

Resolution No.: 17-935  
Introduced: November 12, 2013  
Adopted: November 12, 2013

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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By: County Council

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**SUBJECT:** Repeal of Executive Regulation 20-93, Montgomery County Fire and Rescue Corporation Personnel Regulations

**Background**

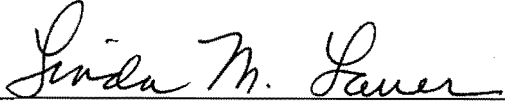
1. Executive Regulation 20-93 contained personnel regulations to cover mechanics and administrative employees of the 19 fire and rescue corporations (also known as Local Fire and Rescue Departments). These employees were paid with County tax funds but were not County merit employees. Beginning in July 2011, there are no more County funded or authorized personnel subject to these regulations. Executive Regulation 20-93 is now obsolete.
2. On October 10, 2013, the County Council received the County Executive's request to repeal Executive Regulation 20-93, Montgomery County Fire and Rescue Corporation Personnel Regulations. The Fire and Emergency Services Commission also approved the repeal of this regulation.
3. Section 2A-15(f)(1) of the County Code provides that to repeal an adopted regulation, an issuer must use the procedure under which the regulation was adopted. Executive Regulation 20-93 was adopted under Method (1). Under Method (1) the Council must approve a regulation before it is adopted, and there is no deadline for Council action

**Action**

The County Council for Montgomery County Maryland approves the following resolution:

Executive Regulation 20-93, Montgomery County Fire and Rescue Corporation Personnel Regulations, is repealed.

This is a correct copy of Council action.

  
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Linda M. Lauer, Clerk of the Council



# EXECUTIVE REGULATION

Montgomery County Fire and Rescue Commission

<b>FIRE AND RESCUE CORPORATION PERSONNEL REGULATIONS</b>	Number <b>20-93</b>
<b>MONTGOMERY COUNTY FIRE AND RESCUE COMMISSION</b>	Effective Date <b>November 12, 2013</b>

## REPEAL OF EXECUTIVE REGULATION #20-93

### MONTGOMERY COUNTY FIRE AND RESCUE COMMISSION REGULATION ON: ***FIRE AND RESCUE CORPORATION PERSONNEL REGULATIONS***

Issued by: Montgomery County Fire and Rescue Commission  
Executive Regulation #20-93

Authority: Montgomery County Code Section 21-4M  
Supersedes: Regulations #5-88, #7-89AMII, and #83-91  
Council Review: Method (1) under Code Section 2A-15  
Register Vol. 29, Issue 3

Effective Date: November 12, 2013

**SUMMARY:** Executive Regulation #20-93 is being repealed because it no longer applies to any personnel. In 2009, the County hired all of the mechanics who worked for the County's 19 fire and rescue corporations. In 2011, the County abolished all the positions of the corporations' administrative employees. These two actions left no personnel employed by the fire and rescue corporations, and no employees remain covered by these *Personnel Regulations*.

**DEADLINE :** Montgomery County *Register* Comment: March 31, 2012

**ADDRESS:** Beth Feldman, Montgomery County Fire and Rescue Service, 12<sup>th</sup> Floor,  
101 Monroe Street, Rockville, Maryland 20878.

**BACKGROUND:** This regulation amends the Montgomery County Personnel Regulations, 1986, which took effect for fire and rescue corporation employees on March 1, 1988, after the County Council disapproved the Fire and Rescue Commission's exceptions to the amendments to the County Personnel Regulations approved by County Council Resolution #10-2060.

#### [SECTION 1. GENERAL PROVISIONS.

##### 1-1. Authority.

(a) The Fire and Rescue Commission is authorized to adopt and amend the Personnel Regulations by Montgomery County Code, 1984, Section 21-4M.

MONTGOMERY COUNTY  
FIRE AND RESCUE CORPORATION  
PERSONNEL REGULATIONS

*Repealed Nov 12, 2013*  
ORIGINALLY ADOPTED 8/25/88,  
REPRINTED MARCH 10, 1997

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**MONTGOMERY COUNTY FIRE AND RESCUE CORPORATION  
PERSONNEL REGULATIONS, REPRINTED 1997**

**SECTION 1. GENERAL PROVISIONS.**

1-1. Authority.

(a) The Fire and Rescue Commission is authorized to adopt and amend the Personnel Regulations by Montgomery County Code, 1984, Section 21-4M.

(b) The designated department head for each corporation is the hiring authority and is responsible for the day to day supervision of its employees. Nothing in this regulation will diminish the corporations' authority or rights as the employer.

1-2. Applicability. The Personnel Regulations apply to all merit system positions and all employees of the independent Montgomery County fire and rescue corporations supported in whole or in part with Montgomery County general or special tax funds.

1-3. Interpretations.

(a) Responsibility for Issuing Interpretations. The Chief Administrative Officer is responsible for rendering interpretations of the Personnel Regulations. Interpretations should be issued in writing with copies to interested County departments, agencies, offices, employees, or employee groups and fire and rescue corporations.

(b) Request Procedure. Any employee or corporation may request a written opinion from the Chief Administrative Officer concerning questions arising under the Personnel Regulations. The request must be submitted to the Chief Administrative Officer in writing identifying the relevant facts, the specific questions to be addressed and the Personnel Regulation sections for which the interpretation is requested.

(c) Response From Chief Administrative Officer. The Chief Administrative Officer should respond in writing to a request for an interpretation within 30 days.

(d) An interpretation by the Chief Administrative Officer provides guidance for the administration of these Regulations and is not subject to appeal. Actions taken based on the interpretation may be appealed if otherwise provided in these Regulations.

(e) The Fire and Rescue Commission may request a written opinion from the Chief Administrative Officer concerning questions arising under the personnel regulations. The request should be submitted to the Chief

Administrative Officer in writing identifying the relevant facts, the specific questions to be addressed and the personnel regulation sections for which the interpretation is requested.

1-4. Responsibility for Administration of the Merit System.

- (a) Responsibility of the Chief Administrative Officer. The Chief Administrative Officer under the direction of the County Executive and subject to merit system laws and regulations is responsible for administration of the County's merit system and the fire and rescue service merit system. The Chief Administrative Officer should:
- (1) Develop administrative procedures and rules necessary to carry out the provisions of the Personnel Regulations;
  - (2) Interpret and enforce the administrative procedures and rules;
  - (3) Direct and supervise all administrative activities involving County personnel management, including development of a personnel staff to advise, assist and train managers and supervisors to carry out their personnel management responsibilities;
  - (4) Maintain a classification and compensation plan;
  - (5) Supervise the operation of recruitment, employment, promotion and equal employment opportunity programs;
  - (6) Maintain up-to-date personnel records, and a personnel information and planning system;
  - (7) Establish training, safety, health, counseling, and general employee welfare programs to improve employee effectiveness;
  - (8) Advise management on personnel requirements and utilization, labor relations, employee appeals, employee grievances, and other personnel matters; and
  - (9) Evaluate all County fire and rescue service personnel programs.
- (b) Delegation of Authority. The Chief Administrative Officer and the Fire and Rescue Commission may designate a representative to implement any or all of the provisions of the merit system law or the Personnel Regulations. The Chief Administrative Officer or the Fire and Rescue Commission should make a delegation of authority in writing. The delegation of authority may be withdrawn by the Chief Administrative Officer or Fire and Rescue Commission at any time.

1-5. Employment of Relatives.

- (a) A fire and rescue corporation employee or official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion or advancement, in or to a fire and rescue service merit system position over which the fire and rescue corporation employee or official exercises jurisdiction or control, any individual related to the fire and rescue corporation employee by blood, marriage or adoption.
- (b) An individual may not be appointed to, employed in, promoted to, or advanced in or to a merit system position if such employment, appointment, promotion or advancement has been advocated by a fire and rescue corporation employee or official exercising jurisdiction or control over such position who is related to the individual by blood, marriage or adoption.

1-6. Political Activity of County Employees.

- (a) No fire and rescue corporation official or employee of Montgomery County shall be prohibited from participating in politics or political campaigns.
- (b) No employee shall be obligated to contribute to an election campaign or to render political service.

1-7. Prohibition Against Private Use of Public Employees. No member of the County Council, County Executive, or any officer or employee of the County or any fire and rescue corporation officer or employee shall detail or cause any officer or employee of the County or corporation to do or perform a service or work outside of the officer's or employee's public office or employment.

1-8. Prohibition Against Additional Compensation. No officer or employee of a fire and rescue corporation whose salary is fixed, in whole or in part, by the Montgomery County Charter, the laws of Montgomery County, or the Fire and Rescue Commission shall be entitled, directly or indirectly, to any other salary, expenses or compensation from Montgomery County for performance of public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law.

1-9. Work During Official Hours. All fire and rescue service officials and employees who receive compensation paid in whole or in part from County funds shall devote their entire time during their official working hours to the performance of their official duties.

