



MONTGOMERY COUNTY EXECUTIVE REGULATION

OFFICES OF THE COUNTY EXECUTIVE • 101 MONROE STREET • ROCKVILLE, MARYLAND 20850

SUBJECT Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations	NUMBER 16-13AMII
ORIGINATING DEPARTMENT Office of Human Resources	EFFECTIVE DATE June 30, 2015

Comprehensive Amendments to the 2001 Montgomery County Personnel Regulations

Executive Regulation No. 16-13AMII
COMCOR No. 33.07.01

Issued by: County Executive

Supersedes: Executive Regulation No. 1200AM, in part,
and Executive Regulation 26-07AM

Authority: Montgomery County Code, 2004, §33-7(b)
Council review: Method 1

Montgomery County Register Volume 31, Issue 10
Comment deadline: October 31, 2014

Effective date: June 30, 2015

Summary: This regulation includes amendments to Sections 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 26, 27, 30, 31, 32, 33, 34, 35, and 36 of the 2001 Montgomery County Personnel Regulations. These amendments resulted from a comprehensive review of the Personnel Regulations by the Office of Human Resources.

Address for comments: Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface
* * *

Heading or defined term.
Existing language unchanged by executive regulation.



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SECTION 2. GENERAL PROVISIONS

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

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

* * *

SECTION 4. RECORDS

* * *

4-3. Employee records.

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

* * *

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

(b) **Department operating record.**

* * *

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

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

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

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

* * *



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

* * *

SECTION 5. EQUAL EMPLOYMENT OPPORTUNITY

* * *

5-4. EEO complaints.

- (a) An individual who believes that he or she has been subjected to employment discrimination or harassment in violation of this policy, or any person acting on behalf of such an individual, may file a complaint with one or more of the following:
 - (1) the individual’s supervisor or department director, if the individual is a County employee;
 - (2) the County’s EEO Officer;
 - (3) the Office of Human Rights; or
 - (4) a State or Federal enforcement agency.
- * * *
- (f) The complaint processes of the Office of Human Rights and of State and Federal enforcement agencies are independent of the County EEO Officer’s complaint



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

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

* * *

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

SECTION 6. RECRUITMENT AND APPLICATION RATING PROCEDURES

* * *

6-5. Competitive rating process.

* * *

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

* * *



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

* * *

7-2. Probationary period; promotional probationary period.

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

- (1) A person appointed to a full-time or part-time merit system position must serve a probationary period as a continuation of the rating process to demonstrate proper attitude and ability for the position.
- (2) A person in a non-merit position appointed to a full-time or part-time merit system position must serve a probationary period.
- (3) A person appointed to a temporary position does not serve a probationary period.
- (4) An employee promoted to a full-time or part-time merit system position must serve a promotional probationary period, as defined in Section 1-63, in order to demonstrate that the employee is able to perform the duties of the new job satisfactorily.
- (5) A County employee with merit system status who is appointed to a position as a Firefighter/Rescuer Recruit, Police Officer Candidate, Deputy Sheriff Candidate, or Correctional Officer I/Private must serve a new probationary period of at least 12 months in the new position. If the employee is unable to successfully complete the new probationary period, the OHR Director must place the employee in an available vacant position for which the employee is qualified at the same grade as the employee had before the transfer.



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

* * *

(e) ***Termination during probation of a probationary employee.***

- (1) A department director may immediately terminate a probationary employee at any time during the probationary period.
- (2) A department director who terminates a probationary employee must ensure that the employee receives severance pay as required under Section 10-22(a)(1) of these Regulations.

* * *

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

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

* * *

SECTION 8. MEDICAL EXAMINATIONS AND REASONABLE ACCOMMODATION

* * *



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

* * *

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

* * *

- (8) The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- (9) Federal Transit Administration (FTA) regulations (49 CFR Parts 653 and 654, as amended);
- (10) U.S. Department of Transportation (DOT) regulations (49 CFR Part 40, as amended); and
- (11) Federal Motor Carrier Safety Administration (FMCSA) regulations (49 CFR Parts 382 and 391.41;

* * *

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

- (a) *Medical and physical requirements for job applicants.*

* * *

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

* * *

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



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

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

* * *

- (2) An employee who is reassigned, transferred, demoted, or promoted on a temporary or permanent basis must undergo a pre-placement medical evaluation, excluding a medical history review, if:
 - (A) the employee has been in the previous position for more than 5 years; or
 - (B) the new position requires a more extensive medical exam protocol than the employee's previous position;

* * *

SECTION 9. CLASSIFICATION

9-1. Definitions.

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

* * *

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

* * *

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



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- (i) **Oracle Position Transaction Approval Process:** This process is used to document and track:
 - (1) position creations, abolishments, reclassifications, transfers, and miscellaneous changes to positions; and
 - (2) Office of Management and Budget and Office of Human Resources approval of changes to positions prior to the above actions taking place.

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

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

* * *

9-3. Classification plan.

* * *

- (b) **Class creation.**

* * *

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

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

- (d) **Allocation of a class to a pay grade or pay band.**



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(1) ***Review of a class.***

(A) Pay for the classes on the salary schedules listed below is not determined by using a job evaluation system. Instead, pay is determined by using the following mechanisms:

* * *

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

(i) General salary schedule (GSS);

* * *

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

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

* * *

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

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

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

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



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

(4) ***Responsibility of OHR Director.***

* * *

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

* * *

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

* * *

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

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

* * *

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

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



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

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

* * *

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

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

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

* * *

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

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

* * *

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

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

* * *



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9-4. Position classification.

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

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

* * *

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

- (1) The incumbent of a position, the incumbent’s supervisor, or the incumbent’s department director may ask the OHR Director to review the classification assignment of a particular position during the month of June. If the last day of June falls on a Saturday, a Sunday, or an official County holiday, then the incumbent, supervisor, or department director may submit the request on the next working day.
- (2) The party who submits a request for an individual position classification study must submit the following information to support the request:

* * *

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

* * *

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



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

* * *

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

* * *

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

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

* * *

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

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

(e) **Date of completion of a classification study.**

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

(f) **Reclassification.**



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* * *

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

* * *

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

* * *

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

* * *

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

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

- (1) An upward reclassification of a position is normally effective at the beginning of the first pay period after whichever date comes first:
 - (A) the date of the OHR Director's or CAO's classification decision; or
 - (B) 12 months from the date when OHR received all information necessary to conduct the study.
- (2) A downward reclassification of a position is normally effective at the beginning of the first pay period after the OHR Director's or CAO's classification decision.

* * *



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(j) **Management Leadership Service.**

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

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

* * *

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

* * *

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

9-5. Special classification studies.

* * *

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

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

* * *

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



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9-6. Administrative review.

- (a) *Review of a classification decision to downgrade.*

* * *

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

* * *

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

* * *

- (iii) the dates when OHR received the requests.

* * *

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



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

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

* * *

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

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

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

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

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

(B) The OHR Director must provide:

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

* * *



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

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

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

* * *

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

SECTION 10. EMPLOYEE COMPENSATION

* * *

10-3. Uniform salary plan.

(a) The uniform salary plan consists of salary schedules authorized in Code Section 33-11(b) for:

* * *

(8) employees in positions in the Management Leadership Service (MLS); and

(9) a General salary schedule (GSS) for all other employees.

(b) The Council must approve the uniform salary plan and any amendments adopted by Council resolution.

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- (e) The salary rate or range for each pay grade or pay band on an approved salary schedule must remain in effect until a change to the salary schedule is approved by the County Council.
- (f) The CAO must base a recommendation to amend a salary schedule on the factors outlined in Section 33-11 of the County Code.

* * *

10-4. Payroll policies.

- (a) **Pay period.** The CAO must pay employees for work performed in a two-week pay period.
- (b) **Work year.** The CAO must compute salaries under the County pay schedules on the basis that one work year is equal to 52 weeks which could consist of:
 - (1) 2,184 or 2,496 hours for uniformed fire/rescue employees; or
 - (2) 2,184 hours for certain police executives; or
 - (3) 2,080 hours for all other employees.

* * *

- (d) **Recovery of overpayment or employee debt.**

* * *

- (2) **Recovery of employee debt to County.** The CAO may set off a debt that an employee or former employee owes to the County and deduct the amount owed from unpaid salary, accrued annual leave or compensatory time owed to the employee. The CAO must give the employee or former employee written notice of the deduction and an opportunity to respond.



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- (f) **Effective date of a salary change.** The effective date of a salary change is the beginning of the pay period in which the change was made, unless the CAO specifies a different date.
- (g) **Direct deposit.** An employee must, as a condition of employment, agree to have the County deposit the employee's biweekly pay directly in the employee's account at a bank, credit union, or other comparable government-regulated financial institution. If an employee is delayed in providing the County with direct deposit information, the County will deposit the employee's bi-weekly pay on a payroll card until such time as the employee provides direct deposit information.

10-5. Salary-setting policies.

- (a) **General.** A department director must ensure that an employee's base salary does not exceed the pay rate or range for the pay grade or pay band assigned to the employee's class, unless the department director:

* * *

- (b) **Salary on appointment and reappointment for employees on the General Salary Schedule and Management Leadership Service Salary Schedule.** A department director must set the base salary of a newly appointed or reappointed employee within the applicable pay grade or pay band under these Regulations and guidance established by the OHR Director and CAO.

- (1) Departments and agencies have the authority to negotiate and determine salaries for candidates equal to or less than the midpoint of the salary range or pay band.
- (2) A department director may submit a request to the OHR Director for approval to hire a candidate at a salary that is above the midpoint of the salary range or pay band. The director should include in the memorandum:
 - (A) the reason the candidate should be hired above the midpoint of the salary range;



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- (B) a copy of the candidate’s resume;
 - (C) proof of the candidate’s prior or current salary (i.e. most recent pay slip, W-2, 1099 or other wage documentation); and
 - (D) the names of other incumbents in the same class in the department with their salaries.
- (3) OHR will review the information submitted by the department director to compare the candidate’s proposed salary to the salaries of existing employees in the same class within the department in order to determine if the proposed salary will create a pay inequity.
 - (4) The candidate’s knowledge, skills and abilities will be reviewed in comparison with those same requirements in the official class specification. Consideration will also be given to the department’s “preferred criteria” documented in the recruitment posting in the review and approval process of the candidate’s proposed salary.
 - (5) If the candidate submits documentation of his/her current salary (pay advice/stub, W-2 or 1099, and the department is requesting a salary that may be higher than the department’s incumbents in the same class, then the department’s proposed salary for the candidate may be approved, even if the candidate has less experience, education, etc. than existing employees in the same class.
 - (6) If there is evidence of recruitment and retention issues for the position (i.e. the existing candidate pool is minimal) and if the candidate’s proposed salary will give the candidate a higher salary than the salaries of existing employees, then the proposed salary may be approved even if the candidate has less experience, education, etc. than existing employees.
 - (7) If there is evidence that the candidate has specialized or unique skills, certifications, licensing, and/or experience and the evidence is used to support a higher salary than the salaries of existing employees, those factors



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must be reflective of the official class specifications or the department's preferred criteria for the current recruitment, and then the proposed salary may be approved even if the candidate has less experience and education than existing employees.

- (8) If there is no evidence of recruitment and retention issues, the candidate's specialized or unique skills, certifications, licensing, and/or experience, or of the candidate's higher salary in a former position, and the proposed salary of the candidate will create an inequity with existing employees, then the proposed salary should be denied and the candidate's salary should be set lower than the salaries of existing employees. If the candidate does not accept the offer of employment at the lower salary, then the department should consider the next candidate on the hiring list.
- (9) The OHR Director will approve or deny the department director's request.
- (10) A department director may appeal the OHR Director's denial of a department's request to hire a candidate at a salary that is above the midpoint of the salary range or pay band to the CAO.
- (11) The department director cannot communicate the requested salary to the candidate prior to approval, in writing, from the OHR Director.

(c) **Salary on promotion.**

- (1) **Compensation for a regular (non-temporary) promotion.**

* * *

- (D) In addition to the non-discretionary 5 percent increase provided for in (B) above, a department director may approve an additional increase in base salary of up to 5 percent for a single promotion, or a total increase not to exceed 10 percent.



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- (E) In addition to the maximum 10 percent increase in base salary for a single promotion that a department director may approve under (D) above, a department director may recommend and the OHR Director may approve an additional increase in base salary of 5 percent for a single promotion, or a total increase not to exceed 15 percent.
- (F) A department director should consider the following factors when recommending to the OHR Director an additional 5 percent salary increase for a single promotion under (E) above, which would constitute a total increase of 15 percent:
 - (i) whether the employee being promoted received an “Exceptional” overall performance rating prior to the promotion; or
 - (ii) whether the position that the employee is being promoted to is a difficult position for which to recruit and retain employees.
- (G) A department director’s recommendation to the OHR Director for a maximum increase of 15 percent in base salary for a single promotion must:
 - (i) document that the promotional increase requested is consistent with the department’s pay practices and policies;
 - (ii) provide justification for the request.
- (H) In extraordinary circumstances, the department director may recommend and the OHR Director may approve a total increase of not to exceed 20 percent of base salary. Extraordinary circumstances means:
 - (i) a promotion of at least 3 grades; or



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(ii) a promotion to a supervisory position after which the employee's salary would be less than that of the employees supervised.

(1) The CAO may approve a total increase in base salary greater than 20% in extraordinary circumstances (as defined in section 10-5(c)(1)(H)) based upon the factors identified in section 10-5(b) where a promotion arises from a competitive promotion that was open to the general public and at least one non-County employee was either in the highest rating category or was interviewed for the vacancy.

(2) **Compensation for a temporary promotion.**

* * *

(B) An employee working under a Position and Career Education (PACE) contract is not considered temporarily promoted and, therefore is not entitled to a pay increase.

* * *

(d) **Salary on demotion.**

(1) **Voluntary demotion.** A department director may allow an employee who has had a voluntary demotion to keep the employee's prior base salary after a voluntary demotion as long as the employee's salary is:

* * *

(2) In a voluntary demotion, when the employee's prior base salary is above the maximum salary of the new pay grade or pay band, the employee's salary must equal the maximum salary of the new pay grade or pay band.

(3) **Disciplinary demotion or demotion resulting from unsatisfactory performance.**



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* * *

(4) ***Demotion resulting from reduction-in-force or disability.***

(A) If a General salary schedule (GSS) or an MLS employee is demoted as a result of reduction-in-force to a class that is non-bargaining unit, the department director must allow the employee to retain the salary received at the time of the demotion. If the demoted employee's salary exceeds the maximum for the new pay grade or pay band, the department director must allow the employee to retain the salary for 2 years after the demotion.

* * *

(C) If an employee in a non-bargaining unit position is demoted as a result of disability, then the employee retains his or her salary indefinitely, even if the salary is above the maximum of the grade.

(D) If the CAO reclassifies a demoted employee's position upward during the 2-year period following the demotion, the department director must not increase the employee's salary unless a salary increase is needed to bring the employee's salary to the minimum salary of the new pay grade or pay band.

(e) ***Salary on reassignment during the promotional probationary period.*** If the promoted employee has a less than satisfactory annual or interim performance rating relating to the duties of the new position during the promotional probationary period, then the department director must reassign the promoted employee to a position at the employee's former pay grade and must reduce the employee's salary after the reassignment by the amount of the promotional increase.

(f) ***Salary on reclassification or reallocation.***

(1) The reclassification or reallocation of a position to a higher or lower pay grade or pay band is not a promotion or a demotion.



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- (2) A department director must not increase the salary of an employee whose position is reclassified or reallocated to a higher pay grade or pay band, except as indicated in Section 12-2(c) of these Regulations, or to ensure that the employee's salary is at the minimum for the new pay grade or pay band.
- (3) A department director must ensure that an employee whose position is reclassified or reallocated to a lower pay grade:
 - (A) retains the salary the employee received the day before the effective date of the reclassification or reallocation; and
 - (B) receives the same general wage adjustment given to other employees in the same occupational class and salary schedule regardless of whether or not the employee's salary exceeds the maximum salary for the pay grade or pay band assigned to the position.
- (4) A department director must ensure that the salary of a position that was reclassified downward reverts to the salary range for the pay grade or pay band reassigned to the position after the employee who occupied the position at the time of the downward reclassification leaves the position.

(g) *Salary during a within-grade salary reduction.*

- (1) A department director may reduce an employee's bi-weekly salary by giving the employee a within-grade salary reduction outlined in Section 33-3(d).
- (2) The department director must give the employee written notice of the amount of the reduction and the number of pay periods covered by the reduction.

10-6. Overtime policy.

