasonable opportunity to correct the problem.

(C) An employee below grade 25, whether FLSA exempt or non-exempt, who withdraws from a compressed work schedule must work a special transition work schedule during the first pay period of the new work schedule. The transition pay period may require "time off" without the use of leave or the use of four (4) hours of annual or compensatory leave, depending on the prior compressed work schedule.

(c) Job Sharing.

(1) ***Employee request to job share.*** When an employee wishes to job share, the employee must submit a job sharing plan to the supervisor. If 2 employees wish to share one job, they must both develop the job sharing plan. The plan should include the method of sharing job duties and hours of work for each participant.

(2) Review of job sharing plan.

(A) The supervisor must review the plan and meet with the employee or employees to discuss the plan. The supervisor should suggest any adjustments to the plan necessary to maintain the effectiveness of the work unit. If the supervisor and employee or employees agree, they must sign a completed *Job Sharing Agreement* (Appendix J) and submit it to the department director for approval. If they cannot agree, the supervisor must submit to the department director a written summary of the areas of agreement and disagreement and a copy of the proposed plan.

(B) A department director must review the requested job sharing arrangement under the following criteria:

(i) operational requirements must be met;

(ii) service to clients or the public must be maintained or improved;

(iii) each office or operation must have enough staff on duty during the normal period of public service, and

(iv) the arrangement must not diminish the ability of the department to assign responsibility and accountability to the job sharing employees for providing County services and performing the employees' official duties.

(C) After reviewing the job sharing plan, the department director must:

(i) approve it;

(ii) disapprove it; or

(iii) suggest changes in the terms for consideration by the employee or employees and the supervisor to help them reach agreement on the plan.

The decision of the department director is final.

(D) The department director must give a copy of the approved or disapproved plan to the employee or employees, ensure that a copy is placed in each employee's department operating file, and send a copy to the OHR Director. If the plan is not approved, the department director must give the employee or employees the reason for not approving the request.

(3) Creation of job sharing positions and status of employee who job shares.

(A) If the department director approves a plan submitted by one employee, the department director must:

(i) ask the OMB director to reduce the hours of the existing position to part-time and create a second comparable part-time position;

(ii) fill the newly created part-time position under merit system procedures; and

(iii) ensure that the duties of the former full-time position are divided between the 2 part-time positions.

(B) If the department director approves a plan submitted by 2 employees, the department director must ask the OMB director to reduce the hours of the existing position to part-time and create a second comparable part-time position for the second employee.

(C) The department director must treat the job sharing positions as part-time positions and the employees assigned to the positions as part-time employees subject to the terms and conditions of part-time employment.

(D) If one of the job-sharing employees leaves, the department director may:

(i) renew the job sharing agreement and fill the vacant position under merit system procedures; or

(ii) dissolve the job sharing agreement and return the remaining employee to full-time status.

The decision of the department director is final.

(E) If the department director dissolves the job sharing agreement and the remaining employee refuses to return to a full-time position, the department director may abolish the part-time position and conduct a RIF under Section 30 of these Regulations.

15-5. Meal periods.

(a) A normal workweek for a County employee must not include any meal periods.

(b) A supervisor must not include a meal period in any computation to determine the amount of compensation or compensatory time due an employee for overtime work, unless compensation is authorized by the CAO.

(c) The CAO may authorize a paid meal period not to exceed 30 minutes for:

(1) an employee assigned to work an around-the-clock shift schedule; or

(2) other groups of employees as appropriate.

15-6. General emergency; liberal leave period; modified liberal leave period.

(a) Declaration of a general emergency, liberal leave period, or modified liberal leave period.

(1) If severe weather conditions or other emergencies occur, the County Executive or CAO must evaluate the conditions and decide whether to declare a general emergency or liberal leave period.

(2) When deciding whether to declare a general emergency or liberal leave period, the County Executive or CAO should consider weather conditions including recent weather reports regarding the amount of precipitation already accumulated as well as the forecast for further accumulations during the succeeding 8-hour period, road conditions including whether the major roadways of the County as passable and safe for travel, whether the County public schools have been closed for the day, and the actions being taken by other public sector jurisdictions in the Washington Metropolitan Region. The decision whether to declare a general emergency should be based on the cumulative effects of all these factors and no one factor shall be conclusive or determinative. The County Executive or CAO should attempt to give employees the earliest notice of whether a general emergency or liberal leave period will be declared.

(3) The County Executive or CAO may announce a modified liberal leave period. During a modified liberal leave period:

(A) a department director must maintain minimum staffing to meet service needs but should permit as many employees as possible to be on leave; and

(B) an employee who wants to use leave must request and obtain approval for leave in advance.

(b) Announcement of a general emergency or liberal leave period.

(1) If the County Executive or CAO declares a general emergency or liberal leave period, the Director of the Office of Public Information must:

(A) inform local radio stations, such as WMAL 630 AM and WTOP 1500 AM; and

(B) notify the Associated Press (AP) wire service for distribution to all subscribing radio and television stations in the Washington, D.C. metropolitan area

(2) During severe weather or other emergency, an employee should listen to local radio and television stations for an announcement that County government offices will be closed or that a liberal leave period has been declared.

(3) If there is no announcement on local radio and television stations that County government offices are closed or that a liberal leave period has been declared, an employee should:

(A) assume that the County is maintaining normal operating hours; and

(B) report to work as usual.

(4) If the County Executive or CAO declares a general emergency or liberal leave period during normal operating hours:

(A) the OHR Director must inform department directors; and

(B) department directors must then notify department employees of the general emergency or liberal leave period.

(c) Designation of essential employees.

(1) The CAO must designate employees in appropriate occupational classes and positions as essential employees based on the recommendations of department directors.

(2) The OHR Director must maintain and update as necessary the list of essential employees.

(3) Department directors must ensure that department employees in occupations or positions that are designated as essential are informed of their designation and their responsibilities if a general emergency or liberal leave period is declared.

(4) A department director or supervisor may designate a non-essential employee to be an essential employee during a particular general emergency period if the employee is needed to:

(A) provide essential services, such as snow removal or helping public safety agencies deal with the emergency; or

(B) perform other work that is critical to the department's mission but unrelated to the general emergency.

Under such circumstances, the County must compensate the non-essential employee as if the employee is an essential employee.

(d) Responsibilities and compensation of employees during a general emergency or liberal leave period.

(1) The County must compensate an employee for a declared general emergency period as required by Section 10-14 of these Regulations.

(2) The County must compensate an employee who works during a liberal leave period as required by Section 10-15 of these Regulations.

(3) If the County Executive or CAO declares a general emergency or liberal leave period, an essential employee must report to work as scheduled.

(4) A non-essential employee should not report to work during a declared general emergency period unless the employee's supervisor requires the employee to work.

(5) During a liberal leave period, a supervisor must allow a non-essential employee to use leave without prior supervisory approval when reporting late, leaving work early, or not reporting for work. However, a supervisor may require a non-essential employee to work during a liberal leave period if the supervisor determines that the employee is needed to maintain minimum staffing during the normal period of public service.

(6) An essential employee may use leave during a liberal leave period only if severe weather or another emergency causes the employee to report late or not report at all.

(7) If a non-essential employee chooses not to report for work during a liberal leave period, the employee must notify the employee's supervisor of the employee's leave status as soon as possible and no later than the beginning of the employee's regularly scheduled workday.

(8) If an employee is at work during a liberal leave period, the employee must notify the employee's supervisor before leaving work.

(e) ***Leave status and compensation of employees during a local emergency.*** During a local emergency at one or more work locations, a department director must:

(1) place an employee who is scheduled but not required to be at work on administrative leave; and

(2) ensure that an employee who is required to work is compensated as required by Section 10-15 of these Regulations.

(f) ***County Government Facility Closings.*** In the event of a breakdown of equipment, power failure or other adverse situation resulting in a closing of a facility, a department director:

(1) should grant up to two hours of administrative leave to employees who work at that closed facility with two or fewer hours remaining in their scheduled workday;

(2) should reassign employees who work at that closed facility with more than two hours remaining in their scheduled workday to a different work site or allow such employees to use annual leave in lieu of working the rest of their shift; and

(3) may require public safety employees or other employees in essential operations to work at a time when a departmental facility is closed.

(g) Role of a supervisor during severe weather or other emergencies.

(1) A supervisor must not take adverse action against a non-essential employee who uses leave during a liberal leave period, unless the supervisor directed the employee to report to work because of service needs.

(2) During severe weather or other emergencies when schools are closed all day, opened late, or closed early, a supervisor should:

(A) favorably consider a non-essential employee's request for annual leave, PTO, LWOP, or compensatory time to attend to children;

(B) approve or disapprove a similar request for leave from an essential employee based on service needs; and

(C) if approving an employee's leave request, approve an amount of leave that corresponds with the school schedule.

15-7. Attendance of employees.

(a) The CAO must establish a method to record and report leave and attendance.

(b) A County employee must maintain regular and punctual attendance at work.

(c) An employee must be at work during scheduled work hours unless the supervisor or other authorized individual approves an absence under an established department procedure or practice.

(d) A department director may allow an employee to work at home or at an alternate work site.

15-8. Absent without leave (AWOL).

(a) A department director must consider an employee to be AWOL if the employee:

(1) fails to report for duty as scheduled;

(2) leaves the work site prior to the end of the scheduled workday without the approval of a supervisor;

(3) fails to notify a supervisor of an absence from work under established department procedures or practice; or

(4) obtains approval of an absence for fraudulent reasons.

(b) A supervisor must place an employee in a non-pay status for the period that the employee is AWOL.

(c) An employee who is AWOL for 3 consecutive workdays or longer has abandoned the employee's position. However, an employee has not abandoned the employee's position if the employee was:

(1) physically or mentally unable to obtain approval for the absence; or

(2) unable to report for work for reasons beyond the employee's control.

15-9. Disciplinary action or termination for noncompliance with attendance requirements and procedures. A department director may:

(a) take disciplinary action against an employee who fails to observe department attendance requirements and procedures for recording and reporting of attendance.

(b) terminate the employment of an employee who abandons the employee's position.

15-10. Appeal of disciplinary action or termination for attendance violation.

(a) An employee with merit system status may appeal a disciplinary action or termination by filing a grievance under Section 34 of these Regulations. Termination and some disciplinary actions may be appealed directly to the MSPB under Section 35 of these Regulations.

(b) A probationary or temporary employee may appeal a disciplinary action by filing a grievance under Section 34.

15-11. Telework

(a) Telework guidelines.

(1) A supervisor may allow an eligible employee to telework where the employee has applied for a telework schedule, has been found to be suitable for telework, and meets the following criteria established by the Director of the Office of Human Resources:

(a) has enough tasks appropriate for telework;

(b) can schedule face-to-face meetings on non-telework days;

(c) is able to meet client and co-worker needs when teleworking;

(d) can schedule use of resources that must stay at work (e.g. security sensitive files, shared resource materials, or large equipment);

(e) is free to manage his or her own work flow;

(f) can benefit from quiet or uninterrupted time;

(g) can be evaluated on their work performance; and

(h) can keep information secure and confidential.

(2) The Director of the Office of Human Resources will develop policies and procedures for implementation of telework in County departments.

(3) Eligible County employees should be permitted to telework because telework has the potential to save energy, mitigate traffic congestion and improve air quality, enhance the work life experiences of County employees, advance employee recruitment and retention, and to improve the continuity of operations in severe weather and other emergency condition.

(b) Policy on telework

(1) An eligible employee approved for telework must not conduct personal business or on-site work meetings at the Remote Work Location listed in the Telework Agreement.

(2) Telework is not a substitute for dependent care.

(3) The telework program is not a reasonable accommodation program. ADA accommodation must be provided within the guidelines of the Americans with Disabilities Act.

(4) An eligible employee may not telework under an approval for the Family Medical Leave Act (FMLA).

(c) Procedure for establishing a telework schedule.

(1) An employee must submit a written request to the employee's supervisor for a telework schedule.

(2) The employee's supervisor will review the request to telework based on the suitability of the employee's work in the unit to telework, the suitability of the employee to telework, and the operational impact on the work unit.

(3) An eligible employee and the employee's supervisor must agree upon on a telework schedule prior to an employee beginning to telework.

(d) Requirements for a telework schedule.

(1) An eligible employee may be approved to telework if the employee has met all requirements for the remote work location or alternate work site related to the availability of technology, security, communication between the teleworker and the supervisor, and the confidentiality of County-owned information.

(2) An eligible employee may be approved to telework if the employee has successfully completed the telework training and assessment provided by the County telework manager.

(3) An eligible employee must have an agreed upon work plan and schedule approved by their supervisor prior to beginning a telework schedule.

(e) Review of employee request to telework.

(1) An eligible employee's application to telework will be reviewed by the employee's supervisor and Department Director to determine whether the employee may telework.

(2) Telework is a privilege and is not a mandatory right for a County employee.

(f) Appeal of denial of request for telework schedule.

(1) An eligible employee who has submitted an application to telework and who is denied an opportunity to telework by the employee's supervisor may appeal that decision to the County telework manager.

(2) The decision of the County telework manager regarding the denial of an appeal of an employee to telework may be reviewed in accordance with applicable provisions of MCPR, Section 34 or a collective bargaining agreement.

(g) Transition to or from a telework schedule.

(1) A County employee who has been approved to telework may return to a regular schedule.

(2) A supervisor may deny an employee an opportunity to continue to telework where either the employee's performance or the operational needs of the unit have changed and telework is no longer appropriate for the teleworking employee.

(3) Telework is not transferable to other County positions.

(4) An employee who does transfer to a new County position, may reapply to Telework after completing six months of performing at a successful level in their new position.

(h) Limits on availability of telework schedules.

(1) A department director may determine that no employees in an operational unit or a work unit are in positions that are suitable for telework.

(2) A supervisor may determine that no other employees in a work unit may telework where operational needs would be adversely impacted by allowing additional employees in the work unit to telework.

(i) Withdrawal from a telework schedule.

(1) A County employee who has been approved for a telework schedule must notify their supervisor that they wish to return to a regular schedule.

(2) A supervisor who has approved a telework schedule for an employee in their work unit may return that employee to a regular schedule and must provide a basis for the decision in writing to the employee.

(j) Training.

(1) The Director of the Office of Human Resources, after consultation with the Chief Information Officer, will develop telework training for eligible County employees and County managers.

(2) An eligible County employee or manager may not telework or be approved to telework until the employee or manager has completed all telework training assessments that have been approved by the Director of the Office of Human Resources.

(k) Annual report

(1) The Chief Administrative Officer will report to the County Executive and the County Council by January 15 of each year on the County's telework program.

(2) The Chief Administrative Officer's annual report will provide information on:

(a) how the telework program is being implemented;

(b) how many employees in each department or office are teleworking in the preceding year;

(c) how many teleworking hours are being worked in each department or office in the preceding year; and

(d) recommendations on how to improve the telework program.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to work schedules, attendance, and hours of work
Firefighter/Rescuer	6, Annual Leave 7, Sick Leave 16, Holidays 23, Hours of Work 24, Daily Work Schedule 25, Reporting Time 48, Job Sharing Program
OPT/SLT	2, Management Rights 5, Wages, Salary and Employee Compensation 13, Work Schedules, Attendance, Hours of Work 16, Leave Without Pay 20, Holiday Leave 29, Labor Management Relations Committee (LMRC) Appendix IV, OPT, Department of Corrections and Rehabilitation Appendix VI, OPT/SLT Units, DPW&T
Police	15, Hours and Working Conditions 27, Secondary Employment 42, Management and Employee Rights 43, Discipline 55, Job Sharing Program 63, Childcare

SECTION 16. ANNUAL LEAVE

(As amended July 12, 2005, October 21, 2008, July 12, 2011, June 30, 2015 and July 17, 2018)

16-1. Definition.

Annual leave: Paid leave earned by an eligible employee that may be used for vacations another personal reasons.

16-2. Eligibility for annual leave.

(a) full-time or part-time employee as defined in Section 1 of these Regulations earns annual leave, except for an MLS employee who is granted PTO.

(b) The OHR Director must credit a former temporary employee with up to 60 hours of annual leave prorated to the time spent as a temporary employee if the employee:

(1) had previously filled a temporary position; and

(2) was appointed, without a break in service, to a full-time or part-time position.

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.

(b) An employee who works more than or less than 40 regularly scheduled hours per week earns a prorated amount of annual leave.

16-4. Change in annual leave accrual rate.

(a) An annual leave accrual rate change is effective on the first day of the pay period in which the employee completes 3 years or 15 years of County service, except when the employee has used more than 4 consecutive weeks of LWOP as described in Section 23-8(a)(2).

(b) The initial employment date for the purpose of annual leave accrual and the maximum annual leave carryover limit is the date on which the employee was first employed in a merit system career position.

(c) An employee in a merit system career position who separates from County service and later returns to County service in the same or different merit system career position is entitled to the same annual leave accrual rate that the employee enjoyed previously based on years of service.

16-5. Adjustment of annual leave balance for uniformed fire/rescue employees.
If a uniformed fire/rescue employee is assigned to a work schedule that requires a different number of hours of work annually from the previous work schedule, the fire/rescue employee's leave balance must be adjusted by a prorated amount consistent with the new work schedule.

16-6. Scheduling use of annual leave.

(a) Except in emergencies, an employee must ask to use accrued annual leave in advance.

(b) A supervisor may approve or deny a request to use annual leave based on workload and other considerations.

(c) A supervisor should make an effort to give each employee the opportunity to use earned annual leave and should give favorable consideration to an employee's request for leave to care for children during unscheduled changes in school hours.

(d) A supervisor should approve or deny an employee's annual leave request within 5 business days after the supervisor receives the request, unless there are extenuating circumstances that prevent the supervisor from approving the request during that time period.

16-7. Maximum annual leave accumulation. The table below shows the maximum annual leave hours that an employee may carry over to the next leave year. These limits do not apply to accumulated annual leave balances during the leave year. A uniformed fire/rescue employee may carry over a prorated amount of annual leave.

Maximum Amount of Annual Leave that May Be Carried Over to the Next Leave Year		
Type of position	**Initial employment date**	**Carryover limit**
Full- or part- time position	before January 1, 1957	560
Full- or part- time position	January 1, 1957 through June 30, 1972	320
Full- or part- time position	after June 30, 1972	240

MLS or PLS position	any initial employment date	320
Full- or part-time position occupied by former State/County employee	any initial employment date	400

16-8. Disposition of annual leave in excess of maximum allowable accumulation.

(a) If an employee has accumulated annual leave in excess of the authorized maximum at the end of the leave year, the employee may elect to:

(1) transfer 100 percent of the excess leave to the employee's accumulated sick leave;

(2) be paid for up to 50 percent of the excess leave at the employee's rate of pay at the end of the year and transfer the remaining excess leave to the employee's accumulated sick leave; or

(3) carry over the excess leave for one additional leave year, with the approval of the employee's department director, if the employee was not able to use the leave because:

(A) of special circumstances or workload demands; or

(B) a supervisor denied the employee's request to use the excess leave.

(b) An employee who carries over annual leave in excess of the maximum annual leave accumulation for an additional year must forfeit the excess annual leave to sick leave at the end of the year.

(c) The annual leave in excess of the authorized maximum that is subject to option (a)(2) must be determined by subtracting the annual leave used in the current leave year from the annual leave earned in the current leave year. It does not include annual leave above the carryover limit specified in Section 16-7 that has been carried over from previous years.

(d) The CAO must determine annually, based on budget limitations and the availability of funds in each operating department, a single annual leave cash out threshold for all eligible employees in all departments. This threshold must be one of the following:

(1) up to 50 percent of excess annual leave;

(2) up to a specified amount of excess annual leave but less than 50 percent; or

(3) no amount of excess annual leave.

16-9. Disposition of accumulated annual leave at separation from County service or death.

(a) The County must pay an employee who separates from County service a lump sum payment for the total accrued annual leave as of the date of separation, less any indebtedness to the County government. The payment must be made at the employee's current rate of pay.

(b) If an employee dies, the County must pay the employee's designated beneficiary a lump-sum payment for the total accrued annual leave as of the date of death, less any debt owed to the County government. If the employee does not name a beneficiary for annual leave, the County must pay:

(1) the beneficiary named under the employee's retirement plan; or

(2) the employee's estate, if the employee did not name a beneficiary the retirement plan.

16-10. Transfer of annual leave to another agency. An individual who resigns from one County-funded agency to accept employment with another County-funded agency without a break in service may transfer accumulated annual leave to the new employing agency. This transfer of annual leave is subject to limitations the County-funded agency may have and requires a signed agreement of reciprocity between the two agencies. OHR must maintain copies of active reciprocal agreements between County-funded agencies and make them available to employees upon request.

16-11. Use of annual leave for Family and Medical Leave Act (FMLA) purposes. A supervisor must allow an employee to use accrued annual leave for FMLA purposes under Section 19 of these Regulations, the Montgomery County Employee Benefits Equity Act, and other sections of these Regulations, as appropriate.

16-12. Paid time off (PTO) and annual leave. PTO is a type of leave granted to MLS employees who are members of the Retirement Savings Plan or the Guaranteed Retirement Income Plan.

(a) ***Crediting and accumulation of PTO.*** An employee who is granted PTO:

(1) does not earn annual leave;

(2) must be credited with:

(A) 140 PTO hours at the beginning of the leave year if a full-time employee;

(B) 140 PTO hours at the beginning of the 14th pay period of the leave year if a full-time employee;

(C) a prorated number of PTO hours at the beginning of the leave year and at the beginning of the 14th pay period, if a part-time employee; and

(3) may accumulate PTO without limit;

(b) Prorating of PTO.

(1) A part-time employee receives a prorated amount of the PTO that a fulltime employee receives.

(2) An employee who becomes an MLS employee after the first or 14th pay period of the leave year is entitled to be credited with a prorated portion of PTO hours.

(c) ***Use of PTO.*** PTO may be used for the same reasons as annual leave.

(d) Conversion of annual leave to PTO for certain MLS employees.

(1) For an MLS employee who belongs to the Retirement Savings Plan, the CAO must:

(A) credit the employee with one hour of PTO for each hour of accrued annual leave;

(B) take away all accrued annual leave; and

(C) credit the employee with a prorated amount of PTO for the remainder of the current leave year.

(2) The CAO must convert the annual leave of an MLS employee who belongs to the Retirement Savings Plan to PTO within 90 calendar days after these Regulations take effect.

(3) If an MLS employee who receives PTO leaves the MLS position and is promoted, demoted, or reassigned to a non-MLS merit system position, the CAO must:

(A) allow the employee to retain and use the unused PTO hours that the employee had accumulated before the current leave year and a prorated share of the unused PTO hours for the current leave year; and

(B) allow the employee to earn annual leave from the effective date of the employee's promotion, demotion, or reassignment to a non-MLS position.

(e) Disposition of PTO at separation or death.

(1) Upon separation from the County, an employee must be paid for:

(A) a prorated portion of the PTO hours granted for the final year of employment; and

(B) no more than a total of 600 PTO hours, including the prorated hours from the final year of employment.

(2) If an employee dies, the County must pay the employee's designated beneficiary a lump-sum payment for up to 600 hours of accrued PTO as of the date of death, less any indebtedness to the County government. If the employee does not name a beneficiary for PTO, the County must pay:

(A) the beneficiary named under the employee's retirement plan; or

(B) the employee's estate, if the employee did not name a beneficiary under the retirement plan.

(3) If an employee who has unused PTO and annual leave separates from County employment or dies, the County must pay the employee or the employee's beneficiary or estate for up to 600 hours of unused PTO and annual leave combined.

16-13. Transfer of annual leave between spouses for childcare.

(a) An employee who is married to another County employee may transfer annual leave to the employee's spouse to enable the spouse to use the leave to care for a child or children. The employee, the employee's spouse, or both must have legal responsibility for the care of the child or children.

(b) The spouse must use the leave to care for:

(1) a child or children under the age of 13; or

(2) an older child with a medically certified disability that makes the child incapable of self care.

(c) The employee must complete an *Annual Leave Transfer* form (Appendix N) and submit the form to the Payroll Section of the Department of Finance. The employee's spouse must sign the form to indicate that he or she has agreed to accept the transferred leave and the spouse's supervisor must sign the form indicating that the employee's spouse is eligible to use the transferred leave under the terms of this subsection of these Regulations.

(d) An employee may transfer leave to the employee's spouse only in increments of 40 hours.

16-14. Appeal of annual leave or PTO decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on annual leave or PTO may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to annual leave**
Firefighter/Rescuer	2, Organizational Security 6, Annual Leave 8, Parental Leave 9, Administrative Leave 10, Disability Leave 11, Family Medical leave 16, Holidays 19, Wages 48, Job Sharing Program
OPT/SLT	5, Wages, Salary and Employee Compensation 13, Work Schedules, Attendance, Hours of Work 14, Annual Leave 16, Leave Without Pay 17, Disability Leave 18, Parental Leave 20, Holiday Leave 28, Disciplinary Actions 36, Union Activities 45, Family and Medical Leave

Police	2, Administrative Leave 16, Parental Leave 17, Disability Leave and Injury on the Job 18, Annual Leave 19, Sick leave and Sick Leave Donor Procedure 20, Leave Without Pay 43, Discipline 50, Reduction-in-Force and Furlough 55, Job Sharing Program 59, Family Medical Leave Act 63, Childcare

SECTION 17. SICK LEAVE

(As amended March 5, 2002, July 13, 2004, January 18, 2005, December 11, 2007, October 21, 2008, June 30, 2015, and February 14, 2017)

17-1. Definitions.

(a) ***Authorized agent:*** An individual authorized in writing by an employee to act on the employee's behalf under the sick leave donor program.

(b) ***Employee donor:*** A County employee who donates sick leave or PTO to be used as sick leave to another County employee.

(c) ***Employee recipient:*** A County employee who receives a donation of sick leave or PTO to use as sick leave from an employee donor.

(d) ***Family sick leave:*** Sick leave that an eligible employee may use to care for the immediate family.

(e) ***Sick leave:*** Paid leave that may be used by an eligible employee for the reasons specified in Section 17-6.

(f) ***Sick Leave Donor Program:*** A program that allows a County merit system employee to donate sick leave or PTO to another County merit system employee who has exhausted all accrued:

(1) annual leave, sick leave, personal leave, and compensatory time; or

(2) PTO, personal leave, and compensatory time if the employee receives PTO instead of sick and annual leave.

(g) ***Sick leave or PTO donation:*** The transfer of sick leave or PTO from the leave balance of an employee donor to an employee recipient.

(h) ***Sick leave restriction:*** A requirement that an employee provide a doctor's certificate to justify the employee's use of sick leave if a supervisor has reason to suspect the employee of misuse or abuse of sick leave.

(i) ***Single extended illness or injury:*** An employee's illness or injury that causes the employee to be unable to work for more than 14 consecutive calendar days.

17-2. Eligibility for sick leave.

(a) A full-time or part-time employee as defined in Section 1 of these Regulations earns sick leave, except an MLS employee who belongs to the Retirement Savings Plan is granted PTO.

(b) The OHR Director must credit a former temporary employee with up to 60 hours of sick leave prorated to the time spent as a temporary employee if the employee:

(1) had previously filled a temporary position; and

(2) was appointed, without a break in service, to a full-time or part-time position.

17-3. Sick leave accrual rates.

(a) A full-time employee who works 40 regularly scheduled hours per week earns 120 hours of sick leave per leave year.

(b) A part-time employee who works less than 40 regularly scheduled hours per week or a full-time employee who works more than 40 regularly scheduled hours per week earns a prorated amount of sick leave.

17-4. Maximum allowable sick leave accumulation. An employee may accumulate an unlimited amount of sick leave.

17-5. Adjustment of sick leave balance for uniformed fire/rescue employees. If a uniformed fire/rescue employee is assigned to a work schedule that requires a different number of hours of work annually from the previous work schedule, the department director must adjust the employee's leave balance by a prorated amount consistent with the new work schedule.

17-6. Use of sick leave. An employee may use accrued sick leave for the purposes stated below if the employee's supervisor approves the leave under established procedures.

(a) An employee may use sick leave for:

(1) personal illness or injury;

(2) medical quarantine,

(3) medical, dental, or optical examinations and treatments, or

(4) a temporary disability related to pregnancy, miscarriage, or childbirth.

(b) A supervisor must allow an employee to use accrued sick leave for FMLA purposes under Section 19 of these Regulations, the Montgomery County Employee Benefits Equity Act, and other sections of these Regulations, as appropriate.

17-7. Use of family sick leave.

(a) An employee may use sick leave when a member of the employee's immediate family:

(1) is ill, injured, or medically quarantined; or

(2) has a medical, dental, or optical examination or treatment.

(b) The CAO may approve an employee's use of sick leave to care for a person who lives with the employee in the employee's residence if the person is either related to the employee by blood or marriage or has a close association with the employee that is the equivalent of a family relationship.

(c) The amount of family sick leave that an employee uses in a leave year must not be more than the amount of sick leave the employee earns in a leave year. An employee may request a waiver of this limitation from the CAO.

(d) An employee may use family sick leave to attend to the immediate family at the time of birth or adoption of a child.

(e) An employee who is a parent of a newborn or newly adopted child may use more sick leave than the employee earns in a leave year when sick leave is taken as parental leave under Section 20 of these Regulations.

17-8. Approval of sick leave; requirement to provide medical certification.

(a) An employee must request sick leave under established department procedures or practices.

(b) An employee who unexpectedly must use sick leave must notify the employee's supervisor. If a supervisor is not available, the supervisor must designate another person to approve sick leave.

(c) A supervisor should require an employee to submit a medical certification to support a request for leave for a serious health condition, if:

(1) the employee is absent from work for more than 5 consecutive workdays because of the employee's health condition or an immediate family member's health condition;

(2) the supervisor has a reason to suspect the employee of leave misuse or abuse;

(3) the supervisor is not familiar with the employee;

(4) the employee requests the leave on a holiday or at a time when the employee would usually not be able to use leave; or

(5) approval of the requested leave would cause a hardship for the work unit or other employees.

17-9. Sick leave restriction.

(a) Before placing an employee on sick leave restriction, the supervisor must give the employee written notice and an opportunity to respond to the notice.

(b) A supervisor may restrict an MLS employee's use of PTO as sick leave if the supervisor has reason to suspect the employee of misuse or abuse of PTO as sick leave.

(c) An employee on sick leave restriction must provide medical certification from a licensed health care provider to support the use of sick leave, if the sick leave is not scheduled and approved in advance.

(d) The employee must give the medical certification to the employee's supervisor immediately after the employee returns from the use of unscheduled sick leave.

(e) If the employee fails to provide medical certification as required, the employee's supervisor may:

(1) designate the absence as AWOL; and

(2) take disciplinary action against the employee.

17-10. Sick Leave Donor Program. The Sick Leave Donor Program allows County employees to give additional sick leave, annual leave, or PTO to eligible employees who have exhausted all types of accrued leave.

(a) Employee eligibility to receive sick leave, annual leave, or PTO donations.

(1) An employee is eligible to receive a sick leave, annual leave or PTO donation after the employee:

(A) has been employed by the County in a merit system position for at least 6 consecutive months;

(B) has an extended illness or injury, which may include pregnancy, childbirth, or recovery from childbirth, that causes the employee to be unable to work for more than 7 consecutive calendar days or to care for the employee's spouse, domestic partner, child, or parent who has a serious health condition; and

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

(D) has used all accrued annual leave, sick leave, personal leave, and compensatory time or all accrued PTO, personal leave, and compensatory time if the employee receives PTO instead of annual and sick leave; and

(E) has caused to be submitted the following to the department director (or another has submitted the following on the employee's behalf):

(i) a *Sick Leave Donor Program Authorization Form* (Appendix K), with the appropriate portions completed;

(ii) a completed *Sick Leave or PTO Donation Request Form* (Appendix L) 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; however, in accordance with Ethics Commission Waiver No. 14-10-004 (October 8, 2014), any solicitation for donated leave must be conducted so that the employee (and any representative of the employee) does not learn the identity of any person who is willing to donate leave; and

(iii) a completed *Medical Certification Form for Sick Leave or PTO Donations* (Appendix M) or a written statement from the employee's health care provider stating:

(a) that the employee cannot perform the essential functions of the employee's position because of the employee's serious health condition, which may include pregnancy, childbirth or recovery from childbirth; and

(b) the estimated date when the employee will be able to return to work.

(iv) if the sick leave donation is to enable the employee to care for the employee's spouse, domestic partner, or child, the employee must submit a completed certification from the health care provider of the spouse, domestic partner, or child stating that the spouse, domestic partner, or child has a serious health condition that requires special care.

(2) In extenuating circumstances, the department director or the employee may submit a written request to the OHR Director to waive the 7-day waiting period for sick leave donations for an employee. Extenuating circumstances may include an employee:

(A) having exhausted all accrued sick leave, annual leave, personal leave, and compensatory time in connection with the employee's or a family member's (spouse, domestic partner, or child's) serious health condition; or

(B) having changed from a full-time position to a part-time position because of the employee's serious illness or injury that required long-term treatment, if the serious illness or injury later prevents the employee from performing any work.

(3) In extenuating circumstances, the department director or the employee may submit a written request to the OHR Director to waive the requirement that an employee has been employed by the County in a merit system position for at least 6 consecutive months. Extenuating circumstances under this section generally relate to employment with the County rather than the medical condition giving rise to the waiver request. Extenuating circumstances may include an employee:

(A) having been a County merit status employee in the past or having previously worked for the County in a temporary position; or

(B) how close the employee is to meeting the 6-month requirement.

(4) In a leave year, a full-time employee may receive up to 1040 hours of donated leave and a part-time employee may receive a prorated amount of donated leave.

(5) An employee is not eligible to receive a leave donation:

(A) if the employee resigns or is separated from County employment;

(B) during a period of suspension; or

(C) during a leave of absence that is unrelated to an extended illness or injury.

(6) An employee who is eligible for, or is currently receiving, disability leave or another benefit under a federal, County, or State program that provides income maintenance payments for illness or injury is not eligible to receive a sick leave donation. However, if the benefit from the federal, County, or State program covers medical expenses only and does not provide compensation for lost wages, the employee may receive a sick leave donation.

(b) Employee eligibility to donate sick leave, annual leave, or PTO.

(1) (A) A full-time employee donor must keep a balance of at least 80 hours of sick leave or PTO after donating sick leave or PTO.

(B) A part-time employee donor who regularly works 40 or more hours per pay period must keep a balance of at least 40 hours of sick leave or PTO after donating leave.

(C) A part-time employee donor who regularly works less than 40 hours per pay period must maintain a pro-rated amount of unused sick leave.

(D) An employee may also donate annual leave to other employees to use as sick leave donations. The minimum amount of annual leave that may be donated is 8 hours.

(2) An employee must not donate sick leave, annual leave, or PTO after giving oral or written notice of retirement or resignation or receiving written notice of separation from County employment.

(c) Program administration.

(1) ***Responsibilities of department director.*** The department director or designee must:

(A) review and approve an application for leave donations for an employee who is eligible under Section 17-10(a) to receive donated sick leave or PTO, unless the department director has reason to question the validity of the medical certification or has reason to suspect sick leave abuse;

(B) determine, based on the medical certification submitted and the amount of donated leave already used by the employee:

(i) how much donated leave the employee may use;

(ii) the time period for which the employee may use donations; and

(iii) if the employee must submit another medical certification to use the donated leave;

(C) ensure that the total of all donations to an employee recipient in any leave year does not exceed 1040 hours for a full-time employee or a prorated amount for a part-time employee;

(D) as necessary, if the department director has reason to question the validity of the medical certification submitted by the employee or has reason to suspect sick leave abuse, send the medical information submitted by the employee to the Employee Medical Examiner for review;

(E) maintain the confidentiality of any medical information received from an employee in support of a request for sick leave or PTO donations;

(F) consider taking disciplinary action against the employee or recommending to the OHR Director that the OHR Director revoke a leave donation to the employee or declare the employee ineligible for leave donations for up to one year, if the employee:

(i) provides false or misleading information on a sick leave donation request form; or

(ii) attempts to intimidate, threaten, or coerce the department director or another employee with respect to donating, receiving, or using sick leave or PTO under the Sick Leave Donor Program.

(2) ***Responsibilities of OHR Director.*** The OHR Director must:

(A) respond within 5 working days to a request from a department director or from an employee for a waiver of the required 7-day waiting period or the 6 months of continuous service;

(B) consider revoking a leave donation to an employee, declaring an employee ineligible for leave donations for up to one year, or recommending discipline to the employee's department director, if the employee:

(i) provides false or misleading information on a sick leave donation request form; or

(ii) attempts to intimidate, threaten, or coerce the department director or another employee with respect to donating, receiving, or using sick leave or PTO under the Sick Leave Donor Program;

(C) provide guidance to employees, supervisors, and department directors about the Sick Leave Donor Program; and

(D) maintain a record of actions taken under the Sick Leave Donor Program.

(3) Responsibilities of Finance Director.

(A) The Finance Director must:

(i) at the department director's request, provide information to the department director about the leave balances of an employee donor or employee recipient and the amount of leave used by an employee recipient;

(ii) verify to the department director that an employee who applies for a leave donation has satisfied the required 7-day waiting period;

(iii) as required, conduct a leave study and advise the department director and employee of the number of hours of donated leave that an eligible employee recipient needs to cover the period of absence indicated by the health care provider;

(iv) as indicated by the department director, deduct sick leave or PTO from the accounts of employee donors in the order in which it was donated and transfer the donated leave to an employee recipient's account, and

(v) provide the OHR Director with the following information for every pay period:

(a) identifying information about the employees who received donated leave;

(b) the number of hours of donated leave that each employee received; and

(c) the total number of hours of donated leave that each employee received during the leave year.

(B) The Finance Director must receive approved leave donations by the first Monday in a pay period in order to pay the leave recipient for the leave on the payday in that pay period. If leave donations are received later in the pay period, the Finance Director will pay the recipient for them on the payday in the following pay period.

(C) The Finance Director must notify an employee leave recipient who, at the beginning of the employee's County employment, received a one-week pay advance that:

(i) the value of the pay advance must be repaid with donated leave before the employee receives any pay based on donated leave; and

(ii) this may cause the amount of the initial payroll check based on the donated leave to be less than the employee's normal amount.

The Finance Director must notify the affected employee before the affected payday.

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

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

(2) An employee must have the approval of the employee's supervisor to use donated sick leave or PTO.

(3) An employee who receives a sick leave or PTO donation must use it for an absence caused by the extended illness or injury for which the leave was donated.

(4) An employee who earns sick and annual leave instead of PTO does not earn or accrue sick and annual leave while the employee is using donated sick leave. An employee who uses donated PTO will continue to be credited with PTO as required under Section 16-12(a) and (b) of these Regulations.

(5) An employee may receive sick leave or PTO donations when the employee is unable to work due to pregnancy, childbirth, or recovery from childbirth.

(6) An employee may use up to 120 hours of sick leave or PTO donations as parental leave to bond with or care for the employee's newborn child, newly adopted child, or newly placed foster child.

(7) An employee may apply for additional sick leave or PTO for the same extended illness or injury before an earlier donation has been exhausted.

(8) An employee must not use donated sick leave, annual leave, or PTO:

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

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

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

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

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

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

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

(b) ***Return of leave donations if employee's injury or illness is later determined to be job-related.*** An employee who donates leave will not have the leave returned to the employee's leave account unless the injury or illness for which the recipient used the leave is later determined to be job-related and eligible for disability payments. The County must return the donated leave to the donor's sick leave or PTO balance in that case.

17-11. Subrogation for reimbursement of sick leave.

(a) If an employee uses sick leave because of an accident, injury, or illness caused by a third party who is legally liable for the accident, injury, or illness, the County has the right of subrogation against the third party.

(b) If the legally liable third party reimburses the employee for the sick leave, the employee must promptly reimburse the County for the sick leave, less attorney's fees. After the employee reimburses the County, the County must recredit the sick leave to the employee's sick leave account.

(c) If the employee does not reimburse the County, the County may initiate disciplinary action against the employee, up to and including dismissal.

17-12. Disposition of accumulated sick leave at separation from County service. An employee must forfeit accumulated sick leave upon separation from County service, except that an employee in the Employees' Retirement System of Montgomery County (ERS) may use accumulated sick leave as credited service for retirement purposes under the ERS.

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.

(b) If the employee does not name a beneficiary for sick leave, the County must pay:

(1) the beneficiary designated under the employee's retirement plan; or

(2) the employee's estate, if the employee did not name a beneficiary under the retirement plan.

(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.

17-14. Reinstatement of forfeited sick leave or PTO; transfer of accumulated sick leave.

(a) ***Reinstatement of sick leave or PTO.*** If an employee returns to County service within 2 years of separation, the County must re-credit the accumulated sick leave or PTO that the employee forfeited at the time of separation.

(b) ***Transfer of sick leave.*** An individual who resigns from one County-funded agency to accept employment with another County-funded agency without a break in service may transfer accumulated sick leave to the new employing agency. This transfer of sick leave is subject to limitations the County-funded agency may have and requires a signed agreement of reciprocity between the two agencies. OHR must maintain copies of active reciprocal agreements between County-funded agencies and make them available to employees upon request.

17-15. Incentive program to reduce sick leave use. The CAO may establish programs to reduce sick leave use by a Method (1) regulation.

17-16. Paid time off (PTO) and sick leave. PTO is a type of leave granted to MLS employees who are members of the Retirement Savings Plan.

(a) ***Use of PTO.*** PTO may be used for the same reasons as sick leave.

(b) ***Crediting of PTO.*** The County must credit PTO to an eligible MLS employee as described under Section 16-12(a) and (b) of these Regulations.

(c) Conversion of sick leave to PTO for certain MLS employees.

(1) For an MLS employee who belongs to the Retirement Savings Plan, the CAO must:

(A) credit the employee with one hour of PTO for each hour of accrued sick leave; and

(B) take away all accrued sick leave.

(2) The CAO must convert the sick leave of an MLS employee who belongs to the Retirement Savings Plan to PTO within 90 calendar days after these Regulations take effect.

(3) If an MLS employee who receives PTO leaves the MLS position and is promoted, demoted, or reassigned to a non-MLS merit system position, the CAO must:

(A) allow the employee to retain and use the unused PTO hours that the employee had accumulated before the current leave year and a prorated share of the unused PTO hours for the current leave year; and

(B) allow the employee to earn sick leave from the effective date of the employee's promotion, demotion, or reassignment to a non-MLS position.

17-17. Department sick leave procedures. A department director may establish department sick leave procedures to help ensure that the department is able to meet its service requirements. Department sick leave procedures must be consistent with these Regulations.

17-18. Appeal of sick leave or PTO decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on sick leave or PTO may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to sick leave
Firefighter/Rescuer	6, Annual Leave 7, Sick Leave 8, Parental Leave 10, Disability Leave, 11, Family Medical Leave 20, Insurance Benefits, Coverage, and Premiums 22, Prevailing Rights 48, Job Sharing Program
OPT/SLT	5, Wages, Salary and Employee Compensation 14, Annual Leave 15, Sick Leave 17, Disability Leave 18, Parental Leave 45, Family and Medical Leave

Police	11, Chronic Incapacity 15, Hours and Working Conditions 16, Parental Leave 17, Disability Leave and Injury on the Job 18, Annual Leave 19, Sick Leave and Sick Leave Donor Procedure 20, Leave Without Pay 27, Secondary Employment 55, Job Sharing Program 59, Family Medical Leave Act 61, Directives and Administrative Procedures 63, Childcare

SECTION 18. SALARY CONTINUATION BENEFIT FOR WORKERS' COMPENSATION DISABILITY LEAVE

(As amended June 30, 2015)

18-1. Definitions.

(a) **Salary Continuation Benefit**: Pay provided by the County instead of Workers' Compensation benefits paid to an employee during the period of Workers' Compensation Disability Leave.

(b) **Workers' Compensation Disability Leave (Disability Leave):** The period of time the employee is:

(1) temporarily disabled by accidental injury or illness resulting directly from performance of the employee's County work; and

(2) (A) unable to perform normal duties, as determined by the Workers' Compensation Commission or by the County using Workers' Compensation Commission guidelines; or

(B) unable to perform alternative duties as determined by the Employee Medical Examiner.

18-2. Salary Continuation Benefit

(a) The CAO must ensure that an employee's wage or salary is continued (salary continuation benefit) during the period of disability leave.

(b) The County's payment of the employee's biweekly salary must:

(1) include special pay differentials but not shift pay differentials or overtime, and will be subject to all taxes and deductions and will be in the same amount and appear the same, and be paid in the same schedule as the normal wage or salary payment;

(2) continue for a maximum of 18 months if the employee uses the County-established network of physicians, Pharmacy Benefit Management (PBM) program, and participates in the Nurse Case Management (NCM) programs; or

(3) continue for a maximum of 12 months if the employee chooses to receive care from a physician who is not included in the County-established network of physicians or refuses participation in the PBM or NCM programs.

(c) An employee who is medically able to perform an alternative or light duty work assignment is not eligible for the salary continuation benefit if the employee:

(1) performs an alternative or light duty work assignment offered by the County;

(2) refuses an alternative or light duty work assignment offered by the County; or

(3) elects to use FMLA leave instead of performing an alternative or light duty assignment.

(d) After the employee's salary continuation benefit ends, the employee may use accrued sick leave, annual leave, PTO, or compensatory time to make up the difference between the Workers' Compensation benefit and the employee's gross pay (supplemental amount) as described in (b)(1) above. The supplemental amount is subject to all taxes and deductions. A priority of deductions, as determined by the Department of Finance, will apply if the supplemental amount is insufficient to cover all deductions. Deductions not taken from the supplemental amount will be billed to the employee as determined by the Department of Finance.

(f) If the CAO denies an employee's application for disability retirement, the employee may file an appeal of the CAO's decision with the Disability Arbitration Board under Section 33-43(l) of the County Code. The CAO must not pay salary continuation benefit payments to the employee while the appeal is pending.

18-3. Disability leave as FMLA leave.

(a) A supervisor must designate Disability Leave as FMLA leave, even if the employee did not request FMLA leave, if:

(1) the leave is taken for an FMLA-qualifying reason described in Section 19 of these Regulations;

(2) the employee is eligible for FMLA leave; and

(3) the employee has not already exhausted the FMLA leave entitlement for the leave year.

(b) An employee on Disability Leave who is eligible to use FMLA leave and who is medically capable of performing an alternative or light duty work assignment may choose to:

(1) take an alternative or light duty work assignment offered by the County; or

(2) use FMLA leave.

18-4. Managed care for job-related injury or illness. The County must provide an employee who has incurred a job-related injury or illness the opportunity, and communicate such opportunity and impact under Section 18-5, to obtain medical care through a County-provided managed care program in which:

(a) network physicians provide initial medical care to an employee at no cost, even if the employee's claim is later denied;

(b) the managed care provider must:

(1) coordinate benefits with group health providers; and

(2) review the employee's utilization of the treatment plan.

18-5. Selection and use of physician and impact on eligibility period for salary continuation benefit. An employee may select a physician to provide medical treatment for the employee's job-related illness or injury.

(a) If the employee selects a physician from the network of physicians established under the County-provided managed care program and participates in the Pharmacy Benefit Management (PBM) and the Nurse Case Management (NCM) program, the employee may receive salary continuation benefits for a maximum of 18 months.

(b) If the employee selects a physician who is not included in the County-established network of physicians, or refuses to participate in the PBM or NCM programs, the employee may receive salary continuation benefits for a maximum of 12 months.

18-6. Subrogation for reimbursement of salary continuation benefit payments.

(a) If an employee receives salary continuation benefits as a result of a job-related injury or illness caused by a third party who is legally liable for the injury or illness, the County has the right of subrogation against the third party.

(b) If the legally liable third party reimburses the employee in whole or part for the value of the salary continuation benefits, the employee must promptly reimburse the County for the salary continuation benefit, less the attorney's fees the employee incurred to obtain the reimbursement, according to current workers' compensation regulations.

(c) If the employee does not reimburse the County after receiving reimbursement

from a third party, the County may initiate disciplinary action against the employee, up to and including dismissal.

18-7. Refund of salary continuation benefit overpayment.

(a) An employee must promptly refund to the County a salary continuation benefit payment to which the employee was not entitled.

(b) If the employee does not refund the payment to the County, the County may initiate disciplinary action against the employee, up to and including dismissal.

(c) If the employee does not refund the salary continuation benefit payment to the County, the County may also consider the payment to be a debt owed to the County.

18-8. Appeal of salary continuation benefit decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on salary continuation benefit may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to disability leave
Firefighter/Rescuer	10, Disability Leave 11, Family Medical Leave 19, Wages 48, Job Sharing Program
OPT/SLT	17, Disability Leave 34, Safety and Health 45, Family and Medical Leave
Police	11, Chronic Incapacity 17, Disability Leave and Injury on the Job 18, Annual Leave 20, Leave Without Pay 27, Secondary Employment 35, Vehicles 55, Job Sharing Program 59, Family Medical Leave Act

SECTION 19. FAMILY AND MEDICAL LEAVE

(As amended December 10, 2002, October 21, 2008, September 22, 2009, July 12, 2011, July 23, 2013, and June 30, 2015)

19-1. Definitions.

(a) ***Active duty or call to active duty status*:** Military duty under a call or order to active duty (or notification of an impending call or order to active duty) as a member of the National Guard or state militia, a member of a reserve component of the Armed Forces of the United States, or as a retired member of the Armed Forces or the Reserve under certain sections of Title 10 of the United States Code identified and discussed in 29 CFR Sec. 825.126(b)(2).

(b) ***Contingency operation*:** A military operation designated by the Secretary of Defense as one in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

(c) ***Daughter or son:*** An employee's biological, adopted, or foster child, stepchild, domestic partner's child, legal ward, or child for whom the employee stands in loco parentis and:

(1) for purposes of regular family leave:

(i) who is under 18 years of age, or

(ii) 18 years of age or older and incapable of self-care because of a mental or physical disability at the time leave is to begin.

(2) who is of any age for purposes of military family leave.

(d) ***Extenuating circumstances:*** Circumstances that prevent the follow-up visit from occurring as planned by the health care provider (e.g., if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period).

(e) ***FMLA Program Manager*.** Person in OHR/OMS who administers the County's FMLA Program, reviews requests and medical certifications submitted by employees for FMLA leave, determines eligibility issues in consultation with the OHR Director and the County Attorney's Office when necessary, and provides assistance to employees and supervisors on FMLA.

(f) ***Health care provider:*** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery, as appropriate, by the State in which the doctor

practices or another person capable of providing health care services, such as a podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwife, clinical social worker, physician assistant, or Christian Science practitioner.

(g) ***Next of kin:*** The nearest blood relative other than the covered service member's spouse, domestic partner, parent, son, or daughter, in the following order of priority unless the servicemember has specifically designated in writing another

blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA:

(1) blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;

(2) brothers and sisters;

(3) grandparents;

(4) aunts and uncles; and

(5) first cousins.

(h) ***Parent:*** The biological, adoptive, step or foster mother or father of an employee or an individual who stands or stood in loco parentis to the employee when the employee was a child.

(i) Serious health condition:

(1) An illness, injury, impairment, or physical or mental condition that involves one of the following:

(A) hospital care;

(B) absence plus treatment;

(C) any period of incapacity due to pregnancy or for prenatal care;

(D) a chronic condition that:

(i) requires visits at least twice a year for treatment by a health care provider or by a nurse or physician's assistant under the direct supervision of a health care provider;

(ii) continues over an extended period of time (including recurring episodes of a single underlying condition; or

(iii) may cause episodic incapacity rather than a continuing period of incapacity (e.g., asthma, diabetes, or epilepsy).

(E) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, such as Alzheimer's, a severe stroke, or the terminal stages of a disease, and for which the employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider;

(F) a period of absence to receive multiple treatments for a non-chronic condition, including time needed to recover from the treatment, 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 3 calendar days in the absence of medical intervention or treatment, such as treatments for cancer , severe arthritis, or kidney disease;

(G) treatment for substance abuse but not for illness caused by active substance abuse without treatment of the underlying substance abuse problem; and

(H) hospital care for complications from a cosmetic treatment but not for the cosmetic treatment.

(2) The following terms used in the definition of "serious health condition" are defined as follows:

(A) ***Absence plus treatment.*** A period of incapacity of more than 3 consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) treatment 2 or more times by a health care provider, by a nurse, or physician's assistant under the direct supervision of a health care provider, or by a provider of health care services such as a physical therapist under orders of, or on referral by, a health care provider, within 30 days of the beginning of the period of incapacity, unless extenuating circumstances exist (with the first treatment taking place within 7 days of the first day of incapacity and the need for a second treatment being determined by the health care provider and not the employee or patient); or

(ii) treatment by a health care provider on at least one occasion, within 7 days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of

the health care provider.

(B) ***Continuing treatment by a health care provider:*** Treatment 2 or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider or by a provider of health care services under the direct supervision of a health care provider or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment

under the supervision of a health care provider.

(C) ***Hospital care or inpatient care:*** An overnight stay in a hospital, hospice, or residential medical care facility and any period of incapacity or any later treatment in connection with the inpatient care.

(D) ***Incapacity:*** Inability to work, attend school, or perform other regular daily activities due to a serious health condition, the treatment of a serious health condition, or recovery from a serious health condition.

(E) ***Regimen of continuing treatment:*** Includes but is not limited to a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition, but does not include, by itself, the taking of over-the-counter medications, bed rest, drinking fluids, exercise of similar activities that can be initiated by an individual without a visit to a health care provider.

(F) ***Treatment:*** Includes but is not limited to an in-person visit to a health care provider for an examination to determine if a serious health condition exists or evaluation of a condition but does not include a routine physical, eye, or dental examination.

19-2. Intent under FMLA. It is the County's intent that this section be:

(a) used to implement the FMLA of 1993, as amended; and

(b) interpreted and applied consistent with the FMLA, except where County statutes and regulations provide greater benefits.

19-3. Eligibility for FMLA leave. An employee is eligible to use FMLA leave if the employee:

(a) has a total of at least 12 months of County employment, if past (going back 7 years) and present County employment are combined;

(b) was paid for at least 1040 hours of work, not including hours of paid leave, during the 12 months before the requested leave is to begin;

(c) complies with applicable notice requirements described in Section 19-7(b);

(d) provides medical certification, if requested, as described in Section 19-9(b)(2), or as described in Section 19-12(b), if applicable; and

(e) has a reason to use the leave that is authorized by the Family and Medical Leave Act.

19-4. Amount of FMLA leave.

(a) An eligible employee may use up to 12 workweeks of FMLA leave in a leave year as defined in Section 1-34.

(b) A workweek for FMLA purposes is a week that includes the average number of hours that an employee works in a week and includes any holiday that occurs during the week.

(c) If an employee uses FMLA leave intermittently or as part of a reduced workweek, the employee's FMLA leave entitlement is calculated based on hours instead of weeks.

19-5. Types of leave that may be used as FMLA leave.

(a) An eligible employee may choose the type of leave that is used as FMLA leave, but must use LWOP if the employee has exhausted all appropriate types of paid leave.

(b) The FMLA Program Manager must allow an eligible employee to use LWOP, annual leave, or personal leave days for any FMLA purpose.

(c) An eligible employee may use sick leave as FMLA leave only if it is an authorized use of sick leave.

19-6. Authorized reasons for using FMLA leave. An eligible employee may use FMLA leave for any of the following reasons:

(a) to care for the employee's newborn daughter or son, newly adopted daughter or son, or newly placed foster daughter or son within the first 12 months after the birth, adoption, or placement of the daughter or son;

(b) to arrange for the adoption or foster care placement of a daughter or son with the employee;

(c) to obtain prenatal care for the employee;

(d) to care for, which may include providing psychological comfort and reassurance, or arrange care for, any of the following with a serious health condition: the employee's spouse, domestic partner, parent, daughter, or son;

(e) because of the employee's serious health condition that makes the employee unable to perform the essential functions of the employee's position;

(f) to handle an exigency arising from the employee's spouse, domestic partner, parent, daughter, or son serving on active duty under a call or order or being

notified of an impending call or order to active duty in support of a contingency operation as described in Section 19-11(b); or

(g) to care for the employee's spouse, domestic partner, parent, daughter, son, or next of kin on active duty with a serious injury or illness incurred in the line of duty as described in Section 19-11(a).

19-7. Application for FMLA leave and notice required of employee.

(a) ***Application for leave.*** An employee must apply for FMLA leave by completing a County *Employee Request for FMLA Leave Form* (Appendix U) and submitting the form to the FMLA Program Manager.

(b) Notice required of employee.

(1) An employee must give the employee's supervisor as much advance notice as possible of the need to use leave for an FMLA purpose so as not to disrupt the work unit unduly.

(2) If an employee needs to use paid or unpaid leave to care for a new daughter or son, the employee must give 30 calendar days advance written notice or as much notice as possible if the need to use the leave is not foreseeable.

(3) If an employee could not foresee the need to use leave for an FMLA purpose, the employee must give the supervisor notice as soon as possible and must follow the department's usual and customary call-in procedures for reporting an absence, absent unusual circumstances.

19-8. Responsibility for Handling FMLA leave.

(a) FMLA Program Manager's Responsibility

(1) The FMLA Program Manager must determine within 5 working days after an employee submits a request for leave for a FMLA purpose whether or not to approve the request.

(2) The FMLA Program Manager may require an employee to submit a County *Medical Certification of Employee's Serious Health Condition Form* (Appendix P-1) or a County *Medical Certification of Family Member's Serious Health Condition Form* (Appendix P-2) completed by the health care provider treating the serious health condition to support a request for leave for a serious health condition.

(3) The FMLA Program Manager may make a provisional designation of leave as FMLA leave if the FMLA Program Manager asked the employee to submit medical certification for the requested leave but the employee has not submitted the medical certification yet.

(4) Upon receiving written authorization from an employee, the FMLA Program Manager or the Employee Medical Examiner (EME) may directly contact the employee's health care provider to clarify or better understand responses on the FMLA Medical Certification or Recertification form.

(5) Under 29 CFR 825.307 of the U.S. Department of Labor's FMLA Regulations, if an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear.

(6) ***Information that the FMLA Program manager must give to an employee.*** Within 5 working days after an employee requests leave for a FMLA purpose, the FMLA Program Manager must inform the employee of the following and may use *Response to Employee Request for FMLA Leave* (Appendix O):

(A) whether the requested leave will be counted against the employee's annual FMLA entitlement;

(B) whether the employee must submit medical certification to support the request for leave and the consequences if the employee fails to submit a required certification;

(C) what type of paid leave may be used as FMLA leave, depending on the reason for the requested leave;

(D) whether the employee must pay for health insurance during any period of leave without pay and the obligation of the employee to repay the County for health insurance payments made by the County;

(E) whether the employee must present a fitness-for-duty certification from the employee's health care provider upon return from FMLA leave;

(F) the amount of notice the employee must give before using the leave;

(G) whether the employee must report periodically to the employee's supervisor during the period of leave; and

(H) other specific information requested by the employee or indicated by the employee's leave request.

(7) ***Recertification.*** The FMLA Program Manager may request a new medical certification by a health care provider of an employee's serious health condition or a serious health condition of a family member:

(A) each calendar year for a medical condition that lasts longer than one year;

(B) in less than 30 days in any of the following situations:

(i) employee requests an extension of FMLA leave;

(ii) circumstances described by the previous certification have changed significantly (e.g. the duration or frequency of the absence, the nature or severity of the illness, complications);

(iii) employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of original certification;

(C) no more often than every 30 days and only in connection with an absence by the employee.

(8) An employee has 15 calendar days after a request by the FMLA Program Manager to submit the medical recertification to the FMLA Program Manager.

