

**Montgomery County, Maryland
Office of the County Executive
Office of Internal Audit**



**Review of Compliance with County Policies
on COVID Front Facing Onsite Differential Pay**

August 31, 2021

Highlights

Why MCIA Did this Review

The Montgomery County Office of Internal Audit (MCIA) conducted a County-wide government review of compliance with County policies associated with payment to employees of COVID Front Facing Onsite differential pay. The review focused on how County government departments and offices managed the pay differential process during the period of March 29, 2020, through October 24, 2020.

The review was conducted at the direction of the Chief Administrative Officer (CAO) following issuance of a report by the Office of Inspector General (OIG) on October 29, 2020, raising concerns that one County department did not follow County policy on the assignment of COVID Front Facing Onsite differential pay and that, as a result, employees in the department received Front Facing Onsite differential pay to which they were not entitled. The OIG also raised, in the report, the possibility that other County departments may have allowed employees to claim Front Facing Onsite differential hours to which they were not entitled.

August 2021

Review of Compliance with County Policies on COVID Front Facing Onsite Differential Pay

What MCIA Found

There appears to have been widespread compliance across County government departments with County policies concerning eligibility for and payment of COVID Front Facing Onsite differential pay.

There were instances in which individual employees recorded Front Facing Onsite time on their timecards and received payments as a result in excess of what they were entitled to under County policy. These entries were the result of either (1) individual employees' apparent errors in entering data on their timecard, or misunderstanding/misinterpretation of County policies regarding eligibility for Front Facing Onsite differential pay; or (2) initial guidance issued by a department's management that may have caused employees to report time in the County's timekeeping system as Front Facing Onsite in excess of what they were entitled to under County policy.

Although not a specific focus of this review, no instances of apparent employee fraud or abuse (i.e., characterized by a deliberate falsification of timecard entries) were identified during the review. Any such instances would have been reported to the OIG for further review/investigation.

Table of Contents

OBJECTIVES	1
BACKGROUND.....	1
Agreements with Labor Unions	2
Information Dissemination	4
Timekeeping Guidance	5
Office of Inspector General (OIG) Investigation	5
County Corrective Actions	6
SCOPE AND METHODOLOGY	6
Limitations.....	7
FINDINGS.....	8
Department Policies and Consistency with County Policies.....	8
Department Processes to Verify/Validate Employee Timecards.....	10
Apparent Reporting of Front Facing Onsite Time in Excess of What the Employee was Entitled to under County Policy and Potential Overpayments that Resulted	10
Post-Audit Analysis	12
SUMMARY OBSERVATIONS.....	13
Appendix A – Negotiated Memoranda of Agreement and Related Memoranda.....	15
Front Facing Onsite Pay Differential Memoranda Issued by Labor Relations	15
Other Directives Issued by the Chief Administrative Officer	16
Appendix B – Legal Opinion Issued by the Office of the County Attorney	45

Review of Compliance with County Policies on COVID Front-Facing Onsite Differential Pay

OBJECTIVES

This report summarizes the review conducted by the Montgomery County Office of Internal Audit (MCIA) of compliance with County policies associated with payment to employees of COVID Front Facing Onsite differential pay. The review focused on how County government departments and offices managed the differential pay process during the period of March 29, 2020, through October 24, 2020.¹ The objectives of the review were to determine

1. Whether there was compliance with the COVID Front Facing Onsite differential pay policies issued by the County in April 2020², as subsequently amended
2. If there was non-compliance with the County policies, document the
 - a. Nature and Extent
 - b. Causes of the non-compliance
 - c. Overpayments, by department, that resulted

BACKGROUND

The County's response to the Coronavirus Disease 2019 (COVID-19) situation started to be actively managed in February-March 2020, with the focus on information communication to employees and managers regarding the disease, its symptoms, and methods to stop the spread of the disease. Guidance on work-related out-of-state travel, workplace safety measures, encouraged use of telephone and videoconferencing to minimize physical interaction, what to do if an employee or a family member became sick, and preparing for emergency telework soon followed. Flyers were disseminated to departments and posted in County facilities.

On March 5, 2020, Governor Hogan declared the initial State of Emergency related to COVID-19. The initial information communication phase was soon followed by implementation of a "maximized" teleworking program across County government, with supervisors being directed to make arrangements "to maximize the number of Teleworking employees" [March 13, 2020,

¹ Although the audit focused on this time period, a subsequent analysis of Front Facing Onsite differential pay for the period of November 2020 through February 13, 2021 (the termination of differential pay) was conducted. This post-audit analysis is discussed in the "Post-Audit Analysis section beginning on page 12 of this report.

² The April 2020 County policy defined "Front Facing Onsite" duties, eligible for the pay differential, to be "work that cannot be performed by telework, involves physical interaction with the public and cannot be performed with appropriate social distancing." [Source: April 5, 2020, memorandum from Chief Administrative Officer to County Directors and Managers.] The Memorandum of Agreement executed April 2020 between the County and the Municipal County Government Employees Organization (MCGEO) afforded COVID front-facing differential pay for employees who could potentially be exposed to COVID-19 because of the nature of their work and worksite. The Agreement expressly included work that cannot be done by telework that involves physical interaction with the public and cannot be performed with appropriate social distancing. The parties subsequently clarified, through a series of agreements, actions and memos, that the intent was to provide front-facing pay for employees who worked in shared or non-private workspaces, where the employees had a heightened risk of exposure to COVID because of frequent or substantial interaction with either members of the public (including contractors) or other County employees, and were unable to maintain the 6-foot social distancing.

memorandum from the County’s Chief Administrative Officer (CAO) to Department and Office Directors].

On March 23, Governor Hogan issued an Executive Order closing all non-essential businesses, exempting from the Order businesses that are part of the “critical infrastructure sectors identified by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency” (<https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>). This Order was followed on March 30, 2020, by the Governor’s issuance of a Stay-At-Home order that required residents to stay in their place of residence except to conduct or participate in “Essential Activities.”

In parallel with the actions at the State level, the County was managing the efforts to continue to provide essential services while protecting County employees and residents; this, in the face of a continually evolving understanding about COVID-19 – its methods of spread and actions that needed to be taken to protect against the spread. On March 20, 2020, the CAO issued a “Directive for Modified Operating Status” to Department and Office Directors announcing decisions made by departments and offices concerning “which functions are necessary to continue performing for the next eight weeks, which is likely the minimum duration of the COVID-19 crisis.”

That Directive also stated that effectively immediately “All work that can be performed via telework must be performed that way,” and “[f]or functions that must be maintained and cannot be performed via telework, take all feasible steps to ensure social distancing and other precautions to protect employee health and safety.” This Directive was effective through March 27, 2020; and was subsequently extended on March 27.

Agreements with Labor Unions

In early April, the County reached agreement with the three labor unions (the United Food and Commercial Workers, Local 1994 (“MCGEO”); the Fraternal Order of Police, Lodge 35 (“FOP”); and the International Association of Fire Fighters, Local 1664 (“IAFF”)) representing County employees. These memoranda of agreement (MOAs) set the foundation for how the County was to compensate employees (particularly through the use of “differential pay”) during the period of the declared Maryland State of Emergency related to COVID-19.³

While each of the MOAs differed in their specific provisions, several common provisions relevant to the current review of Front Facing Onsite differential pay were reflected in all three:

³ The differential pay (Front Facing Onsite and Back Office Onsite) ended on February 14, 2021, with new agreements being reached between the County and the unions.

- COVID-19 Differential Pay: defined as money to be paid to an employee in addition to the employee’s regular pay for either Front Facing Onsite work or Back Office Onsite work, beginning March 29, 2020.
- Types of Work/Differential Pay⁴:
 - “Front Facing Onsite” work – defined as work that cannot be performed by telework that involves physical interaction with the public and cannot be performed with appropriate social distancing. Differential pay: \$10/hour.
 - “Back Office Onsite” work – defined as work performed at a County worksite that cannot be performed by telework and does not involve regular physical interaction with the public. Differential pay: \$3/hour.

Unrepresented General Salary Schedule employees (i.e., employees who are not in one of the bargaining units for the three unions and who are not in the Management Leadership Service (MLS)) were also eligible for the pay differentials negotiated as part of the MCGEO MOA. MLS and Public Safety management were not eligible for the differential pay.

The agreements did not define “physical interaction with the public.” The County initially interpreted “the public” to mean individuals who were not County employees (e.g., residents and contractors). Subsequently, MCGEO and the County agreed that the intent was to provide Front Facing Onsite differential pay for employees who worked in shared or non-private workspaces, where the employees had a heightened risk of exposure to COVID because of frequent or substantial interaction with either members of the public (including contractors) or other County employees, and were unable to maintain the 6-foot social distancing. This agreement was reflected in memoranda issued by the acting Chief Labor Relations Officer (CLRO) concerning the following six departments:

- Department of Correction and Rehabilitation (DOCR)
- Department of General Services (DGS)
- Department of Health and Human Services (HHS)
- Department of Recreation (REC)
- Department of Transportation (DOT)
- Fire and Rescue Service (FRS)

⁴ The definitions for both Front Facing Onsite and Back Office Onsite work in the MOAs make reference to “telework.” “Telework” is defined in the following manner: “Telework is one of two types of work arrangements that allows a Teleworker to perform work, during any part of their authorized work schedule, at an approved Remote Work Location. This does not include work done while on official travel or Mobile Work. Telework is an alternative method of meeting the needs of the County and it will not be universally available in all occupational job classes and/or positions.” Further, “Mobile Work” is defined as “Work which is characterized by routine and regular travel to conduct work in customer or other worksites as opposed to a single authorized alternative worksite. Examples of Mobile Work include but are not limited to: site audits and inspections, investigations, property management, and work performed while commuting or during travel between worksites.” [Source: https://www.montgomerycountymd.gov/HR/Resources/Files/Telework/Telework_Policy.pdf]

Although these agreements specifically identified employees in the six departments, the agreements effectively modified the April MOA (see May 12, 2021 OCA legal opinion at Appendix B) with MCGEO by expanding the types of work eligible for Front Facing Onsite differential pay to include employees who worked in shared/non-private workspaces, where the employees had a heightened risk of exposure to COVID because of frequent or substantial interaction with either members of the public (including contractors) or other County employees, and were unable to maintain the 6-foot social distancing. [NOTE: Employees who worked in private workspaces; or who worked in shared/non-private workspaces, did not have frequent or substantial interaction with others, and who could maintain the 6-foot social distancing would not be eligible for the Front Facing Onsite differential pay.]

Each of these memoranda are summarized later in this document, and a copy of each of the memoranda is provided.

A potential impact of these subsequent agreements on the County's COVID differential pay policies more broadly (i.e., beyond the 349 employees named in the memoranda) was not identified until sometime in March-April 2021. A legal opinion was requested from the Office of the County Attorney concerning the potential impact; the legal opinion was received on May 12, 2021, and is included in Appendix B.

The OCA opinion concluded the following:

Based upon the discussions and conduct between the County and MCGEO, the Parties intended to amend the definition of Front Facing Onsite work in the April 3, 2020 MOA by expanding the differential to certain MCGEO bargaining unit employees that, due to the nature of their work, had a greater risk of infection. Thus, any MCGEO bargaining unit employee that fell within this new definition of Front Facing Onsite work properly received the COVID-19 [Front Facing Onsite] differential for onsite work where the employee has an increased risk of exposure.

[NOTE: The OCA opinion also notes that "Any MCGEO bargaining unit member that may have qualified for Front Facing Onsite work while the differential was available are precluded from filing a grievance under Article 10.6(a) of the Collective Bargaining Agreement ("A written grievance must be presented...by the Union within thirty (30) calendar days from the date of the event giving rise to the grievance or the date on which the employee knew or should have known of the event giving rise to the grievance."). Indeed, the Union did not provide any more names to the County after October 2020 although they were aware that the definition was expanded."]

