

**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.

(d) *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.
- (e) ***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:

<b>Bargaining unit</b>	<b>Articles of current agreements with references to sick leave</b>
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
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