(9) Any recertification requested by the FMLA Program Manager shall be at the employee's expense.

(10) While no second or third medical opinions may be requested in connection with a recertification, the FMLA Program manager or the EME may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(b) ***Supervisor's Responsibility.***

(1) A supervisor must designate a period of leave as FMLA leave even if the employee did not request FMLA leave, if:

(A) the leave is taken for a FMLA-qualifying reason under Section 19-6;

(B) the employee is eligible for FMLA leave; and

(C) the employee has not already exhausted the FMLA leave entitlement for the leave year.

(2) A supervisor must base the designation on information received from the employee or from another person authorized to speak for the employee.

(3) A supervisor must designate a period of disability leave as FMLA leave, even if the employee did not request FMLA leave, if:

(A) the leave is taken for a FMLA-qualifying reason under Section 19-6;

(B) the employee is eligible for FMLA leave; and

(C) the employee has not already exhausted the FMLA leave entitlement for the leave year.

(4) A supervisor who designates a period of disability leave as FMLA leave cannot require the employee to take a light duty assignment until the employee has exhausted the employee's FMLA leave.

(5) A supervisor must not count time that an employee spends performing light duty work as FMLA leave.

(6) A supervisor must designate leave by telling the employee orally or in writing that the leave has been designated as FMLA leave and confirming an oral designation in writing.

(7) If a supervisor has information from an employee on leave to indicate that the employee is using leave for an FMLA purpose, but the supervisor did not designate the leave before the leave began or within 2 working days of the request, the supervisor may designate the entire period of leave as FMLA leave, unless:

(A) the employee did not know that the leave already used before the supervisor designated it as FMLA leave would be considered FMLA leave; and

(B) the employee shows that the employee would have taken less FMLA leave or used intermittent FMLA leave if the employee had received the designation earlier.

19-9. Use of FMLA leave.

(a) Use of FMLA leave to care for a new child.

(1) An employee may use FMLA leave for a court proceeding or a meeting with a social worker or other person if it is required to finalize arrangements for an adoption or foster care placement.

(2) An employee who uses FMLA leave to care for a newborn child or child newly placed for adoption or foster care:

(A) must use the leave within 12 months of the birth, adoption, or foster care placement of the child; and

(B) may use the leave on an intermittent or reduced workweek basis only if the employee's supervisor approves it.

(3) If an employee uses FMLA leave to care for a new child, the employee's supervisor must also count the leave as parental leave under Section 20 of these Regulations unless:

(A) the employee is not eligible to use parental leave;

(B) the leave is taken to care for a newly placed foster child; or

(C) the employee has exhausted the parental leave entitlement.

(4) If an employee uses FMLA leave to care for a new child and the FMLA leave does not qualify as parental leave under Section 20 of these Regulations, the employee must not use more sick leave for this purpose than the employee earns in a leave year.

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

(1) An employee may use FMLA leave on a continuing, intermittent, or reduced work week basis, as needed to care for the employee's spouse, minor child, adult son or daughter incapable of self care, parent, or domestic partner with a serious health condition or because of the employee's own serious health condition.

19-10. Use of military family leave

(a) Use of FMLA leave to care for a servicemember with a serious injury or illness.

(1) An eligible employee whose spouse, domestic partner, parent, son, daughter, or next of kin is a current member of the Armed Forces, including a member of the National Guard or Reserves, may use up to 26 workweeks of leave to care for the servicemember, if the servicemember:

(A) has a serious injury or illness that was incurred in the line of duty while on active duty; and is

(B) (i) undergoing medical treatment, recuperation, or therapy;

(ii) otherwise in outpatient status; or

(iii) otherwise on the military temporary disability retired list.

(2) The up to 26 workweeks of leave under Section 19-11(a)(1) must be taken by the employee during a single 12-month period. The leave period begins on the first day the employee takes leave to care for a covered servicemember and ends 12 months after that date.

(3) If an employee does not take all of the 26 weeks of military caregiver leave during the applicable single 12-month period, the balance is forfeited and no-carryover is permitted.

(4) After the single 12-month period expires, the employee is eligible for another 26 weeks of military caregiver leave during a subsequent single 12-month period to care for a different covered servicemember or to care for the same covered servicemember if that person incurs a different serious injury or illness.

(5) Leave to care for a covered servicemember with a serious injury or illness under Section 19-11(a) may be taken continuously, intermittently, or on a reduced schedule basis.

(6) An employee is entitled to a combined total of 26 workweeks of military caregiver leave and leave for any other FMLA-qualifying reason, provided that the employee may not take more than 12 workweeks of leave for any other FMLA-qualifying reason during the calendar year.

(b) Use of FMLA leave to handle exigencies directly related to a close family member's active duty status or call to active duty.

(1) An eligible employee whose spouse, domestic partner, son, daughter, or parent has been called or ordered to active duty or has been notified of an impending order to active duty may use up to 12 workweeks of leave because of any of the following qualifying reasons:

(A) to deal with an issue that arises because of a short-notice deployment when a military member is notified of an order to active duty with 7 or less calendar days of notice of the deployment;

(B) to attend a military event or related activity, such as an official ceremony, program, or event sponsored by the military, a family support or assistance program, or an informational briefing sponsored or promoted by the military, military service organizations, or the American Red Cross;

(C) to deal with an issue concerning childcare or school activities that arise from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on an urgent, immediate need basis (but not on

a routine, regular, or everyday basis), enrolling in or transferring to a new school or day care facility, or attending a meeting with staff at a school or daycare facility;

(D) to make a financial or legal arrangement, such as preparing or executing a financial or healthcare power of attorney, preparing or updating a will or living trust, transferring a bank account signature authority, or obtaining a military identification card;

(E) to obtain counseling, such as attending a counseling session provided by someone other than a healthcare provider;

(F) to spend time with a covered military member who is on short term temporary leave for rest and recuperation while on active duty;

(G) to participate in a post-deployment activity, such as attending an arrival ceremony, reintegration briefing , or any other official ceremony or program sponsored by the military within a period of 90 days after the end of the military member's active duty status;

(H) to address issues that arise from the death of a covered military member while on active duty status; and

(I) to deal with any other event that arises out of the covered service member's active duty or call to active duty status if the employer and employee agree:

(i) that the event qualifies as an exigency, and

(ii) on both the timing and duration of the leave.

(2) An employee may use leave to deal with an issue arising from a service member's short-notice deployment for no more than 7 calendar days after receiving the notice of deployment.

(3) An employee may use leave to spend time with a covered military member who is on short term temporary leave for rest and recuperation while on active duty for no longer than 5 days for each instance.

(4) A supervisor must count all hours of leave that an employee uses to handle issues arising from a close family member's being called or ordered to active duty military service against the employee's FMLA entitlement of 12 weeks in a leave year.

19-11. Application for military family leave.

(a) ***Application for leave for a qualified exigency.*** The FMLA Program Manager may require an employee requesting FMLA leave due to a qualifying military exigency to submit a County *Certification of Qualifying Exigency For Military Family Leave Form* (Appendix S). The certification should include the following information:

(1) a statement signed by the employee describing the nature and details of the specific exigency, the amount of leave needed, and the employee's relationship to the military member;

(2) a copy of the covered military member's active duty orders;

(3) a description of the facts supporting the leave request, including any available documentation such as a copy of a meeting announcement or copy of a bill (e.g., for financial or legal services);

(4) the approximate date the qualifying exigency began or will begin;

(5) if the request is for a single period of time, the beginning and end dates for the absence;

(6) if the request is for intermittent or reduced schedule basis, an estimate of the frequency and duration of exigency;

(7) if the exigency involves meeting with a third party or entity, contact information for the third party or entity and a brief description of the purpose of the meeting.

(b) Application for military caregiver leave.

(1) The FMLA Program Manager may require an employee who requests FMLA leave to care for a servicemember to submit a County *Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave Form* (Appendix T) indicating that the servicemember has a serious illness or injury incurred in the line of duty on active duty and is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list for the serious illness or injury incurred in the line of duty on active duty.

(2) Medical certification may be provided by:

(A) a United States Department of Defense (DOD) health care provider;

(B) a United States Department of Veterans Affairs health care provider;

(C) a DOD TRICARE network authorized private health care provider; or

(D) a DOD non-network TRICARE authorized health care provider.

(3) The FMLA Program Manager may require confirmation of the employee's family relationship with the servicemember.

(4) The FMLA Program Manager may deny FMLA leave if the employee fails to provide complete certification as required by these Regulations upon request.

19-12. Limits on the use of sick leave as FMLA leave.

(a) An employee may use sick leave for the entire period of FMLA leave if the FMLA leave is used:

(1) to care for the employee's newborn or newly adopted child and the leave qualifies as parental leave under Section 20 of these Regulations;

(2) to obtain prenatal care for the employee; or

(3) because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position.

(b) An employee may only use as much sick leave as the employee earns in a leave year as FMLA leave if the leave is used:

(1) to care for the employee's newborn or newly adopted child and the leave does not qualify as parental leave under Section 20 of these Regulations; or

(2) to care for, or arrange care for, any of the following with a serious health

condition: the employee's spouse, domestic partner, minor child, adult son or daughter incapable of self care, or parent.

19-13. Transfer of employee on FMLA leave. If an employee uses FMLA leave intermittently or as part of a reduced workweek, the department director may temporarily transfer the employee to another position with equivalent pay and benefits in the same department during the period of FMLA leave.

19-14. Recording of FMLA leave.

(a) An employee or supervisor must record leave designated as FMLA leave on the timesheet as FMLA leave, and, as applicable, as annual leave, personal leave, sick leave, disability leave or leave without pay.

(b) An exempt employee under the FLSA may record less than one full day of LWOP as FMLA leave without affecting the employee's exempt status.

19-15. 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 County's share of insurance premiums for periods of unpaid leave, unless the employee does not return to work because of:

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

19-16. Reinstatement of an employee after FMLA leave.

(a) When an employee returns from FMLA leave, the department director must reinstate the employee to the same position the employee had before the leave began; or place the employee in an equivalent position

(b) An equivalent position must have:

(1) the same pay and benefits; and

(2) the same or substantially similar:

(A) duties;

(B) working conditions;

(C) responsibilities;

(D) privileges;

(E) status;

(F) location;

(G) shift or work schedule;

(H) overtime opportunity; and

(I) opportunity for bonuses.

(c) An employee is entitled to reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence.

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

19-17. 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.

19-18. Appeal of FMLA leave decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on FMLA leave may file a grievance under Section 34 of these Regulations.

Editor's note – Additional information and frequently asked questions about FMLA leave can be found in HR Topics – FMLA Leave, which is available from the Office of Human Resources.

Bargaining unit	Articles of current agreements with references to FMLA leave
Firefighter/Rescuer	6, Annual Leave 7, Sick Leave 8, Parental Leave 11, Family Medical Leave 12, Leave Without Pay
OPT/SLT	16, Leave Without Pay 18, Parental Leave 45, Family and Medical Leave
Police	12, Seniority 16, Parental Leave 18, Annual Leave 19, Sick Leave and Sick Leave Donor Procedure 20, Leave Without Pay 21, Compensatory Time 23, Maintenance of Standards/Retention of Benefits 27, Secondary Employment 59, Family Medical Leave Act 63, Childcare

SECTION 20. PARENTAL LEAVE

(As amended June 30, 2015, and February 14, 2017)

20-1. Definition.

Parental leave: An eligible employee's use of accrued paid leave, compensatory time, unpaid leave, or a limited number of hours of donated sick leave granted at the time of the birth, adoption, or foster placement of a child.

20-2. Eligibility for parental leave.

(a) A department director must allow a full-time or part-time employee to use parental leave after the employee has been employed by the County in a merit system position for at least 6 consecutive months.

(b) An employee who is the parent of a newborn child, newly adopted child, or newly placed foster child is eligible for parental leave. Grandparents, aunts and uncles, and other relatives are not eligible for parental leave.

(c) In extenuating circumstances, the department director or the employee may submit a written request to the OHR Director to waive the requirement that an employee has been employed by the County in a merit system position for at least 6 consecutive months. Extenuating circumstances under this section generally relate to employment with the County and may include an employee:
(1) having been a County merit status employee in the past or having previously worked for the County in a temporary position; or
(2) how close the employee is to meeting the 6-month requirement.

20-3. Amount of parental leave.

(a) A full-time employee may use up to 720 hours of parental leave during a 24-month period.

(b) A full-time employee who works more than 40 regularly scheduled hours per week is entitled to use a prorated amount of parental leave.

(c) A part-time employee who works less than 40 regularly scheduled hours per week is entitled to use a prorated amount of parental leave.

20-4. Use of parental leave.

(a) An employee may use any combination of sick leave, annual leave, compensatory time, personal leave or leave without pay as parental leave.

(b) An employee may use parental leave to care for the employee's newborn child, newly adopted child, or newly placed foster child. A spouse or domestic partner

may use parental leave to attend to the child's mother or other children in the family at the time of the birth, adoption, or foster placement of a child.

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

(d) A department director must allow an eligible employee to use up to 720 hours of parental leave on a continuing basis. With the approval of the supervisor, an employee may use parental leave under a method involving a reduced workday or workweek or on an intermittent basis.

(e) Except in an emergency when the need to use parental leave is not anticipated, an employee must provide 30 calendar days advance notice of the intent to use parental leave.

(f) Parental leave generally commences after the birth of a child at a time when the mother and child are both doing well or immediately following the adoption of a child.

(g) All hours used as parental leave must count against the employee's FMLA entitlement of 12 weeks in a leave year unless:

(1) the employee is not eligible for FMLA leave; or

(2) the employee has already exhausted the FMLA leave entitlement for the leave year; or

(3) the employee has used compensatory time as parental leave.

(h) An employee who has used all available parental leave may still be entitled to use up to 12 weeks of FMLA leave in a leave year under Section 19 of these Regulations.

20-5. Relation of parental leave to other benefits.

(a) A department director must not reassign the increment date of an employee who uses leave without pay as parental leave.

(b) The County must maintain an employee's health and life insurance benefits for the period of leave without pay taken as parental leave.

(c) After the employee returns from parental 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.

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

(a) If an employee uses sick leave for either medical reasons related to childbirth or to attend to the child's mother or other children in the family at the time of birth or adoption of a child, the employee's use of sick leave must be deducted from the parental leave authorized by Section 20-3.

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

20-7. Appeal of parental leave decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on parental leave may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to parental leave
Firefighter/Rescuer	7, Sick Leave 8, Parental Leave 11, Family Medical Leave 48, Job Sharing Program
OPT/SLT	15, Sick Leave 16, Leave Without Pay 18, Parental Leave 45, Family and Medical Leave
Police	16, Parental Leave 19, Sick Leave and Sick Leave Donor Procedure 23, Maintenance of Standards/Retention of Benefits 27, Secondary Employment 55, Job Sharing Program 59, Family Medical Leave Act 63, Childcare

SECTION 21. ADMINISTRATIVE LEAVE

(As amended December 11, 2007, October 21, 2008, July 12, 2011, and June 30, 2015)

21-1. Authorized uses of administrative leave. The CAO may grant administrative leave to an employee:

(a) in a general emergency;

(b) when an unhealthy or dangerous situation exists at a County facility;

(c) who is relieved of duty pending:

(1) an investigation of an incident or charge;

(2) removal from the employee's position; or

(3) a determination of the employee's fitness for duty;

(d) to attend officially approved meetings, conferences, seminars, or training, or as paid professional improvement leave;

(e) subpoenaed as a witness in a civil or criminal case or an administrative proceeding, unless the employee is subpoenaed as a witness in a civil case:

(1) that is unrelated to the employee's official duties; and

(2) to which the employee is a party;

(f) required to serve on a jury;

(g) for bereavement, under Section 21-2 of these Regulations;

(h) for military service or military training under Section 22 of these Regulations;

(i) who is injured on the job, until the Risk Management Division of the Department of Finance determines if the employee is eligible for disability leave;

(j) under other circumstances where the CAO determines that granting administrative leave is in the best interest of the County;

(k) for up to two hours to vote if the employee's work schedule on the day of an election does not allow at least 2 consecutive hours off while the polls are open;

(l) to serve as an organ donor, under Section 21-4 of these Regulations; and

(m) for an interview for other positions in County Government.

21-2. Limits on administrative leave for bereavement.

(a) The Department Director may grant administrative leave to an employee who has experienced the death of a member of the employee's immediate family, under Section 1-32 of these Regulations.

(b) Upon written request, the OHR Director may grant administrative leave to an employee who has experienced the death of an individual outside of the employee's immediate family who was related to the employee through blood or marriage or an individual with whom the employee had a close association that was the equivalent of a family relationship, if:

(1) there is demonstrated objective proof of an extremely close relationship between the individual and the employee, such as

(A) the individual was living with the employee at the time of death;

(B) the individual and the employee grew up together in the same household; or

(2) extenuating or special circumstances exist.

(c) 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.

21-3. Limits on administrative leave for injury on the job. If the Risk Management Division of the Department of Finance determines that an employee is not eligible for Workers' Compensation benefits for an injury on the job, the County must adjust the employee's leave balances or pay to reimburse the County for the administrative leave that the employee was granted for the injury on the job. The County should deduct leave from the employee's leave balances first but, if the employee has no leave, may take the value of the leave from the employee's pay.

21-4. Limits on administrative leave for organ donors.

(a) The Department Director may grant administrative leave to an employee for:

(1) up to 7 days in any 12-month period to serve as a bone marrow donor; and

(2) up to 30 days in any 12-month period to serve as an organ donor.

(b) The organ donor leave is in addition to any annual leave, sick leave, personal days, or paid time off that the employee is otherwise entitled to.

(c) The employee must provide medical documentation of the bone marrow or organ donation before organ donor leave is approved.

21-5. Limits on administrative leave for general emergency. An employee will not be eligible for administrative leave for a general emergency if an employee is AWOL on either the employee's last regular workday before or first regular workday after the general emergency, or AWOL on both days,

21-6 Appeal of administrative leave decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on administrative leave may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to administrative leave
Firefighter/Rescuer	2, Organizational Security 3, Union Activities 9, Administrative Leave 10, Disability Leave 19, Wages 38, Contract Grievance Procedure 48, Job Sharing Program
OPT/SLT	16, Leave Without Pay 17, Disability Leave 19, Administrative Leave 34, Safety and Health 36, Union Activities

Police	2, Administrative Leave 15, Hours and Working Conditions 17, Disability Leave and Injury on the Job 27, Secondary Employment 29, Physical Fitness Awards 35, Vehicles 55, Job Sharing Program 61, Directives and Administrative Procedures

SECTION 22. MILITARY LEAVE

(As amended December 11, 2007, and October 21, 2008)

22-1. Definitions.

(a) ***Military leave:*** Paid or unpaid leave granted to an employee who temporarily leaves County employment for military service or training.

(b) ***Maryland organized militia:*** The organized militia of the State of Maryland that consists of the Maryland Army National Guard, the Maryland Air National Guard, the Inactive National Guard, and the Maryland Defense Force. Md. Ann. Code art. 65, §5.

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:

(1) may use accrued annual leave and compensatory time while on active duty;

(2) is entitled to continue life insurance, health insurance, and retirement system credit for the entire leave period; and

(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:

(A) periods when the employee uses accrued annual leave, compensatory time, or donated leave; and

(B) all pay and allowances received from the military except for separation allowances.

(b) ***Military leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).*** Under USERRA, a full-time or part-time employee who volunteers for or is involuntarily ordered to active duty, including active duty training, inactive duty training, initial active duty for training, or absence for an examination to determine fitness for military service, in the armed forces of the United States or a state militia:

(1) may use accrued annual leave and compensatory time while on active duty (38 USC §4316(d));

(2) must be granted LWOP for the remaining period the employee is in the military service (38 USC §4316(b)(1)(A));

(3) may continue life insurance or other benefits during military leave to the same extent that these benefits are available to other employees on LWOP (38 USC §4316(b)(1)(B));

(4) may continue to receive health insurance for up to 19 months after beginning LWOP, by paying only the employee's share for the first 30 days of military service while on LWOP and by paying 102 percent of the total health insurance cost for the remaining 18 months (38 USC §4317(a)(1) and (2)).

(c) ***Military leave for a member of the Maryland organized militia under Maryland law.*** Under the Maryland Code, a County employee member of the Maryland organized militia who is ordered to active duty under authority of the Governor is entitled to administrative leave for the actual period of active duty. For purposes of this subsection, "active duty" does not include inactive duty training (Md. Ann. Code art 65, §42).

(d) ***Effect of more than 90 calendar days of LWOP for military service.*** A department director must not require an employee who is granted more than 90 consecutive calendar days of leave without pay for military service to waive reinstatement rights to the employee's position (38 USC §4316(b)(1)(A) and Md. Ann. Code art 65, §42).

22-3. ***Reinstatement after active duty military service***.

(a) Under USERRA and Md. Ann. Code §2-703(a), (b), and (c) of the State Personnel and Pensions Article, an employee is entitled to reinstatement after military service, as provided in Section 22-2(b) of these Regulations, if:

(1) the total of the employee's periods of active duty do not exceed 5 years over the employee's entire County employment (periods of active duty for training or during which the employee was ordered to active duty during war, emergency, or in support of a critical mission are not included in the calculation of the 5-year period) (38 USC §4312(a)(2)); and

(2) the employee complies with the time limits shown in the table below;

Time Limit for Reinstatement after Military Service (38 USC §4312(a)(3) and (e))	
Period of military service:	**Employee must:**
1-30 calendar days	Report on 1st regularly scheduled workday after completion of military service and an 8-hour rest period
31-180 calendar days	Apply for reinstatement no later than 14 calendar days after completion of service
181 calendar days or more	Apply for reinstatement no later than 90 calendar days after completion of service
If employee hospitalized or convalescing from injury received or aggravated during military service	Apply for reinstatement within 2 years after completion of military service

(3) the employee's position was not a temporary job or a job expected to last for a brief period, but instead was expected to continue for a significant period of time, as determined by the CAO and under USERRA (38 USC §4312(d)(1)(C));

(4) the employee gives written or verbal notice to the department prior to leaving for military service, unless the employee was not able to give prior notice because of military necessity (38 USC §4312(a)(1)); and

(5) the employee gives documentation to the department of the length and character of the military service on return from military service of 30 days or more (38 USC §4312(f)(1)); and

(6) the employee was not discharged under dishonorable conditions (38 USC §4312(f)(1)(C)).

(b) Under the Maryland Code, a non-temporary County employee member of the Maryland organized militia who resigns from County employment after being ordered to active duty under authority of the Governor is entitled to reemployment without back pay if the employee:

(1) is still qualified to perform the duties of the employee's position; and

(2) applies for reemployment within 30 calendar days after being relieved from active duty (Md. Ann. Code art. 65, §32A).

22-4. Employee rights after reinstatement.

(a) Under USERRA and Md. Ann. Code §10-101 of the Political Subdivisions Article and §2-705 and 706 of the State Personnel and Pensions Article, an employee is entitled to the following on reinstatement:

(1) prompt reinstatement to the same job or the job that the employee would have had or attained if the employee had not left for military service (if the employee is or can become qualified for that job) or, if the period of service exceeds 90 days, another job of the same status and same rate of pay (38 USC §4313(a));

(2) accrued seniority, service increments, and proficiency advancements or noncompetitive promotions that the employee would have received if the employee had not left for military service (38 USC §4316(a));

(3) protection against dismissal or termination, except for cause (38 USC §4316(c));

(4) training or retraining to make the employee able or qualified to do the job if the job requirements have changed during the period of military service (38 USC §4313(a));

(5) employment in a position of lesser status and pay, but with full seniority, if the person cannot become qualified to perform the previous job;

(6) reasonable efforts to accommodate a temporary or permanent disability that occurred or was aggravated during the military service (38 USC §4313(a));

(7) credit toward vesting under the employee's retirement plan for the period of military service (38 USC §4318(a)(2));

(8) credited service for retirement if the employee makes up any required employee contributions (38 USC §4313(b)(1) and (2));

(9) reinstatement of unused sick and annual leave (38 USC §4316(a));

(10) the same increment date that the employee had before the employee's military leave (38 USC §4316(a)); and

(11) immediate reinstatement of health insurance coverage without a waiting period or exclusion for pre-existing conditions, except for a health condition that is related to the military service (38 USC §4317(b)(1)).

(b) Under the Md. Ann. Code art. 65, §32A, a County employee member of the Maryland organized militia who is ordered to active duty under authority of the

Governor and who either returns from administrative leave or is reemployed is entitled to the following at the conclusion of active duty:

(1) the pay, seniority, and performance rating that the employee would have had if the employee had not been ordered to active duty; or

(2) if the employee can no longer perform the duties of the employee's former position because of a disability sustained during the active duty, a position with duties that the employee can perform that provides:

(A) similar seniority, status, and pay; or

(B) the nearest approximation possible under the circumstances to the seniority, status, and pay of the employee's former position.

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:

(A) no more than 15 workdays or 120 hours of administrative leave each calendar year; or

(B) a prorated amount of administrative leave but no more than 15 workdays or 168 hours for a uniformed fire/rescue employee for each calendar year.

(2) An employee must apply for administrative leave for military training as soon as the employee receives orders for training.

(3) The CAO may waive the 15-workday limit when 2 annual training periods are scheduled in one calendar year, but an employee must not use more than 30 workdays of administrative leave for training in a 24-month period.

(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.

(c) ***Weekend reserve duty.*** If an employee who is regularly scheduled to work on weekends gives the department director at least 21 calendar days notice of upcoming reserve duty on the weekend, the department director should alter the employee's schedule to enable the employee to report for reserve duty without using leave.

22-6. Appeal of military leave decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on military leave may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to military leave
Firefighter/Rescuer	9, Administrative Leave 12, Leave Without Pay
OPT/SLT	6, Service Increments 16, Leave Without Pay 19, Administrative Leave
Police	20, Leave Without Pay 28, Service Increments 44, Promotions

SECTION 23. LEAVE WITHOUT PAY

23-1. Definition.

Leave without pay or LWOP. An employee's approved unpaid absence from work.

23-2. Authorization of LWOP. A department director may approve LWOP at the request of an employee or place an employee on LWOP.

23-3. Employee request for LWOP. An employee who wants to use LWOP must:

(a) request it in writing in advance unless the employee could not anticipate the need to use LWOP; and

(b) give the request for LWOP to the employee's supervisor and state in general terms the employee's reason for requesting the leave.

23-4. Approval of LWOP request.

(a) A department director must approve LWOP for an eligible employee if the requested leave is:

(1) FMLA leave under the Family and Medical Leave Act, Montgomery County Employee Benefits Equity Act, and Section 19 of these Regulations;

(2) parental leave under Section 20 of these Regulations;

(3) military leave under Section 22 of these Regulations; and

(4) leave approved for an employee who is a member of the General Assembly under Section 23-7(a) of these Regulations.

(b) A department director may approve an employee's request to use LWOP for another purpose after considering the employee's reason for requesting LWOP and how the employee's absence will affect the department's work.

23-5. Limits on LWOP.

(a) A department director may approve LWOP for an employee for one year or less.

(b) If an employee has used more than 12 consecutive months of LWOP, the department director may:

(1) terminate the employee's employment; or

(2) take another action consistent with State or Federal law such as the ADA, FMLA, or USERRA.

(c) If a department director approves more than 90 consecutive calendar days of LWOP for an employee, the department director may, as a condition of approval, require the employee to waive the right to be reinstated to the employee's position after the approved LWOP period ends unless the LWOP is:

(1) FMLA leave;

(2) parental leave;

(3) military leave; or

(4) leave approved for an employee who is a member of the General Assembly under Section 23-7(a).

(d) If the department director requires that an employee waive the right to be reinstated to the employee's position:

(1) the employee remains an employee during the authorized period of LWOP and may apply for other positions, but the County is not obligated to appoint the employee to another position;

(2) the employee's department director may fill the employee's position as soon as the authorized period of LWOP starts; and

(3) the department director must terminate the employment of the employee after the authorized LWOP period ends unless the employee resigns or is appointed to another position.

23-6. Placing an employee on LWOP.

(a) ***LWOP associated with a disciplinary action.*** Under Section 33 of these Regulations, the department director may place an employee on LWOP:

(1) during an investigation, as described in Section 33-3(f), that may lead to disciplinary action against the employee;

(2) after disciplinary action is proposed against the employee; or

(3) before and during the employee's trial for offenses related to the employee's County employment.

(b) ***LWOP for a medical condition.*** Under Section 8 of these Regulations, a department director may place an employee on LWOP if:

(1) the employee is unable to perform the essential functions of the employee's position and reasonable accommodation is either impossible or unsuccessful;

(2) the employee is not eligible for disability leave; and

(3) the employee has exhausted all other types of leave.

(c) ***LWOP by default.*** The County may place an employee on LWOP by default if the employee has exhausted leave of the type that the employee requested, other appropriate leave, and compensatory time.

(d) ***LWOP after a positive drug test.*** A department director may place an employee on LWOP after the employee has a confirmed positive result on a drug or alcohol test, if:

(1) under Federal law, the County must not allow the employee to perform essential functions of the employee's position until the employee is evaluated by a substance abuse professional (SAP) who has determined that the employee may again perform the essential functions of the employee's position;

(2) the employee has no leave of the appropriate type to use during the absence; and

(3) the department director has not assigned the employee to an alternative position with duties that the employee can perform.

23-7. Use of LWOP to perform duties of an elected office or campaign for political office.

(a) ***LWOP for an employee who is a member of the Maryland General Assembly.*** A department director must grant LWOP to an employee who is a member of the Maryland General Assembly as required by Section 2-105 of the State Government Article of the Maryland Code.

(b) ***LWOP for an employee who is not a member of the Maryland General Assembly.*** An employee may request LWOP to campaign for political office and to perform the duties of an elected position. The employee's supervisor may approve the requested LWOP on the same basis as requests for LWOP for other reasons.

(c) ***Effect of LWOP use for an employee who is a member of the Maryland General Assembly.*** If an employee who is a member of the Maryland General Assembly uses LWOP to perform the duties associated with the employee's elected position while the General Assembly is in session, the department director must:

(1) ensure that the employee continues to accrue annual and sick leave;

(2) not delay the employee's eligibility for a higher annual leave accrual rate; and

(3) not reassign the employee's service increment date.

23-8. Effect of LWOP use on employee benefits.

(a) ***Effect on employee's annual and sick leave accrual.*** Except as provided in Section 23-7(c) above:

(1) an employee must not accrue annual or sick leave while the employee uses LWOP; and

(2) a department director must delay the date on which the employee is eligible for a higher annual leave accrual rate for the same length of time that the employee was on LWOP, if an employee uses LWOP for more than 4 consecutive weeks.

(b) ***Effect on an employee's eligibility for a service increment.*** A department director must reassign the service increment date of an employee who uses more than 10 consecutive workdays of LWOP, unless the leave LWOP is:

(1) FMLA leave;

(2) parental leave;

(3) military leave;

(4) professional improvement leave; or

(5) used under Section 23-7(a) and (c) by an employee who is a member of the Maryland General Assembly.

(c) ***Effect on an employee's retirement, health insurance, and tax shelter benefit.*** The following benefits may be affected by an employee's LWOP use:

(1) credited service for retirement;

(2) health insurance coverage and payment of premiums; and

(3) salary reduction taken under any tax shelter benefit such as the deferred compensation plan or dependent care assistance program.

(d) ***Period of suspension to be treated as LWOP for benefits purposes.*** If an employee is suspended, the department director must treat the period of suspension the same as a period of LWOP for the purpose of the employee's benefits, except that a director must reassign an employee's service increment date if it occurs during a suspension.

23-9. Appeal of LWOP decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on LWOP may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to leave without pay
Firefighter/Rescuer	7, Sick Leave 8, Parental leave 11, Family Medical Leave 12, Leave Without Pay
OPT/SLT	5, Wages, Salary and Employee Compensation 6, Service Increments 16, Leave Without Pay 18, Parental Leave 28, Disciplinary Actions 32, Tools and Uniforms 45, Family and Medical Leave
Police	16, Parental Leave 17, Disability Leave and Injury on the Job 20, Leave Without Pay 22, Professional Improvement Leave 23, Maintenance of Standards/Retention of Benefits 27, Secondary Employment 28, Service Increments 43, Discipline 59, Family Medical Leave Act

SECTION 24. HOLIDAY LEAVE AND COMPENSATION

(As amended May 20, 2010 and July 12, 2011)

24-1. Definitions.

(a) ***Holiday compensation:*** Additional pay or compensatory time earned by an employee who is:

(1) eligible for holiday pay under Section 24-4; and

(2) required to work on a day observed by the County as a holiday.

(b) ***Holiday leave:*** Paid leave granted to an eligible employee on a day observed by the County as a holiday.

24-2. Holidays observed by the County.

(a) ***Publication of holidays.*** Each year the OHR Director must publish the dates of the official County holidays listed below for that year. The holiday period is from 12:00 a.m. to 11:59 p.m. on the published dates. These official holidays and any special holiday that may be declared by the CAO are the only County holidays for purposes of these Regulations.

(b) ***Official holidays***. The official County holidays are:

(1) New Year's Day -- January 1 or an alternate holiday designated by the CAO as the official holiday if January 1 falls on a Saturday or Sunday;

(2) Martin Luther King, Jr. Day -- Third Monday in January;

(3) Presidents' Day -- Third Monday in February;

(4) Memorial Day -- Last Monday in May;

(5) Independence Day -- July 4 or an alternate holiday designated by the CAO as the official holiday if July 4 falls on a Saturday or Sunday;

(6) Labor Day -- First Monday in September;

(7) Veterans' Day -- November 11 or an alternate holiday designated by the CAO if November 11 falls on a Saturday or Sunday;

(8) Thanksgiving Day -- Fourth Thursday in November; and

(9) Christmas Day --December 25 or an alternate holiday designated by the CAO as the official holiday if December 25 falls on a Saturday or Sunday.

(c) ***Special holiday.*** The CAO may designate any other day as a full-day or part-day holiday or as a non-workday for all employees or for a group of employees providing services to other County-funded or State agencies.

(d) ***Other agency holiday.*** The CAO may authorize an employee who provides County services to another County-funded or State agency:

(1) to work on a County holiday not observed by the other County-funded agency; and

(2) not to work on the holiday of a County-funded agency if the holiday is not observed by the County government.

24-3. Actual and official holiday.

(a) If Christmas Day, December 25, New Year's Day, January 1, or Independence Day, July 4, falls on either a Saturday or Sunday, a director of a department that provides services on Saturday or Sunday may require an employee to work:

(1) on the actual holiday instead of the official holiday designated by the CAO; or

(2) on the official holiday; or

(3) both the actual and official holiday.

(b) If a department director requires an employee to work on Christmas Day, December 25, New Year's Day, January 1, or Independence Day, July 4, that actual holiday worked is the employee's holiday for purposes of compensation. If a department director requires an employee to work on the official holiday but not the actual holiday, the official holiday is the employee's holiday for purposes of compensation.

(c) A department director who requires an employee to work on both an actual holiday and the official holiday must not pay holiday premium pay for work on the official holiday.

24-4. Eligibility for holiday leave.

(a) A full-time or part-time employee who is not a uniformed fire/rescue employee and who is normally scheduled to work on the day on which the holiday falls may receive paid holiday leave.

(b) A school-based employee who works a 10-month schedule may receive paid holiday leave for holidays during that 10-month period.

(c) An employee may receive holiday leave if the employee is in pay status on the last regularly scheduled workday before and the first regularly scheduled workday after the holiday. An employee who, with supervisory approval, uses furlough hours on the last regularly scheduled workday before and/or the first regularly scheduled workday after a holiday may receive holiday leave.

24-5. General information about holiday leave.

(a) ***Employee on leave or compensatory time.*** An employee on approved paid leave or compensatory time on a holiday is on holiday leave for that day.

(b) Holiday on an employee's regular day off.

(1) If a holiday falls on an employee's regular day off, a department director should assign the employee an alternate day off within the same pay period.

(2) Instead of an alternate day off, the department director may offer the employee pay at the employee's regular hourly rate or an equivalent amount of compensatory time as the holiday benefit. The department director may offer the employee pay as the holiday benefit only if the department director would have to pay overtime to another employee to replace the employee if the employee took an alternate day off.

(c) Holiday leave for a part-time employee.

(1) A supervisor must compute holiday leave and compensation for a part-time employee on a prorated basis using the following formula:

$$\frac{\text{Hours normally scheduled to work in the pay period in which the holiday falls}}{10} \text{ prorated hours}$$

(2) If a department director grants alternate time off or compensatory time to a part-time employee, the alternate time off or compensatory time must be prorated using the formula in subsection (c)(1) above.

24-6. Determining which employees must work on a holiday.

(a) The CAO must determine which County services must be maintained on a full or partial basis on a holiday.

(b) A department director should release an employee from work on a holiday unless the employee is needed to maintain essential services. The department director must determine which employees must work and which employees are released from work on a holiday.

24-7. Premium pay for holiday work.

(a) Eligibility for holiday premium pay.

(1) A department director must pay an employee holiday premium pay if:

(A) the majority of the employee's normal workday falls during the holiday period; and

(B) the employee either works, is on scheduled leave, approved leave, or administrative leave on the employee's scheduled workdays immediately before and after the holiday.

(2) A department director must not pay holiday premium pay or grant compensatory time to an MLS employee who works on a holiday. A department director may give an MLS employee an alternate day off within the same pay period.

(b) Holiday work on an employee's regularly scheduled workday.

(1) A department director must pay a full-time employee who is required to work on a holiday that is the employee's regularly scheduled workday:

(A) regular pay for the hours scheduled to be worked on the normal workday of 8 or more hours, as applicable;

(B) premium pay at a rate of 1 1/2 times the regular hourly rate for each hour worked during the normal workday on which the holiday occurs; and

(C) overtime compensation for each hour worked beyond the normal workday of 8 hours or more.

(2) A department director must pay a part-time employee who is required to work on a holiday that is the employee's regularly scheduled workday:

(A) regular pay for the prorated share of hours for which the employee would have received holiday leave if the employee had not worked;

(B) premium pay at a rate of 1 1/2 times the regular hourly rate for each hour worked during the normal workday on which the holiday occurs; and

(C) overtime compensation for each hour worked beyond the normal workday of 8 hours or more.

(c) Holiday work on an employee's regular day off.

(1) ***For full-time employees.*** A department director must pay a full-time employee who is required to work on a holiday that is the employee's regular day off:

(A) regular pay for the hours scheduled to be worked in the normal workday of 8 hours or more or give the employee an alternate day off within the same pay period or an equivalent amount of compensatory time;

(B) premium pay at a rate of double the regular hourly rate for each hour worked for the normal workday on which the holiday occurs; and

(C) overtime compensation for each hour worked beyond the normal workday of 8 hours or more.

(2) ***For part-time employees.*** A department director must pay a part-time employee who is required to work on a holiday that is the employee's regularly scheduled day off:

(A) regular pay for the prorated share of hours for which the employee would have received holiday leave if the employee had not worked or give the employee a prorated substitute holiday or a prorated share of compensatory time; and

(B) premium pay at a rate of double the regular hourly rate for each hour worked up to 8 hours or more than 8 hours if the employee's normal workday is longer than 8 hours; and

(C) overtime compensation for each hour worked beyond the normal workday of 8 hours or more.

24-8. Compensatory time instead of premium pay for holiday work. If a department director cannot pay premium pay to an employee for holiday work because of special or significant budgetary limitations, the department director must credit the employee with:

(a) 1 ½ hours of compensatory time for each hour of holiday work on the employee's normal workday; and

(b) 2 hours of compensatory time (double time) for each hour of holiday work performed during the employee's normal workday of 8 hours or more on the employee's regular day off.

24-9. Holiday benefit for uniformed County fire/rescue employees.

(a) Holiday benefit.

(1) The holiday benefit in this subsection is the only holiday compensation that a uniformed fire/rescue employee is eligible to receive, regardless of whether the employee is scheduled to work on a holiday.

(2) An employee must record the benefit on the time sheet for the pay period in which the holiday falls.

(b) Eligibility for holiday benefit.

(1) An employee in pay status, on approved leave, or on a regularly scheduled day off on the holiday is eligible to receive the holiday benefit.

(2) An employee who fails to report for work as scheduled and who is not in an approved leave status will not be eligible for the holiday benefit for that holiday.

(3) An employee will not be eligible for the holiday benefit if the employee is:

(A) in a non-pay status on both the employee's last regular workday before and first regular workday after the holiday; or

(B) AWOL on either the employee's last regular workday before or first regular workday after the holiday, or AWOL on both days.

(c) ***Amount of holiday benefit.*** The Administrator of Fire and Rescue Services must pay a uniformed fire/rescue employee a holiday benefit as indicated in the following table.

Holiday Benefit for Uniformed Fire/Rescue Employees				
Firefighter's work schedule	**Holiday benefit for a holiday listed in Section 24-2 (employee may choose either)**		**Substitute for a personal leave day* (employee may choose either)**	
	Regular pay	**Compensatory time**	**Regular pay**	**Compensatory time**
2080-hour work year	13 hours	13 hours	13 hours	13 hours
2184-hour work year	14 hours	14 hours	14 hours	14 hours
2496-hour work year	16 hours	16 hours	16 hours	16 hours

**Applies to an employee who is normally scheduled to work and who actually works on U.S. Presidential Inauguration Day (January 20, one day every 4 years); Election Day (usually first Tuesday after first Monday in November in even-numbered calendar years); and Columbus Day (second Monday in October).*

24-10. Appeal of holiday leave or holiday compensation decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on holiday leave or holiday compensation may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to holiday leave and compensation
Firefighter/Rescuer	16, Holidays
OPT/SLT	6, Service Increments 19, Administrative Leave 20, Holiday Leave 29, Labor Management Relations Committee
Police	14, Holiday Leave and Pay 28, Service Increments 44, Promotions 55, Job Sharing Program

SECTION 25. PERSONAL LEAVE DAYS

(As amended October 21, 2008)

25-1. Definition.

Personal leave: Three days of paid leave granted to an eligible employee at the beginning of the leave year.

25-2. Eligibility for personal leave days.

(a) A full-time or part-time employee who is not a uniformed fire/rescue employee is eligible to receive personal leave days.

(b) An employee must be employed by the County during the first full pay period of the leave year to receive 3 personal leave days for that year.

(c) An employee hired after the first full pay period of the leave year must be employed by no later than the beginning of the 8th pay period of the leave year to receive 2 personal leave days for that year.

(d) An employee hired after the 8th pay period of the leave year must be employed by no later than the beginning of the 16th pay period of the leave year to receive 1 personal leave day for that year.

(e) At the beginning of the leave year a supervisor must prorate personal leave days for part-time employees according to the following formula:

$$\frac{\text{Hours normally scheduled to work in a pay period}}{10} \text{ number of hours in a personal leave day}$$

25-3. Use of personal leave days. An employee may use personal leave under the following conditions:

(a) a personal leave day must be used in the leave year in which it is granted and cannot be carried over to the next leave year;

(b) an employee must request to use a personal leave day in the same manner as annual leave; and

(c) a supervisor must approve the use of a personal leave day unless the employee is needed to provide essential services.

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)

(b) An employee who is granted compensatory time instead of personal leave days may choose to:

(1) use the compensatory time during the leave year in which it was granted;

(2) carry over the compensatory time to the next leave year if the carryover does not exceed the limitation on accrual of compensatory time under Section 10 of these Regulations; or

(3) receive, at the end of the leave year, payment for a compensatory time balance up to the amount of compensatory time the employee was granted instead of personal leave days for that leave year.

(c) To request payment of a compensatory time balance at the end of a leave year, an employee must advise the Finance Department's Payroll Section in writing by February 15th of the following leave year of the employee's wish to be paid for the compensatory time.

25-5. Disposition of unused personal leave days on separation from the County. If an employee leaves County employment, the employee forfeits any unused personal leave days.

25-6. Appeal of personal leave day decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on personal leave days may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to personal leave**
Firefighter/Rescuer	None
OPT/SLT	20, Holiday Leave
Police	14, Holiday Leave and Pay

SECTION 26. TRANSFER

(As amended December 10, 2002, and June 30, 2015)

26-1. Policy on transfer of employees.

(a) Transfer of employees is a prerogative of management.

(b) An involuntary transfer of an employee is not an adverse action or disciplinary action.

(c) A department director need not consider an employee's performance rating before transferring the employee involuntarily.

(d) Appropriate reasons for transferring an employee are:

(1) to benefit the transferred employee;

(2) to benefit another employee;

(3) to benefit the department or work unit;

(4) to benefit a program; or

(5) to resolve conflicts or other problems.

(e) The following are examples of valid reasons for a department director to transfer an employee:

(1) a voluntary request from an employee to be transferred;

(2) a lack of funds;

(3) a change in the approved work program or plan;

(4) an administrative reorganization;

(5) a technological change that affects staffing;

(6) a change in an employee's physical or psychological condition;

(7) the resolution of a grievance or other issue affecting the operational efficiency of a unit or organization;

(8) training or development;

(9) the need for additional personnel at a specific work site; and

(10) an investigation of an incident or charge involving the employee.

(f) A department director must not transfer an employee unless the employee meets the minimum qualifications for the position to which transferred.

26-2. CAO's Authority to Transfer an Employee. The CAO may transfer or place an employee in any vacant position for which the employee meets the minimum qualifications:

(a) in order to resolve a grievance, conflict or other problem;

(b) to promote efficient operations in the County; or

(c) under other circumstances where the CAO determines that such action is in the best interests of the County.

26-3. OHR Director's Responsibility to Transfer an Employee. The OHR Director may act on behalf of the CAO to transfer an employee under Section 26-2 above. However, a department director may appeal the OHR Director's decision to transfer or place an employee in a vacant position to the CAO for final determination.

26-4. Temporary transfers between public agencies. The CAO may enter into a reciprocal agreement with a public agency that is not a County-funded agency to arrange a voluntary detail of an employee for 12 months or less. The employee must remain an employee of the loaning agency. An agreement may provide that the receiving agency will reimburse the loaning agency for the cost of the employee's salary and benefits.

26-5. Transfers between County-funded agencies. The CAO may enter into a reciprocal agreement that provides for the temporary or permanent voluntary transfer of an employee from one County-funded agency to another.

26-6. Access to reciprocal agreements. OHR must maintain copies of active reciprocal agreements that provide for transfers or details between the County and other agencies and make them available to County employees upon request.

26-7. Appeal of transfer. An employee with merit system status may file a grievance over an involuntary transfer under Section 34 of these Regulations. The employee must show that the action was arbitrary and capricious.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to transfers
Firefighter/Rescuer	5, Management Rights 11, Family Medical Leave 17, Special Duty Differentials 28, Transfers 48, Job Sharing Program 52, Paramedic Agreement
OPT/SLT	2, Management Rights 4, Voluntary Checkoff of Union Fees and Deductions 8, Seniority 22, Transfer 27, Reduction-in-Force 45, Family and Medical Leave Appendix VIII, Reasonable Accommodation Appendix IX, Performance Planning and Evaluation Procedures for Bargaining Unit Members
Police	3, Agency Shop and Dues Checkoff 5, Tech Pay 6, Clothing Allowance 15, Hours and Working Conditions 25, Transfers 35, Vehicles 42, Management and Employee Rights 55, Job Sharing Program 59, Family Medical Leave Act 61, Directives and Administrative Procedures

SECTION 27. PROMOTION

(As amended June 30, 2015)

27-1. Policy on promotion.

(a) A supervisor's assignment of higher-graded duties to an employee or are employee's assumption of higher-graded duties must not be considered a promotion or temporary promotion unless it has been formally designated as a promotion or temporary promotion.

(b) The County's promotional program must provide:

(1) general notification of promotional opportunities; and

(2) full and fair consideration of all eligible employees for higher level positions.

(c) A department director should not temporarily reassign an employee to a higher graded position unless the director:

(1) first considers the use of alternate means, such as transfer, for filling the position temporarily; and

(2) determines the action is necessary to accomplish the department's workload.

(d) A department director must not give a temporary promotion to an employee unless the employee:

(1) assumes all the duties and responsibilities of a higher-graded encumbered or vacant position; and

(2) meets the minimum qualifications for the vacant position.

27-2. Types of promotion.

(a) **Competitive promotion.** Prior to making the final selection for promotion, the department director must ensure that an applicant's qualifications are evaluated under the competitive rating process specified in Section 6-5 of these Regulations.

(b) Proficiency advancement; noncompetitive promotion.

(1) **Proficiency advancement.** A department director may approve a noncompetitive promotion of an employee who has passed all required examinations and meets the requirements for a proficiency advancement from an entry or training level class to the designated budget level class within the same occupational series.

(2) Noncompetitive promotion.

(A) A department director may noncompetitively promote a current employee who was demoted as a result of disability or RIF or who was reclassified or reallocated downward, if the individual:

(i) is promoted to a position at the same or lower grade level than the employee held at the time of reclassification, reallocation, or demotion;

(ii) meets the requirements for the position;

(iii) passes a physical examination, if required for the position; and

(iv) applies for promotion within 5 years after the date of reclassification, reallocation, or demotion.

(B) The department director must obtain the OHR Director's approval of the noncompetitive promotion.

(C) For an employee who took a voluntary demotion because of a RIF, noncompetitive promotion does not affect the employee's right to priority consideration for other positions under Sections 6-9 and 30-4 of these Regulations.

(D) Noncompetitive promotion is the prerogative of management and not a right or entitlement of an employee. An employee may not file a grievance or appeal over the denial of a noncompetitive promotion**.**

(c) Noncompetitive temporary promotion.

(1) A department director:

(A) may approve a noncompetitive temporary promotion of an employee for up to 12 consecutive calendar months;

(B) must obtain the approval of the MSPB for a noncompetitive temporary promotion longer than 12 calendar months;

(C) must compensate an employee under Section 10-5(c)(2) for a noncompetitive temporary promotion; and

(D) must not give an employee who was noncompetitively temporarily promoted a priority claim or competitive advantage if the position is later filled on a competitive basis.

(2) In order to effect a noncompetitive temporary promotion, a department director must submit:

(A) a written request for approval of a temporary promotion to the OHR Director stating the reason for the promotion, the duration of the temporary promotion, and the amount of the promotional salary increase; and

(B) a Personnel Action Form (PAF) that shows the effective date of the temporary promotion as the first day of the pay period in which the employee's temporary promotion begins.

(3) In order to extend a noncompetitive temporary promotion beyond 12 months, a department director must submit a written request to the OHR Director stating the reason for the extension. If the OHR Director believes that the extension request is supported by "exigent or compelling circumstances" as defined by the MSPB, the OHR Director must submit the request to the MSPB with a recommendation on the merits of the request. If the OHR Director, however, concludes that it is unlikely that the MSPB would approve the extension for the reasons given, the OHR Director may deny the extension request by the department director. The department director may appeal the OHR Director's denial to the CAO.

(4) When a temporary promotion ends, the department director must:

(A) return the employee to the position occupied immediately prior to the temporary promotion, unless the department director otherwise promotes, demotes, or transfers the employee to another position; and

(B) submit to the OHR Director a PAF that shows the end date of the temporary promotion as the last day of the pay period in which the employee's temporary promotion ends.

(d) Competitive temporary promotion.

(1) Prior to making the final selection for a competitive temporary promotion, the department director must provide for full and open competition and ensure that an applicant's qualifications are evaluated under the competitive rating process specified in Section 6-5 of these Regulations.

(2) A competitive temporary promotion may extend beyond 12 consecutive calendar months without obtaining the approval of the MSPB.

27-3. Compensation for a promotion. A department director must compensate an employee for a promotion as described in Section 10-5(c).

27-4. Appeal of promotional action.

(a) An employee with merit system status may file a grievance under Section 34 of these Regulations over a promotional action. The employee must show that the action was arbitrary and capricious or in violation of established procedure.

(b) An employee who applied for promotion to a merit system position and who alleges that the CAO's decision was arbitrary and capricious, illegal, based on political affiliation, failure to follow announced examination and scoring procedures, or nonmerit factors, may file an appeal directly with the MSPB.

(c) An employee who alleges discrimination prohibited by the County's EEO policy in a promotional action may not file a grievance but may file a complaint under the processes described in Section 5-4 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to promotion**
Firefighter/Rescuer	2, Organizational Security 5, Management Rights 22, Prevailing Rights 29, Promotions 38, Contract Grievance Procedure 40, Employee Status 48, Job Sharing Program
OPT/SLT	2, Management Rights 5, Wages, Salary and Employee Compensation 8, Seniority 9, Working Conditions 12, Probationary Period for Promoted Employees 23, Promotion 24, Demotion 30, Notices to Employees Appendix VIII, Reasonable Accommodation
Police	12, Seniority 20, Leave Without Pay 35, Vehicles 42, Management and Employee Rights 43, Discipline 44, Promotions 50, Reductions-in-Force and Furlough 53, Performance Evaluation 54, Demotion 55, Job Sharing Program

SECTION 28. RESIGNATION

28-1. Definition.

Resignation: An employee's voluntary act to leave County employment.

28-2. Notice of resignation.

(a) An employee should submit a written resignation 2 weeks before the effective date of the resignation. In unusual circumstances, an employee may submit an oral resignation.

(b) If the supervisor accepts the employee's oral resignation, the supervisor must note the date, time, and nature of the communication on the official form documenting the personnel action.

28-3. Withdrawal of resignation.

(a) An employee may withdraw a resignation within 3 calendar days from the date the employee submitted the resignation.

(b) The CAO may approve or deny a written request to withdraw a resignation that is submitted more than 3 calendar days from the date the employee submitted the resignation.

28-4. Appeal of resignation. An employee may appeal, under Section 34 or 35 of these Regulations, a resignation that the employee believes was involuntary or coerced. If the MSPB finds that an employee submitted a resignation under circumstances that caused the resignation to be involuntary, the MSPB will treat the resignation as a removal.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to resignation
Firefighter/Rescuer	None
OPT/SLT	8, Seniority 25, Resignation
Police	19, Sick Leave and Sick Leave Donor Procedure 56, Resignation

SECTION 29. TERMINATION

(As amended October 21, 2008)

29-1. Definition.

Termination: A nondisciplinary act by a department director to end an employee's County employment for a valid reason. Examples of valid reasons for termination include those stated in Section 29-2.

29-2. Reasons for termination.

(a) A department director may terminate the employment of an employee:

(1) who is a probationary employee;

(2) who has abandoned the employee's position by failing to report for work on 3 or more consecutive workdays without having approval for the absence;

(3) who is a temporary employee if:

(A) the employee's job performance or attendance record does not warrant retention of the employee, or

(B) the employee's services are no longer needed or wanted;

(4) who is a term employee whose term of employment has ended;

(5) who does not have a current license or certification required as a minimum qualification for the employee's occupational class;

(6) who fails to perform assigned duties in a satisfactory manner as indicated by receiving the lowest overall performance rating during an annual or interim performance evaluation under Section 11 of these Regulations;

(7) who has not returned to work within 30 calendar days after exhausting all FMLA leave and paid leave of any type, including leave from a sick leave donor program, because of an on-going medical or personal problem;

(8) who has used more than 12 consecutive months of LWOP; unless termination would conflict with State or Federal law;

(9) who has an impairment not susceptible to resolution that causes the employee to be unable to perform the essential functions of the employee's job; or

(10) who:

(A) is employed by Fire and Rescue Services in the firefighter/rescuer occupational series;

(B) was hired after June 30, 1999; and

(C) used a tobacco product on or off duty.

(b) Under subsection (a)(2) above, an employee has not abandoned the employee's position if the employee was:

(1) physically or mentally unable to obtain approval for the absence; or

(2) unable to report for work for reasons beyond the employee's control.

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 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.

29-4. Notice of proposed termination and notice of termination for employees with merit system status.

(a) ***Notice of proposed termination.*** A department director must give an employee with merit system status a written notice of proposed termination that includes:

(1) the reason for termination;

(2) that the employee may submit a written response to the proposed termination;

(3) the person to whom the employee may submit a response; and

(4) that the employee's response must be filed within 10 working days of the employee's receipt of the notice.

(b) ***Notice of termination.*** If a department director decides to terminate an employee with merit system status, the department director must give the employee a written notice of termination and include the following in the notice:

(1) the effective date of the termination;

(2) the reason for the termination;

(3) that the employee did or did not respond to the notice of proposed termination and, if the employee responded, whether the response, influenced the termination decision;

(4) if the employee may file a grievance or MSPB appeal; and

(5) the deadline for filing a grievance or an appeal.

29-5. Notice of termination for probationary and temporary employees. Before terminating the employment of a probationary or temporary employee, a department director must give the employee a written notice that states the effective date of the termination and the reason for the termination.

29-6. Effective date of termination.

(a) A department director may make the termination of a probationary or temporary employee effective immediately.

(b) A department director must issue a notice of termination to an employee with merit system status at least 5 working days before the effective date of the proposed termination.

29-7. Appeal of termination.

(a) An employee with merit system status who is terminated may appeal the termination under Section 34 or 35, unless the employee is a term employee:

(1) whose term of employment has expired; or

(2) who has completed the work the employee was employed to perform.

(b) A term employee may appeal a termination under Section 34 or 35 unless it is a termination described in (a)(1) or (2) above.

(c) A probationary or temporary employee may not appeal a termination.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to termination**
Firefighter/Rescuer	23, Hours of Work 40, Employee Status 51, Pensions
OPT/SLT	4, Voluntary Checkoff of Union Fees and Deductions 5, Wages, Salary and Employee Compensation 16, Leave Without Pay 26, Termination 27, Reduction-in-Force 30, Notices to Employees 44, Defined Contribution Plan
Police	3, Agency Shop and Dues Checkoff 15, Hours and Working Conditions 43, Discipline 52, Termination

SECTION 30. REDUCTION-IN-FORCE

(As amended May 20, 2010, July 12, 2011, and June 30, 2015)

30-1. Definitions.

(a) ***Affected class:*** An occupational class or a group of occupational classes in a department that:

(1) includes a position that the department director intends to eliminate; and

(2) the elimination of the position may cause an employee in the class to be demoted or terminated. An *affected class* includes all classes in an occupational series at and below the budget level class.

(b) ***Affected employee:*** An employee assigned to a position in an affected class who has received a notice of intent or notification of a RIF.

(c) ***Alternative placement:*** The process of assisting affected and displaced employees to find employment in other merit system positions.

(d) ***Class:*** As used in this section, all positions in an occupational class and all occupational classes in an occupational series at or below the budget level that share a common work year, such as full-time year-round positions, full-time school-year positions, part-time year-round positions, or part-time school-year positions.

(e) ***Discontinued service retirement:*** A pension benefit described in Section 33-45(d) of the County Code that may be granted to certain members of the Employees' Retirement System whose employment is terminated by an administrative action.

(f) ***Displaced employee:*** An employee who is demoted or whose County government employment is terminated because of a RIF.

(g) ***Excluded employee:*** An employee who is not eligible for priority consideration under RIF procedures.

(h) ***Notice of intent:*** A letter that the OHR Director sends to an employee in an affected class before a RIF to tell the employee of the potential RIF and that the employee is entitled to priority consideration.

(i) ***Notification:*** A letter from the OHR Director that tells an employee that the employee will be terminated because of RIF.

(j) ***Priority consideration:*** As used in this section only, the right of an affected or displaced employee to be considered for a vacant position for which the employee

is qualified, if the position sought is at or below the grade of the affected or displaced employee.

(k) ***Priority eligible list:*** A list of employees who are eligible to receive priority consideration for a specific vacant position.

