

Bill No. 46-09
Concerning: Personnel – Regulations –
Persons with Disabilities – Hiring
Preference
Revised: January 27, 2010 Draft No. 6
Introduced: December 1, 2009
Enacted: February 2, 2010
Executive: February 16, 2010
Effective: May 18, 2010
Sunset Date: None
Ch. 2, Laws of Mont. Co. 2010

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Andrews, Council Vice President Ervin, Councilmember Trachtenberg,
Councilmember Navarro and Councilmember Berliner

AN ACT to:

- (1) require the Executive to adopt regulations establishing and maintaining a hiring preference for certain qualified persons with disabilities who apply for County merit positions;
- (2) require the preference to apply to a person who is among the highest rating category in a normal competitive process; and
- (3) generally amend the merit system law concerning hiring persons with disabilities and make stylistic and conforming changes to related provisions.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-7 and 33-9

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1 **Sec. 1. Sections 33-7 and 33-9 are amended as follows:**

2 **33-7. County Executive and Merit System Protection Board responsibilities.**

3 (a) *Generally.* In performing its functions, the Board is expected to protect
4 the merit system and to protect employee and applicant rights
5 guaranteed under the merit system, including protection against
6 arbitrary and capricious recruitment and supervisory actions, support for
7 recruitment and supervisory actions demonstrated by the facts to be
8 proper, and to approach these matters without any bias or predilection to
9 either supervisors or subordinates. The remedial and enforcement
10 powers of the Board granted herein [shall] must be [fully] exercised by
11 the Board as needed to rectify personnel actions found to be improper.
12 The Board [shall] must comment on any proposed changes in the merit
13 system law or regulations, at or before the public hearing thereon. The
14 Board, subject to the appropriation process, [shall] must [be responsible
15 for establishing] establish its staffing requirements [necessary to
16 properly implement its duties] and [to] define the duties of [such] its
17 staff.

18 (b) *Personnel regulations.* The County Executive [shall] must adopt
19 personnel regulations under Method (1) [of section 2A-15 of this Code].

20 The personnel regulations [shall] must provide the framework for:

- 21 (1) The classification of all merit system positions in the executive
22 and legislative branches;
- 23 (2) Minimum qualifications for merit system positions, methods of
24 determining qualifications and methods of selection for any
25 positions;
- 26 (3) Probationary periods, promotions, transfers;

27 (4) Causes for removal from any merit system position and methods
 28 of removal, including demotions, furloughs, and reduction of
 29 staff. However, any regulations governing a reduction in staff and
 30 employee rights attendant thereto shall be restricted to the
 31 respective branch of government in which the employee is
 32 employed; in the case of the legislative and judicial branches, this
 33 sentence shall apply to employees hired by the legislative and
 34 judicial branch, respectively, after August 1, 1983.

- 35 (5) Annual, sick and other leave;
- 36 (6) Prohibitions against political activity;
- 37 (7) Maintenance of personnel records; and
- 38 (8) Similar personnel matters as may be provided by law.

39 (c) *Classification standards.* With respect to classification matters, the
 40 County Executive [shall] must provide by personnel regulation, adopted
 41 [in the manner specified above] under Method (1), standards for
 42 establishing and maintaining a classification plan. These standards may
 43 include but are not limited to the following:

- 44 (1) The necessary components of class specifications;
- 45 (2) Criteria for the establishment of new classes, modification or
 46 elimination of existing classes;
- 47 (3) Criteria for the assignment of positions to classes;
- 48 (4) Kinds of data required to substantiate allocation of positions;
- 49 (5) Guidelines for comparing levels of job difficulty and complexity;
- 50 and
- 51 (6) Criteria for the establishment or abolishment of positions.

52 The Board [shall] must conduct or authorize periodic audits of
 53 classification assignments made by the Chief Administrative Officer

54 and of the general structure and internal consistency of the classification
 55 plan, and [shall] must submit audit findings and recommendations to the
 56 County Executive and County Council.

57 (d) Hiring preference for persons with disabilities.

58 (1) Findings.

59 (A) Persons with disabilities are a largely untapped resource
 60 for outstanding candidates for County employment.

61 (B) Persons with disabilities suffer from a high unemployment
 62 and underemployment rate in the County due in part to
 63 unfounded myths, fears and stereotypes associated with
 64 many disabilities.

65 (C) A hiring preference for persons with disabilities is
 66 necessary to remedy past discrimination resulting from
 67 these unfounded myths, fears, and stereotypes.