Information Dissemination

In an attempt to increase the flow of information to County managers and Human Resource (HR) Liaisons in each department/office, the Office of Human Resources (OHR) instituted in March 2020 regularly occurring (initially weekly, and then monthly) virtual meetings to discuss a variety of timely issues – dealing with COVID-19 and County guidance related to the COVID crisis, as well as other issues for awareness to managers. The information sessions supplemented guidance disseminated bi-weekly (or more frequently as warranted) to directors, managers, HR

Liaisons, and others on time-sensitive topics related to COVID-19, most notably on timekeeping issues.⁵

Timekeeping Guidance

Revised timekeeping guidance was issued as necessary to notify departments (with the request to share with employees and supervisors) of changes from previously-issued guidance.

Timekeeping guidance issued on April 11, 2020⁶, notified departments that the County had finalized negotiations with the three unions regarding differential pay, and outlined various timekeeping situations and the negotiated changes. The following categories⁷ were identified in this guidance:

- Working Regular Job and Regular Duties – Onsite
 - Working Onsite – Front Facing
 - Working Onsite – Back Office
- Telework

These would have been the applicable categories under which an employee could record their hours worked in MCTime, the County’s timekeeping system.

It should be noted, however, that no guidance was issued by the County concerning the amended Front Facing Onsite differential pay eligibility criteria agreed to by MCGEO and the County during the summer of 2020. It was apparently believed by senior County officials that the agreements reflected in the memoranda issued by the acting CLRO concerning the six departments referenced above was applicable only to those departments (and specifically, to those employees named in the memoranda). It was not until March-April 2021 – after the COVID differential pay ended and during the conduct of this review – that the potential impact of the agreement/memoranda extended beyond the employees named in the memoranda. When this potential impact was raised, the County requested a legal opinion, as noted above, concerning the impact(s) of the agreement/ memoranda. As noted above, the legal opinion stated that the agreements reflected in the memoranda effectively modified the April 2020, MOA between the County and MCGEO; and, therefore, that the amended criteria applied to other bargaining unit employees.

Office of Inspector General (OIG) Investigation

In July, 2020, the OIG contacted the Director of the County’s Department of Permitting Services (DPS) apparently in response to complaints the OIG had received regarding how DPS was

⁵ A complete list of the guidance issued can be found on the OHR website:
<https://www.montgomerycountymd.gov/HR/Benefits/EmpCoronavirus.html>

⁶ https://www.montgomerycountymd.gov/HR/Resources/Files/EmpFAQ/MEMO-TimekeepingGuidanceForPP03292020_04112020.pdf

⁷ The guidance also addressed other situations, including but not limited to working excess hours, employees not working (on Administrative Leave), healthcare provide-directed quarantine, at-risk employees, and use of personal leave. These were not considered in scope for this review.

administering the Front Facing Onsite differential pay for its inspectors.⁸ The OIG issued a report of findings on October 29, 2020, which included, in relevant part, findings that DPS management did not follow County policy on the assignment of COVID differential pay – specifically, allowing inspectors to record 100 percent of their time as Front Facing Onsite, including hours worked in a remote/teleworking mode – and that, as a result, some DPS inspectors received Front Facing Onsite differential pay to which they were not entitled. The OIG also raised in the report the possibility that other County departments may have similarly allowed employees to claim Front Facing Onsite hours to which they were not entitled.

County Corrective Actions

Based on the possibility that Front Facing Onsite differential payments may have been incorrectly made in other departments/offices, the CAO directed MCIA to conduct a County government-wide review of compliance with County policies associated with payment to employees of Front Facing Onsite differential pay.

In addition, on November 6, 2020, the Deputy CAO directed all departments with employees performing Front Facing Onsite duties to remind their employees with Front Facing Onsite duties of their responsibility to record time worked accurately, and specifically of the importance to record time NOT worked performing Front Facing Onsite duties appropriately. The Deputy CAO also directed departments to remind their supervisors of their responsibility to review the time records of such employees to ensure time is recorded accurately and in accordance with County policies. All departments were found to have complied with the Deputy CAO’s mandate by November 19, 2020.

SCOPE AND METHODOLOGY

Across County government, during the seven-month period (March 29, 2020, through October 24, 2020) encompassed in the review, nearly 6,100 County employees received payments totaling \$50.7 million of the Front Facing Onsite differential pay. The review was conducted of the COVID Front Facing Onsite differential pay timecard entries and resulting payments made during this period. The initial review focused on each County government department/office⁹ in which employees received Front Facing Onsite differential pay during this period:

- | | |
|------------------------------|--|
| Agricultural Services | Alcohol Beverage Services |
| Animal Services | Board of Elections |
| Community Engagement Cluster | Community Use of Public Facilities |
| Consumer Protection | Correction and Rehabilitation |
| County Attorney | Emergency Management & Homeland Security |

⁸ DPS inspectors conduct inspections associated with the issuance of building and construction licenses and permits (including but not limited to residential, commercial, well and septic, right of way, sediment control, fire protection, and special events). The inspectors also conduct investigations in response to property complaints and consultation with commercial builders on design issues to ensure compliance with applicable code and regulations.

⁹ The review did not include County Council staff that received Front Facing Onsite differential pay.

Employee Retirement Program ¹⁰
Finance
General Services
Housing and Community Affairs
Labor Relations¹¹
Police
Public Libraries
Sheriff
Transportation

Environmental Protection
Fire and Rescue Service
Health and Human Services
Human Resources
Permitting Services
Public Information
Recreation
Technology Services

The review excluded the following employees:

- Employees covered by the memoranda of agreement (MOAs) with the Fraternal Order of Police and the International Association of Fire Fighters
- Employees identified by organization, position type or name in agreements (verbal or written) entered into between the County and MCGEO under which employees were to receive Front Facing Onsite differential pay. Examples include employees assigned to the Emergency Communications (9-1-1) Center, and MCGEO employees specifically named in the seven memoranda issued by the acting CLRO.

The review specifically examined the following issues:

1. Whether there was compliance with the COVID Front Facing Onsite policies issued by the County in April 2020, as subsequently amended
2. If there was non-compliance with the County policies – including instances where the policies were not being followed by an employee (or group of employees) – resulting in Front Facing Onsite timecard entries in excess of what they were entitled to under County policy, document the
 - (a) Nature and Extent
 - (b) Causes of the non-compliance
 - (c) Overpayments, by department, that resulted

Limitations

The review focused on timecard entries over a seven-month period (April – October 2020). Because of this long time period, the ability for a department (particularly larger departments) to validate for a given day whether an employee’s recording of time as Front Facing Onsite was accurate for that day was limited.

¹⁰ One ERP employee was initially identified as having received Front Facing Onsite pay differential payments for two separate dates in September 2020. When this issue was brought to the attention of the Executive Director, the issue was investigated and found to be a timecard entry error; a timecard correction was entered by the employee and the employee repaid the overpayment. ERP was subsequently dropped from further analysis in the review.

¹¹ One Labor Relations employee was identified as having received front facing onsite pay differential payments for three separate dates. That office was asked to conduct a focused review for those instances, and determined that each of the three dates was appropriately recorded.

To address this limitation, each department was provided a report from MTime for the time period used for this review; the report contained information for each hour where an employee of that department recorded time as “COVID Front Facing Onsite” and received payment of the Front Facing Onsite differential pay. Departments were required to review the MTime report and determine whether time was recorded as Front Facing Onsite in excess of what was allowed under County policy. Where management in the department did not have specific information regarding an employee’s recording of the nature and location of the time worked on a given day, they were directed to assess the nature of the work required of the position and the pattern of recording time using Front Facing Onsite as the pay code over the seven-month period, and determine whether the pattern for each employee’s recording of such time was consistent with the employee’s duties and responsibilities. For example, if an employee was consistently recording 8 hours each day as COVID Front Facing Onsite duties, did the employee’s job responsibilities qualify for the Front Facing Onsite differential pay because their responsibilities placed them in frequent and close contact with the public (including contractors) or County employees 8 hours each day? If the pattern of COVID Front Facing Onsite hours being recorded was not consistent with what the supervisor would expect based on the employee’s job responsibilities, the department was required to identify the estimated number of hours for each employee that “COVID Front Facing Onsite” pay had been incorrectly recorded in MTime.

FINDINGS

Department Policies and Consistency with County Policies

With the exception of issues identified within the Department of Permitting Services (which were previously identified by the OIG and discussed in the OIG’s October 29, 2020, report) and those discussed below, the policies/guidance followed by all other departments with employees receiving Front Facing Onsite differential payments were consistent with the County policies: departments either re-summarized the County-issued policies and re-issued the policies to their managers and/or employees, or forwarded to their managers/employees a link to the County-issued policies.

In the case of DPS and the following departments, it appears that the application by these departments of COVID Front Facing Onsite differential pay policies that were not fully consistent with County-issued policies was an attempt to address the unique operational situations faced by each department based on information available to them at the time. In some cases, the department-specific policies led to employees recording hours as Front Facing Onsite in excess of what they were entitled to under County policy, and employees being overpaid as a result.

Department of Permitting Services (DPS). DPS management initially provided guidance to its management and employees that resulted in employees not differentiating hours worked in the field (and qualifying for Front Facing Onsite differential pay) from hours worked in a remote/telework mode. In late August 2020, current DPS management clarified for its staff and managers that employees (inspectors primarily) were only eligible to record hours worked as Front Facing Onsite – and eligible for the \$10/hour differential pay – that were spent actually “in the field;” thereby bringing the department’s policies into conformance with the County policy.

Front Facing Onsite timecard entries for hours in excess of what the employee was entitled to under County policy and the resulting overpayments identified in this report are associated with the period of time from March 29, 2020, through issuance of the new DPS guidance in late August 2020. For the audit period subsequent to the issuance of the DPS revised guidance, the audit confirmed that the new guidance was being followed.

Office of Animal Services (OAS). While still organizationally part of the Montgomery County Police Department (MCPD), OAS originally determined that positions engaged in work that was designated as having "regular" contact with the public would qualify for Front Facing Onsite differential pay 100% of the time onsite. Because of the unpredictable nature of this contact, it was initially decided not to have employees split up their time into Front Facing Onsite and Back Office Onsite. However, when OAS separated from MCPD in July, OAS re-evaluated and revised their internal policy in early November 2020, to require staff to record time based on the nature of the work being performed; thereby bringing the office's policies into conformance with the County policy.

Department of Transportation (DOT). DOT appropriately followed the County guidance for employees in DOT's Engineering, Traffic Engineering and Operations, Highway Services, and Parking Divisions in recording their work hours. In addition, Transit Division field staff appropriately recorded time as Front Facing Onsite because of direct interaction with the public (including driving the bus or performing duties that involved coming in contact with the vehicles, and passenger facilities or equipment that was used by Ride On patrons).

DOT management allowed Transit Operations Supervisors (TOS) in the Transit Division to charge 100% of their time worked onsite as Front Facing Onsite. DOT management was concerned about ensuring continuity of transit services both to transport essential workers and for transit-dependent residents to reach essential services; and was concerned about both employee safety and ensuring adequate Transit worker availability, given the increased concerns among staff about perceived COVID exposure risks, to provide the needed transit services. This decision was also at a time when most other County-provided services were being scaled back. Based on the DOT analysis conducted in conjunction with the revised DOT guidance (reflected in a November 10, 2020, joint DOT-MCGEO memorandum), DOT determined that the TOS's performed fewer hours of work that qualified for Front Facing Onsite differential pay than anticipated when DOT management initially decided TOS's should be eligible for front-facing pay 100% of their time onsite. With the pay period beginning November 8, TOS's were directed to record time worked as Front Facing Onsite only for actual time directly interacting with the public or for being on the bus or at other facilities with passengers, thereby bringing the department's policies into conformance with the County policy. DOT also identified instances by five technical and administrative support personnel where time was recorded as Front Facing Onsite in excess of what was allowed by County policy.