(l) ***Qualified:*** As used in this section only, a determination made by the OHR Director that an individual:

(1) meets the minimum qualifications for the position; and

(2) has the documented knowledge, skills, and abilities that an employee must have to satisfactorily perform the duties of the particular position, but which may not be required for satisfactory performance in every position in the class.

(m) ***Reemployment list:*** A list of all displaced employees who are eligible for priority consideration.

(n) ***Seniority:*** The total length of time that an individual has been a County employee in full-time and part-time positions. This does not include:

(1) time spent as a temporary employee;

(2) time in a non-pay or LWOP status that exceeds 10 workdays, unless the employee was in a non-pay or LWOP status while:

(A) on FMLA leave under Section 19;

(B) on military leave under Section 22;

(C) performing the duties associated with the employee's elected position as a member of the Maryland General Assembly while the General Assembly is in session; or

(D) on a furlough day under this Section.

(o) ***Service needs:*** Specialized duties or functions that must be performed by an employee in an affected class but which are not performed by all employees in the affected class in the department. Service needs involve knowledge, skills and abilities that are required for satisfactory performance of the specialized duties or functions.

(p) ***Severance pay:*** Additional compensation granted to certain probationary employees and certain employees in the Retirement Savings Plan whose employment is terminated by a RIF or other administrative action.

(q) ***Status characteristics:*** The conditions of an individual's County employment as reflected by the employee's grade, salary, merit system status, and number and distribution of work hours.

30-2. Policy on RIF.

(a) The abolishment of a temporary position is not a RIF. The abolishment of a term position created for a specified period of time or term is not a RIF if the position is abolished at the end of the term. However, a term employee is treated the same as any other merit system employee subject to RIF if:

(1) the employee's position was not created for a specified time or term; or

(2) the employee's term is not completed.

(b) If RIF is necessary, a department director must base the transfer, demotion, or termination of an employee on one or more of the following:

(1) service needs;

(2) seniority; or

(3) performance.

(c) If a position is abolished in a department or office, only the employees in the same occupational class and department as the abolished position are subject to the RIF.

(d) A department director may not remove an employee with merit system status if there is:

(1) a temporary employee in the same class in the department; or

(2) a probationary employee in the same class in the department.

(e) A department director should exhaust the following alternatives to RIF before instituting a RIF if the alternative is reasonable under the circumstances:

(1) effective position management;

(2) employee placement;

(3) reducing employee work hours;

(4) changing the status of employees from full-time to part-time or from part-time to full-time

(5) restructuring positions; and

(6) retraining incumbent employees.

(f) A department director must conduct a RIF in a manner that:

(1) reduces the negative impact on employees to the greatest extent that is reasonable under the circumstances; and

(2) is consistent with the County's commitment to equal employment opportunity and diversity.

(g) When conducting a RIF, a department director must make every effort to maintain or restore, but not to improve, the employment status of affected employees.

30-3. Pre-RIF alternatives.

(a) The department director and OMB Director must notify the OHR Director of:

(1) the circumstances that may lead to a RIF; and

(2) the number of positions to be abolished in each affected class.

(b) The OHR Director must recommend position management and alternative placement strategies for employees, which may include allowing only affected employees to apply for vacancies in the department.

(c) The OHR Director must determine the date for completion of all alternatives to RIF.

(d) As an alternative to RIF, the CAO may furlough employees.

30-4. Conducting a RIF.

(a) The department director and OMB must determine the number of positions to be abolished.

(b) For each affected class, the department director must:

(1) abolish temporary positions before abolishing career (full-time or part-time) positions; and

(2) remove temporary employees and probationary employees before identifying employees with merit system status for displacement.

(c) The department director must identify employees within an affected class for displacement based on seniority as calculated under Section 30-6.

(d) The OHR Director must issue a notice of intent to each employee in an affected class advising the employee that:

(1) employees in the affected class may be terminated; and

(2) affected employees are entitled to placement on priority eligible lists. The notice of intent may be sent by certified mail or delivered to each employee personally.

(e) The OHR Director must establish a freeze on filling vacant positions in affected classes in affected departments.

(f) The OHR Director must help affected and displaced employees find alternative placement and may offer other services as needed, such as:

(1) training in resume preparation, job search skills, and interview techniques;

(2) financial counseling; and

(3) counseling on benefits.

30-5. Calculation of seniority in a RIF.

(a) A department director must calculate seniority for all affected employees with merit system status in the department and class by:

(1) giving seniority credit for continuous County employment from the date of initial employment in a full-time or part-time position to a fixed date established by the OHR Director;

(2) giving seniority credit for past periods of employment in a full-time or part-time County position if the employee had a break in service;

(3) prorating seniority for part-time employees based on the number of hours worked per week;

(4) giving an employee up to 5 years of seniority credit for periods of military service as required under Section 22 of these Regulations; and

(5) giving an employee seniority credit for service before 1989 as a paid firefighter for a Montgomery County volunteer fire corporation.

(b) A department director must also give additional seniority credit to an affected employee or deduct seniority credit based on the employee's average overall performance rating over the 3 most recently completed rating periods. The department director must calculate the number of extra months of seniority credit by:

(1) giving the employee 24 extra months of seniority for each time the employee received an overall rating of *Exceptional Performance* or an equivalent rating;

(2) giving the employee 12 extra months of seniority for each time the employee received an overall rating of *Highly Successful Performance* or an equivalent rating;

(3) giving the employee no extra months of seniority credit if the employee:

(A) received an overall rating of *Successful Performance* or an equivalent rating; or

(B) did not receive an overall rating during the most recently completed rating period;

(4) deducting 12 months of seniority from the seniority calculated under (a) if the employee received an overall rating of *Does Not Meet Expectations* or an equivalent rating; and

(5) dividing the total extra months of seniority by 3 to determine the additional months of seniority that the employee must receive.

(c) A department director must give an employee in an affected class who has been employed for less than 3 years:

(1) the average extra months of seniority credit for the employee's last 2 overall performance ratings; or

(2) extra seniority credit for one overall performance rating, as appropriate.

(d) The department director must not give affected employees seniority credit or deduct seniority credit based on performance unless the performance evaluation plan used by the department for the last 3 years:

(1) includes 4 rating categories;

(2) was used uniformly to evaluate the performance of employees in the affected class;

(3) is consistent with Section 11 of these Regulations for non-bargaining unit employees; and

(4) is consistent with the appropriate labor agreement for bargaining unit employees.

(e) To break a tie, the department director must use seniority within the affected class, as calculated above using employee performance ratings.

(f) The OHR Director must certify the department director's final seniority calculations and confirm that the department director complied with (c) above.

(g) Based on the certified final seniority calculations, the department director must displace employees in an affected class with merit system status by inverse seniority until the total number of positions to be abolished has been reached.

30-6. Service needs exception.

(a) A department director may request an exception to the use of inverse seniority to displace employees in order to maintain the employment of employees in certain positions within a class that require unique knowledge, skills, and abilities that are not required for every position in the class and that cannot be acquired by other employees in 6 months or less.

(b) To request a service need exception, the department director must:

(1) submit a written request for an exception to the OHR Director;

(2) provide documentation that shows how the position differs from others in the class and department; and

(3) substantiate the service need for the position.

(c) The OHR Director must approve or deny the request for a service need exception after conducting a careful analysis of:

(1) the tasks performed by the employees in the positions that are the subject of the request;

(2) the required qualifications for the positions; and

(3) the qualifications of the other employees.

30-7. Use of discontinued service retirement in a RIF.

(a) A department director may request a discontinued service retirement for one or more incumbents of an affected class who are eligible under Section 33-45(d) of the County Code. The department director must submit a written request for a discontinued service retirement to the OHR Director.

(b) A department director must not request more discontinued service retirements than the number of department positions to be abolished.

(c) A department director must offer discontinued service retirements to employees on the basis of seniority. If 2 employees have the same amount of seniority, the department director must use service need as the basis for determining who receives the discontinued service retirement.

(d) If the employee selected for the discontinued service retirement is not the most senior employee, the department director must submit written documentation to the OHR Director showing that more senior employees within the affected class were offered the retirement but refused it.

(e) The employee and department director must agree that the discontinued service retirement is in the best interest of the employee and the County.

(f) Following approval by the OHR Director, the employee must file an application for discontinued service retirement with OHR.

30-8. Notification of termination resulting from RIF. The OHR Director must:

(a) give at least 30 calendar days written notice to an employee whose employment will be terminated;

(b) send the notice by certified mail or hand-deliver it directly to the affected employee;

(c) give an employee who is to be displaced the option of termination or placement in LWOP status for a period of one year or less; and

(d) include in the notice a statement of the employee's appeal rights and the time limit for filing an appeal.

30-9. Priority consideration resulting from RIF; reinstatement of displaced employees.

(a) ***Meaning of "employee".*** In this subsection, "employee" includes a former employee who was terminated in a RIF and who has priority consideration and reinstatement rights.

(b) Eligibility for priority consideration.

(1) The OHR Director must give priority consideration to an employee with merit system status:

(A) who was given a notice of intent that is not yet rescinded;

(B) whose employment is terminated as the result of RIF;

(C) who took a voluntary demotion because of a RIF; or

(D) who took a temporary position after being displaced from a permanent position in a RIF.

(2) An employee is entitled to priority consideration for announced vacancies in the same branch of government as that from which the employee was affected or displaced. However, an employee of the Legislative or Judicial branches hired before August 1, 1983, is entitled to priority consideration for announced vacancies in all branches.

(3) The OHR Director must place an affected employee on a priority eligible list if the employee applies for a position for which qualified, successfully completes any required routine medical or skills examinations, and the position is at or below the grade held by the employee when affected by RIF, subject to the provisions of Section 33-7(b)(4) of the Montgomery County Code.

(4) The OHR Director must determine if an affected employee is qualified for the position upon reviewing the individual's experience, education, and training.

(c) ***Displaced employees who are not eligible for priority consideration.*** Temporary and probationary employees whose employment is terminated because of a RIF are excluded employees who are not entitled to priority consideration.

(d) Reinstatement of displaced employees.

(1) A department director must reinstate employees from the department who were terminated or demoted to vacant positions in the class from which the employees were terminated or demoted.

(2) The department director must reinstate employees in inverse order of their identification for displacement.

(3) The displaced employee's right to reinstatement to a position in the occupational class and department from which the employee was displaced supersedes the right of a displaced employee from another occupational class or department for priority consideration.

(4) A full-time or part-time employee who is displaced in a RIF and who takes a temporary position to avoid termination is entitled to priority consideration and reinstatement to a permanent position.

(e) ***Duration of priority placement or reinstatement rights.*** An employee has a right to priority placement for 2 years after the effective date of termination or demotion or until the employee has been successfully placed 3 times, including the initial placement, whichever comes first.

(f) ***Priority eligible list as only permissible way to fill a vacant position.*** A department director must not fill a vacant position by any other means if there is a qualified applicant on a priority eligible list for that position.

(g) Order of priority in filling vacant positions.

(1) A full-time affected employee who is entitled to priority consideration has priority over a part-time affected employee for full-time vacancies.

(2) A part-time employee who is entitled to priority consideration has priority over a full-time affected employee for part-time vacancies.

(3) An affected employee who is not in a term position and who is entitled to priority consideration has priority for vacant non-term positions over an affected employee in a term position.

(4) An affected employee in a term position who is entitled to priority consideration has priority for vacant term positions over an affected employee who is not in a term position.

(5) A full-time employee who is placed in a part-time position in a RIF has priority over a part-time employee for full-time positions.

(6) The OHR Director must ensure that an affected employee who is placed on a priority eligible list receives priority consideration in the order described in Section 6-10 of these Regulations.

(7) If more than one affected employee claims priority for an announced vacancy, the department may choose the candidate with the overall qualifications best suited for the position, regardless of the seniority of the affected employees who applied for the vacancy.

(h) ***Time limit for accepting an offer of appointment.*** An employee who receives an offer of appointment to any position for which the employee applied using priority consideration must accept or reject the offer within 7 calendar days or the employee will be removed from the priority eligible list for that position.

(i) Employee's refusal of reinstatement to equivalent job.

(1) If a displaced employee refuses an offer of appointment to a position that has the same status characteristics as the position from which the employee was displaced, the OHR Director must:

(A) remove the employee from the reemployment list; and

(B) take away the employee's future priority consideration rights, unless the OHR Director allows the employee to remain on the reemployment list for good cause shown.

(2) If the employee wishes to keep priority consideration rights after refusing an offer of appointment to a position with the same status characteristics as the position from which the employee was displaced, the employee must submit a written request to the OHR Director within 5 days of rejecting the offer. The employee must explain the reason for refusing the job offer and why the OHR Director should allow the employee to remain on the reemployment list.

(3) The OHR Director may excuse a refusal only in unusual circumstances. The OHR Director's decision is final and an employee may not grieve the decision.

(j) ***Responsibilities of OHR Director when RIF is concluded.*** At the conclusion of a RIF within a department, the OHR Director must rescind the notice of intent and priority consideration rights for affected employees who were not displaced.

30-10. Salary considerations.

(a) When a department director abolishes a position due to RIF at the beginning of a fiscal year, the OHR Director must ensure that general salary adjustments for affected employees are made effective before the personnel actions resulting from the RIF.

(b) A department director must determine the salary of an employee under Section 10-5(c) or (d), as applicable, if the employee is:

(1) demoted as a result of a RIF; or

(2) promoted after being demoted as a result of a RIF.

30-11. Effect of RIF on benefits.

(a) If an alternative placement is not found for an employee before the termination date, the affected employee may chose to be terminated or take LWOP for up to one year. If the employee takes LWOP, the employee:

(1) must leave employee contributions in the retirement system and will not accrue credited service during the period of LWOP;

(2) may continue to receive health insurance coverage for up to 20 months after beginning LWOP, by paying only the employee's share of the cost for the first 60 days of LWOP and by paying 102 percent of the total health insurance cost for the remaining 18 months;

(3) may accept an annual leave accumulation pay-off or let the annual leave remain in the employee's leave account while on LWOP;

(4) will not accrue sick and annual leave; and

(5) will not be credited with personal leave days or PTO during the period of LWOP.

(b) If a terminated employee is a member of the Retirement Savings Plan, the County must, as provided under Section 33 of the County Code:

(1) give the employee severance pay; and

(2) upon separation from County service, distribute the vested portion of the participant's account balance.

(c) A terminated employee who is a vested member of the Employees' Retirement System may elect to leave all member contributions and interest in the fund or to have retirement contributions returned.

(d) The County must return retirement contributions to a terminated employee who is a member of the Employees' Retirement System if the employee is not vested when the employee's position is abolished.

(e) A terminated probationary employee may be entitled to severance pay under Sections 7-2(e) and 10-22(a) of these Regulations.

(f) An employee in an affected class who takes a temporary position to avoid termination is entitled to the benefits and other terms and conditions of employment associated with the status of a temporary employee.

(g) If a displaced employee returns from LWOP within one year or is rehired within 2 years after the effective date of termination, the employee is entitled to the benefits described below.

(1) ***Annual leave.*** The County must ensure that:

(A) the employee's annual leave balance is recredited to the employee if the employee did not receive payment for the leave balance before; and

(B) the employee accrues annual leave at the rate in effect at the time that the employee's position was abolished.

(2) ***Sick leave.*** The County must ensure that the employee's sick leave is recredited.

(3) Retirement.

(A) Optional or Integrated plans.

(i) A vested member of the Optional or Integrated retirement plan (defined benefit plans) who left all member contributions and interest in the fund, may elect to remain a member of the Optional or Integrated plan or, if eligible, may transfer to the Retirement Savings Plan.

(ii) No service credit will be given for the time during which contributions were not made, but all prior credited service must be restored if retirement contributions have not been returned.

(iii) If an employee on LWOP was not vested when the employee's position was abolished, the employee may resume membership in the Optional or Integrated retirement plan if the employee returns to active County service within one year of beginning LWOP.

(B) ***Retirement Savings Plan.*** A member of the Retirement Savings Plan (defined contribution plan) may rejoin the Retirement Savings Plan if the employee meets the requirements for participation.

(4) Group insurance.

(A) The OHR Director must ensure that a reinstated employee does not have to show proof of insurability before enrolling in a health insurance plan offered by the County.

(B) The OHR Director must determine which health benefit plans are available to a reinstated employee.

(C) When a reinstated employee retires, the OHR Director must give credit to the employee for all periods when the employee participated in the health insurance program in determining:

(i) the length of time that the employee may participate County health insurance program; and

(ii) the percentage of the health benefits cost that the employee must pay.

30-12. Effect of RIF on probationary period.

(a) A merit system employee who is transferred or demoted because of a RIF does not serve an additional probationary period in the new position.

(b) A former employee who was terminated because of RIF and who is later reinstated does not have to serve a new probationary period if the employee had completed the probationary period before the termination.

(c) An employee who is demoted because of RIF and who is later promoted back to the level from which the employee was demoted does not have to serve a new promotional probationary period if the employee had completed the probationary period or promotional probationary period, as appropriate, before the demotion.

30-13 . Noncompetitive reappointment or promotion of employees affected by RIF.

(a) An employee whose employment is terminated because of a RIF is eligible for noncompetitive reappointment under Section 7-5(a) of these Regulations.

(b) An employee who accepts a demotion because of a RIF is eligible for noncompetitive promotion under Section 27-3(b)(2) of these Regulations.

30-14. Appeal of RIF.

An employee with merit system status who is demoted or whose employment is terminated due to RIF may appeal under Section 34 or 35 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to reduction-in-force**
Firefighter/Rescuer	40, Employee Status

OPT/SLT	5, Wages, Salary and Employee Compensation 9, Working Conditions 27, Reduction-in-Force 30, Notices to Employees
Police	43, Discipline 50, Reduction-in-Force and Furlough 53, Performance Evaluation
Firefighter/Rescuer	48, Job Sharing Program 49, Compensatory Time
OPT/SLT	None
Police	18, Annual Leave 21, Compensatory Time 50, Reduction-in-Force and Furlough 55, Job Sharing Program

Bargaining unit	**Articles of current agreements with references to furlough**
Firefighter/Rescuer	48, Job Sharing Program 49, Compensatory Time
OPT/SLT	None
Police	18, Annual Leave 21, Compensatory Time 50, Reduction-in-Force and Furlough 55, Job Sharing Program

SECTION 31. FURLOUGH

(As amended June 30, 2015)

31-1. Definitions.

(a) ***Alternate furlough day:*** A furlough day that is assigned to an employee instead of a fixed furlough day if:

(1) the employee is required to work on a fixed furlough day despite the furlough; or

(2) the employee is assigned to a unit or function that is scheduled to be furloughed on a fixed furlough day, but the employee is not normally scheduled to work on the fixed furlough day.

(b) ***Fixed furlough day:*** A date specified by the CAO on which the offices or work sites of specified employees will be closed to:

(1) the specified employees;

(2) seasonal, substitute, and temporary employees; and

(3) the public.

(c) ***Furlough:*** A temporary, non-pay status for hours when an employee is normally scheduled to work but does not work for the County or receive pay from the County due to a lack of funds or work, as determined by the CAO. A furlough may be comprised of any combination of fixed, alternate, or rolling furlough days.

(d) ***Furlough period:*** The time period specified by the CAO during which affected employees must take all assigned furlough hours and lose the pay attributable to the furlough.

(e) ***Furlough plan:*** The CAO's plan for a specific furlough that states:

(1) the number of furlough hours for which pay must be taken from affected employees;

(2) the furlough period;

(3) the employee groups that will be affected by the furlough; and

(4) the designation of fixed furlough days, if any.

(f) ***Rolling furlough day:*** A day or hour(s) of a day that an employee elects, with supervisor approval, to take assigned furlough hours.

31-2. Policy on furlough.

(a) A supervisor must not require or allow an employee to work on the employee's furlough days, except in an emergency as determined by the CAO.

(b) A furlough is a permanent loss of an employee's work hours. A department director or supervisor must not allow an employee to make up the hours lost by working additional hours at another time.

(c) The County must ensure that the following are not adversely affected when an employee takes a furlough:

(1) the employee's accrual of annual and sick leave or the crediting of PTO;

(2) life insurance;

(3) retirement benefits; and

(4) seniority.

(d) The County must not pay an employee's regular County salary to an employee who is on disability leave on a furlough day.

(e) For the purpose of calculation of service increments, awards, salary upon promotion or demotion, or other salary amounts based on the employee's base salary, the figure representing base salary must not be reduced by the salary loss resulting from a furlough.

(f) If a supervisor requires an employee on a fixed furlough day or alternate furlough day or rolling furlough day to return to work to perform unanticipated work assignments of an emergency nature, the department must give the employee call-back pay under Section 10-13 of these Regulations. The supervisor must ensure that the employee takes alternate furlough hours to replace the hours on which the employee was to be furloughed on the furlough day.

31-3. Conducting a furlough.

(a) The CAO must develop a furlough plan for each furlough that identifies the employees who will be furloughed, the number of hours of furlough and the number of fixed furlough days**,** rolling furlough days, or a combination of fixed and rolling furlough days on which the employees will be furloughed.

(b) The CAO may choose to spread the salary loss due to a furlough over multiple pay periods or confine the salary loss to the same pay period in which the furlough is actually taken.

(c) The department director must notify affected employees of fixed furlough days at least 30 days before the furlough day.

(d) To ensure compliance with the furlough plan, the department director must monitor the scheduling, accrual, and reporting of furlough hours.

(e) A department director must ensure that a furlough period is pro rated for a part-time employee, a new hire, an employee who separates from County service before the end of the furlough period or a school-based employee working a 10-month schedule.

(f) The department director and the Director of the Public Information Office must notify the public in advance if work sites are closed or public services are limited because of a furlough.

(g) An employee, with supervisory approval, may elect to take rolling furlough days on a full day or an hourly basis.

31-4. Appeal of furlough. An employee with merit system status who is furloughed may grieve under Section 34 of these Regulations if the County fails to follow the procedures in this Section. A grievance cannot challenge the CAO's determination as to a lack of work or funds necessitating a furlough.

SECTION 32. EMPLOYEE DRUG AND ALCOHOL USE AND DRUG AND ALCOHOL TESTING

(As amended July 12, 2005, October 21, 2008, July 12, 2011, July 24, 2012, and June 30, 2015)

32-1. Purpose. This section of the Personnel Regulations is intended to:

(a) establish policies and procedures to deal with employee use of alcohol and drugs;

(b) provide guidance to managers and supervisors on how to deal with an employee whose job performance may be affected by alcohol or drug use;

(c) establish the conditions under which applicants and employees may be tested for alcohol or drug use;

(d) ensure that the County complies with:

(1) Federal Motor Carrier Safety Administration (FMCSA) regulations (49 CFR Part 382, as amended) on the prevention of accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles;

(2) Federal Transit Administration (FTA) regulations (49 CFR Part 655, as amended) on the prevention of prohibited drug use and alcohol misuse by mass transit employees;

(3) U.S. Department of Transportation (DOT) regulations (49 CFR Part 40, as amended) for conducting drug and alcohol testing of employees covered by the FMCSA or FTA regulations; and

(4) The Federal Drug-Free Workplace Act (41 U.S.C. 701, et seq.).

32-2. Definitions.

(a) ***Accident:*** An occurrence associated with the operation of a motor vehicle, if as a result:

(1) an individual dies;

(2) an individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(3) a vehicle incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.

(b) ***Actual knowledge:*** Actual knowledge by a supervisor that an employee has engaged in the prohibited use of alcohol or drugs based on:

(1) the supervisor's direct observation of the employee;

(2) information provided by the employee's previous employer;

(3) a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or drugs; or

(4) an employee's admission of alcohol or drug use.

Direct observation as used in this definition means observation of alcohol or drug use and does not include observation of employee behavior or physical characteristics that may justify reasonable suspicion testing.

(c) ***Adulterated specimen:*** A urine specimen that contains a substance that:

(1) is not a normal part of human urine; or

(2) is a normal part of human urine but is at a concentration that is not a normal physiological concentration.

(d) ***Alcohol:*** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

(e) ***Alcohol concentration:*** The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under these regulations.

(f) ***Alcohol confirmation test:*** A test using an evidential breath testing device that:

(1) is conducted following a screening test with a result of 0.02 or greater; and

(2) provides quantitative data about the alcohol concentration.

(g) ***Alcohol misuse:*** The consumption, in violation of the alcohol prohibitions in this Section, of a beverage, mixture, preparation, or prescription or over-the-counter medication that contains alcohol.

(h) ***Alcohol screening device or ASD:*** A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

(i) ***Alcohol screening test:*** An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

(j) ***Alcohol use:*** The drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication), containing alcohol.

(k) ***Applicant:*** An individual who has received a conditional job offer for a County merit system position. "Applicant" includes an employee who has applied for appointment to a position that is subject to pre-employment drug and alcohol testing.

(l) ***Breath Alcohol Technician or BAT:*** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

(m) ***Cancelled test:*** A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or that must otherwise be cancelled under applicable regulations. A cancelled test is neither a positive nor a negative test.

(n) ***Chain of custody:*** The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector, including when the specimen is tested, results are received and determined to be positive or negative by the MRO, and until the specimen is destroyed.

(o) Commerce:

(1) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and

(2) trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation described in paragraph (1) of this definition.

(p) ***Commercial Driver's License or CDL:*** The license required under Federal and State law to operate certain commercial motor vehicles used in interstate and intrastate commerce to transport passengers or property.

(q) ***Commercial motor vehicle or CMV:*** A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(1) has a gross combined weight rating of 11,794 or more kilograms or 26,001 or more pounds, which may include a towed unit with a gross vehicle weight rating of more than 4,536 kilograms or 10,000 pounds;

(2) has a gross vehicle weight rating of 11,794 or more kilograms or 26,001 or more pounds;

(3) is designed to transport 16 or more passengers, including the driver; or

(4) is of any size and is used in the transportation of materials:

(A) found to be hazardous under the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)); and

(B) that require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

(r) ***Confirmatory drug test:*** A second analytical procedure performed on a urine specimen that:

(1) is intended to identify and quantify the presence of a specific drug or drug metabolite;

(2) is independent of the initial test; and

(3) uses a different technique and chemical principle to ensure reliability and accuracy.

(s) ***Confirmed drug test:*** A confirmation test result received by a Medical Review Officer from a laboratory.

(t) ***Designated Employer Representative:*** An individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the County.

(u) ***Dilute specimen:*** A specimen with creatinine and specific gravity values that are lower than expected for human urine. Following a "negative dilute" test result, the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test result will be considered a negative and no additional testing will be required unless directed to do so by the Medical Review Officer (MRO)

(v) Disabling damage:

(1) Damage to a motor vehicle that:

(A) keeps the vehicle from leaving the scene of the accident in its usual manner in daylight after simple repairs; or

(B) does not preclude driving the vehicle but would cause further damage to the vehicle if it is driven.

(2) Disabling damage does not include:

(A) damage that can be fixed temporarily at the scene of the accident without special tools or parts;

(B) tire disablement without other damage even if no spare tire is available;

(C) headlight or taillight damage; or

(D) damage to turn signals, horn, or windshield wipers that make them inoperative.

(w) ***Driver:*** A person who operates a commercial motor vehicle, including a full time, regularly employed driver, casual, intermittent, or occasional driver, leased driver, and an independent owner-operator contractor.

(x) ***Employee Assistance Program or EAP:*** A program that offers confidential counseling services to employees and referral to other resources for treatment.

(y) ***Employee Medical Examiner or EME:*** A licensed physician who performs the following functions on behalf of the County:

(1) evaluates the functional abilities and limitations of an applicant or employee in relation to the individual's ability to perform essential job functions;

(2) acts as the medical review officer under drug and alcohol testing programs; and

(3) supervises clinical and administrative functions of the County's occupational medical programs and provides advice on medical issues.

(z) ***Evidential Breath Testing Device or EBT:*** A device approved by NHTSA for the evidential testing of breath, placed on NHTSA's Conforming Products List (CPL) for “Evidential Breath Measurement Devices”, and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

(aa) ***High Potential Risk or HPR position:*** A drug/alcohol designation that the County assigns to a position if:

(1) the position is not a Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position; and

(2) the duties associated with the position, when performed by an employee impaired by or under the influence of drugs or alcohol, would pose a risk of substantial harm to the employee, coworkers, the public, or to public or private property.

(bb) ***Illegal drug:*** A controlled substance that is illegal to possess under local, state, or Federal law.

(cc) ***Initial drug test:*** The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

(dd) ***Initial validity test:*** The first test used to determine if a specimen is adulterated, diluted, or substituted.

(ee) ***Invalid result:*** The result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result. Employees do not have a right to obtain a test of their split specimen following an invalid result.

(ff) ***Laboratory:*** A U.S. laboratory certified by:

(1) the State of Maryland;

(2) the U.S. Department of Health and Human Services (HHS) under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or

(3) both.

(gg) ***Low Potential Risk or LPR position:*** A drug/alcohol designation that the County assigns to a position if the position would pose a low risk of harm to persons or property if the employee's performance of the duties of the position was affected by the use of alcohol or drugs.

(hh) ***Medical Review Officer or MRO***: A licensed physician who is responsible for:

(1) receiving and reviewing laboratory results generated by the County's drug testing program; and

(2) evaluating medical explanations for certain drug test results.

(ii) ***Non-negative specimen:*** A urine specimen that the laboratory reports as:

(1) adulterated, substituted, or positive for a drug or drug metabolite;

(2) invalid; or

(3) both.

(jj) ***Over-the-counter or OTC drug:*** A substance produced for medical use that is available for sale to the general public without a prescription from a physician or other medical practitioner.

(kk) ***Performing a safety-sensitive function:*** An employee is considered to be performing a safety-sensitive function during any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

(ll) ***Public Safety position:*** A drug/alcohol designation that the County assigns to a position with duties that involve the enforcement of criminal laws, the protection of the public, or both.

(mm) **FMCSA *Safety-Sensitive position:*** A drug/alcohol designation that the County assigns to a position that:

(1) requires the employee to maintain a commercial driver's license to operate a commercial motor vehicle; and

(2) is covered by the regulations of the Federal Motor Carrier Safety Administration or FMCSA.

(nn) **FTA *Safety-Sensitive Transit position:*** A drug/alcohol designation that the County assigns to a position that:

(1) requires the employee to maintain a commercial driver's license to perform certain safety-sensitive functions related to the County's operation of a public transit system; and

(2) is covered by the regulations of the Federal Transit Administration or FTA.

(oo) ***Screening Test Technician:*** A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device.

(pp) ***Split Specimen:*** The half of a collected urine "specimen" that is frozen and stored, rather than immediately tested. If the applicant or employee later requests a "split specimen test," the "split specimen" is removed from frozen storage and sent to an independent laboratory for testing.

(qq) ***Split Specimen Test:*** The laboratory test conducted by a second laboratory on the portion of the collected urine specimen that was frozen and stored. The applicant or employee has a right to request a "split specimen test" if the test of the primary specimen produces a verified positive test result, or a verified adulterated or substituted test result.

(rr) ***Substance Abuse Professional:*** A person who:

(1) meets all the DOT requirements and evaluates an employee covered by DOT regulations who has violated a U.S. DOT drug and alcohol regulation; and

(2) makes recommendations concerning the employee's education, treatment, follow-up testing, and aftercare.

(ss) ***Substituted specimen:*** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

(tt) ***Under the influence or impaired:*** A state or condition less than intoxication where consumption of alcohol or drugs has affected an individual's normal coordination, judgment, or discretion.

(uu) ***Verified test:*** A drug test result or validity test result from a laboratory that has undergone review and final determination by the MRO.

32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.

(a) Drug and alcohol prohibitions that apply to job applicants and County employees.

(1) An applicant for an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must not:

(A) have, at the time a urine specimen is given for a drug test, an illegal drug in the applicant's body above the established cutoff levels for the drug; or

(B) adulterate or tamper with a urine specimen given for a drug test or substitute a different urine specimen for the applicant's specimen.

(2) A County employee (regardless of the drug/alcohol designation of the employee's position) must not:

(A) have an illegal drug in the employee's body while at work;

(B) perform the employee's job duties after using a prescription drug or other substance that impairs the employee's ability to perform the employee's job duties safely;

(C) take an illegal drug while on duty, on County property, or in a County vehicle;

(D) consume alcohol while at work or on duty;

(E) be impaired by, or under the influence of, alcohol while at work, on County property, or on duty;

(F) operate a County vehicle or heavy or dangerous equipment with an illegal drug in the employee's body or while impaired by, or under the influence of, alcohol;

(G) operate a privately-owned vehicle with an illegal drug in the employee's body or while impaired by or under the influence of alcohol, if such operation occurs while the employee is at work or on duty;

(H) consume alcohol or have an open container of alcohol in a County vehicle or in a private vehicle that is being used by an employee while the employee is at work or on duty;

(I) possess, manufacture, sell, offer for sale, give, or purchase illegal drugs while on duty, on County property, or in a County vehicle;

(J) take, for the employee's own use or for sale, a drug prescribed for a client or other person with whom the employee comes in contact in the course of performing the employee's duties;

(K) take, for the employee's own use or for sale, a drug or alcohol for which the employee is responsible as part of the employee's duties;

(L) obtain alcohol or drugs by the promise of a favor or a threat based on the authority of the employee's position with the County; or

(M) adulterate, tamper with, or substitute a urine specimen for a drug test.

(3) An employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must not:

(A) consume alcohol during the employee's lunch or other breaks;

(B) consume alcohol within 4 hours of the start of the employee's work day or shift; or

(C) consume alcohol while in stand-by status.

(b) Limited exceptions to drug and alcohol prohibitions.

(1) County law enforcement officers, including employees of the Board of License Commissioners who enforce alcohol control laws, may, if such

actions are taken in accordance with applicable laws and regulations to further law enforcement objectives:

(A) transport alcohol or illegal drugs in official or private vehicles; and

(B) consume, possess, offer for sale, sell, give, or purchase illegal drugs or alcohol.

(2) The Director of the Department of Liquor Control may authorize the tasting of alcoholic beverages by County employees during work hours:

(A) for the purpose of product selection and quality control; and

(B) at supervised product knowledge seminars.

(c) Reporting required of employees charged with or convicted of drug or alcohol-related crimes.

(1) An employee who is convicted of a drug or alcohol-related offense that occurred in the workplace, on County property, while on duty, or while operating a County vehicle or equipment must report the conviction to the employee's supervisor within 5 calendar days.

(2) An employee who is required to maintain a CDL as a condition of employment and who is charged with or convicted of a drug or alcohol-related offense must report the charge or conviction to the employee's supervisor within 5 calendar days.

(3) For the purpose of this section, conviction includes probation before judgment, a plea of nolo contendere, or any imposition of a sentence for being under the influence of, or for having manufactured, distributed, dispensed, used, or possessed any controlled substance or alcohol.

(d) Employee responsibilities when using a prescription or OTC drug while on duty.

(1) Before taking a prescription or OTC drug, an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position should:

(A) ask the physician or other health care practitioner who prescribed the drug about how a prescription drug may affect the employee's job performance; and

(B) read all warnings printed on a prescription or OTC drug container and any information provided with the drug that describes the effects of the drug.

(2) An employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must report to the employee's supervisor if the employee took before duty, or intends to take while on duty, a prescription or OTC drug that may affect the employee's performance. This must be done as soon as possible after reporting for duty or taking the drug.

(3) A supervisor of an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must:

(A) discuss with the MRO, OMS medical staff, or the medical staff of a facility designated by OMS, the potential effect of a prescription drug or OTC drug that the employee has taken or plans to take; and

(B) follow the advice of medical staff and, if recommended, limit the employee's duties and ensure that the employee observes the recommended restrictions if the employee's duties include driving or operating machinery.

(4) The supervisor must not ask the employee or medical staff the name of the drug or the condition it is intended to treat. The employee must give this information to OMS staff.

(5) The MRO or OMS medical staff must, as necessary:

(A) consult with employees and supervisors about the effects of prescription drugs and OTC drugs on job performance; and

(B) designate other medical facilities to provide advice to employees and supervisors about the effects of prescription and OTC drugs during times when OMS staff is not available.

(e) Allowing employees to consume alcohol at County events or functions.

(1) Alcoholic beverages should not be served to County employees at County-sponsored functions or at functions or events held on County property unless it is approved by the CAO.

(2) Upon written request, the CAO may allow alcohol to be served to County employees at a County function. A request for an exception must be made in writing at least 10 calendar days before the event.

(3) If the CAO grants the request, the group or organization sponsoring the event must:

(A) ensure that employees are not required to attend or pressured to attend;

(B) ensure that responsible individuals will be present who will not drink alcohol;

(C) limit the amount of alcohol consumed by employees and others;

(D) ensure that food and nonalcoholic drinks are available;

(E) provide alternate transportation to a driver who is not fit to drive;

(F) monitor employee behavior; and

(G) stop rough or dangerous behavior.

(4) Even if employees in other positions are allowed to consume alcohol at a County event, an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must not consume alcohol if the employee:

(A) must return to duty performing HPR, Public Safety, or safety-sensitive functions after leaving the event;

(B) must begin work within 4 hours of the end of the function or within 4 hours after leaving the function; or

(C) is in stand-by status.

(f) Drug/alcohol designations of County positions.

(1) The OHR Director must give each County position one of the following drug/alcohol designations:

(A) Low Potential Risk (LPR);

(B) High Potential Risk (HPR);

(C) Public Safety;

(D) FMCSA Safety-Sensitive; or

(E) FTA Safety-Sensitive.

(2) The OHR Director must base position designations on:

(A) Federal and State drug and alcohol testing requirements;

(B) the nature of the duties of the position; and

(C) the potential for harm to the employee, the employee's coworkers, the public, or public and private property if the employee's job performance is affected by drug or alcohol use.

(3) The OHR Director must designate a position as HPR if the position is not a Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position and involves:

(A) prescribing or administering drugs or performing medical procedures;

(B) working closely with inmate populations or with vulnerable populations such as children, the elderly, individuals with severe disabilities, abused persons, or recovering addicts;

(C) operating heavy or dangerous equipment, machines, or vehicles;

(D) working with dangerous materials or under hazardous conditions;

(E) providing support services, other than clerical support, to a public safety function or to public safety employees;

(F) carrying or having responsibility for large amounts of cash or other valuables;

(G) having regular access to evidence in criminal cases, crime data/information systems, or motor vehicle administration data; or

(H) having responsibility for the security of government facilities and property and the security of persons using government facilities or property.

(4) All nonsupervisory and supervisory positions in the following occupational series are Public Safety positions:

(A) Police Officer;

(B) Deputy Sheriff;

(C) Firefighter/Rescuer;

(D) Correctional Officer;

(E) Correctional Dietary Officer;

(F) Correctional Specialist;

(G) Resident Supervisor; and

(H) Alcohol & Tobacco Enforcement Specialist.

(5) Additionally, any position with investigation and arrest authority and authorization to carry a firearm is a Public Safety position.

(6) A position that is subject to drug and alcohol testing under the regulations of the U.S. DOT and FMCSA is an FMCSA Safety-Sensitive position. Section 32-4 of these Regulations lists Safety-Sensitive positions.

(7) A position that is subject to drug and alcohol testing under the regulations of the U.S. DOT and FTA is an FTA Safety-Sensitive position. Section 32-5 of these Regulations lists FTA Safety-Sensitive positions.

(8) A position may meet the definition of more than one designation. In such a case, the OHR Director must designate the position as follows:

(A) if a position meets the definitions of HPR and Safety-Sensitive, it must be designated as Safety-Sensitive;

(B) if a position meets the definitions of HPR and FTA Safety-Sensitive, it must be designated as FTA Safety-Sensitive; and

(C) if the position meets the definitions of Public Safety and FMCSA Safety-Sensitive, it must be designated as FMCSA Safety-Sensitive.

(g) Required check on the drug and alcohol testing records of applicants for* FMCSA *Safety-Sensitive and FTA Safety-Sensitive positions.

(1) Before an applicant or employee begins performing safety-sensitive duties for the first time, the County must, after obtaining the applicant or employee's written consent, request the following information from U.S. DOT-regulated employers who have employed the individual during any period during the 2 years before the date of the applicant's application or the employee's transfer:

(A) alcohol tests with a result of 0.04 or higher;

(B) verified positive drug test results;

(C) refusals to be tested (including verified adulterated or substituted drug test results);

(D) other violations of U.S. DOT drug and alcohol testing regulations; and

(E) if the employee violated a U.S. DOT drug and alcohol regulation, documentation of the employee's successful completion of U.S. DOT return-to-duty requirements (including follow-up tests).

(2) To each U.S. DOT-regulated employer from whom the County requests information the County must provide written consent from the applicant or employee for the release of the information.

(3) If the applicant or employee refuses to provide written consent, the County must not employ the applicant in, or transfer the employee to, an FMCSA Safety-Sensitive or FTA Safety-Sensitive position.

(4) If the applicant or employee violated a U.S. DOT drug and alcohol regulation while employed, or under consideration for employment, by another employer but the previous employer does not have information about the return-to-duty process (because, for example, the employer did not hire an applicant who tested positive on a pre-employment test), the County must try to obtain this information from the employee.

(5) If the County obtains information that the applicant or employee violated a U.S. DOT drug and alcohol regulation, the County must not hire the applicant or use the employee to perform safety-sensitive functions unless the County also obtains information that the employee successfully completed a referral, evaluation, and treatment plan as described in U.S. DOT and FTA regulations.

(6) The County must obtain and review the information requested from U.S. DOT-regulated employers before the applicant is hired or the employee first performs safety-sensitive functions. If this is not feasible, the County may employ an applicant or allow an employee to perform safety-sensitive functions after 30 days have passed since the County made and documented a good faith effort to obtain this information.

(7) The County must maintain a written, confidential record of the information obtained or of the good faith efforts made to obtain the information. The County must retain this information for 3 years from the date of the employee's first performance of safety-sensitive duties.

(8) The County must also ask the applicant or employee if he or she has tested positive, or refused to test, on any pre-employment drug or pre-assignment alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by U.S. DOT drug and alcohol testing rules during the past 2 years. If the applicant or employee admits that he or she had a positive test or a refusal

to test, the County must not use the applicant or employee to perform safety-sensitive functions until and unless the applicant or employee documents successful completion of the return-to-duty process as required under U.S. DOT regulations.

(9) The County, as a U.S. DOT-regulated employer from whom information is requested, must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry. The release of information must be in a written form that ensures confidentiality. The County must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) Drug and alcohol testing of job applicants and employees.

(1) ***Goals of drug and alcohol testing program.*** The County government conducts drug and alcohol testing of job applicants and employees to:

(A) identify those whose use of illegal drugs or misuse of alcohol may affect their job performance;

(B) discourage the use of illegal drugs and the misuse of alcohol and other legal substances by employees;

(C) motivate employees with active drug or alcohol problems to seek treatment;

(D) protect the health and safety of employees and the public;

(E) prevent accidents and reduce liability for employee accidents and misconduct;

(F) protect public and private property;

(G) ensure the efficiency and effectiveness of the County work force; and

(H) comply with Federal, State, and County regulations and County labor agreements that require drug and alcohol testing of applicants for certain jobs and employees who perform certain functions.

(2) ***Factors that determine the type and frequency of drug and alcohol testing to which an employee is subject.*** The following factors determine if an applicant or employee must undergo drug or alcohol testing and the type and frequency of testing:

(A) the designation of the employee's position for drug and alcohol testing purposes;

(B) Federal, State, and County regulations and County labor agreements that require testing of certain job applicants, employees, or both;

(C) the employee's conduct, such as the employee's violation of the drug and alcohol prohibitions in these Regulations; and

(D) the recommendation of a Substance Abuse Professional who has evaluated the employee for substance abuse or alcohol misuse.

(3) Pre-employment drug testing.

(A) Under Federal regulations, the County must conduct drug tests on all applicants for FMCSA Safety-Sensitive or FTA Safety-Sensitive positions before employment or before the employees first perform safety-sensitive duties.

(B) Under State regulations, the County must conduct drug tests on all applicants for Police Officer, Deputy Sheriff, and certain correctional positions before appointment as part of the required medical evaluation.

(C) The County conducts pre-employment drug tests on all applicants for:

(i) HPR positions; and

(ii) Public Safety positions not covered by (3)(B) above.

(4) Pre-Assignment alcohol testing.

(A) Federal regulations permit employers to test employees covered by Federal regulations for alcohol immediately before the employees perform safety-sensitive duties for the first time, provided that the employer performs pre-assignment testing on all covered employees.

(B) The County conducts pre-assignment alcohol testing on all employees newly hired or assigned to FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.

(5) Probable cause or reasonable suspicion drug and alcohol testing.

(A) For all employees.

(i) The County may conduct probable cause or reasonable suspicion testing based on suspicion that the employee violated the drug and alcohol prohibitions in this Section.

(ii) The required observations for probable cause or reasonable suspicion testing for alcohol, drugs, or both must be made by a supervisor who is trained as required under these Regulations.

(B) ***For employees in FMCSA Safety-Sensitive positions.*** When the County conducts reasonable suspicion drug and alcohol testing of employees in FMCSA Safety-Sensitive positions under the authority of DOT Regulations, the County must conduct the testing under Section 32-4 of these Regulations.

(C) ***For employees in FTA Safety-Sensitive positions.*** When the County conducts reasonable suspicion drug and alcohol testing of employees in FTA Safety-Sensitive positions under the authority of DOT Regulations, the County must conduct the testing under Section 32-5 of these Regulations.

(D) Reasonable suspicion testing for employees in HPR or Public Safety positions.

(i) ***Alcohol tests.*** A supervisor may require an employee in an HPR or Public Safety position to submit to an alcohol test if the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-3(a) concerning alcohol. The supervisor's determination that reasonable suspicion exists to require the employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the employee’s appearance, behavior, speech, or body odor.

(ii) ***Drug tests.*** A supervisor may require an employee to submit to a drug test when the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-3(a) concerning drugs. The supervisor's determination that reasonable suspicion exists to require the employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the employee’s appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of drugs.

(E) Probable cause testing for employees in LPR positions.

(i) A supervisor may require an employee in an LPR position to submit to a drug or alcohol test if the facts and circumstances within the supervisor's actual knowledge, and of which the supervisor has reasonable, trustworthy information, are enough to cause a reasonably cautious person to believe that a test will produce evidence that the employee has prohibited drugs or alcohol above the cutoff level in the employee's body. This is a higher level of certainty than is required for reasonable suspicion testing.

(ii) If possible, 2 supervisors at the work site should observe the employee, or review the relevant information about the employee, before requiring the employee to submit to a drug or alcohol test.

(F) Requirement for supervisors to record observations.

(i) The supervisor must sign a written record of the observations that lead to an alcohol or drug test immediately after making the observation and before meeting with the employee. The alcohol or drug test must be done following the supervisor's meeting with the employee. If circumstances prevent the supervisor from making a written record immediately, the supervisor must make the written record of the observations within 24 hours of the test.

(ii) The supervisor of an FMCSA Safety-Sensitive or FTA Safety-Sensitive employee must comply with record-keeping requirements in Sections 32-4 and 32-5, as appropriate.

(G) Employee status on and after day of test.

(i) On the day of a probable cause or reasonable suspicion test, the supervisor must place the employee tested in an appropriate leave status for the remainder of the day or shift.

(ii) After the day of the test and until the results of the test are known, the department director may:

(a) assign the employee other duties if:

(1) the department director has cause to believe that the employee cannot perform the employee's regularly assigned duties without risking harm to the employee, the employee's coworkers, or to the public; and

(2) other duties are available; or

(b) place the employee in an appropriate leave status.

(H) ***Negative test results.*** If the result of the probable cause or reasonable suspicion test is negative, the County must:

(i) restore the sick leave, annual leave, or compensatory time that the employee used, unless the employee was actually sick or otherwise unable to perform the employee's duties; and

(ii) reimburse the employee for lost wages and benefits if the employee was on LWOP, unless the employee was sick or otherwise unable to perform the employee's duties.

(6) Post-accident testing.

(A) The County must conduct post-accident drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) and 32-5 (FTA Safety-Sensitive).

(B) The Director of Fire & Rescue Services must ensure that post-accident testing of Firefighters is conducted under applicable regulations or procedures.

(7) Random drug and alcohol testing.

(A) The County conducts random drug testing of:

(i) Police Officers assigned to specialized units that investigate drug-related offenses; and

(ii) employees and volunteers who serve as Firefighter/Rescuers.

(B) The County conducts random drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) and 32-5 (FTA Safety-Sensitive).

(8) Return-to-duty drug and alcohol testing.

(A) ***Return-to-duty testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.*** The County must conduct return-to-duty drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Section 32-4 (FMCSA Safety-Sensitive).

(B) Return-to-duty testing of other employees.

(i) A department director may require a return-to-duty drug or alcohol test for an employee in an HPR or Public Safety position if the employee violated the drug or alcohol prohibitions in Section 32-3(a), had a verified positive drug test result, had a confirmed alcohol test result of 0.02 or higher, or refused to be tested.

(ii) If a department director requires a return-to-duty test, the department director must not allow the employee to perform the duties of the employee's position unless the employee is tested and has a negative test result for drugs, alcohol, or both.

(9) Follow-up drug and alcohol testing.

(A) ***Follow-up testing of employees in FMCSA Safety-Sensitive positions.*** The County must conduct follow-up drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive).

(B) ***Follow-up testing of other employees.*** After a County employee has refused to be tested, or tested positive on a drug or alcohol test, or after a medical provider determines that a County employee is in need of assistance in resolving problems associated with alcohol misuse, drug abuse, or both, and if the employee has not been dismissed or terminated for violating this regulation, the County must drug test, alcohol test, or drug and alcohol test the employee for a period of at least 12 months but no longer than 60 months. The employee's supervisor determines the duration and frequency of testing.

(i) The County must conduct at least 6 alcohol tests over each 12-month period if:

(a) the employee violated the alcohol prohibitions contained in these Regulations;

(b) refused to be tested for alcohol;

(c) had an alcohol concentration of 0.02 or higher; or

(d) the employee's misuse of alcohol has been confirmed either by the employee's admission or other objective evidence.

(ii) The County must ensure that alcohol testing is unannounced and spread reasonably over the 12-month period.

(iii) If recommended by the medical provider, the County must also drug test the employee.

(iv) The County must conduct no less than 6 drug tests over each 12-month period if the employee:

(a) violated the drug prohibitions contained in these Regulations;

(b) refused to be tested for drugs;

(c) had a verified positive drug test result; or

(d) the employee's drug abuse has been confirmed either by the employee's admission or other objective evidence.

(v) The County must ensure that follow-up drug testing is:

(a) unannounced; and

(b) spread reasonably over the 12-month period.

(vi) If recommended by the medical provider, the County must also alcohol test the employee.

(10) ***Guidance on drug and alcohol testing.*** For further guidance on drug and alcohol testing, supervisors should contact. OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email OMSTeam@montgomerycountymd.gov.

(11) ***Drug and alcohol testing forms.*** Before a drug or alcohol test for job positions not covered by U.S. DOT regulations is conducted, the applicant or employee should complete the appropriate County or Federal form.

(12) Collection of specimens for drug testing.

(A) OMS or a collection site/agent authorized by OMS must ensure that specimen collection is conducted:

(i) under Federal or State regulations, as appropriate;

(ii) by a collector who completed the required qualification and refresher training and the initial proficiency demonstration;

(iii) under controlled circumstances that reduce the opportunity to tamper with the specimen or substitute a different specimen, with reasonable accommodation to privacy consistent with the type of test being conducted;

(iv) under direct observation for return-to-duty and follow-up testing of FMCSA Safety-Sensitive employees; and

(v) under direct observation if the County receives a drug test result indicating that the employee's urine specimen test was cancelled because it was invalid. The collection for the retest must take place under direct observation;

(B) The collector must ensure that the specimen is properly identified and that the chain of custody is protected and recorded.

(C) OMS must ensure that specimen collection for required testing of FMCSA Safety-Sensitive and FTA Safety-Sensitive employees or job applicants under U.S. DOT regulations is conducted as required under those regulations.

(13) ***Requirements for laboratories that conduct drug testing.*** Tests must be conducted only by laboratories certified by the State of Maryland or by the U.S. Department of Health and Human Services to perform job-related forensic testing for drugs.

(14) Substances tested.

(A) For drug testing conducted under U.S. DOT regulations, the laboratory must test specimens obtained from FMCSA Safety-Sensitive and FTA Safety-Sensitive applicants and employees for the substances indicated in Sections 32-4 and 32-5.

(B) For drug testing under County authority, the laboratory must test specimens for the following drugs or their metabolites:

(i) amphetamines;

(ii) barbiturates;

(iii) benzodiazepines;

(iv) cannabinoids (marijuana);

(v) cocaine;

(vi) methaqualone (quaalude);

(vii) methadone;

(viii) opiates;

(ix) phencyclidine (PCP); and

(x) propoxyphene (Darvon).

(C) If information available to the department or OMS indicates that it is appropriate, OMS may ask the laboratory to test a specimen for any controlled dangerous substance included on the schedules in Section 5-101 of the Criminal Law Article of the Maryland Annotated Code. This does not apply to testing of FMCSA Safety-Sensitive and FTA Safety-Sensitive employees that is conducted under U. S. DOT regulations.

(D) If the initial screen for drugs is positive, the laboratory must conduct a confirmation test.

(E) The laboratory must conduct validity testing on the specimen to determine if certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

(15) Drug test results.

(A) The laboratory must report drug test results in writing directly to the Medical Review Officer (MRO) by any means that ensures accuracy and confidentiality. The laboratory reports results as:

(i) negative;

(ii) negative – dilute;

(iii) rejected for testing;

(iv) positive, with drug or metabolite noted;

(v) positive – dilute, with drug or metabolite noted, or

(vi) adulterated, substituted, or invalid result.

(B) A positive test result indicates that the presence of a drug or metabolite was measured and confirmed at or above a predetermined cutoff level. If a drug or metabolite is present at a level below the predetermined cutoff, the test result will be reported as negative.

(C) If the MRO receives test results reported as positive, adulterated, or substituted, the MRO must:

(i) verify all test results as required under U.S.DOT regulations; and

(ii) speak with, or make all required attempts to speak with, the applicant or employee for whom the test result was reported.

(D) If the applicant or employee states that there is a medical explanation for the test results, the MRO may:

(i) require the applicant or employee to submit documentation from a treating physician or other relevant medical personnel;

(ii) contact the treating physician or other relevant medical personnel; or

(iii) require a clinical examination of the applicant or employee.

(E) If the MRO determines that there is a legitimate medical explanation for a test result, the test result will be reported to the department as negative.

(F) OMS must report to the Designated Employer Representative (DER) and to the applicant or employee if the test results are verified positive, or indicate a refusal to test because of adulteration or substitution. OMS must report both negative and

positive test results to the DER for post-accident, reasonable suspicion, return to duty, and follow-up testing of employees.

(16) Retesting of employee after a canceled drug test.

(A) A canceled drug test is a test that has been declared invalid by the MRO and is neither a negative test result nor a confirmed positive test result. A canceled test includes a specimen rejected for testing by a laboratory.

(B) If a pre-employment drug test for a non-employee applicant is canceled, the County must conduct another pre-employment drug test.

(C) If a drug test for an employee is canceled, the County must drug test the employee again and receive a negative result before the employee is:

(i) transferred or reassigned to an HRP, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position; or

(ii) allowed to return to HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive duties, because of the possible use of illegal drugs, prohibited alcohol use, or refusal to take a required drug or alcohol test.

(17) Breath alcohol testing procedures.

(A) OMS or a collection site authorized by OMS must ensure that alcohol testing is conducted:

(i) using the process required under Federal or State regulations, as appropriate; and

(ii) by a breath alcohol technician (BAT) or screening test technician who completed the required qualification and refresher training and the initial proficiency demonstration.

(B) A BAT or Screening Test Technician must conduct an initial screening test using an Evidential Breath Testing Device (EBTD). If the result of the test is a breath alcohol concentration of less than 0.02, the test is considered negative and no further testing is authorized.

(C) The BAT must conduct a confirmation test if the result of the screening test is an alcohol concentration of 0.02 or higher.

(18) Refusal to take a drug or alcohol test.

(A) 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 result or an alcohol test with an alcohol concentration of 0.02 or higher:

(i) failing to appear for any test, except a pre-employment test, within a reasonable time, as determined by the County, after being directed to do so by a supervisor or other agent of the employer;

(ii) failing to remain at the testing site until the testing process is complete, but this does not apply to an applicant who leaves the testing site for a pre-employment drug test before the testing process begins;

(iii) failing to provide a urine specimen for a drug test or a breath sample for an alcohol test, but this does not apply to an applicant who leaves the testing site before the testing process begins for a pre-employment drug test;

(iv) in the case of a directly observed or monitored specimen collection for a drug test, failing to permit the observation or monitoring of the collection of a specimen;

(v) failing to provide enough urine for a drug test or adequate breath for an alcohol test when directed if it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure;

(vi) failing or refusing to take an additional drug test the employer or collector has directed the employee to take;

(vii) failing to undergo a medical evaluation as required by the MRO or as directed by the County as part of the verification process;

(viii) failing to cooperate with any part of the testing process, such as refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, or engaging in conduct that obstructs the drug or alcohol testing process or makes the test impossible;

(ix) having a verified adulterated or substituted test result, as reported by the MRO;

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

(xi) failing to remain readily available for post-accident testing, including failing to notify the supervisor or other County representative of the employee's location after leaving the scene of the accident but before submitting to post-accident testing;

(B) A department director must not select an applicant for a position that requires a pre-employment drug test if the applicant refuses to be tested for drugs.

(C) If an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position refuses to be tested for drugs or alcohol as required under these Regulations, the department director:

(i) must treat the refusal to take a drug test as the equivalent of a verified positive drug test result, unless it is a pre-employment drug test;

(ii) must treat the refusal to take an alcohol test as the equivalent of an alcohol test result of 0.02 or higher; and

(iii) may take adverse action against the employee.

(D) If an employee in an LPR position refuses to take a probable cause drug or alcohol test, the department director:

(i) must treat the refusal as the equivalent of a verified positive drug test result or an alcohol test result of 0.02 or higher; and

(ii) may take adverse action against the employee for insubordination.

(19) Consequences of a verified positive drug test result or an alcohol test result of 0.02 or higher.

(A) A department director must not select a job applicant who has a verified positive drug test result.

(B) A department director may take adverse action under County and department regulations against an employee who has a verified positive drug test result when applying for appointment to a position in another department.

(C) OMS must refer an FMCSA Safety-Sensitive or FTA Safety-Sensitive employee who has a verified positive drug test result or an alcohol test result of 0.04 or higher to a Substance Abuse Professional for evaluation. OMS must refer a County employee in any other type of position who has a verified positive drug test result or an alcohol test result of 0.02 or higher to a healthcare provider for evaluation and recommended treatment. The department director may take adverse action against the employee under County and department regulations.

(D) A supervisor of an FMCSA Safety-Sensitive employee who has a confirmed alcohol test result of at least 0.02 but less than 0.04 must not allow the employee to operate a vehicle or heavy or dangerous machinery or equipment for at least 24 hours after the test. A supervisor of an FTA Safety-Sensitive employee who has a confirmed alcohol test result of at least 0.02 but less than 0.04 must not allow the employee to perform safety-sensitive functions for at least 8 hours after the test, unless the employee is tested again with a result of less than 0.02.

(E) For an employee in an LPR, HPR, or Public Safety position, an alcohol test result of 0.02 or higher is considered a positive test result. A department director may take adverse action under County and department regulations against an employee in an LPR, HPR, or Public Safety position who has a confirmed positive alcohol test result.

(F) A department director may take adverse action under County and department regulations against an employee who has a verified positive drug test result.