- (a) The assignment of overtime work is an exercise of management discretion reserved to supervisors. An employee is not entitled to overtime work assignments, unless such a right is expressly stated in a regulation or written agreement.
- (b) A department director:



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* * *

(3) must keep overtime work to a minimum and approve overtime work when the department's workload cannot be accomplished without it;

* * *

(5) must exclude an MLS employee from receiving overtime pay or compensatory time.

(c) A supervisor may assign overtime work to an employee who does or does not volunteer for the overtime assignment, but the supervisor should attempt to equally distribute the overtime work assignments among the employees who are qualified to perform the work.

(d) Except in an emergency, a supervisor should make every effort to schedule overtime work assignments in advance and no later than the end of the workday before the day of the overtime assignment.

* * *

10-7. Overtime compensation.

* * *

Normal Overtime Compensation Thresholds for County Employees			
Type of position	Threshold during regular workday	Threshold during regular workweek	Threshold if employee must work on holiday, in general emergency, or on employee's day off
Non-exempt employee	8-12 hours, depending on number of hours in normal workday	40 hours	40 hours
Exempt employee, grade 24 or below	8-12 hours, depending on number of hours in normal workday	40 hours	40 hours



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Police officer at rank of sergeant or below	8-10 hours, depending on number of hours in normal workday	40 hours	40 hours
Firefighter/ rescuer at rank of captain or below	number of hours in regular workday for full-time employee	48 hours or number of hours in regular workweek for full-time employee	48 hours or number of hours in regular workweek for full-time employee
Deputy Sheriff at rank of lieutenant or below	8-12 hours, depending on number of hours in normal workday	40 hours	40 hours
Correctional officer at the rank of correctional shift commander (lieutenant) or below	8-12 hours, depending on number of hours in normal workday	40 hours	40 hours
Exempt employee, grade 25 or above	8-12 hours, depending on number of hours in normal workday	40 hours, such employees should be compensated for the hours worked above 40 hours per week by altering the employee's regularly scheduled workweek on an hour for hour basis within the pay period when the excess hours were worked or if that is not possible the employee should be granted compensatory time on an hour for hour basis.	40 hours
Police officer at rank of lieutenant or above	13-15 hours, depending on number of hours in normal workday	40 hours	40 hours
Firefighter/ rescuer at rank of battalion chief or above	number of hours in regular workday for full-time employee, plus 5 hours	53 hours or number of hours in regular work-week for full-time employee plus 5 hours	48 hours or number of hours in regular workweek for full-time employee
Deputy sheriff at the rank of captain or above	13-17 hours, depending on number of hours in normal workday	40 hours	40 hours



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(c) Normal overtime pay rates

- (1) **For a bargaining unit employee.** The County must compensate a bargaining unit employee for overtime work at the rate stated in the appropriate labor agreement.
- (2) **For a non-exempt unrepresented employee.** The County must compensate a non-exempt employee who is not in a bargaining unit position at the rate of time and a half the employee’s regular hourly salary for each hour in a pay status beyond the overtime threshold. The regular hourly salary must include pay differentials that apply to the overtime hours worked.

* * *

- (3) **For an exempt employee.** When an exempt employee is eligible for overtime compensation under these Regulations, the County must compensate the employee as follows:
 - (A) an exempt employee at grades 24 and under must be compensated at the rate of time and a half the employee’s regular hourly salary for each hour in a pay status greater than the overtime threshold; and
 - (B) an exempt employee at grades 25 and higher must be compensated on an hour for hour basis for every hour in a pay status greater than the overtime threshold.

(d) Exception to normal overtime pay rates.

- (1) If the overtime work is scheduled, the County must not compensate the employee at the overtime rate except when the employee was in a work status greater than 8 hours of the employee’s regularly scheduled workday.
- (2) If an employee has an unscheduled absence the day after having worked an overtime work assignment, then the County must compensate the employee at the regular (straight time) pay rate for the number of hours of the



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unscheduled absence, except when the FLSA requires such employee to receive overtime compensation at the time and a half rate. A scheduled absence, for the purpose of this section, is leave that is:

- (A) requested and approved during the employee’s work period preceding the day of the requested time off; or
 - (B) requested while the employee is working on the day after the overtime work assignment was completed, and was approved subject to workload requirements as determined by the employee’s supervisor.
- (3) If an employee is in a public safety class that is not on the general salary schedule, a department director must compensate the employee as follows:
- (A) as stipulated in the appropriate labor agreement if the employee is in a public safety class that is in a bargaining unit;
 - (B) an exempt employee in pay grades 24 and under who is:
 - * * *
 - (C) an exempt employee in pay grades 25 and higher who is:
 - * * *

(e) ***Rounding of overtime.***

* * *

(f) ***Form of overtime compensation.*** A department director must provide compensation to employees for eligible overtime work performed. A director must provide overtime compensation at the specified rate in the form of overtime pay or compensatory time earned at the overtime rate.

- (1) A department director must pay a non-exempt employee overtime pay for completed overtime work except when:



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(A) the employee requests to receive compensatory time in lieu of pay and the supervisor approves the request; or

* * *

(2) A department director must compensate an exempt employee for overtime work that is eligible for overtime compensation. The employee must be compensated with compensatory time at the appropriate overtime rate instead of with overtime pay unless the department director determines that:

* * *

(B) the amount of overtime work needed is so great that the employee would not be able to use the compensatory time earned during the current leave year.

10-8. Compensatory time.

* * *

(b) *Use of compensatory time.*

(1) An employee must apply, in advance, to use compensatory time unless the employee could not anticipate the need to use the compensatory time.

(2) An employee must not use compensatory time until it is credited by the payroll system and approved for use by the employee's supervisor.

* * *

(c) *Limits on accrual of compensatory time.*

(1) **Compensatory time carryover.** The CAO must allow an employee to carry over either a maximum of 80 hours of compensatory time to the next leave year or a prorated amount of compensatory time if the employee's regular work schedule consists of more than 80 hours per pay period.



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(2) ***Excess compensatory time.***

- (A) An employee’s unused compensatory time that exceeds 80 hours at the end of the leave year is excess compensatory time, unless the employee’s regular work schedule consists of more than 80 hours per pay period. For a work schedule of more than 80 hours per pay period, the hours in excess of the prorated maximum carryover amount are considered excess compensatory time.

* * *

(4) ***Limits on accrual for an exempt employee.***

- (A) The CAO must convert an exempt employee’s excess compensatory time to sick leave at the beginning of the next leave year, unless the CAO grants an exception under Section 10-8(c)(4)(B).

* * *

(d) ***Disposition of compensatory time at separation.***

* * *

- (2) ***At separation of an exempt employee.*** If an exempt employee leaves County employment, the County must:

* * *

- (B) convert the hours for which an employee is not paid unused compensatory time to sick leave.

* * *

(f) ***Disciplinary deduction of accrued compensatory time.***



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- (1) Under Section 33-3(c) of these Regulations, a department director may deduct up to 80 hours of compensatory time from an exempt employee's accumulated compensatory time for disciplinary reasons. An employee may file a grievance over such disciplinary action and the deducted amount under Section 34 of these Regulations.

* * *

10-9. Pay differentials. The CAO may authorize a pay differential if the County Council approves the differential.

* * *

- (c) ***Multilingual pay differentials.***

* * *

- (2) ***Role of department director***

* * *

- (D) A department director should periodically review the multilingual pay differentials approved for employees within a department, division, or work unit after:

- (i) a program change or reorganization occurred that affected the County's need for multilingual skills;

* * *

- (3) ***OHR certification of multilingual employees.***

- (A) To have an employee's language skills certified, a department director must provide the following information on the language certification form and submit it to OHR:

* * *



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(B) After receiving a completed language certification form from a department, the OHR Director must:

* * *

(iv) add the name of the newly-certified employee to the Countywide Interpreter List, unless the department director has requested that the employee's name not be included on the List and the OHR Director has approved such request.

(C) If the employee fails the examination, the employee may submit a request to be retested within 6 months of the date of the initial examination date. If the employee has not passed the examination within 6 months of the initial examination, the department must submit a new language certification form for the employee to be tested again.

(4) *Countywide Interpreter List.*

(A) The OHR Director must maintain a list of County employees who have been certified as having multilingual skills and make the list available to all County departments on the County internet website. The list must include the following information;

* * *

(iii) language in which the employee is certified; and

(iv) employee's level of proficiency.

* * *

(5) *Payment and amount of multilingual pay differentials.*

* * *



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- (E) The County must not pay a multilingual pay differential to an employee who leaves the position designated for the differential, except when the employee is transferred or reassigned to another position for which the same multilingual skills are approved.
- (F) If a department uses an employee on the Countywide Interpreter List from another department to provide interpreter services for 4 or more hours in a pay period, the department director of the using department must reimburse the employing department at the employee's hourly salary rate for the hours the employee spent providing interpreter services for the using department.

* * *

(7) ***Renewal of an employee's multilingual certification.***

* * *

- (C) An employee who fails the multilingual recertification examination to renew the multilingual certification must take and pass the recertification examination within 3 months of the first renewal examination or the employee will lose the certification and the multilingual pay differential. The OHR Director may grant an extension for up to one month for extenuating circumstances.

(8) ***Stopping a multilingual pay differential.***

- (A) A department director must ensure that the County stops paying the multilingual differential to a certified employee who:

* * *

- (iii) is no longer needed by a department to provide a specific language skill;

* * *



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(D) If an employee refuses or fails to provide requested multilingual services in a satisfactory manner, this should be reflected in the employee's performance evaluation and may be grounds for disciplinary action including removing the employee from the designated position.

(9) *Appeal of decisions on multilingual pay.* The following decisions on multilingual pay are not grievable matters:

* * *

(D) stopping the payment of a multilingual pay differential under subsection (8).

* * *

10-10. Performance-based pay.

(a) *Performance-based pay for MLS employees.* An MLS employee is not eligible to receive service increments, but may receive performance-based pay as described in this subsection.

* * *

(2) *Eligibility for performance-based pay.*

(A) *Career employee.* An MLS employee with merit system status is eligible to receive performance-based pay. In order to receive a compensation adjustment, an employee must have a performance evaluation on record for the previous fiscal year.

(B) *Probationary employee.* A probationary employee with less than 6 months of service is not eligible for performance-based pay.

* * *



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(b) ***Performance-based pay for employees on the General salary schedule.*** An employee whose position is on the general salary schedule may be eligible to receive a lump-sum performance-based pay award as described in this subsection.

* * *

(c) ***Administration of performance-based pay.***

(1) ***Role of department director.***

(A) ***For MLS Employees.***

(i) A department director must recommend the individual award amount for an MLS employee in the department and must recommend individual award amounts that are consistent with, and do not exceed, the award amounts in the table in Section 10-10(a)(2)(C)(i).

(ii) A department director must notify OHR prior to the first pay period of the fiscal year if a General wage adjustment will be denied to an MLS employee, based on the pending overall performance rating given the employee. The department director must give the employee written notice of the denial and include in the notice information about the employee's right to appeal the denial to the MSPB and the time limit for filing an appeal.

(B) ***For General salary schedule employees.*** The department director must submit to the OHR Director:

* * *

(3) ***Role of Office of Management and Budget (OMB) and Office of Human Resources (OHR).***

* * *



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(B) In no case will employees' performance-based pay be limited by available appropriation. Any insufficiency of appropriation must be addressed through:

- (i) an executive transfer;
- (ii) a request for a supplemental appropriation; or
- (iii) any other means used to ensure adequate funding for employees' performance-based pay.

(C) Performance-based pay must be allocated based on performance, not department size or other non-performance criteria. Funds dedicated to this purpose must be identified in the recommended operating budget in a non-departmental account for performance-based pay. OMB must not move the funds appropriated by the County Council for MLS performance-based pay out of the non-departmental account unless the spending conditions in the appropriation resolution for each fiscal year expressly authorize moving the funds to the individual departments after that department's performance evaluations and pay awards decisions are completed.

* * *

(4) *Effective date of compensation awards.*

* * *

(B) A performance-based pay award for an employee on the general salary schedule must be effective at the beginning of the first full pay period following the end of the review period for which the employees who received an overall performance rating of *Exceptional Performance* or *Highly Successful Performance*.

(5) *Appeals of performance-based pay decisions.*

* * *



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(B) An MLS employee who is denied a general wage adjustment may file a grievance under Section 34 of these Regulations.

* * *

10-11. Stand-by pay.

* * *

(b) A department director must pay an employee stand-by pay for the entire period that the employee is in stand-by status until:

* * *

(c) An employee is eligible to receive stand-by pay compensation if the employee's supervisor notifies the employee to remain available for work during a specified period of time beyond the employee's assigned work hours.

* * *

(e) An MLS employee is not eligible to receive stand-by pay.

(f) A supervisor who places an employee in stand-by status should tell the employee:

* * *

(2) the location where the employee must report if called into work; and

* * *

(g) To cancel stand-by status, the supervisor or other designated department representative must contact the employee and tell the employee that the employee's stand-by status has been cancelled.

* * *

(j) An employee in stand-by status is responsible for:



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- (1) ensuring that the device by which the employee will be contacted is turned on and in good working order; and
- (2) promptly providing the supervisor or other designated department representative with an alternative point of communication if the employee can not be contacted on the primary device.

10-12. On-call status. An employee who is on call:

* * *

- (d) must be compensated under the overtime pay provisions in this section only if:
 - (1) the employee is contacted by a supervisor or designee; and
 - (2) actually performs the overtime work.

10-13. Call-back pay.

* * *

- (b) **Form of compensation for call-back assignment.** The County should compensate an employee who performs a call-back work assignment with call-back pay and not with compensatory time, except when the department director determines that compensatory time must be used due to budget limitations.
- (c) **Call-back pay rate.** The County must pay an employee for all time worked on a call-back assignment at a rate equal to time and a half the employee's regular hourly rate.

* * *

10-14. Compensation of employees during a declared general emergency.

- (a) For a declared general emergency period, the County must:



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- (1) compensate an essential employee who worked during the general emergency period with the following:
 - (A) the employee’s regular pay for the total number of hours worked during the general emergency period; plus
 - (B) general emergency pay at the regular hourly rate for the total number of hours worked during the general emergency period;

- (2) compensate a non-essential employee whose supervisor requires such employee to work during the general emergency period with the following:
 - (A) the employee’s regular pay for the hours worked during the general emergency period; plus
 - (B) general emergency pay at the regular hourly rate for the total number of hours such employee was required to work during the general emergency period;

- (3) compensate an essential employee or a non-essential employee whose supervisor requires the employee to work during a general emergency period that occurs on the employee’s scheduled day off with the following:
 - (A) the employee’s regular pay at the overtime rate or compensatory time at the overtime rate, as outlined in Section 10-7(f), for the total number of hours worked during the general emergency period; plus
 - (B) general emergency pay or compensatory time at the regular hourly rate for the total number of hours worked during the general emergency period;

- (4) compensate an essential employee, or a non-essential employee whose supervisor requires the employee to work, for work performed beyond the normal workday of at least 8 hours with:



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(A) additional pay at the overtime rate or compensatory time at the overtime rate, as outlined in Section 10-7(f), for the total number of hours worked during the general emergency period that exceed the employee's normal workday; plus

* * *

10-16. Special within-grade pay increase.

* * *

- (b) A department director or the OHR Director must not approve a within-grade increase for a newly-hired employee or for an employee whose salary is at the maximum of the pay grade.
- (c) The OHR director must review the following information to determine whether to approve a special within-grade pay increase:
 - (1) the salaries of other department employees in the same occupational class and in other occupational classes that may be affected by the increase; and
 - (2) if the within-grade pay increase is used to keep an employee in an occupational class to which it is difficult to attract new or retain existing employees by analyzing the following metrics:
 - (A) the turnover rate, number of vacant positions; and length of time it took to fill vacant positions in the occupational class;
 - (B) the number of qualified applicants in the local labor pool; and
 - (C) salaries paid to members of the occupational class by local employers in the private and public sectors.

* * *

(e) The OHR Director may not approve a special within-grade pay increase that is greater than 10 percent except in extraordinary cases.



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- (f) An employee who receives a special within-grade pay increase may also receive a service increment and a general wage adjustment if the employee is eligible under these Regulations.

10-17. Recruitment and retention incentives.

- (a) A department director, with the written approval of the OHR Director, may give a recruitment or retention incentive in the form of one lump-sum payment to:
 - (1) a candidate for a County position in an occupational class for which it is difficult to recruit qualified applicants due to labor market conditions; or
 - (2) an employee in a position in an occupational class for which it is difficult to retain experienced employees.
 - (b) A department director may give a recruitment or retention incentive to an applicant or employee only when the OHR Director has determined that the applicable occupational class is eligible for such incentive.
 - (c) Before recommending a retention incentive, a department director must consider the following:
 - (1) whether one employee, some employees, or all employees in the occupational class should be given the retention incentive;
 - (2) the effect on employees who do not receive the incentive if such incentive is not given to each employee in the occupational class; and
- * * *
- (d) The OHR Director must determine which occupational classes are eligible for the incentive by reviewing the following indicators:
 - (1) the turnover rate, number of vacant positions; and length of time it took to fill vacant positions in the occupational class;
 - (2) the number of qualified applicants in the local labor pool; and



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- (3) the salaries paid to individuals in the occupational class employed by local employers in the private and public sectors.