Police Department. In addition to the departments discussed above, there appeared to be misunderstanding and misapplication of the County policies regarding the criteria for receiving Front Facing Onsite differential pay within certain operations of the Police department (MCPD), both at the employee and supervisor level. When this situation was discussed with MCPD officials, they acknowledged this confusion and acknowledged that dealing with both the

MCGEO and FOP agreements, and the common interactions with different employee groups at the worksite, caused interpretation errors by employees and managers. The officials also acknowledged that while many of the employees were entitled to receive Front Facing Onsite pay for a percentage of the time they worked – because they came into direct contact with the public – the employees often did not differentiate the time worked onsite where they were in direct contact with the public from the time worked onsite where they were not in direct contact with the public (including other County employees) and did not meet the criteria for Front Facing Onsite differential pay. As noted in the “Post-Audit Analysis” section, this situation continued into January 2021.

Department Processes to Verify/Validate Employee Timecards

Each department reported having processes in place under which supervisors and/or other designated personnel were responsible for reviewing each employee’s completed timecards for accuracy and compliance with County policies. Mctime personnel report that ensuring supervisors fulfill this responsibility on a consistent basis is a challenge. The review generally found that where timecard entries in a department contained errors or entries not consistent with County policies with respect to reporting time as Front Facing Onsite (i.e., when Back Office Onsite or telework would have been the appropriate entry) because of misapplication of timekeeping guidance or data entry error in recording time worked in Mctime, a timecard reviewer/approver did not identify and take action to correct an inaccurate timecard entry by an employee. This could have been the result of a number of factors, including lack of clarity by the reviewer of the County policies.

Although not a specific focus of this review, no instances of apparent employee fraud or abuse (i.e., characterized by a deliberate falsification of timecard entries) were identified during the review. Any such instances would have been reported to the OIG for further review/ investigation.

Apparent Reporting of Front Facing Onsite Time in Excess of What the Employee was Entitled to under County Policy and Potential Overpayments that Resulted

Front Facing Onsite timecard entries in excess of what the employee was entitled to under County policy fell into five categories:

- A. Hours recorded/paid as Front Facing Onsite that should have been recorded/paid as Back Office Onsite
- B. Hours recorded/paid as Front Facing Onsite Overtime (OT) that should have been recorded/paid as Back Office Onsite Overtime (OT) Hours
- C. Hours recorded/paid as Front Facing Onsite that were not eligible for the differential pay (examples include hours worked in a telework status, or hours worked by a supervisor who was not eligible for differential pay)
- D. Hours recorded/paid as Front Facing Onsite Overtime (OT) that were not eligible for the differential pay
- E. Hours recorded/paid as Front Facing Onsite Overtime (OT) that, while eligible for the pay differential, are not OT hours

Each of these categories has a different impact on the amount of overpayment per hour recorded:

Category	Differential Pay Paid	Correct Differential Pay	Overpayment Amount
A	\$10.00/hour	\$3.00/hour	\$7.00/hour
B	\$15.00/hour	\$4.50/hour	\$10.50/hour
C	\$10.00/hour	\$0/hour	\$10.00/hour
D	\$15.00/hour	\$0/hour	\$15.00/hour
E	\$15.00/hour	\$10.00/hour	\$5.00/hour

A summary, by category of excess Front Facing Onsite timecard entry and resulting overpayment is provided in Table 1 below.

Table 1:

Category	Hours	% Hours to Total	Gross Overpayment
A	67,184.79	93.7%	\$470,294
B	841.47	1.2%	\$8,835
C	3,467.06	4.8%	\$34,671
D	64.50	0.1%	\$968
E	172.65	0.2%	\$863
TOTALS	71,730.46	100%	\$515,630

The overwhelming number of Front Facing Onsite hours (Categories A and B: 94.9 percent) identified as being recorded in excess of what was allowed under County policy were associated with hours that should have been recorded as Back Office Onsite – work performed onsite but does not involve regular physical interaction with the public.

Hours recorded as Front Facing Onsite where the work did not qualify for the differential pay (either because the work was performed in a remote/telework manner, or because the employee did not qualify for the differential) comprised another 4.9 percent of the total hours identified during this review. The remaining 0.2 percent of the hours recorded actually were eligible for Front Facing Onsite differential pay, but were erroneously recorded as Front Facing Onsite Overtime.

A summary, by department, of the audit findings based on the department-by-department review for the audit period (inclusive of the Post-Audit Analysis conducted) is provided in Table 2 below.

Table 2:

Recording of Front Facing Onsite Hours in Excess of What Was Allowed under County Policy and the Associated Differential Pay Overpayment				
Department	Number of Employees Identified with Excess Front Facing Pay	Total # Hrs. - Excess Front Facing Onsite	Average # Hrs. - Excess Front Facing Onsite	Total Estimated Gross Overpayment
Agricultural Services	0			
Alcohol Beverage Services	0			
Animal Services	29	6,634.27	228.77	\$46,440
Board of Elections	0			
Community Engagement Cluster	0			
Community Use of Public Facilities	1	8.00	8.00	\$80
Consumer Protection	0			
Correction and Rehabilitation	45	776.95	17.27	\$5,801
County Attorney's Office	0			
Emergency Mgmt & Homeland Sec	0			
Employee Retirement Programs	1	16.00	16.00	\$112
Environmental Protection	0			
Finance	1	27.00	27.00	\$189
Fire & Rescue	4	197.50	49.38	\$1,825
General Services	3	155.00	51.67	\$1,085
Health and Human Services	4	67.60	16.90	\$473
Housing and Community Affairs	0			
Human Resources	0			
Labor Relations	0			
Permitting Services	63	16,217.80	257.43	\$123,255
Police	84	28,524.35	339.58	\$202,628
Public Information	0			
Public Libraries	0			
Recreation	0			
Sheriff	0			
Technology Services	0			
Transportation	27	19,106.00	707.63	\$133,742
TOTAL	262	71,730.46		\$515,630

Post-Audit Analysis

Subsequent to the audit period, Internal Audit conducted a targeted review of the pattern of Front Facing Onsite differential pay being recorded by employees, to determine the impact of the corrective actions and new departmental guidance issued to department employees. This review was limited to three departments: Animal Services, Police, and Transportation, since the audit

had identified specific issues in these departments with respect to Front Facing Onsite differential pay. [As noted above, the audit determined that the departmental guidance issued in August 2020 by Permitting Services had corrected the issues previously identified; therefore, Permitting Services was not included in the post-audit review.] Since the issues identified in the other seven departments were limited to timecard (data entry) errors, Internal Audit determined the post-audit review should be focused on the three departments.

For Animal Services and Transportation, Internal Audit reviewed the data for the six pay periods prior to and the six pay periods (up until differential pay was terminated) subsequent to the revised department guidance being issued – which was contemporaneous with the County-mandated reminders to employees and supervisors discussed under the County Corrective Actions section above. In the case of both departments, for the employees identified by the audit as having recorded hours as Front Facing Onsite in excess of what was allowed by County policy, the employees’ recording of time following the corrective actions taken by the department demonstrably changed, and was consistent with County policy.

For the Police Department, the pattern of recording hours as Front Facing Onsite revealed two distinct trends: for some employees the corrective actions had a lasting effect in recording hours worked consistent with County policy. For other employees, there appeared to be minimal effect in how the employees recorded time, at least up until late January. Based on this latter observation, Internal Audit conducted a follow-on audit of 44 employees whose pattern of recording hours worked as Front Facing Onsite did not conclusively determine that the employees were recording time consistent with County policy. The audit identified that there were 38 employees where issues continued, up until late January when clarifying guidance was disseminated to the department’s command/executive staff. The results of this second audit are reflected in the table below:

Table 3:

Department	Category of Issues (Hours)			Total	Overpayment
	1	2	3		
Police Department	994.82	0.00	0	994.82	\$7,088

SUMMARY OBSERVATIONS

There are several overall observations from this review. First, the COVID crisis presented the County with numerous and complex operational and human resource challenges. The COVID virus itself was not well understood, and, particularly in the early stages of the crisis, guidance about protections that should be taken to minimize exposure and transmission of the virus was frequently evolving.

Second, it is evident from the information gathered, both at the County and department levels, that there was a clear concern from the very beginning of the crisis for employee safety, and balancing providing County services to residents and businesses with protecting employee safety. In addition to the information about the virus evolving, the status of County operations

was similarly not static; with operations evolving as the County (and the State) strove to restore “normal” operations as early as safely possible.

Third, there was a lack of timely understanding among senior County management concerning the impact of the agreements reached by the County and MCGEO in the summer 2020. The potential impact was not known until March-April 2021 – after the differential pay ended – with confirmation of this impact received through a legal opinion dated May 12, 2021.

Finally, effective communications are always a challenge when dealing with a large and dispersed organization, such as the County government. Effective communication, particularly under an evolving crisis, requires both clear and timely information to be disseminated, as well as receipt and understanding by those that have to act on and implement the information. The further away from the decision-makers (one might say, the further down in the County government organizational structure) one gets, the more difficult it is to ensure that the information being communicated is received, understood, and correctly acted upon. Steps taken by the County to disseminate information (including emails, employee newsletters, weekly/monthly meetings for HR Liaisons and managers in departments) were all appropriate and commendable. It is questionable whether conducting more such outreach/communication would have resulted necessarily in fewer instances of MCTime entries for Front Facing Onsite pay in excess of what was allowed by County policy; since a number of people interviewed as part of the review indicated that at times they felt overwhelmed with the volume of information coming their way, particularly when combined with the challenges of managing a dynamic operations environment.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

A Memorandum of Agreement (MOA) between MCGEO and the County was executed on April 3, 2020. A copy of that overarching MOA is contained later in this Appendix.

Front Facing Onsite Pay Differential Memoranda Issued by Labor Relations

There were seven separate memoranda issued by the acting CLRO to memorialize agreements reached between the County and MCGEO designating groups of employees in six departments as eligible for the Front Facing Onsite differential pay, pursuant to the initial Memorandum of Agreement (MOA) between MCGEO and the County (dated April 3, 2020). These agreements are summarized below. The memoranda all directed that:

- The named employees be retroactively compensated at the \$10/hour Front Facing Onsite rate for all dates worked between 3/29/2020 and 7/18/2020 that was paid at the Back Office Onsite rate (\$3/hour)
- Effective with the pay period beginning 7/19/2020 “the time for these individuals should be recorded as front-facing with the associate differential”
- Employees eligible for the differential only if they are working onsite

Correction and Rehabilitation:

- Issued July 28, 2020; amended July 29, 2020
- Identified ten employees (an eleventh was subsequently identified; but no amendment to the memorandum was issued to reflect this employee)

Fire and Rescue Service

- Issued September 4, 2020
- Identified 22 employees

General Services

- Issued July 28, 2020; Amended July 29, 2020; Amended September 4, 2020; Amended September 9, 2020
- Identified 141 employees (an employee was identified twice in the memorandum)

Health and Human Services (2)

- Issued September 4, 2020 (1)
- Identified 66 employees, for dates worked at the Dennis Avenue HHS facility
- Also directs that any bargaining unit member who works at the Dennis Avenue HHS facility should receive hour-for-hour COVID Front Facing Onsite pay for any hours worked at that location
- Issued October 19, 2020 (2)
- Identified 94 employees (separate from the 66 employees identified in the 9/4/2020 memo), for dates worked at the Dennis Avenue HHS facility

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

- Also directs that any bargaining unit member who works at the Dennis Avenue HHS facility should receive hour-for-hour COVID Front Facing Onsite pay for any hours worked at that location

Recreation

- Issued September 4, 2020
- Identified 1 employee, for dates worked at the Dennis Avenue HHS facility

Transportation

- Issued July 28, 2020; Amended July 29, 2020; Amended September 4, 2020
- Identified 14 employees

[NOTE: Subsequent to the memoranda, a joint DOT/MCGEO memorandum was issued to DOT employees on November 10, 2020, to facilitate “a uniform interpretation of the COVID front facing pay for MCDOT employees....” The memorandum outlined a pilot agreed to between DOT and MCGEO to define when an employee is eligible for the Front Facing Onsite differential pay. The pilot was effective as of November 8, 2020. The guidance contained in the memorandum superseded the previous agreement discussed above for specific DOT employees. It also resolved the consideration of Front Facing Onsite differential pay for positions not previously agreed to between the County and MCGEO. Compliance with this November 10 memorandum was not reviewed as part of this review, because it fell outside the review period.]