(G) A department director must take adverse action under County and department regulations against an FMCSA Safety-Sensitive employee who has an alcohol test result of 0.04 or higher, or who has a verified positive drug test result.

(H) A department director must not allow an employee in an HPR, Public Safety, or FMCSA Safety-Sensitive position who has a verified positive drug test result or an alcohol test result of 0.02 or higher to perform the duties of the employee's position until the employee has been evaluated by a Substance Abuse Professional

for employees covered by U.S. DOT regulations or by a medical provider for other employees and:

(i) the Substance Abuse Professional or medical provider determines that the employee has completed the treatment recommended by that person and is able to return to the employee's regular duties; or

(ii) if no treatment is recommended by the Substance Abuse Professional or a medical provider, the evaluator determines that the employee does not have a drug or alcohol problem and is able to return to the employee's regular duties.

(I) Once an employee has been given medical clearance by a Substance Abuse Professional or a medical provider to return to work, the employee must report to OMS for a Return to Duty test. Upon reviewing the medical clearance and the return to work test result, the Employee Medical Examiner (EME), defined in Section 1-20, must perform a Return to Work evaluation to determine whether the employee should return to work.

(J) A department director may determine that an employee in an LPR position who has a confirmed positive drug test result or who has an alcohol test result of 0.02 or higher must not be allowed to perform some or all of the duties of the employee's position until the department is satisfied that the employee no longer has a drug or alcohol problem. The department must base the determination on a careful review of:

(i) the employee's duties and responsibilities and if the employee is responsible for County funds, negotiable instruments, County stores, or valuable equipment; and

(ii) the recommendation of the Substance Abuse Professional or medical provider who evaluated the employee.

(20) Rights of job applicants and employees subject to drug or alcohol testing.

(A) OMS must advise an applicant or employee subject to drug testing of the following, before the collection of the specimen:

(i) the reason for the test; and

(ii) the name and address of the laboratory that will perform the test;

(B) If the applicant or employee refuses to be tested, OMS must tell the applicant or employee of the consequences for refusing.

(C) (i) If the MRO has verified a drug test result as positive or as a refusal to test because of adulteration or substitution, the MRO must notify the applicant or employee of the applicant's or employee's right to have a test conducted on the split specimen, as appropriate, by a different laboratory at the employee's expense.

(ii) The MRO must tell a DOT covered applicant or employee how to request the split specimen test and give him or her at least 72 hours to request the test. Applicants or employees not covered by U.S. DOT regulations are given 10 days to request the test.

(iii) An employee covered by U.S. DOT regulations may be required to pay for the test. Other employees are required to pay for the test before the test takes place.

(iv) If the test conducted by a different laboratory is negative, the County must treat the test result as negative.

(21) Appeal rights of job applicants and employees subject to drug or alcohol testing.

(A) A job applicant may appeal to the MSPB under Section 35 of these Regulations if the applicant was denied employment or assignment to the position sought because of a verified drug test result, alcohol test result, or refusal to take a drug test.

(B) If an employee receives an adverse action or the employee's conditions of employment were changed because of a drug or alcohol test result or a refusal to test, the employee may appeal under the following, as applicable:

(i) Section 34 or 35 of these Regulations;

(ii) relevant provisions of the Law Enforcement Officers' Bill of Rights; or

(iii) relevant provisions of the appropriate labor agreement.

(C) An applicant or employee may not appeal the testing procedure or validity of the test result, unless the reason for challenging the

procedure, or the validity of the result, is material to the basic fairness or reliability of the procedure, or the basic accuracy of the test result.

(i) Required referral, evaluation, and treatment.

(1) Montgomery County Employee Assistance Program (EAP).

(A) The County has an Employee Assistance Program or EAP.

(B) The EAP provides:

(i) confidential counseling for employees; and

(ii) the services of a Substance Abuse Professional, who:

(a) is specifically trained and certified in the area of substance abuse; and

(b) can evaluate employees and refer them to appropriate treatment.

(C) There are no fees to employees for EAP services.

(D) An employee may seek the help of the EAP independently.

(E) With the approval of the employee's supervisor, an employee may use 2 hours of administrative leave to confer with an EAP counselor.

(2) Referral, evaluation, and treatment for employees covered by U.S. DOT regulations.

(A) If an employee has a verified positive drug test result, engaged in prohibited alcohol use, or refused to take a drug or alcohol test, and if the employee hasn't been dismissed or terminated as a result of such conduct, the employee's supervisor must:

(i) ensure that the employee is evaluated by a Substance Abuse Professional to determine if the employee is in need of assistance in resolving problems associated with illegal drug use or alcohol misuse;

(ii) give the employee contact information and the credentials of the Substance Abuse Professional;

(iii) ensure that, before the employee returns to FMCSA Safety-Sensitive duties, the employee has complied with the appropriate referral and evaluation provisions and takes, as appropriate:

(a) a return-to-duty drug test with a verified negative result;

(b) a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; or

(c) both, if the Substance Abuse Professional determines that the employee should be tested for both drugs and alcohol.

(B) OMS staff must ensure that the Substance Abuse Professional does not refer the employee to the Substance Abuse Professional's private practice from which the Substance Abuse Professional receives payment or to a person or organization in which the Substance Abuse Professional has a financial interest.

(3) Referral, evaluation, and treatment for employees not covered by U.S. DOT regulations.

(A) If an employee has a verified positive drug test result, engaged in prohibited alcohol use, or refused to take a drug or alcohol test, and if the employee hasn't been dismissed or terminated as a result of such conduct, the employee's supervisor must:

(i) refer the employee to the EAP;

(ii) give the employee information about the resources available to the employee to evaluate and resolve problems associated with illegal drug use or alcohol misuse, including contact information for counseling and treatment programs;

(iii) ensure that the employee is evaluated by a medical provider trained in substance abuse to determine if the employee is in need of assistance in resolving problems associated with illegal drug use or alcohol misuse;

(iv) give the employee contact information and the credentials of a medical provider affiliated with the County;

(v) ensure that, before the employee returns to work, the employee has complied with the appropriate referral and evaluation provisions and takes, as appropriate:

(a) a return-to-duty drug test with a verified negative result;

(b) a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; or

(c) both, if the medical provider determines that the employee should be tested for both drugs and alcohol.

(B) OMS staff must ensure that the medical provider does not refer the employee to the medical provider's private practice from which the medical provider receives payment or to a person or organization in which the medical provider has a financial interest.

(j) Effects of drug abuse and alcohol misuse.

(1) An employee who misuses alcohol or uses illegal drugs may show it or may be an expert at masking the symptoms. The following indicate that an employee has a personal problem, which may be, but is not necessarily, a problem caused by drug abuse or alcohol misuse:

(A) deteriorating performance, including inconsistent work quality and productivity, erratic pace and concentration, and increased errors;

(B) poor attendance and increased absenteeism, early departures, extended meal periods, and unexplained absences;

(C) changes in attitude and physical appearance, including blaming others, avoiding supervisors and coworkers, inability to get along with others, deteriorating personal appearance, and poor morale among coworkers who spend time covering for the employee;

(D) increased accidents and injuries, careless handling of equipment or machinery, disregard for safety of others, and taking needless risks to raise productivity to make up for absences or periods of lowered productivity; and,

(E) financial or domestic problems such as separation, divorce, behavioral problems with children, or inability to pay bills.

(2) An employee who recognizes symptoms of drug abuse or alcohol misuse in himself or herself should contact the EAP instead of ignoring or covering up the problem.

(3) An employee who recognizes symptoms of drug abuse or alcohol misuse in a coworker should be supportive but refuse to cover up for the coworker. If the coworker's behavior is creating safety concerns or causing other serious problems, the employee should discuss it with a supervisor or suggest that the employee call an EAP counselor.

(4) A supervisor must intervene by talking to the employee about the performance problems, explaining the consequences if performance expectations are not met, and being supportive, honest, and firm.

(5) Supervisors and coworkers are not expected to diagnose drug abuse or alcohol misuse problems.

(k) Employees Who Refer Themselves for Treatment.

(1) Employees who refer themselves for treatment for drug or alcohol abuse or obtain treatment for drug/alcohol abuse on their own initiative will not be subject to disciplinary action, absent evidence that they have violated this regulation, federal, state, or local law, or County or departmental regulations.

(2) If an employee tells a supervisor that he or she needs help to resolve a problem associated with prohibited drug use or alcohol misuse:

(A) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:

(i) after the employee is approached by a supervisor who intends to inform the employee that the employee has been selected for testing, but before the supervisor has the opportunity to notify the employee that the employee has been selected for a required drug or alcohol test;

(ii) after the employee learns that he/she has been selected for a required drug or alcohol test but before the employee is officially notified of the required drug or alcohol test;

(iii) after the employee is notified of a required drug or alcohol test but before the employee is tested for drugs or alcohol;

(iv) after the employee is tested for drugs or alcohol;

(v) after an accident;

(vi) after a confirmed positive drug test result or a confirmed alcohol test result with an alcohol concentration of 0.02 or greater, or in the case of an FMCSA Safety-Sensitive or FTA Safety-Sensitive employee, an alcohol concentration of 0.04 or greater;

(vii) after a refusal to be tested for drugs or alcohol; or

(viii) after conduct prohibited by Section 32-3 of these Regulations; and

(B) the County must refer the employee to a Substance Abuse Professional for evaluation, treatment, return-to-duty testing, and follow-up testing.

(l) Education and training programs.

(1) An individual who performs the functions of a collector, MRO, BAT, Screening Test Technician, or Substance Abuse Professional must receive the qualification training and refresher training required under the appropriate Federal or State regulations.

(2) The County must give employees information about the dangers of drug abuse and alcohol misuse and the resources available for treatment and rehabilitation.

(3) The County must ensure that all new and existing employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use or alcohol misuse.

(4) The County must ensure that supervisors of HPR, Public Safety, FMCSA Safety-Sensitive, and FTA Safety-Sensitive employees who may make reasonable suspicion determinations receive at least:

(A) 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use; and

(B) 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

(m) Maintenance of Records.

(1) Drug and alcohol test results will be maintained by the Occupational Medical Section of OHR. They will be treated as confidential medical information and will be disclosed only to the following individuals:

(A) Those who have a bona fide need to know in order to make an administrative decision on the basis of the information, which may include the Department director, the employee's supervisor, and appropriate individuals in the Office of Human Resources or County Attorney's Office.

(B) The labor organization or other representative of the applicant or employee, if the applicant/employee provides written authorization for such release.

(C) Those to whom release is required by law, or authorized by the applicant/employee.

(n) ***For further information.*** For further information about drug and alcohol testing, an employee may contact the staff of:

(1) OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email OMSTeam@montgomerycountymd.gov.

32-4. Prevention of Prohibited Drug Use and Alcohol Misuse by FMCSA Safety-Sensitive Employees under Federal Motor Carrier Safety Administration Regulations.

(a) ***Applicability.*** This Section applies to any employee assigned to a Safety-Sensitive position on a full-time, part-time, temporary, or intermittent basis.

(b) ***Safety-Sensitive positions.*** The following County positions are Safety-Sensitive positions:

(1) Equipment Operator I;

(2) Equipment Operator II;

(3) Equipment Operator III;

(4) Truck Driver/Warehouse Worker;

(5) Truck Driver Substitute/Warehouse Worker; and

(6) any other position that:

(A) requires the employee to maintain a CDL;

(B) involves the operation of a commercial motor vehicle; and

(C) is not an FTA Safety-Sensitive position.

(c) ***Safety-sensitive functions.*** An employee in a Safety-Sensitive position is performing safety-sensitive functions at all times when the employee is:

(1) waiting at a County facility before being dispatched, unless the employee has been relieved from duty by the County;

(2) inspecting equipment as required by FMCSA Regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) at the driving controls of a commercial motor vehicle in operation;

(4) in or on a commercial motor vehicle other than while driving;

(5) loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments loaded or unloaded;

(6) during all time spent performing the driver requirements associated with an accident; and

(7) repairing, obtaining assistance, or remaining in attendance on a disabled vehicle.

(d) Drug and alcohol prohibitions.

(1) ***Prohibitions for Safety-Sensitive employees.*** In addition to the prohibitions of Section 32-3, a Safety-Sensitive employee must not:

(A) report for duty or remain on duty requiring the performance of safety-sensitive duties while having an alcohol concentration of 0.02 or higher (an alcohol concentration of 0.02 – 0.039 requires removal from duty for 24 hours while an alcohol concentration of 0.04 or higher is a positive test and a violation under FMCSA regulations);

(B) use alcohol while performing a safety-sensitive function;

(C) perform a safety-sensitive function within 4 hours after using alcohol;

(D) use alcohol for 8 hours after an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first, if the employee is required to take a post-accident alcohol test under these regulations; or

(E) refuse to submit to any type of drug or alcohol testing required under FMCSA regulations, except for pre-employment drug testing;

(F) report for duty or remain on duty requiring the performance of a safety-sensitive function when using a controlled substance, except when the use is under the instructions of a licensed medical practitioner who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle; or

(G) report for duty, remain on duty, or perform a safety-sensitive function after:

(i) testing positive for a prohibited drug; or

(ii) adulterating or substituting a specimen for a drug test.

(2) ***Prohibitions for supervisors of Safety-Sensitive employees.*** A supervisor must not permit a Safety-Sensitive employee to perform or continue to perform a safety-sensitive function if the supervisor has actual knowledge that the employee:

(A) has an alcohol concentration of 0.02 or greater;

(B) is using alcohol while performing a safety-sensitive function;

(C) used alcohol within the last 4 hours;

(D) refused to submit to drug or alcohol testing required under FMCSA regulations; or

(E) used a prohibited drug, tested positive for a prohibited drug; or adulterated or substituted a specimen for a drug test.

(3) ***Refusal to submit to drug or alcohol testing.*** Any of the following on the part of a Safety Sensitive 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:

(A) failing to appear for any test, except a pre-employment test, within a reasonable time, as determined by the County, after being directed to do so by a supervisor or other agent of the employer;

(B) failing to remain at the testing site until the testing process is complete, but this does not apply to an applicant who leaves the testing site before the testing process begins for a pre-employment drug test;

(C) failing to provide a urine specimen for a drug test or a breath or saliva sample for an alcohol test required under FMCSA regulations, but this does not apply to an applicant who leaves the testing site before the testing process begins for a pre-employment drug test;

(D) in the case of a directly observed or monitored specimen collection for a drug test, failing to permit the observation or monitoring of the collection of a specimen, including failing to follow instructions from the observer to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if any type of prosthetic or other device (that could be used to interfere with the collection process) is present;

Observed collections are required in the following circumstances:

(1) All return-to-duty tests;

(2) All follow-up tests;

(3) Anytime the employee is directed to provide another specimen because the temperature of the original specimen was outside of the accepted temperature range of 90o-100oF;

(4) Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;

(5) Anytime a collector observes that the employee has brought materials to the collection site or that the employee's conduct clearly indicates an attempt to tamper with a specimen;

(6) Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined

that there was not an adequate medical explanation for the result;

(7) Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but the test had to be canceled because the test of the split specimen could not be performed.

(E) failing to provide enough urine for a drug test or adequate breath or saliva for an alcohol test when directed if it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure;

(F) failing or refusing to take an additional drug test the employer or collector has directed the employee to take;

(G) failing to undergo a medical evaluation as required by the MRO or as directed by the County as part of the verification process;

(H) failing to cooperate with any part of the testing process, such as refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, or engaging in conduct that obstructs the drug or alcohol testing process or makes the test impossible;

(I) having a verified adulterated or substituted test result, as reported by the MRO;

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

(K) failing to remain readily available for post-accident testing, including failing to notify the supervisor or other County representative of the employee's location after leaving the scene of the accident but before submitting to post-accident testing;

(L) possessing or wearing a prosthetic or other device that could be used to interfere with the collection process; or

(M) admitting to the collector or MRO that the specimen provided has been adulterated or substituted.

(f) Drug and alcohol testing.

(1) Procedures used.

(A) All drug testing and alcohol testing under FMCSA authority must comply with DOT regulations at 49 CFR Part 40, as amended. The DOT regulations at 49 CFR Part 40, as amended, are incorporated into these Regulations by reference.

(B) The County must have a copy of 49 CFR Part 40, as amended, available to give to any employee or employee representative who requests it. These regulations describe:

(i) the procedures that will be used to test for the presence of drugs and alcohol;

(ii) the procedures that protect the employee and the integrity of the drug and alcohol testing processes;

(iii) how the validity of test results are ensured;

(iv) how the test results are attributed to the correct employee;

(v) an employee's right to access the employee's drug and alcohol records; and

(vi) the required qualifications, role, and responsibilities of the MRO, Substance Abuse Professional, collection site, and laboratory.

(C) The County must contract for drug testing services only with laboratories certified by the U.S. Department of Health and Human Services (DHHS).

(D) Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if its content is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

(2) ***Prohibited drugs.*** When administering a drug test under FMCSA regulations, the County must ensure that employees are tested for the following drugs:

(A) marijuana;

(B) cocaine;

(C) opiates;

(D) amphetamines; and

(E) phencyclidine.

(3) ***Medical Review Officer (MRO).*** The MRO must be a licensed physician with knowledge of substance abuse disorders.

(4) Notice required for drug and alcohol testing.

(A) Before performing a drug or alcohol test under FMCSA regulations, the supervisor must notify the employee:

(i) that the FMCSA requires the drug or alcohol test; and

(ii) if drug testing, of the identity of the DHHS certified laboratory that will conduct the drug test.

(B) A supervisor must not falsely represent that a test not required by FMCSA regulations is being given under FMCSA regulations.

(5) ***Times when an employee is subject to testing.*** The County may require a Safety-Sensitive employee to submit to testing required under FMCSA regulations at the following times:

(A) at any time the employee is on duty for reasonable suspicion, random, return-to-duty, and follow-up testing for drugs;

(B) just before, just after, or while the employee is performing a safety-sensitive function for reasonable suspicion, random, return-to-duty, and follow-up alcohol testing;

(C) within 32 hours after an accident for post-accident drug testing; and

(D) within 8 hours after an accident for post-accident alcohol testing.

(6) Alcohol testing of an on-call employee who reports for duty.

(A) A supervisor who contacts an on-call employee to ask the employee to report for duty must ask if the employee has used alcohol and is unable to perform safety-sensitive functions.

(B) If an on-call employee acknowledges the use of alcohol but claims ability to perform safety-sensitive functions, the supervisor must ensure that the employee takes an alcohol test resulting in an

alcohol concentration of less than 0.02 before the supervisor allows the employee to perform a safety-sensitive function.

(g) ***Types of drug and alcohol testing.*** Under FMCSA regulations, a Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. An applicant for such a position must submit to pre-employment drug testing as described in (1) below.

(1) Pre-employment and pre-assignment testing.

(A) A non-employee applicant for a Safety-Sensitive position must produce a negative drug test result before employment.

(B) An employee applicant for a Safety-Sensitive position or an employee transferred or temporarily assigned to a Safety-Sensitive position must produce a negative drug test result before performing safety-sensitive functions.

(C) An employee newly hired or assigned to a Safety-Sensitive position must take a pre-*assignment* alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time.

(2) Post-accident testing.

(A) An accident that involves operation of a commercial motor vehicle on a public road in commerce requires post-accident drug and alcohol testing of each surviving driver who was performing safety-sensitive functions with respect to the vehicle if the accident results in:

(i) the death of an individual;

(ii) a citation for the driver for a moving violation under State or local law if the accident involved:

(a) bodily injury to an individual that causes the individual to immediately receive medical treatment away from the scene of the accident; or

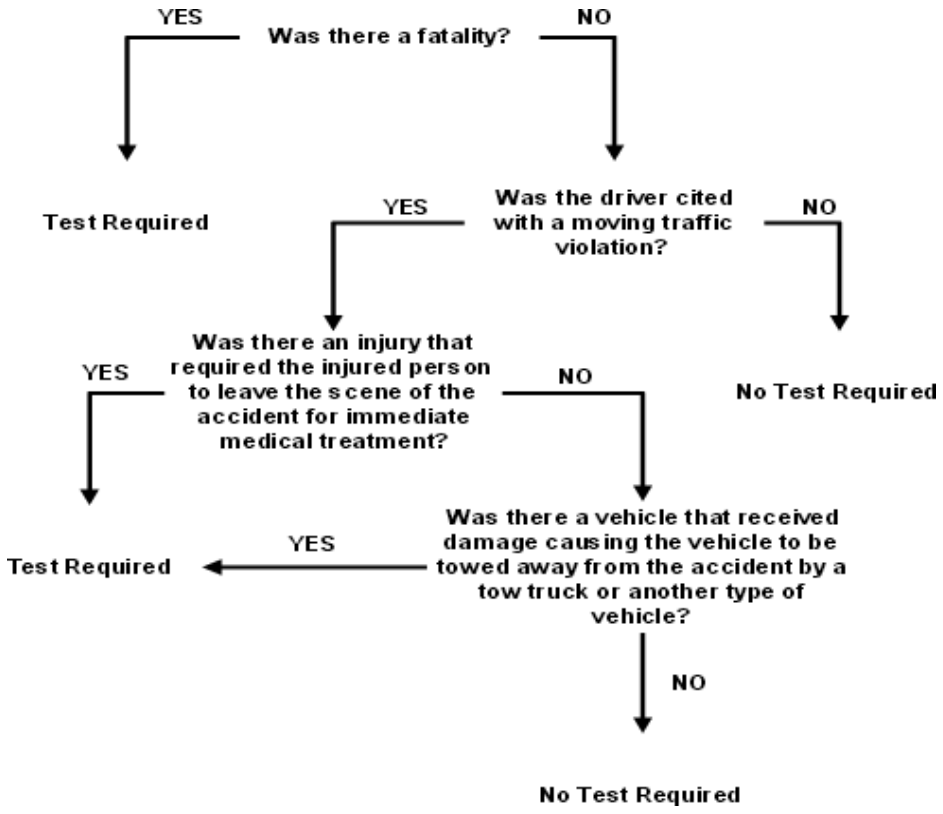
(b) disabling damage to one or more motor vehicles that requires the vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(B) Post-accident testing is not required if the accident involves only:

(i) boarding or leaving a stationary motor vehicle; or

(ii) the loading or unloading of cargo.

(C) The table below shows when a post-accident test is required.



(D) If an alcohol test required by this section is not administered within 2 hours after the accident, a supervisor must prepare and maintain on file a record stating why the test was not promptly administered. If an alcohol test is not administered within 8 hours after the accident, the supervisor must stop attempts to administer an alcohol test and must prepare and maintain a record stating why the test was not administered. The County must submit these records to the FMCSA upon request.

(E) A supervisor must ensure that an employee who must be tested for drugs is tested as soon as practicable after the accident. If a drug test required by this section is not administered within 32 hours after the accident, the supervisor must stop attempts to administer a drug test and prepare and maintain on file a record stating why the test was not promptly administered. The County must submit these records to the FMCSA upon request.

(F) An employee who is subject to post-accident testing must remain readily available for such testing. The County may consider it a refusal to submit to testing if an employee who is subject to post-accident testing:

(i) fails to remain readily available for testing; or

(ii) fails to notify the supervisor or other County representative of the employee's location if the employee leaves the scene of the accident before submitting to a test.

(G) These Regulations do not:

(i) require the delay of necessary medical attention for injured persons after an accident; or

(ii) prohibit an employee from leaving the scene of an accident for the time necessary to obtain help in responding to the accident or to obtain necessary emergency medical care.

(H) The County must provide each employee with necessary information, procedures, and instructions about post-accident testing before the employee operates a commercial motor vehicle, so that the employee will be able to comply with the requirements of this section.

(I) If the County obtains the results of a breath or blood test for alcohol or a urine test for drugs that was conducted by Federal, State, or local officials having independent authority for the test, the County will consider the test results as meeting the requirements of this section, provided such tests conform to applicable Federal, State or local testing requirements.

(3) Random testing.

(A) The County must randomly select enough Safety-Sensitive employees for drug testing and for alcohol testing during each calendar year to equal an annual rate for each type of testing that is not less than the minimum annual percentage rate determined by the FMCSA Administrator for each type of random testing.

(B) Employees must be selected for testing by the use of a scientifically valid method such as a computer-based random number generator matched with employee social security numbers or other comparable identifying numbers.

(C) Each employee in a Safety-Sensitive position must:

(i) be in a pool of employees subject to random drug and alcohol testing;

(ii) have an equal chance of selection for testing each time selections are made; and

(iii) remain in the pool subject to testing even after being tested.

(D) The County must ensure that random drug and alcohol tests are unannounced and that the dates for administering random tests are spread reasonably throughout the entire calendar year.

(E) To calculate the total number of covered employees eligible for random testing throughout the year, the County must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Only Safety-Sensitive employees are in the FMCSA random testing pool and all employees in Safety-Sensitive positions must be in the random pool. The total number of covered employees and the random testing rate must be computed once per month.

(F) A covered employee must be randomly tested for alcohol at the following times: just before, just after, or while the employee is performing safety-sensitive functions.

(G) An employee selected for a random test must proceed to the test site immediately after being notified of selection. If at the time of notification the employee is performing a safety-sensitive function other than driving a commercial motor vehicle, the supervisor must make arrangements to relieve the employee as soon as possible.

(4) Reasonable suspicion testing.

(A) A supervisor must require a covered employee to submit to an alcohol test when the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-4(d) concerning alcohol. The supervisor's determination that reasonable suspicion exists to require the employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the employee’s appearance, behavior, speech, or body odors.

(B) A supervisor must require a covered employee to submit to a drug test when the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-4(d)

concerning drugs. The supervisor's determination that reasonable suspicion exists to require the employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of drugs.

(C) The required observations for reasonable suspicion testing for alcohol, drugs, or both must be made by a supervisor who is trained as required under FMCSA and these regulations. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test must not conduct the alcohol test.

(D) If the facts and circumstances within the supervisor's knowledge are enough to cause a reasonably cautious person to believe that the employee may be under the influence of a member of a class of controlled drugs whose use isn't prohibited under U.S. DOT Regulations, the supervisor may direct the employee to submit a urine specimen for reasonable suspicion testing under County authority (Section 32-3(h)(5)(A)) that is not derived from U.S. DOT Regulations.

(E) Alcohol testing is authorized by this section only if the observations required by paragraph (A) of this subsection are made during, just before, or just after the employee is performing safety-sensitive functions. A supervisor may direct an employee to undergo reasonable suspicion testing only while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has stopped performing such functions.

(F) If an alcohol test required by this section is not administered within 2 hours after the determination under paragraph (A), the supervisor must prepare and maintain on file a record stating why the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within 8 hours following the determination under paragraph (A), the supervisor must stop attempts to administer an alcohol test and state in the record the reasons for not administering the test.

(G) Even if a reasonable suspicion alcohol test is not performed under this section, a driver must not report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse and the supervisor must not permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) an alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) 24 hours have passed since the determination under paragraph (A) that there was reasonable suspicion to believe that the driver had violated the prohibitions concerning the use of alcohol.

(H) Except as provided in paragraph (G) above, a supervisor must not take any action under this section against an employee based solely on a belief that the employee's behavior or appearance indicates prohibited alcohol use unless an alcohol test shows that the employee used alcohol.

(I) A supervisor must make a written record of the observations that lead to a reasonable suspicion test. The supervisor who made the observations must sign the record within 24 hours of the observed behavior or before the results of the alcohol or drug test are released, whichever is earlier.

(5) Return-to-duty testing.

(A) ***After prohibited drug use or refusal to take a drug test.*** If the County does not dismiss or terminate an employee who refuses to submit to a drug test or has a verified positive drug test result, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:

(i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation, and refers the employee for appropriate education and treatment;

(ii) the Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;

(iii) the employee takes a return-to-duty drug test, under direct observation if required, with a verified negative result; and

(iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(B) ***After prohibited alcohol use or refusal to take an alcohol test.*** If the County does not dismiss or terminate an employee who engages in prohibited alcohol use or refuses to submit to a required alcohol test, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:

(i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation and refers the employee for appropriate education and treatment;

(ii) the Substance Abuse Professional evaluates the employee to determine if the employee properly followed the recommendations for action by the Substance Abuse Professional, including participation in a rehabilitation program;

(iii) the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; and

(iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty drug test with a verified negative result.

(6) ***Follow-up testing.*** The County must ensure that an employee who returns to duty after a required evaluation by a Substance Abuse Professional under Section 32-4(g)(5) is subject to unannounced follow-up drug testing, alcohol testing, or both, as follows:

(A) the employee must take at least 6 unannounced follow-up tests during the first 12 months after the employee returns to duty;

(B) follow-up testing may last for up to 5 years to deter or detect a relapse, based on the Substance Abuse Professional's assessment of the employee's unique situation and recovery progress and the recommendation submitted in the report to the County;

(C) follow-up testing, performed under direct observation if required, is in addition to random, post-accident, reasonable suspicion, and return-to-duty testing.

(h) Retesting of employees.

(1) Retesting of employee with an alcohol concentration of 0.02 or greater but less than 0.04.

(A) The County must not allow an employee who is tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(i) the employee's alcohol concentration is tested again and measures less than 0.02; or

(ii) the start of the employee's next regularly scheduled duty period, but not less than 24 hours after the test.

(B) Except as provided in paragraph (A) above, which requires that an employee with an alcohol concentration of between 0.02 and 0.039 be removed from safety-sensitive duties for up to 24 hours, the County must not take any action under FMCSA authority against an employee based solely on the results of a test conducted under FMCSA authority showing an alcohol concentration of less than 0.04.

(2) Retesting of employee after a canceled drug test.

(A) A cancelled drug test is a test that has been declared invalid by the MRO and is neither a verified positive nor a verified negative test result. A cancelled test includes a specimen rejected for testing by a laboratory.

(B) If a non-employee applicant’s drug test is cancelled, the applicant must take another pre-employment drug test.

(C) If an employee’s drug test is cancelled, the employee must take another drug test with a verified negative result before the County:

(i) transfers or reassigns the employee to a Safety-Sensitive position; or

(ii) allows the employee to return to safety-sensitive duties, because of the possible use of prohibited drugs, prohibited alcohol use, or refusal to take a required drug or alcohol test.

(D) OMS must ensure that specimen collection is conducted under direct observation if the County receives a drug test result indicating that the employee’s urine specimen test was cancelled because it was invalid. The collection for the retest is required to take place under direct observation at the direction of the MRO.

(i) ***Required referral, evaluation, and treatment.*** For information about required referral, evaluation, and treatment, see Section 32-3(i).

(j) ***Effects of drug abuse and alcohol misuse.*** See Section 32-3(j) for information about the effects of drug abuse and alcohol misuse.

(k) ***Education and training programs.*** See Section 32-3(l) for education and training programs and requirements for supervisor training.

32-5. Prevention of Prohibited Drug Use and Alcohol Misuse by FTA Safety-Sensitive Employees Under Federal Transit Administration Regulations

(a) ***Application of section.*** This Section applies to any employee assigned to an FTA Safety-Sensitive position on a full-time, part-time, temporary, or intermittent basis.

(b) ***Safety-sensitive functions.*** An employee of the Departments of General Services or Transportation who performs any of the following safety-sensitive functions at any time is in an FTA Safety-Sensitive position:

(1) operating a Montgomery County revenue service vehicle, including when not in revenue service;

(2) operating a Montgomery County nonrevenue service vehicle to provide ancillary services for transit operations, when the operator is required to hold a Commercial Driver's License (CDL);

(3) controlling dispatch or movement of a Montgomery County revenue service vehicle; or

(4) maintaining (including repairing, overhauling, and rebuilding) a Montgomery County revenue service vehicle or equipment used in revenue service.

(c) **FTA *Safety-Sensitive positions.*** The following are FTA Safety-Sensitive positions if the employee must have a CDL or operates, dispatches, controls, or maintains Montgomery County transit vehicles and operations:

(1) Apprentice Autobody Repairer;

(2) Apprentice Mechanic;

(3) Autobody Repairer;

(4) Bus Operator;

(5) Communications Supervisor (Central Dispatch)

(6) Crew Chief;

(7) Mechanic;

(8) Mechanic's Helper;

(9) Mechanic Leader;

(10) Motor Pool Attendant;

(11) Program Specialist (Trainer);

(12) Transit Coordinator;

(13) Transit Equipment Technician; and

(14) Welder.

(d) ***Supervisor as FTA Safety-Sensitive employee.*** A supervisor is an FTA Safety-Sensitive employee only if the supervisor actually performs safety sensitive functions.

(e) Drug and alcohol prohibitions.

(1) ***Prohibitions for FTA Safety-Sensitive employees.*** In addition to the prohibitions of Section 32-3, an FTA Safety-Sensitive employee must not:

(A) use a prohibited drug;

(B) report for duty, remain on duty, or perform a safety-sensitive function after testing positive for a prohibited drug;

(C) report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or higher;

(D) consume alcohol while performing a safety-sensitive function;

(E) consume alcohol within 4 hours prior to performing a safety-sensitive function;

(F) consume alcohol while the employee is on-call;

(G) consume alcohol for 8 hours following an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first, if the employee is required to take a post-accident alcohol test; or

(H) refuse to submit to any of the following types of drug or alcohol testing, if required under FTA regulations:

(i) pre-assignment alcohol testing;

(ii) reasonable suspicion;

(iii) post-accident;

(iv) random;

(v) return-to-duty; or

(vi) follow-up.

(2) ***Prohibitions for supervisors.*** A supervisor must not permit an FTA Safety-Sensitive employee to perform or continue to perform safety-sensitive functions if the supervisor has actual knowledge that the employee:

(A) has an alcohol concentration of 0.02 or greater;

(B) consumed alcohol while performing safety-sensitive functions;

(C) consumed alcohol within 4 hours of performing a safety-sensitive function;

(D) used a prohibited drug or tested positive for a prohibited drug; or

(E) refused to submit to drug or alcohol testing required under FTA regulations.

(3) ***Use of medications containing alcohol.*** The use of a prescription or over-the-counter medicine that contains alcohol is considered to be use of alcohol and is subject to the FTA prohibitions on alcohol misuse.

(4) ***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:

(A) failing to provide a urine or breath sample without a genuine inability to provide a specimen, as determined by a medical evaluation;

(B) engaging in conduct that clearly obstructs the drug or alcohol testing process or makes the test impossible;

(C) failing to remain readily available for post-accident testing, including failing to notify the supervisor or other County representative of the employee's location after leaving the scene of the accident but before submitting to post-accident testing;

(D) refusing verbally or in writing to provide a urine or breath sample for testing;

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

(F) 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;

(G) 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;

(H) in the case of a directly observed or monitored specimen collection for a drug test, failing to permit the observation or monitoring of the provision of a specimen, including failing to follow instructions from the observer to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if any type of prosthetic or other device (that could be used to interfere with the collection process) is present;

Observed collections are required in the following circumstances:

(1) All return-to-duty tests;

(2) All follow-up tests;

(3) Anytime the employee is directed to provide another specimen because the temperature of the original specimen

was outside of the accepted temperature range of 90°-100°F;

(4) Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;

(5) Anytime a collector observes that the employee has brought materials brought to the collection site or that the employee's conduct clearly indicates an attempt to tamper with a specimen;

(6) Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;

(7) Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but the test had to be canceled because the test of the split specimen could not be performed; and

(8) Anytime the employee admits to the collector or MRO that the employee adulterated or substituted the specimen.

(I) failing to sign the certification at Step 2 of the Alcohol Testing Form.

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

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

(L) possessing or wearing a prosthetic or other device that could be used to interfere with the collection process; or

(M) admitting to the collector or MRO that the specimen provided has been adulterated or substituted.

(f) Drug and alcohol testing.

(1) Procedures used.

(A) All drug testing and alcohol testing under FTA authority must comply with DOT regulations at 49 CFR Part 40, as amended. The DOT regulations at 49 CFR Part 40, as amended, are incorporated into these Regulations by reference.

(B) The County must have a copy of 49 CFR Part 40, as amended, available to give to any employee or employee representative who requests it. The DOT regulations describe:

(i) the procedures that will be used to:

(a) test for the presence of drugs;

(b) test for the presence of alcohol;

(c) protect the employee and the integrity of the drug and alcohol testing processes;

(d) safeguard the validity of the test results; and

(e) ensure the test results are attributed to the correct employee;

(ii) an employee's right to access the employee's drug and alcohol records; and

(iii) the required qualifications, role, and responsibilities of the medical review officer, substance abuse professional, collection site, and laboratory.

(C) The County must contract for drug testing services only with laboratories certified by the U.S. Department of Health and Human Services (DHHS).

(D) Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if its content is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

(2) ***Prohibited drugs.*** When administering a drug test under FTA regulations, the County must ensure that employees are tested for the following drugs:

(A) marijuana;

(B) cocaine;

(C) opiates;

(D) amphetamines; and

(E) phencyclidine.

(3) ***Medical Review Officer (MRO).*** The MRO must be a licensed physician with knowledge of substance abuse disorders.

(4) Notice required for drug and alcohol testing.

(A) Before performing a drug or alcohol test under FTA regulations, the supervisor must notify the employee:

(i) that the FTA requires the drug or alcohol test; and

(ii) if drug testing, of the identity of the DHHS certified laboratory that will conduct the drug test.

(B) A supervisor must not falsely represent that a test not required by FTA regulations is being given under FTA regulations.

(5) ***Times when an employee is subject to testing.*** The County may require an FTA Safety-Sensitive employee to submit to testing required under FTA regulations at the following times:

(A) reasonable suspicion, random, return-to-duty, and follow-up testing for prohibited drugs at any time the employee is on duty;

(B) reasonable suspicion, random, return-to-duty, and follow-up alcohol testing just before, just after, or while the employee is performing a safety sensitive function.

(C) post-accident drug testing within 32 hours after an accident; and

(D) post-accident alcohol testing within 8 hours after an accident.

(6) Alcohol testing of an on-call employee who reports for duty.

(A) A supervisor who contacts an on-call employee to ask the employee to report for duty must ask if the employee has used alcohol and is unable to perform safety-sensitive functions.

(B) If an on-call employee acknowledges the use of alcohol but claims ability to perform safety-sensitive functions, the supervisor must ensure that the employee takes an alcohol test with an alcohol

concentration of 0.02 or less before the supervisor allows the employee to perform a safety sensitive function.

(g) ***Types of drug and alcohol testing.*** Under FTA regulations, an FTA Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. A non-employee applicant for such a position must submit to pre-employment drug testing as described in (1)(A) below.

(1) Pre-employment and pre-assignment drug testing.

(A) An applicant for an FTA Safety-Sensitive position must produce a negative drug test result before employment.

(B) An employee transferred or temporarily assigned to an FTA Safety-Sensitive position must produce a negative drug test result before performing safety-sensitive functions.

(C) An employee newly hired or assigned to an FTA Safety-Sensitive position must take a pre-assignment alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time.

(2) Reasonable suspicion testing.

(A) A trained supervisor must direct an employee to submit to drug or alcohol testing if, based on specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech, or body odors, the supervisor has a reasonable basis to believe that the employee has used a prohibited drug or violated a prohibition in Section 32-5(e) concerning alcohol use. The required observations must be made by a supervisor who is trained as required under Section 32-3(k)(4) in detecting the signs and symptoms of alcohol misuse.

(B) Alcohol testing is authorized under FTA regulations only if the supervisor's observations are made just before, just after, or while the employee is performing a safety-sensitive function.

(C) The supervisor who makes the determination that an alcohol test is appropriate must not administer the test.

(D) If reasonable suspicion exists to test the employee for alcohol but no test is administered at that time, the supervisor must not allow the employee to perform safety-sensitive functions until:

(i) a test is administered and the employee has an alcohol concentration of less than 0.02; or

(ii) the start of the employee's next regularly scheduled duty period but at least 8 hours after the determination was made that reasonable suspicion existed for a test.

(E) If a reasonable suspicion test for alcohol is not administered within 2 hours following the determination under Section 32-5(g)(2)(A), the supervisor must prepare and maintain on file a record stating the reasons the test was not promptly administered.

(F) If an alcohol test is not administered within 8 hours following the supervisor's determination that a test is required, the supervisor must stop attempts to administer an alcohol test and state in the record the reasons for not administering the test.

(G) A supervisor must require a covered employee to submit to a drug test when the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-5(e) concerning drugs. The supervisor's determination that reasonable suspicion exists to require the employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of drugs. The required observations must be made by a supervisor who is trained as required under Section 32-3(k)(4) in detecting the signs and symptoms of prohibited drug use.

(H) If the facts and circumstances within the supervisor's knowledge are enough to cause a reasonably cautious person to believe that the employee may be under the influence of a member of a class of controlled drugs whose use isn't prohibited under U.S. DOT Regulations, the supervisor may direct the employee to submit a urine specimen for reasonable suspicion testing under County authority (Section 32-3(h)(5)(A) that is not derived from U.S DOT Regulations.

(3) Post-accident testing.

(A) ***Accident requiring drug and alcohol testing.*** An accident that requires post-accident drug and alcohol testing is an occurrence associated with the operation of a vehicle used for mass transit or for ancillary services that results in:

(i) the death of an individual;

(ii) bodily injury to an individual that causes the individual to immediately receive medical treatment away from the scene of the accident; or

(iii) one or more vehicles incurring disabling damage and receiving transportation away from the scene by a tow truck or other vehicle.

(B) ***Fatal accident.*** As soon as practicable following an accident involving the loss of human life, the responsible supervisor must have the following employees tested for drugs and alcohol:

(i) each surviving employee operating the mass transit vehicle at the time of the accident; and

(ii) any other employee whose performance could have contributed to the accident, as determined by the supervisor using the best information available at the time of the decision.

(C) ***Nonfatal accident.*** As soon as practicable following an accident covered by subsections (3)(A)(ii) or (iii) above but not involving the loss of human life, the responsible supervisor must have the following employees tested for drugs and alcohol:

(i) each employee who was operating the vehicle at the time of the accident unless the supervisor determines, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident; and

(ii) any other employee whose performance could have contributed to the accident, as determined by the supervisor using the best information available at the time of the decision.

(D) A supervisor must ensure that an employee required to be tested for drugs is tested as soon as practicable and within 32 hours of the accident.

(E) If an employee required to be tested for alcohol is not tested within 2 hours following an accident, the supervisor must prepare and maintain on file a record stating the reason why the test was not promptly administered. If an alcohol test is not administered within 8 hours following the accident, the supervisor must stop attempts to administer an alcohol test and update the written record.

(F) The County may consider it a refusal to submit to testing if an FTA Safety-Sensitive employee who is subject to post-accident testing:

(i) fails to remain readily available for testing; or

(ii) fails to notify the supervisor or other County representative of the employee's location if the employee leaves the scene of the accident before submitting to a test.

(G) These Regulations do not:

(i) require the delay of necessary medical attention for the injured after an accident; or

(ii) prohibit an employee from leaving the scene of an accident for the time necessary to obtain help in responding to the accident or to obtain necessary emergency medical care.

(4) Random testing.

(A) The County must randomly select enough FTA Safety-Sensitive employees for drug testing and for alcohol testing during each calendar year to equal an annual rate for each type of testing that is not less than the minimum annual percentage rates for random drug testing and for random alcohol testing determined by the FTA.

(B) The County must ensure that random drug and alcohol tests are unannounced and that the dates for administering random tests are spread reasonably throughout the entire calendar year.

(C) Every employee in an FTA Safety-Sensitive Transit position must be in a pool of employees subject to random drug and alcohol testing. Each employee must have an equal chance of selection for testing and must remain in the pool subject to testing even after being tested.

(D) Employees must be selected for testing by the use of a scientifically valid method such as a computer-based random number generator matched with employee social security numbers.

(E) A covered employee must be randomly tested for alcohol only just before, just after, or while the employee is performing safety-sensitive functions.

(F) An employee selected for a random test must proceed to the test site immediately after being notified of selection. If the employee is performing a safety-sensitive function at the time of notification, the supervisor must make arrangements to relieve the employee as soon as possible.

(G) If an employee or applicant for an FTASafety-Sensitive position has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason and has not been in the random selection pool during that time, the County must ensure that the employee or applicant takes a pre-employment drug test with a verified negative result before allowing the employee or applicant to perform safety-sensitive functions.

(h) Retesting of employees; collecting a new specimen after a dilute test result.

(1) Retesting of employee with an alcohol concentration of 0.02 or greater but less than 0.04.

(A) The County must not allow an employee who is tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(i) the employee's alcohol concentration measures less than 0.02; or

(ii) the start of the employee's next regularly scheduled duty period, but not less than 8 hours after the test.

(B) Except as provided in paragraph (A) above, the County must not take any action against an employee based solely on the results of a test conducted under FTA authority showing an alcohol concentration of less than 0.04.

(2) Retesting of employee after a canceled drug test.

(A) A canceled drug test is a test that has been declared invalid by the MRO and is neither a verified positive nor a verified negative test result. A canceled test includes a specimen rejected for testing by a laboratory.

(B) If a non-employee applicant's drug test is canceled, the County must require the applicant to take another pre-employment drug test.

(C) If an employee's drug test is canceled, the County must require the employee to take another drug test with a verified negative result before the employee is:

(i) transferred or reassigned to an FTA Safety-Sensitive position; or

(ii) allowed to return to safety-sensitive duties because of the possible use of prohibited drugs, prohibited alcohol use, or refusal to take a required drug or alcohol test.

(D) OMS must ensure that specimen collection is conducted under direct observation if the County receives a drug test result indicating that the employee's urine specimen test was canceled because it was invalid and the MRO has directed that the second collection must take place under direction observation.

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

(A) 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.

(B) 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.

(C) The MRO will direct whether the new specimen is to be collected under direct observation or not.

(D) After a dilute negative test result, if a new specimen is collected for testing this second test will be the test of record. If this second test also produces a dilute negative result, no additional tests will be conducted.

(i) Consequences for an employee of prohibited drug use, alcohol misuse, or refusal to take a drug or alcohol test.

(1) ***Consequences under FTA regulations.*** Under FTA regulations, the following are the required consequences for an employee who has a verified positive drug test result, violates the alcohol misuse prohibitions, or who refuses to be tested:

(A) immediate removal from safety-sensitive duties; and

(B) referral to a Substance Abuse Professional for evaluation.

(2) Consequences under County authority.

(A) Under County authority not derived from the FTA regulations, a department director must dismiss an FTA Safety-Sensitive employee with merit system status or terminate an FTA Safety-Sensitive probationary employee who:

(i) has a confirmed positive drug test result;

(ii) has a confirmatory alcohol test with an alcohol concentration of 0.04 or greater; or

(iii) refuses to take a drug or alcohol test.

(B) FTA regulations require the County to refer the dismissed employee to a Substance Abuse Professional for evaluation and treatment.

(C) If an FTA Safety-Sensitive employee tells a supervisor that he or she needs help to resolve a problem associated with prohibited drug use or alcohol misuse:

(i) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:

(a) after the employee is approached by a supervisor who intends to inform the employee that the employee has been selected for testing, but before the supervisor has the opportunity to notify the employee that the employee has been selected for a required drug or alcohol test;

(b) after the employee learns that the employee has been selected for a required drug or alcohol test but before the employee is officially notified of the required drug or alcohol test;

(c) after the employee is notified of a required drug or alcohol test but before the employee is tested for drugs or alcohol;

(d) after the employee is tested for drugs or alcohol;

(e) after an accident;

(f) after a confirmed positive drug test result or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater;

(g) after a refusal to be tested for drugs or alcohol; or

(h) after conduct prohibited by Section 32-3 of these Regulations; and

(ii) the supervisor must refer the employee to a Substance Abuse Professional for evaluation, treatment, return-to-duty testing, and follow-up testing. These tests will be conducted under County authority and not under direct observation.

(j) **Required referral, evaluation, and treatment.** For information about required referral, evaluation, and treatment see Section 32-3(i)

(k) **Effects of drug abuse and alcohol misuse.** See Section 32-3(j) for information about the effects of drug abuse and alcohol misuse.

(l) **Education and training programs.** See Section 32-3(l) for education and training programs and requirements for supervisor training.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to alcohol misuse or drug abuse by employees covered by FTA regulations**
Firefighter/Rescuer	None
OPT/SLT	34, Safety and Health
Police	None

SECTION 33. DISCIPLINARY ACTIONS

(As amended December 11, 2007, October 21, 2008, November 3, 2009, and June 30, 2015)

33-1. Definition.

Disciplinary action: One of the following adverse personnel actions taken by a supervisor against an employee:

(a) oral admonishment;

(b) written reprimand;

(c) forfeiture of annual leave or compensatory time;

(d) within-grade salary reduction;

(e) suspension;

(f) demotion; or

(g) dismissal.

33-2. Policy on disciplinary actions.

(a) ***Purpose of disciplinary actions.*** A department director may take a disciplinary action against an employee to maintain order, productivity, or safety in the workplace.

(b) Prompt discipline.

(1) A department director should start the disciplinary process promptly and issue a statement of charges within 30 calendar days of the date on which the supervisor became aware of the employee's conduct, performance, or attendance problem.

(2) A department director may wait for more than 30 calendar days to issue a statement of charges if an investigation of the employee's conduct or other circumstances justify a delay.

(c) Progressive discipline.

(1) A department director must apply discipline progressively by increasing the severity of the disciplinary action proposed against the employee in response to:

(A) the severity of the employee's misconduct and its actual or possible consequences; or

(B) the employee's continuing misconduct or attendance violations over time.

(2) Progressive discipline does not require a department director to apply discipline in a particular order or to always begin with the least severe penalty. In some cases involving serious misconduct or a serious violation of policy or procedure, a department director may bypass progressive discipline and dismiss the employee or take another more severe disciplinary action.

(d) ***Consideration of other factors.*** A department director should also consider the following factors when deciding if discipline is appropriate or how severe the disciplinary action should be:

(1) the relationship of the misconduct to the employee's assigned duties and responsibilities;

(2) the employee's work record;

(3) the discipline given to other employees in comparable positions in the department for similar behavior;

(4) if the employee was aware or should have been aware of the rule, procedure, or regulation that the employee is charged with violating; and

(5) any other relevant factors.

33-3. Types of disciplinary actions.

(a) ***Oral admonishment.*** An oral admonishment is:

(1) the least severe disciplinary action;

(2) a spoken warning or indication of disapproval about a specific act of misconduct or violation of a policy or procedure; and

(3) usually given by the immediate supervisor.

(b) ***Written reprimand.*** A written reprimand is:

(1) the second least severe disciplinary action;

(2) a written statement about a specific act of misconduct or violation of a policy or procedure; and

(3) included in the employee's official personnel record.

(c) Forfeiture of annual leave or compensatory time.

(1) A forfeiture of annual leave or compensatory time:

(A) is the removal of a specified number of hours from the annual leave or compensatory time balance of an employee;

(B) must be at least one day but not more than 10 days.

(2) The FLSA prohibits a department director from taking compensatory time from a non-exempt employee for disciplinary purposes.

(d) ***Within-grade salary reduction***.

(1) A within-grade salary reduction:

(A) is the reduction of an employee's base salary by a specified amount for a specified period of time; and

(B) must not exceed one year.

(2) A department director must not impose a within-grade salary reduction on an exempt employee because it is inconsistent with the employee's FLSA-exempt status.

(e) Suspension.

(1) A suspension is an action that places an employee in a LWOP status for a specified period for a violation of a policy or procedure or other specific act of misconduct.

(2) A department director may not:

(A) suspend an employee for more than 10 days without the approval of the CAO; or

(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.

(f) Suspension pending investigation of charges or trial.

(1) ***Purpose of suspension pending investigation of charges or trial.*** A department director may place an employee in LWOP status for an indefinite period while the employee is:

(A) being investigated by the County or a law enforcement agency for an offense that has a nexus with (is reasonably related to) County employment; or

(B) waiting to be tried for an offense that is job-related or has a nexus with County employment.

(2) Employee's return to work after suspension.

(A) The CAO must allow the employee to return to work unless the County dismisses or terminates the employee or the employee is convicted by a court.

(B) The CAO must give the employee back pay and benefits, subject to subparagraph (C) below, except as provided in a separate disciplinary action imposed by the County.

(C) The CAO's approval of back pay is subject to the following:

(i) the employee must provide documentation of other earnings or income during the period of suspension and must obey all County regulations on secondary employment; and

(ii) back pay must equal the amount the employee would have earned during all or part of the period of suspension less the amount the employee earned in other employment during the period.

(g) ***Demotion.*** A disciplinary demotion is an action in which a department director places an employee in a merit system position with a lower pay grade and reduces the employee's salary under Section 10-5(d)(2) of these Regulations.

(h) ***Dismissal.*** Dismissal is the removal of an employee from County employment for cause.

33-4. Authority to take disciplinary action.

(a) An immediate supervisor may give an employee an oral admonishment.

(b) A department director may take any disciplinary action under these Regulations.

(c) A department director may delegate the authority to take any type of disciplinary action to a lower level supervisor. The delegation must be in writing.

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:

(a) materially falsifies information provided on an application or on a document associated with an application for employment, promotion, transfer, or County benefits, which includes a document associated with any type of health insurance, life insurance, disability insurance, Workers' Compensation benefits, or disability retirement;

(b) refuses to take a medical examination or to provide medical records as directed;

(c) violates any established policy or procedure;

(d) violates any provision of the County Charter, County statutes, ordinances, regulations, State or Federal laws, or is convicted of a criminal offense, if such violation is related to, or has a nexus with, County employment;

(e) fails to perform duties in a competent or acceptable manner;

(f) behaves insubordinately or fails to obey a lawful direction from a supervisor;

(g) knowingly makes a false statement or report in the course of employment;

(h) is negligent or careless in performing duties;

(i) abuses sick leave or disability leave;

(j) is AWOL or late repeatedly;

(k) is impaired or under the influence of alcohol or an unprescribed controlled substance while at work or when reporting to work;

(l) uses, possesses, sells, or transfers alcohol or an illegal drug to another person while on duty, on County government property, or in a County vehicle unless the employee's County employment requires such conduct;

(m) fails to observe a safety practice, which includes wearing a seat belt, protective eyewear, and protective hearing devices;

(n) damages or destroys County property or damages or destroys private property of another while on duty or in a County vehicle;

(o) takes, steals, misuses, or misappropriates County funds or property or the property of a client, patient, citizen, or other person with whom the employee deals while on duty;

(p) possesses an unauthorized dangerous weapon while on duty, on County government property, or in a County vehicle;

(q) engages in discriminatory, retaliatory, or harassing behavior;

(r) interferes with or disrupts the work of another County employee;

(s) threatens another with bodily harm while on duty, on County government property, or in a County vehicle;

(t) engages in a physical altercation or assaults another while on duty, on County government property, or in a County vehicle;

(u) fails to disclose a private interest or to disqualify himself or herself from participation in a decision or other action in which there is a conflict between the employee's official duties and a private interest in violation of Section 19A, "Ethics", of the Montgomery County Code;

(v) directs an employee to perform service or work outside of the employee's official duties;

(w) engages in a private business, trade, or occupation during official working hours in violation of County statutes, regulations, or administrative procedures;

(x) accepts, offers, gives, or promises to give money or a valuable thing, threatens to use force or to disclose another's personal affairs, or blackmails or extorts to influence a person in the performance of the person's official duties;

(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;

(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; or

(bb) violates the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

33-6. Disciplinary process.

(a) ***Prior to taking disciplinary action.*** A supervisor who is considering taking a disciplinary action should:

(1) document the incident or employee's behavior that caused concern;

(2) conduct an investigation, if appropriate and necessary; and

(3) interview the employee and others who may have witnessed the conduct or have information about it.

(b) Statement of charges.

(1) Before taking a disciplinary action other than an oral admonishment, a department director must give the employee a statement of charges that tells the employee:

(A) the disciplinary action proposed;

(B) the specific reasons for the proposed disciplinary action including the dates, times, and places of events and names of others involved, as appropriate;

(C) that the employee may respond orally, in writing, or both;

(D) who to direct the response to;

(E) the deadline for submitting a response; and

(F) that the employee may be represented by another when responding to the statement of charges.

(2) The department director must allow the employee at least 10 working days to respond to the statement of charges.

(3) If the employee responds to the statement of charges, the department director must carefully consider the response and decide:

(A) if the proposed disciplinary action should be taken;

(B) if no disciplinary action should be taken; or

(C) if a different disciplinary action should be taken.

(4) The department director must issue a new statement of charges if the department director decides that a more severe disciplinary action is appropriate.

(c) Notice of disciplinary action.

(1) A notice of disciplinary action must contain the following information:

(A) the type of disciplinary action that will be taken;

(B) the date on which the disciplinary action will take effect;

(C) the specific reasons for the disciplinary action including dates, times, places, and names of others involved, as appropriate;

(D) whether the employee responded to the statement of charges and if the response influenced the decision on the disciplinary action; and

(E) whether the employee may appeal the action by filing a grievance or an appeal to the MSPB; and

(F) the deadline for filing a grievance or an appeal.

(2) A department director must issue a notice of disciplinary action at least 5 working days before the effective date of the proposed action.

33-7. Immediate removal of an employee from duty.

(a) An immediate or higher level supervisor may immediately relieve an employee from duty for serious misconduct or if the presence of the employee will cause or continue a disruption in the workplace.

(b) The supervisor who took the action must submit a recommendation for appropriate disciplinary action to the department director by the end of the workday following the day the employee is relieved from duty.

(c) A supervisor must ensure that an employee removed from duty is either on administrative leave or on another appropriate type of leave until the department director takes disciplinary action against the employee or allows the employee to return to work. An employee who is ill or otherwise medically unfit for duty during the period of time before a disciplinary action is taken may be required to use sick or annual leave or LWOP.

33-8. Employee resignation after disciplinary action is initiated. If an employee voluntarily resigns after a department director initiates formal disciplinary action against the employee, the department director may indicate on the employee's separation papers that:

(a) disciplinary action is pending against the employee; and

(b) the employee is not eligible for rehire.

33-9. Right of an employee to appeal a disciplinary action.

(a) Grievance rights.

(1) With the exception of an oral admonishment, an unrepresented (non-bargaining unit) employee may file a grievance under Section 34 of these Regulations over any disciplinary action and the penalty associated with the disciplinary action, such as the length of the suspension, the amount of leave or compensatory time taken from the employee, or the salary reduction associated with a demotion or within-grade salary reduction.

(2) A bargaining unit employee may file a grievance over a disciplinary action by using the grievance procedure in the appropriate collective bargaining agreement.

(b) Right to appeal a disciplinary action to the MSPB.

(1) ***Right to file a direct appeal to the MSPB.*** An employee with merit system status may appeal a demotion, suspension, or dismissal by filing an appeal directly with the MSPB under Section 35 of these Regulations. An employee who files a direct appeal must not also file a grievance on the same disciplinary action.

(2) ***Right to appeal a grievance decision to the MSPB.*** An employee, other than a probationary employee or temporary employee, may appeal a decision on a grievance over a disciplinary action to the MSPB.

33-10. Right of a Volunteer Firefighter or Rescuer to appeal a disciplinary action to the MSPB. A volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire and rescue activities, may file a direct appeal with the MSPB under Section 35 of these Regulations, as if the individual were a County merit system employee.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to disciplinary actions
Firefighter/Rescuer	5, Management Rights 23, Hours of Work 30, Discipline 38, Contract Grievance Procedure 40, Employee Status 48, Job Sharing Program
OPT/SLT	2, Management Rights 5, Wages, Salary and Employee Compensation 6, Service Increments 10, Grievances 13, Work Schedules; Attendance; Hours of Work 16, Leave Without Pay 24, Demotion 28, Disciplinary Actions 30, Notices to Employees 34, Safety and Health Appendix IV, Dept. of Corrections and Rehabilitation
Police	4, Prevention of Substance Abuse/Employee Rehabilitation 15, Hours and Working Conditions 28, Service Increments 43, Discipline 53, Performance Evaluation 54, Demotion 55, Job Sharing Program

SECTION 34. GRIEVANCES

(As amended February 15, 2005, October 21, 2008, July 12, 2011, and June 30, 2015)

34-1. Definitions.