* * *

- (g) An applicant or employee who receives a recruitment or retention incentive must agree to remain a County employee for at least 2 years after receiving the first incentive payment and must agree to repay a prorated amount of the total incentive if the employee separates from the County before the end of the 2-year period. The employee will not have to repay the recruitment or retention incentive if the employee dies or the County terminates the individual's employment. The OHR Director may waive repayment in other extenuating circumstances.

10-18. Court time compensation. The County must compensate an employee assigned to a facility that is open 24-hours a day 7 days per week as follows, if the employee is required by the employer to attend court or a Motor Vehicle Administration (MVA) hearing on the employee's day off or during times that are not the employee's regularly scheduled work hours:

* * *

- (b) if the employee works longer than 3 hours, the employee must be compensated for the total number of hours spent in court or in an MVA hearing at a rate equal to one and a half times the employee's regular hourly rate; and
- (c) if the employee is required to appear in court 2 or more times within the initial 3-hour period, then the employee is not eligible to receive additional court time compensation for a second or subsequent appearance unless such appearances occurred 3 hours after the time of the employee's initial court appearance.

10-19. Automotive Service Excellence (ASE) incentive pay.

- (a) **Purpose of ASE incentive pay program.** The purpose of the ASE incentive pay program is to encourage all eligible employees in the Division of Fleet Management Services, Department of General Services, and the Fire and Rescue Service to increase their knowledge and application of the latest technology in vehicle



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maintenance by compensating such employees for obtaining ASE certifications, recertifications, and master certifications.

(b) **Eligibility for ASE incentive pay.** An employee who works for the Division of Fleet Management Services, Department of General Services, or the Fire and Rescue Service is eligible to receive the ASE incentive pay if:

- (1) the employee takes and passes an ASE administered examination and obtains either a certification or recertification that is relevant to the employee’s job duties or the employee obtains a master certification by obtaining the required number of certifications;
- (2) the employee:
 - (A) is directly responsible for maintaining or supervising employees who maintain County vehicles and equipment;
 - (B) trains or supports employees who maintain County vehicles and equipment;
 - (C) inspects County vehicles and equipment; or
 - (D) provides technical expertise, quality assurance, or warranty administration for County vehicles and equipment; and
- (3) the employee’s job performance and job-related conduct are satisfactory.

(c) **Amount of ASE certification pay.** The County may compensate an eligible employee with ASE certification pay according to the following table:

* * *

10-20. Rewarding Excellence Bonus Incentive Awards Program/Gain Sharing Program. The CAO should establish a gain sharing program to reward employees for making suggestions that improve efficiency, increase productivity, reduce costs, or streamline operations. Under this program, if the employees’ suggestion is adopted, the employees would receive a portion of the cost



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savings. An employee cannot grieve or appeal any decision by the Review Panel or the Chief Administrative Officer relating to the Rewarding Excellence Bonus Incentive Awards Program.

10-21. Line of Duty Funeral Expenses. In the event an employee's death is caused by or directly related to performing the employee's job duties, then the County will pay up to \$10,000 to cover the employee's funeral expenses.

10-22. Severance pay.

(a) *Severance pay for a probationary employee whose employment is terminated.*

- (1) A department director who terminates a probationary employee must ensure that the employee receives severance pay as follows:
 - (A) three weeks if the employee's probationary period lasted more than 12 months;
 - (B) two weeks if the employee's probationary period lasted for at least nine months;
 - (C) one week if the employee's probationary period lasted for at least three months; or
 - (D) notwithstanding the foregoing provisions, no severance pay under these Regulations, in the following instances:
 - (i) the employee's probationary period lasted for less than three months; or
 - (ii) the department director terminated the employee for materially falsifying information on his/her employment application, a document associated with the employment application, or for committing gross misconduct, such as a violation of the County Charter, Code, regulations, or procedures, State or Federal laws, or a conviction for a criminal offense.



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(2) An employee who is eligible to receive severance pay under Section (a)(1)(A), (B) or (C) above is not eligible to receive severance pay under the Retirement Savings Plan or the Guaranteed Retirement Income Plan.

(b) ***Severance pay for Merit System Employees in the Retirement Savings Plan or Guaranteed Retirement Income Plan.***

(1) Under COMCOR 33.140.01, *Severance Pay for Certain Retirement Savings Plan Participants*, the County must pay severance pay as shown in the table below to an eligible employee who participates in the Retirement Savings Plan or the Guaranteed Retirement Income Plan:

Severance Pay for Merit System Employees in the RSP or GRIP Retirement Savings Plans	
Years of service completed:	Severance benefit:
0 to 1	none
over one to 5	6 weeks of employee's final earnings
over 5 to 7	8 weeks of employee's final earnings
over 7 to 9	10 weeks of employee's final earnings
over 9	12 weeks of employee's final earnings

- (2) The employee is eligible for severance pay if the employee:
- (A) was not terminated during the probationary period;
 - (B) lost the employee's job through affirmative administrative action of the County;
 - (C) was not dismissed for cause; and
 - (D) did not resign, retire, or otherwise voluntarily leave County service.

* * *

SECTION 11. PERFORMANCE PLANNING AND EVALUATION



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11-1. Definitions.

- (a) **Coaching:** * * *
- (b) **Competency:** A performance success criteria listing a cluster of the knowledges, skills, abilities, and job-related behaviors that collectively contribute to successful performance of one or more job functions. A competency includes a definition and collection of observable behavior statements or behavioral indicators grouped together under a central theme, and represents successful performance for that theme.
- (c) **Conduct:** * * *
- (d) **Interim evaluation:** * * *
- (e) **Multi-source feedback:** * * *
- (f) **Performance objectives and success criteria:** The criteria by which an employee or team is rated. A performance objective or success criteria is a written description of the quality, quantity, or characteristics of the work performance or results that the employee or team is expected to accomplish.
- (g) **Performance management:** The systematic process by which an organization involves its employees in improving the organization's effectiveness and accomplishing the organization's mission and goals. It covers the entire process of establishing objectives, monitoring progress, and providing employees and teams with feedback and ratings on the level of performance achieved.
- (h) **Performance plan:** The document that records performance objectives and success criteria and is the basis for assessment of the employee's job performance.
- (i) **Performance planning and evaluation:** The total process in which a supervisor develops performance objectives and success criteria; observes, reviews and appraises individual work performance; recognizes exceptional performance; and identifies areas for improvement.
- (j) **Progress discussion:** A supervisor's verbal assessment of an employee's performance in relation to the objectives in the performance plan.



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- (k) **Reviewing official:** * * *
- (l) **Team:** A directed or self-directed work group with one or more formally assigned and shared work objectives for which all members of the group are responsible.
- (m) **Team member or peer:** * * *
- (n) **Team rating:** A rating given to all members of a team on one or more formally assigned and shared work objectives for which all members of the group are held responsible.

11-2. Objectives of performance planning and evaluation. The objectives of performance planning and evaluation are to:

- * * *
- (c) inform an employee about performance objectives and success criteria for the job;
- (d) provide an assessment by the employee's supervisor as to whether the employee is meeting those objectives;

* * *

11-3. Responsibility for performance planning and evaluation.

- (a) The CAO must:
 - (1) establish mandatory performance objectives for the MLS; and
- * * *
- (b) Each department director must:
 - (4) ensure that department supervisors use a performance planning and evaluation form that includes the following:

* * *



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- (J) signatures or electronic acknowledgements of supervisor and employee, as applicable, to establish plan;
- (K) signatures or electronic date stamps to document progress discussion, as applicable;
- (L) signatures or electronic date stamps by supervisor and employee to finalize performance appraisal;
- (M) signature or electronic date stamp of the reviewing official;
- (N) list of performance objectives, ratings, and narrative comments;

* * *

(d) An immediate supervisor must:

* * *

(4) sign or electronically acknowledge the plan and evaluation to indicate approval;

* * *

(10) give the employee an opportunity to review, discuss, comment on, and sign or electronically acknowledge the evaluation.

11-4. Performance management. Performance management is the responsibility of the supervisor and includes:

(a) developing the performance objectives for an employee or team at the beginning of a review period;

* * *

11-5. The performance plan.

* * *



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(b) *Annual review period.*

* * *

- (2) The review period may be linked to an employee’s increment date, the anniversary of the employee’s hire date if the employee does not receive increments, or the fiscal year.

* * *

(c) *Substance of a performance plan.*

- (1) Each employee's performance plan must state the performance objectives and success criteria for the employee or team during the review period. Performance objectives and success criteria must describe, at a minimum, the performance level of “Successful Performance” in terms that allow reasonably objective assessment.
- (2) Performance objectives and success criteria may be stated as a goal, outcome or result expected, numerical criteria, competency to be demonstrated, task to be accomplished or performed, acceptable conduct, or other expectation appropriate to the job classification and position.
- (3) The performance plan for a supervisor must include an objective that the supervisor must:

* * *

- (5) A performance objective or success criteria may be developed for an individual, a team, or both.

* * *

- (9) If an employee receives a multilingual pay differential, the employee’s supervisor must include a performance objective that the employee will provide multilingual services as required.



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11-6. Performance planning process.

(a) *Establishing the plan.*

- (1) A supervisor and employee formally establish the performance plan by signing it or by electronic acknowledgement. The employee's signature or electronic acknowledgement indicates only that the employee has seen the plan, and does not indicate that the employee agrees with the plan.

* * *

(b) *Employee refusal to sign the plan.*

- (1) If an employee refuses to sign or date stamp a performance plan, the supervisor must refer the plan to the reviewing official.

* * *

11-7. Performance evaluation.

* * *

- (b) ***Progress discussion.*** After approximately half of the review period has passed, a supervisor should conduct a comprehensive progress discussion with the employee that covers all elements of the performance plan. The supervisor and employee should sign and date or electronically date stamp the evaluation form to document a comprehensive progress discussion. The supervisor must document the substance of the progress discussion if the discussion resulted in a change to the performance plan or if specific performance issues were brought to the employee's attention.

* * *

(h) *Substance of a performance evaluation.*

- (1) A supervisor must record in the written performance evaluation the performance rating of the employee in relation to the performance objectives and success criteria established in the performance plan.



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(2) If a performance objective was assigned but not made a part of the employee's established performance plan, the supervisor should assess the employee's accomplishment of the performance objective as part of the performance evaluation. A supervisor must document that the employee was given adequate notice of the objective or success criteria.

* * *

(5) If performance objectives are jointly shared by members of a team, the supervisor may give each member sharing the objective a team rating. A supervisor must apply competency or job-related behavior ratings only to an individual employee.

* * *

(i) **Overall rating.** The supervisor must give an employee an overall rating using one of the following 5 rating categories as indicated below:

(1) **Exceptional Performance.**

(A) This rating indicates that the employee:

* * *

(iv) was rated "Exceptional Performance" on the majority of performance objectives and success criteria.

* * *

(C) A supervisor must not give an overall rating of "Exceptional Performance" to an employee who received a rating of "Does Not Meet Expectations" on any single objective.

(2) **Highly Successful Performance.**

(A) This overall rating category indicates that the employee:



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* * *

(iv) was rated as having “Highly Successful Performance” on the majority of performance objectives and success criteria.

(B) A supervisor must not give an overall rating of “Highly Successful” to an employee who received a rating of “Does Not Meet Expectations” on any single objective.

(3) **Successful Performance.**

(A) This overall rating category indicates that the employee:

(i) met the majority of performance success criteria and objectives;

* * *

(4) **Below Expectations**

* * *

(5) **Does Not Meet Expectations.**

(A) This overall rating category indicates that the employee has not met the basic requirements of the job as evidenced by:

(i) receiving a rating of “Does Not Meet Expectations” on a majority of the performance objectives and success criteria listed in the performance plan; or

* * *

(j) **Performance evaluation procedures.**

* * *



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- (2) An immediate supervisor must allow an employee to sign or electronically date stamp and comment on the evaluation.
- (3) The employee's signature or electronic date stamp indicates only that the employee has seen the evaluation and does not indicate that the employee agrees with the evaluation.
- (4) If an employee refuses to sign or electronically date stamp a performance evaluation, the supervisor must make a notation on the evaluation to indicate that the employee refused to sign the evaluation.

* * *

- (5) (A) * * *
- (B) The employee must submit the request in writing to the department director or other appropriate management official within 15 calendar days after the employee receives the completed evaluation form signed or electronically date stamped by the reviewing official. The employee must indicate the specific areas of the performance evaluation that the employee does not agree with.

* * *

SECTION 12. SERVICE INCREMENTS

* * *

12-2. Eligibility for service increment.

- (a) An employee with merit system status is eligible to receive a service increment if:
 - (1) the employee's performance rating during the rating period is higher than the "Does Not Meet Expectations" performance rating; and



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- (2) the employee’s salary is below the maximum salary in the employee’s pay grade.
- (b) An employee without merit system status is eligible to receive a service increment if the employee is:
 - (1) a probationary police officer or deputy sheriff whose department director has approved a service increment under Section 12-5(e); or
 - (2) a temporary employee whose department director has approved a service increment under Section 12-5(f).
- (c) Any employee who is eligible to receive a service increment and whose position is reclassified or reallocated to a higher pay grade is still eligible to receive a service increment on the effective date of the position’s reclassification or reallocation. In this case, the OHR Director must change the employee’s service increment date to the effective date of the reclassification or reallocation of the employee’s position.

12-3. Effective date of a service increment. A service increment must be effective on the first day of the pay period in which the employee’s increment date falls.

12-4. Amount of service increment.

- (a) The CAO must establish the percentage or amount of the service increment pay increase.
- (b) An eligible employee’s salary cannot exceed the maximum salary for the employee’s pay grade. In cases where a service increment would make an eligible employee’s salary greater than the maximum salary of his/her pay grade, the OHR Director must give the employee a reduced service increment pay increase that would make the employee’s salary equal to the maximum salary for the employee’s pay grade.

12-5. Policy on service increments.

- (a) A department director must approve a service increment for an eligible employee, unless the department director notifies the OHR Director that the employee should



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not receive the service increment at least 15 calendar days before the beginning of the pay period that contains the employee's assigned increment date.

- (b) A department director must notify an employee when a service increment is denied.
- (c) The OHR Director must take appropriate action to ensure that an eligible employee receives a service increment unless a department director notifies the OHR Director that the employee should be denied the service increment.
- (d) An MLS employee is not eligible to receive a service increment, but is eligible to receive a performance-based pay increase if recommended by an Executive Branch department director and the CAO approves a performance-based pay increase for an eligible MLS Executive Branch employee and if a Legislative Branch department director approves a performance-based pay increase for an eligible MLS Legislative Branch employee.
- (e) The OHR Director must give a service increment to a probationary police officer or deputy sheriff if recommended by the department director.
- (f) The OHR Director must give a service increment to a temporary employee if recommended by the department director and is determined to be in the County's best interest.
- (g) The OHR Director must give service credit toward a service increment to a former temporary employee who was appointed to a full-time or part-time position without a break in service. The increment date must be the employee's next anniversary date with the County.

12-6. Reassignment of a service increment date.

- (a) A department director must assign an employee a new service increment date if the employee's:

* * *



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(3) service increment date occurs during a period of within-grade salary reduction described in subsection 33-3(d) or during a suspension described in subsection 33-3(e);

(4) leave without pay (LWOP) exceeds 10 consecutive workdays, excluding LWOP for FMLA, parental leave, military service, professional improvement or used under Section 23-7(a) and (c) by an employee who is a member of the Maryland General Assembly; or

* * *

(b) If the employee's probationary period for merit status is extended, the new service increment date is the date when the employee's merit system status is granted.

(c) If a service increment is delayed, the employee's new service increment date is the date when the delayed service increment is finally granted.

(d) If the employee's position is reclassified or reallocated to a higher pay grade, the employee's new service increment date is the effective date of the reclassification or reallocation.

(e) A department director may reassign an employee's service increment date for the following reasons:

(1) to prevent or resolve pay inequities;

(2) to serve the County's best interest, provided that the reassignment will not adversely affect the employee; or

(3) in conjunction with a disciplinary action.

(f) An employee's reassigned service increment date becomes effective only with the OHR Director's approval.

(g) The OHR Director must assign a new service increment date to an employee in an MLS position who is promoted, demoted, or reassigned to a non-MLS position.



