

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 42-10, Personnel – Retirement – Furlough – Imputed Compensation – Represented Employees

Management and Fiscal Policy Committee recommends (3-0) approval of Expedited Bill 42-10 as introduced.
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Expedited Bill 42-10, Personnel – Retirement – Furlough – Imputed Compensation – Represented Employees, sponsored by the Council President at the request of the County Executive, was introduced on July 20, 2010. A public hearing was held on September 21, 2010 and a Management and Fiscal Policy Committee meeting was held on October 4.

Background

Bill 42-10 would amend the definition of regular earnings and final earnings under the employees' retirement system and the retirement savings plan to include imputed compensation not received due to a furlough for calculating retirement contributions and benefits for represented employees.

Expedited Bill 18-10, Personnel – Retirement – Furlough – Imputed Compensation, enacted on May 20, 2010 and signed into law on May 29, 2010, provided this benefit for both unrepresented and represented employees who are furloughed. Article 50 of the recently negotiated out-of-cycle collective bargaining agreement between the Fraternal Order of Police (FOP) and the County Executive provides that if a police bargaining unit employee is required to take any furlough, regular earnings for retirement purposes must include any amount the employee would have received had the employee not been furloughed. This Bill would implement this provision of the agreement by clarifying current law to include represented employees.

Public Hearing

No one from the Executive Branch or the FOP testified at the September 21 public hearing. There were no speakers.

October 4 MFP Worksession

Stuart Weisberg, OHR, represented the Executive Branch. Marc Zifcak represented the FOP. Bob Drummer represented Council staff. The Committee (3-0) approved the Bill as introduced.

Issues

1. Is the Bill necessary to protect represented employees?

The personnel regulations, at COMCOR 33.07.01.01 §1-27, define a furlough as “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.” Article 50, Section C of the collective bargaining agreement with the FOP defines a furlough as “a permanent relief from duty and loss of pay for hours of services which would otherwise be performed by members of the bargaining unit and which is required by the chief administrative officer due to lack of funds or work.” Bill 18-10 referred to the definition of a furlough in the personnel regulations. Bill 42-10 would add a reference to the definition of furlough in a collective bargaining agreement.

Both Bill 18-10 and Bill 42-10 amend the definition of regular earnings in Code §33-35. This section provides a definition of “regular earnings” to calculate a pension benefit for both represented and unrepresented employees. It protects an employee’s pension benefit if the employee is furloughed. Bill 18-10 referred to the personnel regulations in order to define the term “furlough.” Although some of the words defining “furlough” in the personnel regulations and in the FOP Agreement are different, the general meaning of the term is the same. Therefore, Bill 42-10 is unnecessary to extend the benefits of Bill 18-10 to FOP members.

2. Can the bill be amended to eliminate references to both the personnel regulations and a collective bargaining agreement?

Placing a definition for “furlough” directly in §33-35 would eliminate the need to refer to either the personnel regulations or a collective bargaining agreement. It would also avoid the possibility that a collective bargaining agreement could indirectly amend the benefits of Bill 18-10 in the future by either contracting or expanding the definition of “furlough.” Staff amendment 1 at ©9 would accomplish this. OHR Director Joseph Adler opposed this staff amendment in a memorandum dated September 23. See ©10. **Committee recommendation 3-0):** enact the Bill as introduced.

This packet contains:

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Expedited Bill No. 42-10
Concerning: Personnel - Retirement -
Furlough - Imputed Compensation -
Represented Employees
Revised: July 12, 2010 Draft No. 1
Introduced: July 20, 2010
Expires: January 20, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) amend the definition of regular earnings and final earnings under the employees' retirement system and the retirement savings plan to include certain imputed compensation not received due to a furlough for certain represented employees; and
- (2) generally amend the law regarding the employees' retirement system and the retirement savings plan.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-35, 33-113 and 33-128

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

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

Sec. 1. Sections 33-35, 33-113 and 33-128 are amended as follows:

33-35. Definitions

In this Article, the following words and phrases have the following meanings:

* * *

Regular earnings: Except as otherwise provided, gross pay for actual hours worked, not including overtime. To calculate regular earnings for FY10 only, a Group A, E, or H member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.5% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. To calculate regular earnings, for FY10 only, for a Group F member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.25% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. To calculate regular earnings, for FY10 only, for a Group G member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. If a member is required to take any furlough, as defined in personnel regulations adopted under Section 33-7(b) or a collective bargaining agreement, regular earnings must include any amount the member would have received if the member had not been required to take any furlough. Regular earnings for an elected official is gross pay for services rendered to the County. Regular earnings must not exceed the limit under Internal Revenue Code Section 401(a)(17), as adjusted by the Internal Revenue Service. Gross pay must be used to determine benefits even if the County implements a

pick-up plan under Section 414 of the Internal Revenue Code. Gross pay must be used to determine benefits even if a member has agreed to a reduction in earnings under:

- (a) the County's deferred compensation plan under Section 457 of the Internal Revenue Code; or
- (b) any statutory fringe benefit program sponsored by the County and permitted by the Internal Revenue Code.