(a) ***Alternative dispute resolution or ADR:*** Methods, such as conciliation, mediation, settlement conferences, and peer review, for settling disputes more informally and quickly than through the grievance procedure described in Section 34-8.

(b) ***CAO's designee:*** For the purpose of this section, a staff member of the Labor/Employee Relations Team.

(c) ***Consolidated grievance:*** Two or more grievances that are filed by one employee or 2 or more different employees and which are processed as one grievance, if the grievances:

(1) concern the same subject; and

(2) request the same or similar relief.

(d) ***Grievant:*** An employee or former employee who files a grievance.

(e) ***Immediate supervisor:*** The individual responsible for the assignment and evaluation of an employee's work.

(f) ***Informal resolution:*** Efforts made to resolve a grievance before the filing of a written complaint.

(g) ***Party:*** An employee who files a grievance or the department that responds to the grievance.

34-2. Eligibility to file a grievance.

(a) A merit system employee who has successfully completed the probationary period and has merit system status, including a term employee, may file a grievance on a matter described in Section 34-4.

(b) A probationary or temporary employee may file a grievance over a disciplinary action, except for an oral admonishment, but may not appeal a grievance decision by the CAO to the MSPB.

(c) A bargaining unit employee may not file a grievance under this section over a matter covered in the collective bargaining agreement, but may file a grievance under the grievance procedure in the appropriate collective bargaining agreement.

(d) An individual must be an employee of the County government when the individual files the grievance, unless:

(1) the 30-day time period to file a grievance extends after the date when the individual's employment is terminated by resignation, retirement, termination, or dismissal; or

(2) the subject of the grievance is the County's deduction of funds from the employee's unpaid salary, leave, or compensatory time to satisfy the employee's unpaid debt to the County.

(e) If an employee who files a grievance resigns, retires, or is separated from County employment before the grievance is resolved, the County must continue to process the grievance if the relief requested by the employee could still be granted.

(f) A County law enforcement officer may not use the grievance procedure to appeal a matter for which there is a remedy or appeal under the Law Enforcement Officers' Bill of Rights.

34-3. Policy on grievances.

(a) ***Objectives.*** The objectives of the grievance-resolution process are to:

(1) resolve grievances at the lowest level and provide an opportunity for resolution at each step;

(2) provide for review and resolution of grievances by the immediate supervisor, department director, and CAO; and

(3) provide specific and reasonable time limits for each level or step in the review of a grievance.

(b) ***Responsibilities of department directors and supervisors.*** A department director or supervisor:

(1) must not interfere with an employee's right to file a grievance;

(2) must not coerce or discriminate against an employee who files a grievance; and

(3) must consider an employee's grievance fairly and promptly.

(c) ***Use of ADR.*** County employees and supervisors should consider using ADR methods at each step in the grievance procedure to resolve disputes, if appropriate.

(d) ***Freedom from harassment or retaliation for filing a grievance.*** A supervisor or coworker must not restrain, interfere, coerce, discriminate, or retaliate against an employee for filing a grievance.

(e) ***Employee's right to representation.*** An employee may choose a representative to represent the employee at each step of the grievance procedure.

(f) ***Representation of a supervisor.*** A labor organization or an official, employee, or representative of a labor organization that is certified under a County collective bargaining law to represent an employee must not also represent the supervisor of the employee, unless the supervisor is included in the same bargaining unit as the employee.

(g) Use of official time to prepare and present a grievance.

(1) An employee must have the approval of the employee's supervisor before the employee uses official time to prepare or present a grievance or to represent another employee in a grievance.

(2) A supervisor must allow an employee to use up to 4 hours of official time to prepare a grievance.

(3) To use more than 4 hours of official time to prepare a grievance, an employee must:

(A) submit a written request to the supervisor that explains why the employee needs more than 4 hours; and

(B) have the supervisor's approval of the request.

(4) If an employee's supervisor denies the employee's request for more than 4 hours of official time to prepare a grievance, the employee may appeal the supervisor's denial to the OHR Director. The decision of the OHR Director is final.

(5) A supervisor must allow an employee to use official time to present a grievance at any step of the grievance procedure.

(6) An employee who represents another employee is entitled to official time to attend grievance meetings.

(h) ***Pay status of employee witness at a grievance meeting.*** The County must compensate an employee who attends a grievance meeting as a witness for the time spent at the meeting as follows:

(1) the employee's regular hourly salary during the employee's established work hours; and

(2) compensatory time or overtime pay under Section 10-7 of these Regulations during the employee's non-work hours.

(i) Confidentiality of documents and meetings associated with a grievance.

(1) The following documents and other matters associated with a grievance are confidential:

(A) the grievance and grievance file;

(B) responses to the grievance;

(C) grievance meetings and other proceedings related to the grievance; and

(D) written reports and materials related to the investigation of a grievance.

(2) The department director, OHR Director, or CAO, as appropriate depending on the step of the grievance procedure, must ensure that only the following individuals are allowed to review the documents listed in (1) without the grievant's written authorization:

(A) the grievant;

(B) the grievant's representative; and

(C) individuals who are directly involved in responding to the grievance or resolving it.

(3) Only the following may attend a grievance meeting or other grievance proceeding without the consent of the grievant:

(A) the grievant;

(B) the grievant's representative;

(C) individuals designated by the CAO, OHR Director, or department director who are directly involved in responding to the grievance or resolving it;

(D) individuals designated by the CAO, OHR Director, department director, or County Attorney to represent individuals who are directly involved in responding to the grievance or resolving it; and

(E) witnesses.

(4) The OHR Director must keep grievance files in OHR at least 2 years and then send them to the County Records Center for storage.

(5) Despite the confidentiality requirements of this subsection, if the OHR Director finds that a grievance filed by a bargaining unit employee is covered by the employee's collective bargaining agreement, the OHR Director must notify the certified representative for the bargaining unit of the employee's name and the subject of the grievance.

(j) ***Disclosure of facts.*** Each party to a grievance must provide timely full disclosure of facts known by or available to that party directly relating to the grievance, unless that information must not be disclosed under any other applicable law, regulation, or policy. The OHR Director must resolve disputes that arise under this subsection.

(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.

34-4. ***Reasons for filing a grievance.*** An eligible employee, as described in Section 34-2, may file a grievance if the employee was adversely affected by an alleged:

(a) violation, misinterpretation, or improper application of a law, rule, regulation, procedure, or policy;

(b) improper or unfair act by a supervisor or other employee, which may include coercion, restraint, retaliation, harassment, or intimidation;

(c) improper, inequitable, or unfair act in the administration of the merit system, which may include involuntary transfer, RIF, promotional action that was arbitrary and capricious or in violation of established procedures, or denial of an opportunity for training;

(d) improper, inequitable, or unfair application of the compensation policy and employee benefits, which may include salary, a pay differential, overtime pay, leave, insurance, retirement, or a holiday;

(e) improper disciplinary action, which includes a written reprimand, forfeiture of annual leave or compensatory time, within-grade salary reduction, suspension, demotion, and dismissal; or

(f) involuntary resignation or improper or unfair termination.

34-5. Matters that may either be appealed directly to the MSPB or grieved under the grievance procedure. An employee with merit system status may choose to file either an appeal directly with the MSPB or a grievance under the County grievance procedure over a demotion, suspension, termination, dismissal, or involuntary resignation. If the employee chooses to file a grievance, the employee may appeal the final grievance decision by the CAO to the MSPB.

34-6. Matters that are not grievable.

(a) The following matters are not grievable:

(1) a position classification;

(2) performance ratings, except in cases of failure to follow established procedures;

(3) termination of a probationary employee;

(4) the termination of a term employee at the end of the term of employment or the completion of the work the employee was hired to perform;

(5) resignation, but an involuntary or coerced resignation may be appealed under Section 34 or 35 of these Regulations;

(6) employee awards;

(7) a matter for which another County appeal process is available, except for a suspension, demotion, dismissal, or termination;

(8) a matter that has been clearly identified as not grievable by a statute, regulation, or MSPB decision; and

(9) employment discrimination or harassment in violation of Section 5 of these Regulations, unless the alleged violation is related to a disciplinary action, termination, or involuntary resignation.

(b) An employee may appeal a decision that a matter is not grievable to the MSPB. An employee who wishes to appeal must file the appeal within 10 working days after the employee receives the OHR Director's decision.

34-7. Investigation of complaints of harassment or retaliation for filing a grievance.

(a) An employee may file a complaint with the OHR Director if the employee was harassed or retaliated against by a supervisor or coworker for filing a grievance. The employee must include a written description of the harassment or retaliation.

(b) The OHR Director must investigate the complaint and give the employee a written report of findings within 30 calendar days after the OHR Director receives the complaint.

(c) The employee may file an appeal with the MSPB if the OHR Director denies the complaint. The employee must file the appeal within 10 working days after the employee receives the OHR Director's decision.

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.

(1) ***Mediation.*** In mediation, a neutral party who has been trained as a mediator is designated by the OHR Director to help the parties resolve a workplace dispute.

(2) ***Settlement conference.*** At a settlement conference, the parties to a dispute present information and arguments to a 3-person committee consisting of representatives of management, the employee, and OHR. After listening to the parties' presentations, the committee makes a recommendation to the parties to resolve the dispute.

(3) ***Peer resolution panel.*** In this form of ADR, a panel of no more than 3 trained Montgomery County employees 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:

(A) interviewing witnesses and reviewing documents;

(B) deciding if a policy or practice was applied correctly, fairly, and consistently;

(C) hearing brief presentations by the parties to the grievance; and

(D) issuing a non-binding advisory decision sustaining the grievance, denying the grievance, or modifying the action that is the subject of 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.

(2) A party to ADR must agree not to use information from or about the ADR process, a recommended resolution, or statements made during ADR discussions as evidence or argument:

(A) at another level of the grievance procedure;

(B) in a different forum for the same dispute; or

(C) in a different grievance or appeal.

(3) The County must pay the costs associated with the ADR process, except for attorney's fees.

(4) The parties to an ADR process must agree to maintain the confidentiality of the dispute and information relating to the dispute or the ADR process.

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

(6) Each party is limited to a 30-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:

(A) the date on which the employee knew or should have known of the occurrence or action on which the grievance is based; or

(B) the date on which the employee received notice, if notice of an action is specifically required by these Regulations.

(2) If a grievant does not file the grievance at the next step of the grievance procedure within the time limits specified in the procedure, the OHR Director may consider the grievance resolved on the basis of the most recent response and may end the consideration of the grievance.

(3) If the supervisor, department director, or CAO, as appropriate, does not respond within the time limits specified, the employee may file the grievance at the next higher level.

(4) If an employee files an appeal with the MSPB under (3) before the CAO issues a written response to the grievance, the MSPB may choose not to process the appeal, return the appeal to the employee, and ask the CAO to respond to the grievance within a specific period of time.

(5) The parties to a grievance may agree to extend the time limits stated in the grievance procedure.

(6) The OHR Director may extend the time limits stated in the grievance procedure for compelling reasons. The OHR Director must give the parties prompt notice of an extension.

(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.

(2) The OHR Director may return the grievance to the employee if the employee does not complete the grievance form or provide the information requested on the form.

(3) The staff of the Labor/Employee Relations Team is available to help employees complete the grievance form.

(4) As instructed by the grievance form, an employee should send a copy of the grievance to OHR's Labor/Employee Relations Team when the employee files the grievance at the first step of the grievance procedure.

(5) The OHR Director must review the grievance and decide if the grievance:

(A) presents an issue that is grievable under Section 34-4;

(B) was timely filed; and

(C) otherwise complies with this section.

(6) The department that the grievance was filed against should not respond to the grievance if OHR advises the department that the issue is not grievable or the grievance is not timely filed.

(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.

(c) Consolidated grievances.

(1) The OHR Director may consolidate 2 or more grievances and process them together to save time.

(2) OHR must give written notice to the employee or employees who filed the grievances that the grievances have been consolidated and will be processed together.

(3) If the employee gives written notice to the OHR Director that the employee objects to the consolidation of the employee's grievance with other grievances, the OHR Director must process the employee's grievance separately.

(4) If a consolidated grievance includes grievances from more than one department, the OHR Director may designate one department director to respond to the consolidated grievance at Step 2 of the grievance procedure.

(5) The department director or CAO, as appropriate, must ensure that:

(A) each employee who filed a grievance that was consolidated with other grievances receives a copy of the decision issued at that level; and

(B) each employee receives consistent and appropriate relief.

(6) Each employee may decide to accept the decision and the relief offered, if any, or may file the grievance at the next level if the relief requested by the employee was not granted.

(d) Burden of proof.

(1) The County has the burden of proof in a grievance on:

(A) a recovery of an overpayment to an employee or recovery of an employee debt to the County under Section 10;

(B) a delay of service increment under Section 12;

(C) an involuntary or coerced resignation under Section 28;

(D) a termination under Section 29;

(E) a demotion or termination due to RIF under Section 30;

(F) an involuntary demotion under Section 36; and

(G) a disciplinary action under Section 33.

(2) The grievant has the burden of proof in a grievance on any other issue.

(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 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 15 working 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.

(2) The employee must agree to pay ½ of the cost of obtaining the transcript.

(3) The OHR Director must give a copy of the transcript to each party to the grievance or each party's representative.

(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.

(5) The department's representative may present facts, documents, and arguments responding to the grievance. Other employees may speak at the meeting in support of the department's position.

(6) After each speaker has presented information or argument, the representative of the other party and the CAO's designee may ask questions of the speaker. Formal cross-examination is not allowed.

(7) The representative of each party may review the documents presented to the CAO's designee by the other party.

(8) At the conclusion of the meeting, the representative of each party may summarize the party's arguments.

(9) The CAO must give the parties to the grievance a written decision within 45 calendar days after the Step 2 meeting.

34-10. Appeal of a grievance decision.

(a) An employee with merit system status may appeal a grievance decision issued by the CAO to the MSPB under Section 35 of these Regulations.

(b) A probationary or temporary employee may not appeal a grievance decision by the CAO to the MSPB.

(c) A written grievance decision must include information about:

(1) how the employee may appeal the decision to the next step of the grievance procedure or file an appeal with the MSPB, if applicable; and

(2) the time limits for appealing the grievance to the next step, or to the MSPB.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to grievances**
Firefighter/Rescuer	5, Management Rights 28, Transfers 30, Discipline 38, Contract Grievance Procedure 48, Job Sharing Program
OPT/SLT	2, Management Rights 4, Voluntary Checkoff of Union Fees and Deductions 6, Service Increments 10, Grievances 11, Arbitration 12, Probationary Period for Promoted Employees 22, Transfer 26, Termination 38, Non-discrimination
Police	3, Agency Shop and Dues Checkoff 8, Contract Grievance Procedure 28, Service Increments

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

(As amended February 15, 2005, October 21, 2008, November 3, 2009, July 27, 2010, February 8, 2011, and June 30, 2015)

35-1. Definitions.

(a) ***Appeal:*** The written request of an applicant for employment or employee for review of an administrative decision on a grievance, disciplinary action or other personnel action for which appeal privileges are provided that adversely affects employment, opportunity for employment, or promotion.

(b) ***Appellant:*** The County employee, applicant for employment, or volunteer firefighter or rescuer who files an appeal with the MSPB.

(c) ***De novo:*** The MSPB's examination of an appeal anew, regardless of any prior proceedings.

(d) ***Responding party:*** The party against whom the charges have been brought.

(e) ***Hearing:*** An employee's appearance before 2 or more members of the MSPB or a designated hearing officer to present evidence or arguments concerning the employee's appeal.

(f) ***Deposition:*** Testimony given under oath before both parties prior to a hearing that is submitted in writing as evidence in lieu of requiring the witness to appear.

(g) ***Rebuttal:*** The charging party's response to evidence submitted by the responding party.

(h) ***Surrebuttal:*** The responding party's response to rebuttal evidence.

(i) ***Working days:*** All days except Saturdays, Sundays and official or special County holidays.

35-2. Right of appeal to MSPB.

(a) Except as provided in Section 29-7 of these Regulations, an employee with merit system status has the right of appeal and a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal, or involuntary resignation and may file an appeal directly with the MSPB.

(b) An employee with merit system status may file an appeal with the MSPB over other matters after receiving an adverse final decision on a grievance from the CAO. After the development of a written record, the MSPB must review the appeal. The MSPB may grant a hearing or refer the appeal to a hearing officer if

the MSPB believes that the record is incomplete or inconsistent and requires oral testimony to clarify the issues. If the MSPB does not grant a hearing, the MSPB must render a decision on the appeal based on the written record.

(c) An applicant or employee may file an appeal directly with the MSPB over a denial of employment.

(d) An employee or applicant may file an appeal alleging discrimination prohibited by Chapter 27 of the County Code with the Human Relations Commission but must not file an appeal with the MSPB.

(e) An employee or applicant for County employment who alleges discrimination on the basis of political affiliation may file a direct appeal with the MSPB.

(f) A volunteer firefighter or rescuer may file an appeal with the MSPB over an adverse final action of the Fire Chief or local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire rescue activities, as if the individual were a County merit system employee. A volunteer firefighter or rescuer is entitled to a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal or involuntary resignation. The MSPB must hear and decide each such appeal except for an appeal of a personnel matter subject to an employee grievance procedure under a collective bargaining agreement.

(g) An employee with merit status may file an appeal with the MSPB alleging a personnel action in retaliation for:

(1) refusing to obey an instruction involving an illegal or improper action; or

(2) disclosing to a Federal, State, or County official or employee, information concerning illegal or improper action in County government with a reasonable good-faith belief that the information disclosed is accurate.

35-3. Appeal period.

(a) An employee has 10 working days to file an appeal with the MSPB in writing after the employee:

(1) receives a notice of disciplinary action over an involuntary demotion, suspension, or dismissal;

(2) receives a notice of termination;

(3) receives a written final decision on a grievance;

(4) resigns involuntarily; or

(5) knows or should have known of a personnel action

(b) An applicant has 10 working days to file an appeal with the MSPB in writing after the applicant receives notice that the applicant will not be appointed to a County position.

(c) Per Chapter 21-7 of the Montgomery County Code, a volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire and rescue activities, may appeal the action to the MSPB within 30 days after receiving a final notice of disciplinary action unless another law or regulation requires that an appeal be filed sooner.

35-4. Appeal filing requirements.

(a) An employee or applicant must file an appeal with the MSPB in writing, providing the following information:

(1) appellant's name, signature and date;

(2) home address, telephone number, and email address;

(3) title of position;

(4) department, agency, or office, if applicable;

(5) concise description of the action or decision being appealed;

(6) reason why the appellant disagrees with the action or decision; and

(7) relief requested, subject to later modification by the appellant.

(b) Alternatively, an employee or applicant may complete the MSPB Appeal Form (Appendix V) and provide the information requested on the Form.

(c) An employee or applicant may instead choose to file an appeal electronically by completing the MSPB Appeal Form found on the MSPB County website.

(d) Depending on the nature of the appeal, an employee or applicant must include the following documentation with the appeal:

(1) If the employee is contesting a disciplinary action, a copy of the Notice of Disciplinary Action must be provided to the Board;

(2) If the employee is contesting a decision by the Chief Administrative Officer (CAO), a copy of the CAO's decision must be provided to the MSPB; or

(3) If the employee or applicant is contesting a nonselection/nonpromotion decision, a copy of the notification of nonselection/nonpromotion must be provided.

35-5. Service requirements for a party to an appeal.

(a) Each party to an appeal must send to every other party a copy of every paper filed with the MSPB.

(b) A party to an appeal must indicate on every paper filed with the MSPB that a copy was sent to the other party to the appeal.

35-6. Appeal does not act as automatic stay of action.

(a) The filing of an appeal does not automatically stay the action at issue in the appeal.

(b) The MSPB on its own motion may stay the action or grant a stay requested by the appellant based on reasons that the MSPB believes are proper and just.

(c) If the MSPB orders a stay, it must give written notice of its action to all parties.

35-7. Dismissal of an appeal.

(a) The MSPB may dismiss an appeal if the appellant did not submit the appeal within the time limits specified in Section 35-3.

(b) The MSPB may dismiss an appeal if the appellant fails to prosecute the appeal or comply with established appeal procedures. The MSPB must give the County and the appellant prior notice of its intent to dismiss for lack of prosecution or compliance with an MSPB rule or order.

(c) The MSPB must dismiss an appeal if it determines it lacks jurisdiction.

(d) The MSPB may dismiss an appeal if the appeal becomes moot.

(e) The MSPB may dismiss an appeal based on the appellant's failure to exhaust administrative remedies.

(f) The MSPB may dismiss an appeal for any other reason in compliance with applicable laws, rules and regulations.

35-8. Notification, response and submission of record in appeal.

(a) The MSPB must promptly notify the CAO, County Attorney, OHR Director, and department director in writing that a County merit system employee filed an appeal and provide the County Attorney and OHR Director with a copy of the appeal.

(b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and Local Fire and Rescue Department in writing that a volunteer firefighter or rescuer filed an appeal and provide the County Attorney, the OHR Director and the head of the Local Fire and Rescue Department with a copy of the appeal.

(c) An appellant must respond to an MSPB request for documentation in support of an appeal within 15 working days. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(d) The OHR Director and County Attorney must respond to an appeal filed by a County merit system employee within 30 calendar days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(e) The OHR Director and County Attorney must respond to an appeal filed by a volunteer firefighter or rescuer challenging an action taken by the Fire Chief within 30 calendar days and forward a copy of the action or decision appealed and

all relevant reports, papers, and documents to the MSPB. In all other appeals filed by a volunteer firefighter or rescuer, the Local Fire and Rescue Department must respond within 30 calendar days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

35-9. Appellant's right to representation. The appellant has the right to be represented by an individual of the appellant's choosing.

35-10. Appellant's right to review; right to hearing.

(a) (1) An employee with merit system status has the right to appeal and to an evidentiary hearing before 2 or more members of the MSPB or a designated hearing officer from a demotion, suspension, dismissal, termination, or involuntary resignation.

(2) In all other cases, if the MSPB chooses not to hold an evidentiary hearing, it must conduct a review based on the written record before the MSPB.

(b) A volunteer firefighter or rescuer is entitled to a de novo hearing before 2 or more members of the MSPB or a designated hearing officer on appeal from a demotion, termination, dismissal or involuntary resignation. In all other cases, the MSPB may choose to decide the appeal on the basis of a written record without an evidentiary hearing.

(c) The appealing party, the County Attorney, and the OHR Director must be served with a written notice of the time, date, and place of the prehearing conference.

(d) The MSPB may assign a hearing officer to hear any case appealed to the MSPB. If the MSPB refers an appeal to a hearing officer, the hearing officer must issue a notice of hearing within 15 working days. The hearing officer must issue the notice at least 30 working days prior to the date of the hearing. Within 20 working days of completion of a hearing, the hearing officer must submit written findings and recommendations to the parties and the MSPB. Within 15 working days of receipt of the hearing officer's report, the MSPB may schedule oral arguments.

(e) The MSPB or hearing officer designated by the MSPB must conduct hearings under the Administrative Procedures Act, Chapter 2A of the County Code (Appendix D).

(f) The MSPB or hearing officer may:

(1) administer oaths;

(2) issue subpoenas for witnesses and documents enforceable by injunction by the party requesting the subpoena(s) in a court of competent jurisdiction;

(3) rule on petitions to revoke subpoenas;

(4) rule on motions and offers of proof;

(5) dispose of procedural requests or similar matters;

(6) call, examine and cross-examine witnesses;

(7) accept evidence by stipulation of facts;

(8) maintain an orderly procedure at all times;

(9) set the time limits for a hearing or part of a hearing; and

(10) take any action necessary to assure a fair disposition of the appeal.

(g) A hearing must not be open to the public unless the appellant requests it in writing at the time of the prehearing submissions.

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

(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, 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.

(3) Requests, after stated deadlines, to call witnesses or to use documentation not contained in the prehearing submission may be granted only on good cause shown.

(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 10 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 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.

(b) ***Conduct of a hearing.*** The order of procedure in the conduct of a hearing is usually:

(1) disposition of preliminary motions and matters, if any;

(2) opening statements, which must be a summary of the appeal to be presented;

(3) presentation of the factual case for the party making the charges and cross examination of all witnesses;

(4) presentation of the factual case for the responding party and cross examination of all witnesses;

(5) rebuttal evidence of the charging party;

(6) surrebuttal evidence of the responding party; and

(7) closing arguments.

(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.

35-12. Testimony of witnesses at hearing; interrogatories and depositions.

(a) Testimony of witnesses at hearing.

(1) All witnesses must testify under oath and only witnesses having direct knowledge of the facts on which the charges are based will be heard. The MSPB or hearing officer will hear testimony:

(A) directly related to the charges;

(B) indirectly related to the charges, provided a relevant relationship has been established; and

(C) of past work record, but only for the purpose of determining degree of penalty, if any.

(2) Each party must have a reasonable amount of time to examine and cross-examine witnesses and to submit evidence. The MSPB or hearing officer may examine witnesses as deemed appropriate.

(3) A witness under oath who intentionally falsifies material facts or willfully and falsely testifies in a hearing is subject to the penalties of perjury under State law and, if a County employee, dismissal.

(b) ***Interrogatories and depositions.*** The MSPB or hearing officer may accept a statement of a witness taken by written interrogatory or a deposition made under oath. This does not preclude a party from taking a deposition or interrogatory of a witness prior to the hearing for impeachment or discovery purposes as authorized by the Montgomery County Code, Chapter 2A, Administrative Procedures Act, Section 2A-7(b). A party must file a true copy of an interrogatory, answer, or deposition with the MSPB or hearing officer.

35-13. Payment of witnesses for appearance.

(a) A department director must reimburse a County employee who is required to appear as a witness with pay or compensatory time under applicable laws and regulations.

(b) If the witness is not a County employee, the MSPB must determine a reasonable fee that must be paid to a witness by the party that subpoenaed the witness.

35-14. Record of MSPB proceedings. The MSPB must record hearings.

35-15. MSPB may enforce settlement agreements.

(a) If a settlement agreement is before the MSPB in connection with an appeal, the MSPB may interpret and enforce the agreement.

(b) If the parties settle a case while in proceedings before the MSPB, the parties may agree to enter the settlement agreement into the record. If requested to enter the agreement into the record, the MSPB will retain jurisdiction to enforce the terms of the agreement.

35-16. MSPB decisions.

(a) The MSPB may decide an appeal in any manner deemed necessary and appropriate, under County Code Section 33-14(c), *Hearing Authority of MSPB.* The MSPB may order appropriate relief, which includes but is not limited to the following:

(1) retroactive appointment, promotion or reclassification with or without back pay;

(2) change in position status, grade, work schedule, working conditions, and benefits;

(3) priority consideration for an employee found qualified before other candidates are considered;

(4) reinstatement with or without back pay, although the CAO may reinstate an employee either to a position previously held or to a comparable position of equal pay, status, and responsibility;

(5) cancellation of a personnel action found to be in violation of law or personnel regulation, but any cancellation must not, without following any process otherwise required, adversely affect the employment rights of another employee;

(6) participation in an employee benefit previously denied, such as training, an educational program or assistance, preferential or limited work assignments and schedules, overtime pay, or compensatory time;

(7) removal from administrative or personnel records of any reference or document pertaining to an unwarranted disciplinary or personnel action;

(8) corrective measures regarding any management procedure adversely affecting employee pay, status, working conditions, leave, or morale; and

(9) reimbursement or payment by the County of all or part of an employee's reasonable attorney's fees.

(b) The MSPB must:

(1) issue written decisions that set forth findings of fact and conclusions of law;

(2) include a statement of each party's appeal rights and the time limit for filing an appeal;

(3) send a copy of each decision to:

(A) the appellant or appellant's counsel of record;

(B) the CAO;

(C) the County Attorney;

(D) the OHR Director;

(E) the department director; and/or

(F) the Fire Chief and the local fire and rescue department in a case where the appellant is a volunteer firefighter and rescuer.

(c) An MSPB decision is final and binding unless appealed to a court of competent jurisdiction;

(d) A court of competent jurisdiction may enforce an MSPB decision.

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 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.

35-18. Appeals to court of MSPB decisions. A party may appeal a final MSPB decision by filing a petition for appeal to a court as provided in Section 33-15 of the County Code.

35-19. Penalties for unauthorized interference with MSPB. A person who intimidates, bribes, or attempts to coerce or influence an MSPB member, MSPB staff, or MSPB hearing officer, or a

witness is subject to appropriate criminal charges and, if a County employee, is subject to dismissal.

35-20. MSPB audits, investigations, and inquiries.

(a) The MSPB has the responsibility and authority to conduct audits, investigations or inquiries to assure that the administration of the merit system complies with County law and these Regulations.

(b) County employees must not be expected or required to obey instructions that involve an illegal or improper action and may not be penalized for disclosure of such actions. County employees are expected and authorized to report instances of alleged illegal or improper actions to the individual responsible for appropriate action as set forth in Section 3-2 of these Regulations.

35-21. Prohibited practices; protections for employees.

(a) ***Prohibited practices.*** It is unlawful for any person to:

(1) coerce or attempt to coerce any merit system employee into taking an illegal or improper action;

(2) retaliate against or penalize an employee, or threaten an employee with retaliation or penalty because of that employee's:

(A) refusal to obey an instruction involving an illegal or improper action;

(B) disclosure of information to a Federal, State, or County official or employee concerning illegal or improper action in County government with a good faith belief that the information disclosed is accurate; or

(C) providing information to, cooperating with, or in any way assisting the Inspector General or the Office of Legislative Oversight.

(b) Protection for employee.

(1) The MSPB must protect a merit system employee from any retaliatory or coercive action for:

(A) refusing to obey an instruction involving an illegal or improper action; or

(B) disclosing information to a Federal, State, or County official or employee concerning illegal or improper action in County government that the employee had a reasonable good-faith belief:

(i) was accurate; and

(ii) concerned an illegal or improper action.

(2) The MSPB must not protect the employee if it is determined that:

(A) the employee's actions were frivolous, unreasonable, and without foundation, even though not brought in bad faith;

(B) the employee, without good cause, did not comply with applicable regulations concerning the making of such disclosures; or

(C) the employee was the subject of an otherwise proper personnel action that would have been taken regardless of the employee's disclosure of information concerning illegal or improper action in County Government.

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35-22. Due process protections.

(a) If the MSPB determines that an investigation pursuant to Section 35-20 of these Regulations is warranted, the MSPB must prepare a memorandum before the start of the investigation stating the legal authority, scope, and beginning date of the investigation.

(b) At least 5 working days before an employee is expected to participate as a witness, custodian of records, or possible subject, the MSPB or a special personnel investigator appointed by the MSPB must give the employee a written request to participate that includes the following:

(1) date of the request;

(2) name of the employee whose participation is requested;

(3) whether the employee is requested to participate as a witness, custodian of records, or possible subject of the investigation;

(4) name of the investigative authority;

(5) name of the individual conducting the investigation;

(6) law or regulation authorizing the investigation and the request for participation;

(7) subject areas to be covered in the investigation;

(8) if the employee is a possible subject, a clear and detailed statement of all allegations of misconduct;

(9) notice that the employee has the right to be assisted by legal counsel; and

(10) signature of the chairperson of the MSPB certifying that the MSPB has officially initiated an investigation and requested the employee's participation.

(c) Within 30 days after the employee's participation, the MSPB or a special personnel investigator appointed by the MSPB must provide the employee with a copy of:

(1) a transcript or recording of all questions asked to the employee and the employee's responses;

(2) a complete set of notes of all questions asked to the employee and the employee's responses, if there is no verbatim transcript or recording; and

(3) all documents that the employee has been asked to identify or review.

(d) Within 90 days after the employee's participation, the MSPB must, if applicable, serve the employee with written notice of intent to take an action that may adversely affect the employee' terms and conditions of employment. The written notice must include a statement of appeal rights and the time limit for filing an appeal.

(e) After the investigation is finished, the MSPB must deliver to each employee requested to participate:

(1) a statement that the investigation is finished; and

(2) a complete description of all actions taken or planned that may adversely affect the employee's employment.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	**Articles of current agreements with references to MSPB**
Firefighter/Rescuer	38, Contract Grievance Procedure
OPT/SLT	10, Grievances 46, Records
Police	34, Grievance Representation 51, Personnel Files 52, Termination

SECTION 36. DEMOTION

(As amended June 30, 2015)

36-1. Voluntary demotion.

(a) A department director may demote an employee who requests a demotion or consents in writing to a demotion.

(b) An employee may request or accept a voluntary demotion:

(1) to avoid termination in a RIF;

(2) to remain employed if the employee is unable to perform the essential functions of the employee's job because of a physical or mental impairment; or

(3) for other personal reasons.

(c) A voluntary demotion must not adversely reflect on the employee's work record or affect the employee's opportunity for promotion to a position for which the employee is qualified.

36-2. 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.

(b) A department director must not demote an employee with a physical or mental disability under Section 36-2(a)(1) above unless efforts at reasonable accommodation within the employee's position as described in Section 8 of these Regulations are unsuccessful and the employee is not transferred to another position.

(c) The director must give a written notice of the demotion to the employee at least 5 working days prior to the effective date of the demotion and must state in the notice:

(1) the reason for the demotion;

(2) the effective date; and

(3) if the employee may appeal the demotion and the time limit for filing an appeal.

36-3. Salary after a demotion. A department director must compensate an employee after a demotion as described in Section 10-5(d).

36-4. Appeal of involuntary demotion.

(a) An employee with merit system status may appeal an involuntary demotion and the amount of the salary reduction associated with the demotion by filing a grievance under Section 34 of these Regulations or by filing a direct appeal with the MSPB under Section 35.

(b) A temporary or probationary employee may appeal a disciplinary demotion and the salary reduction by filing a grievance under Section 34.

APPENDIX A - ARTICLE 4, MONTGOMERY COUNTY CHARTER MERIT SYSTEM AND CONFLICTS OF INTEREST.

Sec. 401. Merit System.

The Council shall prescribe by law a merit system for all officers and employees of the County government except: (a) members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney; (b) the heads of the departments, principal offices and agencies, as defined by law; (c) any officer holding any other position designated by law as a non-merit position; (d) one confidential aide for each member of the Council; (e) two senior professional staff members for the Council as a whole as the Council may designate from time to time; (f) three special assistants to the County Executive as the Executive may designate from time to time; (g) special legal counsel employed pursuant to this Charter; (h) members of boards and commissions; and (i) other officers authorized by law to serve in a quasi-judicial capacity.

Any law which creates a new department, principal office, or agency, or designates a position as a non-merit position, requires the affirmative vote of six Councilmembers for enactment. Any law which repeals the designation of a position as a non-merit position requires the affirmative vote of five Councilmembers for enactment.

Officers and employees subject to a collective bargaining agreement may be excluded from provisions of law governing the merit system only to the extent that the applicability of those provisions is made subject to collective bargaining by legislation enacted under Section 510, Section 510A, or Section 511 of this Charter.

The merit system shall provide the means to recruit, select, develop, and maintain an effective, nonpartisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The council shall establish by law a system of retirement pay.

The Council by law may exempt probationary employees, temporary employees, and term employees from some or all of the provisions of law governing the merit system, but the law shall require these employees to be recruited, selected and promoted on the basis of demonstrated merit and fitness.

The Council by law may establish within the merit system a program to recruit and select qualified individuals with severe physical or mental disabilities on a noncompetitive basis.

Sec. 402. Personnel Administration.

The County Executive shall be responsible for adopting personnel regulations for the administration and implementation of the merit system law. These 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.

Sec. 403. Merit System Protection Board.

There is established a Merit System Protection Board composed of three members who are qualified voters of the County appointed by the Council. One member shall be appointed each year for a term of three years. Any member appointed to fill a vacancy occurring prior to

the expiration of a term shall be appointed only for the remainder of that term. Appointment shall be made so that not more than two members of the Board shall be members of the same political party. No member shall hold political office or participate in any campaign for any political or public office during the member's term of office. Members of the Board shall be compensated as prescribed by law.

Sec. 404. Duties of the Merit System Protection Board.

Any employee under the merit system who is removed, demoted, or suspended shall have, as a matter of right, an opportunity for a hearing before the Merit System Protection Board, which may assign the matter to a hearing examiner to conduct a hearing and provide the Board with a report and recommendations. The charges against the employee shall be stated in writing, in such form as the Board shall require. If the Board assigns the matter to a hearing examiner, any party to the proceeding shall have, as a matter of right, an opportunity to present an oral argument on the record before the Board prior to a final decision. The Board shall establish procedures consistent with law for the conduct of its hearings. The decisions of the Board in such appeals shall not be subject to review except by a court of competent jurisdiction. The Council shall provide by law for the investigation and resolution of formal grievances filed under the merit system and any additional duties or responsibilities of the Board. The Board shall conduct on a periodic basis special studies and audits of the administration of the merit and retirement pay systems and file written reports of its findings and recommendations with the Executive and the Council. The Board shall comment on any proposed changes in the merit system law or regulations in a timely manner as provided by law.

Sec. 405. Political Activity.

No officer or employee of the County shall be prohibited from participating in politics or political campaigns; however, the Council may by law restrict political activities by County officers and employees (including members of boards and commissions) who serve in a quasi-judicial capacity. No County officer or employee shall be obligated to contribute to a political campaign or to render political service.

Sec. 406. Prohibition Against Private Use of Public Employees.

No member of the Council, the County Executive, or any officer or employee of the County shall detail or cause any officer or employee of the County to do or perform any service or work outside of the officer's or employee's public office or employment.

Sec. 407. Prohibition Against Additional Compensation.

No member of the Council and no officer or employee of the County whose salary is fixed, in whole or in part, by this Charter, the laws of the County, or its personnel regulations, shall be entitled, directly or indirectly, to any other salary, expenses, or compensation from the County for performance of public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law.

Sec. 408. Work During Official Hours.

All officers and employees of the Executive or Legislative Branches who receive compensation paid in whole or in part from County funds shall devote their entire time during their official working hours to the performance of their official duties.

Sec. 409. Corrupt Practices.

No person whose salary or expenses are paid in whole or in part from County funds shall invite, accept, offer, give or promise to give any money or any valuable thing in consideration of appointment or employment by the County. Any person violating this Section shall be removed from any public office or employment held and be subject to such other penalties as may be prescribed by law.

Sec. 410. Code of Ethics.

The Council shall adopt by law a code of ethics applicable to all public employees. In this section, public employee includes each County employee, elected officer, and appointed officer, including a member of a board or commission, and any other person designated by law.

The code of ethics shall at a minimum regulate: (a) conflicts of interest; (b) solicitation and receipt of gifts; (c) other employment of present and former public employees; (d) lobbying; (e) financial disclosure by public employees; (f) the use of County property and County insignia; and (g) the use of the prestige of office.

The code of ethics shall:

a) provide that each public employee owes a fiduciary responsibility to the County, which the public employee shall not breach by any public or private action;

b) prohibit a public employee from obtaining an economic benefit as a result of public employment if the economic benefit is received on terms more favorable than those available to persons who are not public employees;

c) allow waivers from restrictions and requirements of the code if a waiver is in the best interest of the County and all pertinent facts are disclosed to the public;

d) authorize enforcement of the code and impose penalties for violations; and

e) include any other provisions required by State law or that the Council finds serve the purposes of this section.

The Council by law shall prohibit corrupt practices by any individual or organization that attempts to obtain or is a party to a contract with the County, including kickbacks in the award of County contracts and using confidential information obtained in performing a contract with the County for personal gain or the gain of another without the approval of the County.

The Council may by law establish a commission to enforce and interpret the code of ethics and related laws. The Council by law may allow an ethics commission to retain legal counsel with the approval of the Council, subject to appropriation, and may exempt legal counsel for the commission from Section 213.

APPENDIX B – MERIT SYSTEM LAW

MONTGOMERY COUNTY CODE, CHAPTER 33, PERSONNEL AND HUMAN RESOURCES ARTICLE II. MERIT SYSTEM

Sec. 33-5. Statement of legislative intent; merit system principles; statement of purpose; merit system review commission; applicability of article.

(a) **Statement of legislative intent.** It is the legislative intent of the county council that this article foster excellence in the public service; high individual competence among employees; recognition that respect for the employee as an individual is first required for achieving such excellence and competence; and harmonious and efficient operation within the various components of county government.

(b) **Merit system principles.** The merit system established by this chapter encompasses the following principles:

(1) All county government authority, including internal supervisory authority, is for service to the people, is derived from law and the people and must not be abused;

(2) The recruitment, selection and advancement of merit system employees shall be on the basis of their relative abilities, knowledge and skills, including the full and open consideration of qualified applicants for initial appointment;

(3) Merit system employees shall be provided compensation consistent with standard of comparability with other public agencies and the private sector;

(4) Merit system employees shall be provided training as needed to assure high quality performance and such training where possible should also provide increased opportunity to facilitate their career advancement;

(5) Merit system employees are encouraged to excel in their work performance; they shall be retained if they meet standards of satisfactory overall performance and shall be separated from merit system service if they do not; both supervisors and subordinates have an equal responsibility to facilitate work performance correction and improvement;

(6) All applicants to and employees of the county merit system shall be assured fair treatment without regard to political affiliation or other nonmerit factors in all aspects of personnel administration.

(7) Merit system employees shall be protected against any coercion to engage in illegal or improper actions or partisan political activities and shall be prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office;

(8) The merit system established under this chapter shall be interpreted in accordance with these principles.

(c) **Statement of purpose.** The basic purpose of this article is to delineate the respective responsibilities of the county executive, the Chief Administrative Officer and the Merit System Protection Board for personnel management in county government. It is the further purpose of this article to implement by law the county charter responsibilities of the county council with respect to a merit system generally, including provisions for salaries and wages of all classified employees of the merit system under a uniform salary plan, the Merit System Protection Board's authority to exercise its appellate functions, and promotion of the overall objective that the integrity of the county merit system be preserved and that it be administered fairly and efficiently in the best interests of the county and its employees.

(d) **Merit system review commission.** In addition to the County Council's legislative responsibilities authorized under sections 101 and 401 of the County Charter, there shall be convened no later than July 1, 1980, and, if determined necessary in each instance by county council resolution, subsequently at intervals of four (4) years, a merit system review commission, the functions of which are to strengthen the system of checks and balances among those officials and agencies of county government having merit system responsibilities and to examine and recommend legislative or administrative revision to the merit system in keeping with the intent of the county charter and this article and with new developments in the field of public administration and personnel management. The commission shall be an eleven-member body composed of appropriately qualified county citizens and established by a resolution of the county council. The County Executive shall appoint five (5) of the members of this commission and the county council shall appoint the remaining members. Each commission shall terminate after it renders to the county council its final report.

(e) **Applicability of article.** This article shall apply to all merit system employees defined herein. Not included under this article unless specifically stated to the contrary are those positions excluded by section 401 of the County Charter as amended and any other positions so excluded from the merit system under other provisions of County law.

Sec. 33-6. Definitions.

In this article, the following words and phrases have the following meanings:

Board: The Merit System Protection Board as described in Section 403 of the County Charter.

County employees: All persons employed by the county regardless of merit system status.

Domestic partner: A person who meets the requirements of Section 33-22 as the domestic partner of a County employee. This definition applies throughout this Chapter unless otherwise indicated.

Illegal or improper actions: Any actions which violate any law or regulation, or which constitute a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety.

Merit system employees: All persons who are employed by the county in full-time or part-time year-round permanent career positions in any department/office/agency of the executive and legislative branches of the county government or in any other position specifically so designated by law.

Removal: The separation of a merit system employee through dismissal, involuntary resignation or abolishment of his or her position for reasons or circumstances determined by the Board as being other than a bona fide reduction of funds or work.

Supervisor: The Chief Administrative Officer and all subordinate personnel exercising supervisory functions in the capacity of a public employer.

Sec. 33-7. County Executive and Merit System Protection Board responsibilities.

(a) Generally. In performing its functions, the Board is expected to protect the merit system and to protect employee and applicant rights guaranteed under the merit system, including protection against arbitrary and capricious recruitment and supervisory actions, support for recruitment and supervisory actions demonstrated by the facts to be proper, and to approach these matters without any bias or predilection to either supervisors or subordinates. The remedial and enforcement powers of the Board granted herein shall be fully exercised by the Board as needed to rectify personnel actions found to be improper. The Board shall comment on any proposed changes in the merit system law or regulations, at or before the public hearing thereon. The Board, subject to the appropriation process, shall be responsible for establishing its staffing requirements necessary to properly implement its duties and to define the duties of such staff.

(b) **Personnel Regulations.** The County Executive shall adopt personnel regulations under method (1) of section 2A-15 of this Code.
The personnel regulations shall provide the framework for:

(1) The classification of all merit system positions in the executive and legislative branches;
(2) Minimum qualifications for merit system positions, methods of determining qualifications and methods of selection for any positions;
(3) Probationary periods, promotions, transfers;
(4) Causes for removal from any merit system position and methods of removal, including demotions, furloughs, and reduction of staff. However, any regulations governing a reduction in staff and employee rights attendant thereto shall be restricted to the respective branch of government in which the employee is employed; in the case of the legislative and judicial branches, this sentence shall apply to employees

hired by the legislative and judicial branch, respectively, after August 1, 1983.

(5) Annual, sick and other leave;
(6) Prohibitions against political activity;
(7) Maintenance of personnel records; and
(8) Similar personnel matters as may be provided by law.

(c) **Classification standards.** With respect to classification matters, the County Executive shall provide by personnel regulation, adopted in the manner specified above, standards for establishing and maintaining a classification plan. These standards may include but are not limited to the following:

(1) The necessary components of class specifications;
(2) Criteria for the establishment of new classes, modification or elimination of existing classes;
(3) Criteria for the assignment of positions to classes;
(4) Kinds of data required to substantiate allocation of positions;
(5) Guidelines for comparing levels of job difficulty and complexity; and
(6) Criteria for the establishment or abolishment of positions.

The Board shall conduct or authorize periodic audits of classification assignments made by the Chief Administrative Officer and of the general structure and internal consistency of the classification plan, and shall submit audit findings and recommendations to the County Executive and County Council.

(d) **Personnel Regulation review.** The Merit System Protection Board shall meet and confer with the Chief Administrative Officer and employees and their organizations from time to time to review the need to amend these regulations.

(e) **Adjudication.** The Board shall hear and decide disciplinary appeals or grievances upon the request of a merit system employee who has been removed, demoted or suspended and in such other cases as required herein.

(f) **Retirement.** The Board may from time to time prepare and recommend to the council modifications to the county's system of retirement pay.

(g) **Personnel management oversight.** The Board shall review and study the administration of the county classification and retirement plans and other aspects of the merit system and transmit to the Chief Administrative Officer, County Executive and the County Council its findings and recommendations. The Board shall conduct such special studies and audits on any matter relating to personnel as may be periodically requested by the County Council. All county agencies, departments and offices and county employees and organizations thereof shall cooperate with the Board and have adequate notice and an opportunity to participate in any such review initiated under this section.

(h) **Publication.** Consistent with the requirements of the Freedom of Information Act, confidentiality and other provisions of law, the Board shall publish, at least annually, abstracts of its decisions, rulings, opinions and interpretations, and maintain a permanent record of its decisions.

(i) **Public forum.** The Board shall convene at least annually a public forum on personnel management in the county government to examine the implementation of charter requirements and the merit system law.

Sec. 33-8. Administrative responsibilities of the Chief Administrative Officer.

(a) The Chief Administrative Officer shall be responsible for the administration and enforcement of the merit system, including any retirement laws, labor relations laws and the personnel regulations. The Chief Administrative Officer may designate a representative to implement any or all of the provisions of law or the personnel regulations. The Chief Administrative Officer and all department heads are responsible for implementing all final decisions of the Merit System Protection Board made after grievance appeals, although the Chief Administrative Officer shall have the right to appeal any such decision in accordance with procedures recited elsewhere in this article. The Chief Administrative Officer shall ensure that all supervisors receive continual orientation and training about the intent purpose and principles of the merit system and shall ensure that all supervisors implement the objectives of this article.

(b) The Chief Administrative Officer shall formulate administrative procedures to implement requirements of the merit system law and personnel regulations after providing reasonable public notice and opportunity for comment. These administrative procedures shall be distributed in a manner to make them accessible to all employees.

Sec. 33-9. Equal employment opportunity and affirmative action.

(a) **Policy.** The county's policy shall be to take all personnel actions on the basis of merit and fitness without regard to political affiliation or non-merit factors, and without regard to other factors as may be provided for in chapter 27, "Human Relations and Civil Liberties," such as sex, marital status, race, religion, national origin, age or handicap.

The Chief Administrative Officer shall be responsible for initiating, developing and maintaining such an equal employment opportunity and affirmative action program as necessary to ensure all persons an equal opportunity to enter and progress in the county's service on the basis of open competition and demonstrated ability. The county executive is authorized to issue such regulations, adopted under method (1) of section 2A-15 of this Code, as necessary to implement this policy. Such regulations shall provide that an employee whose

personal religious beliefs require the abstention from work during certain periods of time may elect to engage in an alternate work schedule in order to meet those religious requirements. The regulation shall include provision for any employee who elects to work an alternate schedule to be obligated to work an equal period of time to that taken off for such religious reasons.

(b) **Conciliation.** The Chief Administrative Officer is authorized to engage in consultation and conciliation efforts with agencies responsible for enforcement of equal employment opportunity laws with the objective of resolving complaints and to execute binding agreements with these agencies; provided, however, that these conciliation efforts shall not be deemed to abate the procedures or requirements as recited in chapter 27. Should the complaint be determined to be a matter not properly within the jurisdiction of an equal employment opportunity enforcement agency, the complaint, as filed, shall be treated as a grievance and processed under the appropriate procedures established for grievances.

(c) **Appeals by applicants.** Any applicant for employment or promotion to a merit system position may appeal decisions of the Chief Administrative Officer with respect to their application for appointment or promotion. Appeals alleging discrimination prohibited by chapter 27, "Human Relations and Civil Liberties," of this Code, may be filed in the manner prescribed therein. Appeals alleging that the decisions of the Chief Administrative Officer were arbitrary and capricious, illegal, based on political affiliation, failure to follow announced examination and scoring procedures, or nonmerit factors, may be filed directly with the Merit System Protection Board. Appeals filed with the Merit System Protection Board shall be considered pursuant to procedures adopted by the Board. The Board may order such relief as is provided by law or regulation.

Sec. 33-10. Disclosure of illegal or improper actions in county government; protection for merit system employees against retaliation or coercion for disclosing illegal or improper actions in county government; prohibited practices; complaint procedures; investigations; penalties; appeals.

(a) Disclosure of illegal or improper actions.

(1) Employees should report illegal or improper actions in County government.

(2) Employees should first report illegal or improper actions to the individual responsible for corrective action. That person may be anyone from the employee's immediate supervisor up to and including the County Executive, or for legislative branch employees, the County Council.

(3) In unusual circumstances, or if a retaliatory action or coercion has taken place, the employee may file a report directly with either the Board or the Ethics Commission. Unless expressly authorized by Section 19A-10, the identity of both the employee filing a report and the county employee or official who is the subject of this report must be kept confidential unless

waived in writing by each party, respectively. The Board or the Ethics Commission must refer the report to the government agency, including the Board or the Ethics Commission, that is responsible for addressing the unlawful conduct raised in the report. That government agency must then conduct an inquiry.

(b) **Protection for employees.** Any merit system employee who refuses to obey an instruction involving an illegal or improper action or who discloses information concerning illegal or improper action in county government with a reasonable good-faith belief that such disclosures are true and accurate shall be protected under procedures authorized herein from any retaliatory or coercive personnel action. This provision does not extend protection to a merit system employee upon a determination that:

(1) The employee's actions were frivolous, unreasonable and without foundation, even though not brought in bad faith;

(2) The employee without good cause failed to comply with administrative regulations concerning the making of such disclosures; or

(3) The employee was the subject of otherwise proper personnel actions taken for disciplinary reasons and not for retaliatory purposes prohibited by this section.

A "personnel action" shall mean any administrative act or omission which has a significant adverse impact upon the employee, or a change in the employee's duties or responsibilities inconsistent with the employee's grade and salary.

(c) **Prohibited practices.** It shall be unlawful for any person to coerce any merit system employee into taking an illegal or improper action or take any retaliatory action against any merit system employee because of that employee's disclosure of information relating to illegal and improper action in county government.

(d) **Filing of complaints.** If an employee believes a retaliatory action or coercion has taken place or been attempted because of his refusal to obey an illegal or improper instruction or disclosure of same, the employee may file a written complaint with the Board. The complaint must be filed within sixty (60) days of the alleged violation or action and must contain:

(1) The employee's name and signature;

(2) The employee's home address and telephone number;

(3) The name of the individual who allegedly took the action;

(4) A concise description of the alleged coercion or retaliatory action and reasons for believing it to be so. The identity of all parties shall be kept confidential unless and until there is a finding of probable cause or all parties waive such confidentiality in writing.

The Board may initiate an inquiry of any person suspected of taking retaliatory or coercive action, with or without a written complaint from an employee.

(e) **Investigations.** All complaints charging a violation of subsection (c) shall be promptly investigated by the Board's staff, who shall determine whether probable cause exists to believe a violation of that subsection has occurred. Should the Board's staff determine that the subject matter of the complaint involved allegations more properly the subject of an employee grievance or complaint to be filed under the provisions of the personnel regulations or other laws or regulations, the complainant shall be so advised and the complaint dismissed; and the period of limitations for the bringing of such other action shall be deemed to run from the date of the dismissal. Should the Board's staff determine that no probable cause exists, that determination shall be final and the complaint dismissed unless Board reconsideration is requested. Should the Board's staff determine that probable cause does exist, the staff shall prepare and cause to be served on the person believed to have violated subsection (c) a statement of charges fairly describing the alleged violation and the sanctions sought to be imposed for such violation. The charges shall then be certified to the Board to schedule and conduct hearings in accordance with the provisions of this chapter. The case in support of charges shall be presented by the Board's staff.

(f) **Penalties.** If a county employee is found guilty of coercion, harassment or retaliation, the Merit System Protection Board may order the imposition of one (1) or more of the following penalties:

(1) Any disciplinary action provided for in the personnel regulations up to and including dismissal;
(2) A monetary fine in any amount up to two thousand dollars ($2,000.00);
(3) Reimbursement of expenses incurred by all parties;
(4) Other penalties as may be deemed appropriate and consistent with the charter and laws of Montgomery County, Maryland.

(g) **Appeals.** An employee subject to the foregoing penalties based on the Merit System Protection Board's findings and decision may appeal to a court of competent jurisdiction.

Sec. 33-11. Classification; salary and wage plans.

(a) Classification.

(1) The Chief Administrative Officer must apply the classification standards in this Chapter and the Personnel Regulations to:
   (A) establish and abolish occupational classes as necessary for effective and economical operation of the County government;
   (B) assign all positions in the merit system to proper classes;
   (C) assign pay grades to classes; and
   (D) establish a procedure for the administrative review of an employee’s objection to an assignment action that downgrades the employee's position.

The Board must have a reasonable opportunity to review and comment on any proposed new classes except new classes proposed for the Management Leadership Service under paragraph (2).

(2) The CAO may establish by amendment to the Personnel Regulations under method (1) a Management Leadership Service (MLS) to ensure that the senior management of the County government is responsive to the needs, policies, and goals of the County and is the highest quality possible. The MLS must:

(A) be established within the Merit System;

(B) provide a compensation system designed to attract and retain highly competent senior managers and compensate employees on the basis of individual and organizational performance (including success in improving efficiency, productivity, quality of work or service, cost efficiency, and timeliness and complying with anti-discrimination and equal employment opportunity requirements);

(C) ensure that senior managers are accountable and responsible for the effectiveness and productivity of the employees they supervise;

(D) ensure accountability for honest, economical, and efficient government;

(E) recognize exceptional accomplishment;

(F) enable the CAO reasonably to reassign senior managers to promote the mission and goals of the County government;

(G) protect senior managers from arbitrary and capricious actions and maintain a Merit System free of prohibited personnel practices;

(H) ensure compliance with applicable personnel laws, including those related to equal employment opportunity, political activity, and conflicts of interest;

(I) enhance the management and leadership skills of highly competent senior managers through professional development; and

(J) appoint career managers to fill MLS positions to the extent practical, consistent with the effective and efficient implementation of agency policies and responsibilities.

(3) The CAO must determine by written finding that a reclassification is necessary for the efficient and effective operation of County government before approving an upward reclassification of a position between July 1 and December 31 of any year in which the County Executive is elected.

(b) Uniform salary plan.

(1) The uniform salary plan consists of:

(A) salary schedules for employees represented by certified employee organizations;

(B) a minimum wage/seasonal salary schedule;

(C) a salary schedule for sworn police managers;

(D) a salary schedule for uniformed fire/rescue managers;

(E) a salary schedule for employees in positions included in the Management Leadership Service; and
(F) a general salary schedule for all other employees.

(2) The Chief Administrative Officer may recommend to the County Council amendments to the uniform salary plan.

(3) The Council must approve the uniform salary plan and any amendments by resolution.

(4) In approving the salary plan or amendments, the Council may consider such factors as:
(A) experience;
(B) prevailing salary rates for comparable services in both the public and private sectors;
(C) County collective bargaining agreements;
(D) living costs; and
(E) other employee benefits.

(5) A salary schedule must include grades and a salary rate or salary range for each grade.

(6) The Chief Administrative Officer must assign each occupational class to an appropriate grade under an approved salary schedule.

(7) The minimum wage/seasonal salary schedule must identify each occupational class assigned to the salary schedule. The Chief Administrative Officer may assign an occupational class to the minimum wage/seasonal salary schedule only if all employees in the class:
(A) are paid the federal minimum wage; or
(B) work for the County fewer than:
(i) 20 regularly scheduled hours per week on a continuing year- round or school-year basis; or
(ii) 1040 hours in a 12-month period; or
(C) are participants in the County's Conservation/Service Corps job training program.

(8) The Chief Administrative Officer must base any recommendation to amend the police management salary schedule on:
(A) police management salary rates in neighboring jurisdictions;
(B) police collective bargaining agreements;
(C) other pay and benefits available to police management;
(D) availability of funds; and
(E) any other relevant factors.

(9) The Chief Administrative Officer must base any recommendation to amend the fire/rescue management salary schedule on:
(A) fire/rescue management salary rates in neighboring jurisdictions;
(B) fire/rescue collective bargaining agreements;
(C) other pay and benefits available to fire/rescue management;
(D) availability of funds; and
(E) any other relevant factors.

(10) The Chief Administrative Officer must ensure that all occupational classes, except those on the minimum wage/seasonal salary schedule, police management salary schedule, fire/rescue management salary schedule, and Management Leadership Service salary schedule, involving comparable duties, experience, responsibilities, and authority are paid comparable salaries that reflect the relative value of the services performed.

(11) The Chief Administrative Officer may recommend compensation policies for overtime, pay differentials, and other salary and wage benefits to the County Council. The County Council must approve any such policy or benefit.

(12) Any plan, policy, or schedule approved by the County Council under this subsection is subject to the provisions of this Chapter regarding employees who are represented by a certified employee organization.

(c) **Salary policies.** Employees are paid on a biweekly basis. Except as specifically provided by federal, state, or county law, the Chief Administrative Officer must determine any applicable payroll deductions and charges for such deductions, including state income tax withholding for any state of residence of an employee. When an employee leaves county employment, any debts the employee owes to the county may be set off and deducted from any unpaid salary, accrued annual or compensatory leave, or retirement contributions due to the employee.