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- (1) If the County employee was in a non-MLS position and had a service increment date before taking the MLS position, the OHR Director must assign as the new service increment date the last service increment date that the employee had before becoming an MLS employee.
- (2) If the employee was not in a non-MLS position before taking the MLS position, the OHR Director must assign a new service increment date as the date when the employee was first employed in a County merit system position.

12-7. Delay of a service increment.

- (a) A supervisor should promptly provide to the department director a written recommendation to delay an employee's service increment for any employee who has a less than satisfactory annual or interim performance rating or unsatisfactory performance, attendance, or conduct.
- (b) To delay an eligible employee's service increment, a department director must:
 - (1) provide the OHR director written documentation of the decision and the reason for the delay at least 15 calendar days before the beginning of the pay period that contains the employee's assigned increment date in order to obtain the OHR Director's approval for the delay;
 - (2) give written notice to the employee before the beginning of the pay period that contains the employee's increment date;
 - (3) include in the written notice to the employee:
 - (A) the reasons for the delay;
 - (B) the next date on which the employee's performance will be reviewed and the service increment may be granted if the employee's performance or attendance has improved; and



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(C) whether the employee may file a grievance over the decision and, if so, the deadline for filing such a grievance.

- (c) A department director may delay an employee's service increment if the employee's performance was unsatisfactory during the rating period or if the employee was absent for more than 50 percent of the work year, excluding periods of compensatory time, annual leave, parental leave, disability leave, military leave, or LWOP for political purposes under Section 23-7(c).

* * *

12-8. Twenty-year longevity increment for police, fire, sheriff or correction management.

- (a) A department director must award a twenty-year longevity increment to an employee who has:
 - (1) completed twenty years of active service (excluding temporary service); and
 - (2) is in a position on the police, fire, sheriff, and correction management salary schedules; and
- (b) The employee's annual base salary does not have to be at the maximum of the respective pay range to receive the twenty-year longevity increment.
- (c) The CAO must determine the amount of the longevity increment.

12-9. Twenty-year longevity/performance increment.

- (a) A 20-year longevity/performance increment is a one-time increase to an employee's base salary.
- (b) A department director must award a one-time 20-year longevity/performance increment of 2 percent of base salary to an employee in a position on the General salary schedule if the employee has:
 - (1) a base salary equal to the maximum salary of the pay range; and
 - (2) 20 years of actual County service; and



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(3) received an annual overall performance rating of *Highly Successful Performance* or *Exceptional Performance* for the 2 most recent consecutive years.

(c) An employee is eligible to receive only one 20-year longevity/performance increment.

(d) Awarding longevity/performance increments to promoted employees.

(1) When an employee is promoted from a non-bargaining unit position to another non-bargaining unit position:

(A) the 20-year longevity increment is added to the employee's prior base salary before the promotional increase is added; or,

(B) if (A) does not apply, then the employee may be eligible to receive a 2% longevity/performance increment as outlined in Section 12-9 (b); however,

(C) whether (A) or (B) applies, the employee's new base salary cannot exceed the maximum salary of the new pay range.

(2) When an employee receives a promotion from a non-bargaining unit position to a bargaining unit position:

(A) the 20-year longevity/performance increment is added to the employee's base salary before the promotional increase is added;

(B) the new base salary cannot exceed the maximum salary of the new pay range; however,

(C) if the employee's new base salary is equal to the maximum salary of the new pay range, then the employee may be eligible to receive a bargaining unit longevity increment as stipulated in the respective collective bargaining agreement.



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- (3) When an employee receives a promotion from a bargaining unit position to a non-bargaining unit position:
 - (A) the 20-year longevity increment is added to the employee's base salary before the promotional increase is added;
 - (B) the employee is eligible to receive a 2% longevity/performance increment under Section 12-9 (b); and,
 - (C) the employee's new base salary cannot exceed the maximum salary of the new pay range.
- (e) An employee who has a 20 year longevity/performance increment and who:
 - (1) transfers from a non-bargaining unit position to another non-bargaining unit position, the longevity/performance increment remains the same;
 - (2) transfers from a non-bargaining unit position to a bargaining unit position is eligible to receive a bargaining unit 20-year longevity increment as provided in the respective collective bargaining agreement; or,
 - (3) transfers from a bargaining unit position to a non-bargaining unit position:
 - (A) the longevity/performance increment is added to the employee's base salary except when the employee's base salary exceeds the maximum salary of the non-bargaining unit pay range; then,
 - (B) the employee's base salary must be reduced to the maximum salary of the pay range.
- (f) A department director must not give an employee a lump-sum award and a 20-year longevity/performance increment for the same annual overall performance rating.
- (g) The effective date of all longevity/performance increments must be the beginning of the first pay period after the review period ends.



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12-10. Appeal of a reassignment of service increment date or of a delay of service increment pay increase. An employee with merit system status may appeal a department director’s decision to reassign an employee’s service increment date or to delay an employee’s service increment by filing a grievance under Section 34 of these Regulations.

SECTION 13. PERFORMANCE AWARDS

13-1. Policy on employee performance awards.

- (a) The CAO may grant an award to a merit system employee for noteworthy or extraordinary performance under the criteria outlined in this section.

* * *

- (d) An MLS employee is not eligible for a monetary award under this section except with approval of the CAO or as outlined in Section 13-2(d).

13-2. Monetary awards.

- (a) *Department Employee of the Year Award.*

- (1) *Award type.* The Department Employee of the Year Award is a lump sum cash award.

* * *

- (4) *Limitations.* A department director must not award more than \$500 per employee in a fiscal year.

* * *

- (b) *Department Recognition Award.*

- (1) *Award type.* The Department Recognition Award is a:

- (A) lump sum cash award; or



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(B) non-cash award such as a restaurant gift certificate or theater tickets.

* * *

(3) **Award criteria.** Criteria include:

* * *

- (A) noteworthy performance;
- (B) special effort that results in a significant product, action or efficiency improvement; or
- (C) any employee action, activity, or product that is valued and appreciated by the department.

(4) **Limitations.**

- (A) A department director must not grant more than \$200 to an employee in a fiscal year.
- (B) A department director must not grant non-cash awards with a cost or value of more than \$100 to an employee in a fiscal year.

(5) **Nomination procedure.** A division chief must provide a written recommendation to the department director documenting the reason for the award.

(c) **Annual Leave Award.**

* * *

(3) **Award criteria.** Criteria include:

* * *

- (C) any actions, activities, or products of importance and value to the department.



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* * *

(5) **Nomination procedure.** A division chief must provide a written recommendation to the department director documenting the reason for the award.

(d) **Paid Time Off or Annual Leave Award for MLS Employees.**

(1) **Award type.** The Paid Time Off Award is an amount of paid time off for MLS employees who are members of the Retirement Savings Plan or Guaranteed Retirement Income Plan. The Annual Leave Award is an amount of annual leave for MLS employees who are members of a defined benefit pension plan and who earn annual leave and sick leave instead of Paid Time Off.

(2) **Eligibility.** MLS employees are eligible.

(3) **Award criteria.** A Paid Time Off or Annual Leave Award for an MLS employee is neither ordinary nor usual but may be appropriate to recognize:

* * *

(C) working a substantial number of uncompensated hours during an emergency (i.e. general emergency, local emergency, and liberal leave periods).

* * *

(5) **Nomination and approval procedure.** A department director must make a written recommendation to the CAO documenting the reason for the award. The CAO must determine whether to approve a Paid Time Off Award or an Annual Leave Award to an MLS employee.

13-3. Procedures for monetary awards.

(a) A department director must:



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- (1) recommend to the CAO a departmental employee who deserves to receive an Outstanding Performance Increment, and if granted by the CAO, must prepare the documentation for processing;
- (2) recommend to the CAO an MLS employee who deserves to receive a Paid Time Off Award or an Annual Leave Award and document the reason for the award;
- (3) for all other monetary awards:
 - (A) review and evaluate all awards recommended for the department, ensuring that the award type and amount are commensurate with the performance or product being recognized;

* * *

- (b) The OHR Director must:

* * *

- (3) collect from departments information about all awards granted by the department in a fiscal year; and

* * *

- (c) The CAO must determine whether to approve an Outstanding Performance Increment to an employee or to approve a Paid Time Off Award or an Annual Leave Award to an MLS employee.

* * *

13-5. Gifts or awards from a civic group or similar organization.

* * *

- (c) An employee should direct a question about whether it is permissible to accept a gift from civic groups or similar organizations to the Ethics Commission.



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* * *

SECTION 15. WORK SCHEDULES, ATTENDANCE, HOURS OF WORK

15-1. Definitions.

* * *

- (c) **Display period:** The display part of the employee’s electronic timecard. Typically, the display reads Sunday through Saturday. For employees below Grade 25, whether Non-exempt or Exempt, on compressed work schedules, the display period may be altered to either a Monday through Sunday or Friday through Thursday.
- (d) **Flex hours:** * * *
- (e) **Flextime.** * * *
- (f) **Job Sharing:** * * *
- (g) **Modified liberal leave:** * * *
- (h) **Reporting period:** The reporting period part of the employee’s electronic timecard. Typically the reporting period is Sunday through Saturday. For employees below Grade 25, whether Non-exempt or Exempt, on compressed work schedules, the display period may be altered to either a Monday noon through Monday noon or Friday noon through Friday noon reporting period for purpose of compliance with the Fair Labor Standards Act (FLSA).
- (i) **Severe Weather:** * * *

15-4. Alternate work schedules.

- (a) **Alternate work schedules for religious observance.**

* * *



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(3) ***Requirements for an alternate work schedule for religious observance.***

* * *

(B) ***For an exempt employee.*** An exempt employee may work additional hours for compensatory time in order to use the earned compensatory time to cover work absences for religious observance. The compensatory time may be earned before, after, or both before and after the absence for religious observance but must be earned over no more than 8 pay periods or during the same pay period as the absence for religious observance.

(C) ***For an MLS employee.*** An MLS employee may request an alternate work schedule during the same pay period to equal the amount of time taken off for religious observances.

* * *

(b) ***Compressed work schedule and flextime.*** A compressed work schedule and flextime are types of alternate work schedules that are intended to enable employees to better balance their work lives and personal lives.

(1) ***Requirements for employees on compressed work schedules.***

(A) An employee on a compressed work schedule must work one of the following 4 established compressed work schedules and may select either alternate Mondays or Fridays off:

(i) Schedule A, Reporting period is from 12:01 p.m. Monday through 12:00 noon Monday;

Display period for Non-Exempt and Exempt Below Grade 25 is

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Total
Week 1	OFF	9	9	9	9			36
Week 2	8	9	9	9	9			44



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Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		OFF	9	9	9	9		36
Week 2		8	9	9	9	9		44

- (ii) Schedule B, Reporting period is from 12:01 p.m. Monday through 12:00 noon Monday;

Display period for Non-Exempt and Exempt Below Grade 25 is

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Total
Week 1	8	9	9	9	9			44
Week 2	OFF	9	9	9	9			36

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		8	9	9	9	9		44
Week 2		OFF	9	9	9	9		36

- (iii) Schedule C, Reporting period is from 12:01 p.m. Friday through 12:00 noon Friday;

Display period for Non-Exempt and Exempt Below Grade 25 is

	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Total
Week 1	8			9	9	9	9	44
Week 2	OFF			9	9	9	9	36



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Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		9	9	9	9	OFF		36
Week 2		9	9	9	9	8		44

(iv) or Schedule D, Reporting period is from 12:01 p.m. Friday through 12:00 noon Friday.

Display period for Non-Exempt and Exempt Below Grade 25 is

	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Total
Week 1	OFF			9	9	9	9	36
Week 2	8			9	9	9	9	44

Display period for Exempt Grade 25 and above is

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Week 1		9	9	9	9	8		44
Week 2		9	9	9	9	OFF		36

- (B) An employee must work the scheduled number of hours each day as required by the fixed schedule.
- (C) An employee must adhere to the schedule on the 8 hour day and must not change the 8-hour day to another day during the pay period.
- (D) If an employee uses annual or sick leave for the entire day on a day on which the employee is scheduled to work 9 hours, the employee must record 9 hours of annual or sick leave on the timesheet for that day. Similarly, an employee must record 8 hours of leave on the timesheet for a day on which the employee is scheduled to work 8 hours.



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* * *

(6) ***Requesting a compressed work schedule or flextime.***

- (A) An employee who is interested in working a compressed work schedule must submit a completed *Compressed Work Schedule Agreement* (Appendix H-revised) to the employee's supervisor. The employee must specify either a Monday or Friday as the fixed day off in each pay period. The employee may need to work a transition period before starting the Compressed Work Schedule and may be required to use four to eight hours of leave. Department of Finance Mctime personnel will provide guidance on an appropriate transition schedule.

* * *

- (B) An employee who is interested in working flextime must submit a completed *Flextime Agreement* (Appendix I) to the employee's supervisor. The employee must specify the core hours to be worked and the manner of scheduling flex hours.

(7) ***Review of employee request for compressed work schedule or flextime.***

* * *

- (H) The employee's supervisor or department must submit the appropriate schedule change form to the Mctime Team to enter the employee's schedule change in the Time and Attendance module.

(8) ***Transition to or from a compressed work schedule.***

- (A) Transitioning on or off of a compressed work schedule may be complicated by factors such as the FLSA Exempt Status and pay grade of the employee and the scheduling system used by the department. Therefore, Mctime staff must be consulted to determine the appropriate transition schedule for each employee transitioning on or off a compressed schedule.



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- (B) An employee must change to a compressed work schedule at the start of a pay period.
- (C) An employee below grade 25, whether FLSA exempt or non-exempt, who changes to a compressed work schedule no longer has a Sunday to Saturday workweek and must work a special transition work schedule during the first pay period of the compressed work schedule. The transition pay period may require the use of eight (8) or four (4) hours of annual or compensatory leave. The charts below illustrate the considerations that come into play in determining the transition schedule. If the original schedule is other than a Monday through Friday regular 8 hours schedule, additional considerations must be applied.

For Non-Exempt and Exempt Employee, below Grade 25, when transition is from a M-F regular eight hour schedule:

	Transition to Schedule A Monday -- Sunday	Transition to Schedule B Monday -- Sunday	Transition to Schedule C Friday -- Thursday	Transition To Schedule D Friday -- Thursday
Pay period* *except Police Department				
Leave required for Transition	0	4 or 8 hours	8 hours	4 hours
Impact of use of Personal Leave	Yes	Yes	Yes	Yes
Impact of Holiday in Pay period	Yes	Yes	Yes	Yes



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For Exempt Employee, Grade 25 and above, when transition is from a M-F Regular Eight hour schedule:

	Transition to Schedule A	Transition to Schedule B	Transition to Schedule C	Transition to Schedule D
Pay period	Sunday – Saturday	Sunday – Saturday	Sunday – Saturday	Sunday – Saturday
Leave required for Transition	None	None	None	None
Impact of use of Personal Leave	No	No	No	No
Impact of Holiday in Pay Period	No	No	No	No

- (9) *Limits on availability of alternate work schedules.*

* * *

- (10) *Withdrawal from an alternate work schedule.*

* * *

- (C) An employee below grade 25, whether FLSA exempt or non-exempt, who withdraws from a compressed work schedule must work a special transition work schedule during the first pay period of the new work schedule. The transition pay period may require “time off” without the use of leave or the use of four (4) hours of annual or compensatory leave, depending on the prior compressed work schedule.

* * *

SECTION 16. ANNUAL LEAVE

* * *



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16-2. Eligibility for annual leave.

* * *

- (b) The OHR Director must credit a former temporary employee with up to 60 hours of annual leave prorated to the time spent as a temporary employee if the employee:
 - (1) had previously filled a temporary position; and
 - (2) was appointed, without a break in service, to a full-time or part-time position.

* * *

16-4. Change in annual leave accrual rate.

- (a) An annual leave accrual rate change is effective on the first day of the pay period in which the employee completes 3 years or 15 years of County service, except when the employee has used more than 4 consecutive weeks of LWOP as described in Section 23-8(a)(2).
- (b) The initial employment date for the purpose of annual leave accrual and the maximum annual leave carryover limit is the date on which the employee was first employed in a merit system career position.
- (c) An employee in a merit system career position who separates from County service and later returns to County service in the same or different merit system career position is entitled to the same annual leave accrual rate that the employee enjoyed previously based on years of service.

* * *

SECTION 17. SICK LEAVE

* * *



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17-2. Eligibility for sick leave.

* * *

- (b) The OHR Director must credit a former temporary employee with up to 60 hours of sick leave prorated to the time spent as a temporary employee if the employee:
 - (1) had previously filled a temporary position; and
 - (2) was appointed, without a break in service, to a full-time or part-time position.