1-10. Corrupt Practices. No person whose salary or expenses are paid in whole or in part from County funds shall invite, accept, offer, give or promise to give any money or any valuable thing in consideration of appointment or employment by the County or the fire and rescue service. Any person violating this Section shall be removed from any public office or employment held and be subject to such other penalties as may be prescribed by law.

1-11. Prohibited Activities.

- (a) No person whose compensation is paid in whole or in part from the County shall:
  - (1) Act as an attorney, agent, broker or employee for, or receive compensation or anything of value from, any person, firm or corporation transacting business of any kind with, or engaging in litigation against, the County or the fire and rescue service or any instrumentality thereof.
  - (2) Represent or serve any client in any manner if that client's interest is adverse to that of the County, or the fire and rescue service or in conflict with the person's fire and rescue service duties.
- (b) The Montgomery County Council has established ethical standards and procedures for the implementation of this Section and for justified waivers from the provisions of this Section when such waivers are deemed to be in the public interest of the County after full public disclosure of all pertinent facts. The provisions for obtaining waivers are contained in Montgomery County Code, 1984, Chapter 19A.
- (c) Other applicable ethics provisions are contained in Montgomery County Code, 1984, Chapter 19A.

1-12. Merit System Protection Board.

- (a) Duties. The duties of the Merit System Protection Board are contained in:
  - (1) Montgomery County Charter, Section 404, "Duties of the Merit System Protection Board";
  - (2) Montgomery County Code, 1984, Section 33-7, "County Executive and Merit System Protection Board Responsibilities" and
  - (3) Montgomery County Code, Chapter 21, Fire and Rescue Services.
- (b) Audits, Investigations and Inquiries. The Merit System Protection Board shall have the responsibility and authority to conduct audits, investigations or inquiries to assure that administration of the merit system is in compliance with the merit system law and these Regulations and in this capacity to administer oaths, require the attendance of witnesses and the production of records and other material in connection with said investigation, audit or inquiry. The results of each audit, investigation or inquiry shall be transmitted to the County Council, County Executive, Chief Administrative Officer, the Fire and Rescue Commission, and the fire and rescue

corporations with appropriate recommendations for corrective action necessary.

(c) Staff. The Merit System Protection Board shall be provided with adequate staff and facilities to perform its responsibilities subject to budgetary approval of the County Council.

(d) Minutes of Meetings.

(1) The Merit System Protection Board must maintain minutes of the Board meetings consistent with State law.

(2) Upon review and approval of the minutes by the Merit System Protection Board, the minutes become public documents consistent with State law.

(3) Upon approval of the minutes of the Merit System Protection Board, copies will be made available upon request.

(e) Due Process Protections in Investigatory Proceedings. In any investigatory proceeding authorized or conducted by the Merit System Protection Board, the Board must provide the following due process protections.

(1) Prior to initiating an investigation the Board must prepare a memorandum stating when the investigation commences, the scope of the investigation and the legal authority for the investigation.

(2) Any request that an employee participate as a witness, custodian of records or as a possible subject in an investigation must be made in writing and delivered to the employee at least 5 days prior to the requested participation. The request must include the following:

a. The date on which the request is issued by the Merit System Protection Board;

b. The name of the employee requested to participate in the investigation;

c. Specify whether the employee is requested to participate as a witness, custodian of governmental records, or as a possible subject of the investigation;

d. Contain the name of the investigative authority and the name of the individual conducting the investigation;

e. The law or regulation authorizing the investigation and the request for participation;

- f. A statement of the subject areas to be covered in the investigation. If the employee is a possible subject of the investigation, include a clear and detailed statement of all allegations of misconduct;
  - g. Notice that the employee has the right to be assisted by legal counsel; and
  - h. The signature of the chairperson of the Merit System Protection Board certifying that the Board has officially initiated an investigative proceeding and requested the participation of the employee.
- (3) Provide the employee with a copy of:
- a. Any transcript or recording made of any questions asked the employee and the employee's response;
  - b. A complete set of notes of all questions asked the employee and of all responses made by the employee, if there is no verbatim transcript or recording;
  - c. Any documents that the employee has been asked to identify or review in responding to the investigative proceeding; and
  - d. All information within 30 days following the employee's participation in the investigative proceeding.
- (4) Within 90 days following the employee's participation in the investigative proceeding, the Board must serve upon the employee written notice of any intent to take action that could adversely affect the terms and conditions of that person's employment.
- (5) Upon conclusion of the investigation, the Merit System Protection Board must deliver to each employee requested to participate in the investigatory proceeding a statement that the investigation has concluded, and a complete description of any actions taken or to be taken that could adversely affect the employee's employment.
- (6) Investigative proceedings are confidential. Information about the proceedings may be disclosed only to the extent necessary to complete the investigation.

1-13. Limitations on Actions and Relief.

- (a) Any actions instituted or filed by an employee under these Regulations must be filed within 45 days from the date the employee knew or should have



known of the occurrence upon which the action is based, subject to the provisions of (b).

- (b) If another provision of the Personnel Regulations provides a shorter period of time within which an action must be commenced, the shorter period of time is controlling.
- (c) Any remedies for actions instituted by an employee under the Personnel Regulations may not extend earlier than one year from the date of filing the action.

1-14. Computation of Time. In computing any period of time under the Personnel Regulations:

- (a) The day of the act or event after which the designated period of time begins to run is not included;
- (b) If the period of time allowed is more than 7 days, intermediate Saturdays, Sundays and legal holidays are counted;
- (c) If the period of time allowed is 7 days or less, intermediate Saturdays, Sundays and legal holidays are not counted;
- (d) The last day of the period so computed is included unless:
  - (1) It is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday; or
  - (2) The act to be done is the filing of some paper with an office of the Montgomery County government and the office on the last day of the period is not open, or is closed for a part of a day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, legal holiday or a day on which the office is not open during its regular hours.
- (e) For operational firefighters, where the act to be done is the filing of some paper with an office of the Montgomery County government, the period of time shall be based on calendar days and not work days as may be otherwise specified in these Regulations.

1-15. Shortening or Extending Time Requirements. When the Personnel Regulations or an administrative procedure requires or allows an act to be done within a specific time period, the Chief Administrative Officer, upon receipt of a written request, may with notice to the Fire and Rescue Commission:

- (a) Shorten the period of time remaining with the consent of both parties in an emergency situation;
- (b) Extend the period if the written request is received by the Chief Administrative Officer before the expiration of the period originally established by Personnel Regulation, administrative procedure or a previous authorization from the Chief Administrative Officer; or
- (c) Upon receipt of a written request within 30 days after the expiration of the specified time period, permit the action to be taken if the failure to act within the specified time period was the result of extenuating circumstances established by the person requesting the extension and the interest of justice is served by an extension.
- (d) The grant or denial of a request under this Section is solely within the discretion of the Fire and Rescue Commission, whose decision is final.

1-16. Citation. The Personnel Regulations should be cited as "Montgomery County Fire and Rescue Corporation Personnel Regulations, 1997, Section \_\_\_\_" or "MCFRCPR, 1997, Section \_\_\_\_."

1-17. Severability. If a court of final appeal holds that part of the Personnel Regulations are invalid, the invalidity does not affect other parts of the Regulations.

1-18. Conflict Between a Collective Bargaining Agreement and the Personnel Regulations. In the event of a conflict between any provision in a collective bargaining agreement between Montgomery County and a certified representative and a provision in these Regulations, the conflict shall be governed by the provisions of Montgomery County Code section 33-85 and 33-112, as applicable.

1-19. Adjustment of Leave Balances for Operational Firefighters. In the event that an operational firefighter is no longer assigned to a work schedule of 2,496 hours per work year, the leave balance at the time of the reassignment shall be reduced by a factor of 1.2 in order to be compatible with leave usage requirements of newly assigned hours of work. In the event an operational firefighter is transferred to a work schedule of 2,496 hours per work year, the leave balance at the time of the reassignment shall be increased by a factor of 1.2 in order to be compatible with leave usage requirements of newly assigned hours of work.

## **SECTION 2. RECORDS.**

2-1. Establishment. There must be established and maintained such personnel records as the Chief Administrative Officer deems necessary for the administration of the merit system and to meet legal requirements. These records usually include applicant files, examination records, classification and pay files, leave records, EEO and similar data files, and employee files.

2-2. Ownership of Records. All personnel records on employees of the fire and rescue corporations covered under the merit system are confidential and property of the corporation. All records and materials relating to the administration of the fire and rescue corporation merit system are property of the County. The decision of the Chief Administrative Officer relating to the use, maintenance and disposition of such records and materials is final, subject to relevant State and Federal laws and requirements.

2-3. Time Limits Records Are to Be Kept. Except for employee files, which must be permanent records, the Chief Administrative Officer must determine the length of time that personnel records must be retained, which must be in accordance with appropriate State and Federal laws and requirements.