(d) **Other compensation policies.** The Chief Administrative Officer may establish other compensation policies to recognize employees who perform in an extraordinary manner either on a sustained performance basis or in recognition of a specific act or service. These compensation policies may include monetary awards to employees making suggestions which result in better public service, cost savings or more efficient operations. Compensation policies may be in the form of cash awards or be part of the uniform salary plan.

Sec. 33-12. Appeals of disciplinary actions; grievance procedures.

(a) **Appeals of certain disciplinary actions.** Any merit system employee, excluding those in probationary status, who has been notified of impending removal, demotion or suspension shall be entitled to file an appeal to the Board, which shall cause a hearing to be scheduled without undue delay unless the appeal has been settled during administrative review of the appeal by the Chief Administrative Officer or a designee. Any merit system employee who is the subject of other disciplinary action not specified above may file an appeal with the Board, but such appeal may or may not require a hearing as the Board may determine.

(b) **Grievances.** A grievance is a formal complaint arising out of a misunderstanding or disagreement between a merit system employee and supervisor with reference to a term or condition of employment. The determination of the Board as to what constitutes a term or condition of employment shall be final. Grievances do not include the following: Classification allocations, except due process violations; failure to reemploy a probationary employee; or other employment matters for which another forum is available to provide relief or the Board determines are not suitable matters for the grievance resolution process. A grievance shall include termination by resignation which is found by the Board to have been submitted under circumstances which cause the resignation to be involuntary; in the event of such a finding, the Board shall require the appointing authority to substantiate the termination as in the case of a removal. The County Executive shall prescribe, in the personnel regulations adopted under method (1) of section 2A-15 of this Code, procedures which seek to secure at the lowest possible level a fair, prompt and mutually satisfactory resolution to a grievance. In providing these procedures, the county executive shall ensure that any grievance based upon an alleged improper application of a merit system law or regulation concerning a disputed issue of fact is entitled to resolution after a fact-finding inquiry authorized by the Board. Grievances based upon an alleged improper interpretation of merit system laws or regulations do not require a hearing during the grievance resolution process.

(c) **Hearing examiners.** The Board may utilize hearing examiners to conduct grievance investigations and other hearings, authorized under this section, who shall make findings and recommendations subject to objection by the parties and final Board approval under such procedures as established by the Board. A party to any proceeding which has been assigned to a hearing examiner shall be afforded the opportunity to present an oral argument on the record before the Board prior to a final decision.

Sec. 33-13. Appeal procedures.

The County Executive shall prescribe by personnel regulations, adopted under method (1) of section 2A-15 of this Code, procedures covering appeals, including grievances which shall include the time limit for filing such appeal, the granting of administrative leave pending appeal, filing and cost of the administrative record, conduct of hearings, requirements for written notice, special evidentiary proceedings in cases where the remedy of employee reinstatement was a contested and unresolved issue in an ordinary appeal hearing and provisions for summary actions by the Board.

Sec. 33-13A. Audits, investigations and inquiries.

The Merit System Protection Board is authorized to conduct audits, investigations or inquiries, to assure that the merit system is administered in accordance with the provisions of this chapter and regulations promulgated pursuant thereto, and may administer oaths, require the

attendance of witnesses and the production of records or other material in connection with an investigation, audit or inquiry. The results of each audit, investigation or inquiry shall be transmitted to the county council, county executive, and Chief Administrative Officer, with appropriate recommendations.

There is hereby created the position of special personnel investigator. The special personnel investigator shall exercise the following powers and perform the following duties and functions:

(a) Investigate any matter referred to him by the Merit System Protection Board, including matters arising under section 33-10, in which case he shall be deemed Board staff as provided in section 33-10(e).

(b) File a complaint with the Merit System Protection Board where, as result of his investigation of matters referred to him by the Board, he has probable cause to believe that the merit system has not been administered in accordance with the provisions of this chapter or regulations promulgated pursuant thereto.

(c) Recommend corrective action on matters which have been referred to him by the Merit System Protection Board.

(d) Designate, with the approval of the council, an alternate special personnel investigator for matters in which he has a conflict of interest or is otherwise unable to pursue.

The special personnel investigator is appointed by the county council for a term of 5 years, or until a successor is appointed and qualified. The council may remove the special personnel investigator on the vote of 6 members of the council. The special personnel investigator must:

(1) have experience in law or personnel matters;

(2) be paid a per diem fee set by contract with the county; and

(3) be reimbursed for necessary expenses.

When an audit, investigation or inquiry gives the Board cause to believe that the merit system has not been administered in accordance with the provisions of this chapter or regulations promulgated pursuant thereto, the Board may refer the matter to an appropriate investigative entity, including the special personnel investigator, at the Board's option. Where a complaint is filed by the special personnel investigator, or on its own motion, the Board may hold a hearing and issue a decision ordering such corrective action as it determines to be necessary, including those remedies provided in section 33-14(c). Where the Board holds a hearing on its own motion, the Board's staff or the special personnel investigator shall be the charging party. In any hearing, the responding party shall include all individuals who may be adversely affected. All investigatory proceedings under this section shall include due process protections consistent with the purposes of this chapter and procedures shall be included in the personnel regulations adopted under method (1) of section 2A-15 of this Code, which specify these protections in further detail. Nothing herein shall be construed to prohibit the Board from initiating and acting upon audits, investigations or inquiries until such regulations are adopted.

Sec. 33-14. Hearing authority of Board.

(a) **Hearing requirements.** Hearings before the Board are quasi-judicial in nature and shall be conducted in formal session in accordance with the provisions and authority contained in the county administrative procedures act. Board members shall be provided orientation and training as required to properly implement the requirements of the county administrative procedures act and conduct administrative evidentiary proceedings. With respect to hearings which go beyond one (1) session, the Board shall endeavor to schedule such hearings so that a minimum amount of time elapses between sessions. When required for continuity and minimum loss of time in concluding a case, the Board shall also endeavor to schedule hearings during daytime, weekday hours. Hearing shall be open to the public with reasonable notice, if requested by the employee.

(b) **Board counsel.** The Board may request special counsel when the Board and the county attorney determine that a representational conflict exists within the county attorney's office. The special counsel shall be an individual acceptable to the Board. The county attorney may assign an attorney to the Board as its general counsel who shall represent the Board exclusively on matters concerning the merit system.

(c) **Decisions.** Final decisions by the Board shall be in writing, setting forth necessary findings of fact and conclusions of law. A copy of such decision shall be furnished to all parties. The Board shall have authority to order appropriate relief to accomplish the remedial objectives of this article, including but not limited to the following:

(1) Order retroactive promotion or reclassification with or without back pay;

(2) Order change in position status, grade, work schedule, work conditions and work benefits;

(3) Order priority consideration be given to an employee found qualified before consideration is given to other candidates;

(4) Order reinstatement with or without back pay, although the Chief Administrative Officer may reinstate either to a position previously held or to a comparable position of equal pay, status and responsibility;

(5) Order cancellation of personnel actions found in violation of law or personnel regulation provided that such action may not without due process, adversely affect the employment rights of another employee;

(6) Grant employee participation in an employee benefit previously denied (training, educational program or assistance, preferential or limited work assignments and schedules, overtime pay or compensatory leave);

(7) Order removal from administrative or personnel records any reference or document pertaining to an unwarranted disciplinary or adverse personnel action;

(8) Order corrective measures as to any management procedure adversely affecting employee pay, status, work conditions, leave or morale;

(9) Order the county to reimburse or pay all or part of the employee's reasonable attorney's fees. The reasonableness of the attorney fees shall be determined by the following factors;
   a. Time and labor required;
   b. The novelty and complexity of the case;
   c. The skill requisite to perform the legal service properly;
   d. The preclusion of other employment by the attorney due to acceptance of the case;
   e. The customary fee;
   f. Whether the fee is fixed or contingent;
   g. Time limitations imposed by the client or the circumstances;
   h. The experience, reputation and ability of the attorneys; and
   i. Awards in similar cases;

(10) Order such other and further relief as may be deemed appropriate consistent with the charter and laws of Montgomery County.

Sec. 33-15. Judicial review and enforcement.

(a) Any aggrieved merit system employee, or applicant, or the Chief Administrative Officer may obtain judicial review of a Merit System Protection Board order or decision from the circuit court for the county in the manner prescribed under chapter 1100, subtitle B of the Maryland Rules of Procedure. In addition, with respect to orders or opinions relating to personnel of Montgomery County fire and rescue corporations, the independent fire and rescue corporation affected by the Merit System Protection Board order, as well as any aggrieved fire and rescue corporation employee, may obtain judicial review of the Board's order or decision as provided in this section.

(b) The court, in hearing the case, shall apply the judicial review standards as set forth in the Maryland administrative procedures act, article 41, Maryland Code Annotated, section 255. The court review shall be on the basis of the record before the Board. Judicial review of Board decisions issued hereunder also includes appellate review by the special courts of appeals of Maryland.

(c) When the Chief Administrative Officer is the party seeking judicial review of a Board order or decision in favor of a merit system employee, the county shall be responsible for the employee's legal expenses, including attorneys' fees which result from the judicial review and are determined by the county to be reasonable under the criteria set forth in subsection (c)(9) of section 33-14.

(d) Upon the failure of a party to invoke the judicial review provision of section (a) above or the exhaustion thereof and upon noncompliance with any final decision or order of the Board, the Board may certify the matter to the county attorney for enforcement. The county attorney shall promptly institute appropriate civil

proceedings in the circuit court for Montgomery County to seek enforcement of the decision or order and for any other appropriate relief.

Sec. 33-16. Conflicting provisions.

In the event of any conflict between the provisions of this article and any provisions of the personnel regulations or administrative rules or regulations, the provisions of this article shall control.

Sec. 33-17. Prohibited personnel practices; criminal penalty.

(a) No county employee or other person acting in concert with a county employee shall threaten, promise to take, or take any official action with respect to any individual employee for the purpose of inducting or coercing political activity of any county employee or applicant for county employment (including the providing of any political contribution or service), or take any official action against any county employee or applicant for county employment as a reprisal for the refusal of the person to engage in any political activity.

(b) No person shall willfully make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provisions of this law or in any manner commit or attempt to commit any fraud preventing the impartial execution of this law and any regulations issued thereunder.

(c) No county employee or other person acting in concert with a county employee shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for the purpose of providing any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, county employment.

(d) No county employee or other person acting in concert with a county employee shall willfully defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this law, or furnish to any person special or confidential information for the purpose of affecting the rights of any person with respect to employment under the county merit system.

(e) No county employee or other person acting in concert with a county employee shall willfully grant any preference or advantage contrary to law, rule or regulation to any merit system employee or applicant for merit system employment (including preselection or defining the scope or manner of competition or the requirements for any position primarily for the purpose of improving or ensuring the prospects of a particular person for a merit system position rather than for the purpose of advancing or improving service to the public, contrary to merit system principles).

(f) No county employee or other person acting in concert with a county employee shall willfully take or cause to be taken a personnel action with respect to a merit system position or merit system employee on the basis of political affiliation or family relationship.

Any person who shall violate any of the above provisions shall be guilty of a misdemeanor and shall, on conviction thereof, be punished by a fine not to exceed one thousand dollars ($1,000.00), or by imprisonment for a term not to exceed six (6) months or by both.

APPENDIX C - PUBLIC ETHICS LAW
MONTGOMERY COUNTY CODE, CHAPTER 19A, ETHICS

ARTICLE I. GENERAL PROVISIONS.

Sec. 19A-1. Short title. This chapter may be cited as the Montgomery County Public Ethics Law.

Sec. 19A-2. Legislative findings and statement of policy.

(a) Our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.

(b) The confidence and trust of the people erodes when the conduct of County business is subject to improper influence or even the appearance of improper influence.

(c) To guard against improper influence, the Council enacts this public ethics law. This law sets comprehensive standards for the conduct of County business and requires public employees to disclose information about their financial affairs.

(d) The Council intends that this Chapter, except in the context of imposing criminal sanctions, be liberally construed to accomplish the policy goals of this Chapter. The Council also intends that this Chapter meet the requirement under state law that the County adopt legislation that is similar to the state public ethics law.

Sec. 19A-3. Conflicts of law. If any other County statute or regulation relating to conflicts of interest, financial disclosure, or lobbying disclosure is more stringent than this law, the more stringent provision applies.

Sec. 19A-4. Definitions. Unless the context clearly indicates otherwise, the following words have the following meanings:

(a) ***Agency*** or ***County agency*** means:
- (1) any department, principal office, or office of the executive or legislative branch of County government;
- (2) any board, commission, committee, task force, or similar body appointed by the County Executive or County Council;
- (3) the Revenue Authority, the Housing Opportunities Commission, and the Board of License Commissioners;
- (4) each independent fire department or rescue squad that receives funds from the County or uses property owned by the County; and

(5) any other public body if the Commission finds that:

(A) the public body is subject to the County's legislative authority to enact an ethics law; and

(B) the policies articulated in section 19A-2 would be significantly furthered by the application of this Chapter to the public body.

(b) ***Business*** means any for-profit or non-profit enterprise, including a corporation, general or limited partnership, sole proprietorship, joint venture, association, firm, institute, trust, or foundation. Business does not include a County agency, but includes an independent fire department or rescue squad.

(c) ***Commission*** means the Montgomery County Ethics Commission, established under Section 19A-5.

(d) ***Compensation*** means any money or thing or value, regardless of form, including the sale or delivery of tangible or intangible property, that an employer pays or agrees to pay for services rendered.

(e) ***Doing business with*** means:

(1) being a party with a County agency to a transaction that involves at least $1,000 during a year;

(2) negotiating a transaction with a County agency that involves at least $1,000 during a year; or

(3) submitting a bid or proposal to a County agency for a transaction that involves at least $1,000 during a year.

(f) ***Employer*** means any person who pays or agrees to pay compensation for services rendered.

(g) ***Employment*** or ***employ*** means engaging in an activity for compensation.

(h) ***Gift*** means the transfer of anything of economic value, regardless of form, without an exchange of consideration of at least equal value. Gift does not include a transfer regulated by state or federal law governing political campaigns or elections.

(i) ***Immediate family*** means spouse and dependent children. For a public employee, immediate family also includes the employee's domestic partner, if the partner is receiving County benefits.

(j) ***Interest*** or ***economic interest*** means any source of income or any other legal or equitable economic interest, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, directly or indirectly. ***Interest*** does not include:

(1) an interest in a time deposit or demand deposit in a financial institution or in a money market fund with assets of at least $10,000,000;
(2) an interest in an insurance policy, endowment policy, or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period; or
(3) an interest in a deferred compensation plan that:
(A) has more than 25 participants; and
(B) the Internal Revenue Service has determined qualifies under section 457 of the Internal Revenue Code; or
(4) an interest in a common trust fund or a trust that forms part of a pension plan or profit-sharing plan that:
(A) has more than 25 participants; and
(B) the Internal Revenue Service has determined qualifies as a trust under sections 401 and 501 of the Internal Revenue Code.

(k) ***Lobbying*** means any attempt to influence any legislative, executive, or administrative action by a County agency.

(l) ***Lobbyist*** means any individual or organization who spends money or is compensated to influence legislative, executive, or administrative action by a County agency.

(m) ***Public employee*** means:
(1) the County Executive and each member of the County Council;
(2) any person employed by a County agency, including the director of the agency;
(3) any person appointed by the County Executive or County Council to a board, commission, committee, task force, or similar body, whether or not:
(A) the person is compensated for serving on the body; or
(B) the body is permanent or temporary;
(4) any member of the Revenue Authority, the Housing Opportunities Commission, or the Board of License Commissioners; and
(5) any other person providing services without compensation to a County agency if that person:
(A) exercises any responsibility for government-funded programs, procurement, or contract administration for an agency; or
(B) has access to confidential information of an agency that relates to government-funded programs, procurement, or contract administration.

(n) ***Relative*** means:
(1) the public employee's siblings, parents, grandparents, children, grandchildren;

(2) the public employee's spouse, or domestic partner receiving County benefits, and the spouse's or partner's siblings, parents, grandparents, children, grandchildren; and
(3) the spouses of these relatives.

(o) ***Year*** means calendar year.

ARTICLE II. ADMINISTRATION.

Sec. 19A-5. Ethics Commission.

(a) **Creation.** The Montgomery County Ethics Commission is established. The Commission has 5 members. Each Commission member is appointed by the County Executive and confirmed by the Council.

(b) **Composition; Qualifications for Membership.** Each member of the Commission must meet the following qualifications:
(1) The member must reside in the County and be registered to vote in the County.
(2) During the member's term of office, the member must not:
(A) hold or be a candidate for any state, County or local elected or appointed office;
(B) be an employee of:
(i) the state;
(ii) a political subdivision of the state; or
(iii) a public body created by the state or a political subdivision of the state;
(C) be an employee or officer of a political party;
(D) participate (except by voting or contributing money) in any state, County, or local political campaign;
(E) participate (except by voting or contributing money) in support of or opposition to any question placed on the ballot by state, County, or local government, except a question that directly affects the Commission; or
(F) be a lobbyist.
(3) No more than 3 members may be registered to vote in primary elections of the same political party.

(c) **Term.** Commission members serve for a term of 4 years. The terms of no more than 2 members may expire in any one year. Any vacancy must be filled only for the remainder of the unexpired term. A Commission member serves until the Council confirms a successor unless the member resigns before a successor is confirmed.

(d) **Chair.** The Commission must select a chair annually. The Commission may select other officers annually as it finds appropriate.

(e) Removal.

(1) The Council or the County Executive may initiate the removal of a Commission member for:
   (A) neglect of duty;
   (B) misconduct in office;
   (C) disability that renders the member unable to perform the duties of office; or
   (D) violation of law.

(2) The Council or the County Executive must give the member written notice of the reason for the removal. The member is entitled to a hearing held under Chapter 2A. If the County Executive initiates the removal, the hearing must be held by the Council or a hearing officer designated by the Council. If the Council initiates the removal, the hearing must be held by the County Executive or a hearing officer designated by the Executive.

(3) A member is removed if the Council and the County Executive concur in removal.

(4) If the County Executive does not approve a removal within 14 days after the Council votes to remove a member, the Council may remove the Commission member without the approval of the County Executive by a vote which would be sufficient to enact legislation over the disapproval of the Executive under Section 208 of the Charter. The Council must take this action within 30 days after it first voted to remove the member.

(f) Administrative Support.

(1) The Commission must be allocated merit system staff, office space, equipment, and supplies within the limits of the Commission's appropriations. The Chief Administrative Officer appoints or assigns staff to the Commission after receiving a recommendation from the Commission. Subject to the general supervision of the Chief Administrative Officer, assigned staff serve at the direction of the Commission to perform duties assigned by the Commission.

(2) The Commission may ask the County Attorney to provide an opinion on any legal issue relating to the Commission's duties,

(3) The County Attorney must provide the Commission with legal services. However, the County Attorney may employ special legal counsel to the Commission under Section 213 of the Charter. The County Attorney must provide an attorney to prosecute a case before the Commission under Section 19A-10. An individual attorney assigned to provide general legal advice to the Commission must not be an investigator under Section 19A-9 or prosecute a case before the Commission under Section 19A-10 for one year after the attorney's Ethics Commission assignment ends.

(4) The Commission may retain legal services from persons outside the Office of the County Attorney and without the approval of the County Attorney if:
   (A) the Commission finds that obtaining independent legal services is necessary for the Commission effectively to perform its responsibilities; and
   (B) the County Council approves the Commission's decision to select legal counsel and appropriates sufficient funds to cover the cost of the legal services.

Sec. 19A-6. Authority and duties of Commission; appeal of Commission decisions.

(a) **Authority.** The Commission may:
   (1) conduct investigations under Section 19A-9;
   (2) authorize the issuance of summonses and subpoenas, and administer oaths and affirmations;
   (3) impose sanctions under Section 19A-10;
   (4) adopt regulations to implement this Chapter under method (2);
   (5) extend a deadline for distribution or filing of forms for up to 6 months if the Commission finds that the deadline creates an unreasonable burden. An extension may apply to an individual or a class of individuals. The extension must be in writing. However, the Commission must not extend the time in which a complaint must be filed under Section 19A-10;
   (6) conduct public education and information programs regarding the purpose and implementation of this Chapter;
   (7) publish opinions under Section 19A-7;
   (8) establish procedures to govern the conduct of Commission affairs;
   (9) interpret this Chapter and advise persons as to its application; and
   (10) take all other necessary acts to carry out the purposes of this Chapter.

(b) **Duties.** The Commission must:
   (1) prepare and distribute all financial disclosure forms under Article IV and lobbying disclosure forms under Article V;
   (2) maintain, as official custodian, forms and records filed under this Chapter;
   (3) act on a complaint filed under Section 19A-10;
   (4) respond to a request for a waiver under Section 19A-8;
   (5) act on a request for other employment approval under Section 19A-12; and
   (6) respond to a request for an advisory opinion submitted under Section 19A-7.

(c) **Appeals.** A final decision of the Commission on a complaint, request for a waiver, or request for other employment approval may be appealed to the Circuit Court under the applicable Maryland Rules of Procedure governing administrative

appeals. An appeal does not stay the effect of the Commission's decision unless the court hearing the appeal orders a stay.

(d) Request for rehearing or reconsideration.

(1) A person affected by a final decision of the Commission on a complaint, request for waiver, or request for other employment approval may ask the Commission for a rehearing or reconsideration.

(2) A request for rehearing or reconsideration:

(A) must be filed within 30 days after the issuance of the Commission's final decision; and

(B) must state in writing all reasons in support of the request.

(3) The filer of the request must mail or deliver a copy of the request to all parties of record.

(4) A request for rehearing or reconsideration does not stay the effect of the Commission's decision unless the Commission orders otherwise.

(5) A request for rehearing or reconsideration stays the time in which an appeal under subsection (c) may be filed until the Commission takes final action on the request.

(e) **Cooperation with Inspector General.** The Commission may ask the Inspector General to investigate any matter within the Inspector General's or the Commission's jurisdiction, and if the matter is within the Commission's jurisdiction, to report any findings confidentially to the Commission. The Commission may disclose confidentially to the Inspector General any information it has that the Inspector General reasonably needs to perform statutory duties.

(f) **Annual report.** The Commission must publish an annual report each year, not later than March 1, summarizing the actions it has taken during the preceding calendar year and describing each waiver it approved and advisory opinion it issued during that year. The report must not mention the names of any individual, unless otherwise properly made public, who was the subject of any action or opinion.

Sec. 19A-7. Advisory Opinions.

(a) Any person subject to this Chapter or Sections 2-109, 11B-51 or 11B-52(a) may ask the Commission for an advisory opinion on the meaning or application of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) to that person. A supervisor or department head may ask the Commission for an advisory opinion about the meaning or application of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) to the employment-related conduct of any public employee supervised by the supervisor or department head. Unless the subject of the opinion authorizes disclosure, the Commission must keep the names of the requesting party and the

(b) The Commission must publish each opinion when it is issued unless the Commission finds that the privacy interest of a public employee or other person clearly and substantially outweighs the public's needs to be informed about Commission actions. The Commission at least annually must publish a list of all unpublished opinions, with the reason why each opinion was not published. The Commission must take all reasonable steps consistent with making the opinion useful for public guidance to keep confidential the identity of any person who is affected by the opinion request.

Sec. 19A-8. Waivers.

(a) After receiving a written request, the Commission may grant to a public employee or a class of public employees a waiver of the prohibitions of this Chapter and Sections 11B-51 and 11B-52(a) 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.

(b) After receiving a written request, the Commission may waive the prohibitions of subsection 19A-12(b) if it finds that:
- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

(c) After receiving a written request, the Commission may waive the prohibitions of Section 19A-13 if it finds that:
- (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (2) the proposed employment is not likely to create an actual conflict of interest.

(d) The Commission may waive the prohibitions of Sections 19A-12 or 19A-13 without making the findings required in subsection (b) or (c) if an employer certifies, and the Commission agrees, that releasing pertinent facts about the proposed other employment is not in the interest of effective law enforcement or the national security of the United States.

(e) The Commission may impose appropriate conditions to fulfill the purposes of this Chapter when it grants a waiver.

(f) The Commission must disclose to the public any waiver that it grants. If a request for a waiver is denied, the Commission may publish its response as an advisory opinion under Section 19A-7(b). But the identity of any public employee who applies for a waiver must be kept confidential until the waiver is granted. The Commission may reveal the identity of any public employee who applies for a waiver that is not granted if:
(1) the public employee authorizes public disclosure; or
(2) the Commission has reasonable cause to believe that the public employee has engaged in the conduct for which the waiver was sought.

(g) The Commission must include the pertinent facts in each waiver.

(h) The Commission must promptly notify the State Ethics Commission, the Chief Administrative Officer, and the Council when it waives any prohibition of this Chapter for any class of public employees.

Sec. 19A-9. Investigations.

(a) The Commission may on its own initiative investigate any matter that the Commission believes may constitute a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) if the Commission finds in writing that an investigation is necessary to resolve the matter.

(b) Any investigation must be conducted by the staff of the Commission, the County Attorney, or a special counsel or other person temporarily retained by the Commission to conduct the investigation. The Commission must not actively participate in any investigations.

(c) An investigator acting under the authority of the Commission may require any person to:
(1) respond under oath to written questions within 30 days;
(2) produce verified copies of records within 30 days; and
(3) on 15 days notice, attend a deposition to answer under oath questions asked by the investigator.
The investigator must disclose to the person from whom information is sought the general nature and purpose of the inquiry. A person must not refuse to answer written questions, produce records, attend a deposition, or answer questions at a deposition unless the refusal is permitted by law. The investigator may seek from a court of competent jurisdiction an order compelling compliance with this subsection.

(d) The identity of any person who supplies information to an investigator and the report of the investigator must be kept confidential, except as otherwise expressly provided in this Chapter.

(e) The investigator must give the Commission a confidential written report of the investigator's factual findings, the sources of information, and the identity of each person providing information.

Sec. 19A-10. Complaint; Adjudicatory Hearing.

(a) (1) Any individual may file a confidential written complaint with the Commission. The complaint must allege facts under oath that would support a reasonable person in concluding that a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) occurred.

(2) (A) The complaint must be filed within the later of 2 years after:

(i) the alleged violation; or

(ii) the complainant learned or should have learned of facts that would lead a reasonable person to conclude that a violation occurred.

(B) A complaint may not be filed more than 6 years after the alleged violation occurred.

(3) The Commission may refer the complaint to Commission staff or the County Attorney for investigation under Section 19A-9 or may retain a special counsel or other person to conduct an investigation.

(4) If the complaint does not allege facts sufficient to state a violation of this Chapter, the Commission may dismiss the complaint. The Commission must inform the complainant of its decision to dismiss the complaint. The Commission may inform the subject of the complaint that the complaint was filed and dismissed, but must not disclose the identity of the complainant.

(b) The Commission may file, on its own motion, a complaint based on a report received from an investigator under Section 19A-9, if the complaint is filed within the time limits established in subsection (a).

(c) If, based on a complaint and a report, if any, submitted under Section 19A-9, the Commission finds reasonable cause to believe that a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) has occurred, the Commission must hold an adjudicatory hearing. However, the Commission may dispose of a matter by consent order instead of holding an adjudicatory hearing.

(d) If the Commission holds an adjudicatory hearing, the Commission must:

(1) give the subject of the complaint a copy of the complaint, including the identity of the complainant; and

(2) give the subject of the complaint copies of those portions of approved minutes of the Commission relating to the complaint, and any report issued under Section 19A-9.

(e) The Commission may:
(1) issue summonses and subpoenas to compel attendance at a hearing;
(2) require any person to produce records at a hearing; and
(3) administer oaths or affirmations to witnesses.

(f) The parties to the hearing are the subject of the complaint and the County. The prosecuting attorney may be the investigator who issued a report under Section 19A-9, an attorney in the County Attorney's office, or a special counsel. Each party may be represented by counsel. Each party may present evidence and crossexamine witnesses. The subject of the complaint may require the Commission to issue subpoenas for witnesses and documents to the same extent a party in litigation in state court would be entitled to the summons or subpoena.

(g) The rules of evidence used in judicial proceedings do not apply. The Commission may admit and give appropriate weight to evidence, including hearsay, that possesses probative value commonly accepted by reasonable and prudent persons.

(h) A hearing is closed to the public. However, the Commission may in its sole discretion open the hearing to the public if the subject of the complaint requests that the hearing be open. The Commission may issue additional rules of procedure governing an adjudicatory hearing.

(i) The Commission must make written findings of fact and conclusions of law based on the record made at the hearing. If after a hearing the Commission finds that no violation of this Chapter has occurred, the Commission must dismiss the complaint.

(j) If the Commission dismisses a complaint without holding a hearing or after holding a closed hearing, the Commission must not release to the public the identity of the subject of the complaint, the complainant, or any witness.

(k) If the Commission finds that a violation of this Chapter has occurred, the Commission must publicly disclose its findings and conclusions, including the identity of the subject of the complaint, the complainant, and the witnesses.

(l) The Commission must promptly notify the complainant and the subject of the complaint of its findings and conclusions and the disposition of the complaint.

(m) If the Commission finds a violation of this Chapter or Sections 2-109, 11B-51 or 11B- 52(a), the Commission may:
(1) seek injunctive relief under Section 19A-27;
(2) proceed under Section 19A-28;
(3) seek recovery under Section 19A-29;

(4) seek the imposition of disciplinary action by appropriate public employees under Section 19A-30;
(5) order the subject of the complaint to stop any violation; and
(6) issue a public or private reprimand.

(n) The Commission may, at any time, refer to an appropriate prosecuting attorney any information that indicates that a criminal offense may have occurred.

ARTICLE III. CONFLICTS OF INTEREST.

Sec. 19A-11. Participation of public employees.

(a) **Prohibitions.** Unless permitted by a waiver, a public employee must not participate in:
(1) any matter that affects, in a manner distinct from its effect on the public generally, any:
(A) property in which the public employee holds an economic interest;
(B) business in which the public employee has an economic interest; or
(C) property or business in which a relative has an economic interest, if the public employee knows about the relative's interest;
(2) any matter if the public employee knows or reasonably should know that any party to the matter is:
(A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee;
(B) any business in which a relative has an economic interest, if the public employee knows about the interest;
(C) any business with which the public employee is negotiating or has any arrangement about prospective employment;
(D) any business that is negotiating with a relative or has an arrangement with a relative about prospective employment, if the public employee knows about the negotiations or the arrangement;
(E) any business or individual that is a party to an existing contract with the public employee or a relative, if the contract could reasonably result in a conflict between private interests and official duties;
(F) any business that is engaged in a transaction with a County agency if:
(i) another business owns a direct interest in the business;
(ii) the public employee or a relative has a direct interest in the other business; and
(iii) the public employee reasonably should know of both direct interests;
(G) any business that is subject to regulation by the agency with which the public employee is affiliated if:

(i) another business owns a direct interest in the business;
(ii) the public employee or a relative has a direct interest in the other business; and
(iii) the public employee reasonably should know of both direct interests; or

(H) any creditor or debtor of the public employee or a relative if the creditor or debtor can directly and substantially affect an economic interest of the public employee or relative.

(b) Exceptions.

(1) If a disqualification under subsection (a) leaves less than a quorum capable of acting, or if the disqualified public employee is required by law to act or is the only person authorized to act, the disqualified public employee may participate or act if the public employee discloses the nature and circumstances of the conflict.

(2) Subsection (a) does not apply to an administrative or ministerial duty that does not affect an agency's decision on a matter.

(3) Paragraph (a)(1) does not apply to a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to the body.

(4) Subparagraph (a)(2)(A) does not apply to a public employee, if the County Executive or the County Council appoints the public employee to serve as an officer, director, or trustee of a business to represent the public interest.

(5) Subparagraph (a)(2)(A) does not apply to a public employee who is an officer, director, or trustee of an organization, if the public employee discloses the relationship, is not compensated by the organization, and has no:

(A) managerial responsibility or fiduciary duty to the organization;
(B) authority to approve the organization's budget;
(C) authority to select any officer or employee of the organization; or
(D) authority to vote on matters as a member of the governing body of the organization.

(c) **Thresholds.** In this section, interest or economic interest only includes:

(1) any source of income, direct or indirect, if the employee:

(A) received more than $1,000 from that source of income in any of the last 3 years;
(B) is currently receiving more than $1,000 per year from that source of income: or
(C) is entitled to receive at least $1,000 in any year in the future from that source of income;

(2) a business in which the public employee owns more than 3 percent;

(3) securities that represent ownership or can be converted into ownership of more than 3 percent of a business; and

(4) any other economic interest worth more than $1,000.

Sec. 19A-12. Restrictions on other employment and business ownership.

(a) General restrictions.

(1) A public employee must not engage in any other employment unless the employment is approved by the Commission. The Commission may impose conditions on its approval of other employment.

(2) The Commission may adopt appropriate procedures to receive and decide other employment requests.

(3) The appointing authority should give a copy of this Section to applicants for positions that are affected by this Section. The Supervisor of Elections should give a copy to candidates for elected offices that are affected by this Section.

(4) A request for approval of other employment is confidential. Commission action on the request is also confidential. However, the Commission must disclose to the public each action approving an employment request, including:

(A) the name of the employee;

(B) the name of the employer;

(C) the nature of the other employment; and

(D) any conditions imposed by the Commission.

(b) **Specific restrictions.** Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

(1) be employed by, or own more than one percent of, any business that:

(A) is regulated by the County agency with which the public employee is affiliated; or

(B) negotiates or contracts with the County agency with which the public employee is affiliated; or

(2) hold any employment relationship that would impair the impartiality and independence of judgment of the public employee.

(c) **Exceptions.** Subsections (a) and (b) do not apply to:

(1) a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to it;

(2) a public employee whose government duties are ministerial, if the employment does not create a conflict of interest;

(3) a member of a board, commission, or similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required. The appointing authority must forward a record of the disclosure to the Commission, which must keep a record of the disclosure on file; or

(4) an elected public employee in regard to employment held at the time of election, if the employment is disclosed to the Board of Supervisors of Elections before the election. The Commission must file the disclosure received from the Supervisor of Elections with the financial disclosure record of the elected public employee.

(d) **Prohibition against unapproved employment.** Unless the Commission permits it or subsections (a) and (b) do not apply, a person must not knowingly employ a public employee.

(e) **Prohibition against contingent compensation.** A public employee must not assist or represent a party for contingent compensation in a matter before or involving a County agency except in a judicial or quasi-judicial proceeding. However, a public employee may assist or represent a party for contingent compensation in any matter for which contingent fees are authorized by law.

Sec. 19A-13. Employment of former public employees.

(a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.

(b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:
(1) significantly participated in regulating the person or business; or
(2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

(c) Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

Sec. 19A-14. Misuse of prestige of office; harassment; improper influence.

(a) A public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection.

(b) Unless expressly authorized by the Chief Administrative Officer, a person must not use an official County or agency title or insignia in connection with any private enterprise.

(c) A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is:
- (1) generally available to the public; or
- (2) authorized by a County law, regulation, or administrative procedure.

(d) (1) A public employee must not appoint, hire, or advocate the advancement of a relative to a position that is under the jurisdiction or control of the public employee.
- (2) A relative of a public employee must not be employed in a position if the public employee:
  - (A) would exercise jurisdiction or control over the position; and
  - (B) advocates the relative's employment.

(e) A public employee must not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with that person's freedom to engage in political activity.

(f) A person must not influence or attempt to influence a public employee to violate this Chapter.

(g) (1) A public employee must not with respect to a particular matter represent another person, or provide advice to another person that would qualify as an expert opinion in a court, if:
  - (A) a County agency or the County is a party to the matter and the person being assisted has a position adverse to the County agency or the County; or
  - (B) the County agency or the County has a direct and substantial interest in the matter that is adverse to the interests of the person being assisted.
- (2) This subsection does not apply to a public employee who renders assistance to:
  - (A) another public employee if the matter involves a personnel action;
  - (B) a member of the public employee's immediate family if the public employee renders the assistance without compensation; or
  - (C) a person for whom the public employee serves as a guardian, trustee or other personal fiduciary.
- (3) This subsection does not apply to:
  - (A) a public employee while carrying out the employee's official duties; or
  - (B) a member of a board, committee or commission if:
    - (i) the member is not compensated by the County;

(ii) the matter does not relate to the responsibilities of the board, committee or commission; and

(iii) the board, committee or commission solely performs an advisory function.

(4) In this subsection "represent" means to act on behalf of another person, and includes acting as an agent or attorney for the other person.

Sec. 19A-15. Disclosure of confidential information; ex parte communications.

(a) Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency that is not available to the public. A public employee or former public employee must not use confidential information for personal gain or the gain of another. Unless expressly prohibited by law, a public employee may disclose validly obtained confidential information to another public employee if the other public employee reasonably needs the information to carry out the employee's official duties.

(b) A public employee must not consider any ex parte or private communication regarding any matter that must be decided on the basis of a record after giving interested parties an opportunity for a hearing. The recipient must incorporate any ex parte or private communication in the record. If the communication was oral, the recipient must write down the substance of the communication and enter it into the record. The decision-making body may consider ex parte or private communications if all parties are given an appropriate opportunity to respond. This subsection does not apply to:

(1) advice rendered by an attorney for the County;

(2) advice rendered by appropriate officials or staff of County or other government agencies; and

(3) discussions between members of a decision-making body.

Sec. 19A-16. Soliciting or accepting gifts.

(a) A public employee must not solicit a gift to the employee or another person or organization:

(1) from any business or person who:

(A) is registered or must register as a lobbyist;

(B) does business with the County agency with which the public employee is affiliated; or

(C) is, or owns or operates a business that is, regulated by the County agency with which the public employee is affiliated;

(2) during official work hours, or at a County agency, or from any other public employee who is supervised directly or indirectly by the public employee;

(3) while wearing all or part of an official uniform of a County agency, or while otherwise identifiable as a public employee;
(4) for the employee's own benefit, unless the Ethics Commission approves the solicitation; or
(5) with the intent of affecting or offering to affect any action by a County agency.

(b) However, a public employee may solicit a gift:
(1) from public employees during official work hours, or at a County agency, for a charitable drive that is approved by the County Executive or (for public employees of the legislative branch) the President of the Council, when the solicitation is part of the public employee's official duties;
(2) from any person to a charitable organization, as defined in the state law regulating public charities, or a municipality, if the public employee does not solicit gifts primarily from those persons who do business with or are regulated by the county agency with which the public employee is affiliated, or from other employees who are supervised directly or indirectly by the public employee;
(3) from any person, during official work hours, while identifiable as a public employee, or at a County agency, for the benefit of a County agency or a nonprofit organization formally cooperating on a program with a County agency if the solicitation is authorized by the County Executive or (for public employees of the legislative branch) the President of the Council in an order printed in the County Register that designates:
(A) the public employee authorized to solicit the gift;
(B) the purpose for which the gift is sought;
(C) the manner in which the gift may be solicited;
(D) the persons or class of persons from whom gifts may be solicited; and
(E) the type of gifts that may be solicited;
(4) while wearing all or part of a uniform of the corporation, to a nonprofit fire or rescue corporation of which the public employee is a member; or
(5) from any person to a charitable organization, as defined in the state law regulating public charities, while identifiable as an elected official, if the employee lists in a supplement to each annual financial disclosure statement each organization to which the employee solicited a contribution during that year.

(c) A public employee must not knowingly accept a direct or indirect gift from any individual or organization that the public employee knows or reasonably should know:
(1) is registered, or must register, as a lobbyist on a matter that is or could be considered by the County agency with which the public employee is affiliated;
(2) does business with the County agency with which the public employee is affiliated;

(3) owns or operates a business that is regulated by the County agency with which the public employee is affiliated; or

(4) has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee's official duties.

(d) Subsection (c) does not apply to:

(1) meals and beverages under $50 per event or a higher amount, not to exceed $100, that the Commission sets;

(2) ceremonial gifts or awards with a resale value of $100 or less, if the gift or award commemorates an event or achievement associated with the public employee.

(3) items of personal property, other than cash, worth less than $10;

(4) reasonable expenses for food, travel, lodging, and scheduled entertainment of the public employee, given in return for the public employee's participation in a panel or speaking at a meeting;

(5) gifts to a public employee who must file a public financial disclosure statement under subsection 19A-17(a), if the gift:

(A) is a courtesy extended to the office; and

(B) consists of tickets or free admission for the employee and one guest to attend a charitable, cultural, civic, labor, trade, sports, or political event, including meals and beverages served at the event;

(6) any item that is solely informational or of an advertising nature, including a book, report, periodical, or pamphlet, if the resale value of the item is $25 or less;

(7) gifts from a relative;

(8) honoraria or awards for achievement; or

(9) a specific gift or class of gifts which the Commission exempts from this Section after finding in writing that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency.

(e) Subsection (c) does not apply to unsolicited gifts to a County agency.

(f) A public employee who receives a gift that the public employee must not accept under this Section must report the gift to the Commission, if otherwise required to report it, and return the gift to the donor or transfer the gift to the County.

APPENDIX D, ADMINISTRATIVE PROCEDURES ACT
MONTGOMERY COUNTY CODE, CHAPTER 2A

ARTICLE I. APPEALS FROM ADMINISTRATIVE AGENCIES.

Sec. 2A-1. Declaration of policy and legislative intent.

It is hereby declared to be the policy of Montgomery County, Maryland, to provide for and ensure the realization of administrative due process with respect to specified appeals and contested matters which are subject to hearings before enumerated boards, commissions, offices and other administrative agencies performing quasi-judicial functions; and to provide where feasible, uniformity in procedures and regulations governing the processing of administrative appeals and other matters which require administrative and/or quasi-judicial hearings. It is the intent of the County Council to protect those legal rights afforded to affected parties who utilize and are subject to the administrative hearing processes established by the laws and ordinances of the County.

Sec. 2A-2. Applicability.

This Chapter governs the following administrative appeals and proceedings and applies equally when a hearing is conducted by a hearing examiner or another designated official.

(a) Complaints and actions involving discriminatory acts or practices prohibited under Article I of Chapter 27, as amended, for which hearings are provided or required by that chapter before the Montgomery County Commission on Human Relations or specified panels of said commission.

(b) Complaints and actions involving acts or practices prohibited by Chapter 29, as amended, for which hearings are provided or required by that Chapter before the Montgomery County Landlord-Tenant Commission; fact-finding hearings conducted pursuant to subsection (c) of Section 29-58 not being subject to the provisions of this Chapter.

(c) Appeals, grievances and complaints filed pursuant to Chapter 33, as amended, for which hearings are provided or required by that Chapter before the Montgomery County Merit System Protection Board.

(d) Appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in Section 2-112, Article V, Chapter 2, as amended, or the Montgomery County zoning ordinance or any other law, ordinance or regulation providing for an appeal to said board from an adverse governmental action.

(e) Complaints and actions filed with or by the Department of Housing and Community Affairs under Section 11-4 when a hearing is required or provided before a cease and desist order is issued.

(f) Appeals and complaints filed under Chapter 5, when a hearing is required or allowed by that Chapter before the Animal Matters Hearing Board.

(g) Such other hearings as hereinafter provided for by law or executive regulations which are specifically designated as being governed hereby. In this regard, the County Executive is hereby authorized to add or delete additional quasi-judicial authorities from time to time by executive regulation adopted under method (2) of section 2A-15 of this Code.

Sec. 2A-3. Conflicts of laws; interpretations.

(a) Where any provision of this article conflicts with a substantive provision of an act pertaining to a particular agency, the latter shall prevail.

(b) The provisions of this article are not intended to confer different or additional powers or jurisdiction on hearing authorities governed hereby; in this regard, this article shall be construed to be procedural rather than substantive.

(c) The provisions set forth herein shall prevail over any agency rule of procedure and in the event of conflict, the latter shall be amended to conform with this article; provided, however, that nothing herein shall be construed to limit or restrict a hearing authority from adopting additional rules of procedure as will implement this article and the substantive provisions under which it operates so long as they are not in conflict with this article.

(d) No action taken hereunder shall be declared invalid on the basis or procedural irregularities absent a finding of a denial of substantive due process. Substantial compliance with this article shall be sufficient.

Sec. 2A-4. Definitions.

The following words and phrases have the following meanings except when otherwise indicated in this Article.

Hearing authority: The Commission on Human Relations or a designated panel thereof; the Merit System Protection Board; the County Board of Appeals; the Landlord-Tenant Commission, the Director of the Department of Housing and Community Affairs; the Animal Matters Hearing Board; or a hearing examiner or official designated or appointed to conduct those hearings listed in Section 2A-2.

Charging party: Any person, business entity, organization or agency who properly files a charging document with a "hearing authority" seeking administrative relief.

Charging document: Any petition, complaint, appeal or grievance.

Responding party: Any person, business entity, organization or agency who is notified to defend or substantiate their actions or activities before a "hearing authority."

Sec. 2A-5. Initiation of hearing process.

Any proceeding governed by this article as specified in section 2A-2 shall be initiated by filing a charging document in writing with the office of the hearing authority on forms provided therefor. Such forms shall include or be accompanied by a written statement which may include: A description of the nature and specifics of the allegation together with reference to sections of applicable laws, ordinances or regulations, if known, which are alleged to have been violated or relied upon. The statement shall contain the nature of the relief requested and if applicable the names and addresses of the person, persons, business entity or organization or agency alleged to have committed any violation or undertaken any action which is the subject of the proceedings governed by this article. The statement may be accompanied by supporting documentation.

Sec. 2A-6. Notice of hearing.

In any administrative proceeding in which a hearing is to be held if ordered by a hearing authority, reasonable notice thereof shall be given to all parties not less than thirty (30) days before the hearing. The hearing authority shall give such notice to the charging and responding party in writing either by certified mail or by personal service at the addresses of parties as indicated in the charging document or as otherwise determined. In the event a party cannot be served after diligent and reasonable efforts have been made to locate the party, an affidavit of attempt to make service shall be filed in the record. The written notice shall contain the following information:

(a) A copy of the charging document.
(b) Time, place and date of hearing.
(c) That the parties may be represented by counsel or represent themselves.
(d) That the parties have the opportunity to present witnesses, cross-examine witnesses and present supporting documentation.
(e) That there are pre-hearing procedure requirements as set forth in section 2A-7 hereof.
(f) That the parties may request a continuance of the hearing by written request if made not less than five (5) days prior to the date of hearing.
(g) That a verbatim record and transcript of the hearing will be made where said record and transcript is required by law; or, in the alternative, that any party may request that such record of the transcription be made at his or her expense.
(h) That there is a right, subject to the provisions of the state public information law, to inspect and copy at the requesting party's own expense documents of any party, administrative authority or investigating governmental agency involved where such inspection is not otherwise prohibited by law.

Sec. 2A-7. Pre-hearing procedures.

(a) Submissions.

(1) In any case in which the Montgomery County government, or a department, office or agency thereof is a party, it shall submit to the hearing authority no later than twenty (20) days prior to the date set for the hearing the following information in regard to its case:

A. All supporting documents which are relied upon at the hearing, including investigative reports, or portions thereof. The hearing authority may in its discretion exclude from evidence any materials or documents not included in the pre-hearing submission.

B. List of names and addresses of all its prospective witnesses, together with summaries of their expected testimony.

C. List of names and addresses of any persons requested to be summoned by the hearing authority and any documents or records requested to be subpoenaed for the hearing.

D. Estimate of time to present case. In addition, the hearing authority, in its discretion may require any party to submit no later than ten (10) days prior to the date set for hearing any part of or all of the information required by subsection (a)(1) above.

(2) The original of all pre-hearing submissions shall be filed with the hearing authority and a copy thereof served upon parties and/or counsel of record.

(3) The information submitted in compliance with this section shall be construed as an intent only to submit such information or witnesses and no party shall be bound to introduce the same at the hearings.

(4) Requests for permission at the time of the hearing or prior thereto to submit new witnesses or new or supplemental material, not contained in a pre-hearing statement and subsequent to the time limits herein specified, may be granted by the hearing authority only upon good cause shown, and may be cause for a postponement or continuance of the hearing or a decision to leave the record open for a specified time to receive rebuttal evidence. Nothing herein shall interfere with the right to offer rebuttal evidence.

(b) **Discovery.** Subject to the provisions of the state public information law:

(1) Any party shall have the right to review at reasonable hours and locations and to copy at its own expense documents, statements or other investigative reports or portions thereof pertaining to the charging document to the extent that they will be relied upon at the hearing or to question the charging party or agency personnel at reasonable times on matters relevant to the appeal, provided such discovery is not otherwise precluded by law.

(2) No investigative agency involved in the complaint or proceeding shall unreasonably refuse to any party to a hearing access to files and personnel connected with any matter relevant to the complaint.

(3) The provisions contained herein shall not infringe upon any attorney-client privilege and shall not include the work product of counsel to any party to the proceedings.

(4) Where it appears that a party possesses information or evidence necessary or helpful in developing a complete factual picture of a case, a hearing authority may order such party to answer interrogatories or submit itself or its witnesses to depositions upon its own motion or for good cause shown by any other party. Failure of a party to submit to ordered discovery may be cause for entry of a default judgment against the offending party or such other equitable sanction as the hearing authority may deem appropriate and just.

(c) **Motions.** Any motion seeking determination by the hearing authority of any preliminary matter including, but not limited to, motions for continuance, motions to amend a charging document or other submissions to the hearing authority, motions to compel discovery and motions to quash subpoenas shall be made promptly; however, nothing herein shall preclude the hearing authority, on its own motion, from reaching a determination on any preliminary matter as the interests of justice may require without a hearing.

(d) **Restrictions on data.** Unless a matter has been formally certified for hearing by the hearing authority, government documents or records shall not be subject to these provisions. In the event a matter is certified for hearing by the hearing authority, any documents or records not to be used at the hearing shall not be subject to the provisions of this chapter. Further, any matter or materials which are designated by law as confidential shall not be released without a waiver of the parties to the confidentiality.

Sec. 2A-8. Hearings.

(a) **Time and place.** The hearing for the purpose of the taking of evidence upon a contested matter shall be held at such time and place as designated in the notices therefor, except for continued hearings. All such hearings shall be public except where otherwise ordered by the hearing authority or provided by law.

(b) Official record.

(1) The hearing authority must prepare, maintain and supervise the custody of an official record in each case. The record must include testimony, exhibits and verbatim transcript, if any, submitted during the hearing and at other times the record is open to receive evidence. Documentary evidence may be received in the form of copies, excerpts, photographic reproductions or by incorporation by reference. The hearing authority must make the official record available for inspection to all affected persons before any hearing.

(2) a. This paragraph applies to any ex parte or private communication, written or oral, received by a member of a hearing authority if:

(i) the communication relates to a contested matter before the hearing authority;

(ii) all appellate rights regarding the contested matter have not been exhausted; and

(iii) the hearing authority is required by law to make a decision on the matter based on the record before it.

b. This paragraph does not apply to:

(i) legal or technical advice rendered by government agency staff or an attorney for the County at the request of the hearing authority;

(ii) any communication about the status or procedure of a pending matter or;

(iii) any communication between members of the hearing authority.

c. If a member of a hearing authority receives an oral ex parte or private communication, that member must reduce the substance of the communication to writing within a reasonable time after receipt of the communication.

d. If a final administrative decision has not been made prior to receipt of the ex parte or private conversation, the hearing authority must send a written notice to all parties that discloses the contents of the communication and states whether the hearing authority will consider the communication as a basis for its decision under subparagraph e.

e. The hearing authority must include the ex parte or private communication in the record and may:

(i) consider the communication as a basis for its decision after giving all parties an opportunity to respond to the communication; or

(ii) decide the matter if the hearing authority expressly finds that it has not considered the communication as a basis for its decision.

f. The substance of an ex parte or private communication received after a final administrative decision and before appellate rights have been exhausted must be maintained in the case file and, in the event of any remand, treated in accordance with all other provisions of this paragraph.

(3) The hearing authority may seek additional evidence if the evidence is included as part of the record and the parties are given due notice and opportunity to respond.

(c) **Subpoena power.** The hearing authority shall have the power to issue subpoenas enforceable by injunction by the party requesting same or by the County itself, in a court of competent jurisdiction, to compel the attendance of witnesses and require the production by them of books, papers, documents and other materials relevant to any case under consideration. Subpoenas may be served by certified mail, by private process server designated by the hearing authority or by anyone who could lawfully serve said subpoena in a judicial proceeding of a civil nature.

(d) **Burden of going forward with the evidence.** The charging party shall have the burden of going forward with the production of evidence at the hearing before the hearing authority; provided, however, where a governmental agency or an administrative authority is a party, such agency or administrative authority shall have the burden of going forward with the production of evidence at the hearing before the hearing authority. Such evidence shall be competent, material and relevant to all matters at issue and relief requested.

(e) **Evidence.** The hearing authority may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence which appears to be reliable in nature. It shall give effect to the rules of privilege recognized by law. It may exclude incompetent, unreliable, irrelevant or unduly repetitious evidence, or produce evidence at its own request. The hearing authority may take official notice of commonly cognizable facts, facts within its particular realm of administrative expertise and documents or matters of public record. Parties shall be notified of matter and material so noticed while the record in the case is open and shall be afforded an opportunity to contest the facts so noticed.

(f) **Cross-examination.** Every party shall have the right of reasonable cross-examination of witnesses who testify, and shall have the right, upon request, to submit rebuttal evidence. Repetitious questions and examination on irrelevant matters shall not be permitted. Cross-examination shall be subject to reasonable regulation by the hearing authority who is authorized to require the designation of specific persons to conduct cross-examination on behalf of other individuals.

(g) **Right to counsel.** In any case governed by the procedures established in this chapter, the parties have the right to be represented by themselves or by legal counsel of their choice. The appearance of counsel shall be entered and the hearing authority shall be notified in writing expeditiously following counsel's retention. All parties of record shall be notified simultaneously with the hearing authority.

(h) **Powers of the hearing authority.** In addition to any other power granted by this article, a hearing authority is empowered:

(1) To administer oaths and affirmations.

(2) To grant or deny requests for subpoenas or issue subpoenas on its own initiative and to call independent witnesses or seek additional evidence to be made part of the record as justice may require.

(3) To rule on petitions to quash subpoenas.

(4) To rule upon motions, offers of proof and receive relevant and probative evidence, to exclude incompetent, irrelevant, immaterial or unduly repetitious evidence and to give effect to the rules of privilege recognized by law.

(5) To regulate the course of the hearing and to allow the record in hearings to remain open.

(6) To hold conferences for simplification of the issues.

(7) To dispose of procedural requests or similar matters including motions for continuance, to amend a pre-hearing statement and to order hearings reopened, consolidated or grant rehearings.

(8) To call, examine and cross-examine witnesses and to obtain and introduce into the record documentary or other evidence.

(9) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof.

(10) To take any other action authorized by this article or necessary to a fair disposition of the case.

(11) To accept evidence by stipulation of facts which may be introduced at any time.

(12) To schedule, suspend or continue hearings to a time and date certain with notification to all parties.

(13) Upon its own motion and at the request of an affected party to order that witnesses other than a party be excluded from the hearing room until called to testify.

(14) To order that statements of witnesses who are beyond the jurisdiction of the hearing authority or who for sufficient reason are unavailable to testify be taken by written interrogatories or deposition made under oath. The original of any interrogatories, answers thereto or depositions must be filed in the case file of the proceedings.

(15) To promulgate rules for witness reimbursement of expenses actually incurred by reason of such witness's required presence at a hearing or if such witness is a County employee promulgate rules for the extension of appropriate leave to said witnesses.

(16) To permit additional parties to participate in the proceedings as justice may require.

(i) Hearing conduct and procedure.

(1) Unless otherwise provided by law:

a. A quorum of the hearing authority must be present to conduct a hearing. A majority of the persons appointed to any hearing authority shall constitute a quorum. The quorum requirements shall not apply to hearings conducted by a hearing examiner or hearing officer. A ruling of the presiding officer shall stand unless overruled by a majority vote of the members of the hearing authority present and participating.

b. All hearings shall be de novo before the hearing authority.

c. The members of any hearing authority shall be subject to disqualification for conflict of interest, and suggestions for disqualification of any member may be made on petition of any party.

(2) The presiding officer of the hearing authority shall preside at hearings and have full authority at all times to maintain orderly procedure and restrict the hearing to relevant and material facts. A ruling of the presiding officer shall stand unless overruled by a majority vote of the members of the hearing authority, present and participating.

(3) All exhibits accepted shall be marked and held in the hearing file. Those exhibits whose admission is rejected shall either be returned to the offering party or retained in the file with appropriate notations reflecting that the material was rejected as an exhibit.

(4) Rulings on motions, petitions and objections made during the course of a hearing shall be ruled on as received or as soon thereafter as practicable.

(5) The ordinary, but not mandatory, order or procedure for the conduct of the hearing and the presentation of evidence is as follows, subject to subsection (d) of section 2A-6 or waiver or such reasonable changes as may be ordered by the hearing authority or by law:

a. Disposition of all outstanding preliminary motions and preliminary matters.

b. Opening statement of parties.

c. Presentation of factual case of appellant: cross-examination of all witnesses thereof.

d. Presentation of factual case of responding party: cross-examination of witnesses thereof.

e. Presentation of factual case of other interested persons: cross-examination of witnesses thereof.

f. Rebuttal evidence of appellant: cross-examination of witnesses thereof.

g. Surrebuttal evidence of responding party: cross-examination of witnesses thereof.

h. Closing arguments.

(j) **Sanctions.** The hearing authority may impose sanctions against parties and witnesses for failure to abide by the provisions of this article, or for unexcused delays or obstructions to the pre-hearing and hearing process. Such sanctions may include suspension or continuance of scheduled hearings, dismissals of actions, denial of admission of documents and exhibits and admission of matters as adverse to a defaulting party.

In addition to any other sanction, the hearing authority is authorized to assess any offending party the full cost of verbatim recording and transcription of any hearing delayed or obstructed by such party; and further to assess such party the cost of re-advertisement, if such notification is either required by law or necessary in the discretion of the hearing authority, to give adequate notice to interested or affected parties.

Sec. 2A-9. Emergency hearings.

Where the ordinary processing of any appeal may, due to time constraints, cause injury to any party, the hearing authority may for good cause grant an emergency hearing on its own motion or upon good cause shown by any party thereto. Where an emergency hearing is ordered by a hearing authority, it may suspend or alter any provisions of this article necessary to avert such undue injury; provided, however, that in such cases, the hearing authority shall notify all parties of the operation of this section, and make every reasonable effort to provide substantive due process of law to all parties. All hearings pursuant to section 2A-2(c) of this chapter involving the removal or suspension of a County merit system employee and all hearings pursuant to chapter 41A, rent supplement and assistance program, shall be governed by this section.

Sec. 2A-10. Decisions.

(a) **Content.** All recommendations and/or decisions of the hearing authority except rulings on preliminary matters or on motions or objections shall be in writing, based on evidence of record and shall contain findings of fact, conclusions of law and an appropriate decision and order; provided, however, any decision stipulated or consented to by the parties need only be reflected by an appropriate written order or consent decree.

(b) **Evidence required.** All recommendations and/or decisions of the hearing authority shall be based upon and supported by a preponderance of the evidence of record.

(c) **Voting requirements.** Any decision rendered in conformance with the provisions of this article must have the concurrence of a majority of the voting members of the decision-making authority unless a greater number of votes are required by law. Members of the hearing authority absent during a hearing may vote upon a matter upon written certification that they have read the transcripts and reviewed the evidence of record.