* * *

17-10. Sick Leave Donor Program. The Sick Leave Donor Program allows County employees to give additional sick leave, annual leave, or PTO to eligible employees who have exhausted all types of accrued leave.

- (a) *Employee eligibility to receive sick leave, annual leave, or PTO donations.*
 - (1) An employee is eligible to receive a sick leave, annual leave or PTO donation after the employee:
 - (A) has been employed by the County in a merit system position for at least 6 consecutive months;
- * * *
- (E) has caused to be submitted the following to the department director (or another has submitted the following on the employee's behalf):
 - (i) a *Sick Leave Donor Program Authorization Form* (Appendix K), with the appropriate portions completed;
 - (ii) a completed *Sick Leave or PTO Donation Request Form* (Appendix L) that lists the names of the employees who are willing to donate sick leave or PTO and the amount of leave to be donated by each; however, in accordance with Ethics



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Commission Waiver No. 14-10-004 (October 8, 2014), any solicitation for donated leave must be conducted so that the employee (and any representative of the employee) does not learn the identity of any person who is willing to donate leave; and

* * *

- (2) In extenuating circumstances, the department director or the employee may submit a written request to the OHR Director to waive the 7-day waiting period for sick leave donations for an employee. Extenuating circumstances may include an employee:
 - (A) having exhausted all accrued sick leave, annual leave, personal leave, and compensatory time in connection with the employee's or a family member's (spouse, domestic partner, or child's) serious health condition; or
 - (B) having changed from a full-time position to a part-time position because of the employee's serious illness or injury that required long-term treatment, if the serious illness or injury later prevents the employee from performing any work.

- (3) In extenuating circumstances, the department director or the employee may submit a written request to the OHR Director to waive the requirement that an employee has been employed by the County in a merit system position for at least 6 consecutive months. Extenuating circumstances under this section generally relate to employment with the County rather than the medical condition giving rise to the waiver request. Extenuating circumstances may include an employee:
 - (A) having been a County merit status employee in the past or having previously worked for the County in a temporary position; or
 - (B) how close the employee is to meeting the 6-month requirement.



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- (4) In a leave year, a full-time employee may receive up to 1040 hours of donated leave and a part-time employee may receive a prorated amount of donated leave.
- (5) An employee is not eligible to receive a leave donation:
 - (A) if the employee resigns or is separated from County employment;
 - (B) during a period of suspension; or
 - (C) during a leave of absence that is unrelated to an extended illness or injury.
- (6) An employee who is eligible for, or is currently receiving, disability leave or another benefit under a federal, County, or State program that provides income maintenance payments for illness or injury is not eligible to receive a sick leave donation. However, if the benefit from the federal, County, or State program covers medical expenses only and does not provide compensation for lost wages, the employee may receive a sick leave donation.

* * *

(c) ***Program administration.***

- (1) ***Responsibilities of department director.*** The department director or designee must:
 - (A) review and approve an application for leave donations for an employee who is eligible under Section 17-10(a) to receive donated sick leave or PTO, unless the department director has reason to question the validity of the medical certification or has reason to suspect sick leave abuse;

* * *



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(D) as necessary, if the department director has reason to question the validity of the medical certification submitted by the employee or has reason to suspect sick leave abuse, send the medical information submitted by the employee to the Employee Medical Examiner for review;

* * *

(2) **Responsibilities of OHR Director.** The OHR Director must:

(A) respond within 5 working days to a request from a department director or from an employee for a waiver of the required 7-day waiting period or the 6 months of continuous service;

* * *

(d) **Use of sick leave, annual leave, or PTO donations.**

* * *

(5) An employee may receive sick leave or PTO donations to cover complications of pregnancy, complications of childbirth, or complications of recovery from childbirth, when any of these complications make the employee unable to work.

* * *

SECTION 18. SALARY CONTINUATION BENEFIT FOR WORKERS' COMPENSATION DISABILITY LEAVE

18-1. Definitions.

(a) **Salary Continuation Benefit:** Pay provided by the County instead of Workers' Compensation benefits paid to an employee during the period of Workers' Compensation Disability Leave.



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- (b) **Workers' Compensation Disability Leave (Disability Leave):** The period of time the employee is:
- (1) temporarily disabled by accidental injury or illness resulting directly from performance of the employee's County work; and
 - (2)
 - (A) unable to perform normal duties, as determined by the Workers' Compensation Commission or by the County using Workers' Compensation Commission guidelines; or
 - (B) unable to perform alternative duties as determined by the Employee Medical Examiner.

18-2. Salary Continuation Benefit

- (a) The CAO must ensure that an employee's wage or salary is continued (salary continuation benefit) during the period of disability leave.
- (b) The County's payment of the employee's biweekly salary must:
 - (1) include special pay differentials but not shift pay differentials or overtime, and will be subject to all taxes and deductions and will be in the same amount and appear the same, and be paid in the same schedule as the normal wage or salary payment;
 - (2) continue for a maximum of 18 months if the employee uses the County-established network of physicians, Pharmacy Benefit Management (PBM) program, and participates in the Nurse Case Management (NCM) programs; or
 - (3) continue for a maximum of 12 months if the employee chooses to receive care from a physician who is not included in the County-established network of physicians or refuses participation in the PBM or NCM programs.
- (c) An employee who is medically able to perform an alternative or light duty work assignment is not eligible for the salary continuation benefit if the employee:



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- (1) performs an alternative or light duty work assignment offered by the County;
 - (2) refuses an alternative or light duty work assignment offered by the County; or
 - (3) elects to use FMLA leave instead of performing an alternative or light duty assignment.
- (d) After the employee's salary continuation benefit ends, the employee may use accrued sick leave, annual leave, PTO, or compensatory time to make up the difference between the Workers' Compensation benefit and the employee's gross pay (supplemental amount) as described in (b)(1) above. The supplemental amount is subject to all taxes and deductions. A priority of deductions, as determined by the Department of Finance, will apply if the supplemental amount is insufficient to cover all deductions. Deductions not taken from the supplemental amount will be billed to the employee as determined by the Department of Finance.
- (e) If an employee files an application for disability retirement before the employee's eligibility period for salary continuation benefit ends, the CAO must continue to pay the salary continuation benefit until the CAO makes a decision on the employee's disability retirement application, even if this means that the period of salary continuation benefit payments will continue for longer than 12 or 18 months, as appropriate under Section 18-5(a) or (b) below.
- (f) If the CAO denies an employee's application for disability retirement, the employee may file an appeal of the CAO's decision with the Disability Arbitration Board under Section 33-43(l) of the County Code. The CAO must not pay salary continuation benefit payments to the employee while the appeal is pending.

18-3. Disability leave as FMLA leave.

- (a) A supervisor must designate Disability Leave as FMLA leave, even if the employee did not request FMLA leave, if:
 - (1) the leave is taken for an FMLA-qualifying reason described in Section 19 of these Regulations;



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- (2) the employee is eligible for FMLA leave; and
 - (3) the employee has not already exhausted the FMLA leave entitlement for the leave year.
- (b) An employee on Disability Leave who is eligible to use FMLA leave and who is medically capable of performing an alternative or light duty work assignment may choose to:
- (1) take an alternative or light duty work assignment offered by the County; or
 - (2) use FMLA leave.

18-4. Managed care for job-related injury or illness. The County must provide an employee who has incurred a job-related injury or illness the opportunity, and communicate such opportunity and impact under Section 18-5, to obtain medical care through a County-provided managed care program in which:

- (a) network physicians provide initial medical care to an employee at no cost, even if the employee's claim is later denied;
- (b) the managed care provider must:
 - (1) coordinate benefits with group health providers; and
 - (2) review the employee's utilization of the treatment plan.

18-5. Selection and use of physician and impact on eligibility period for salary continuation benefit. An employee may select a physician to provide medical treatment for the employee's job-related illness or injury.

- (a) If the employee selects a physician from the network of physicians established under the County-provided managed care program and participates in the Pharmacy Benefit Management (PBM) and the Nurse Case Management (NCM) program, the employee may receive salary continuation benefits for a maximum of 18 months.



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- (b) If the employee selects a physician who is not included in the County-established network of physicians, or refuses to participate in the PBM or NCM programs, the employee may receive salary continuation benefits for a maximum of 12 months.

18-6. Subrogation for reimbursement of salary continuation benefit payments.

- (a) If an employee receives salary continuation benefits as a result of a job-related injury or illness caused by a third party who is legally liable for the injury or illness, the County has the right of subrogation against the third party.
- (b) If the legally liable third party reimburses the employee in whole or part for the value of the salary continuation benefits, the employee must promptly reimburse the County for the salary continuation benefit, less the attorney's fees the employee incurred to obtain the reimbursement, according to current workers' compensation regulations.
- (c) If the employee does not reimburse the County after receiving reimbursement from a third party, the County may initiate disciplinary action against the employee, up to and including dismissal.

18-7. Refund of salary continuation benefit overpayment.

- (a) An employee must promptly refund to the County a salary continuation benefit payment to which the employee was not entitled.
- (b) If the employee does not refund the payment to the County, the County may initiate disciplinary action against the employee, up to and including dismissal.
- (c) If the employee does not refund the salary continuation benefit payment to the County, the County may also consider the payment to be a debt owed to the County.

18-8. Appeal of salary continuation benefit decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on salary continuation benefit may file a grievance under Section 34 of these Regulations.



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SECTION 19. FAMILY AND MEDICAL LEAVE

19-1. Definitions.

* * *

(e) ***FMLA Program Manager.*** Person in OHR/OMS who administers the County's FMLA Program, reviews requests and medical certifications submitted by employees for FMLA leave, determines eligibility issues in consultation with the OHR Director and the County Attorney's Office when necessary, and provides assistance to employees and supervisors on FMLA.

(f) ***Health care provider:*** * * *

(g) ***Next of kin:*** * * *

(h) ***Parent:*** * * *

(i) ***Serious health condition:*** * * *

* * *

19-4. Amount of FMLA leave.

(a) An eligible employee may use up to 12 workweeks of FMLA leave in a leave year as defined in Section 1-34.

(b) A workweek for FMLA purposes is a week that includes the average number of hours that an employee works in a week and includes any holiday that occurs during the week.

(c) If an employee uses FMLA leave intermittently or as part of a reduced workweek, the employee's FMLA leave entitlement is calculated based on hours instead of weeks.



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19-5. Types of leave that may be used as FMLA leave.

* * *

- (b) The FMLA Program manager must allow an eligible employee to use LWOP, annual leave, or personal leave days for any FMLA purpose.

* * *

19-7. Application for FMLA leave and notice required of employee.

- (a) *Application for leave.* An employee must apply for FMLA leave by completing a County *Employee Request for FMLA Leave Form* (Appendix U) and submitting the form to the FMLA Program Manager.

* * *

19-8. Responsibility for Handling FMLA leave.

(a) *FMLA Program Manager's Responsibility*

- (1) The FMLA Program Manager must determine within 5 working days after an employee submits a request for leave for a FMLA purpose whether or not to approve the request.
- (2) The FMLA Program Manager may require an employee to submit a County *Medical Certification of Employee's Serious Health Condition Form* (Appendix P-1) or a County *Medical Certification of Family Member's Serious Health Condition Form* (Appendix P-2) completed by the health care provider treating the serious health condition to support a request for leave for a serious health condition.
- (3) The FMLA Program Manager may make a provisional designation of leave as FMLA leave if the FMLA Program Manager asked the employee to submit medical certification for the requested leave but the employee has not submitted the medical certification yet.



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- (4) Upon receiving written authorization from an employee, the FMLA Program Manager or the Employee Medical Examiner (EME) may directly contact the employee's health care provider to clarify or better understand responses on the FMLA Medical Certification or Recertification form.
- (5) Under 29 CFR 825.307, the U.S. Department of Labor's FMLA Regulations, if an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear.
- (6) ***Information that the FMLA Program manager must give to an employee.*** Within 5 working days after an employee requests leave for a FMLA purpose, the FMLA Program Manager must inform the employee of the following and may use *Response to Employee Request for FMLA Leave* (Appendix O):
 - (A) whether the requested leave will be counted against the employee's annual FMLA entitlement;
 - (B) whether the employee must submit medical certification to support the request for leave and the consequences if the employee fails to submit a required certification;
 - (C) what type of paid leave may be used as FMLA leave, depending on the reason for the requested leave;
 - (D) whether the employee must pay for health insurance during any period of leave without pay and the obligation of the employee to repay the County for health insurance payments made by the County;
 - (E) whether the employee must present a fitness-for-duty certification from the employee's health care provider upon return from FMLA leave;
 - (F) the amount of notice the employee must give before using the leave;



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- (G) whether the employee must report periodically to the employee’s supervisor during the period of leave; and
 - (H) other specific information requested by the employee or indicated by the employee’s leave request.
- (7) **Recertification.** The FMLA Program Manager may request a new medical certification by a health care provider of an employee’s serious health condition or a serious health condition of a family member:
- (A) each calendar year for a medical condition that lasts longer than one year;
 - (B) in less than 30 days in any of the following situations:
 - (i) employee requests an extension of FMLA leave;
 - (ii) circumstances described by the previous certification have changed significantly (e.g. the duration or frequency of the absence, the nature or severity of the illness, complications);
 - (iii) employer receives information that casts doubt upon the employee’s stated reason for the absence or the continuing validity of original certification;
 - (C) no more often than every 30 days and only in connection with an absence by the employee.
- (8) An employee has 15 calendar days after a request by the FMLA Program Manager to submit the medical recertification to the FMLA Program Manager.
- (9) Any recertification requested by the FMLA Program Manager shall be at the employee’s expense.



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(10) While no second or third medical opinions may be requested in connection with a recertification, the FMLA Program manager or the EME may provide the health care provider with a record of the employee’s absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(b) ***Supervisor’s Responsibility.***

- (1) A supervisor must designate a period of leave as FMLA leave even if the employee did not request FMLA leave, if:
 - (A) the leave is taken for a FMLA-qualifying reason under Section 19-6;
 - (B) the employee is eligible for FMLA leave; and
 - (C) the employee has not already exhausted the FMLA leave entitlement for the leave year.

- (2) A supervisor must base the designation on information received from the employee or from another person authorized to speak for the employee.

- (3) A supervisor must designate a period of disability leave as FMLA leave, even if the employee did not request FMLA leave, if:
 - (A) the leave is taken for a FMLA-qualifying reason under Section 19-6;
 - (B) the employee is eligible for FMLA leave; and
 - (C) the employee has not already exhausted the FMLA leave entitlement for the leave year.

- (4) A supervisor who designates a period of disability leave as FMLA leave cannot require the employee to take a light duty assignment until the employee has exhausted the employee’s FMLA leave.



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- (5) A supervisor must not count time that an employee spends performing light duty work as FMLA leave.
- (6) A supervisor must designate leave by telling the employee orally or in writing that the leave has been designated as FMLA leave and confirming an oral designation in writing.
- (7) If a supervisor has information from an employee on leave to indicate that the employee is using leave for an FMLA purpose, but the supervisor did not designate the leave before the leave began or within 2 working days of the request, the supervisor may designate the entire period of leave as FMLA leave, unless:
 - (A) the employee did not know that the leave already used before the supervisor designated it as FMLA leave would be considered FMLA leave; and
 - (B) the employee shows that the employee would have taken less FMLA leave or used intermittent FMLA leave if the employee had received the designation earlier.

19-9. Use of FMLA leave.

* * *

- (b) *FMLA leave taken for a serious health condition.*

* * *

19-11. Application for military family leave.

- (a) *Application for leave for a qualified exigency.* The FMLA Program Manager may require an employee requesting FMLA leave due to a qualifying military exigency to submit a County *Certification of Qualifying Exigency For Military Family Leave Form* (Appendix S). The certification should include the following information:

* * *



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(b) Application for military caregiver leave.

- (1) The FMLA Program Manager may require an employee who requests FMLA leave to care for a servicemember to submit a *County Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave Form* (Appendix T) indicating that the servicemember has a serious illness or injury incurred in the line of duty on active duty and is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list for the serious illness or injury incurred in the line of duty on active duty.

* * *

- (3) The FMLA Program Manager may require confirmation of the employee's family relationship with the servicemember.
- (4) The FMLA Program Manager may deny FMLA leave if the employee fails to provide complete certification as required by these Regulations upon request.

* * *

19-15. Relation of FMLA leave to other benefits.

* * *

- (c) When an employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or has expired, the employee must repay the County for the County's share of insurance premiums for periods of unpaid leave, unless the employee does not return to work because of:

- (1) continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member that would otherwise entitle the employee to leave under FMLA; or
- (2) other circumstances beyond the employee's control, such as:



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- (A) the employee chooses to stay home with the employee’s newborn child who has a serious health condition;
- (B) the employee's spouse is transferred to a job location more than 75 miles from the employee's worksite; or
- (C) the employee is needed to provide care for a relative or individual other than an immediate family member with a serious health condition.