* * *

33-113. Definitions.

In this Division the following words and phrases have the following meanings:

* * *

- (p) Regular earnings means gross pay for actual hours worked, including paid leave, but not including overtime, without reduction for participant contributions that are picked up under Section 33-116(a), or contributions to any County deferred compensation plan or statutory fringe benefit program. If a participant is required to take any furlough, as defined in personnel regulations under Section 33-7(b) or a collective bargaining agreement, regular earnings must include any amount the participant would have received if the participant had not been required to take any furlough.

* * *

33-128. Definitions.

In this Division, the following words and phrases have the following meanings:

* * *

Final earnings means the annual average of the regular salary of an employee less any shift pay differential for the 18-month period immediately before the disability or any period of 18 consecutive months, whichever is greater. If a participant is required to take any furlough, as defined in personnel regulations adopted under 33-7(b) or a collective bargaining agreement, final earnings must include amounts the participant would have received if the participant had not been required to take any furlough.

* * *

Sec. 2. Expedited Effective Date. The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on July 1, 2010.

Approved:

Nancy Floreen, President, County Council	Date
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Approved:

Isiah Leggett, County Executive	Date
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This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council	Date
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LEGISLATIVE REQUEST REPORT

Expedited Bill 42-10

Personnel – Retirement – Furlough – Imputed Compensation – Represented Employees

DESCRIPTION: The requested legislation amends the definition of regular earnings and final earnings under the employees' retirement system and the retirement savings plan to include certain imputed compensation not received due to a furlough for represented employees.

PROBLEM: Article 50 of the recently negotiated collective bargaining agreement between the Fraternal Order of Police and the County provides that if a police bargaining unit employee is required to take any furlough, regular earnings for retirement purposes must include any amount the employee would have received had the employee not been furloughed.

GOALS AND OBJECTIVES: To implement a provision of the collective bargaining agreement with the FOP.

COORDINATION: Office of Human Resources

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Fiscal impact statement to be provided at a later date

EVALUATION: n/a



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 24, 2010

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Legislation to Ensure No Loss of Retirement Benefits When Sworn Police Officers Are Furloughed

2010 JUN 25 10:11:08

Montgomery County
Council

Article 50 of the recently negotiated collective bargaining agreement between the County and the Fraternal Order of Police, Montgomery County Lodge No. 35, INC (FOP) provides that regular earnings for retirement purposes must include any amount the employee would have received had the employee not been furloughed.

I am attaching for Council introduction a bill to implement this provision of the agreement. The bill would amend the definition of regular earnings under the employees' retirement system and the retirement savings plan to include compensation not received by sworn police officers due to any furlough.

This bill is similar in purpose to Bill 18-10, Personnel – Retirement – Furloughs – imputed compensation, which was enacted by the Council on May 20, 2010. That bill generally amended the definition of regular earnings under the employees' retirement system and the retirement savings plan to include compensation not received due to any furlough. Bill 18-10, however, defined the term "furlough" by reference to the Montgomery County Personnel Regulations (MCPR).

The provisions of the MCPR generally do not apply to FOP bargaining unit members unless specifically referenced in the collective bargaining agreement. The FOP was concerned that because Bill 18-10 defined a furlough by reference to the personnel regulations, it might be construed in the future as somehow binding the FOP to the furlough provisions of the MCPR as interpreted by the Merit System Protection Board rather than the collective bargaining agreement which is interpreted by an arbitrator. Therefore, the FOP sought this clarifying language during collective bargaining and the County agreed in Article 50 to amend the retirement law so as to eliminate any confusion in the future.

Attachments

cc: Joseph Adler, Director, Office of Human Resources
J. Thomas Manger, Police Chief



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
Acting County Attorney

MEMORANDUM

TO: Wes Girling

CC: Kathleen Boucher
Robert Drummer

THRU: Marc Hansen

FROM: Edward Lattner
Amy Moskowitz

DATE: August 30, 2010

RE: Bill 42-10

Our office was asked to comment on Bill 42-10. Bill 42-10 amends Sections 33-35, 33-113 and 33-128 of the County Code to amend the definition of regular earnings under the employees' retirement system and the retirement savings plan and disability plan (for retirement savings plan participants) to include imputed compensation not received due to a furlough for calculating retirement contributions and benefits. While Bill 18-10 also amended the same provisions of the County Code for the same purpose, that Bill defined furlough by referencing the personnel regulations whereas this Bill defines furlough by referencing the collective bargaining agreements. Although the Bill 42-10 purports to permit a collective bargaining agreement to define the term "furlough," this would not amount to an impermissible delegation of legislative authority because we do not interpret Bill 42-10 as delegating final legislative authority to define what constitutes a "furlough." The authority to define what constitutes a furlough remains with the County Council.

