

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