68 (2) The Executive must adopt by personnel regulation, under Method
 69 (1), standards for establishing and maintaining a preference for
 70 the initial appointment of a qualified person with a disability into
 71 a merit system position. These standards must:

72 ~~[(1)]~~ (A) define a person with a disability ~~[[who is]]~~ eligible
 73 for the preference as:

74 (i) a person with medical proof of a developmental
 75 disability, a severe physical disability, or a
 76 psychiatric disability; or

77 (ii) a veteran rated by the Department of Veterans
 78 Affairs with a compensable service-connected
 79 disability of 30 percent or more;

80 ~~[(2)]~~ (B) require medical certification of a qualifying
 81 disability;

82 ~~[(3)]~~ (C) establish the following order of preference ~~[[in~~
 83 relation to other preferences authorized by law]]:

84 (i) an employee who is unable to perform the
 85 employee's job because of a disability or injury
 86 under the ADA;

87 (ii) an employee subject to reduction-in-force;

88 (iii) an employee who was granted a temporary
 89 disability retirement under the Employees
 90 Retirement System or an initial or temporary
 91 disability benefit of any type under the Retirement
 92 Savings Plan or the Guaranteed Retirement Income
 93 Plan but is no longer eligible for such a temporary
 94 disability retirement or benefit;

95 (iv) a veteran with a disability;

96 (v) an equal preference for a veteran without a
 97 disability and a non-veteran with a disability; and

98 ~~[(3)]~~ (D) only apply the preference to a person who is among
 99 the highest rating category in a normal competitive
 100 process.

101 (e) *Personnel regulation review.* The Merit System Protection Board [shall]
 102 must meet and confer with the Chief Administrative Officer and
 103 employees and their organizations from time to time to review the need
 104 to amend these regulations.

105 ~~[(e)]~~ (f) *Adjudication.* The Board [shall] must hear and decide disciplinary
 106 appeals or grievances upon the request of a merit system employee who

107 has been removed, demoted or suspended and in such other cases as
108 required herein.

109 [(f)] (g) *Retirement.* The Board may from time to time prepare and
110 recommend to the Council modifications to the County's system of
111 retirement pay.

112 [(g)] (h) *Personnel management oversight.* The Board [shall] must review
113 and study the administration of the County classification and retirement
114 plans and other aspects of the merit system and transmit to the Chief
115 Administrative Officer, County Executive and [the] County Council its
116 findings and recommendations. The Board [shall] must conduct such
117 special studies and audits on any matter relating to personnel as may be
118 periodically requested by the County Council. All County agencies,
119 departments and offices and County employees and organizations
120 [thereof shall] must cooperate with the Board and have adequate notice
121 and an opportunity to participate in any such review initiated under this
122 Section.

123 [(h)] (i) *Publication.* Consistent with the requirements of [the Freedom of
124 Information Act] State law, confidentiality and other provisions of law,
125 the Board [shall] must publish, at least annually, abstracts of its
126 decisions, rulings, opinions and interpretations, and maintain a
127 permanent record of its decisions.

128 [(i)] (j) *Public forum.* The Board [shall] must convene at least annually a
129 public forum on personnel management in the County government to
130 examine the implementation of Charter requirements and the merit
131 system law.

132 **33-9. Equal employment opportunity and affirmative action.**

133 (a) *Policy.* [The county's policy shall be to] Except as provided in Section
 134 33-7(d), the County must take all personnel actions on the basis of
 135 merit and fitness without regard to political affiliation or non-merit
 136 factors, and without regard to other factors as may be provided for in
 137 chapter 27, "Human Relations and Civil Liberties," such as sex, marital
 138 status, race, religion, national origin, age or [handicap] disability. The
 139 Chief Administrative Officer [shall be responsible for initiating,
 140 developing and maintaining] must initiate, develop, and maintain [such]
 141 an equal employment opportunity and affirmative action program [as]
 142 necessary to ensure that all persons have an equal opportunity to enter
 143 and progress in the County's service on the basis of open competition
 144 and demonstrated ability. The County Executive [is authorized to issue
 145 such] may adopt regulations, [adopted] under Method (1) [of section
 146 2A-15 of this Code], [as necessary] to implement this policy. Such
 147 regulations [shall] must provide that an employee whose personal
 148 religious beliefs require the abstention from work during certain periods
 149 of time may elect to engage in an alternate work schedule in order to
 150 meet those religious requirements. The [regulation shall] regulations
 151 must [include provision for any] require an employee who elects to
 152 work an alternate schedule to [be obligated to] work an equal period of
 153 time to that taken off for such religious reasons.

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155 *Approved:*

156 *Nancy Floreen* *February 3, 2010*
Nancy Floreen, President, County Council Date

157 *Approved:*

158 *Isiah Leggett* *Feb 16, 2010*
Isiah Leggett, County Executive Date

159 *This is a correct copy of Council action.*

160 *Linda M. Lauer* *Feb 16, 2010*
Linda M. Lauer, Clerk of the Council Date