2-4. Employee Records.

(a) Official Records. Designated officials must retain and maintain the official record for each employee which must be limited to:

- (1) Application for employment or promotion which resulted in appointment or promotion;
- (2) Employment history, including personnel action documents affecting appointment, promotion, transfer, salary change, etc.;
- (3) Copy of disciplinary actions;
- (4) Employee emergency information;
- (5) Payroll withholding documents;
- (6) Insurance and retirement records;
- (7) Education and training records;
- (8) Performance evaluations - limited to last 5 years only;
- (9) Results of tests and examinations successfully completed - limited to 2 years from date of test or examination;
- (10) Copy of commendations; and
- (11) Copy of reprimands - limited to one year only.

(b) Operating Record. The Montgomery County Government may maintain employee files containing documents necessary for program level operations which must be limited to:

- (1) Home address and phone number;

- (2) Present job information, i.e., description, location, etc.;
  - (3) Employee emergency information;
  - (4) Data necessary to verify payroll;
  - (5) Copy of leave record - limited to 5 years only;
  - (6) Copy of periodic performance evaluations including supporting documentation limited to 5 years only;
  - (7) Copy of commendations, reprimands and disciplinary actions - limited to 5 years only;
  - (8) Documents from doctors certifying appointment, light duty or return to work.
  - (9) Insurance and retirement records.
  - (10) Other documents as required by law.
- (c) Medical records. Designated officials in the Occupational Medical Section must maintain the official medical records of each employee, which must be limited to:
- (1) County medical examination records;
  - (2) Records obtained or received from any physician in reference to the fitness of an employee or applicant;
  - (3) Any medical waiver or release signed by the employee;
  - (4) Requests to the Occupational Medical Section, by a supervisor or the appointing authority of the employee for any additional or special medical examination and the record of the actions taken by the Occupational Medical Section;
  - (5) Results of medical tests, examinations or procedures including psychological examinations or reports; and
  - (6) Information provided by the employee or designee which relates to the health or health care of the employee.
- (d) Maintenance. Employee records must be reviewed periodically to assure compliance with Subsections (a), (b), and (c) above, and all documents removed must be destroyed.

(e) Access to Records. Personnel records are confidential and available on a "need to know" basis only to:

- (1) The employee's supervisor;
- (2) The Chief Administrative Officer or designee;
- (3) The Personnel Director or a designee;
- (4) Member of the Merit System Protection Board or a designee;
- (5) Personnel Office staff;
- (6) The appointing authority considering the employee or applicant for appointment, transfer or promotion;
- (7) The Fire and Rescue Commission

Except for verification of employment and current salary, requests for information concerning an employee from other than the above-specified individuals may only be considered when accompanied by a signed authorization from the employee. The requester is required to state the reason for the review and identify the material desired. The Chief Administrative Officer is responsible for establishing administrative procedures to be followed in reviewing personnel records.

(f) Rights of Employee. An employee or designee of the employee has the right to review the entire employee file(s) for that employee upon request and at a time and place mutually convenient to the custodian. An employee must be provided a copy of any document that is to be placed in the file and an opportunity to submit a rebuttal to be included in the record. The custodian of medical records may determine that certain medical information will only be released through the physician or attorney of the employee upon receipt of a signed release from the employee.

(g) Supervisors may maintain informal notes regarding the performance or other information about employees under their supervision. Such notes are not considered official employee records and are not subject to review by the employee or others.

### **SECTION 3. DEFINITIONS.**

3-1. Corporation. The individual fire department or rescue squad chartered to provide fire and/or rescue service in Montgomery County.

- 3-2. Department Head. The designated administrative head of each corporation; this may be the president, the fire chief, the board of directors, the personnel committee of the corporation, or any other person or body designated by the corporation.
- 3-3. Due Process. The right of a fire and rescue corporation employee to be afforded those procedural and substantive protections established by applicable provisions of the Charter, merit system law, regulations or administrative procedures in any matter affecting terms or conditions of employment.
- 3-4. Immediate Family. The term "immediate family" as used in these Regulations, includes only the employee's:
- (a) Parent;
  - (b) Stepparent;
  - (c) Spouse;
  - (d) Brother or sister;
  - (e) Child or stepchild;
  - (f) Spouse's parent;
  - (g) Grandparent;
  - (h) Spouse's grandparent;
  - (i) Legal guardian; or
  - (j) Any other relative living with the employee at time of death.
  - (k) In extenuating circumstances, the Chief Administrative Officer may approve administrative leave for other relatives.
- 3-5. Merit System Employees. All persons who are employed by a corporation in full-time or part-time year-round positions paid in full or in part with tax funds and who have satisfactorily completed the required probationary period.
- 3-6. Merit System Positions. All positions in the fire and rescue corporations paid in full or in part by tax funds and approved by the Fire and Rescue Commission.
- 3-7. Fire and Rescue Services. When used in these regulations means the collective activity of the fire and rescue corporations. Not to be confused with the Montgomery County Department of Fire and Rescue Services.
- 3-8. Full-time Employee. Incumbent of a full-time position.

- 3-9. Full-time Position. A position that requires employment for 40 or more regularly scheduled hours per week on a continuing year-round basis including:
- (a) A position created for a special term, project, or program;
  - (b) A position which is funded in whole or in part by federal, state or private funds or organizations; and,
  - (c) A State of Maryland merit system position which is also classified under the County's merit system.

3-10. Part-Time Employee. Incumbent of a part-time position.

3-11. Part-Time Position. A position that requires employment for 20 or more regularly scheduled hours per week on a continuing year-round basis, including:

- (a) A position created for a special term, project or program;
- (b) A position which is funded in whole or in part by federal or state funds or private funds or organizations; and
- (c) A State of Maryland merit system position which is also classified under the County's merit system.

Other positions having regular work requirements of 10 to 20 hours per week on a continuing year-round basis may be designated as part-time positions if recommended by the Chief Administrative Officer and approved by the Merit System Protection Board.

3-12. Temporary Employee. Incumbent of a temporary position.

3-13. Temporary Position. A position required for a specific task for a period not to exceed 12 months or a position that is used intermittently on an as-needed basis (seasonal, substitute, etc.). The Fire and Rescue Commission may authorize the continuance of a temporary position in excess of 12 months. Temporary positions must not be used in lieu of full-time or part-time positions as a means to circumvent the requirement to provide benefits to which merit system employees are entitled.

3-14. Operational Firefighter. A uniformed employee of the Department of Fire and Rescue Services who occupies a full- or part-time merit system position as designated by the Chief Administrative Officer.

#### **SECTION 4. EQUAL EMPLOYMENT OPPORTUNITY.**

4-1. Policy. It is the intent of the County and the Fire and Rescue Commission that applicants for employment and all employees must receive fair and equal treatment and that the fire and rescue corporations must strive for hiring or promoting the best qualified

individuals available in the labor market. Therefore, it shall be the policy of the Fire and Rescue Commission to conduct all personnel activities in a manner that will assure equal employment opportunity for all persons on the basis of merit, without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, handicapping condition, or other non-merit factor. This policy must include all personnel practices related to the employment process, promotion, demotion, transfer, layoff, termination, compensation, benefits, training and general treatment of employees. This policy should not be interpreted as lowering standards for employment or promotion. Supervisors must be trained to enable them to discharge their responsibilities to assure compliance with the County's stated policy, and employees are to be informed of their right to equal employment opportunities.

4-2. Appeals. If an individual believes the County, a corporation or the Fire and Rescue Commission has violated the policy with respect to race, color, religion, national origin, sex, marital status, age or handicapping condition, an appeal may be filed with the County's Human Relations Commission in accordance with the procedures established in Chapter 27, "Human Relations and Civil Liberties," of the Montgomery County Code 1984, as amended. Alleged violations involving political affiliation and other non-merit factors must be filed with the Merit System Protection Board in accordance with Section 30 of these Regulations.

4-3. Affirmative Action Program. The Chief Administrative Officer is responsible for the development and administration of an effective affirmative action program to aid in achieving the full realization of equal employment opportunity. Such program must include:

- (a) A statement of purpose;
- (b) Procedure for determining or identifying problem areas and factors to be used in determining whether minorities, females or handicapped persons are under utilized in an occupational grouping;
- (c) Procedure and responsibility for developing action-oriented programs designed to eliminate problems, to assure equal employment opportunity for all members of the available labor pool, and to foster upward mobility for present employees;
- (d) Criteria for establishing goals and timetables; and
- (e) Designation of responsibility for dissemination, implementation, compliance and audit.

## **SECTION 5. APPLICATION AND EXAMINATION PROCEDURES.**

5-1. Recruitment and Examination Program. The Chief Administrative Officer must administer a recruiting and examination program for all merit system positions. The Chief Administrative Officer may issue recruitment and examination procedures as necessary.