* * *

Editor’s note – Additional information and frequently asked questions about FMLA leave can be found in HR Topics – FMLA Leave, which is available from the Office of Human Resources.

SECTION 20. PARENTAL LEAVE

* * *

20-2. Eligibility for parental leave.

- (a) A department director must allow a full-time or part-time employee to use parental leave if the employee has completed the probationary period and has merit system status.
- (b) An employee who is the parent of a newborn child or a newly adopted child is eligible for parental leave. Grandparents, aunts and uncles, and other relatives are not eligible for parental leave.

* * *

20-4. Use of parental leave.

* * *



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(b) An employee may use parental leave to care for a newborn child or a newly adopted child of the employee, and a spouse or domestic partner may use parental leave to attend to the child’s mother or other children in the family at the time of the birth or adoption of a child.

* * *

(f) Parental leave generally commences after the birth of a child at a time when the mother and child are both doing well or immediately following the adoption of a child.

(g) All hours used as parental leave must count against the employee’s FMLA entitlement of 12 weeks in a leave year unless:

- (1) the employee is not eligible for FMLA leave; or
- (2) the employee has already exhausted the FMLA leave entitlement for the leave year; or
- (3) the employee has used compensatory time as parental leave.

(h) An employee who has used all available parental leave may still be entitled to use up to 12 weeks of FMLA leave in a leave year under Section 19 of these Regulations.

* * *

SECTION 21. ADMINISTRATIVE LEAVE

21-1. Authorized uses of administrative leave. The CAO may grant administrative leave to an employee:

* * *

(k) for up to two hours to vote if the employee’s work schedule on the day of an election does not allow at least 2 consecutive hours off while the polls are open;



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- (l) to serve as an organ donor, under Section 21-4 of these Regulations; and
- (m) for an interview for other positions in County Government.

* * *

21-5. Limits on administrative leave for general emergency. An employee will not be eligible for administrative leave for a general emergency if an employee is AWOL on either the employee's last regular workday before or first regular workday after the general emergency, or AWOL on both days,

21-6. Appeal of administrative leave decision. * * *

SECTION 26. TRANSFER

* * *

26-2. CAO's Authority to Transfer an Employee. The CAO may transfer or place an employee in any vacant position for which the employee meets the minimum qualifications:

- (a) in order to resolve a grievance, conflict or other problem;
- (b) to promote efficient operations in the County; or
- (c) under other circumstances where the CAO determines that such action is in the best interests of the County.

26-3. OHR Director's Responsibility to Transfer an Employee. The OHR Director may act on behalf of the CAO to transfer an employee under Section 26-2 above. However, a department director may appeal the OHR Director's decision to transfer or place an employee in a vacant position to the CAO for final determination.

26-4. Temporary transfers between public agencies. * * *



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26-5. Transfers between County-funded agencies. * * *

26-6. Access to reciprocal agreements. * * *

26-7. Appeal of transfer. * * *

SECTION 27. PROMOTION

* * *

27-2. Types of promotion. * * *

(c) *Noncompetitive temporary promotion.*

(1) A department director:

- (A) may approve a noncompetitive temporary promotion of an employee for up to 12 consecutive calendar months;
- (B) must obtain the approval of the MSPB for a noncompetitive temporary promotion longer than 12 calendar months;
- (C) must compensate an employee under Section 10-5(c)(2) for a noncompetitive temporary promotion; and
- (D) must not give an employee who was noncompetitively temporarily promoted a priority claim or competitive advantage if the position is later filled on a competitive basis.

(2) In order to effect a noncompetitive temporary promotion, a department director must submit:



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* * *

(3) In order to extend a noncompetitive temporary promotion beyond 12 months, a department director must submit a written request to the OHR Director stating the reason for the extension. If the OHR Director believes that the extension request is supported by “exigent or compelling circumstances” as defined by the MSPB, the OHR Director must submit the request to the MSPB with a recommendation on the merits of the request. If the OHR Director, however, concludes that it is unlikely that the MSPB would approve the extension for the reasons given, the OHR Director may deny the extension request by the department director. The department director may appeal the OHR Director’s denial to the CAO.

(d) ***Competitive temporary promotion.***

- (1) Prior to making the final selection for a competitive temporary promotion, the department director must provide for full and open competition and ensure that an applicant’s qualifications are evaluated under the competitive rating process specified in Section 6-5 of these Regulations.
- (2) A competitive temporary promotion may extend beyond 12 consecutive calendar months without obtaining the approval of the MSPB.

* * *

SECTION 30. REDUCTION-IN-FORCE

30-1. Definitions.

- (a) ***Affected class:*** * * *
- (b) ***Affected employee:*** * * *
- (c) ***Alternative placement:*** * * *



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- (d) *Class:* * * *
- (e) *Discontinued service retirement:* * * *
- (f) *Displaced employee:* * * *
- (g) *Excluded employee:* * * *
- (h) *Notice of intent:* * * *
- (i) *Notification:* * * *
- (j) *Priority consideration:* * * *
- (k) *Priority eligible list:* * * *
- (l) *Qualified:* * * *
- (m) *Reemployment list:* * * *
- (n) *Seniority:* * * *
- (o) *Service needs:* * * *
- (p) *Severance pay:* * * *



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(q) *Status characteristics:* * * *

30-2. Policy on RIF.

- (a) The abolishment of a temporary position is not a RIF. The abolishment of a term position created for a specified period of time or term is not a RIF if the position is abolished at the end of the term. However, a term employee is treated the same as any other merit system employee subject to RIF if:
 - (1) the employee's position was not created for a specified time or term; or
 - (2) the employee's term is not completed.

- (b) If RIF is necessary, a department director must base the transfer, demotion, or termination of an employee on one or more of the following:
 - (1) service needs;
 - (2) seniority; or
 - (3) performance.

- (c) If a position is abolished in a department or office, only the employees in the same occupational class and department as the abolished position are subject to the RIF.

- (d) A department director may not remove an employee with merit system status if there is:
 - (1) a temporary employee in the same class in the department;
 - (2) a probationary employee in the same class in the department.



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- (e) A department director should exhaust the following alternatives to RIF before instituting a RIF if the alternative is reasonable under the circumstances:
 - (1) effective position management;
 - (2) employee placement;
 - (3) reducing employee work hours;
 - (4) changing the status of employees from full-time to part-time or from part-time to full-time
 - (5) restructuring positions; and
 - (6) retraining incumbent employees.

- (f) A department director must conduct a RIF in a manner that:
 - (1) reduces the negative impact on employees to the greatest extent that is reasonable under the circumstances; and
 - (2) is consistent with the County's commitment to equal employment opportunity and diversity.

- (g) When conducting a RIF, a department director must make every effort to maintain or restore, but not to improve, the employment status of affected employees.

30-3. Pre-RIF alternatives.

* * *

30-4. Conducting a RIF.



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* * *

30-5. Calculation of seniority in a RIF.

* * *

30-6. Service needs exception.

* * *

30-7. Use of discontinued service retirement in a RIF.

* * *

30-8. Notification of termination resulting from RIF.

* * *

30-9. Priority consideration resulting from RIF; reinstatement of displaced employees.

* * *

(b) *Eligibility for priority consideration.*

* * *

- (4) The OHR Director must determine if an affected employee is qualified for the position upon reviewing the individual's experience, education, and training.

* * *

(g) *Order of priority in filling vacant positions.*

* * *



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(6) The OHR Director must ensure that an affected employee who is placed on a priority eligible list receives priority consideration in the order described in Section 6-10 of these Regulations.

* * *

30-10. Salary considerations.

* * *

30-11. Effect of RIF on benefits.

* * *

30-12. Effect of RIF on probationary period.

* * *

30-13. Noncompetitive reappointment or promotion of employees affected by RIF.

* * *

30-14. Appeal of RIF. An employee with merit system status who is demoted or whose employment is terminated due to RIF may appeal under Section 34 or 35 of these Regulations.

SECTION 31. FURLOUGH

31-1. Definitions.

(a) **Alternate furlough day:** A furlough day that is assigned to an employee instead of a fixed furlough day if:

- (1) the employee is required to work on a fixed furlough day despite the furlough; or



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- (2) the employee is assigned to a unit or function that is scheduled to be furloughed on a fixed furlough day, but the employee is not normally scheduled to work on the fixed furlough day.
- (b) **Fixed furlough day:** A date specified by the CAO on which the offices or work sites of specified employees will be closed to:
 - (1) the specified employees;
 - (2) seasonal, substitute, and temporary employees; and
 - (3) the public.
- (c) **Furlough:** A temporary, non-pay status for hours when an employee is normally scheduled to work but does not work for the County or receive pay from the County due to a lack of funds or work, as determined by the CAO. A furlough may be comprised of any combination of fixed, alternate, or rolling furlough days.
- (d) **Furlough period:** The time period specified by the CAO during which affected employees must take all assigned furlough hours and lose the pay attributable to the furlough.
- (e) **Furlough plan:** The CAO's plan for a specific furlough that states:
 - (1) the number of furlough hours for which pay must be taken from affected employees;
 - (2) the furlough period;
 - (3) the employee groups that will be affected by the furlough; and
 - (4) the designation of fixed furlough days, if any.
- (f) **Rolling furlough day:** A day or hour(s) of a day that an employee elects, with supervisor approval, to take assigned furlough hours.



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31-2. Policy on furlough.

- (a) A supervisor must not require or allow an employee to work on the employee's furlough days, except in an emergency as determined by the CAO.
- (b) A furlough is a permanent loss of an employee's work hours. A department director or supervisor must not allow an employee to make up the hours lost by working additional hours at another time.
- (c) The County must ensure that the following are not adversely affected when an employee takes a furlough:
 - (1) the employee's accrual of annual and sick leave or the crediting of PTO;
 - (2) life insurance;
 - (3) retirement benefits; and
 - (4) seniority.
- (d) The County must not pay an employee's regular County salary to an employee who is on disability leave on a furlough day.
- (e) For the purpose of calculation of service increments, awards, salary upon promotion or demotion, or other salary amounts based on the employee's base salary, the figure representing base salary must not be reduced by the salary loss resulting from a furlough.
- (f) If a supervisor requires an employee on a fixed furlough day or alternate furlough day or rolling furlough day to return to work to perform unanticipated work assignments of an emergency nature, the department must give the employee call-back pay under Section 10-13 of these Regulations. The supervisor must ensure that the employee takes alternate furlough hours to replace the hours on which the employee was to be furloughed on the furlough day.



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31-3. Conducting a furlough.

- (a) The CAO must develop a furlough plan for each furlough that identifies the employees who will be furloughed, the number of hours of furlough and the number of fixed furlough days, rolling furlough days, or a combination of fixed and rolling furlough days on which the employees will be furloughed.
- (b) The CAO may choose to spread the salary loss due to a furlough over multiple pay periods or confine the salary loss to the same pay period in which the furlough is actually taken.
- (c) The department director must notify affected employees of fixed furlough days at least 30 days before the furlough day.
- (d) To ensure compliance with the furlough plan, the department director must monitor the scheduling, accrual, and reporting of furlough hours.
- (e) A department director must ensure that a furlough period is pro rated for a part-time employee, a new hire, an employee who separates from County service before the end of the furlough period or a school-based employee working a 10-month schedule.
- (f) The department director and the Director of the Public Information Office must notify the public in advance if work sites are closed or public services are limited because of a furlough.
- (g) An employee, with supervisory approval, may elect to take rolling furlough days on a full day or an hourly basis.

31-4. Appeal of furlough. An employee with merit system status who is furloughed may grieve under Section 34 of these Regulations if the County fails to follow the procedures in this Section. A grievance cannot challenge the CAO's determination as to a lack of work or funds necessitating a furlough.



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SECTION 32. EMPLOYEE DRUG AND ALCOHOL USE AND DRUG AND ALCOHOL TESTING

* * *

32-2. Definitions.

* * *

(t) **Designated Employer Representative:** An individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the County.

(u) **Dilute specimen:** * * *

(v) **Disabling damage:** * * *

(w) **Driver:** * * *

(x) **Employee Assistance Program or EAP:** * * *

(y) **Employee Medical Examiner or EME:** A licensed physician who performs the following functions on behalf of the County:

- (1) evaluates the functional abilities and limitations of an applicant or employee in relation to the individual's ability to perform essential job functions;
- (2) acts as the medical review officer under drug and alcohol testing programs; and



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

(z) **Evidential Breath Testing Device or EBT:** * * *

(aa) **High Potential Risk or HPR position:** A drug/alcohol designation that the County assigns to a position if:

(1) the position is not a Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position; and

(bb) **Illegal drug:** * * *

(cc) **Initial drug test:** * * *

(dd) **Initial validity test:** * * *

(ee) **Invalid result:** * * *

(ff) **Laboratory:** * * *

(gg) **Low Potential Risk or LPR position:** * * *

(hh) **Medical Review Officer or MRO:** * * *

(ii) **Non-negative specimen:** * * *

(jj) **Over-the-counter or OTC drug:** * * *

(kk) **Performing a safety-sensitive function:** * * *

(ll) **Public Safety position:** * * *



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(mm) **FMCSA Safety-Sensitive position:** A drug/alcohol designation that the County assigns to a position that: * * *

(nn) **FTA Safety-Sensitive Transit position:** A drug/alcohol designation that the County assigns to a position that: * * *

(oo) **Screening Test Technician:** * * *

(pp) **Split Specimen:** * * *

(qq) **Split Specimen Test:** * * *

(rr) **Substance Abuse Professional:** * * *

(ss) **Substituted specimen:** * * *

(tt) **Under the influence or impaired:** * * *

(uu) **Verified test:** * * *

32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.

(a) **Drug and alcohol prohibitions that apply to job applicants and County employees.**

(1) An applicant for an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must not:



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* * *

- (3) An employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must not:

* * *

(d) *Employee responsibilities when using a prescription or OTC drug while on duty.*

- (1) Before taking a prescription or OTC drug, an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position should:

* * *

- (2) An employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must report to the employee's supervisor if the employee took before duty, or intends to take while on duty, a prescription or OTC drug that may affect the employee's performance. This must be done as soon as possible after reporting for duty or taking the drug.

- (3) A supervisor of an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must:

* * *

(e) *Allowing employees to consume alcohol at County events or functions.*

* * *

- (4) Even if employees in other positions are allowed to consume alcohol at a County event, an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must not consume alcohol if the employee:

* * *

(f) *Drug/alcohol designations of County positions.*



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(1) The OHR Director must give each County position one of the following drug/alcohol designations:

* * *

(D) FMCSA Safety-Sensitive; or

(E) FTA Safety-Sensitive.

* * *

(3) The OHR Director must designate a position as HPR if the position is not a Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position and involves:

* * *

(6) A position that is subject to drug and alcohol testing under the regulations of the U.S. DOT and FMCSA is an FMCSA Safety-Sensitive position. Section 32-4 of these Regulations lists Safety-Sensitive positions.

(7) A position that is subject to drug and alcohol testing under the regulations of the U.S. DOT and FTA is an FTA Safety-Sensitive position. Section 32-5 of these Regulations lists FTA Safety-Sensitive positions.

(8) A position may meet the definition of more than one designation. In such a case, the OHR Director must designate the position as follows:

(A) if a position meets the definitions of HPR and Safety-Sensitive, it must be designated as Safety-Sensitive;

(B) if a position meets the definitions of HPR and FTA Safety-Sensitive, it must be designated as FTA Safety-Sensitive; and

(C) if the position meets the definitions of Public Safety and FMCSA Safety-Sensitive, it must be designated as FMCSA Safety-Sensitive.



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(g) ***Required check on the drug and alcohol testing records of applicants for FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.***

* * *

- (3) If the applicant or employee refuses to provide written consent, the County must not employ the applicant in, or transfer the employee to, an FMCSA Safety-Sensitive or FTA Safety-Sensitive position.

* * *

- (8) The County must also ask the applicant or employee if he or she has tested positive, or refused to test, on any pre-employment drug or pre-assignment alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by U.S. DOT drug and alcohol testing rules during the past 2 years. If the applicant or employee admits that he or she had a positive test or a refusal to test, the County must not use the applicant or employee to perform safety-sensitive functions until and unless the applicant or employee documents successful completion of the return-to-duty process as required under U.S. DOT regulations.

* * *

(h) ***Drug and alcohol testing of job applicants and employees.***

* * *

(3) ***Pre-employment drug testing.***

- (A) Under Federal regulations, the County must conduct drug tests on all applicants for FMCSA Safety-Sensitive or FTA Safety-Sensitive positions before employment or before the employees first perform safety-sensitive duties.