A copy of each of the memoranda summarized above is included at the end of this Appendix.

Other Directives Issued by the Chief Administrative Officer

In addition, the previous Chief Administrative Officer issued two memoranda (one dated March 20, 2020, and the second dated April 5, 2020) providing guidance and direction to departments/offices regarding modifications in the County government’s operating status, and application of the April 3 MOA. Copies of these memoranda follow.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

Andrew W. Kleine
Chief Administrative Officer

March 20, 2020

TO: Department and Office Directors

FROM: Andrew Kleine *Andrew Kleine*
Chief Administrative Officer

RE: Directive for Modified Operating Status

This week, all departments and offices have determined which functions are necessary to continue performing for the next eight weeks, which is likely the minimum duration of the COVID-19 crisis.

The Governor has encouraged people to stay home if possible, and Emergency Management is concerned that we are not able to sustain cleaning supplies for full operations.

Due to the current COVID-19 situation, effective immediately:

- All work that can be performed via telework must be performed in that way. Telework is not voluntary.
- Directors have authority to grant administrative leave to employees whose functions cannot be performed via telework and whose presence is not required at their worksite for functions that must be maintained for the next 8 weeks.
- Employees placed on administrative leave must be told that they are on-call and can be assigned at any time to perform functions as needed.
- Functions that must be maintained and require employees on-site should be performed with minimum feasible staffing.

I want to emphasize some key points:

- Any work that can be performed via telework should continue.
- For functions that must be maintained and cannot be performed via telework, take all feasible steps to ensure social distancing and other precautions to protect employee health and safety.
- Discuss with your union representatives your plans for maintaining functions, using telework, placing employees on administrative leave, and recalling them to work.
- Any alterations to services must be reported to 311 and the Emergency Management Communications Team.
- The leave policies issued on March 13 remain in effect.

This change in the County Government's operating status is effective through Friday, March 27. The County will continue to closely monitor the situation and employees will receive an update prior to this date.

101 Monroe Street • Rockville, Maryland 20850 • 240-777-2500 • 240-777-2518 FAX
www.montgomerycountymd.gov

montgomerycountymd.gov/311  Maryland Relay 711

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Marc Elrich
County Executive

Andrew Kleine
Chief Administrative

April 5, 2020

Dear Directors and Managers,

I wanted you to know that last Friday we finalized negotiations with our three unions regarding differential pay for this pandemic.

Recently, you and your teams, in close coordination with your union representatives, worked to determine which of your functions are critical core services that would need to continue for the next eight weeks, the likely minimum duration of the COVID-19 crisis. This COVID-19 differential pay would apply to those front-facing and back-office onsite employees who are required to come to work to respond to COVID-19 or provide County's selected critical core services. Those who must work onsite are in the following two categories:

- a. Front Facing Onsite: work that cannot be performed by telework, involves physical interaction with the public and cannot be performed with appropriate social distancing.
- b. Back Office Onsite: work that cannot be performed by telework and does not involve regular physical interaction with the public.

The broad details of the COVID-19 pay differential are as follows:

- The differential pay will be uniform for FOP and IAFF members. For MCGEO-represented and GSS employees, the differential will distinguish between front-facing onsite and back office onsite work. The differential pay for all impacted employees are retroactive to March 29, the beginning of the current pay period.
- The front-facing onsite employees will receive an additional \$10/hr and the back-office onsite will receive \$3/hr.
- Represented employees will also receive one week of compensatory time for the period from March 22-28.

The agreements cover six pay periods starting March 29, or until the Maryland State of Emergency is lifted. If the State of Emergency is still in effect at the end of the six pay periods, the agreements will be revisited.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Differential Pay During COVID-19 Crisis

April 5, 2020

Page 2 of 2

This differential pay recognizes the unusual risks our employees now face in leaving their homes and delivering vital services to the public. It will help us maintain needed staffing levels, but is not enough to assure our employees' trust and confidence. We must remain vigilant in protecting employee health and safety. In addition to the steps we have already taken, today OHR sent out new guidance on what to do if an employee becomes sick or reports exposure. Additionally, this week we will distribute masks to employees who do not have them, and I will issue a policy that gives administrative leave to high risk employees who cannot telework and do not feel safe working on site.

Early this week, OHR will be sending guidance on the correct pay codes to use for the differential pay.

I cannot thank you enough for the work you are doing during this unprecedented time. This is a defining moment for us as public servants and you have risen to the challenge.

Best,

Andrew Kleine

cc: Fariba Kassiri, Deputy Chief Administrative Office
Dale Tibbitts, Special Assistant to the County Executive
Marlene Michaelson, Executive Director, Montgomery County Council

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

**MEMORANDUM OF AGREEMENT
BETWEEN
MONTGOMERY COUNTY GOVERNMENT
AND
UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1994
MUNICIPAL AND COUNTY GOVERNMENT EMPLOYEES ORGANIZATION**

The following agreement is entered into between Montgomery County Government (the “County”) and the United Food and Commercial workers, Local 1994, Municipal and County Government Employees Organization (“MCGEO”) (hereinafter referred to collectively as the “Parties”) concerning differential pay for an emergency of an extended duration and designated essential personnel for COVID-19.

DEFINITIONS

Back Office Onsite work: work performed at a County worksite that cannot be performed by telework and does not involve regular physical interaction with the public.

Front Facing Onsite work: work that cannot be performed by telework that involves physical interaction with the public and cannot be performed with appropriate social distancing. For example, Transit Desk Coordinators, Police Service Assistants, bargaining unit members assigned to the Crisis Center, and any other similarly situated bargaining unit members shall be considered front facing. Notwithstanding the foregoing, the Parties agree that the following work will be treated as Front Facing Onsite work: bargaining unit members assigned to the ECC.

COVID-19 Differential: money to be paid to an employee in addition to the employee’s regular pay for Back Office Onsite work or Front Facing Onsite work.

AGREEMENT

As a result of the declared Maryland State of Emergency related to COVID-19 the Parties agree to the following:

COVID-19 Differential:

Compensatory Leave

For the period of March 22, 2020 through March 28, 2020, the County shall provide forty (40) hours of compensatory leave to each bargaining unit member who was required to work onsite, whether front facing or back office.

For employees who are required to perform Front Facing Onsite work:

For the period of March 29, 2020 through June 20, 2020, employees will be paid a \$10.00 per hour COVID-19 Differential for each hour of Front Facing Onsite work performed.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

For employees who are required to perform Back Office Onsite work:

For the period of March 29, 2020 through June 20, 2020, employees will be paid a \$3.00 per hour COVID-19 Differential for each hour of Back Office Onsite work performed.

Overtime Pay:

Overtime pay shall be based on the employee's base hourly wage. COVID-19 Differential due an employee, if any, shall be counted as part of the employee's hourly wage for purposes of calculating overtime pay.

Telework/Administrative Leave:

The Parties agree that Telework is mandatory for work that can be performed remotely and COVID-19 Differential pay will not be paid for any work that can be performed by telework or to any employee on paid administrative leave. Employees directed to perform work onsite will receive the appropriate COVID-19 Differential as defined in this agreement for the entire duration of that assignment.

Any employee who has been directed by a healthcare provider to quarantine/isolate, due to symptoms, exposure, or travel, will be provided COVID-19 administrative leave for the quarantine/isolation period until a healthcare provider documents that the employee has successfully completed/been released from the quarantine/isolation period. The County may request that the employee's healthcare provider update the quarantine directive on a bi-weekly basis.

For the duration of the Maryland Declaration of State of Emergency, any employee who is considered high-risk based on the Center for Disease Control's guidelines (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>) or who resides with a family member who is considered high-risk, shall, upon providing OMS with supporting documentation, be provided the ability to telework. If work is not available for the employee to telework, the employee is eligible to be provided COVID-19 administrative leave until the Maryland Declaration of State of Emergency is lifted. Administrative leave may only be revoked by the Chief Administrative Officer, if necessary, to ensure public health and safety.

Notification:

The County will provide MCGEO with data regarding the usage of the COVID-19 Differential Pay on a per pay period basis.

Work Sites and Schedules:

The Parties recognize that during this event, the need to schedule and assign employees alternative work schedules or work sites outside of their normal work assignment may arise. Accordingly, the parties intend to work collaboratively to ensure that the County

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

has the necessary scheduling flexibility to address those needs. The County, therefore, in consultation with the Union, may schedule and assign an employee to work and to a work site based on a demonstrated operational need and availability, including assigning an employee to work in a department or office other than the employee's normal current department or office. If, after consultation, MCGEO believes it is necessary, it may request bargaining regarding any bargainable aspects of the implementation of a work or work site change.

Health and Safety:

The Parties acknowledge the importance of complying with the CDC guidelines regarding social distancing as a measure to prevent the spread of the COVID-19 virus. Accordingly, the County will ensure employees working onsite will comply with those guidelines.

Time Codes:

During the declared Maryland State of Emergency related to COVID-19, employee work time will be coded on an hourly basis pursuant to timekeeping guidance provided by the County.

General Emergency Pay:

MCGEO agrees to waive its right to pursue general emergency pay, pursuant to their Collective Bargaining Agreement, for work performed during the term of this Agreement with respect to the declared Maryland State of Emergency related to COVID-19. This Agreement does not alter in any way a bargaining unit member's right to receive emergency pay under CBA Article 5.17 for a County Executive declared general emergency.

Reopener of Agreement:

This Agreement may re-open on June 20, 2020. However, if the declared Maryland State of Emergency related to COVID-19 extends beyond that time, the terms of this Agreement shall continue, or after collectively bargaining with MCGEO, will be modified based upon the circumstances at the time. In the event that the declared Maryland State of Emergency related to COVID-19 is rescinded before June 20, 2020, the date of the Declaration's rescission shall be considered the last day of this Agreement, notwithstanding the pay periods indicated above defining when the COVID-19 Differential will be paid.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

IN WITNESS, WHEREOF, the Parties hereto have caused their names to be subscribed by their duly authorized officers and representatives this ___ day of _____ 2020.

United Food and Commercial Workers,
Local 1994, Municipal and County
Government Employees Organization

Montgomery County Government

By: Gino Renne 4/3/20
Gino Renne Date
President

By: Marc Elrich 4/3/20
Marc Elrich Date
County Executive

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

MEMORANDUM OF AGREEMENT BETWEEN MONTGOMERY COUNTY GOVERNMENT AND FRATERNAL ORDER OF POLICE MONTGOMERY COUNTY LODGE 35, INC.

The following agreement is entered into between Montgomery County Government (the “County”) and the Fraternal Order of Police, Montgomery County Lodge #35, Inc. (the “Union”) (hereinafter referred to collectively as the “Parties”) concerning differential pay for an emergency of an extended duration and designated essential personnel for COVID-19.

DEFINITIONS FOR THE PURPOSES OF THIS AGREEMENT

Onsite work: work that cannot be performed by telework that involves physical interaction with the public and which cannot be performed with appropriate social distancing. Onsite work includes work performed by a bargaining unit member required to report to work at a police facility.

COVID-19 Differential Pay: money to be paid to a bargaining unit member in addition to the employee’s regular pay for Onsite work. COVID-19 Differential Pay will be paid consistent with the Union’s bargained differentials.

Onsite response: when an employee is required to leave from telework or work from home administrative status to respond to a police scene or assigned police worksite.

AGREEMENT

As a result of the declared State of Emergency related to COVID-19, the Parties agree to the following:

COVID-19 Differential Pay:

For the period of March 22, 2020 through March 28, 2020, the County shall provide forty (40) hours of compensatory leave to each bargaining unit member.

For the period of March 29, 2020 through June 20, 2020, bargaining unit member shall be paid a \$10.00 per hour differential pay for each onsite hour worked.