5-2. **Announcement.** Announcement of employment opportunities must receive appropriate distribution to enable and encourage qualified candidates to apply. Announcements should be open for at least 2 weeks. In unusual circumstances, the Chief Administrative Officer may shorten the 2-week announcement period. Announcements must contain specific information about examinations, minimum qualifications, duties and other relevant job factors.

5-3. **Application.** The Chief Administrative Officer may establish a reasonable deadline for receipt of applications for announced vacancies and provide for open continuous examinations for entry level positions. Applications may be accepted at any time for future consideration when vacancies occur, but must not be considered if submitted after the announced deadline for a vacancy.

5-4. **Review of Applicants.** Each application submitted for an examination must be reviewed and evaluated to determine if the applicant is eligible to compete in the examination. Applicants may be disqualified from further consideration or competition for the following reasons:

- (a) Lack of required education, experience, license or certification;
- (b) Willful and material falsification of application;
- (c) Prior separation from the County service for cause, or not in good standing;
- (d) Evidence of recent and relevant unsatisfactory work performance;
- (e) Evidence of a job-related factor that would hinder or prohibit satisfactory performance of the duties and responsibilities assigned to the position; or
- (f) Failure to comply with established procedures or reference and investigatory requirements.

5-5. **References and Investigations.** The Chief Administrative Officer may establish reference and investigation requirements deemed necessary to verify the relevant prior work performance, experience and job-related personal characteristics of each applicant. All applicants must comply with established reference and investigatory requirements in order to be considered for a vacancy.

5-6. **Examinations.** Examinations must be given for the purpose of establishing eligible lists for employment and promotion. Examinations may be written, oral, a demonstration of physical ability or skill, an evaluation of experience and/or education (or a combination thereof), or any other professionally acceptable selection instrument which fairly appraises and determines the qualifications, fitness and ability of competitors. Such examinations must:

- (a) Be based on a written plan for the examination;

- (b) Result from a job analysis documenting required skills and knowledge;
- (c) Be administered in good faith and without discrimination; and
- (d) Be properly and accurately evaluated.

5-7. Noncompetitive Examinations. The Chief Administrative Officer may authorize the establishment of eligible lists on a noncompetitive basis for positions involving unskilled manual labor and for other classes of work for which competitive examination is impractical.

5-8. Invalidation of Examinations. An examination must be invalidated in whole or in part when the Chief Administrative Officer determines that there has been any impropriety in the examination process or that the examination was not job related or was discriminatory.

5-9. Rating of Examinations and Eligible Lists. The Chief Administrative Officer must develop procedures for scoring and rating of examinations and the establishment of eligible lists for each position. These procedures must be announced prior to the examination. Such scoring procedures may provide for the granting of special credits to veterans of the United States armed forces (as provided in Article 96 1/2, Section 48, Maryland Annotated Code).

5-10. Eligible Lists. Upon completion of the examination process, the Personnel Office must certify the names of all individuals found qualified for the vacancy for placement on the eligible list. The names of qualified applicants must be placed on an eligible list and grouped in a manner which will accurately reflect the individual relative standings. The Chief Administrative Officer must determine the length of time an eligible list will be in effect and may extend or abolish such list at any time for good cause shown. If an eligible list is abolished prior to an announced expiration date, all individuals whose names appear on the list must be notified in writing of the effective date and reasons for such action.

5-11. Special Eligible List. The Chief Administrative Officer may authorize the establishment of a limited or priority eligible list for the purpose of meeting affirmative action goals or facilitating the placement of employees subject to layoff or unable to perform their present job because of a disability or injury.

5-12. Medical Requirements for Employees/Applicants. Each individual must be of sufficient good health to perform assigned duties and responsibilities. To determine this, the Chief Administrative Officer must establish a system of medical examinations and standards for employees/applicants with provisions for reasonable accommodation of the handicapped.

After a medical examination, a written report will be prepared, containing the physician's findings and evaluation as to the individual's physical fitness for the position. This medical report must be considered part of the employee's official medical record of the County. The refusal of an employee/applicant to take the examination or to provide medical records may be grounds for immediate termination of employment or processing of an application.

Whenever an employee/applicant is found to have a defect or condition that would impair satisfactory performance of duties, or may jeopardize the health or safety of the employee/applicant or others, the Chief Administrative Officer may declare the applicant ineligible for appointment. In the case of an employee, the Chief Administrative Officer may remove that individual from the position and temporarily place the employee on limited duty or transfer the employee to a position where the individual may be productively employed, or take another personnel action deemed appropriate and reasonable.

Prior to making a decision or taking an action based on the medical findings, the Chief Administrative Officer must determine if the problem is correctable and whether or not reasonable accommodation could be made in accordance with the County's policy on employment of the handicapped or disabled.

## **SECTION 6. APPOINTMENTS AND PROBATIONARY PERIOD.**

6-1. Appointment. An appointment is the assignment of an eligible applicant to a merit system position by a department head.

6-2. Types of Appointments. Appointments may be full-time, part-time, or temporary.

6-3. Selection Procedures. When a position is to be filled, the appointing authority must be provided an eligible list that has been certified by the Personnel Office. Subject to affirmative action objectives, the appointing authority is free to choose any individual from the highest rating category. However, if an individual from a lower rating category is selected, the appointing authority must submit written justification for such action, which must then be approved by the Chief Administrative Officer and made a part of the selection record.

6-4. Probationary Period.

- (a) Purpose. Each person appointed or promoted to a full-time or part-time merit system position must serve a probationary period as a continuation of the examination process to provide an opportunity to demonstrate proper attitude and ability for the position for which employed. Temporary employees do not serve a probationary period since such appointment is for a specific task or period.
- (b) Length and Effective Date. The length of probationary periods must be determined by the Chief Administrative Officer and must not be less than 3 months nor more than 12 months, except for police officers and deputy sheriffs whose probationary period continues for 12 months on attainment of sworn status. The probationary period for police officers and deputy sheriffs will not exceed 18 months from the date of hire except in extraordinary circumstances. Extraordinary circumstances may include, but will not be limited to circumstances where the probationary employee cannot complete the required probationary period within 18 months because of a medical condition which affects the employee's fitness for duty. The Personnel

Director must notify the department head 30 days prior to the employee's probationary period ending.

- (c) Extension. An appointing authority may extend the probationary period for each person appointed or promoted to a full-time or part-time merit system position, up to a maximum of 50 percent of the original length of time, to provide a marginal employee an opportunity to improve, if deemed reasonable and appropriate. The Chief Administrative Officer may approve additional extensions not to exceed a total of 6 months where the nature of the work has prevented the supervisor from observing and evaluating the critical tasks to be performed by the employee.
- (d) Evaluation and Counseling. Supervisors must observe the employee's work performance and counsel a probationary employee whose work performance is marginal or inadequate.
- (e) Termination During Probation of Employees without Merit System Status. Inadequate performance after counseling is justification for termination. A probationary employee must be notified in writing at least 15 days before the effective date of such action. Immediate termination is warranted in cases of gross misconduct which may include a violation of any provision of the County Charter, County laws, ordinances, procedures, regulations, state or federal laws, or conviction for a criminal offense.
- (f) Reassignment During Probation. Inadequate performance during probation and after counseling is justification for reassignment of a merit system employee who has been promoted. The department taking the removal action is responsible for placing the employee. The employee must be reassigned to a grade level not less than that from which the employee was promoted. The employee must be notified in writing at least 15 days before the effective date of the action. Reassignment of an employee under this Section must not cause the separation or reduction in grade of any other employee.
- (g) Appeal of reassignment during probation. A merit system employee who has been promoted and is subsequently reassigned, during or at the conclusion of the promotional probationary period, to the former grade held prior to the promotion may appeal pursuant to Section 29 of these Regulations.
- (h) Merit System Status. A probationary employee becomes eligible for merit system status after satisfactory completion of the required probationary period and is then entitled to certain rights and benefits as provided for in these Regulations. Merit system status is not automatic on expiration of the probationary period but is attained only when granted by the Chief Administrative Officer or designee. If, at the expiration of the probationary period or any extension, an employee has not been terminated, reassigned or

granted merit system status, the probationary period is automatically extended and the employee must be placed on administrative leave until an action is taken. Employees subsequently terminated or reassigned must be given 15 days written notice of the action.

6-5. **Noncompetitive Reappointment.** A former County merit system employee, a former employee of a Montgomery County fire and rescue corporation in the firefighter/rescuer occupational series, or an employee demoted as a result of a reduction-in-force, disability or reclassification may be reappointed or promoted noncompetitively provided such action is approved by the Chief Administrative Officer and:

- (a) Reappointment or promotion would be to a position at the same or lesser grade level held at the time of separation or demotion;
- (b) The individual fully meets the requirements for the subject position;
- (c) The individual successfully passes a physical examination, if required, for the position;
- (d) The individual had successfully completed the required probationary period prior to separation;
- (e) The individual had resigned in good standing and is eligible for reemployment; and
- (f) The individual had applied for reappointment or promotion within 5 years from the date of separation, demotion or retirement, or if the individual is a non-merit employee who had been a former merit system employee, had applied for reappointment within 4 years of acceptance of the non-merit position and without a break in County service.