Failure to achieve the necessary affirmative votes shall act as a denial of the relief requested by the charging party by operation of law. No written opinion in this instance shall be required; provided, however, individual members of the hearing authority may file written reasons supporting their respective positions.

(d) **Time requirements for decisions.** All recommendations and/or decisions of the hearing authority shall be rendered within forty-five (45) days after the closing of the record in the case; provided, however, the hearing authority on its own motion may extend the time for recommendation and/or decision for an additional period upon written notification to all parties.

(e) **Notification of recommendation and/or decision.** All recommendations and/or decisions of the hearing authority shall be released and sent simultaneously to all parties of record and their counsel.

(f) **Rehearing and reconsideration.** Where otherwise permitted by law, any request for rehearing or reconsideration shall be filed within ten (10) days from a final decision. Thereafter a rehearing or reconsideration may be approved only in the case of fraud, mistake or irregularity. Any request for rehearing or reconsideration shall be in writing, containing supporting reasons therefor, with copies served on all parties of record. Any decision on a request for rehearing or reconsideration not granted within ten (10) days following receipt of the request therefor in accord with subsection (c) of this section shall be deemed denied. Any request for rehearing or reconsideration shall stay the time for any administrative appeal pursuant to judicial review until such time as the request is denied or in the event such request is granted such further time or a subsequent decision is rendered. A request for reconsideration or rehearing shall not stay the operation of any order unless the hearing authority so states.

(g) **Informal disposition.** Where appropriate to the nature of the proceedings and the governing laws, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

Sec. 2A-11. Judicial review.

Any party aggrieved by a final decision in a case governed by this article, whether such decision is affirmative or negative in form, may appeal said decision to the circuit court for Montgomery County, Maryland, in accord with the provisions of the Maryland Rules of Procedure governing administrative appeals. Said court shall have the power to affirm, reverse or modify the decision or remand the case for further proceedings as justice may require. The filing of such appeal shall not stay the order of the hearing authority. Any party to the proceeding in the circuit court may appeal from such decision to the appellate courts of Maryland pursuant to applicable provisions of the Maryland Rules of Procedure.

QUANTITATIVE EVALUATION SYSTEM III

MANUAL OF PROCEDURES FOR ADMINISTERING THE SYSTEM

MONTGOMERY COUNTY GOVERNMENT

APPROVED: CHIEF ADMINISTRATIVE OFFICER

DATE: *02/14/06*

Revised: February 10, 2006

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QUANTITATIVE EVALUATION SYSTEM III

(QES Ill)

ADMINISTRATIVE MANUAL

I. INTRODUCTION

This manual for administering Montgomery County Government's Quantitative · Evaluation System III (QES III) sets forth procedures for applying the system, and provides the factor level definitions, guides, applications, factor points, and point-to-grade conversion table. The manual is intended to serve as an operational guide for the Office of Human Resources staff, and for others who may require or desire a detailed understanding of the system and how it is applied.

The QES III is a quantitative, point-factor job evaluation system for determining the grade of occupational classes. The system contains ten factors; nine factors are common to all jobs and one is used to measure supervisory responsibilities. Each factor is divided into levels which define the various degrees of the factor. Points are assigned to each level, which increase in value for successively higher levels of the factor. Classes are evaluated by determining the level of each factor appropriate to the class, recording the corresponding point value, and adding all points to arrive at a total point value for the class. The total point value is converted to a grade in a salary schedule by referring to a Point-to-Grade Conversion Table.

The County Government's original QES was developed in 1980 by Hallcrest-Craver, Incorporated. In 1986, in response to pay equity concerns, the consulting firm of Hubbard & Revo-Cohen, Incorporated, was hired by the County to conduct a diagnostic study of QES and recommend revisions and improvements to the system. As a result of the diagnostic study, the County Executive directed in May, 1986, that a Senior Management Job Evaluation Task Force and an Employee Job Evaluation Task Force review the Consultants' recommendations and make appropriate modifications to QES; some additional modifications were later suggested by the consultants. As a result, QES was revised to incorporate these recommendations and was approved by the Chief Administrative Officer for application by a consultant to the County's occupational classes. After completion of this effort, further revisions to the system were made at the recommendation of the consultant.

Principal modifications made in 1986 to the original QES which resulted in QES II included the following:

- A new job evaluation factor - Public Service/Assistance - has been added to recognize and credit direct "hands-on" care or assistance to members of the public, who may be called "clients." The Contacts factor was then revised to distinguish the differences between these two factors and ensure against double-crediting. (Specifically, credit for interactions with others which are of a similar nature, purpose and level may only be credited under one factor- either Contacts or Public Service/Assistance.
- Revision to the Working Conditions (Working Environment and Hazards) and Physical
- Demands factors to provide varying credit for occasional occurrence of the factor (greater than 25% of the time but less than 50% of the time) and recurring occurrence of the factor (50% or more of the time);
    - Revision to language of Working Conditions (Working Environment and Hazards) and Physical Demands factors to recognize previously unspecified job characteristics of female-dominated classes. For example:
        - Working Environment includes reference to exposure to human/animal waste or bodily fluids and the requirement to respond to life-threatening emergencies;
        - Hazards includes reference to abusive, aggressive and unpredictable behavior from clients or the public and exposure to contagious disease;
        - Physical Demands credits physical dexterity, including fine-finger movement required in production-oriented operation of keyboard devices.
- Revision to the Supervision Exercised factor to credit supervision of two or more regularly scheduled full-time workers or the equivalent.

As a result, QES II met the needs of Montgomery County Government for a single, bias- free job evaluation system that could be applied fairly to all of the County Government's merit system occupational classes. To help achieve this objective, the factors and definitions were carefully designed to eliminate, to the extent possible, ambiguity and potential bias in it language and terms. As a further aid, each factor level definition was accompanied by guide and application statements that explained or illustrated how the factor was to be applied.

In 2004, the Office of Human Resources determined that QES II needed to be reviewed and updated. A consulting firm, Analytic Solutions, was hired to conduct this review and to develop QES III. This revision of QES II is intended to bring the system up to date by addressing obsolete references and terms, and to enhance its usefulness by removing ambiguities, sharpening its concepts and language, and to improve its internal structure by ensuring that factor concepts progress logically from level to level. No change has been made in the point values assigned to the factors or in the Point to Grade Conversion Table. Careful checking of the revised factor definitions has found no change in the way they have been applied in the past, thus ensuring that its continued use will bring the same valid and reliable results.

Job evaluation is not an exact science. QES III is an evaluation tool that provides a systematic guide to judgment, but it is no substitute for thorough job knowledge and job analysis by trained evaluators who have both good job documentation and knowledge of a wide variety of occupational groups. To the extent that the system produces results which are accepted as reasonable and sound, the system may be said to be valid. To the extent that the system produces consistent results in the hands of different evaluators who are trained job analysts, at different times, it will be reliable. This manual provides instructions and guides to help ensure that these objectives will be achieved.

A. COVERAGE

QES III is applied to merit system classes in the Montgomery County Government which are subject to the classification authority of the Chief Administrative Officer. Some classes or individual positions may be exempt from coverage in accordance with provisions of the County Charter, Merit System

Law and Personnel Regulations, or collective bargaining agreements.

B. AUTHORITY

The adoption and implementation of QES III is authorized by Section 9-3(C) of the Personnel Regulations.

C. RESPONSIBILITY

Responsibility for administering QES III has been delegated to the Director, Office of Human Resources.

II. CLASSIFICATION PROCESS

The classification process consists of the following two separate activities:

1. The evaluation of occupational classes and their assignment to pay grades on a salary schedule, which is accomplished through application of the quantitative job evaluation system as part of the occupational class study process or when a new occupational class is established; and
2. The assignment or classification of individual positions to occupational classes, including new positions, which is accomplished through individual position classification studies and reference to class specifications. QES (all versions) is not designed for and is not used for individual position evaluations.

The following classification terms should be understood and properly applied to ensure correct results with the system:

Position A position is a set of duties and responsibilities assigned or delegated by management to be performed by one individual.

Occupational Class A class is a single stand-alone position, or two or more positions, which are similar with respect to the nature and level of duties and responsibilities. Wherever possible, the classification plan attempts to

define broad "generic" classes, to facilitate recruitment and employee mobility.

Occupational Series A series consists of two or more classes similar as to type of work performed, but differing as to level of difficulty and responsibility. The different levels within an occupational series constitute the normal lines of promotion within an occupation, including proficiency levels, which are provided as learning and developmental classes leading to a full-performance level.

Grade A grade designates a salary range on a County Government salary schedule which applies to classes of positions. Although different with respect to kinds of work, classes assigned to the same grade are considered equivalent in value as determined by their evaluations under QES III.

Job Analysis Job analysis is the systematic study of a position or class. When applied to position classification, job analysis is concerned with a position's duties and responsibilities, reporting relationships, skill requirements, working conditions, and other elements that govern its allocation to a particular class. It involves the collection and comparative analysis of facts about positions to identify their principal characteristics. When these meet existing classification standards (class specifications), positions are allocated to established classes in the organization's classification plan, taking the titles and salary grades established for other positions in the same classes.

When a position does not fit an established class, a new class is created; new classes must be evaluated using QES III to determine their salary grades.

When applied to the process of evaluation of an occupational class, job analysis is concerned with comparing the work of a class to the criteria established for determining the relative value of classes. It involves the application of defined evaluation factors to discrete elements or aspects of the work. The factor levels that match most closely are assigned to the class and the individual factor levels totaled to obtain a total point score for the class. This score provides an objective measure of the value of each class, which can then be converted to a salary grade using an approved point-to-grade conversion table.

Class Specification

Class specifications are written statements describing the duties, responsibilities, and qualification requirements of a class of positions. They establish a single title to be used for all positions in the class, define the principal characteristics of the work, provide examples of duties, list the knowledges, skills and abilities required to perform the work, and state the minimum qualifications for initial appointment or promotion to positions in the class.

Similar to previous versions of QES, QES III is designed to evaluate the skill, effort, responsibility and working conditions of occupational classes and results in the assignment of those classes to grades on a salary schedule. The ten factors of QES III (unchanged from QES II) are:

1. Knowledge Required
2. Supervisory Controls
3. Guidelines
4. Complexity
5. Scope and Effect
6. Contacts
7. Public Service/Assistance
8. Working Conditions
   A. Working Environment
   B. Hazards
9. Physical Demands
10. Supervision Exercised
    A. Nature of Work Direction
    B. Personnel Authority
    C. Number Supervised

Definitions describing the various levels for each of the factors follow later in this manual. Accompanying the factor level definitions is guide material describing the intent of each factor definition and examples of specific applications to different kinds of work.

III PROCEDURES FOR EVALUATION OF OCCUPATIONAL CLASSES

A. OBTAINING PROPER DOCUMENTATION OF FACTOR DATA

Current and accurate data on each of the job evaluation factors must be obtained before a class can be evaluated. For most purposes, data can be in the form of a current class specification and/or other written documentation of the work performed. In addition, information obtained from audits and supervisory interviews, organization charts, functional statements, and other pertinent sources such as budget documents is consulted during the evaluation.

B. DETERMINING PRIMARY AND SUBSTANTIAL DUTY

The *primary duty* is defined as those tasks, duties and activities which together

constitute an identifiable assignment that represents at least 50% of the work in a class. The primary duty is the normal basis for evaluation. *Substantial duty* is defined as an assignment which comprises at least 25% of the work of a class. Such assignments may be considered as the basis for evaluation when such duties are paramount in influence and weight, are regularly assigned on a reasonably frequent basis, and are not of an emergency, incidental, or temporary nature.

C. ASSIGNING FACTOR LEVELS

As stated above, the primary and substantial duties of each occupational class are the basis for the QES III evaluation. Each of the factors is evaluated separately. When there is variation within a class with respect to duties, responsibilities, working conditions, or other requirements of the class, the factor level that best evaluates the work of the class is awarded.

A factor level awarded must be fully equivalent to the overall intent of the definition. The guide and application material that accompanies the factor level definitions aids in discerning the overall intent of that factor level and in distinguishing between factor levels. A factor must be present in a class on a regular and recurring basis in order to be credited; however, in unusual cases a factor level is an absolute and recurring requirement of the job which is documented in the class specification and/or is a bona fide occupational qualification for recruitment. In such cases, the factor level award may be made regardless of the time spent in the activity.

D. DETERMINING FREQUENCY

Frequency of occurrence must be determined for the following factors: Factor 8: Working Conditions (both subfactors 8A and 8B) Factor 9: Physical Demands Frequency of occurrence refers to actual occurrence of the work characteristic or requirement and is determined as follows:

Regularly Recurring

The factor is present in the work at least 50 percent of the work time (based

on an 8-hour work day, 40-hour work week). Regularly may mean hourly, daily, or weekly; it implies sustained action, or actions repeated at frequent intervals.

Occasionally Recurring

The factor is present in the work at least 25 percent but less than 50 percent of the work time (based on an 8-hour work day, 40-hour work week). It may occur periodically such as monthly, quarterly, or annually, or at irregular intervals. Note, however, that in unusual cases, if the factor is an absolute and recurring requirement of the job which is documented in the class specification, and/or is a bona fide occupational qualification for recruitment, "occasional" credit may be given regardless of the time spent.

The letters "R" and "0" are used to designate the respective point values for Regularly Recurring and Occasionally Recurring.

E. EVALUATING SUPERVISORY RESPONSIBILITIES

The Supervision Exercised factor is designed to avoid overlap with other factors, particularly Guidelines, Complexity, and Scope and Effect. Consequently, the definitions must be interpreted carefully to ensure that only the defined aspects of supervision are evaluated. Credit for policies and procedures, complexity of work, and its scope and effect, are recognized under other factors.

The Supervision Exercised factor is divided into three subfactors: Nature of Work Direction, Personnel Authority, and Number Supervised. This factor is applied to classes the majority of whose positions have supervisory responsibility for 2 or more regularly scheduled full-time workers or the equivalent.

1. Regularly Assigned Duties

Positions in a supervisory class must regularly be assigned supervisory responsibilities on a continuing basis, as distinct from

project leaders who head temporary groups formed to perform a specific assignment of limited duration.

2. "People" Supervision Distinguished from Functional Supervision

The Supervision Exercised factor may only be applied to classes which directly supervise the work of other regularly assigned workers. Classes of positions which have responsibility for the proper operation of a process, procedure, system, or function, or for work of contractors, are considered to have functional supervision. Functional supervision is carried out through such activities as designing, monitoring, and reviewing, rather than directly supervising the performance of work. This type of supervision is recognized under the factors of Complexity and Scope and Effect, and does not constitute supervision of employees.

3. Crediting Supervision Exercised for Deputies and Full Assistants

Deputies to department heads and full assistants who share in supervising the entire work effort of the organization receive supervisory credit as follows:

1) Deputies to department heads receive level fourof Work Direction.
2) Deputies and full assistants receive level three of Personnel Authority. Level four of this subfactor is reserved for department or agency heads, who have final authority and responsibility for personnel actions affecting their employees.

F. ASSIGNING POINT VALVES

Only the specific point values provided for each factor level may be used. Partial values, such as one-third, one-half, etc., may not be used in an attempt to give partial credit for a factor. The factor must be "fully equivalent" to the overall intent of the factor definition; this precludes the award of partial credit and thus the use of any partial point values.

G. POINT-TO-GRADE CONVERSION TABLE

The following table is used to convert total evaluation points for a class into County pay grades.

Point-to-Grade Conversion Table

Grade	Points		
5	0	–	920
6	921	–	961
7	962	–	1003
8	1004	–	1047
9	1048	–	1093
10	1094	–	1141
11	1142	–	1191
12	1192	–	1244
13	1245	–	1298
14	1299	–	1355
15	1356	–	1415
16	1416	–	1477
17	1478	–	1542
18	1543	–	1609

19	1610	–	1680
20	1681	–	1754
21	1755	–	1831
22	1832	–	1911
23	1912	–	1995
24	1996	–	2083
25	2084	–	2174
26	2175	–	2270
27	2271	–	2369
28	2370	–	2473
29	2474	–	2582
30	2583	–	2695
31	2696	–	2814
32	2815	–	2937
33	2938	–	3066
34	3067	–	3201
35	3202	–	3341
36	3342	–	3488
37	3489	–	3641
38	3642	–	3801
39	3802	–	3968

IV. QUANTITATIVE EVALUATION SYSTEM III - DEFINITIONS

The Factor-Point Table (unchanged from QES II) and the detailed factor and level definitions for this revised version of the Montgomery County Government's QES (QES III) are

presented on the following pages. Also presented are guides and illustrative applications for the different levels of each factor.

QES III
FACTOR DEFINITIONS, GUIDES AND APPLICATIONS

FACTOR 1: KNOWLEDGE REQUIRED

This factor measures the nature and extent of information or facts, or grasp of a field of work (e.g., steps, procedures, practices, rules, policies, theories, principles and concepts) and the nature and extent of the skills needed to apply those knowledges. Knowledge may be acquired through formal education, self-study or experience. To be awarded a level under this factor, a knowledge, skill and ability must actually be required and applied in the work.

Level (Points)	Definition	Guide/Application
1 (255)	Ability to follow oral instructions or demonstrations. OR Ability to perform unskilled manual tasks. OR Ability to perform specific tasks of a step by step nature.	**Guide** Intended to cover work that can be learned within a few hours or days and which requires no previous training or experience. Applies to trainees in support type occupations who typically perform tasks of a step by step nature. **Application** Sort, log, tally, or compare written materials or items: file materials alphabetically, numerically, or by date; do basic arithmetic, deliver materials. Operate photocopiers and microfilm readers; operate printers and keyboard devices for completing forms and producing short documents. Perform custodial cleaning of public buildings and facilities using hand, power operated, and commercial cleaning equipment. Control vehicular traffic and pedestrian movement at school and Church crossings.
2 (295)	Knowledge of basic or commonly used rules, procedures, methods, or operations to perform limited, recurring assignments. OR Ability to operate standard keyboard devices to perform limited assignments where speed is not essential. OR Ability to perform manual work requiring training and practice.	**Guide** Intended to cover work that requires limited training or prior experience. The work consists of a series of related steps, tasks or procedures that typically comprise a part of a process. **Application** Compile, proof, and check written materials or items; file materials by readily recognized subject matter; receive and route visitors to appropriate offices; calculate discounts and extensions; issue or sell standard stock items or merchandise. Operate keyboard devices to enter and retrieve data and to produce forms, letters, short correspondence and similar documents. Operate production-type copiers, duplicators, automatic mail processing equipment. Fuel vehicles; perform cleaning/custodial duties in garage and surrounding motor pool areas. Store, locate, and retrieve materials in a warehouse.

FACTOR 1: KNOWLEDGE REQUIRED (Continued)

Level (Points)	Definition	Guide/Application
3 (345)	Knowledge of a body of rules, procedures, methods, or operations that typically comprise a complete process to perform the full range of standard assignments and to perform the full range of standard assignments and to OR Knowledge of basic procedures in a technical field to perform limited assignments. OR Ability to operate common shop tools and equipment in performing limited and/or repetitive operations. OR Ability to perform manual work involving the use of basic trade or craft methods and procedures. OR Ability to operate specialized motorized equipment and heavily loaded vehicles that require training and practice. OR Knowledge of the basic concepts and purposes of the field of public safety to perform limited assignments in the field.	**Guide** Intended to cover work that requires job specific skills acquired through experience or through formal vocational training, during or after high school. High school diploma plus experience or considerable learning time on the job are typical requirements. **Application** Carry out varied office support work for a unit or a group of professionals/administrators; use office automation hardware and software to: • produce correspondence, reports, tables, spreadsheets and similar documents; • maintain operating and financial records and files; process transactions; • communicate and log communications with others; record appointments; maintain calendars; and format complicated documents. Identify and correct grammatical • and spelling errors; draft routine replies to correspondence; locate information and incorporate into correspondence and reports. • Obtain and verify information to process transactions including vendor claims, requisitions and purchase orders, tax bills, payments, license applications, • inspection reports, citations, and permit requests. Maintain databases by entering, editing, and updating data files; generate reports and documents from a database. Follow specific procedures or detailed instructions to complete tasks such as: • cataloging books; and ordering receiving, stocking, controlling and distributing equipment and supplies. • Skill to set up, operate and adjust dental equipment and perform dental radiography work. • Work as a helper or apprentice in plumbing, electricity, carpentry, HVAC, and auto body repair; perform rough carpentry, routine maintenance painting, simple masonry or minor automotive repairs. • Perform semi-skilled manual labor work in the maintenance and repair of roads and property; operate tractor mowers, air compressors, masonry saws, augers, pavement breakers and trenchers; cut, thread and ream pipe; install traffic signs and signposts. • Operate transit buses and trucks. • Perform basic security work involving patrolling, equipment monitoring, desk assignment, and parking detail; perform entry corrections work.

FACTOR 1: KNOWLEDGE REQUIRED (Continued)

Level (Points)	Definition	Guide/Application
4 (415)	Knowledge of an **extensive and specialized body** of rules, procedures, methods or operations, which typically comprise a complete system of procedures, to perform a wide variety of interrelated or nonstandard assignments and to resolve a wide range of problems. OR Practical knowledge of standard procedures in a technical field to perform work requiring an understanding of technical data or symbols, and/or to operate technical instruments. OR Ability to set up, operate and adjust specialized tools or equipment to perform standard operations. OR Knowledge of standard methods, procedures and practices of a trade or craft to perform a variety of less than full journey level assignments in the trade or craft. OR Ability to operate specialized motorized equipment requiring special training and extended experience. OR Knowledge of standard methods, procedures and rules of the field of public safety to perform varied assignments in accordance with standard practices of the occupation.	**Guide** Intended to cover work that requires job specific skills acquired through experience or through formal vocational training, during or after high school. High school diploma plus experience or considerable learning time on the job are typical requirements. **Application** Carry out varied office support work for a unit or a group of professionals/administrators; use office automation hardware and software to: • produce correspondence, reports, tables, spreadsheets and similar documents; • maintain operating and financial records and files; process transactions; • communicate and log communications with others; record appointments; maintain calendars; and format complicated documents. Identify and correct grammatical • and spelling errors; draft routine replies to correspondence; locate information and incorporate into correspondence and reports. • Obtain and verify information to process transactions including vendor claims, requisitions and purchase orders, tax bills, payments, license applications, • inspection reports, citations, and permit requests. Maintain databases by entering, editing, and updating data files; generate reports and documents from a database. Follow specific procedures or detailed instructions to complete tasks such as: • cataloging books; and ordering receiving, stocking, controlling and distributing equipment and supplies. • Skill to set up, operate and adjust dental equipment and perform dental radiography work. • Work as a helper or apprentice in plumbing, electricity, carpentry, HVAC, and auto body repair; perform rough carpentry, routine maintenance painting, simple masonry or minor automotive repairs. • Perform semi-skilled manual labor work in the maintenance and repair of roads and property; operate tractor mowers, air compressors, masonry saws, augers, pavement breakers and trenchers; cut, thread and ream pipe; install traffic signs and signposts. • Operate transit buses and trucks. • Perform basic security work involving patrolling, equipment monitoring, desk assignment, and parking detail; perform entry corrections work.

FACTOR 1: KNOWLEDGE REQUIRED (Continued)

Level (Points)	Definition	Guide/Application
5 (510)	Knowledge of an administrative system (office, stores, personnel. etc.) to perform assignments requiring an understanding of the basic principles and concepts of the field and its methods and procedures; assignments are characterized by analysis of factual matters that are readily apparent and the application of systems of rules or procedures. OR Knowledge of the principles and concepts of a field of work or study, and ability to apply these to well-defined situations or to perform introductory assignments in the field. OR Knowledge of the methods, procedures and practices of a technical field of work to carry out well-defined projects. OR Knowledge of the methods, procedures and practices of a trade or craft to lay out and complete projects. OR Knowledge of maintenance and operations methods, procedures and practices to perform or oversee complete projects. OR Knowledge of standard, methods, procedures, rules and practices of the field of public safety to carry out well-defined operations and to resolve problems.	**Guide** Intended to cover work which requires knowledge of a subject matter field that is normally acquired through extended learning at a college or university or through a combination of experience and post-high school education such as: paraprofessional work in accounting, library sciences, planning, information technology, and general administration; skilled work in technical, trades or craft occupations; and intern work in any professional or administrative field. Work typically requires comparing and evaluating data or information, interpreting results, and taking action or making decisions after considering alternatives. Work systems involve several separate operations which are often performed by different persons and that together make up a system of work. Workers are able to perform all aspects of the system and to identify and correct problems in the system and explain how the system operates to others. **Application** Plan, organize and direct support services for an organization or function requiring knowledge of the organization's operations, policies and procedures. Perform all steps necessary to complete an accounting function such as a billing process from auditing and posting original transactions, balancing and reconciling accounts, resolving discrepancies, preparing billings, and preparing related reports and statements. Manage liquor store operations. Perform limited assignments, operations or procedures designed to provide practice in and understanding of the basic principles, concepts and methods of a professional or administrative field. Apply knowledge of recreation methods, practices, procedures, regulations, precedents and policies in administering recreational activities and facilitating the delivery of program services within a defined area of one or more recreational programs. Design and draft entire plans and specifications for limited projects; collect and analyze data from tests, surveys, maps, plans, or other sources and draw conclusions; construct, maintain, diagnose and repair electronic equipment.

FACTOR 1: KNOWLEDGE REQUIRED (Continued)

Level (Points)	Definition	Guide/Application
6 (635)	Knowledge of the theories, principles, and concepts of a field of work or study, and ability to perform standard, recurring assignments in the field. OR Knowledge of technical concepts, methods and symbols and use of technical instruments to plan and carry out a full range of projects. OR Knowledge of maintenance and operations concepts, methods, procedures and practices to perform work involving the planning and implementation of policies, procedures and actions, methods to others. OR Knowledge of the methods, procedures, rules and practices of a specialized area in the field of public safety to perform a variety of standard and nonstandard assignments.	**Guide** Intended to cover work in a professional or administrative field that ordinarily requires a job-related college degree (e.g., accounting, business administration, nursing, engineering, planning, computer sciences) and some experience in the field; or completion of a postgraduate course of instruction leading to a Master's degree. The level is also appropriate for classes that require a non-specific college degree with experience in the field. The level may also apply to classes for which no formal degree requirement exists, but which require some experience in the field and require knowledge of work concepts, methods or techniques, acquired through experience and study that are equivalent to a college degree. **Application** Apply commonly used methods, procedures, and practices in an administrative or professional field of work to organize and analyze information, recommend appropriate correct standard problems, and explain well established procedures and systems. Apply knowledge of budgetary methods, procedures, and practices to tabulate, summarize and analyze preliminary budget data and to explain budget procedures to department agency representatives. Troubleshoot technology performance and operational problems of complex operating systems; Install, monitor, test, maintain, diagnose and repair components of a county-wide emergency communication system including state-of-the-art computer controlled radio transmitter and receiver controllers, communications and data switching systems, pagers, microwave communications systems, base stations, repair networks, audio systems, and emergency power generating equipment. Perform construction inspection and monitoring work of the full range of county building and highway construction projects, to ensure compliance with all applicable codes and regulations and timely and quality completion of projects. Plan, prepare cost estimates for, and manage a variety of facility renovation, remodeling, repair, maintenance and installation projects performed by skilled trade contractors or County employees. Coordinate all inmate focused activities and processes that occur within multiple and diverse posts within a correctional facility during an assigned shift; ensure inmates participate in treatment programs; serve as shift unit commander.

FACTOR 1: KNOWLEDGE REQUIRED (Continued)

Level (Points)	Definition	Guide/Application
7 (815)	Knowledge of the theories, principles and concepts of a field of work or study, and ability to perform a variety of difficult and complex work assignments that include ***unusual and nonstandard matter***s. OR Knowledge of technical concepts, methods and symbols to plan, design, coordinate and oversee large-scale technical projects or projects involving the development of new methods, approaches or procedures. OR Knowledge of maintenance and operations concepts, methods and practices to perform work involving the development of new methods, approaches or procedures. OR Knowledge of a wide range of methods, procedures, rules and practices of the field of public safety to perform difficult and complex work assignments.	**Guide**: Intended to cover work requiring full proficiency in a professional or administrative field, which typically consists of varied assignments embracing unusual, nonstandard and difficult matters within the field; or work requiring wide knowledge of many different aspects of a field in order to develop policy recommendations. **Application** Perform professional information systems technology work requiring expertise in specific software applications, programming languages, system hardware and/or emerging technology in order to determine requirements, and design, develop and implement components of new technology applications. Perform accounting/auditing work encompassing all or major parts of a financial system, including identifying problems and recommending appropriate solutions. Provide community health nursing services in all phases of health to individuals and their families. Review and analyze major legislative/budget programs and policies for the County Council. Perform design/construction project management work for major capital projects. Plan, organize and direct facilities and grounds maintenance services for a major center of County government facilities. Plan, oversee and resolve problems of fire suppression and emergency medical services for an assigned area. Plan, organize and direct a large section of a County correctional facility to include 24 hour responsibility for all activities within that section.

FACTOR 1: KNOWLEDGE REQUIRED (Continued)

Level (Points)	Definition	Guide/Application
8 (1055)	Mastery of a professional or administrative field or breadth of professional and program knowledge to: Make decisions or recommendations significantly changing, Interpreting or developing important public policies or programs. OR Apply experimental theories and new developments to problems not susceptible to treatment by accepted methods. OR Ability to plan, organize and direct administrative or professional activities involving the development and implementation of new programs, approaches and methods that affect many areas of the organization.	**Guide**: Intended to cover work requiring advanced knowledge and competency in a professional or administrative field or significant breadth of knowledge in several fields. Work typically consists of unusually difficult matters that cannot be resolved through conventional techniques or approaches, or which have far-reaching significance on major County programs. **Application** Represent the County Government in a specialized area of municipal law. Perform professional clinical psychologist work providing direct clinical services. Direct major administrative programs such as purchasing, employment, classification, and budget. Direct accounting, auditing, and revenue programs; direct major engineering programs or library services; advanced-level policy development and analysis work in support of the legislative process. Direct all programs and services at a County correctional facility.
9 (1400)	Mastery of a field of work or study, and ability to perform authoritative work in ***determining*** the nature of the functions, programs and services to be provided for major County programs. OR Comprehensive knowledge of a professional field requiring extended education, training and certification such as medicine to perform highly responsible work in the field.	**Guide**: Intended to cover work requiring exceptional grasp of a professional or administrative field, and which typically consists of highly technical and specialized matters requiring extended training and experience to master, or a broad range of subject matter, issues and policies which must be understood and dealt with. The work is critical to the success of essential County programs. **Application** Provide direct medical and psychiatric treatment services to clients Provide wide-ranging program guidance and staff assistance to the County Chief Administrative Officer. Direct major County health programs or legal services.

FACTOR 2: SUPERVISORY CONTROLS

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility, and the review of work. Controls are exercised by the supervisor in the way assignments are made, instructions are given to the employee, priorities and deadlines are set, and objectives and boundaries are defined. Responsibility of the employee depends upon the extent to which the employee is expected to develop the sequence and timing of various aspects of the work, to modify or recommend modification of instructions, and to participate in establishing priorities and defining objectives. The degree of review of completed work depends upon the nature and extent of the review-- e.g., close and detailed review of each phase of the assignment; detailed review of the finished assignment; spot-check of finished work for accuracy; or review only for adherence to policy.

Level (Points)	Definitions	Guide/Application
1 (75)	The supervisor makes specific assignments, issuing clear, detailed, and specific instructions. The employee works as instructed and consults with the supervisor as needed on all matters not specifically covered in the original instructions. For all positions, the work is closely controlled. For some positions, the control is through the structured nature of work itself; for others, it may be controlled by the circumstances in which it is performed. In some situations, the supervisor maintains control through review of the work which may include checking progress or reviewing completed work for accuracy, adequacy, and adherence to instructions and established procedures.	Guide Intended to cover learner and trainee situations in office support, technical, and labor and trades classes where assignments are given primarily for the purpose of introducing the worker to the basic aspects of the work. Specific instructions are provided for each task and operation to be performed, and the worker has little or no responsibility to determine the sequence of work. The work is reviewed in detail or the work process contains inherent controls which effectively prevent inaccurate or unacceptable work from being performed. In such cases, review may be intermittent and in some situations, may actually be some distance removed from the work site. Application Trainee, apprentice, and learner classes in office support, technical, and labor and trades classes in which the work is closely controlled.
2 (90)	The supervisor provides continuing or individual assignments by indicating generally what is to be done, limitations, and quality and quantity expected, deadlines, and priority of assignments. The supervisor provides additional, specific instructions for new, difficult, or unusual assignments including suggested methods or advice on source material available. The employee uses initiative in carrying out recurring assignments independently without specific instruction, but refers deviations, problems, and unfamiliar situations not covered by instructions to the supervisor for decision or help. The supervisor assures that finished work and methods used are technically accurate and in compliance with instructions or established procedures. Review of the work increases with more difficult assignments if the employee has not previously performed similar assignments.	**Guide** Intended to cover recurring work in which the sequence of work and methods are set, OR varying work assigned by an employee's supervisor who furnishes specific guidance and instructions concerning work methods and procedures to be used, time frames for completion of work steps, and scope and limitations of new and continuing assignments. The work is reviewed to ensure that results are accurate and that procedures used are correct. **Application** Classes covering experienced workers in technical and labor and trades areas, and learners in professional and administrative classes, in which the worker has immediate access to a supervisor or a senior worker for guidance, or the sequence of work and methods used are usually determined by a supervisor or the work process.

FACTOR 2: SUPERVISORY CONTROLS (Continued)

Level (Points)	Definitions	Guide/Application
3 (115)	The supervisor makes assignments by defining objectives, priorities, and deadlines; and assists employee with unusual situations which do not have clear precedents. The employee plans and carries out the successive steps and handles problems and deviations in the work assignment in accordance with instructions, policies, previous training, or accepted practices in the occupation. Completed work is usually evaluated for technical soundness, appropriateness, and conformity to policy and other requirements. The methods used in arriving at the end results are not usually reviewed in detail.	**Guide** Intended to cover situations in which workers who are proficient in the work proceed on their own to plan daily and ongoing work effort, independently arranging the sequence of work; obtaining needed materials or supplies, data or information; and selecting appropriate methods and procedures and varying these as necessary to treat different situations. Unusual and non-standard matters which do not have clear precedent are referred to supervisors or a senior worker. At this level, the worker has significant control over how the work is performed. Completed work is often subject to internal or external checks and is reviewed in terms of accuracy and acceptability. Some work efforts cannot be reviewed in the conventional sense such as service, advice, and counseling, but the techniques, methods and approaches used would normally be reviewed for conformity to policy and established requirements. **Application** Trained and experienced workers in all fields carrying out standard assignments, such as: Procurement Specialists who plan and carry out all steps needed to purchase goods and services for the County, which involves planning and carrying out information gathering and analysis activities that include consideration and application of County policies, procedures and regulations, and whose work is reviewed to ensure conformance with County policies and regulations; A Code Enforcement inspector who plans and conducts daily inspections, issues violation notices and citations in accordance with strict codes and regulations, and whose findings and written reports are reviewed for technical adequacy; A Nurse who assesses, plans and implements direct care to clients in accordance with established laws and community health nursing standards.

FACTOR 2: SUPERVISORY CONTROLS (Continued)

Level (Points)	Definitions	Guide/Application
4 (150)	Overall objectives and resources available are set. The employee alone, or in consultation with the supervisor, develops the deadlines and work to be done. At this level, the employee having developed expertise in the line of work, is responsible for planning and carrying out the assignment, resolving most of the conflicts which arise, coordinating the work with others as necessary, and interpreting policy on own initiative in terms of established objectives. In most assignments, the employee determines the approach to be taken and the methodology to be used. The employee keeps the supervisor informed of progress, potentially controversial matters, or far-reaching implications. Completed work is reviewed only from an overall standpoint in terms of feasibility, compatibility with other work or effectiveness in meeting requirements or expected results.	**Guide** Intended to cover situations in which workers (who have full technical responsibility for the work) independently determine and carry out all necessary steps to complete assignments, which often are long-term projects (2-3 months), subject to available resources and agreed-upon deadlines. This typically involves planning the work effort, identifying potential problems, resolving problems, coordinating with others outside the work unit, and determining the methods, procedures or approaches to be used. The worker effectively has full control over how the work is performed. Results of the work, such as recommendations, completed plans, products or services, are reviewed in terms of effectiveness in meeting objectives **Application** Senior workers in all fields who have full technical responsibility for the work and who are frequently given long term assignments and projects or the most difficult work.
5 (200)	Assignments are stated in terms of broadly defined missions or functions; work is normally performed under administrative direction with little or no technical guidance available. The employee is responsible for planning, designing, and carrying out the work independently. Results of the work are considered technically authoritative and are normally accepted without significant change. If the work should be reviewed, the review concerns such matters as fulfillment of program objectives, effect of advice and influence on the overall program, or the contribution to the field. Recommendations for new projects and alteration of objectives are usually evaluated for such considerations as availability of funds and other resources, broad program goals or priorities.	**Guide** Intended to cover situations in which workers, who have responsibility for broad programs, functions or activities, have full and final responsibility for the work effort. This typically involves determining all matters associated with completing work assignments, including what is to be done as well as how it is to be performed. The work product or service is evaluated in terms of meeting broad program goals. **Application** Managers of broad programs and functions who are responsible to administrative heads; or professionals who provide technically authoritative advice, such as physicians, psychiatrists and attorneys.

FACTOR 3: GUIDELINES

This factor covers the nature of guidelines, the judgment needed to apply them, and the authority to depart from and to adopt guides. Guides include desk manuals, established procedures and policies, traditional practices, and reference materials such as dictionaries, style manuals, and engineering handbooks.

Individual jobs in different occupations vary in the specificity, applicability, and availability of the guidelines for performance of assignments. Consequently, the constraints and judgmental demands placed upon employees also vary. For example, the existence of specific instructions, procedures and policies may limit the opportunity of the employee to make or to recommend decisions or actions. However, in the absence of procedures or under broadly stated objectives, employees in some occupations may use considerable judgment in researching and developing new methods.

Guidelines should not be confused with the knowledges described under Factor 1. Guidelines either provide reference data or impose certain constraints on the use of knowledges. For example, in the field of engineering, for a particular design application, there may be three or four standard approaches set forth in a technical manual. An engineer is expected to know these approaches. However, in a given environment, the policy may be to use only one of the approaches, or the policy may state specifically under what conditions which approach may be used.

Level (Points)	Definitions	Guide/Application
1 (75)	Specific, detailed guidelines covering all important aspects of the assignment are provided to the employee. The employee works in strict adherence to the guidelines; deviations must be authorized by the supervisor.	**Guide** Intended to cover work that follows set procedures allowing no choice by the employee on how the work is performed. Procedures may be in the form of written guides or instructions, or learned, but cannot be deviated from without prior approval. **Application** Work that follows prescribed procedures or rules, such as: Mail and file clerks, and persons who work closely with others as learners, trainees or assistants; Operators of equipment that requires strict observance of operating instructions; Routine maintenance workers following procedures and methods that are clearly indicated.

FACTOR 3: GUIDELINES (Continued)

Level (Points)	Definitions	Guide/Application
2 (90)	Procedures for doing the work have been established and specific guidelines are available. The employee uses judgment in locating, selecting, and applying the appropriate guidelines, references, and procedures to spec1fic cases. Significant, proposed deviations or situations to wh1ch existing guidelines cannot be applied typically are referred to the supervisor. At this level the employee may also determine which of several authorized alternatives to use.	**Guide** Intended to cover work that is performed according to several different procedures and guides, which must be known (or referenced) by the employee. The employee selects and applies the appropriate law, rule, regulation, policy, procedure or method to varying situations or cases encountered in the work. **Application** Work that consists of varied situations requiring the application of different procedures or methods, such as: Office workers who utilize office productivity software to produce a variety of documents in different formats; Equipment operators who adjust equipment, or use different pieces of equipment, to work on different items; Paraprofessionals in accounting who utilize different procedures depending on the nature of the transaction or account; Persons who enforce or apply a variety of laws or regulations; Maintenance work consisting of different types of problems or repairs.

FACTOR 3: GUIDELINES (Continued)

Level (Points)	Definitions	Guide/Application
3 (115)	Guidelines are normally available, but are not completely applicable to the work or do not cover new or unusual situations encountered in the work. The employee uses ingenuity and resourcefulness to modify, adapt, or deviate from existing guides (such as precedents, conventional methods and procedures, and normal practices). The employee analyzes results and recommends changes.	**Guide** Intended to cover work that consists of situations or cases which are unusual or out of the ordinary and do not fit existing guides. The employee is required to handle such situations by modifying procedures or adopting different approaches or methods. Employees recommend changes to existing guides based on a review of cases or experience. **Application** Work that deals with unusual, nonstandard situations and in which the employee is authorized to deviate from existing guides to resolve matters, such as: Accountants who decide on how to treat nonstandard entries or transactions; Office workers who identify ways to utilize technology to improve the efficiency and effectiveness of office operations; Workers who identify and implement new ways to repair electrical, electronic or mechanical malfunctions; Budget analysts who develop alternative methods of analysis to handle unusual or new situations; Security supervisors who develop new procedures and policies for monitoring program performance.

FACTOR 3: GUIDELINES (Continued)

Level (Points)	Definitions	Guide/Application
4 (150)	Administrative policies and precedents are applicable but are stated in general terms. Guidelines for performing the work are scarce or of limited use. The employee uses initiative and resourcefulness in deviating from traditional methods or researching trends and patterns to develop new methods or criteria, or to propose new policies.	**Guide** Intended to cover work that is performed within an established framework of existing guides which apply generally to the work, but which do not cover specifically most of the substantive, technical or operational processes involved. The employee, through research, analysis or own knowledge, devises appropriate guides (such as new approaches, methods or procedures) to be used by the employee (and others) in the work. **Application** Work that deals with new or changing situations for which the employee is responsible for developing and applying appropriate guides, such as: Legislative staff professionals engaged in policy development concerning a variety of issues before the County Council; Supervisors of programs subject to changing requirements or new technologies; Workers engaged in highly creative efforts to develop new standards, policies, procedures or methods.
5 (200)	Guidelines are broadly stated (e.g., broad public policy statements or basic legislation) and require extensive interpretation. The employee uses considerable judgment to interpret the intent of the guides and to develop specific directives, rules, regulations, policies, and procedures for application to the work. The employee is recognized as the technical authority on the interpretation of guides in highly unusual cases.	**Guide** Intended to cover work that is subject only to very general or broad guides. The employee is granted full latitude to interpret and to develop specific rules, regulations, policies and procedures to apply to the work or to develop specific strategies to accomplish complex work assignments. **Application** Work encompassing a program, function, or activity operated under general laws or policies which require the employee to develop all or most of the policies, rules, and procedures covering the work; advanced analytical work in legislative policy development and implementation; advanced analytical work in information technology that results in new procedures, methods, and/or policies that affect how work is done in many County Departments.

FACTOR 4: COMPLEXITY

This factor covers the nature, number, variety and intricacy of tasks, steps, processes or methods in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

Level (Points)	Definitions	Guide/Application
1 (240)	The work consists of tasks that are clear cut and directly related. There are few if any choices to be made in deciding what needs to be done. Actions to be taken or responses to be made are readily discernible.	**Guidelines** Intended to cover work in which the employee recognizes what is to be done through simple observation of readily apparent situations. **Application** Work that consists of a few, clearly related steps such as: Filing materials by date or reference code; Producing typed materials such as form letters, registration cards or short correspondence; Cleaning buildings or grounds.
2 (290)	The work consists of duties involving related steps, processes or methods. The decision regarding what needs to be done involves various choices requiring the employee to recognize the existence of and differences among a few easily recognizable situations. Actions to be taken or responses to be made differ depending on the source of information, the kind of transactions or entries, or other differences of a factual nature.	**Guide** Intended to cover work in which the worker, through training or prior experience, recognizes the meaning of readily apparent differences in situations and acts accordingly. **Application** Work that consists of several related steps, processes and methods, and which requires the employee to vary responses or actions, according to differences in the work, such as: Workers who check and verify data on forms, select appropriate applications and formats to produce different types of documents and identify and correct spelling and grammatical errors; Security officers who monitor facilities using surveillance equipment to identify security breaches and determine appropriate courses of action; Workers who operate machines and equipment that require close attention and adjustment, such as offset presses and chainsaws; Maintenance workers who repair defects or malfunctions that are readily found.

FACTOR 4: COMPLEXITY (Continued)

Level (Points)	Definitions	Guide/Application
3 (365)	The work consists of duties involving a variety of processes and methods. The decision regarding what needs to be done depends on **analysis** of the subject, or issues involved in each assignment, and the chosen course of action may have to be selected from many alternatives. The work involves conditions and elements that must be identified and analyzed to discern interrelationships.	**Guide** Intended to cover work requiring analysis. Analysis assumes that the meaning, significance or interrelationships among data, situations or conditions are not clear, but must be identified through some systematic analytical procedure, such as: (1) assembling and categorizing facts or information; (2) examining the facts or information to ascertain their significance or meaning; and (3) determining what action to take. **Application** Work that involves problem-solving, planning and organizing, or making decisions after considering several factors, such as: Planning and organizing office support services for a large organization; Maintaining a system of accounts (or parts thereof) and preparing reports and statements describing the condition of accounts; Preparing plans, maps and drawings from survey notes, photos or sketches.
4 (465)	The work typically consists of varied duties involving a wide range of processes and methods, such as those relating to established practices of an administrative or professional field. Decisions regarding what needs to be done include the assessment of unusual circumstances, variations in approach, and Incomplete or conflicting data. The work requires making many decisions concerning such things as interpreting of considerable data, planning of the work, or devising the methods and techniques to be used.	**Guide** Intended to cover work that consists of analysis and assessment of unusual or nonstandard matters or of data that is incomplete or contradictory. The employee decides what course to follow after considering the results of analysis (which is frequently only partial) and weighing the issues, factors or circumstances involved. **Application** Work that involves resolving unusual problems which conventional analysis only partially solves and which typically requires different analytical approaches to identify various alternatives, such as: Management and organization analysis to identify and recommend changes to improve productivity and design new work systems; Analysis and assessment of accounting practices in organizations in which there are unusual or highly variable accounting issues; Design of structures to control drainage; Management and delivery of library services; • Provision of direct psychiatric/mental health nursing services; Analytical work in support of the development and implementation of legislation concerning a range of issues.

FACTOR 4: COMPLEXITY (Continued)

Level (Points)	Definitions	Guide/Application
5 (605)	The work consists of varied duties applied to a broad range of activities, including new and untried aspects, or requiring substantial depth of analysis, in an administrative or professional field. Decisions regarding what needs to be done involve major areas of uncertainty in approach, methodology, or interpretation and evaluation resulting from such elements as continuing changes in program technological development, unknown phenomena, or conflicting requirements. The work requires originating new techniques, establishing criteria, or developing new information.	**Guide** Intended to cover work that consists of either a broad range of activities or a highly specialized area. The work is characterized by uncertain facts, data or information, rapid change, conflicting requirements or similar conditions. The employee must consider a broad range of issues, factors or circumstances whose importance and interrelationships are difficult to ascertain and assess; or must apply extensive forms of analysis combined with seasoned judgment to make decisions. **Application** Highly analytical work requiring the use of new techniques; work requiring consideration of a broad range of issues or requiring the use of technical analysis and judgment or the development of new information or criteria, such as: Directing accounting, auditing or revenue programs; Providing specialized psychological counseling to severely troubled individuals; Handling legal matters where the facts, issues and precedents are not clear; Developing and guiding through the political process legislation concerning a wide range of complex and sensitive issues; Developing, establishing, and maintaining materials standards for major County construction projects.
6 (800)	The work consists of broad functions and processes of an administrative or professional field. Assignments are characterized by breadth and intensity of effort and involve several phases being pursued with the support of others within or outside the organization. Decisions regarding what needs to be done include largely undefined issues and elements, requiring extensive probing and analysis to determine the nature and scope of the problems. The work requires continuing effort to establish concepts, theories, or programs, or to resolve very complex problems.	**Guide** Intended to cover work that consists of broad functions, programs or services which require extensive planning and coordination; and which require consideration of a very wide range of factors, issues, circumstances and elements to decide on courses of action. **Application** Work involving planning, coordination, and direction of broad County programs and functions; OR The performance of highly specialized work in resolving problems that are unprecedented or novel, such as directing County medical programs; providing expert analysis and recommendations concerning new IT technologies.

FACTOR 5: SCOPE AND EFFECT

This factor covers the purpose, breadth and depth of the assignment, and the effect of work products or services both within and outside the organization.

"Effect' measures such things as whether the work output facilitates the work of others, provides timely services of a personal nature, or impacts the adequacy of programs. Only the effect of properly performed work is to be considered.

NOTE: Functional supervision OF PROFESSIONAL SERVICES CONTRACTORS is credited under this factor.

Level (Points)	Definition	Guide/Application
1 (165)	The work involves the performance of specific, routine operations that include a few separate tasks or procedures. The work product or service facilitates the work of others within the unit; however, it has little impact beyond the immediate organizational unit.	**Guide** Intended to cover work of a basic support type that helps or assists in the activities or operations of the immediate organizational unit. **Application** Work that primarily facilitates internal processes or to aid, assist or help others performing this work, such as: Filing, typing, operating office or shop equipment; Helping skilled trades or craft workers.
2 (205)	The work involves the execution of specific rules, regulations or procedures and typically comprises a complete segment of an assignment or project of broader scope. The purpose of the work is to help ensure the accuracy, reliability, or acceptability of the work of the unit. The work product or service typically is of a support nature that contributes to further processes within or outside of the unit.	**Guide** Intended to cover work that directly contributes to the product or service of the unit. **Application** Work that typically consists of a complete assignment which is part of a larger area of work, such as: Office workers who provide office support services to a unit; Library assistants who help patrons and maintain and update databases; Health technicians who administer tests and obtain and record patient health history information.

FACTOR 5: SCOPE AND EFFECT (Continued)

Level (Points)	Definition	Guide/application
3 (255)	The work involves investigating, analyzing and resolving a variety of conventional problems, questions or situations in conformance with established criteria. The purpose of the work is to ensure the proper design or operation of a system, program or work process, the products of which typically represent the final product or outcome of the system, program or work process to which the worker is assigned. The work product or outcome affects the adequacy of such activities as field investigations, testing operations, or research conclusions, the social, physical, or economic well-being of persons.	**Guide** Intended to cover work whose primary purpose is to provide the main product or service of the work unit or system or to ensure the proper production of products or services by others. **Application** Work that involves carrying out a range of conventional assignments within a professional or administrative field, in public service, or in maintenance work, such as: Buyers executing purchase orders; Librarians developing book collections; Engineers designing standard structures or facilities; Community health nurses coordinating client care services; Managing and monitoring professional services contracts of moderate scope, expenditure and effect.
4 (325)	The work involves establishing criteria; formulating projects; assessing program effectiveness; thorough analysis of a variety of complex issues; or investigating or analyzing a variety of unusual conditions, problems or questions. The purpose of the work typically is to ensure that programs, functions and services achieve their desired objectives by assessing results, establishing/changing policies and procedures, or devising new approaches. The service or work project affects a wide range of community activities, or the operation of other governmental units.	**Guide** Intended to cover work that involves planning, organizing and directing a program, function or service; or dealing with problems, situations or conditions that establish precedents, standards, or policies affecting a wide range of activities. **Application** Work that involves managing and monitoring professional services contracts of major scope, expenditure and effect; ensuring that the objectives of a program, service or function are being met; or resolving unusual problems that have wide impact, such as : Social work supervisors; Nurse administrators; Budget analysts presenting, in public, policy recommendations as part of the legislative process; Engineers responsible for projects from conception through acceptance of designs, or from construction through final acceptance of completed work.

FACTOR 5: SCOPE AND EFFECT (Continued)

Level (Points)	Definition	Guide/Application
5 (425)	The work involves isolating and defining unknown conditions, resolving critical problems or developing new theories; or developing, and presenting in public, analysis and recommendations concerning complex and sensitive issues. The purpose of the work is to resolve critical problems in the organization and delivery of government services. The work product or service affects the work of major aspects of administrative or technical programs or missions or the well- being of substantial numbers of people.	**Guide** Intended to cover work that involves designing, developing and implementing new programs, functions or services; or using new concepts, approaches or methods to resolve critical problems. The work has substantial effect on County-wide operations and/or the community. **Application** Work that involves directing a County program or developing and implementing solutions to critical problems, such as: Information Technology experts responsible for solving the most difficult systems problems of cnt1cal Importance to County operations; Management of an economic development program that contributes to the development of the County Government's competitive posture for new investments and cooperative ventures which enhance the County's economic base; Legislative staff work affecting a broad range of sensitive and complex issues.
6 (560)	The work involves planning, developing and carrying out vital administrative or technical programs. The programs are essential to the missions of the jurisdiction or affect large numbers of people on a long-term, continuing basis.	**Guide** intended to cover work involving the overall direction of major County programs, functions or serv1ces that directly affect the provision of government services to the community. **Application** Work involving the direction of major County programs, such as transportation and health.

FACTOR 6: CONTACTS

This factor refers to the requirement for the worker to deal with individuals or groups, such as representatives of organizations, legislative bodies, or community groups, in person or by telephone to accomplish work objectives. Consideration is given to the purpose of contacts, their difficulty, importance and level within or outside the organization.

NOTE: SEE DEFINITION FOR FACTOR 7: PUBLIC SERVICE/ASSISTANCE for the distinction between Contacts and Public Service/Assistance. CREDIT FOR INTERACTION WITH OTHERS WHICH IS OF A SIMILAR NATURE. PURPOSE AND LEVEL MAY ONLY BE CREDITED UNDER ONE FACTOR- EITHER CONTACTS OR PUBLIC SERVICE/ASSISTANCE.

Level (Points)	Definition	Guide/Application
1 (75)	Contacts are primarily with employees in the immediate work area or in related or support units and involve obtaining or giving facts or information concerning routine matters.	**Guide** Intended to cover normal, everyday contacts among employees within an organization, which may be a unit, section, division or department. Contacts require normal courtesy in dealing with others and typically involve routine matters. **Application** Contacts are primarily with other employees and involve giving or exchanging information.
2 (90)	Contacts are with employees inside and outside of the immediate organization or with the general public, and involve exchanging information, explaining procedures, scheduling meetings, or providing instructions to facilitate a process or to provide a service.	**Guide** Intended to cover contacts with others that aid, explain or facilitate a process or service; provide basic technical information; coordinate or facilitate activities such as integrating and coordinating work products or work schedules; resolving problems; or making arrangements for meetings, hearings or similar activities. **Application** Office workers who coordinate meetings and resolve schedule conflicts; Printers who exchange information with others concerning print job requirements

FACTOR 6: CONTACTS (Continued)

Level (Points)	Definition	Guide/Application
3 (115)	Contacts are with individuals, organizations or groups within or outside of the organization, and involve meeting and dealing with others to agree on courses of action or to solve operational or similar problems; or to provide advice related to area of operations. OR Contacts are with high-level officials within or outside of the organization and involve coordinating and/or facilitating the activities of the office of an elected or appointed official. Such activities include making arrangements with news media, setting up public appearances, arranging executive meetings, serving as liaison between high-level officials and others.	**Guide** Contacts require significant interactions with others, highly developed communications skills, skill in presenting ideas and technical information or addressing groups. Contacts may involve differences which the worker is expected to resolve. **Application** Interactive contacts to facilitate accomplishment of projects or management of programs, services or activities for which the worker is responsible: provide technical advice; resolve operating problems; provide classroom instruction. Examples are: An information technology specialist who meets with representatives of other departments to develop a plan for upgrading or resolving technology issues; A property manager who meets with contractors to resolve problems encountered in renovation of buildings; Office workers who coordinate meetings and events for elected or appointed officials.
4 (150)	Contacts are with individuals or groups within or outside the organization and involve persuading, advising, or presenting and justifying matters having substantial impact on the organization to obtain desired actions, to reach agreement and/or to resolve significant operating problems. OR Contacts are with high-level officials to provide subject-matter advice based on area of expertise, to agree on courses of action, or to solve difficult problems encountered in work assignments.	**Guide** Intended to cover interactions with others which involve responsibility for influencing others, who may have different views or objectives, to obtain desired actions, and/or working skillfully with others to resolve the more difficult operating/program problems. Contacts require considerable communications skills and perception, understanding, and evaluation of others' viewpoints, positions and opinions to resolve problems or reach objectives. **Application** Contacts involve the presentation and defense of important and possibly controversial matters in meetings and hearings, or the resolution of difficult problems. Examples are: Senior analysts who present findings and recommendations to elected officials in both the executive and legislative branches; Managers who meet with citizen groups to explain and justify County plans or actions.

FACTOR 6: CONTACTS **(Continued)**

Level (Points)	**Definition**	**Gudie/Application**
5 (200)	Contacts are with high-level officials within or outside of the organization and involve presenting, justifying, or defending very important issues where diverse viewpoints, goals and objectives are strongly advocated and must be reconciled to achieve suitable alternatives or to arrive at acceptable positions.	**Guide** Intended to cover extremely difficult contacts of County-wide importance involving meeting and dealing with individuals or groups whose approval, participation, or agreement is vital to the effective administration of County-wide programs, functions or services. The worker represents the County Government and has authority to negotiate or make commitments or decisions concerning major policy or program matters. **Application** Limited to high-level County officials who interact with persons of equivalent level in other jurisdictions or government agencies, businesses or the community in formulating major County policies, programs or services, or contesting significant and complex legal matters in court.

FACTOR 7: PUBLIC SERVICE/ASSISTANCE

This factor refers to the worker's provision of direct assistance to the public and/or care and custody for a client population in providing public service, either in person or by telephone. This factor encompasses one-on-one assistance/care-giving or custody as well as similar responsibilities for groups of individuals. Consideration is given to the level of intensity and the duration of personal interaction required in providing the public service or assistance. ASSISTANCE TO OTHER COUNTY EMPLOYEES, INCLUDING EMPLOYEES OF OTHER COUNTY-FUNDED AGENCIES, IS CREDITED UNDER THE CONTACTS FACTOR.

NOTE: SEE DEFINITION FOR FACTOR 6: CONTACTS for the distinction between Public Service/Assistance and Contacts. CREDIT FOR INTERACTIONS WITH OTHERS THAT ARE OF A SIMILAR NATURE, PURPOSE AND LEVEL MAY ONLY BE CREDITED UNDER ONE FACTOR- EITHER CONTACTS OR PUBLIC SERVICE/ASSISTANCE.

Level (Points)	Definition	Guide/Application
1 (0)	Limited public service and assistance to clients and the public is required.	Guide Intended to cover work in which service to the public or immediate one-to-one assistance is limited. Work primarily supports or directs activities of other employees within the organization. This level includes work that may provide some public service, but such service is incidental to the primary purpose of the job; or work involves meeting with citizens or groups, but does not require providing direct public service or assistance on a one-to-one basis for a substantial amount of time. Application Workers who provide only limited public service or assistance such as file clerks, accountants, and mechanics; managers and supervisors whose assigned duties are primarily administrative or managerial and for whom hands-on public service/assistance is incidental to the purpose for which they were hired; program work that requires meeting or dealing frequently with the public to present information or to organize events but does not involve one-to-one assistance.
2 (90)	Personal assistance, care, and/or custody is provided to the public or clients (non co-workers) on demand. Assistance/service, which is usually immediate and of short duration, requires the employee to respond to readily recognizable needs.	**Guide** Intended to cover work in which requests for service or assistance are recurring and frequent. Assistance is normally of short duration and may involve referral to other individuals and/or agencies for final resolution. Needs of clients are normally readily identifiable or readily ascertained through asking predetermined questions of a checklist nature, and appropriate assistance can usually be rendered immediately. **Application** Workers who provide immediate assistance to many people on a daily basis.