* * *



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(4) ***Pre-Assignment alcohol testing.***

- (A) Federal regulations permit employers to test employees covered by Federal regulations for alcohol immediately before the employees perform safety-sensitive duties for the first time, provided that the employer performs pre-assignment testing on all covered employees.
- (B) The County conducts pre-assignment alcohol testing on all employees newly hired or assigned to FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.

(5) ***Probable cause or reasonable suspicion drug and alcohol testing.***

* * *

- (B) ***For employees in FMCSA Safety-Sensitive positions.*** When the County conducts reasonable suspicion drug and alcohol testing of employees in FMCSA Safety-Sensitive positions under the authority of DOT Regulations, the County must conduct the testing under Section 32-4 of these Regulations.
- (C) ***For employees in FTA Safety-Sensitive positions.*** When the County conducts reasonable suspicion drug and alcohol testing of employees in FTA Safety-Sensitive positions under the authority of DOT Regulations, the County must conduct the testing under Section 32-5 of these Regulations.

* * *

(F) ***Requirement for supervisors to record observations.***

* * *

- (ii) The supervisor of an FMCSA Safety-Sensitive or FTA Safety-Sensitive employee must comply with record-keeping requirements in Sections 32-4 and 32-5, as appropriate.



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* * *

(6) ***Post-accident testing.***

- (A) The County must conduct post-accident drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) and 32-5 (FTA Safety-Sensitive).

* * *

(7) ***Random drug and alcohol testing.***

- (B) The County conducts random drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) and 32-5 (FTA Safety-Sensitive).

* * *

(8) ***Return-to-duty drug and alcohol testing.***

- (A) ***Return-to-duty testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.*** The County must conduct return-to-duty drug and alcohol testing of employees in FMCSA Safety-Sensitive positions under the procedures in Section 32-4 (FMCSA Safety-Sensitive).

* * *

(9) ***Follow-up drug and alcohol testing.***

- (A) ***Follow-up testing of employees in FMCSA Safety-Sensitive positions.*** The County must conduct follow-up drug and alcohol testing of employees in FMCSA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive).



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* * *

- (10) **Guidance on drug and alcohol testing.** For further guidance on drug and alcohol testing, supervisors should contact OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email OMSTeam@montgomerycountymd.gov.

* * *

- (12) **Collection of specimens for drug testing.**
 - (A) OMS or a collection site/agent authorized by OMS must ensure that specimen collection is conducted:

* * *

- (iv) under direct observation for return-to-duty and follow-up testing of FMCSA Safety-Sensitive; and

* * *

- (C) OMS must ensure that specimen collection for required testing of FMCSA Safety-Sensitive and FTA Safety-Sensitive employees or job applicants under U.S. DOT regulations is conducted as required under those regulations.

* * *

- (14) **Substances tested.**
 - (A) For drug testing conducted under U.S. DOT regulations, the laboratory must test specimens obtained from FMCSA Safety-Sensitive and FTA Safety-Sensitive applicants and employees for the substances indicated in Sections 32-4 and 32-5.

* * *



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(C) If information available to the department or OMS indicates that it is appropriate, OMS may ask the laboratory to test a specimen for any controlled dangerous substance included on the schedules in Section 5-101 of the Criminal Law Article of the Maryland Annotated Code. This does not apply to testing of FMCSA Safety-Sensitive and FTA Safety-Sensitive employees that is conducted under U. S. DOT regulations.

* * *

(15) ***Drug test results.***

* * *

(F) OMS must report to the Designated Employer Representative (DER) and to the applicant or employee if the test results are verified positive, or indicate a refusal to test because of adulteration or substitution. OMS must report both negative and positive test results to the DER for post-accident, reasonable suspicion, return to duty, and follow-up testing of employees.

(16) ***Retesting of employee after a canceled drug test.***

* * *

(C) If a drug test for an employee is canceled, the County must drug test the employee again and receive a negative result before the employee is:

- (i) transferred or reassigned to an HRP, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position; or
- (ii) allowed to return to HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive duties, because of the possible use of illegal drugs, prohibited alcohol use, or refusal to take a required drug or alcohol test.



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* * *

(18) ***Refusal to take a drug or alcohol test.***

(A) Any of the following on the part of an employee is considered a refusal to submit to drug or alcohol testing and is considered to be the same as a verified positive drug test result or an alcohol test with an alcohol concentration of 0.02 or higher:

* * *

(iii) failing to provide a urine specimen for a drug test or a breath sample for an alcohol test, but this does not apply to an applicant who leaves the testing site before the testing process begins for a pre-employment drug test;

* * *

(v) failing to provide enough urine for a drug test or adequate breath for an alcohol test when directed if it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure;

* * *

(C) If an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position refuses to be tested for drugs or alcohol as required under these Regulations, the department director:

* * *

(19) **Consequences of a verified positive drug test result or an alcohol test result of 0.02 or higher.**

* * *



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(C) OMS must refer an FMCSA Safety-Sensitive or FTA Safety-Sensitive employee who has a verified positive drug test result or an alcohol test result of 0.04 or higher to a Substance Abuse Professional for evaluation. OMS must refer a County employee in any other type of position who has a verified positive drug test result or an alcohol test result of 0.02 or higher to a healthcare provider for evaluation and recommended treatment. The department director may take adverse action against the employee under County and department regulations.

(D) A supervisor of an FMCSA Safety-Sensitive employee who has a confirmed alcohol test result of at least 0.02 but less than 0.04 must not allow the employee to operate a vehicle or heavy or dangerous machinery or equipment for at least 24 hours after the test. A supervisor of an FTA Safety-Sensitive employee who has a confirmed alcohol test result of at least 0.02 but less than 0.04 must not allow the employee to perform safety-sensitive functions for at least 8 hours after the test, unless the employee is tested again with a result of less than 0.02.

* * *

(G) A department director must take adverse action under County and department regulations against an FMCSA Safety-Sensitive employee who has an alcohol test result of 0.04 or higher, or who has a verified positive drug test result.

(H) A department director must not allow an employee in an HPR, Public Safety, or FMCSA Safety-Sensitive position who has a verified positive drug test result or an alcohol test result of 0.02 or higher to perform the duties of the employee's position until the employee has been evaluated by a Substance Abuse Professional for employees covered by U.S. DOT regulations or by a medical provider for other employees and:



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* * *

(20) ***Rights of job applicants and employees subject to drug or alcohol testing.***

* * *

(C) (i) If the MRO has verified a drug test result as positive or as a refusal to test because of adulteration or substitution, the MRO must notify the applicant or employee of the applicant's or employee's right to have a test conducted on the split specimen, as appropriate, by a different laboratory at the employee's expense.

(ii) The MRO must tell a DOT covered applicant or employee how to request the split specimen test and give him or her at least 72 hours to request the test. Applicants or employees not covered by U.S. DOT regulations are given 10 days to request the test.

* * *

(i) ***Required referral, evaluation, and treatment.***

* * *

(2) ***Referral, evaluation, and treatment for employees covered by U.S. DOT regulations.***

(A) If an employee has a verified positive drug test result, engaged in prohibited alcohol use, or refused to take a drug or alcohol test, and if the employee hasn't been dismissed or terminated as a result of such conduct, the employee's supervisor must:

* * *



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(iii) ensure that, before the employee returns to FMCSA Safety-Sensitive duties, the employee has complied with the appropriate referral and evaluation provisions and takes, as appropriate:

* * *

(k) *Employees Who Refer Themselves for Treatment.*

* * *

(2) If an employee tells a supervisor that he or she needs help to resolve a problem associated with prohibited drug use or alcohol misuse:

(A) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:

* * *

(vi) after a confirmed positive drug test result or a confirmed alcohol test result with an alcohol concentration of 0.02 or greater, or in the case of an FMCSA Safety-Sensitive or FTA Safety-Sensitive employee, an alcohol concentration of 0.04 or greater;

* * *

(l) *Education and training programs.*

* * *

(3) The County must ensure that all new and existing employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions receive at least 60 minutes of training on the effects and consequences of prohibited drug use on



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personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use or alcohol misuse.

- (4) The County must ensure that supervisors of HPR, Public Safety, FMCSA Safety-Sensitive, and FTA Safety-Sensitive employees who may make reasonable suspicion determinations receive at least:

* * *

(m) ***Maintenance of Records.***

- (1) Drug and alcohol test results will be maintained by the Occupational Medical Section of OHR. They will be treated as confidential medical information and will be disclosed only to the following individuals:

* * *

- (n) ***For further information.*** For further information about drug and alcohol testing, an employee may contact the staff of:

- (1) OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email OMSTeam@montgomerycountymd.gov.

32-4. Prevention of Prohibited Drug Use and Alcohol Misuse by FMCSA Safety-Sensitive Employees under Federal Motor Carrier Safety Administration Regulations.

* * *

- (b) ***Safety-Sensitive positions.*** The following County positions are Safety-Sensitive positions:

* * *

- (6) any other position that:

* * *



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(C) is not an FTA Safety-Sensitive position.

* * *

(g) **Types of drug and alcohol testing.** Under FMCSA regulations, a Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. An applicant for such a position must submit to pre-employment drug testing as described in (1) below.

(1) **Pre-employment and pre-assignment testing.**

* * *

(C) An employee newly hired or assigned to a Safety-Sensitive position must take a pre-assignment alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time.

* * *

(2) **Post-accident testing.**

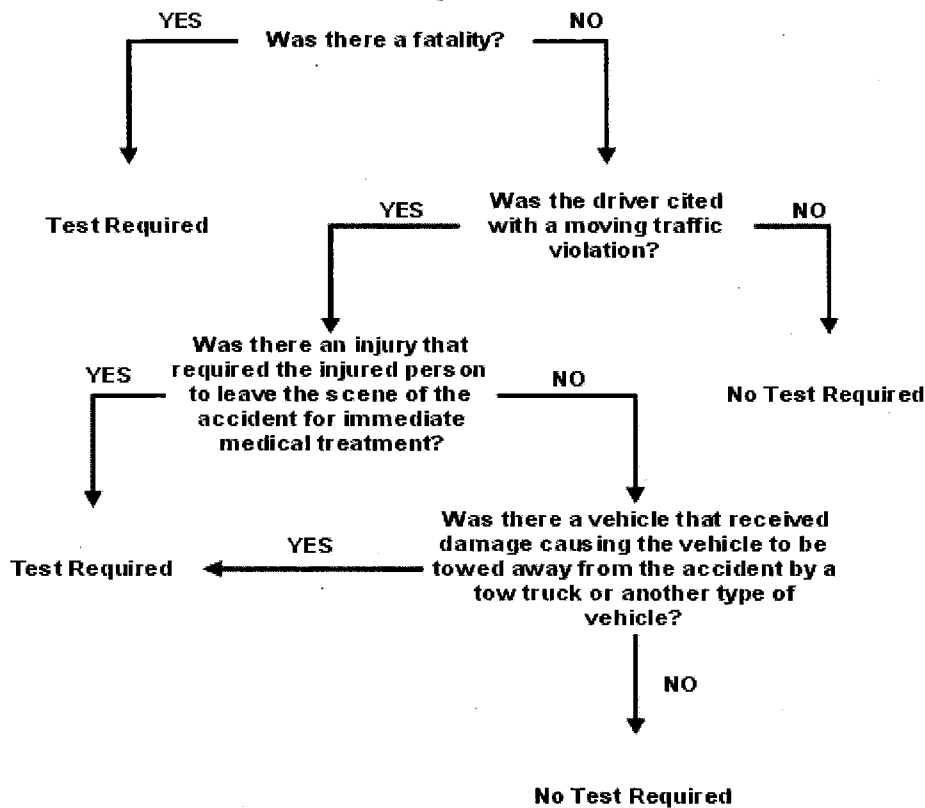
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* * *

32-5. Prevention of Prohibited Drug Use and Alcohol Misuse by FTA Safety-Sensitive Employees Under Federal Transit Administration Regulations

- (a) **Application of section.** This Section applies to any employee assigned to an FTA Safety-Sensitive position on a full-time, part-time, temporary, or intermittent basis.
- (b) **Safety-sensitive functions.** An employee of the Departments of General Services or Transportation who performs any of the following safety-sensitive functions at any time is in an FTA Safety-Sensitive position:



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* * *

- (c) **FTA Safety-Sensitive positions.** The following are FTA Safety-Sensitive positions if the employee must have a CDL or operates, dispatches, controls, or maintains Montgomery County transit vehicles and operations:

* * *

- (d) **Supervisor as FTA Safety-Sensitive employee.** A supervisor is an FTA Safety-Sensitive employee only if the supervisor actually performs safety sensitive functions.

- (e) **Drug and alcohol prohibitions.**

- (1) **Prohibitions for FTA Safety-Sensitive employees.** In addition to the prohibitions of Section 32-3, an FTA Safety-Sensitive employee must not:

* * *

- (H) refuse to submit to any of the following types of drug or alcohol testing, if required under FTA regulations:

- (i) pre-assignment alcohol testing;

* * *

- (2) **Prohibitions for supervisors.** A supervisor must not permit an FTA Safety-Sensitive employee to perform or continue to perform safety-sensitive functions if the supervisor has actual knowledge that the employee:

* * *

- (f) **Drug and alcohol testing.**

* * *

- (5) **Times when an employee is subject to testing.** The County may require an FTA Safety-Sensitive employee to submit to testing required under FTA regulations at the following times:



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* * *

(g) **Types of drug and alcohol testing.** Under FTA regulations, an FTA Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. A non-employee applicant for such a position must submit to pre-employment drug testing as described in (1)(A) below.

(1) **Pre-employment and pre-assignment drug testing.**

- (A) An applicant for an FTA Safety-Sensitive position must produce a negative drug test result before employment.
- (B) An employee transferred or temporarily assigned to an FTA Safety-Sensitive position must produce a negative drug test result before performing safety-sensitive functions.
- (C) An employee newly hired or assigned to an FTA Safety-Sensitive position must take a pre-assignment alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time.

* * *

(3) **Post-accident testing.**

* * *

- (F) The County may consider it a refusal to submit to testing if an FTA Safety-Sensitive employee who is subject to post-accident testing:

* * *

(4) **Random testing.**

- (A) The County must randomly select enough FTA Safety-Sensitive employees for drug testing and for alcohol testing during each



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calendar year to equal an annual rate for each type of testing that is not less than the minimum annual percentage rates for random drug testing and for random alcohol testing determined by the FTA.

* * *

- (C) Every employee in an FTA Safety-Sensitive position must be in a pool of employees subject to random drug and alcohol testing. Each employee must have an equal chance of selection for testing and must remain in the pool subject to testing even after being tested.

* * *

- (G) If an employee or applicant for an FTA Safety-Sensitive position has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason and has not been in the random selection pool during that time, the County must ensure that the employee or applicant takes a pre-employment drug test with a verified negative result before allowing the employee or applicant to perform safety-sensitive functions.

- (h) *Retesting of employees; collecting a new specimen after a dilute test result.*

* * *

- (2) *Retesting of employee after a canceled drug test.*

* * *

- (C) If an employee's drug test is canceled, the County must require the employee to take another drug test with a verified negative result before the employee is:

- (i) transferred or reassigned to an FTA Safety-Sensitive position; or

* * *



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(i) ***Consequences for an employee of prohibited drug use, alcohol misuse, or refusal to take a drug or alcohol test.***

- (1) ***Consequences under FTA regulations.*** Under FTA regulations, the following are the required consequences for an employee who has a verified positive drug test result, violates the alcohol misuse prohibitions, or who refuses to be tested:

* * *

(2) ***Consequences under County authority.***

- (A) Under County authority not derived from the FTA regulations, a department director must dismiss an FTA Safety-Sensitive employee with merit system status or terminate an FTA Safety-Sensitive probationary employee who:

* * *

- (B) FTA regulations require the County to refer the dismissed employee to a Substance Abuse Professional for evaluation and treatment.

- (C) If an FTA Safety-Sensitive employee tells a supervisor that he or she needs help to resolve a problem associated with prohibited drug use or alcohol misuse:

* * *

- (ii) the supervisor must refer the employee to a Substance Abuse Professional for evaluation, treatment, return-to-duty testing, and follow-up testing. These tests will be conducted under County authority and not under direct observation.

* * *



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SECTION 33. DISCIPLINARY ACTIONS

* * *

33-5. Causes for disciplinary action. The following, while not all-inclusive, may be cause for a disciplinary action by a department director against an employee who:

* * *

(c) violates any established policy or procedure;

* * *

(z) fails to cooperate or provide information when questioned as a witness during an investigation;

(aa) fails to cooperate or provide information when the employee is the subject of an investigation, unless the employee invokes the Fifth Amendment right against self-incrimination or refuses to give information that the employee is ethically or legally prohibited from revealing, such as attorney-client privileged material or mental health records; or

(bb) violates the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

* * *

SECTION 34. GRIEVANCES

* * *

34-9. Grievance procedure.