Noncompetitive reappointment is the prerogative of management and not the right or entitlement of an employee or a former employee. Such an appointment may not be approved if the Chief Administrative Officer determines that it would subvert, violate or adversely affect established affirmative action objectives.

## **SECTION 7. CLASSIFICATION.**

7-1. **General Policy.** It is the policy of the Montgomery County government and the Fire and Rescue Commission to classify positions on the basis of assigned duties and responsibilities and minimum qualifications required to assure that positions are allocated to classes which are at comparable grade level assignments for work of substantially equal value performed under essentially similar conditions. In determining grade level assignments for classes, particular care must be taken to assure clear and concise distinctions between levels of required knowledges, skills, physical and mental effort, and responsibilities in the work performed. The prevailing salary rates for similar occupational classes in both the public and private sectors may be considered to assure comparability and competitiveness in the labor

market. Each occupational class in the classification plan will be reviewed as necessary to ensure proper grade assignment.

7-2. Definitions.

- (a) Allocation/Reallocation. The assignment/reassignment of a class to a different pay grade on an approved salary schedule.
- (b) Classification. The allocation of positions to occupational classes and the assignment of each class in the classification plan to a pay grade on an approved salary schedule.
- (c) Classification Plan. The classification plan consists of:
  - (1) The official list of occupational classes;
  - (2) The assigned grade of each class;
  - (3) The class specification for each class;
  - (4) The arrangement of classes into occupational series and groups; and
  - (5) Approved salary schedules.
- (d) Class Specification. The written description of an occupational class that contains:
  - (1) The class title;
  - (2) A definition of the class describing the scope of assigned duties and responsibilities;
  - (3) Supervisory relationships;
  - (4) Illustrative examples of duties normally assigned;
  - (5) Minimum qualification requirements (including the education, experience, knowledges, skills, and abilities required to perform assigned duties);
  - (6) Medical protocol; and
  - (7) The date approved/revised.
- (e) Class Title. The official name assigned to each occupational class in the classification plan. A position may be assigned an unofficial "working title" to reflect a specific area of responsibility.

- (f) Salary Schedule. A series of grades and the salary rates and ranges for each grade. The Chief Administrative Officer may recommend to the County Council amendments to a salary schedule. The Council must approve any salary schedule amendments.
- (g) Occupational Class. One or more positions sufficiently similar as to:
  - (1) Type of work performed;
  - (2) Difficulty and complexity of duties;
  - (3) Level of responsibility; and,
  - (4) Knowledges, skills, and abilities required to warrant the same classification assignment.
- (h) Occupational Group. One or more related occupational series.
- (i) Occupational Series. Two or more occupational classes similar in type of work performed but differing in the level of difficulty and responsibility. The different levels usually constitute the normal lines of promotion.
- (j) Position. A grouping of duties and responsibilities assigned by an appointing authority to be performed by an individual. A position may be either full-time, part-time or temporary and may be occupied or vacant.
- (k) Position Description. A written list of duties and responsibilities assigned to a position.
- (l) Job Evaluation. A systematic procedure for analyzing and hierarchically ordering occupational classes based on common factors for the purpose of allocating classes to grades on an approved salary schedule.
- (m) Reclassification. The reassignment of a position to a different class.

7-3. Classification Plan.

- (a) Responsibility. The Chief Administrative Officer is responsible for the development, maintenance, and administration of the fire and rescue service classification plan within the guidelines established by law and these Personnel Regulations.
- (b) Merit System Protection Board. The Board may conduct a review or audit of classification actions as it determines necessary to assure the accuracy and integrity of the system. Comments will be obtained from the County Council and the Chief Administrative Officer. At least once every 5 years, the Board shall have an impartial, objective audit conducted of the entire

Classification and Compensation Plan and procedures by a specialist in the field who is independent of the County Government. The results of such an audit and whatever recommendations the Board deems appropriate shall be submitted to the County Executive, Chief Administrative Officer, Fire and Rescue Commission, and County Council for appropriate action. The Fire and Rescue Commission must provide this information to the affected corporations.

- (c) Class Creation. When it is determined that the duties and responsibilities of one or more positions are not appropriately described in any authorized class in the classification plan, the Chief Administrative Officer will create a new occupational class. Such new class must be assigned to an appropriate grade in accordance with guidelines contained herein. The Merit System Protection Board must be notified and given reasonable opportunity to review and comment on the proposed new class prior to its inclusion in the Plan.
- (d) Class Abolishment. The Chief Administrative Officer may abolish an occupational class when it is determined that the class is no longer needed.
- (e) Job Evaluation System. The Chief Administrative Officer must establish a quantitative job evaluation system. Each class in the classification plan must be reviewed under the system as necessary to ensure proper grade assignment. All classes in the classification plan must be allocated to pay grades on the basis of quantifiable job evaluation factors which must include, but not be limited to, the following:
  - (1) Level of knowledge, skills, and abilities required for satisfactory work performance;
  - (2) Complexity and diversity of work including judgment, originality, and initiative required;
  - (3) Responsibility for decisions;
  - (4) Nature and extent of supervision received and guidelines available, amount of independent judgment and discretion exercised;
  - (5) Importance of subject matter, level, purpose, nature, frequency and complexity of personal contacts, and service to the public;
  - (6) General work conditions and physical demands required, which may include, but not be limited to work environment, hazards, physical activity, or stressful conditions; and
  - (7) Supervision of others, if any, including responsibility for nature of work directed, personnel authority, and number supervised.



- (f) Reallocation. The Chief Administrative Officer may reallocate a class from one pay grade to another when a job evaluation review so indicates, the salary range of the pay grade is no longer competitive in the labor market based on the fire and rescue service compensation philosophy, or a change is required to maintain the internal equity of the fire and rescue service classification plan.
- (g) Publication of Classification Plan. The fire and rescue service classification plan must be published annually and made available to all employees. Changes to the classification plan will be posted in all departments and offices that have employees covered by the classification plan within 30 days of the decision of the Chief Administrative Officer.
- (h) Effective Date of Classification Plan Changes. Classification plan changes are effective at the beginning of the pay period following the date of approval by the Chief Administrative Officer.
- (i) When the review of an occupational class which was scheduled to be studied by December 31, 1993 is not completed in the 5 years previously required by Section 7-1 of these Regulations, employee salary adjustments under Section 9-20 must be made retroactive to the expiration of the 5-year period.

7-4. Position Classification.

- (a) General. The Chief Administrative Officer must establish written procedures for the review of the classification of a position. An incumbent or a superior may request a review of the classification assignment of a particular position.
- (b) Reclassification. The Personnel Director may reclassify a position when a review of the position description or a desk audit indicates a significant change in:
  - (1) Type of work performed;
  - (2) Difficulty and complexity of duties;
  - (3) Level of responsibility, or
  - (4) Knowledges, skills, and abilities required.
- (c) Effect of Reclassification on Incumbent. The incumbent of a reclassified position will be placed in the new class unless the incumbent does not meet the minimum qualifications of the new class. Employees reclassified downward are eligible for noncompetitive promotion as provided in Section 6-5 of these Regulations.

- (d) Effective Date of Position Reclassifications. Position reclassifications are effective 6 months from the date the request is received by the Personnel Office in accordance with the procedures established by the Chief Administrative Officer as required by Section 7-4(a) of these Regulations.
- (e) Position Abolishment. The Fire and Rescue Commission may authorize abolishment of one or more positions because of:
  - (1) Reduction in work force due to a lack of sufficient funds;
  - (2) A change in the approved work program/plan/design for a department/office/agency;
  - (3) Administrative reorganization of a department/ office/agency; or
  - (4) A technological change or advancement that impacts on work force needs.

7-5. Administrative Review. Before the Personnel Director makes a final classification decision on a position or class, all incumbents and their supervisors must be given an opportunity to provide written comments.

In addition, an employee who objects to a classification assignment action which downgrades that employee's position or class may file a request for an administrative review with the Personnel Director. The request must be filed within 10 days of receipt of notice of the action. The employee may submit additional information in support of the request. The Personnel Director will arrange within 30 days for an independent professionally qualified classifier to conduct a factfinding review.

At the conclusion of the review, the independent classifier must file a written report of findings and recommendations with the Chief Administrative Officer. The Chief Administrative Officer must provide the employee with a copy of the report. The Chief Administrative Officer may assign a higher grade, a lower grade, or the same grade. The decision of the Chief Administrative Officer is final.