COVID-19 Differential Pay will only be paid to a bargaining unit member who is essential and required to report to an assigned police worksite. Bargaining unit members who are teleworking or at home on administrative leave will not receive the bargained COVID-19 Differential Pay, unless an onsite response is required.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Overtime Pay:

Overtime pay shall be based on the employee's hourly wage. COVID-19 Differential Pay due to a bargaining unit member, if any, shall be counted as part of the employee's hourly wage for purposes of calculating overtime pay.

Telework:

The Parties agree that telework is mandatory for work that can be performed remotely, and that unless an employee is directed to perform work onsite, COVID-19 Differential Pay will not be paid for any work that can be performed by telework.

Any employee who has been directed by a healthcare provider to quarantine/isolate, due to symptoms, exposure, or travel, will be provided COVID-19 administrative leave for the quarantine/isolation period until a healthcare provider documents that the employee has successfully completed/been released from the quarantine/isolation period. The County may request that the employee's healthcare provider update the quarantine directive on a bi-weekly basis.

For the duration of the Maryland Declaration of State of Emergency, any employee who is considered high-risk based on the Center for Disease Control's guidelines (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>) or who resides with a family member who is considered high-risk, shall, upon providing OMS with supporting documentation, be provided the ability to telework. If work is not available for the employee to telework, the employee is eligible to be provided COVID-19 administrative leave until the Maryland Declaration of State of Emergency is lifted. Administrative leave may only be revoked by the Chief Administrative Officer, if necessary, to ensure public health and safety.

Notification:

The County will provide the Union with data regarding the usage of the COVID-19 Differential Pay on a per pay period basis.

Schedule Change:

The employer will be allowed to implement a one-time schedule change for COVID-19 effective April 6, 2020. Bargaining unit members that are required under the CBA to receive a three week notice of schedule change shall receive forty-five (45) hours of compensatory leave. Bargaining unit members that are required under the CBA to receive a one-week notice of schedule change shall receive fifteen (15) hours of compensatory leave. Each unit member shall receive notice of a schedule change by April 3, 2020. For the purposes of this agreement regarding a one time schedule change for COVID-19, the employer may send notice via email or memo to unit members. The notice shall contain a start date and the unit members published schedule. Should the

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

County need to make additional schedule changes, the Parties shall meet to discuss the Department's operational needs and shall bargain over any related bargainable issues.

All future schedule changes shall be in accordance with Article 15, Section C.1. If the County can demonstrate that there is an exigent circumstance regarding the COVID-19 pandemic, causing the need for another one-time schedule change to be implemented without the required notice, the Union and the County will bargain such a change.

Health and Safety:

The Parties acknowledge the importance of complying with the CDC guidelines regarding social distancing as a measure to prevent the spread of the COVID-19 virus. Accordingly, the County will ensure employees working onsite will comply with those guidelines.

Time Codes:

During the declared Maryland State of Emergency related to COVID-19, employee work time will be coded on a daily basis pursuant to timekeeping guidance for COVID-19, as provided by the County.

General Emergency Pay:

The Union agrees to waive its right to pursue general emergency pay, pursuant to the Collective Bargaining Agreement, for work performed during this term of this Agreement with respect to the declared State of Emergency related to COVID-19. This Agreement does not alter in any way a bargaining unit member's right to receive emergency pay under CBA Article 15, Section B for a snow emergency or other declared general emergency.

Reopener of Agreement:


This Agreement may re-open on June 20, 2020. However, if the declared Maryland State of Emergency related to COVID-19 extends beyond that time, the terms of this Agreement shall continue, or after collectively bargaining with the Union, will be modified based upon the circumstances at the time. In the event that the declared Maryland State of Emergency related to COVID-19 is rescinded before June 20, 2020, the date of the Declaration's rescission shall be considered the last day of this Agreement, notwithstanding the periods indicated above defining when the COVID-19 Differential Pay will be paid.

IN WITNESS, WHEREOF, the Parties hereto have caused their names to be subscribed by their duly authorized officers and representatives this 3rd day of April 2020.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Fraternal Order of Police, Lodge 35

Montgomery County Government

By:  4/3/2020
Torrie Cooke Date
President

By:  4/3/20
Marc Elrich Date
County Executive

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

**MEMORANDUM OF AGREEMENT
BETWEEN
MONTGOMERY COUNTY GOVERNMENT
AND
THE MONTGOMERY COUNTY CAREER FIRE FIGHTERS ASSOCIATION,
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1664, AFL-CIO.**

The following agreement is entered into between the Montgomery County Maryland Government (the “County”) and the Montgomery County Career Fire Fighters Association, International Association of Fire Fighters, Local 1664, AFL-CIO (“IAFF”) (hereinafter referred to collectively as the “Parties”).

DEFINITIONS

COVID-19 Differential Pay: money to be paid to a bargaining unit employee in addition to the employee’s regular pay for any work performed by IAFF Bargaining Unit members during the declared Maryland State of Emergency related to COVID-19

AGREEMENT

During the declared Maryland State of Emergency related to COVID-19, the Parties agree to the following:

COVID-19 Differential Pay:

For the period of March 22, 2020 through March 28, 2020, the County shall provide forty-eight hours (48) of compensatory leave to all bargaining unit members assigned during that period to the Bureau of Operations. Bargaining unit members assigned to day work in the Bureau of Operations, to the Fire Code Enforcement Section, or Training Section shall be provided forty (40) hours of compensatory leave. Bargaining unit members assigned to the Fire and Explosives Investigations Section or to the Emergency Communications Center shall be provided forty-two (42) hours of compensatory leave.

For the period of March 29, 2020 through June 20, 2020 (or through the end of any shift that commenced during this period), employees will be paid a \$10.00 per hour COVID-19 Differential Pay for each hour of work performed onsite.

Overtime Pay:

Overtime pay shall be based on the employee’s hourly rate. COVID-19 Differential Pay due to an employee, if any, shall be counted as part of the employee’s hourly wage for the purposes of calculating overtime pay.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Telework:

The Parties agree that telework is mandatory for work that can be performed remotely. Any employee who is directed or ordered to report to any worksite shall be entitled to be paid the COVID-19 Differential Pay regardless of the work performed. COVID-19 Differential Pay will not be paid for telework.

Any employee who has been directed by a healthcare provider to quarantine/isolate, due to symptoms, exposure, or travel, will be provided COVID-19 administrative leave for the quarantine/isolation period until a healthcare provider documents that the employee has successfully completed/been released from the quarantine/isolation period. The County may request that the employee's healthcare provider update the quarantine directive on a biweekly basis.

For the duration of the Maryland Declaration of State of Emergency, any employee who is considered high-risk based on the Center for Disease Control's guidelines (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>) or who resides with a family member who is considered high-risk, shall, upon providing OMS with supporting documentation, be provided the ability to telework. If work is not available for the employee to telework, the employee is eligible to be provided COVID-19 administrative leave until the Maryland Declaration of State of Emergency is lifted. Administrative leave may only be revoked by the Chief Administrative Officer, if necessary, to ensure public health and safety.

Notification:

The County will provide the Union with data regarding the usage of the COVID-19 Differential Pay on a per pay period basis.

Health and Safety:

The Parties acknowledge the importance of complying with the CDC guidelines regarding social distancing as a measure to prevent the spread of the COVID-19 virus. Accordingly, the County will ensure employees working onsite will comply with those guidelines.

General Emergency Pay:

IAFF agrees to waive its right to pursue general emergency pay, pursuant to the Collective Bargaining Agreement, for work performed during this term of this Agreement with respect to the declared State of Emergency related to COVID-19. This Agreement does not alter in any way a bargaining unit member's right to receive emergency pay under CBA Article 18 for another declared general emergency.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Reopener of Agreement:

This Agreement may re-open on June 20, 2020. However, if the declared Maryland State of Emergency related to COVID-19 extends beyond that time, the terms of this Agreement shall continue, or after collectively bargaining with the Union, will be modified based upon the circumstances at the time. In the event that the declared Maryland State of Emergency related to COVID-19 is rescinded before June 20, 2020, the date of the Declaration's rescission shall be considered the last day of this Agreement, notwithstanding the periods indicated above defining when the COVID-19 Differential Pay will be paid.

IN WITNESS, WHEREOF, the Parties hereto have caused their names to be subscribed by their duly authorized officers and representatives this 3rd day of April 2020.

Montgomery County Career
Fire Fighters Association, International
Association of Fire Fighters, Local 1664,
AFL-CIO

Montgomery County Government

By: Jeffrey Buddle 4/3/2020
Jeffrey Buddle Date
President

By: Marc Elrich 4/3/20
Marc Elrich Date
County Executive

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF LABOR RELATIONS
Rockville, Maryland 20850

Marc Elrich
County Executive

Steven N. Blivess
Acting Chief Labor Relations Officer

MEMORANDUM

July 28, 2020
Amended July 29, 2020

TO: Michael Coveyou, Director, Department of Finance
Berke Attila, Director, Office of Human Resources
Angela Talley, Director, Department of Correction and Rehabilitation

FROM: Steven N. Blivess, Acting Chief Labor Relations Officer *SNB*

RE: Front Facing Differential

By agreement between the County Executive and MCGEO, the following individuals are eligible for the Front Facing differential under the April 3, 2020 Memorandum of Agreement. Please retroactively compensate these individuals at the \$10 per hour rate for front-facing work for all dates worked between March 29, 2020 and July 18, 2020 that was paid at the back office rate of \$3 per hour. Effective the current pay period, beginning on July 19, 2020, the time for these individuals should be recorded as front-facing with the associate differential.

As a reminder, these individuals are only eligible for the differential if they were working onsite; any employee on administrative leave – whether due to a COVID-related reason or for other reasons – or on personal leave (annual, sick, or comp time) is not eligible for the differential.

Ajibola, Oluwakemi*	Johnson Jr., Robert
Britton, Gary	Johnson, Sukhu
Crawford, Bruce	Lemus, Esmeralda
Dutta, Sumita	Watkins, Kimberly*
Dwiggins, Terry	Watkins, Ursula

The individuals added in this amended Memorandum are marked with an asterisk.

CC: Heather Black, Manager, MCTime Program

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF LABOR RELATIONS
Rockville, Maryland 20850

Marc Elrich
County Executive

Steven N. Blivess
Acting Chief Labor Relations Officer

MEMORANDUM

September 4, 2020

TO: Michael Coveyou, Director, Department of Finance
Berke Attila, Director, Office of Human Resources
Scott Goldstein, Fire Chief, Fire and Rescue Service

FROM: Steven N. Blivess, Acting Chief Labor Relations Officer *SNB*

RE: Front Facing COVID Pay

By agreement between the County Executive and MCGEO, the following individuals are eligible for the Front Facing COVID pay under the April 3, 2020 Memorandum of Agreement. Please retroactively compensate these individuals at the \$10 per hour rate for front-facing work for all dates worked between March 29, 2020 and August 29, 2020 that was paid at the back office rate of \$3 per hour. Effective the current pay period, beginning on August 30, 2020, the time for these individuals should be recorded as front-facing with the associated COVID pay.

Atwood, William	Mendez, Jose
Au, Clayton	Neubauer, Stephen
Brown, Terrell	Peary, Stephen
Chubb, Patrick	Redmond, Clifton
Davis, Kevin	Smith, Samuel
Dean, Daniel	Spickler, Kevin
Epley, Corey	Steppek, Michael
Ferguson, Jacob	Waters, Christopher
Krouse, Ernest	Wolff, Stephen
Lawhorn, Tim	Wright, Scott
Letterman, Gary	Wright, Sherman

Please notify the identified employees of the forthcoming retroactive adjustment and notify all affected employees of the need to properly record their time to receive the appropriate COVID pay.

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Front-Facing COVID Pay - FRS

Page 2 of 2

As a reminder, these individuals are only eligible for the COVID pay if they were working onsite; any employee on administrative leave – whether due to a COVID-related reason or for other reasons – or on personal leave (annual, sick, or comp time) is not eligible for the COVID pay.