FACTOR 7: PUBLIC SERVICE/ASSISTANCE **(Continued)**

Level (Points)	Definition	Guide/Applications
3 (115)	Personal assistance and/or care of clients is provided on demand or on an on-going basis. Assistance/service requires questioning or interviewing clients in order to determine the appropriate assistance/service to be provided.	Guide Intended to cover work that requires lengthy or detailed questioning of clients or investigation on behalf of clients in order to determine the nature of assistance/service required. Once the service needs are determined, assistance can normally be provided. Application Occupations which require the use of judgment in questioning others to identify the nature assistance required, such as investigation to assist clients, client intake, community outreach, and library reference work.
4 (150)	Professional assistance or care involving intensive counseling therapy is provided to clients. Assistance/service requires the employee to assess problems that are multi-faceted and typically of a psychological, physical, psycho-social, or socioeconomic nature requiring long-term treatment.	Guide Intended to cover work requiring intensive interaction with individuals due to the nature of the problems involved. Intense or difficult inter-personal interaction with clients and client assistance requiring long-term counseling is involved. Application Professional therapeutic counseling to individuals with severe and complex problems which may require considerable follow-up.

NOTE: DETERMINING FREQUENCY: Frequency of occurrence must be determined for the following factors:

o Factor 8: Working Conditions

- Sa: Working Environment
- 8b: Hazards

o Factor 9: Physical Demands

Frequency of occurrence refers to actual occurrence of the work characteristics or requirement and is determined as follows:

Regularly Recurring

The factor is present in the work at least 50 percent of the work time (based on an 8-hour work day, 40-hour work week).

Occasionally Recurring

The factor is present in the work at least 25 percent but less than 50 percent of the work time (based on an 8-hour day, 40-hour work week). It may occur periodically such as monthly, quarterly, or annually, or at irregular intervals. Note, however, that even if the factor is present less than 25 percent of the time, if the factor is inherent in the nature of the work, is an absolute and recurring requirement of the job which is documented in the class specification, and/or is a bona fide occupational qualification for recruitment, "occasionally recurring" credit may be given regardless of the time spent.

The letters "R" and "0" are used in the plan to designate the respective point value of Regularly Recurring and Occasionally Recurring.

FACTOR 8: WORKING CONDITIONS
FACTOR 8A: WORKING ENVIRONMENT

This factor measures the discomforts or unpleasantness of the work environment. Frequency of occurrence is also considered.

Level (Points)	Definition	Guide/Applications
1 (0)	The work environment involves normal, everyday discomforts or unpleasantness. The work area is adequately lighted, heated and ventilated.	Guide I tended to cover all normal work situations where workers encounter common everyday discomforts or unpleasantness. No special measures are necessary to control environmental conditions. Application Work in such places as offices or meeting rooms; or travel in commercial vehicles such as airplanes, trains or buses.
2 (R=35) (0=25)	The work environment involves minor discomforts or unpleasantness which typically are inherent in the work. Workers readily adjust to such conditions in order to perform their assignments. Conditions include annoying noise; vibrations from the operation of equipment; dust and grease encountered in maintaining and repairing equipment and facilities; exposure to human/animal body waste or body fluids, as when clinic personnel collect urine specimens; working outside in inclement weather; prolonged exposure to media attention, and providing office support services to an organization unit.	**Guide** Intended to cover situations where workers are subjected to some unpleasantness or discomfort which must be tolerated, or which requires that some care be taken or special measures adopted to deal with conditions. **Application** Shop or laboratory conditions; work performed outdoors; data entry work; legislative staff work; clerical work in support of several professionals; directing on-site firefighting efforts.
3 **(R=45) (0=35)**	The work environment involves very disagreeable or unpleasant situations which are inherent in the work. Workers, who must accept such conditions, are often provided some means of ameliorating their effects such as uniforms, special clothing and cleanup facilities. Conditions include work involving exposure to sewage; working with very dirty or greasy equipment; working outside in conditions of high humidity; working in enclosed protective custody or similar environments.	**Guide** Intended to cover situations where workers are subjected to noticeably unpleasant or discomforting conditions; or work in a correctional or similar facility subject to special security procedures. **Application** Very dirty shop conditions or work on equipment covered with grease and soil, work in sanitary landfills, or in a correctional facility.
4 (R=60) (0=45)	The work environment involves unusually disagreeable or unpleasant conditions due to the extreme nature of the situations. The conditions are inherent in the work and cannot be avoided. Conditions include fire suppression work where personnel must respond on a 24 hour basis in extremes of weather, heat, soil and grime, and may have to deal with the severely injured or death; and call takers/dispatchers who must respond quickly and accurately to calls from persons in emergency situations of a serious or life-threatening nature.	**Guide** Intended to cover situations where workers are subjected to extremely unpleasant and discomforting conditions. **Application** Work under very cold or very hot conditions such as front-line work fighting fires; responding to calls for emergency assistance in an emergency operations center.

FACTOR 8: WORKING CONDITIONS
FACTOR 8B: HAZARDS

This factor considers the risks or hazards present on the job. Use of special equipment and/or adherence to special procedures or precautions is required. Frequency of occurrence is also considered.

Level (Points)	Definition	Guide/Applications
1 (0)	The work presents no significant hazards to employees.	**Guide** Intended to cover all normal work situations where workers encounter common everyday risks. No special measures are necessary to safeguard workers against injury. **Application** As defined.
2 (R=40) (0=30)	The work involves hazards that require special procedures, safety precautions, and/or the use of special equipment, such as hard hats, respiratory masks, protective clothing, gloves; or work involves exposure to abusive, aggressive and unpredictable behavior from clients or the general public in a work location to which the public has unrestricted, open access; or work which requires home visits to provide a service. The hazards encountered may result in injuries or disease that typically can be controlled through proper safeguards and/or procedures.	**Guide** Intended to cover situations in which workers are subjected to some risk. Care is taken or special measures adopted to deal with conditions. **Application** Work in which the worker may encounter threatening situations by conducting home visits or performing work in similar situations that could present a threat to workers; work requiring use of tools, equipment or machines that may cause injury; work requiring workers to work within close proximity to moving equipment; work requiring exposure to disease or toxic substances; or work directing on-site firefighting efforts or law enforcement efforts.
3 (R=65) (0=50)	The work involves considerable risks which require use of strict safety precautions and procedures and/or the use of specialized equipment, such as, shields, ear protectors, insulated or protective clothing; exposure to contagious disease due to work with hazardous substances such as human/animal waste or bodily fluids; or visits to such places as personal residences or commercial establishments which are likely to provoke hostility or aggression toward the workers.	**Guide** Intended to cover work requiring strict observance of safety precautions or procedures and/or the use of safety equipment to avoid injury to workers. **Application** Workers who process/test toxic substances or bodily fluids for highly contagious and life threatening diseases such as workers, in a medical environment, who conduct a series of tests of bodily fluids for HIV, hepatitis, or similar diseases or workers who have equivalent exposure to chemicals, disease, or toxic substances; labor and trades occupations whose customary work environment requires use of safety equipment in order to prevent serious injury; workers who encounter hostility or dangerous situations due to the nature and purpose of the work such as workers who visit residences or commercial establishments to enforce laws or to conduct investigations.

FACTOR 8 B: WORKING CONDITIONS: HAZARDS **(Continued)**

Level (Points)	Definition	Guide/Applications
4 **(R=90)** **(0=65)**	The work involves high risk due to exposure to dangerous situations, such as working with explosives, radioactive substances, noxious gases or fumes; working at great heights; work subjecting the worker to physical attack or mob violence; or work fighting fires. The employee must apply a wide range of safety precautions.	Guide Intended to cover situations which present serious risk to workers. Careful use of safety equipment and special safety precautions are required to minimize possibility of injury. Application Climbing trees; providing security in a correctional facility; "front-line" work in law enforcement or fighting fires.

FACTOR 9: PHYSICAL DEMANDS

This factor covers the requirements and physical demands placed on the employee by the work assignment. This includes physical characteristics and abilities (e.g., specific agility and dexterity requirements) and the physical exertion involved in the work (e.g., climbing, lifting, balancing, stooping, kneeling, crouching, crawling, reaching, using quick and frequent hand/arm and foot/leg movements.) The frequency or intensity of physical exertion is also considered. Lifting and carrying of heavy objects (50 pounds and over) is assumed to be unaided.

Level (Points)	Definition	Guide/Applications
1 **(0)**	The work requires ordinary physical effort to sit, walk, stand, bend, and reach or to carry light items.	**Guide** Intended to cover all normal work situations where employees exert ordinary physical effort in carrying out their duties. Effort does not result in noticeable fatigue to workers. **Application** As defined.
2 **(R=35)** **(0=25)**	The work requires long periods of standing or sitting in one position; walking over rough, uneven, or rocky surfaces; bending, crouching, stooping, stretching, reaching, or similar activities; lifting of objects from 20 to 50 pounds; rapid and sustained use of hands, fingers or arms; precise use of hands or fingers; on-going production-oriented operation of keyboard devices.	**Guide** Intended to cover situations in which work requires light physical effort, which results in some fatigue. **Application** Operating a truck or similar vehicle; operating word processing equipment, computer terminals or other keyboard devices and VDTs where speed, accuracy, and volume of work are required for extended periods; parking meter repair; shelving and storing books, boxes, and materials; field work or visiting construction sites.

FACTOR 9: PHYSICAL DEMANDS **(Continued)**

Level (Points)	Definition	Guide/Applications
3 **(R=45)** **(0=35)**	The work requires crouching or crawling in confined spaces, climbing ladders and scaffolding, or lifting of objects from 50 to 100 pounds; prolonged fine finger movement (i.e., data entry) or monitoring machinery or equipment (i.e., VDT screens); or sustained operation of buses and other large vehicles or construction equipment.	**Guide** Intended to cover situations in which workers possess good strength and agility sufficient to exert medium physical effort in carrying out their duties. Effort results in noticeable fatigue. **Application** Labor and trades and materials handling jobs.
4 **(R=60** **(0=45)**	The work requires climbing tall ladders, poles or ropes; lifting or carrying of objects over 100 pounds	**Guide** Intended to cover situations in which workers possessing above average strength and agility exert heavy physical effort in carrying out their duties. Effort results in considerable fatigue. **Application** Firefighting; climbing trees; performing heavy repairs on motorized equipment

FACTOR 10: SUPERVISION

This factor is only applied to classes that directly and on a continuing basis supervise the work of other regularly assigned workers, who may be paid employees or volunteers. A minimum of two work-years must be supervised for a class to receive credit under this factor, and two or more employees may not receive credit for directly supervising the same workers.

SUBFACTOR 10A: SUPERVISION- NATURE OF WORK DIRECTION

This subfactor measures the responsibility of an employee for the work of others. It includes the supervisory functions of assigning and reviewing work, establishing and enforcing work standards, coordinating work efforts; and work planning, organization and control.

NOTE: Employees who direct volunteers or part-time, intermittent or seasonal workers who are non-career County employees receive Level 1 of this factor.

Level (Points)	Definition	Guide/Application
1 **(50)**	Supervises others in the performance of work by passing on or giving assignments or instructions to employees and checking their work; ensures that work rules and practices are observed, solves ordinary problems, ensures that materials, supplies, and equipment are properly used, that required work records are maintained, and that work is completed on time.	**Guide** Intended to cover situations in which workers, who may participate regularly in the work, provide work direction or lead supervision to others; and workers who direct the work of volunteers or non-career County employees. **Application** As defined.

FACTOR 10: SUPERVISION **(Continued)**

Level (Points)	Definition	Guide/Application
2 (85)	**Assigns & reviews work; enforces work standards; solves ordinary problems encountered in the work; coordinates work within area; enforces unit policies; makes minor changes to work methods or procedures or to work stations, furnishings or equipment; prepares or reviews work records and reports**	**Guide** Intended to cover situations in which workers, who may participate in the work, devote the majority of their time to supervising directly the work of others. **Application** Supervisors of a unit, section, function or program where the primary emphasis is on directing the work of others: first level supervisors.
3 (120)	Develops plans to implement approved work programs extending over one or two years; plans for and allocates resources to accomplish work programs; reviews work progress and recommends or takes actions to adjust work effort to meet objectives; approves purchases of equipment, materials and supplies.	**Guide** Intended to cover situations in which workers plan and control programs in a large or multifaceted organizational unit, and do not normally participate directly in the work themselves. **Application** Workers who direct varied functions or organizational units and who have responsibility for planning and budgeting, and for changing work efforts to meet objectives; division heads.
4 (140)	Coordinates overall planning of the organization's work programs over a one- or two-year cycle. Decides on own authority or in consultation with superior, on organizational structure, work methods and procedures, level of service, and resource requirements to accomplish work objectives. Resolves difficult problems of coordination among major County departments and outside organizations	**Guide** Intended to cover situations in which workers, either on own authority or consultation with a superior, decide on the work program of a department or equivalent organization unit. **Application** Full assistant or deputy department heads
5 (160)	Approves work programs for a department or independent office. On own authority, decides or approves such matters as organizational structure, work methods and procedures, kind and level of service or product, and resources to accomplish work. Takes or directs actions to resolve major problems of coordination or to adjust work effort to meet objectives.	**Guide** Approves work programs for a department or independent office. On own authority, decides or approves such matters as organization structure, work methods and procedures, kind and level of service or product, and resources to accomplish work. Takes or directs actions to resolve major problems of coordination or to adjust work effort to meet objectives. **Application** Department heads.

SUBFACTOR 108: SUPERVISION- PERSONNEL AUTHORITY

This subfactor measures the degree of authority exercised by an employee over matters affecting the selection, assignment, performance appraisal, training, promotion, reward, transfer, suspension, discipline, or removal of employees, or the adjustment of employee grievances and complaints. The authority may be formally delegated or informally exercised, so long as its exercise is not simply the transmitting of instructions from someone else, or of a routine or clerical nature, but requires independent judgment.

Level (Points)	Definition	Guide/Application
1 (0)	Upon request, provides information, advice, or suggestions to a higher level for use in making a personnel decision or in acting upon a personnel matter.	**Guide** Intended to cover situations in which supervisors participate informally in the personnel decision-making process; workers have no formal authority to act upon a personnel matter. **Application** Lead Workers
2 (40)	Regularly participates in or recommends decisions or actions on a variety of personnel matters, typically involving the selection, orientation, training, performance appraisal, leave approval, promotion, and transfer of employees; counseling of employees; minor disciplinary measures; adjustments of minor complaints.	**Guide** Intended to cover situations in which supervisors regularly participate in personnel decisions by formally recommending or initiating personnel actions. **Application** First level supervisors and equivalent positions at other levels.
3 (80)	Independently decides or acts on a wide variety of personnel matters which are normally subject only to administrative review; recommends serious disciplinary measures and adjustments of informal or formal complaints and grievances.	**Guide** Intended to cover situations in which supervisors effectively decide on personnel matters affecting their employees by initiating and signing personnel actions. **Application** Full assistant or deputy department heads, division chiefs, and equivalent positions at other levels.

SUBFACTOR 10C: SUPERVISION- NUMBER OF WORKERS SUPERVISED

This subfactor credits supervisory classes for the number of workers supervised both directly and indirectly, whether paid, full-time or part-time, volunteers or similar categories of workers. To be credited, employees or volunteers supervised must be regularly scheduled workers. For all regularly scheduled workers, the hours worked are converted to full-time equivalent and credited as provided in the following chart.

Level (Points)	**Number of Employees Supervised (FTE)**
1 (0)	Fewer than 2
2 (20)	2-12
3 **(30)**	13-50
4 (45)	51-200
5 (60)	201-800
6 (80)	801-3200

FACTOR-POINT TABLE MONTGOMERY
COUNTY GOVERNMENT

QUANTITATIVE EVALUATION SYSTEM III

	FACTOR	1	2	3	4	5	6	7	8	9
1.	Knowledge Required	255	295	345	415	510	635	815	1055	1400
2.	Supervisory Controls	75	90	115	150	200				
3.	Guidelines	75	90	115	150	200				
4.	Complexity	240	290	365	465	605	800			
5.	Scope & Effect	165	205	255	325	425	560			
6.	Contacts	75	90	115	150	200				
7.	Public Service/Assistance	--	90	115	150					
8.	Working Conditions									
	8A. Working Environment									
	Recurring	--	35	45	60					
	Occasional	--	25	35	45					
	8B. Hazards									
	Recurring	--	40	65	90					
	Occasional	--	30	50	65					
9.	Physical Demands									
	Recurring	--	35	45	60					
	Occasional	--	25	35	45					
10.	Supervision Exercised – 2 or more workers supervised									
	10A. Nature of Work Direction	50	85	120	140	160				
	10B. Personel Authority	--	40	80	120					
	10C. Number of Employees	--	20	30	45	60	80			

APPENDIX F - GUIDELINES ON BROADBAND CLASSIFICATION OF MANAGEMENT LEADERSHIP SERVICE POSITIONS

1. Management Leadership Service program elements.

(a) Scope.

(1) The County's Management Leadership Service (MLS) is a component of the merit system made up of high-level management/staff positions significantly directing and influencing the operation of County departments and agencies. Members of the MLS are key leaders who are responsible for the development and implementation of County policy and the efficient and effective management of County programs and services.

(2) MLS positions include merit department or agency directors, deputy directors, division chiefs, section chiefs and team leaders, or other very senior staff positions having a comparable effect on County-wide policies and programs.

(3) Non-merit positions established under the authority of Question A are included in MLS.

(4) Although not included in MLS, Public Safety Managers are encouraged to participate in MLS training opportunities.

(b) **Purpose.** MLS is designed to meet the following objectives:

(1) to improve organizational quality and effectiveness through management development, performance accountability, and appropriate compensation of key senior managers/staff;

(2) to provide organizational flexibility to respond to emerging needs and provide opportunity for mobility to senior managers/staff to seek new challenges;

(3) to achieve flexibility in the recruitment, hiring and transfer of senior managers/staff to meet the needs of the organization;

(4) to provide opportunities for managers to develop skills and obtain education which will benefit both the manager and the organization;

(5) to develop a government-wide perspective or "corporate" philosophy and to foster an esprit de corps among key organizational managers; and

(6) to improve the delivery of services to the community through dynamic, innovative, and highly motivated leadership.

(c) Key features of MLS.

(1) MLS has a broadband classification system and performance-based compensation system.

(2) The MLS classification system has a single generic management track or “career path” consisting of three separate pay bands that are defined by scope, complexity, and delegated level of authority.

(3) The compensation system is performance-based. Salary increases are not an entitlement based on years of service, but, instead, are based on performance plans, reviews, and accomplishments.

(4) MLS members participate in continuous professional career training. This comprehensive development approach includes:

(A) multiple feedback skill assessment;

(B) individual developmental plans;

(C) comprehensive leadership training; and

(D) partnership program with leaders from other public agencies and the private sector.

(5) A separate performance accountability system for MLS members requires an annual performance evaluation. The annual performance evaluation is the basis for pay and other personnel decisions. Advancement through the appropriate MLS salary range is based on performance.

2. Broadband classification structure.

(a) Plan.

(1) MLS positions are assigned to a separate classification structure consisting of a single generic career path designated as the Management Career Path.

This career path consists of three separate levels (Manager I, II, and III) that are defined in the class specifications for each level by scope, complexity, and delegated level of authority.

(2) The incumbents of most MLS positions are responsible for providing leadership to the organization by planning, directing, and executing a wide variety of County functions and services and are held accountable for the attainment of program objectives.

(b) Position classification.

(1) A merit system position is assigned to the MLS if the position, prior to its inclusion in the MLS, either:

(A) was classified under the quantitative evaluation system at grade 27 or higher and the duties of the position include all of the following:

(i) directing the work of an organizational unit of a department, such as a division, section, or team;

(ii) supervising at least 2 full-time employees, or the equivalent of 2 full-time employees;

(iii) assuming responsibility for the success of one or more significant County programs, functions, or services; and

(iv) influencing County policy in the assigned area; or

(B) the position was classified under the quantitative evaluation system at grade 30 or higher and the duties of the position include developing and promoting public policy for major programs and management functions that are:

(i) directly related to the broad mission of the County government; and

(ii) in direct support the County Executive or CAO, or both, or other elected or appointed official.

(2) Upon creation of a new position, the Director, Office of Human Resources, after reviewing staff recommendations, will determine if the position meets the above criteria and warrants inclusion in the MLS.

(3) Advancement through the pay band associated with a management level is based on performance.

(4) Movement to a higher management level is based on either a promotion to a vacant position in a higher management level or reclassification because of a significant change in duties.

(5) Individuals appointed to high-level non-merit management positions will not be assigned to the classifications of Manager I, II, or III. These nonmerit positions will continue to be assigned to occupational classes created specifically for non-merit appointed officials. Such classes will be assigned to pay bands on the MLS Salary Schedule.

(c) Job titles.

(1) MLS position incumbents may use working titles to distinguish their positions from others in the same career path.

(2) Official job-specific titles will not be part of the classification structure of the MLS.

(d) Documentation.

(1) The class specification for the Management Career Path describes the general duties, responsibilities and minimum qualifications of each management level in the MLS.

(2) A brief position description form for each MLS position documents the major duties and responsibilities of the particular position as well as any specific technical or program expertise requirements necessary to perform the work of the position.

MONTGOMERY COUNTY, MARYLAND
PERFORMANCE PLANNING AND EVALUATION FORM

EMPLOYEE INFORMATION	
Employee Name: Social Security Number: Job Title:	Department: Division/Team:
Supervisor Name(s):	Reviewing Official Name:
Type of Evaluation: _____Annual _____Interim	Review Period: From (date)_____To (date)_____

DOCUMENTATION SIGNATURES		
Activity to be documented	**Date**	**Signature**
Performance Plan Finalized (Employee)		
Performance Plan Finalized (Supervisor)		
Mid Year Progress Discussion (Employee)		
Mid Year Progress Discussion (Supervisor)		
Evaluation Reviewed by Employee* *Does not indicate agreement		
Evaluation Finalized by Supervisor		
Evaluation Reviewed by Reviewing official		

OVERALL RATING	
_____ Exceptional Performance _____ Highly Successful Performance	_____Successful Performance _____Does Not Meet Expectations

This form is for employees who are not in a bargaining unit position or an MLS position.

Note for automated versions of this form: This form is in a *Word* tables format. Each row will expand as you type into it. Hit tab key when at the bottom of the row to create additional rows. All automated forms must be safeguarded or password protected from unauthorized viewing.

PERFORMANCE PLAN
PART 1: INDIVIDUAL OR TEAM SPECIFIC EXPECTATIONS
Plan Development: This section should list the performance expectations for this individual and/or team. Clearly indicate which expectations will receive team ratings (as applicable). If feedback from nonsupervisors will be obtained, describe the source and approach to obtaining and utilizing this information (as applicable). Serious corrective performance improvement issues may be addressed in a separate work improvement plan.
Evaluation: Ratings should be based on the degree to which the employee/team achieved or met the performance expectation. Narrative Comments are required for all ratings.
#1
Narrative Comments for #1
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#2:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#3:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#4:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#5:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations

PART 2: GENERAL EXPECTATIONS & COMPETENCIES General expectations and competencies are generic in nature and may apply to a cross section of positions and functions
Plan: Each general expectation or competency listed below must include a description and/or behavioral examples of the expected performance (below or in an attachment) Evaluation: Team ratings do not apply to general expectations or competencies
#1
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#2:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#3:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#4:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#5:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#6:
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations
#7 (add more “boxes” as needed):
Narrative Comments
Rating: ____ Exceptional____Highly Successful_____Successful____Does Not Meet Expectations

CAREER DEVELOPMENT (REQUIRED)
Goal or Competency to be developed: Year End Accomplishment Summary

PROGRESS DISCUSSION NOTES
Supervisor: Employee:

COMMENTS
Supervisor: Employee:

MONTGOMERY COUNTY GOVERNMENT
COMPRESSED WORK SCHEDULE AGREEMENT

Employee's Role. A full-time employee who wishes to work a compressed work schedule should review the information on this form, specify the compressed work schedule to be worked below, including a fixed day off, and give the form to the employee's supervisor.

The work schedule must not be less than 80 regularly scheduled hours in a pay period. A compressed schedule changes the reporting period from a Sunday to Saturday pattern to either a Monday to Sunday (Schedules A & B) or a Friday to Thursday (Schedules C& D) pattern. As such, please populate the appropriate ten days of the new pattern below.

WEEK 1

DAY	Start Time	Stop Time
Friday (payday)		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		

WEEK 2

DAY	Start Time	Stop Time
Monday		
Tuesday		
Wednesday		
Thursday		
Friday (payday)		
Monday		

The above schedule is compressed work schedule (A, B, C, or D)_____. (See MCtime form and Section 15-4(b) of the Personnel Regulations for more information.)

Standards for Approving a Compressed Work Schedule. The supervisor and department director must evaluate the compressed work schedule agreement under the following standards:

- Operational requirements must be met;
- Service to clients or the public must be maintained or improved;
- Costs to the County must not increase;
- Each office or operation must have enough staff on duty during the normal period of public service, and
- The compressed work schedule must not diminish the ability of the department to assign responsibility and accountability to the employee for providing County services and performing the employee's official duties.

Supervisor's Role. The supervisor must review this form and meet with the employee to discuss the request. The supervisor should suggest to the employee any adjustments to the schedule necessary to maintain the effectiveness of the work unit. If the supervisor agrees with the terms of the request as stated in the form, the supervisor and the employee must sign the form and forward it to the department director.

If the supervisor and the employee do not agree to the terms stated on the form, the supervisor must forward a copy of the form and a summary of the points on which the supervisor and the employee agreed and disagreed to the department director.

Department Director's Role. The department director must review the compressed work schedule request and:

- Approve it
- Disapprove it, or
- Suggest changes in the terms for consideration by the employee and the supervisor to help them reach agreement

If the request is not approved, the department director must give the employee the reason. The decision of the department director is final.
The department director must:

- Complete a MCtime Compressed Schedule Request Form and receive a 2 week transition schedule.
- Give a copy of the approved or disapproved request to the employee
- Ensure that a copy is placed in the employee's department operating file, and
- Send a copy to the Director, Office of Human Resources

Important Information About Compressed Work Schedules

These are 4 compressed reporting schedules as follows:

- **Schedule A,** from 12:01 a.m. Monday through 12:00 midnight Sunday, with the first Monday off during the two-week pay period;
- **Schedule B,** from 12:01 a.m. Monday through 12:00 midnight Sunday, with the second Monday off during the two-week pay period;
- **Schedule C,** from 12:01 a.m. Friday through 12:00 midnight Thursday, with the first Friday off during the two-week pay period; or
- **Schedule D,** from 12:01 a.m. Friday through 12:00 midnight Thursday, with the second Friday (mid pay period) off during the two-week pay period;

An employee must work the scheduled number of hours each day as required by the fixed schedule. Alterations to the schedule should be minimal.

On the 8-hour Monday or Friday, an employee must work 4 hours before 12:00 noon and 4 hours after 12:00 noon in order to avoid creating overtime liability for the County. This is because, for compressed work schedules A and D, the 8-hour Monday or Friday is split between 2 workweeks and hours worked before 12:00 noon are in one workweek while the hours worked after 12:00 noon are in the next workweek. On compressed work schedules B and C, the hours on the 8-hour day are split between two different pay periods.

An employee must adhere to the schedule on the 8-hour day and must not change the 8-hour day to another day during the pay period. The employee must not work on the scheduled day off, and is not permitted to alter the scheduled day off to another day during the pay period.

If an employee uses annual or sick leave for the entire day on a day on which the employee is scheduled to work 9 hours, the employee must record 9 hours of annual or sick leave on the timesheet for that day. Similarly, an employee must record 8 hours of leave on the timesheet for a day on which the employee is scheduled to work 8 hours.

An employee must change to a compressed work schedule at the start of a pay period. Additionally, at least 2 weeks should be allowed for a transition schedule.

An employee who changes to a compressed work schedule no longer has a Sunday to Saturday workweek and must work a special transition work schedule during the first pay period of the compressed work schedule. See Section 15-4 of the Personnel Regulations for more information on transition schedules.

Working a compressed work schedule will not affect the employee's salary, benefits, job responsibilities, or eligibility for overtime compensation.

The employee may terminate this agreement at any time and return to a traditional work schedule by giving notice to the supervisor. At least two weeks should be allowed for a transition schedule.

The supervisor may require the employee to modify the compressed work schedule temporarily to address operational requirements, workload fluctuations, or problems with the employee's performance or attendance. The supervisor must give the employee reasonable advance notice of any temporary schedule change.

A supervisor may require an employee to stop working a compressed work schedule if the supervisor determines that the standards for approving a compressed work schedule request stated above are not being met. The supervisor must give the employee notice and a reasonable opportunity to correct the problem.

A department director may:

- Exclude employees in an organizational unit, position, or class of positions from working compressed work schedules if the operation does not lend itself to such schedules
- Limit an employee to a particular compressed schedule with a specific day off if the department director determines that it is consistent with operational requirements, and
- Exclude an employee with a performance or attendance problem from working a compressed work schedule.

Approved:

Employee's signature	date
Supervisor's signature	date
Department Director's signature	date

Disapproved/Reason:

Supervisor's signature	date

_____

_____

_____ _____

Department Director's signature date

MONTGOMERY COUNTY GOVERNMENT
FLEXTIME AGREEMENT

Employee's Role. A full-time employee who wishes to work a flextime schedule should review the information on this form, specify the core hours to be worked in the #1 below, indicate the manner of scheduling flex hours in #2 below, and give the form to the employee's supervisor. (For more information about flextime, see Section 15-4(b) of the Personnel Regulations)

1. The employee will work the following core hours on every regularly scheduled work day: _____ a.m. to_____p.m. These hours must include a lunch break.

   (Complete 2(a) or 2(b).)

2(a) The employee will work the following additional flex hours on every regularly scheduled work day:_____.

(b) The employee will work_____flex hours each pay period in addition to the core hours. The employee must schedule these hours between_____a.m. and_____p.m. on regularly scheduled work days.

Standards for Approving a Flextime Schedule. The supervisor and department director must evaluate the flextime schedule agreement under the following standards:

- Operational requirements must be met;
- Service to clients or the public must be maintained or improved;
- Costs to the County must not increase;
- Each office or operation must have enough staff on duty during the normal period of public service, and
- The flextime schedule must not diminish the ability of the department to assign responsibility and accountability to the employee for providing County services and performing the employee's official duties.

Supervisor's Role. The supervisor must review this form and meet with the employee to discuss the request. The supervisor should suggest to the employee any adjustments to the schedule necessary to maintain the effectiveness of the work unit. If the supervisor agrees with the terms of the request as stated in the form, the supervisor and the employee must sign the form and forward it to the department director.

If the supervisor approves flextime for an employee on a compressed work schedule, the supervisor must ensure that the flextime does not cause the employee to work more than 40 hours in a work week

If the supervisor and the employee do not agree to the terms stated on the form, the supervisor must forward a copy of the form and a summary of the points on which the supervisor and the employee agreed and disagreed to the department director.

Department Director's Role. The department director must review the flextime request and:

- Approve it
- Disapprove it, or
- Suggest changes in the terms for consideration by the employee and the supervisor to help them reach agreement

If the request is not approved, the department director must give the employee the reason. The decision of the department director is final.
The department director must:

- Give a copy of the approved or disapproved request to the employee
- Ensure that a copy is placed in the employee's department operating file, and
- Send a copy to the Director, Office of Human Resources

Important Information About Flextime.

Working a flextime schedule will not affect the employee's salary, benefits, job responsibilities, or eligibility for overtime compensation.

The employee may terminate this agreement at any time and return to a traditional work schedule by giving notice to the supervisor.

The supervisor may require the employee to modify the flextime schedule temporarily to address operational requirements, workload fluctuations, or problems with the employee's performance or attendance. The supervisor must give the employee reasonable advance notice of any temporary schedule change.

A supervisor may require an employee to stop working a flextime schedule if the supervisor determines that the standards for approving a flextime request stated above are not being met. The supervisor must give the employee notice and a reasonable opportunity to correct the problem.

A department director may:

- Exclude employees in an organizational unit, position, or class of positions from working flextime schedules if the operation does not lend itself to flextime schedules
- Limit an employee to a particular flextime schedule with specific flex hours if the department director determines that it is consistent with operational requirements, and
- Exclude an employee with a performance or attendance problem from working a flextime schedule.

Approved:

_____ _____
Employee's signature date

_____ _____
Supervisor's signature date

_____ _____
Department Director's signature date

Disapproved/Reason:

_____
_____

_____ _____
Supervisor's signature date

_____
_____

_____ _____
Department Director's signature date

MONTGOMERY COUNTY GOVERNMENT
JOB SHARING AGREEMENT

(If 2 full-time employees wish to share one job, each must complete a separate agreement.)

This agreement between_____, _____
employee's name position

and the Montgomery County_____. The effective date
department/office name

of this job sharing agreement is_____. The work schedule is as follows:
date

Sunday _____ Monday _____ Tuesday_____ Wednesday _____

Thursday_____Friday_____Saturday_____. The work schedule must include not less than 40 regularly scheduled hours per pay period.

Attach a copy of the job sharing plan that shows how the duties of the position will be divided.

The employee understands and accepts the following conditions of job sharing and part-time employment

- Annual leave, sick leave, holiday leave, and personal leave days are prorated.
- Paid time off (PTO) is prorated.
- Health benefits are not affected and remain the same.
- Retirement benefits may be based on a combination of full-time and part-time service.
- Life insurance and tuition assistance benefits (ETAP) decrease by 50 percent.
- The maximum for deferred compensation is 25 percent of salary.
- Seniority credits for reduction-in-force (RIF) and for meeting minimum qualification requirements are prorated. For example, one year of part-time service at 40 hours per pay period equals 6 months of seniority for RIF or 6 months of experience toward minimum qualification requirements.
- If the employee works more than 40 hours in a pay period, the employee must not be paid at the overtime rate or receive compensatory time at the overtime rate unless the employee has worked more then 40 hours in a work week or 80 hours in a pay period.
- All other benefits and the laws, regulations, and rules that determine a job sharer's conditions of employment apply as to a part-time employee.

For more information about job sharing, see Section 15-4(c) of the Personnel Regulations.

The supervisor and department director must evaluate the job sharing agreement under the following standards:

- Operational requirements must be met;
- Service to clients or the public must be maintained or improved;
- Costs to the County must not increase;
- Each office or operation must have enough staff on duty during the normal period of public service, and
- The arrangement must not diminish the ability of the department to assign responsibility and accountability of the job sharing employees for providing County services and performing the employee's official duties.

The supervisor must review the plan and meet with the employee to discuss the plan. The supervisor should suggest to the employee any adjustments to the plan necessary to maintain the effectiveness of the work unit. If the supervisor and the employee agree, they must sign the

completed job sharing agreement and submit it to the department director for approval. If they cannot agree, the supervisor must submit to the department director a written summary of the areas of agreement and disagreement and a copy of the proposed plan.

The department director must review the job sharing plan and:

- Approve it
- Disapprove it, or
- Suggest changes in the terms for consideration by the employee and the supervisor to help them reach agreement

If the plan is not approved, the department director must give the employee the reason for not approving the request. The decision of the department director is final.

The department director must:

- Give a copy of the approved or disapproved plan to the employee
- Ensure that a copy is placed in the employee's department operating file, and
- Send a copy to the Director, Office of Human Resources

If one of the job-sharing employees leaves, the department director may:

- Renew the job sharing agreement and fill the vacant position under the merit system procedures, or
- Dissolve the job sharing agreement and return the employee to full-time status.

If the department director dissolves the job sharing agreement and the remaining employee refuses to return to a full-time position, the department director may abolish the part-time position and conduct a RIF under Section 30 of the Personnel Regulations. The decision of the department director is final.

Approved:

Employee's signature	date
Supervisor's signature	date
Department Director's signature	date

Disapproved/Reason:

Supervisor's signature	date
Department Director's signature	date

MONTGOMERY COUNTY GOVERNMENT
Sick Leave Donor Program Authorization Form

To be completed by employee or another acting on employee's behalf:

Name: _____ **Title:** _____
(Please print)

Department: _____ **Division:** _____

Work schedule: Full-time:____Part-time:____If part-time, how many work hours per week? ____

Work phone:_____**Home phone:** _____

Please read the information below. (See Section 17-10 of the Personnel Regulations for more information about the Sick Leave Donor Program.)

1. If you received a pay advance, as reflected on your payroll check, those advanced hours will be paid off by your initial grant of donated sick leave. This will cause the payroll check containing the initial grant of donated sick leave to be less than a full check. This Finance Department policy was established to prevent any overpayment of salaries beyond the end of the time sheet certification. The Payroll Section will give you further notice of this adjustment before it sends you the affected payroll check. If you have questions about this, please call the Payroll Section, at 240-777-8840.

2. The Director of the Office of Human Resources may revoke a leave donation to an employee, declare an employee ineligible for leave donations for up to one year, or recommend discipline to the employee's department director, if the employee:
   - gives false or misleading information on a form associated with the Sick Leave Donor Program; or
   - attempts to intimidate, threaten, or coerce another with respect to donating, receiving, or using sick leave or PTO under the Sick Leave Donor Program

3. Complete this form, the *Sick Leave or PTO Donation Request Form*, the *Medical Certification Form for Sick Leave or PTO Donations*, and send the forms with a copy of the approved leave request (if in written form) to the Payroll Section. Payroll must receive all required forms **no later than the Monday following a payday** to ensure that you receive a paycheck based on the donated leave on the next payday.

   Please fax or send the forms (fax is preferred) to: Payroll Section, Attention: Sick Leave Donor Program, 101 Monroe Street, 8th Floor, Rockville, Maryland 20850. (Fax 240-777- 8843 and phone 240-777-8840)

Signature of employee or
person signing for employee:_____**Date:** _____

If employee did not sign form, please indicate below your relationship to employee and phone number(s) where you may be reached:

_____

Sick Leave Donor Program Authorization Form

To be completed by employee's Department Director or designee

Name of employee requesting sick leave or PTO donations: _____

Please answer the questions below.

1. Has the employee had an extended illness or injury, which may include complications of pregnancy or childbirth or recovery from childbirth, that causes the employee to be unable to perform the essential functions of the employee's position for more than 7 consecutive calendar days? ( ) Yes ( ) No

2. Has the employee been a County merit system employee for at least 12 consecutive months? ( ) Yes ( ) No

   (If the answer is "no" to either of the questions above, you may ask the Director of the Office of Human Resources to waive the requirement if special circumstances exist that would justify a waiver. See Section 17-10 of the Personnel Regulations for more detail.)

3. Has the employee requested approval to use sick leave or PTO under established department procedures or practices because of the extended illness or injury referred to in Question #1? ( ) Yes ( ) No

4. Has the employee provided a completed *Medical Certification Form for Sick Leave or PTO Donations* or a written statement from the employee's health care provider that supports the request for sick leave or PTO donations? *(Please attach the medical certification.)* ( ) Yes ( ) No

5. Has the employee's request to use sick leave or PTO been approved? ( ) Yes ( ) No
   If "yes", the leave was requested and approved by: *Leave Request Form*____ e-mail Memo verbal ____

6. Has the employee used, or will the employee have used, all accrued annual leave, sick leave, personal leave days, and compensatory time or, if the employee receives PTO instead of annual and sick leave, all accrued PTO, personal leave days, and compensatory time? ( ) Yes ( ) No

Questions 3-6 above must be answered "yes" in order for the employee to be eligible to receive sick leave or PTO donations. Questions 1 and 2 must be answered "yes" unless a waiver is approved by the OHR Director. If the employee has used all of the employee's paid leave and is on leave without pay, please be sure to notify OHR's Records Management unit at 240-777-5112.

I certify that the employee is eligible for sick leave or PTO donations. I have attached the employee's approved leave request (if in written form), Medical Certification Form for Sick Leave or PTO, and the Sick Leave or PTO Donation Request Form.

Name of Department Director (or designee): _____
(*Please print*)

Signature:_____Date: _____

Sick Leave Donor Program Authorization Form

For use by Department of Finance, Payroll Section only:

Employee's name: _____

Date received: _____

1. A full-time employee who donates leave must maintain a sick leave or PTO balance of 80 hours after donation. A part-time employee who works at least 40 hours in a pay period must maintain a sick leave or PTO balance of 40 hours. A part-time employee who works less than 40 hours in a pay period must maintain a pro-rated amount of unused sick leave or PTO after donation.

2. Employee recipient leave balance:

   *Annual*_____*Sick*_____*PTO*_____*Personal leave days*_____*Compensatory time* _____

3. To be eligible to receive donated sick leave or PTO, an employee must have an extended illness or injury that causes the employee to be unable to work for more than 7 consecutive calendar days. Employee's last day worked: _____

4. Date employee exhausted all paid leave: _____

5. A full-time employee may receive up to 1040 hours of donated leave in a leave year. A part-time employee may receive a prorated amount of donated leave. Total leave donated to employee: _____

6. To be retroactive: ( ) Yes ( ) No

Authorized by:_____Date: _____

MONTGOMERY COUNTY GOVERNMENT

Sick Leave or PTO Donation Request Form

Name of employee to receive donations: _____ **Last 4 digits of Soc. Sec. No.:** _____
(*Please print*)

Form submitted by: _____ **Date:** _____
(name & work phone)

Employee eligibility to donate sick leave or PTO.

1. A full-time employee must maintain a sick leave or PTO balance of 80 hours after donation. A part-time employee who works 40 hours or more in a pay period must maintain a sick leave or PTO balance of 40 hours after donation. A part-time employee who works less than 40 hours in a pay period must maintain a pro-rated amount of unused sick leave after donation.

2. An employee must not donate sick leave or PTO after giving oral or written notice of retirement or resignation or receiving written notice of separation from County employment.

I/We hereby donate sick leave or PTO to the above named employee in the amounts indicated in accordance with the eligibility requirements of the Sick Leave Donor Program.

Dept Code	Donor's Name	Last 4 digits of Soc. Sec. No.	Donor's Work phone	Donor's Signature	Hours Donated

Use additional sheets, if necessary. See Section 17-10 of the Personnel Regulations for more information about the Sick Leave Donor Program.

MONTGOMERY COUNTY GOVERNMENT
Medical Certification Form for Sick Leave or PTO Donations

To be completed by physician or other licensed health care provider.

Date: _____

Employee/patient's name: _____

Employee/patient's job title: _____

The above-named employee/patient is currently under my care. The employee/patient cannot perform the essential functions of the employee/patient's position with the Montgomery County Government because of the employee/patient's serious health condition, which may include complications of pregnancy or childbirth, or recovery from childbirth.

The employee/patient's serious health condition began on_____.
(*Please provide date*)

I estimate that the patient will be able to return to work on_____.
(*Please provide date*)

Name of licensed health care provider: _____
(*Please print*)

Professional title _____
(*medical doctor, licensed physical therapist, etc.*)

Work phone: _____

Other phone: _____

Address: _____

Signature: _____

Please return this form to the employee/patient.

MONTGOMERY COUNTY GOVERNMENT
Annual Leave Transfer Form

To be completed by employee, employee's spouse, and spouse's supervisor:

Under Section 16-13 of the Personnel Regulations and Article 14.14 of the MCGEO Agreement, an employee who is married to another County employee may transfer annual leave to the employee's spouse to enable the spouse to use the leave to care for a child or children. The following conditions apply to the annual leave transfer:

- the employee or the employee's spouse must have legal responsibility for the care of the child or children;
- the spouse must use the leave to care for:
  - a child or children under the age of 13; or
  - an older child with a medically certified disability that makes the child incapable of self care;
- the employee's spouse must sign the form to indicate that he or she has agreed to accept the transferred leave;
- the spouse's supervisor must sign the form indicating that the employee's spouse is eligible to use the transferred leave under the terms of the Personnel Regulations or MCGEO Agreement; and;
- an employee may transfer leave to the employee's spouse only in increments of 40 hours.

Employee's name:_____ Dept: _____
(Please print)
Division: _____Work phone:_____e-mail:_____

Spouse's name:_____Dept: _____
(Please print)
Division: _____Work phone:_____e-mail:_____

I wish to donate _____hours of annual leave to my spouse.

Signature of spouse donating leave:_____Date: _____

I agree to accept the annual leave donation from my spouse to care for a child or children for whom I or my spouse is legally responsible. I agree to use the leave in accordance with the terms described above.

Signature of spouse accepting leave: _____Date: _____

I am the supervisor of the above employee who accepted the donated annual leave and I indicate by my signature on this form that the employee is eligible to use the donated leave under the terms stated above on this form.

Name of supervisor: _____
(Please print)

Signature of supervisor:_____ Date:_____

Please fax or send this form (fax is preferred) to: Payroll Section, Attention: Annual Leave Donation, 101 Monroe Street, 8th Floor, Rockville, Maryland 20850. (Fax 240-777-8843 and phone 240-777-8840)

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

This is to further inform you that:

1. You are eligible [ ] 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

Montgomery County Government

Medical Certification of Health Care Provider for
Employee's Serious Health Condition Form
(Family and Medical Leave Act of 1993 as amended)

SECTION I: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section I before giving this form to your medical provider. The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave for the employee's serious health condition to submit a timely and complete certification providing sufficient facts to support the request for leave. Your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of your FMLA request. You have 15 calendar days to return this form to your supervisor.

Your name: _____
First Middle Last

Your department/division _____

Your job title:_____Your regular work schedule: _____

Your supervisor: _____

Your essential job functions: _____

_____

_____

Check if job description is attached: _____

SECTION II: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Page 4 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____)_____Fax :(_____) _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

   Probable duration of condition: _____

   Mark below as applicable:
   Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
   ___Yes____No. If yes, dates of admission:

   _____

   Date(s) you treated the patient for condition:

   _____

   Will the patient need to have treatment visits at least twice per year due to the condition?____Yes____No.

   Was medication, other than over-the-counter medication, prescribed?____Yes____No.

   Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?_____Yes____No. If so, state the nature of such treatments and expected duration of treatment:

   _____

   _____

2. Is the medical condition pregnancy?____Yes____No. If yes, expected delivery date:_____

3. Use the information provided in Section I to answer this question.

   Is the employee unable to perform any of his/her job functions due to the condition:_____Yes_____No.

   If so, identify the job functions the employee is unable to perform:

   _____

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

   _____

   _____

   _____

   _____

   _____

   _____

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery?____Yes____No.

   If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition?____Yes____No.

   If so, are the treatments or the reduced number of hours of work medically necessary? ___Yes____No.

   Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

   _____

   Estimate the part-time or reduced work schedule the employee needs, if any:

   _____ hour(s) per day;_____days per week from_____through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions?_____Yes_____No.

   Is it medically necessary for the employee to be absent from work during the flare-ups? ____ Yes_____No. If yes, explain:

   _____

   _____

   _____

   _____

   Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

   Frequency:_____times per_____week(s) month(s) _____

   Duration:_____hours or____day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

Signature of Health Care Provider **Date**

Montgomery County Government

Certification of Health Care Provider for Family Member's Serious Health Condition

(Family and Medical Leave Act of 1993 as amended)

SECTION I: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section I before giving this form to your family member or his/her medical provider. The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave to care for a covered family member with a serious health condition to submit a timely, and complete certification providing sufficient facts to support the request for leave. Your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of your FMLA request. You have 15 calendar days to return this form to your supervisor.

Your name: _____
First Middle Last

Your department/division _____

Your job title:_____Your regular work schedule: _____

Your supervisor: _____

Name of family member for whom you will provide care: _____
First Middle Last

Relationship of family member to you: _____

If family member is your son or daughter, date of birth: _____

Describe care you will provide to your family member and estimate leave needed to provide care:

_____

_____

_____

_____ _____
Employee Signature Date

SECTION II: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Page 4 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____)_____Fax :(_____) _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

   Probable duration of condition: _____

   Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility? ___Yes____No. If so, dates of admission: _____

   Date(s) you treated the patient for condition: _____

   Was medication, other than over-the-counter medication, prescribed?____Yes____No.

   Will the patient need to have treatment visits at least twice per year due to the condition?____Yes____No.

   Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?_Yes_ No. If yes, state the nature of such treatments and expected duration of treatment:

   _____

   _____

2. Is the medical condition pregnancy?____Yes____No. If yes, expected delivery date:_____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

   _____

   _____

   _____

   _____

_____

_____

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery?____Yes____No.

   Estimate the beginning and ending dates for the period of incapacity: _____

   During this time, will the patient need care? Yes No.

   Explain the care needed by the patient and why such care is medically necessary:

   _____

   _____

   _____

   _____

   _____

5. Will the patient require follow-up treatments, including any time for recovery?____Yes____No.

   Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

   _____

   Explain the care needed by the patient, and why such care is medically necessary:

   _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery?

   __ Yes No.

   Estimate the hours the patient needs care on an intermittent basis, if any:

   _____ hour(s) per day;_____days per week from_____through _____

   Explain the care needed by the patient, and why such care is medically necessary: _____

   _____

_____

_____

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities?_____Yes_____No.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency:_____times per_____week(s)_____month(s)

Duration:_____hours or____day(s) per episode

Does the patient need care during these flare-ups?_____Yes_____No.

Explain the care needed by the patient, and why such care is medically necessary: _____

_____

_____

_____

_____

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER

_____

_____

_____

_____

_____

_____

_____ _____

Signature of Health Care Provider Date

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://montgomerycountymd.gov/ohr/resources/files/regulation/MCPR 2001 Section 34.doc.

1. Complete this form and give a copy, along with any supporting documentation, to your supervisor. Failure to provide your supervisor with a copy of your grievance may delay the process. 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: _____ mailing address:_____phone no.:_____
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, 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** ☐ (If not resolved, employee has ten calendar days upon receipt of response to appeal to next step.)

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 ten 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 ten 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.

Montgomery County Government

Certification of Qualifying Exigency Military Family Leave

(Family and Medical Leave Act of 1993 as amended)

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking military family leave due to a qualifying exigency to submit a timely, complete, and sufficient certification to support the request for leave. The employee should complete this form fully and completely. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Your response is required to obtain a benefit. While you are not required to provide this information, failure to do so may result in a denial of your request for FMLA leave. You have 15 calendar days to return this form to your supervisor.

Your Name: _____
First Middle Last

Name of covered military member on active duty or call to active duty status in support of a contingency operation: _____
First Middle Last

Relationship of covered military member to you: _____

Period of covered military member's active duty: _____

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation. Please check one of the following:

- ☐ A copy of the covered military member's active duty orders is attached.
- ☐ Other documentation from the military certifying that the covered military member is on active duty (or has been notified of an impending call to active duty) in support of a contingency operation is attached.
- ☐ I have previously provided my employer with sufficient written documentation confirming the covered military member's active duty or call to active duty status in support of a contingency operation.

PART A: QUALIFYING REASON FOR LEAVE

1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):

_____

_____

_____

_____

_____

_____

2. A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs. Available written documentation supporting this request for leave is attached. Yes No None Available

PART B: AMOUNT OF LEAVE NEEDED

1. Approximate date exigency commenced: _____

   Probable duration of exigency: _____

2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency?____Yes____No.

   If so, estimate the beginning and ending dates for the period of absence: _____

   _____

3. Will you need to be absent from work periodically to address this qualifying exigency? Yes No

   Estimate schedule of leave, including the dates of any scheduled meetings or appointments:

   _____

   _____

   _____

   _____

   Estimate the frequency and duration of each appointment, meeting, or leave event, including any travel time (i.e., 1 deployment-related meeting every month lasting 4 hours):

   Frequency:_____times per_____week(s)_____month(s)

   Duration:_____hours____day(s) per event.

PART C:

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school or childcare providers, to make financial or legal arrangements, to act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address, and appropriate contact information of the individual or entity with whom you are meeting (i.e., either the telephone or fax number or email address of the individual or entity). This information may be used by the County Government to verify that the information contained on this form is accurate.

Name of Individual:_____Title: _____

Organization: _____

Address: _____

Telephone: (_____)_____Fax: (_____) _____

Email: _____

Describe nature of meeting: _____

_____

_____

_____

_____

_____

_____

_____

_____

PART D:

I certify that the information I provided above is true and correct.

_____ _____

Signature of Employee Date

Montgomery County Government

Certification for Serious Injury or Illness of Covered Servicemember
for Military Family Leave
(Family and Medical Leave Act of 1993 as amended)

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking military family leave due to a serious injury or illness of a covered servicemember to submit a timely, and complete certification providing sufficient facts to support the request for leave.

SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee Is Requesting Leave The employee or covered servicemember should complete Section I before having Section II completed. Your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of an employee's FMLA request. You have 15 calendar days to return this form to your supervisor.

SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed on Page 2 has requested leave under the FMLA to care for a family member who is a member of the Regular Armed Forces, the National Guard, or the Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a covered servicemember's serious injury or illness includes written documentation confirming that the covered servicemember's injury or illness was incurred in the line of duty on active duty and that the covered servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave.

SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee Is Requesting Leave: (This section must be completed first before any of the below sections can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and Address of Employer (this is the employer of the employee requesting leave to care for covered servicemember): _____

Name of Employee Requesting Leave to Care for Covered Servicemember:

_____

First Middle Last

Name of Covered Servicemember (for whom employee is requesting leave to care):

_____

First Middle Last

Relationship of Employee to Covered Servicemember Requesting Leave to Care:

_____Spouse _____Parent _____Son _____Daughter _____Next of Kin

Part B: COVERED SERVICEMEMBER INFORMATION

(1) Is the Covered Servicemember a Current Member of the Regular Armed Forces, the National Guard or Reserves?_____Yes_____No

If yes, please provide the covered servicemember's military branch, rank and unit currently assigned to:

_____

Is the covered servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit)?_____Yes_____No. If yes, please provide the name of the medical treatment facility or unit: _____

(2) Is the Covered Servicemember on the Temporary Disability Retired List (TDRL)?_____Yes_____No

Part C: CARE TO BE PROVIDED TO THE COVERED SERVICEMEMBER

Describe the Care to Be Provided to the Covered Servicemember and an Estimate of the Leave Needed to Provide the Care:

_____

_____

SECTION II: For Completion by a United States Department of Defense ("DOD") Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider. If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator). (Please ensure that Section I above has been completed before completing this section.) Please be sure to sign the form on the last page.

Part A: HEALTH CARE PROVIDER INFORMATION
Health Care Provider's Name and Business Address:

_____

Type of Practice/Medical Specialty: _____

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider: _____

Telephone: ( )_____Fax: ( )_____Email: _____

PART B: MEDICAL STATUS
(1) Covered Servicemember's medical condition is classified as (Check One of the Appropriate Boxes):

☐ **(VSI) Very Seriously Ill/Injured** – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **(SI) Seriously Ill/Injured** – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **OTHER Ill/Injured** – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

☐ **NONE OF THE ABOVE** (Note to Employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a "serious health condition" under § 825.113 of the FMLA. If such leave is requested, you may be required to complete DOL FORM WH-380 or an employer-provided form seeking the same information.)

(2) Was the condition for which the Covered Service member is being treated incurred in line of duty on active duty in the armed forces?_____Yes_____No

(3) Approximate date condition commenced: _____

(4) Probable duration of condition and/or need for care: _____

(5) Is the covered servicemember undergoing medical treatment, recuperation, or therapy?____Yes____No If yes, please describe medical treatment, recuperation or therapy: _____

PART C: COVERED SERVICEMEMBER'S NEED FOR CARE BY FAMILY MEMBER

(1) Will the covered servicemember need care for a single continuous period of time, including any time for treatment and recovery?____Yes____No
If yes, estimate the beginning and ending dates for this period of time: _____

(2) Will the covered servicemember require periodic follow-up treatment appointments?
___ Yes____No If yes, estimate the treatment schedule: _____

(3) Is there a medical necessity for the covered servicemember to have periodic care for these follow-up treatment appointments?____Yes____No

(4) Is there a medical necessity for the covered servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g., episodic flare-ups of medical condition)?_____Yes_____No. If yes, please estimate the frequency and duration of the periodic care:

_____

_____

Signature of Health Care Provider:_____Date: _____

Montgomery County Government
Employee Request for Family and Medical Leave (FMLA)

Date:_____

TO: (name of supervisor) _____

FROM: (name of employee _____

Department/Division _____

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

I have worked for Montgomery County for a total of at least 12 months:
__ Yes No Unsure

I have worked for Montgomery County for at least 1040 hours, not including hours of paid leave, during the past 12 months: __ Yes No Unsure

I need to take FMLA leave because of:

- ⌋ the birth of a child, or the placement of a child with me for adoption or foster care;
- ⌋ a serious health condition that makes me unable to perform the essential functions of my job;
- ⌋ a serious health condition affecting my
  - ⌋ spouse
  - ⌋ domestic partner
  - ⌋ minor child
  - ⌋ adult child incapable of self-care
  - ⌋ parent;
- ⌋ to handle an exigency directly related to active duty status or a call to active duty of my
  - ⌋ spouse
  - ⌋ domestic partner
  - ⌋ son or daughter
  - ⌋ parent; or
- ⌋ to care for a servicemember with a serious injury or illness incurred in the line of duty while on active duty who is my
  - ⌋ spouse
  - ⌋ domestic partner
  - ⌋ son or daughter
  - ⌋ parent
  - ⌋ next of kin
- ⌋ I need this leave to begin on (date)_____and expect it to continue until (date) _____ and want to take this leave using:
  - ⌋ accrued annual leave
  - ⌋ accrued sick leave or family sick leave
  - ⌋ accrued personal leave
  - ⌋ leave without pay
  - ⌋ some combination of the above
- ⌋ I need to take this FMLA leave on an intermittent or as needed basis.

APPENDIX V

Merit System Protection Board Appeal Form

* indicates required form fields

General Information

First Name *

Middle Name

Last Name *

Home Phone * ### – ### – ####

Work Phone ### – ### – ####

Email. *

Mailing Address

Street Address 1 *

City *

Street Address 2

State

Maryland

Zip Code *

•

Are you a current county employee? *

Yes No

Title/Position:

Grade

Name of the Department that took the action or made the decision you are appealing *

Select

Type of personnel action or decision you are appealing*

(Please check the one that applies.) *

Disciplinary Action

Date you received the Department's Statement of Charges * MM / DD / YYYY

Date you responded to the Statement of Charges * MM / DD / YYYY

Date you received the Department's Notice of Action * MM / DD / YYYY

Effective date of the Department action or decision * MM / DD / YYYY

Denial Of Employment

Date you received the Department's Notice of denial * MM / DD / YYYY

CAO Denial of grievance

Date you received the Chief Administrative Officer(CAO)'s decision * MM / DD / YYYY

Explain briefly why you think the Department was wrong in taking this action or making this decision *

What action would you like the Board to take in this case (i.e, what is the relief/remedy you are requesting)? *

Do you wish to designate an attorney to represent you in this proceeding before the Board? (You may designate a representative at any time. However, the processing of your appeal will not normally be delayed because of any difficulty you may have in obtaining a representative.) *

Yes No

Representative's Information

Representative's First Name *

Middle Name

Last Name *

Phone Number * ### – ### – ####

Fax

Email *

Mailing Address

Street Address 1 *

City *

Street Address 2

State

Zip Code *

Certification

By clicking on this submit button you are certifying that all of the statements made in this form are true, complete and correct to the best of your knowledge and belief. Upon clicking the submit button, the MSPB will receive this appeal and a copy of this appeal will automatically be sent to the Office of the County Attorney, in accordance with Section 35-5(a) of the Montgomery County Personnel Regulations.

- Submit