7-6. Appeal of Decision on Classification. The decision of the Chief Administrative Officer on a classification or compensation assignment is final and may be appealed to the Merit System Protection Board only if there is a violation of the procedures contained in Section 7-5 of these Regulations.

## **SECTION 8. PERFORMANCE PLANNING AND APPRAISAL.**

8-1. General. Performance planning and appraisal is the total process of observing and reviewing work performance, recognizing its quality, identifying needs for improvement, and working with employees to improve their effectiveness and efficiency to maximize the use of their knowledge, skills and abilities. Performance planning and appraisal is a continuous

process and an ongoing exchange of expectations between the employee and supervisor about work requirements and what is needed to assure that standards are met.

8-2. Performance Planning and Appraisal Procedures. The Chief Administrative Officer must establish procedures for performance planning and appraisal to:

- (a) Provide a continuing record of employee work performance and development;
- (b) Provide information for aiding in decisions on career status, promotions, pay increases, work assignments, training, awards, reductions-in-force and disciplinary actions;
- (c) Keep employees informed of what is expected of them and how well they are meeting those expectations;
- (d) Provide a basis for meeting employee needs for training and career development;
- (e) Help management improve use of personnel resources through maximum utilization of each employee's capabilities;
- (f) Foster an effective working relationship between supervisors and employees; and
- (g) Assure that managers and supervisors are evaluated on their administration of the performance evaluation system.

8-3. Performance Planning and Appraisal.

- (a) The performance evaluation system(s) must include procedures to inform the employee of major duties and responsibilities to be performed, standards to be met and goals to be achieved during the rating period, provide for interim review and counseling and written notice of inadequacies, and necessary corrective action. Supervisors must assist employees in improving work performance.
- (b) Employees must receive written performance standards at the start of any evaluation period. A written work performance improvement plan shall be developed by the supervisor, after consultation with the employee, when the employee's overall performance fails to meet the performance standards. Upon request, the employee shall receive copies of all performance evaluations and work performance improvement plans. These same procedures shall apply to group and team evaluations.

8-4. Performance Evaluation Rating. Each employee, except temporary employees, must receive a written performance evaluation rating at least annually. Clearly defined levels of achievement shall be established by the Chief Administrative Officer or designee.

8-5. Appeals from Performance Ratings. Performance standards and ratings are not appealable to the Merit System Protection Board. Performance standards and ratings are not grievable except in cases of failure to follow established procedures and where the rating resulted in an overall evaluation of unsatisfactory performance.

## **SECTION 9. EMPLOYEE COMPENSATION.**

9-1. General Policy. The County must provide a total compensation system designed to recruit and retain a high quality workforce. Total compensation for fire and rescue service employees will be periodically compared with the appropriate labor market and other area compensation systems in order to maintain a standard of comparability.

9-2. Uniform Salary Plan. Subject to approval of the County Council, the Chief Administrative Officer must issue salary schedules for all merit system positions with a minimum and maximum salary for each grade. Each occupational class must be assigned to an appropriate grade on an approved salary schedule in the County's fire and rescue service classification plan. Established salary ranges for each grade on an approved salary schedule must remain in effect until a change is approved by the County Council. The base salary for an employee may not exceed the range of the grade assigned to the class, except that the total salary of each employee on the effective date of a new salary schedule may not be less than that received under the preceding schedule unless there is an overall reduction of rates of pay of all grades on an approved salary schedule.

9-3. Special Pay Differentials. The Chief Administrative Officer may authorize pay differentials for any extra hazardous or very specialized position if approved by the County Council.

9-4. Shift Pay Differentials. The Chief Administrative Officer may establish shift differentials for evening work. The amount of shift pay differential, if any, must be determined by the Chief Administrative Officer. The Chief Administrative Officer must establish reporting procedures for shift pay differential, if adopted.

9-5. Call-back Pay. Whenever an employee is required to return to work to perform unanticipated and unscheduled work assignments, usually of an emergency nature, the employee is entitled to receive call-back pay in a guaranteed minimum amount of 3 hours of overtime pay. The Chief Administrative Officer must establish reporting procedures for call back pay, if adopted.

9-6. Disposition of Educational, Special and Shift Pay Differentials.

- (a) An employee who is transferred, promoted, demoted or reappointed will be compensated for special pay or shift pay differential entitled to the incumbent of the new position.

- (b) An employee who is transferred, promoted, demoted or reappointed from a position entitled to educational, special pay or shift pay differential to a position not so entitled will forfeit such additional compensation.

9-7. Payroll Policies. Employees are to be paid on a bi-weekly pay period basis. Salaries under the general pay schedules are computed on the basis of 52 weeks for a work year of not more than 2,496 hours for operational firefighters primarily engaged in fire suppression and the provision of emergency medical services and 2,080 hours for all other employees. Except as specifically provided by federal, state or County law and these Regulations, the Chief Administrative Officer has the responsibility for determining payroll deductions and charges for such deductions, if any. Upon termination if an employee is indebted to the County or the corporation, the amount due may be deducted from pay, accrued annual leave or compensatory time or retirement contributions.

9-8. Overtime Policy. Overtime work may be authorized by the Chief Administrative Officer, department head or designee when an employee is required to work in excess of the normally scheduled work day or work week, subject to the following:

- (a) Overtime work must be required and authorized by the Chief Administrative Officer, department head or designee;
- (b) Overtime work must be kept to a minimum and must be based on the workload of the corporation;
- (c) Payment of overtime must be within budget limitations, except as provided in (g) below;
- (d) Overtime is paid at the rate of one-and-a-half times the employee's gross hourly rate of pay (including pay differentials);
- (e) For the purposes of compensation, overtime work must be rounded to the nearest half-hour:
  - 0 - 15 minutes = no compensation,
  - 16 - 45 minutes = one half-hour overtime compensation,
  - 46 - 60 minutes = one hour overtime compensation.
- (f) Prior to authorizing overtime, the employee must have been in pay status either:
  - (1) More than the regularly scheduled work week, but at least 40 hours;  
or
  - (2) More than the regularly scheduled work day, but at least 8 hours;

- (3) Except, if the overtime work is scheduled, then the employee must have been in work status more than the regularly scheduled work day, but at least 8 hours.
- (g) The Chief Administrative Officer, department head or designee may grant to eligible employees compensatory time at one-and-a-half times the excess hours worked when budgetary limitations preclude the payment of overtime compensation, except when the Fair Labor Standards Act requires overtime pay. Non-exempt employees under the Fair Labor Standards Act who are below grade 25 may not be granted compensatory time, but rather must be paid at the rate of time and one-half for hours worked in excess of forty hours in a work week.
- (h) The Chief Administrative Officer may establish any necessary administrative procedures to implement this policy.

9-9. Limitations on Overtime.

- (a) Employees Grade 25 and Above. Employees at grade 25 and above are not usually eligible to receive overtime pay but may be declared eligible to receive pay pursuant to administrative procedures established by the Chief Administrative Officer when it is determined to be equitable and in the best interest of the County.
- (b) Employees Below Grade 25 Exempt from the Fair Labor Standards Act. Employees below grade 25 who are exempt from the overtime provisions of the Fair Labor Standards Act are not usually eligible to earn overtime pay but will normally be eligible to earn compensatory time at one and one-half times the excess hours worked unless the Chief Administrative Officer, department head or designee authorizes overtime pay.
- (c) Employees Not Exempt From Fair Labor Standards Act. Upon request, non-exempt employees may be granted compensatory time at one-and-a-half times the excess hours worked in lieu of overtime pay.
- (d) Alteration of Work Day or Work Week. Subject to administrative procedures established by the Chief Administrative Officer and the Fair Labor Standards Act, employees may request reasonable alterations of their normally scheduled work day or work week. In such circumstances, leave time may be granted by the department head on an hour-for-hour basis. Overtime compensation must not be paid an employee who requests an alteration to the regular work day or work week.

9-10. Compensatory Time. An employee required by a supervisor to work overtime must be credited with compensatory time at the rate of one-and-one-half hours for each hour of overtime work performed whenever the employee does not receive overtime compensation for such work.