CC: Heather Black, Manager, MCtime Program
David Pazos, Labor Relations Assistant Chief, Fire and Rescue Service

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF LABOR RELATIONS
Rockville, Maryland 20850

Marc Elrich
County Executive

Steven N. Blivess
Acting Chief Labor Relations Officer

MEMORANDUM

July 28, 2020
Amended July 29, 2020
Amended September 4, 2020
Amended September 9, 2020

TO: Michael Coveyou, Director, Department of Finance
Berke Attila, Director, Office of Human Resources
David Dise, Director, Department of General Services

FROM: Steven N. Blivess, Acting Chief Labor Relations Officer *SNB*

RE: Front Facing COVID Pay

By agreement between the County Executive and MCGEO, the following individuals are eligible for the Front Facing COVID pay under the April 3, 2020 Memorandum of Agreement. Please retroactively compensate these individuals at the \$10 per hour rate for front-facing work for all dates worked between March 29, 2020 and August 29, 2020 that was paid at the back office rate of \$3 per hour. Effective the current pay period, beginning on August 30, 2020, the time for these individuals should be recorded as front-facing with the associate COVID pay.

Abram, Greg	Diethrich, Doug	Kuzminski, Joseph	Prather, Ranardo
Adams, Wally	Dixon, Theodore	Lavanderos, Ed	Purdum, Michael
A'hesh, Hector	Dookharan, Mike	Lawrence, Leon	Robinson, Jeffrey
Ahmed, Fayyaz	Earnest, Jim	Lee, Jae	Ross, Steven
Akhtar, Saleem	Easterday, Kenneth	Lee, Sangduk	Rourke, Mike
Alvarenga, Mario	Escudero, Alfredo	Leonard, Tim	Rutledge, Randy
Antabeel, Michael	Farmer, Earnest	Lewis, Gary	Sanders, Jon
Ayton, John	Figgatt, Cody	Maggi, Steven	Savage, Kevin
Beharry, Colin	Flores, Ronny	Manuzon, Aldo	Scarlett, Radcliffe
Bentley, George	Fournier, Kevin	Marple, Don	Schloe, Michael
Blare, Rodney	Fournier, Shawn	Martin, Jeremy	Selby, Dallas
Bokhari, Shakeel	Gary, Byron	Mathis, Roger	Shakeel, Bokhari
Bouaichaoui, Reda	Gilgeous, Hamlet	Matthew, Wade	Shelton, Guy

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Front-Facing COVID Pay - DGS

Page 2 of 2

Briggs, Rollins	Godon, Phil	Mejia, Melvin	Short, Michael
Brooks, Ryan	Gonzalez, Jose	Merino, Alfredo	Sihakhoon, Ruangchai
Brown, Jimmy	Gonzalez-Raymund, Sam	Metz, Kyle	Simmons, David
Bucheimer, Michael	Guevara, Earl	Miller, Charlie	Smith, Joe
Bungato, Tim	Guevara, Jose	Miller, Tim	Smoak, John
Butler, Antwan	Harding, Calbert	Milli, Steve	Stevens, James
Caldo, Bill	Heyden, David	Moussinga, Eugene	Tibbs, Gerald
Camaya, Ramon	Hicks, Clarence	Myers, Alan	Ton, Trung
Carter, Edwin	Hines, Lynam	Nelson, Jonah	Tse, Danny
Channer, Ennevor	Homed, Shiek	Ntitebem, Henry	Tugwell, Ronald
Chevez, Cesar	Howard Jr., Francis	Oakley, Jason	Turner, Scott
Chevez-Fortin, Ben	Hunt, Rodney	O'Brien, John	Unger, Jack
Conteh, Joseph	Iliouk, Igor	Ocampo, Rodolfo	Valeda, Frank
Contreras, Javier	Jimenez, Carlos	Osborne, Ryan	Von Nessen, Bill
Cook, Thomas	Jimenez, John	Owens, David	Vu, Bach
Cosare, Mario	Johnson, Kevin	Palmisano, Jimmy	Waldon, Joseph
Cox, Vyron	Johnson, Maurice	Pancholi, Jitendra	Washington, Mike
Culley, Milton	Jones, Troy	Pastor, Paulino	Watson, Torrie
Culley, Quency	Joseph, Kingsley	Perez, Manual	White, John
Day, Dnany	Kalampanayil, Joe	Petrelles, Matt	Wijegunawardana, Panduka
Dean, Byron	Kingsley, Joseph	Pinkney, David	Willis, Thomas
Dean, Dave	Kirk, Stephen	Post, George	Yuen, Tak
Diaz, Walter	Kuza, Ed		

Please notify the identified employees of the forthcoming retroactive adjustment and notify all affected employees of the need to properly record their time to receive the appropriate COVID pay.

As a reminder, these individuals are only eligible for the COVID pay if they were working onsite; any employee on administrative leave – whether due to a COVID-related reason or for other reasons – or on personal leave (annual, sick, or comp time) is not eligible for the COVID pay.

CC: Heather Black, Manager, Mctime Program
 Jamie Cooke, DGS Deputy Director, Chief Operating Officer

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF LABOR RELATIONS
Rockville, Maryland 20850

Marc Elrich
County Executive

Steven N. Blivess
Acting Chief Labor Relations Officer

MEMORANDUM

September 4, 2020

TO: Michael Coveyou, Director, Department of Finance
Berke Attila, Director, Office of Human Resources
Dr. Raymond Crowel, Director, Department of Health and Human Services

FROM: Steven N. Blivess, Acting Chief Labor Relations Officer *SNB*

RE: Front Facing COVID Pay

By agreement between the County Executive and MCGEO, the following individuals are eligible for the Front Facing COVID pay under the April 3, 2020 Memorandum of Agreement for all dates worked at the Dennis Avenue HHS facility between March 29, 2020 and August 29, 2020. Please retroactively compensate these individuals at the \$10 per hour rate for front-facing work that was paid at the back office rate of \$3 per hour. Effective August 30, 2020, the time for these individuals spent at the Dennis Avenue HHS facility should be recorded as front-facing with the associated COVID pay.

Arsenault, Mark	Forrester, Corrine	Lichter, Jennifer	Persaud, Margaret
Austin, Nancy	Frost, Lisa	Martinez, Maria	Pinion, Rodreck
Azzi, Nancy	Funes, Ingrid	Massillon, Mode	Quiroz, Miryam
Beck, Sheila	Furgason, Lori	Matthews, James	Ralli, Lynda
Brickhouse, Deborah	Gill, Marta	Miceli, Pamela	Renderos, Carol
Caruso, Nancy	Grocki, Joan	Michaels, Gail	Robinson, Gregory
Clyburn, Sheila	Gumucio, Irene	Morgan, Maryanne	Rohlin, Annie
Colbert, Darlene	Hagner, Katherine	Mowdy, Julie	Roldan, Axel
Cruz, Nelson	Harvey, Hope	Moyer, Jordan	Shimozato, Anita
Day, Catherine	Jones, Jennifer	Mulatu, Selam	St Lawrence, Nicole
Denicoff, Anne	Jones, Songsarae	Nabunya, Christine	Stewart, Caitlin
Dewitt, Carol Matthews	Kelly, Catherine	Nichols, Ingrid	Stickell, Colleen
Diaz, Maria	Kemp, Cheryl	Oland, Breanna	Stives, Anna
Doye, Kisha	Kim, KiNam	Park, Alexia	VanVeldhuisen, Tami
Duncan-Gunn, Sandra	Kimball, Janice	Penn, Jaunae	Wilby, Susan
Duque, Sofia	Krivenko, Tatyana	Perez, Diana	Wininger, Wendy
Fischer, Tammi	Lee, Janet		

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Front-Facing COVID Pay – HHS
Page 2 of 2

In addition to the individuals identified here, please ensure that any bargaining unit member who works at the Dennis Avenue HHS facility receives hour-for-hour COVID front-facing pay for any hours worked at that location.

Lastly, please notify the identified employees of the forthcoming retroactive adjustment and notify all affected employees of the need to properly record their time to receive the appropriate COVID pay.

As a reminder, bargaining unit employees are only eligible for the COVID pay if they were working onsite; any employee on administrative leave – whether due to a COVID-related reason or for other reasons – or on personal leave (annual, sick, or comp time) is not eligible for the COVID pay.

CC: Heather Black, Manager, MCtime Program
Susan Seling, Chief, Human Capital Management and Organizational Development, HHS

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF LABOR RELATIONS
Rockville, Maryland 20850

Marc Elrich
County Executive

Steven N. Blivess
Acting Chief Labor Relations Officer

MEMORANDUM

October 19, 2020

TO: Michael Coveyou, Director, Department of Finance
Berke Attila, Director, Office of Human Resources
Dr. Raymond Crowel, Director, Department of Health and Human Services

FROM: Steven N. Blivess, Acting Chief Labor Relations Officer *SNB*

RE: Front Facing COVID Pay

By agreement between the County Executive and MCGEO, the following individuals are eligible for the Front Facing COVID pay under the April 3, 2020 Memorandum of Agreement for all dates worked at the Dennis Avenue HHS facility between March 29, 2020 and October 24, 2020. Please retroactively compensate these individuals at the \$10 per hour rate for front-facing work that was paid at the back office rate of \$3 per hour. Effective October 25, 2020, the time for these individuals spent at the Dennis Avenue HHS facility should be recorded as front-facing with the associated COVID pay.

Aglebe, Mary	Dwyer, Carey	Mendelsohn, Debra
Aguilar, Marco	Eyman, Nicole	Moen, Karol
Alexander, Thecla	Fass, Amy	Moffat, Thokozile
Amadei, Celeste	Flute, Brittany	Moges, Kassaye
Arefian, Fatemeh	Fontana, Itala	Nasoff, Lisa
Arzate, Norma	Franco, Gloria	Olkewicz, Jennifer
Bacchus-Messerli, Karin	Gallagher, Frances	Pelucia, Christian
Bailey-Johnson, Sheree	Gazvoda-Wentz, Michelle	Pittman, Gretta
Battle, Darlene	Girimonte, Andrea	Pyle, Cheryl
Bekele, Sihine	Gonella, Donna	Ragsdale, Kya
Berkoh, Asamoah Evelyn	Gorena, Joan	Rebert, Elizabeth
Blackman-Diarra, Gillian	Gray, Beatrice	Robertson, Gail
Blanco, Ann	Gregory, Rona	Rochon, Mary
Borschuk, Eugenia	Grimmett, Beth	Rollins, Sonja
Bryant, Tiara	Guerrero, Ana Marissa	Santosh, Benjamin
Burke, Donna	Hamilton, Joseph	Somers-Roblero, Stephanie
Byrum, Carmen	Hay, Yen	Suescun, Gloria

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

Front-Facing COVID Pay – HHS

Page 2 of 2

Calero, Caroline	Heitmann, Silvana	Teichler, Tricia
Caplan, Harriet	Ingram, Robin	Tejan-Kabia, Mary
Carey, Patricia	Jain, Sarita	Telang, Aniket
Carter, Kimberly	Khandagle, Franklin	Teti, Lacey
Carter-Way, Donna	Kim, Youngsoon	Turek-Valeri, Rosana
Cassidy, Barbara	Kowalewski, Lisa	Waites, Anna
Clarke, Carmen	Larbi, Akua	Walker, Shari
Corraya, Nicholas	Leavy, Lauren	Walker, Shelley
Cortez, Tamara	Lewis, Carlton	Whiteis, Caitlin
Daniel, Karla	Lima, Marcia	Williams, Christie
David, Jennifer	Margolius-Laibstain, Jane	Williams, Fiona
De, Armas Hamblett Lilibeth	Marmillot, Emily	Wilson, Nora
Deeley, Maureen	Martino, Colette	Wright, Denyse
Di, Meglio Juana	Mccallum, Milva	Zavala, Sara
Djoupet, Tchigui Liliane		

In addition to the individuals identified here, please ensure that any bargaining unit member who works at the Dennis Avenue HHS facility receives hour-for-hour COVID front-facing pay for any hours worked at that location.