* * *

(d) *Burden of proof.*



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(1) The County has the burden of proof in a grievance on:

* * *

(F) an involuntary demotion under Section 36; and

* * *

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS

35-1. Definitions.

* * *

(b) **Appellant:** The County employee, applicant for employment, or volunteer firefighter or rescuer who files an appeal with the MSPB.

* * *

35-2. Right of appeal to MSPB.

(a) Except as provided in Section 29-7 of these Regulations, an employee with merit system status has the right of appeal and a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal, or involuntary resignation and may file an appeal directly with the MSPB.

(b) An employee with merit system status may file an appeal with the MSPB over other matters after receiving an adverse final decision on a grievance from the CAO. After the development of a written record, the MSPB must review the appeal. The MSPB may grant a hearing or refer the appeal to a hearing officer if the MSPB believes that the record is incomplete or inconsistent and requires oral testimony to clarify the issues. If the MSPB does not grant a hearing, the MSPB must render a decision on the appeal based on the written record.



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* * *

35-4. Appeal filing requirements.

- (a) An employee or applicant must file an appeal with the MSPB in writing, providing the following information:
- (1) appellant's name, signature and date;
 - (2) home address, telephone number, and email address;
 - (3) title of position;
 - (4) department, agency, or office, if applicable;
 - (5) concise description of the action or decision being appealed;
 - (6) reason why the appellant disagrees with the action or decision; and
 - (7) relief requested, subject to later modification by the appellant.
- (b) Alternatively, an employee or applicant may complete the MSPB Appeal Form (Appendix V) and provide the information requested on the Form.
- (c) An employee or applicant may instead choose to file an appeal electronically by completing the MSPB Appeal Form found on the MSPB County website.
- (d) Depending on the nature of the appeal, an employee or applicant must include the following documentation with the appeal:
- (1) If the employee is contesting a disciplinary action, a copy of the Notice of Disciplinary Action must be provided to the Board;
 - (2) If the employee is contesting a decision by the Chief Administrative Officer (CAO), a copy of the CAO's decision must be provided to the MSPB; or



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- (3) If the employee or applicant is contesting a nonselection/nonpromotion decision, a copy of the notification of nonselection/nonpromotion must be provided.

* * *

35-7. Dismissal of an appeal.

- (a) The MSPB may dismiss an appeal if the appellant did not submit the appeal within the time limits specified in Section 35-3.
- (b) The MSPB may dismiss an appeal if the appellant fails to prosecute the appeal or comply with established appeal procedures. The MSPB must give the County and the appellant prior notice of its intent to dismiss for lack of prosecution or compliance with an MSPB rule or order.
- (c) The MSPB must dismiss an appeal if it determines it lacks jurisdiction.
- (d) The MSPB may dismiss an appeal if the appeal becomes moot.
- (e) The MSPB may dismiss an appeal based on the appellant's failure to exhaust administrative remedies.
- (f) The MSPB may dismiss an appeal for any other reason in compliance with applicable laws, rules and regulations.

35-8. Notification, response and submission of record in appeal.

* * *

- (b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and Local Fire and Rescue Department in writing that a volunteer firefighter or rescuer filed an appeal and provide the County Attorney, the OHR Director and the head of the Local Fire and Rescue Department with a copy of the appeal.

* * *



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- (d) The OHR Director and County Attorney must respond to an appeal filed by a County merit system employee within 30 calendar days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.
- (e) The OHR Director and County Attorney must respond to an appeal filed by a volunteer firefighter or rescuer challenging an action taken by the Fire Chief within 30 calendar days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. In all other appeals filed by a volunteer firefighter or rescuer, the Local Fire and Rescue Department must respond within 30 calendar days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

* * *

35-10. Appellant's right to review; right to hearing.

* * *

- (c) The appealing party, the County Attorney, and the OHR Director must be served with a written notice of the time, date, and place of the prehearing conference.

* * *

- (f) The MSPB or hearing officer may:
 - (1) administer oaths;
 - (2) issue subpoenas for witnesses and documents enforceable by injunction by the party requesting the subpoena(s) in a court of competent jurisdiction;

* * *

35-11. Prehearing procedure in appeal; motions; requests for reconsideration of preliminary matters; conduct of hearing; continuances.



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(a) *Prehearing procedure in appeal.*

* * *

(3) Requests, after stated deadlines, to call witnesses or to use documentation not contained in the prehearing submission may be granted only on good cause shown.

(4) **Motions.** Any motion to the MSPB seeking a determination of a preliminary matter including, but not limited to, motions to compel discovery, motions to exclude evidence (motions in limine), and motions to quash subpoenas, must be in writing. The opposing party has 10 calendar days from the date of the motion to respond to the motion before the Board rules on the motion.

* * *

35-12. Testimony of witnesses at hearing; interrogatories and depositions.

* * *

(b) **Interrogatories and depositions.** The MSPB or hearing officer may accept a statement of a witness taken by written interrogatory or a deposition made under oath. This does not preclude a party from taking a deposition or interrogatory of a witness prior to the hearing for impeachment or discovery purposes as authorized by the Montgomery County Code, Chapter 2A, Administrative Procedures Act, Section 2A-7(b). A party must file a true copy of an interrogatory, answer, or deposition with the MSPB or hearing officer.

* * *

35-15. MSPB may enforce settlement agreements.

(a) If a settlement agreement is before the MSPB in connection with an appeal, the MSPB may interpret and enforce the agreement.



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- (b) If the parties settle a case while in proceedings before the MSPB, the parties may agree to enter the settlement agreement into the record. If requested to enter the agreement into the record, the MSPB will retain jurisdiction to enforce the terms of the agreement.

* * *

35-16. MSPB decisions.

- (a) The MSPB may decide an appeal in any manner deemed necessary and appropriate, under County Code Section 33-14(c), *Hearing Authority of MSPB*. The MSPB may order appropriate relief, which includes but is not limited to the following:

- (1) retroactive appointment, promotion or reclassification with or without back pay;

* * *

- (b) The MSPB must:

* * *

- (3) send a copy of each decision to:
 - (A) the appellant or appellant's counsel of record;
 - (B) the CAO;
 - (C) the County Attorney;
 - (D) the OHR Director;
 - (E) the department director; and/or
 - (F) the Fire Chief and the local fire and rescue department in a case where the appellant is a volunteer firefighter and rescuer.

* * *



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35-17. Request for rehearing or reconsideration of MSPB final decisions.

* * *

- (c) A party's timely request for reconsideration stays the time for any further judicial appeal until the MSPB makes a decision on the request. A request for rehearing or reconsideration does not stay the operation of any order in the MSPB's final decision unless the MSPB so states. The MSPB must issue a written decision on the request. If the MSPB does not grant a reconsideration request within 10 calendar days after it receives the request, the request is deemed denied.

* * *

SECTION 36. DEMOTION

36-1. Voluntary demotion.

- (a) A department director may demote an employee who requests a demotion or consents in writing to a demotion.
- (b) An employee may request or accept a voluntary demotion:
- (1) to avoid termination in a RIF;
 - (2) to remain employed if the employee is unable to perform the essential functions of the employee's job because of a physical or mental impairment; or
 - (3) for other personal reasons.
- (c) A voluntary demotion must not adversely reflect on the employee's work record or affect the employee's opportunity for promotion to a position for which the employee is qualified.



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36-2. Involuntary demotion.

- (a) A department director may involuntarily demote an employee if:
- (1) the employee is not able to perform the duties assigned to the employee's position because of a physical or mental incapacity;
 - (2) the employee receives a less than satisfactory performance evaluation following a written warning, counseling, and at least 3 months opportunity to improve;
 - (3) the employee is not able to perform the duties assigned to the employee's position for a reason unrelated to a physical or mental incapacity, such as failing to maintain a license or certification that is required for the employee's position; or
 - (4) the demotion is for disciplinary reasons under Section 33 of these Regulations.
- (b) A department director must not demote an employee with a physical or mental disability under Section 36-2(a)(1) above unless efforts at reasonable accommodation within the employee's position as described in Section 8 of these Regulations are unsuccessful and the employee is not transferred to another position.
- (c) The director must give a written notice of the demotion to the employee at least 5 working days prior to the effective date of the demotion and must state in the notice:
- (1) the reason for the demotion;
 - (2) the effective date; and
 - (3) if the employee may appeal the demotion and the time limit for filing an appeal.

36-3. Salary after a demotion. A department director must compensate an employee after a demotion as described in Section 10-5(d).



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36-4. Appeal of involuntary demotion.

- (a) An employee with merit system status may appeal an involuntary demotion and the amount of the salary reduction associated with the demotion by filing a grievance under Section 34 of these Regulations or by filing a direct appeal with the MSPB under Section 35.
- (b) A temporary or probationary employee may appeal a disciplinary demotion and the salary reduction by filing a grievance under Section 34.

Approved: Isiah Leggett
 Isiah Leggett, County Executive

June 24, 2015
 Date

Approved as to form and legality:
Anne T. Wilde 6/24/15
 Office of the County Attorney Date



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MCPR, 2001 APPENDIX H, COMPRESSED WORK SCHEDULE AGREEMENT

MONTGOMERY COUNTY GOVERNMENT COMPRESSED WORK SCHEDULE AGREEMENT

Employee's Role. A full-time employee who wishes to work a compressed work schedule should review the information on this form, specify the compressed work schedule to be worked below, including a fixed day off, and give the form to the employee's supervisor.

The work schedule must not be less than 80 regularly scheduled hours in a pay period. A compressed schedule changes the reporting period from a Sunday to Saturday pattern to either a Monday to Sunday (Schedules A & B) or a Friday to Thursday (Schedules C & D) pattern. As such, please populate the appropriate ten days of the new pattern below.

WEEK 1

DAY	Start Time	Stop Time
Friday (payday)		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		

WEEK 2

DAY	Start Time	Stop Time
Monday		
Tuesday		
Wednesday		
Thursday		
Friday (payday)		
Monday		



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The above schedule is compressed work schedule (A, B, C, or D) _____. (See Mctime form and Section 15-4(b) of the Personnel Regulations for more information.)

Standards for Approving a Compressed Work Schedule. The supervisor and department director must evaluate the compressed work schedule agreement under the following standards:

- Operational requirements must be met;
- Service to clients or the public must be maintained or improved;
- Costs to the County must not increase;
- Each office or operation must have enough staff on duty during the normal period of public service, and
- The compressed work schedule must not diminish the ability of the department to assign responsibility and accountability to the employee for providing County services and performing the employee's official duties.

Supervisor's Role. The supervisor must review this form and meet with the employee to discuss the request. The supervisor should suggest to the employee any adjustments to the schedule necessary to maintain the effectiveness of the work unit. If the supervisor agrees with the terms of the request as stated in the form, the supervisor and the employee must sign the form and forward it to the department director.

If the supervisor and the employee do not agree to the terms stated on the form, the supervisor must forward a copy of the form and a summary of the points on which the supervisor and the employee agreed and disagreed to the department director.

Department Director's Role. The department director must review the compressed work schedule request and:

- Approve it
- Disapprove it, or
- Suggest changes in the terms for consideration by the employee and the supervisor to help them reach agreement

If the request is not approved, the department director must give the employee the reason. The decision of the department director is final.

The department director must:

- Complete a Mctime Compressed Schedule Request Form and receive a 2 week transition schedule.
- Give a copy of the approved or disapproved request to the employee
- Ensure that a copy is placed in the employee's department operating file, and
- Send a copy to the Director, Office of Human Resources



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Important Information About Compressed Work Schedules

These are 4 compressed reporting schedules as follows

- **Schedule A**, from 12:01 a.m. Monday through 12:00 midnight Sunday, with the first Monday off during the two-week pay period;
- **Schedule B**, from 12:01 a.m. Monday through 12:00 midnight Sunday, with the second Monday off during the two-week pay period;
- **Schedule C**, from 12:01 a.m. Friday through 12:00 midnight Thursday, with the first Friday off (payday) during the two-week pay period; or
- **Schedule D**, from 12:01 a.m. Friday through 12:00 midnight Thursday, with the second Friday (mid payperiod) off during the two-week pay period;

An employee must work the scheduled number of hours each day as required by the fixed schedule. Alterations to the schedule should be minimal.

On the 8-hour Monday or Friday, an employee must work 4 hours before 12:00 noon and 4 hours after 12:00 noon in order to avoid creating overtime liability for the County. This is because, for compressed work schedules A and D, the 8-hour Monday or Friday is split between 2 workweeks and hours worked before 12:00 noon are in one workweek while the hours worked after 12:00 noon are in the next workweek. On compressed work schedules B and C, the hours on the 8-hour day are split between two different pay periods.

An employee must adhere to the schedule on the 8-hour day and must not change the 8-hour day to another day during the pay period. The employee must not work on the scheduled day off, and is not permitted to alter the scheduled day off to another day during the pay period.

If an employee uses annual or sick leave for the entire day on a day on which the employee is scheduled to work 9 hours, the employee must record 9 hours of annual or sick leave on the timesheet for that day. Similarly, an employee must record 8 hours of leave on the timesheet for a day on which the employee is scheduled to work 8 hours.

An employee must change to a compressed work schedule at the start of a pay period. Additionally, at least 2 weeks should be allowed for a transition schedule.

An employee who changes to a compressed work schedule no longer has a Sunday to Saturday workweek and must work a special transition work schedule during the first pay period of the compressed work schedule. See Section 15-4 of the Personnel Regulations for more information on transition schedules.

Working a compressed work schedule will not affect the employee's salary, benefits, job responsibilities, or eligibility for overtime compensation.



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The employee may terminate this agreement at any time and return to a traditional work schedule by giving notice to the supervisor. At least two weeks should be allowed for a transition schedule.

The supervisor may require the employee to modify the compressed work schedule temporarily to address operational requirements, workload fluctuations, or problems with the employee's performance or attendance. The supervisor must give the employee reasonable advance notice of any temporary schedule change.

A supervisor may require an employee to stop working a compressed work schedule if the supervisor determines that the standards for approving a compressed work schedule request stated above are not being met. The supervisor must give the employee notice and a reasonable opportunity to correct the problem.

A department director may:

- Exclude employees in an organizational unit, position, or class of positions from working compressed work schedules if the operation does not lend itself to such schedules
- Limit an employee to a particular compressed schedule with a specific day off if the department director determines that it is consistent with operational requirements, and
- Exclude an employee with a performance or attendance problem from working a compressed work schedule.

Approved:

_____	_____
Employee's signature	date
_____	_____
Supervisor's signature	date
_____	_____
Department Director's signature	date

Disapproved/Reason:

_____	_____
Supervisor's signature	date
_____	_____
Department Director's signature	date



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APPENDIX V

Merit System Protection Board Appeal Form

* indicates required form fields

- General Information

- First Name *

- Middle Name

- Last Name *

- Home Phone * ### - ### - ####

- Work Phone ### - ### - ####

- Email. *

- Mailing Address

- Street Address 1 *

- City *

- Street Address 2

- State

- Zip Code *

-



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- Are you a current county employee? *

Yes No

- Title/Position:

- Grade

- Name of the Department that took the action or made the decision you are appealing *

- Type of personnel action or decision you are appealing* (Please check the one that applies.) *

- Disciplinary Action

- Date you received the Department's Statement of Charges * MM / DD / YYYY

- Date you responded to the Statement of Charges * MM / DD / YYYY

- Date you received the Department's Notice of Action * MM / DD / YYYY

- Effective date of the Department action or decision * MM / DD / YYYY

- Denial Of Employment

- Date you received the Department's Notice of denial * MM / DD / YYYY

- CAO Denial of grievance



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- Date you received the Chief Administrative Officer(CAO)'s decision * MM / DD / YYYY

- Explain briefly why you think the Department was wrong in taking this action or making this decision *

- What action would you like the Board to take in this case (i.e, what is the relief/remedy you are requesting)? *

- Do you wish to designate an attorney to represent you in this proceeding before the Board? (You may designate a representative at any time. However, the processing of your appeal will not normally be delayed because of any difficulty you may have in obtaining a representative.) *

Yes No

- Representative's Information
- Representative's First Name *
- Middle Name



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• Last Name *

• Phone Number * ### - ### - ####

• Fax

• Email *

• Mailing Address

• Street Address 1 *

• City *

• Street Address 2

• State

• Zip Code *

• Certification

By clicking on this submit button you are certifying that all of the statements made in this form are true, complete and correct to the best of your knowledge and belief. Upon clicking the submit button, the MSPB will receive this appeal and a copy of this appeal will automatically be sent to the Office of the County Attorney, in accordance with Section 35-5(a) of the Montgomery County Personnel Regulations.

Submit