- (a) Limitations on Crediting of Compensatory Time for Overtime Work. Any employee at grade 25 and above is eligible to be credited with compensatory time on an hour-for-hour basis for overtime work. Such employees are not eligible for compensatory time for the first 5 hours of overtime work in an employee's regularly scheduled work week. An employee may begin receiving compensatory time on the forty-first hour or forty-ninth hour for operational firefighters assigned to a 2496-hour work year, if required to work during a period of a general emergency, holiday, or on the employee's regular days off. Authorization for crediting of compensatory time for overtime work shall ordinarily be specifically approved in advance by the supervisor and ordinarily it may not be approved on a continuing basis. Only the Chief Administrative Officer may approve special exceptions to the above requirements.
- (b) Use of Compensatory Time. Compensatory time may not be used until credited and until approved by an employee's supervisor. Application for compensatory time must be made in advance of use. In emergency cases, the employee's supervisor may waive this requirement. It is the responsibility of each department head to schedule the use of compensatory time so that not more than 80 hours or 96 hours, as applicable, of compensatory time is carried over from one leave year to the next. The requirements of an employee's job may require the department head to restrict the use of compensatory time during certain periods of the year. When deemed practicable and in the best interest of the fire and rescue service, a department head may require the use of compensatory time in amounts not less than 8 hours.
- (c) Limitations on Accrual of Compensatory Time.
- (1) Non-Exempt Employees under the Fair Labor Standards Act (FLSA). A non-exempt employee with a compensatory time balance in excess of 80 hours at the end of the leave year may elect to be paid for the excess hours or to carry them over for one year. Operational firefighters assigned to a 2496-hour work year may elect to be paid for the excess hours or to carry over compensatory time balances in excess of 96 hours beginning in calendar year 1988.
  - (2) Exempt employees under FLSA. An exempt employee may not carry over more than 80 hours of compensatory time from one leave year to the next, except for operational firefighters assigned to a 2496-hour work year, who may carry over 96 hours. Unused compensatory time in excess of 80 or 96 hours, as applicable, will automatically be credited to sick leave. Upon specific approval of the Fire and Rescue Commission, an employee may be permitted to retain a compensatory time balance in excess of 80 or 96 hours, as applicable, at the end of a leave year whenever it is shown that the employee was unable to reduce the compensatory time balance to 80 or 96 hours because of

emergency or special workload considerations. The carry-over of excess compensatory time must be reduced by no later than December 31 of the succeeding leave year.

- (d) Disposition of Compensatory Time at Separation. When an exempt employee is separated from the fire and rescue service, the employee must be paid in a lump sum for up to 80 or 96 hours, as applicable, of earned unused compensatory time. In the event of an employee's death, the employee's estate shall be paid for all unused compensatory time. When a non-exempt employee under the Fair Labor Standards Act is separated from County service, the employee must be paid in a lump sum for all earned unused compensatory time.
- (e) Withholding or Adjustment of Accumulated Compensatory Time. Whenever an employee is indebted to the County or a fire and rescue corporation, the amount due may be deducted from accumulated compensatory time. An employee objecting to the deduction may file a grievance as provided in Section 29 of these Regulations.
- (f) Forfeiture of Accumulated Compensatory Time. Whenever it is deemed appropriate by a department, an employee may have from one to 10 days of compensatory time deducted from the employee's accumulated compensatory time for disciplinary reasons in lieu of other disciplinary actions (i.e., within-grade reduction, suspension, demotion, etc.). An employee objecting to the deduction may file a grievance as provided in Section 29 of these Regulations.
- (g) Use of Compensatory Time for Purchase of Retirement Service Credits Under the Provisions of the Employees' Retirement System of Montgomery County and the Montgomery County Police Relief and Retirement Fund Law. An employee wishing to purchase retirement service credits pursuant to the appropriate provisions of the employee's retirement system of Montgomery County and the Montgomery County Police Relief and Retirement Fund Law, may authorize the conversion of accrued compensatory time to a cash value for the purpose of depositing this amount under either retirement system. Not more than 80 hours of compensatory time may ever be used for purchase of retirement service credits. The lump-sum cash value of the compensatory time is to be based on the employee's rate of pay as of the date of conversion. The use of compensatory time for this purpose is subject to the availability of lapsed salary monies within an employee's department and to the provisions of the Employees' Retirement System of Montgomery County and the Montgomery County Police Relief and Retirement Fund Law. Whenever an employee converts compensatory time for the purpose of purchasing retirement service credits, lapsed salary monies in the employee's department or agency may be used, and the monies may be transferred to the Employees' Retirement System of Montgomery County or the Montgomery County Police Relief and Retirement Fund,



whenever recommended by an employee's department head or agency head and approved by the Chief Administrative Officer.

- (h) Use of Compensatory Time for Family and Medical Leave Act Purposes. Compensatory time used by the employee cannot be designated by the employee or supervisor as FMLA leave.

9-11. Payroll Certification. Placement of any person in any merit system position or on the payroll of any merit system agency of the County Government, authorization for payment of salary or wages, authorization for changes in salaries or wages, or authorization for the removal of any person from a payroll may only be done under appropriate Personnel Regulations and on the written approval of the Chief Administrative Officer or the Personnel Office, who must be supplied with all time, attendance and payroll records on request. Whenever deemed necessary, the Chief Administrative Officer may require the Personnel Office to certify each pay period, or periodically, that each merit system employee whose name appears on a payroll has been appointed or employed and is performing service in accordance with the provisions of the Charter of Montgomery County and the Personnel Regulations and that the person's name appears on an employee roster for the time for which such salary or compensation is claimed and that the salary or compensation is at the rate indicated on such roster. The Personnel Office is authorized to establish procedures, not in conflict with Personnel Regulations, necessary to record the time and attendance of merit system employees, to process the handling of overtime, to handle the placement and removal of employees on payrolls, and to process changes in rates of pay.

9-12. Employee Roster and Files. Each appointing authority or agency head must promptly transmit to the Personnel Office all information deemed necessary by the Personnel Office for the establishment and maintenance of an employee roster or employee files.

9-13. Length-of-Service Honor Award Program. The Chief Administrative Officer may establish a length-of-service awards program. Under the program, each merit system employee is eligible for consideration for a length-of-service honor award emblem and certificate upon completion of 5 years of County or fire and rescue service and upon completion of each 5 years of additional service. The same criteria and procedures used in awarding or denying service increments and appeal privileges from denials apply to length-of-service honor awards. Eligible service and award dates must be determined by the Personnel Office.

9-14. Civic Awards. A merit system employee who has been selected by a service group, civic association or similar organization to be the recipient of an honorary award in recognition of the contributions made to the community in the impartial performance of official duties as an employee of the fire and rescue service may accept such award provided it is not a pecuniary award. Any question arising as to the propriety of accepting an award, on whether the award is a pecuniary award or on the disposition of any award must be decided by the department head and his decision is final.

9-15. Salary on Appointment and Reappointment. The base salary of a newly appointed or reappointed employee is to be fixed within the applicable grade by the appointing authority subject to procedures established by the Fire and Rescue Commission.

9-16. Salary on Promotion. A merit system employee who is promoted is entitled to at least a 5 percent increase in base salary, except when an employee has taken a demotion with no loss in salary and is subsequently promoted to a pay grade which is the same or less than the grade from which the employee was originally demoted. At the discretion of the appointing authority, an additional increase may be provided to a maximum of 10 percent of base salary for a single promotion. In extraordinary circumstances, including a 4 or more grade increase, the department head may recommend and the Chief Administrative Officer may approve an increase not to exceed 20 percent of base salary. An employee's salary following promotion may not be less than the minimum or more than the maximum salary of the new grade.

9-17. Salary on Demotion.

- (a) The salary of an employee who requests a demotion for personal reasons may be retained or decreased by 5 percent of the employee's base salary for each grade the employee is demoted up to 20 percent of base salary as determined by the appointing authority. An employee's salary following demotion may not be less than the minimum or more than the maximum salary of the new grade.
- (b) An employee demoted for cause must receive at least a 5 percent reduction in base pay. At the discretion of the appointing authority a reduction of 5 percent for each grade up to 20 percent of base salary may be required.
- (c) An employee demoted as a result of reclassification/reallocation, reduction-in-force or disability may retain the salary received immediately prior to the effective date of the demotion. Should the demoted employee's salary exceed the maximum for the new pay grade, the salary may be retained for 2 years from the date of demotion, except that a demotion resulting from reclassification/reallocation occurring after July 1, 1992 is not subject to the 2-year limitation. No salary increase will be awarded for so long as the employee's salary exceeds the maximum. If upgraded during the 2-year reappointment period, an employee's salary will be adjusted:
  - (1) To the maximum of the new grade if still less than the original salary;  
or
  - (2) As if no demotion had occurred if upgraded to an equal or higher-graded position.

Except for a demotion resulting from reclassification/reallocation occurring after July 1, 1992, at the end of the 2-year salary retention period the employee's salary must be reduced to the maximum for the grade, if necessary.

9-18. Salary Following Reclassification/Reallocation. The salary of an employee whose position is reclassified or reallocated to a higher grade must not be increased on reclassification/reallocation, except that an employee's salary must be at least the minimum for the new grade. However, employees assigned to an occupational class which is due or overdue for a classification review under the five-year classification maintenance review program prior to December 31, 1993 and which is subsequently reallocated upward will have their salaries increased by 5 percent, except that an employee's salary must be at least the minimum but not more than the maximum for the new grade. An employee whose individual position study request is received on or before June 30, 1993 or whose study is completed prior to December 31, 1993 and whose position is reclassified upward will have their salary increased by 5 percent, except that an employee's salary must be at least the minimum but not more than the maximum for the new grade. The salary of an employee whose position is reclassified or reallocated to a lower grade must be determined as provided in Section 9-17(c), "Salary on Demotion."