Lastly, please notify the identified employees of the forthcoming retroactive adjustment and notify all affected employees of the need to properly record their time to receive the appropriate COVID pay.

As a reminder, bargaining unit employees are only eligible for the COVID pay if they were working onsite; any employee on administrative leave – whether due to a COVID-related reason or for other reasons – or on personal leave (annual, sick, or comp time) is not eligible for the COVID pay.

CC: Heather Black, Manager, Mctime Program
Susan Seling, Chief, Human Capital Management and Organizational Development, HHS

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF LABOR RELATIONS
Rockville, Maryland 20850

Marc Elrich
County Executive

Steven N. Blivess
Acting Chief Labor Relations Officer

MEMORANDUM

September 4, 2020

TO: Michael Coveyou, Director, Department of Finance
Berke Attila, Director, Office of Human Resources
Robin Riley, Director, Department of Recreation

FROM: Steven N. Blivess, Acting Chief Labor Relations Officer *SNB*

RE: Front Facing COVID Pay

By agreement between the County Executive and MCGEO, the following individual is eligible for the Front Facing COVID pay under the April 3, 2020 Memorandum of Agreement. Please retroactively compensate him at the \$10 per hour rate for front-facing work for all dates worked at the Dennis Avenue HHS facility between March 29, 2020 and August 29, 2020 that was paid at the back office rate of \$3 per hour. Effective the current pay period, beginning on August 30, 2020, his time spent at the Dennis Avenue HHS facility should be recorded as front-facing with the associated COVID pay.

Taylor, Winston (Alex)

Please notify the identified employee of the forthcoming retroactive adjustment and remind him of the need to properly record their time to receive the appropriate COVID pay.

As a reminder, he is only eligible for the COVID pay if he is working onsite; any employee on administrative leave – whether due to a COVID-related reason or for other reasons – or on personal leave (annual, sick, or comp time) is not eligible for the COVID pay.

CC: Heather Black, Manager, MCTime Program
Traci Anderson, Department of Recreation

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



OFFICE OF LABOR RELATIONS
Rockville, Maryland 20850

Marc Elrich
County Executive

Steven N. Blivess
Acting Chief Labor Relations Officer

MEMORANDUM

July 28, 2020
Amended July 29, 2020
Second Amendment September 4, 2020

TO: Michael Coveyou, Director, Department of Finance
Berke Attila, Director, Office of Human Resources
Christopher Conklin, Director, Department of Transportation

FROM: Steven N. Blivess, Acting Chief Labor Relations Officer *SNB*

RE: Front Facing COVID Pay

By agreement between the County Executive and MCGEO, the following individuals are eligible for the Front Facing COVID pay under the April 3, 2020 Memorandum of Agreement. Please retroactively compensate these individuals at the \$10 per hour rate for front-facing work for all dates worked between March 29, 2020 and August 29, 2020 that was paid at the back office rate of \$3 per hour. Effective the current pay period, beginning on August 30, 2020, the time for these individuals should be recorded as front-facing with the associated COVID pay.

Adegun, Yisa	Jones, Odell
Boone, Nicholas	Kisner Jr., James
Curtis, Travis	Martin, Alfred
Derrick, Adam	McBride, James
Faulkner, Timothy	Schools-Bey, James
Fisher, Andrew	Smith Jr., Norman
Jackson Jr., James	Williams, DeCarlos

Please notify the identified employees of the forthcoming retroactive adjustment and notify all affected employees of the need to properly record their time to receive the appropriate COVID pay.

As a reminder, these individuals are only eligible for the COVID pay if they were working onsite; any employee on administrative leave – whether due to a COVID-related reason or for other reasons – or on personal leave (annual, sick, or comp time) is not eligible for the COVID pay.

CC: Heather Black, Manager, MCtime Program

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda



Marc Elrich
County Executive

Christopher R. Conklin
Director

DEPARTMENT OF TRANSPORTATION

MEMORANDUM

November 10, 2020

TO: MCDOT Employees

From: Chris Conklin, Director, Department of Transportation
Gino Renne, President, MCGEO, Local 1994

Subject: Uniform Interpretation of Front Facing Pay Differential in MCDOT

To facilitate a uniform interpretation of the COVID front facing pay for MCDOT employees as agreed to between the County and MCGEO in the Memorandum of Agreement dated April 3, 2020, MCGEO and the Department have developed this pilot initiative to clearly define when an employee is eligible for the front facing pay. This pilot is effective as of November 8, 2020 and shall run for a period of 8 weeks until January 2, 2021. If the County and MCGEO do not make a joint decision to extend the pilot, the Department will revert to the application of front facing and back office pay differential that was in place prior to this memo. This interpretation does not affect the application of the back office pay differential, nor is it applicable to other County departments.

This pilot supersedes any and all previous side agreements regarding specific MCDOT employees or position groups. It also resolves the consideration of front facing pay for positions not previously agreed to between the County and MCGEO.

Payment of the front facing pay differential will be paid on an hourly basis only for that portion of the day actually spent performing the front facing task as described below and shall be rounded to the nearest half hour increment. Employees will not be paid front facing pay for the entirety of their scheduled day unless they perform front facing eligible task for the entirety of the day.

The tasks described below compliment safety and social distancing modifications to work activities put in place by the Department. Employees not following the safety and social distancing provisions will forfeit their eligibility for the front facing pay differential.

Office of the Director

101 Monroe Street, 10th Floor, Rockville, MD 20850 · 240-777-7170 · 240-777-7178 Fax
www.montgomerycountymd.gov/mcdot

montgomerycountymd.gov/311 301-251-4850 TTY

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

	Task	Status
1	MCDOT employees while performing duties at their assigned work location/project site during a time when the employee is physically interacting and NOT able to maintain a distance of 6ft for social distancing.	Eligible
2	MCDOT employees while performing duties at their assigned work location/project site during a time when the employee is physically interacting and able to maintain a distance of 6ft for social distancing.	Not Eligible
3	MCDOT employees while performing duties at their assigned work location/project site that do not require physical interaction.	Not Eligible
4	MCDOT employees traveling to and from work assignments while in a county vehicle.	Not Eligible
5	MCDOT employees picking up, delivering and receiving materials at county facilities, while the facility is closed to the public and safety/social distancing protocols are in place.	Not Eligible
6	MCDOT employees picking up materials or performing other duties onsite at a store/supplier or supply-house, while the facility is open to other customers.	Eligible
7	MCDOT employees accepting delivery of items in the presence of an outside vendor, supplier or delivery person where social distancing cannot be maintained.	Eligible
8	MCDOT employees handling the mail or other materials picked up or delivered to county facilities or through the U.S. Postal Service, regardless of the amount of time elapsed since the mail was delivered to the facility.	Not Eligible
9	MCDOT employees conducting/attending training in small size groups with social distancing and not involving direct interaction with the public.	Not Eligible
10	Operating a bus in service.	Eligible
11	MCDOT employees conducting transit road coordinator duties while in a county vehicle or at the transit depot.	Not Eligible
12	MCDOT employees conducting transit road coordinator duties outside of the vehicle and depot.	Eligible
13	MCDOT employees conducting training of bus operators in which the employees go on the bus while the bus is in service	Eligible
14	MCDOT employees while performing accident scene and post-accident testing	Eligible
15	MCDOT employees providing supervision to bus operators away from the depot while the bus is in service	Eligible
16	MCDOT employees providing supervision at the bus depot at the front desk	Eligible
17	MCDOT employees conducting inspections of taxicabs, interviewing and/or interacting with taxicab drivers at taxi stands	Eligible

Appendix A – Negotiated Memoranda of Agreement and Related Memoranda

18	MCDOT employees appearing in court and NOT able to maintain a 6ft distance for social distancing.	Eligible
19	MCDOT employees serving as Covid-19 test site Coordinators	Eligible

Questions regarding the above list should be directed to your Division Chief.

Thank you for your continued service to our residents and customers during these challenging times.

Gino Renne

Gino Renne (Nov 12, 2020 11:15 EST)

Gino Renne, President, MCGEO Local 1994

Christopher Conklin

Christopher Conklin (Nov 12, 2020 10:46 EST)

Christopher Conklin, Director, MCDOT

Steven N. Blivess

Steven N. Blivess, Acting Chief Labor
Relations Officer

Appendix B – Legal Opinion Issued by the Office of the County Attorney

Appendix B – Legal Opinion Issued by the Office of the County Attorney



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Fariba Kassiri
Deputy Chief Administrative Officer

VIA: Marc Hansen *mph*
County Attorney

VIA: Silvia Kinch *SCK*
Chief, Division of Labor Relations and Public Safety

FROM: Edward E. Haenftling, Jr. *E.E.H.*
Associate County Attorney

DATE: May 12, 2021

RE: Effect of Subsequent Agreements on COVID-19 Hazard Pay Settlement with the Municipal & County Government Employees Organization, UFCW Local 1994

The Office of the County Attorney (“OCA”) has been tasked with providing an opinion regarding the legal ramifications of seven memoranda, which implemented an oral agreement between the County Executive and the Municipal & County Government Employees Organization, UFCW Local 1994 (“MCGEO”) (collectively the “Parties”), providing COVID-19 differential pay during the period of July 28, 2020 and October 19, 2020. Specifically, you ask if the oral agreement referenced in the seven memoranda amends the April 3, 2020, MOA between the Parties regarding front-facing and back-office COVID differential pay?

Brief Summary of Findings

After entering into the April 3, 2020 MOA with MCGEO, the Parties further amended the definition of Front Facing Onsite work to include situations where a bargaining unit employee was at an increased risk of exposure. The amendment to the MOA applies to both MCGEO represented bargaining unit employees specifically listed by MCGEO as well as other

101 Monroe Street, Third Floor, Rockville, Maryland 20850
(240) 777-6749 • TTD (240) 777-2545 • FAX (240) 777-6705 • edward.haenftling@montgomerycountymd.gov

Appendix B – Legal Opinion Issued by the Office of the County Attorney

Fariba Kassiri
May 12, 2021
Page 2

MCGEO represented bargaining unit employees that were not listed but are similarly situated regarding their increased risk of exposure. The amendment only applies to MCGEO represented bargaining unit employees.

Background

In response to the COVID-19 pandemic, on March 5, 2020, Maryland Governor Larry Hogan issued a State of Emergency proclaiming that the novel coronavirus COVID-19, created a “catastrophic health emergency” in the State of Maryland. See March 5, 2020 State of Emergency Proclamation. On March 16, 2020, Montgomery County government switched to a “situational telework” status, wherein employees who worked in telework eligible positions could telework up to five days a week, with supervisor approval.

Soon thereafter, MCGEO threatened legal action for the County’s failure to declare its own state of emergency.¹ On April 3, 2020, in an effort to avoid an adverse ruling that could require invoking the emergency pay provisions of the Collective Bargaining Agreements, the Parties entered into a Memorandum of Agreement (“MOA”) detailing various procedures and hazard pay provisions that applied to the MCGEO represented bargaining units.

For MCGEO bargaining unit members, the Parties agreed to two levels of hazard pay: “back office onsite work” and “front facing onsite work.” The two levels of pay are defined as follows:

Back Office Onsite work: work performed at a County worksite that cannot be performed by telework and does not involve regular physical interaction with the public.

Front Facing Onsite work: work that cannot be performed by telework that involves physical interaction with the public and cannot be performed with appropriate social distancing. For example, Transit Desk Coordinators, Police Service Assistants, bargaining unit members assigned to the Crisis Center, and any other similarly situated bargaining unit members shall be considered front facing. Notwithstanding the foregoing, the Parties agree that the following work will be treated as Front Facing Onsite work: bargaining unit members assigned to the ECC.