There are no legal issues associated with this Bill.



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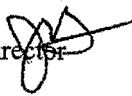
OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County ExecutiveJoseph F. Beach
Director

MEMORANDUM

September 13, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director 

SUBJECT: Expedited Bill 42-10, Personnel – Retirement – Furlough – Imputed Compensation – Represented Employees

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

Expedited Bill 42-10 amends the definition of regular earnings and final earnings under the employees' retirement system and the retirement savings plan to include certain imputed compensation not received due to a furlough for represented employees, as defined in the personnel regulations or in a collective bargaining agreement.

FISCAL AND ECONOMIC SUMMARY

The proposed legislation has neither a fiscal nor an economic impact. Expedited Bill 18-10, Personnel – Retirement – Furlough – Imputed Compensation, enacted on May 20, 2010, and signed into law on May 29, 2010, provided this benefit for both unrepresented and represented employees who are furloughed. The proposed legislation clarifies current law to include represented employees through reference to the definition of a furlough found in a collective bargaining agreement.

The following contributed to and concurred with this analysis: Lori O'Brien, Office of Management and Budget; David Platt, Department of Finance; and Belinda Fulco, Office of Human Resources.

JFB:lob

- c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Jennifer Barrett, Director, Department of Finance
Joseph Adler, Director, Office of Human Resources
Belinda Fulco, Office of Human Resources
David Platt, Department of Finance
Michael Coveyou, Department of Finance
Lori O'Brien, Office of Management and Budget
John Cuff, Office of Management and Budget

2010 SEP 14 PM 2:33

MONTGOMERY COUNTY
COUNCIL

Office of the Director

Bill 42-10 Staff Amendment 1

Add the following after line 5:

Furlough: A temporary, non-pay status and absence from normally scheduled duty required by the CAO due to lack of funds or work.

Amend lines 23-27 as follows:

calculating a member's contribution under Section 33-39. If a member is required to take any furlough, [[as defined in personnel regulations adopted under Section 33-7(b) or a collective bargaining agreement,]] regular earnings must include any amount the member would have received if the member had not been required to take any furlough. Regular earnings for an elected official is gross pay for services

Amend lines 43-52 as follows:

- (p) Regular earnings means gross pay for actual hours worked, including paid leave, but not including overtime, without reduction for participant contributions that are picked up under Section 33-116(a), or contributions to any County deferred compensation plan or statutory fringe benefit program. If a participant is required to take any furlough, as defined in [[personnel regulations under Section 33-7(b) or a collective bargaining agreement]] Section 33-35, regular earnings must include any amount the participant would have received if the participant had not been required to take any furlough.

Amend lines 58-64 as follows:

Final earnings means the annual average of the regular salary of an employee less any shift pay differential for the 18-month period immediately before the disability or any period of 18 consecutive months, whichever is greater. If a participant is required to take any furlough, as defined in [[personnel regulations adopted under 33-7(b) or a collective bargaining agreement]] Section 33-35, final earnings must include amounts the participant would have received if the participant had not been required to take any furlough.



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

September 23, 2010

TO: Bob Drummer
Montgomery County Council

FROM: Joseph Adler, Director
Office of Human Resources

SUBJECT: Comments on Bill 42-10

Thank you for the opportunity to comment on your proposed staff amendment to Bill 42-10, Personnel – Retirement – Furlough – Imputed Compensation – Represented Employees.

Upon careful review of this amendment, the County Executive will not support it for the following reasons:

- (1) it guts the negotiated agreement with the FOP;
- (2) it provides a definition of furlough that differs from that contained in Article 50, Section C of the FOP agreement;
- (3) it would arguably be a prohibited practice for the County Executive to support this staff amendment which is at odds with our negotiated agreement with the FOP;
- (4) the amendment provides a definition of furlough that differs somewhat from the definition contained in the Personnel Regulations (Section 1-27) that was approved by the Council earlier this year in ER 5-10AM. Therefore, we would need to amend the Personnel Regulations to make it congruent with the statutory definition.

cc: Walt Bader, FOP
OHR Labor Team