The Back Office Onsite work differential was paid at the rate of “\$3.00 per hour for each hour of Back Office Onsite work performed.” The Front Facing Onsite work

¹ See email from: Steven Sluchansky (steven.sluchansky@montgomerycountymd.gov) to Mark Elrich (mg.krebs@montgomerycountymd.gov); and Andrew Kleine (andrew.kleine@montgomerycountymd.gov); and Fariba Kassiri (fariba.kassiri@montgomerycountymd.gov); and Debbie Spielberg (debbie.spielberg@montgomerycountymd.gov) and Marc P. Hansen (marc.hansen@montgomerycountymd.gov); and Silvia Kinch (silvia.kinch@montgomerycountymd.gov); and Berke Attila (berke.attila@montgomerycountymd.gov), Re: My meeting with the Unions, Tuesday, March 17, 2020, 2:59 PM.

Appendix B – Legal Opinion Issued by the Office of the County Attorney

Fariba Kassiri
May 12, 2021
Page 3

differential was paid at the rate of “\$10.00 per hour...[d]ifferential for each hour of Front Facing Onsite work.”

The MOA with MCGEO included the following Reopener language:

This Agreement may re-open on June 20, 2020. However, if the declared Maryland State of Emergency related to COVID-19 extends beyond that time, the terms of this Agreement shall continue, **or after collectively bargaining with MCGEO, will be modified based upon the circumstances at the time.** In the event that the declared Maryland State of Emergency related to COVID-19 is rescinded before June 20, 2020, the date of the Declaration’s rescission shall be considered the last day of this Agreement, notwithstanding the pay periods indicated above defining when the COVID-19 Differential will be paid.

(Emphasis added.)

On or about June 5, 2020, the County Executive and MCGEO President, Gino Renne, agreed to extend the Front Facing Onsite work differential to specific individuals who performed duties that exposed the individual to a risk of exposure to COVID-19 that was equivalent to the risks faced by a front-facing employee. The Parties agreed to consider these individuals to be front-facing employees but did not discuss whether the change would apply to other employees in the same or similar job classifications. It should be noted that these discussions were not recorded; nor did the Parties enter into written agreements. However, the Parties’ oral agreements were implemented through seven (7) memoranda issued by then-acting Chief Labor Relations Officer (“CLRO”) Steven N. Blivess, wherein bargaining unit members were determined not only to qualify for the Front Facing Onsite work differential, but also to back pay relating back to April 3, 2020. No documents were signed by the County Executive.

The first three (3) memoranda were issued on July 28, 2020 to the Directors of the Department of Finance, Office of Human Resources, the Department of Correction and Rehabilitation, the Department of Transportation, and the Department of General Services. The memoranda stated that “[b]y agreement between the County Executive and MCGEO, the following individuals are eligible for the Front Facing differential under the April 3, 2020, Memorandum of Agreement.” The memoranda then provided a detailed list of employees that the Parties agreed were eligible for the Front Facing Onsite work differential. The memoranda were subsequently amended to add more employees that qualified but were not originally listed by the Union.²

Three (3) more memoranda were issued by the acting CLRO on September 4, 2020, this time to the Montgomery County Fire and Rescue Service, the Department of Recreation, and the Department of Health and Human Services. The memoranda included

² The Parties agreed to extend the Front Facing Onsite work differential to ten (10) employees at DOCR, fourteen (14) employees at DOT, and one hundred forty-two (142) employees at DGS.

Appendix B – Legal Opinion Issued by the Office of the County Attorney

Fariba Kassiri
May 12, 2021
Page 4

identical language referencing the agreement between the County Executive and MCGEO and included a list of employees that the Parties agreed to extend the Front Facing Onsite work differential.³ The memorandum to HHS also included the following sentence:

In addition to the individuals identified here, please ensure that any bargaining unit member who works at the Dennis Avenue HHS facility receives hour-for-hour COVID front-facing pay for any hours worked at that location.

It should be noted that HHS recommended expansion of its list beyond what the Union presented due to enhanced risk of exposure at the Dennis Avenue HHS facility.

The last memorandum was issued by the acting CLRO on October 19, 2020 to HHS. The memorandum included the same language as the September 4, 2020 HHS memorandum, but included a different list of employees.⁴

In all, the Parties agreed to extend the Front Facing Onsite work differential to three hundred forty-nine (349) employees that would not have qualified under the definition included in the original April 3, 2020 MOA.

Although the County Executive agreed to extend the Front Facing Onsite work differential to the list of employees provided by MCGEO, some departments chose to extend the Front Facing Onsite work differential without consulting with or notifying the County Executive or the CLRO. This information was initially discovered during an internal audit by the Montgomery County Office of Internal Audit (“MCIA”) who found that the prior director of the Alcohol Beverage Service (“ABS”) had extended the Front Facing Onsite work differential to warehouse bargaining unit employees who, due to the circumstances of their work, did not qualify for the Front Facing Onsite work differential as defined in the April 3, 2020 MOA.⁵ The factors ABS used to conclude that warehouse bargaining unit employees were entitled to the differential are unknown.

By agreement of the Parties, which was memorialized in a MOA dated February 17, 2021, the COVID-19 differentials described in the April 3, 2020 MOAs and subsequent memoranda expired on February 14, 2021.

³ The Front Facing Onsite work differential was extended to twenty-two (22) MCFRS employees, one (1) REC employee, and sixty-six (66) HHS employees.

⁴ The Front Facing Onsite work differential was extended to ninety-four (94) HHS employees, bringing the total to one hundred sixty (160) employees.

⁵ The internal audit is being conducted at the request of the Chief Administrative Officer after receiving a recommendation contained in a Montgomery County Inspector General Report, which found that certain employees with the Department of Permitting Services (“DPS”) were overpaid for work that did not fall within the definition of Front Facing Onsite work, specifically, DPS inspectors were applying the differential to work time while traveling in their vehicles and/or teleworking.

Appendix B – Legal Opinion Issued by the Office of the County Attorney

Fariba Kassiri
May 12, 2021
Page 5

Question Presented

Did the oral agreement between the County Executive and MCGEO referenced in the seven (7) memoranda issued by acting CLRO Steven N. Blivess effectively amend the definition of Front Facing Onsite work contained in the April 3, 2020 MOA between the Parties?

Discussion

- a. **The oral agreement referenced in the seven memorandums amended the April 3, 2020 MOA between the Parties regarding front-facing and back-office pay.**

The April 3, 2020 MOA is a binding agreement subject to general contract law. *See Musick v. Musick*, 144 Md. App. 494, 501-502, 798 A.2d 1213 (2002) (“[a]s this Court has summarized, ‘a settlement agreement is subject to general contract law.’”), quoting *Fultz v. Shaffer*, 111 Md. App. 278, 297-98, 681 A.2d 568 (1996) (citations omitted). The terms of the MOA provided for a reopener, specifically that after June 20, 2020, the Parties could mutually modify the MOA should circumstances require such an action. Based upon the discussions between the County Executive and President Renne, the Parties determined that circumstances required modification. Upon the direction of the County Executive, and after June 20, 2020, acting CLRO Blivess directed the various Departments to provide the Front Facing Onsite work differential to the listed employees through seven separate (7) memoranda. The issuance of the subsequent memoranda coupled with the payment to the employees was evidence of an agreement to modify the April 3, 2020 contract. *See Taylor v. University National Bank*, 263 Md. 59, 63 (1971) (“...the conduct of parties to a contract may be evidence of a subsequent modification of their contract.”); *University Nat’l Bank v. Wolfe*, 279 Md. 512, 522, 369 A.2d 570, 576 (1977) (the court noted the “well settled rule that the parties by their conduct may waive the requirements of a written contract.”).

Thus, the seven (7) memoranda were a change to the April 3 MOA.

- b. **The Parties intended that the Front Facing Onsite work differential to apply to other unnamed MCGEO employees.**

While it is clear that the individuals listed by the Union should receive the Front Facing Onsite work differential as a result of the oral amendment, a question arises regarding those who were not specifically listed in the seven memoranda. A review of the relevant facts indicates that the Parties intended that the amendment to the April 3, 2020 MOA should apply to all MCGEO bargaining unit members who were exposed to higher risk of exposure to COVID-19.

Because the amendment was not memorialized into a written document, applicability of the amendment to bargaining unit members not listed by MCGEO is ambiguous. Under these circumstances, the Parties’ “conduct and intentions may be employed to determine any ambiguous and unknown provisions of the [oral] contract.” *Son v. Margolius, Mallios*,

Appendix B – Legal Opinion Issued by the Office of the County Attorney

Fariba Kassiri
May 12, 2021
Page 6

Davis, Rider & Tomar, 114 Md.App. 190, 213, 689 A.2d 645, 656 (1996), *reversed on other grounds*, 349 Md. 441, 709 A.2d 112 (1998), *citing Globe Home Improvement Co. v. McCarty*, 204 Md 513, 517, 105 A.2d 216 (1954); *Weil v. Free State Oil Co.*, 200 Md 62, 87 A.2d 826 (1952); *Snyder v. Cearfoss*, 187 Md. 635, 51 A.2d 264 (1947). Intent to amend a contract term may be inferred from the conduct of the parties:

“The parties to a contract may agree to vary its terms and enter into a new contract embodying the changes agreed upon and a subsequent modification of a written contract may be established by a preponderance of the evidence. Assent to an offer to vary, modify or change a contract may be implied and found from circumstances and the conduct of the parties showing acquiescence or agreement.”

Cole v. Wilbanks, 226 Md. 34, 38, 171 A.2d 711 (1960) (internal citations omitted).

A review of the relevant facts suggests that the Parties intended that the amendment apply to the bargaining unit as a whole, and not specific individuals identified by the Union. MCGEO requested an amendment to the contract during the June 5, 2020 meeting. The CE accepted the request when he agreed that the definition of Front Facing Onsite work be expanded to include MCGEO represented bargaining unit members whose duties included an enhanced risk of exposure. At no point during the conversation did the County Executive insist that the amendment apply strictly to those MCGEO represented bargaining unit members listed by the Union. The amendment was permitted per the Reopener provision in the April 3, 2020 MOA.

The Parties' conduct further evinces the Parties' intent that the amendment applied to all similarly situated MCGEO represented bargaining unit members beyond the list presented by the Union. As previously stated, there were no statements made during the June 5, 2020 conversation that suggested that the amendment be limited to such a list. The County did not object when the Union expanded the list beyond the one that was initially presented. In fact, the memoranda were amended a few times to include bargaining unit members not originally listed by the Union. For instance, HHS, through its own initiative and without objection by either the County or the Union, expanded the list of bargaining unit members beyond the list provided by MCGEO. Finally, a number of departments, such as ABS, provided the Front Facing Onsite work differential to certain bargaining unit employees the departments deemed were eligible for various reasons prior to the amendment and without MCGEO asserting that the bargaining unit employees should receive the differential. Since the bargaining unit members were already receiving the differential, there was no reason for the Union to include these individuals in the list.

Conclusion

Based upon the discussions and conduct between the County and MCGEO, the Parties intended to amend the definition of Front Facing Onsite work in the April 3, 2020 MOA

Appendix B – Legal Opinion Issued by the Office of the County Attorney

Fariba Kassiri
May 12, 2021
Page 7

by expanding the differential to certain MCGEO bargaining unit employees that, due to the nature of their work, had a greater risk of infection. Thus, any MCGEO bargaining unit employee that fell within this new definition of Front Facing Onsite work properly received the COVID-19 differential for onsite work where the employee has an increased risk of exposure.⁶

cc: Richard S. Madaleno, Chief Administrative Officer
Berke Attila, Director, Office of Human Resources
Jennifer Harling, Chief Labor Relations Officer
Silvia Kinch, Chief, Office of the County Attorney Division of Labor Relations and Public Safety
Edward E. Haentfling, Jr., Associate County Attorney

⁶ Any MCGEO bargaining unit member that may have qualified for Front Facing Onsite work while the differential was available are precluded from filing a grievance under Article 10.6(a) of the Collective Bargaining Agreement (“A written grievance must be presented...by the Union within thirty (30) calendar days from the date of the event giving rise to the grievance or the date on which the employee knew or should have known of the event giving rise to the grievance.”). Indeed, the Union did not provide any more names to the County after October 2020 although they were aware that the definition was expanded.