9-19. Stand-by Pay. Whenever an employee is required during off-duty hours, under conditions specified by administrative procedure, to remain in readiness to perform actual work when the need arises, and such work is unscheduled, unanticipated and usually of an emergency nature, the employee is eligible to receive stand-by compensation.

9-20. Effective Dates of Salary Changes. The effective date of all salary changes is the beginning of the pay period in which the change is made, unless otherwise specified.

9-21. Conflict with Other Law. When these Regulations are in conflict with applicable state or federal wage and hour regulations, the state or federal regulations prevail.

## **SECTION 10. SERVICE INCREMENTS; SERVICE INCREMENT DATES.**

10-1. Service Increments. A service increment is an increase in salary which is granted annually, upon approval of a department head, to each employee having merit status who assumes the duties and responsibilities of their position at an acceptable level of competence as determined by the department head and whose work generally meets expectations. Service increments may be awarded annually until an employee reaches the top of the pay grade to which the position is assigned. Service increments are earned by performance of work at an acceptable level of competence. An employee cannot be awarded a service increment automatically or solely on the basis of length of service.

10-2. Service Increment Awards for Employees. Each merit system employee is eligible to be considered each year for a service increment award to be effective on the assigned increment date. When it is deemed necessary and in the best interest of the County service, a department head may approve the award of a service increment annually to a temporary employee until the employee reaches the top of the pay grade to which the position is assigned.

10-3. Special Service Credits for Service Increment Award. Notwithstanding other provisions of this Section, a temporary employee filling a full-time or part-time position, if

given an appointment to a full-time or part-time position without a break in service, is entitled to be credited with that amount of service credit for a service increment that would have otherwise been credited a full-time or part-time appointment rather than a temporary appointment.

10-4. Service Increment Awards while in Probationary Status. Merit system employees who become eligible for consideration for a service increment on the date they became eligible for consideration for merit system status may not be advanced if they have not been granted merit system status. Merit system employees who are assigned a probationary period of more than one year may be advanced, even though they have not yet earned merit system status, on the assigned increment date, provided that their work record up to that time warrants such advancement. Notwithstanding other provisions of these Personnel Regulations, if a person has a minor correctable defect and is undergoing competent medical treatment to correct the defect, the employee may be continued in probationary status as a fire and rescue service employee or in the position to which promoted for a period not to exceed 2 years while at the same time being eligible for consideration for the award of a service increment.

10-5. Procedures for Recommending Service Increments and Effective Dates. Service increment recommendations must be in writing and must be submitted for processing at least 15 days before the recommended effective date. The recommendation must be made by one or more of the employee's supervisors, must contain a certification that the employee's work record is at an acceptable level of competence as determined by the employee's department head, and a statement that the award of the service increment is warranted. The recommendation must be approved by the employee's department head before becoming effective. Service increment awards for full-time or part-time employees and eligible temporary employees may only become effective on an employee's assigned increment date. Service increment awards of other temporary employees may only become effective annually on dates specified by the Chief Administrative Officer.

10-6. Reassignment of Increment Date. A new increment date must be assigned by a department head whenever an employee has had the merit status probationary period extended, the service increment delayed, the employee's increment date occurs during a period of within-grade reduction, or the employee has been on authorized leave without pay (excluding leave without pay for parental leave, military service or professional improvement) for a period exceeding 10 work days. An employee who is given merit system status after the probationary period is extended, or who is granted an increment after a delay, must have as a newly assigned increment date that date on which merit system status is granted or on which the delayed increment becomes effective. This rule must apply to an employee on a military-temporary appointment as applicable. Any increment date reassigned must be approved by the Chief Administrative Officer or designee before it becomes effective.

10-7. Reassignment of Increment Dates. A department head may reassign an employee's increment date to prevent or resolve pay inequities and for disciplinary or other reasons. In such cases, the same type of procedures and appeal privileges contained in Subsection 10-11 of this Section must apply. Increment dates may also be reassigned by a department head for

reasons deemed to be in the best interest of the fire and rescue service, when the action would not adversely affect an employee. Any increment date reassigned must be approved by the Chief Administrative Officer or designee before it becomes effective.

10-8. Retention of Assigned Increment Date. In special circumstances, when it is deemed in the best interest of the fire and service, a full-time or part-time employee may be permitted by the Chief Administrative Officer to retain an increment date which would otherwise be subject to change as provided in this Subsection.

10-9. Delayed Service Increment. A department head may delay approval of a service increment award if the employee's work attitude or performance has been substandard. In such cases the department head must submit in writing the reasons for the delay and the decision as to the period of time the service increment award is to be delayed. A service increment award can be delayed a second or successive time if the employee's work attitude or performance continues to be substandard.

A department's failure to follow the performance planning and appraisal procedures established under Section 8 of these Regulations does not prevent a department head from delaying a service increment where the employee's work attitude or performance has been substandard.

10-10. Delay of Service Increment Resulting from Work Absences. A service increment may be delayed by a department head when an employee is absent from duty (on other than compensatory time, annual leave, parental leave or holiday leave) for 50 percent or more of the rating period. However, if the absence is due to a service-connected injury or illness as determined by the Workers' Compensation laws of Maryland, the increment will not be delayed if the employee received a satisfactory evaluation in the preceding rating period.

10-11. Notification of Service Increment Delay. Notwithstanding other provisions of this Section, in all cases of service increment delay the affected merit system status employee must be notified in writing by the department head of the reasons for the action prior to the effective date, and be informed of the right to file a grievance in accordance with procedures established by Section 29 of these Regulations.

10-12. Acceptable Level of Competence. Wherever in these Regulations the word "satisfactory" is used in reference to the evaluation of an employee's work record, the phrase "acceptable level of competence as determined by an employee's department head" shall be substituted in lieu thereof.

10-13. Effective Dates of Salary Changes. The effective date of a salary change shall always be the beginning of a biweekly pay period.

10-14. Service Increment Dates. The increment date of each employee is the date of employment unless the originally assigned increment date has been reassigned under these Regulations. The effective date of any pay changes resulting from approved service increment awards is the first day of the pay period in which the employee becomes eligible for the awards.

## **SECTION 11. ACCELERATED WITHIN-GRADE ADVANCEMENT.**

11-1. Outstanding Service Increment Award. A merit system employee who performs the duties and responsibilities of their position in a "sustained" outstanding manner and whose work is continuously well above expectations may be considered for advancement within grade. An advancement in recognition of outstanding service shall be known as an "Outstanding Service Increment Award."

11-2. Special Within-grade Advancement. In special or emergency situations a merit system employee filling a position which is assigned to an occupational class or group which may be considered to be in "short supply" may be advanced, provided that work is being performed at an acceptable level of competence, whenever it can be clearly shown that it is very difficult to attract and retain in the fire and rescue service qualified and competent persons in such occupational classes or groups. An employee may also be advanced in recognition of an exceptional act or an act of heroism in performing official duties and responsibilities or to resolve a pay inequity.

11-3. Decision of Chief Administrative Officer. The decision of the Chief Administrative Officer on all within-grade advancements after reduction, on all Special Within-Grade Advancements and on Outstanding Service Increment Awards is final.

11-4. Effect of Accelerated Within-grade Advancements on an Employee's Eligibility for Other Within-grade Advancements and General Pay Increases. Except as may be specifically provided in these Regulations, an employee's eligibility for normal service increments, or general pay raises will not be affected by accelerated within-grade advancement.

11-5. Excellent Performance Award. An employee who performs the duties and responsibilities of their position in a manner that may be considered "excellent performance" warranting recognition will be eligible to be considered for advancement within grade. This award may be made whenever an outstanding service award may not be appropriate and only in recognition of excellent performance rendered the fire and rescue service.

11-6. Procedures for Recommending an Excellent Performance Award. Whenever a department head believes that an employee is qualified for consideration for an Excellent Performance Award, the department head may recommend that the employee be given such award in accordance with procedures established by the Chief Administrative Officer. Such recommendation must be in writing, contain specific examples of the employee's excellent performance, and it shall be submitted to the Chief Administrative Officer for action. The Chief Administrative Officer may initiate and approve an Excellent Performance Award. The awards and justification must be made a part of the employee's personnel file.

11-7. Limitations on Excellent Performance Awards. An employee may not be awarded more than one Excellent Performance Award in any 12-month period or within 6 months of having earned an Outstanding Service Increment Award.

## **SECTION 12. WORK SCHEDULES, ATTENDANCE, HOURS OF WORK**

12-1. Work Schedules. The work schedules for all employees must be determined by the department head. Department heads, under the supervision of the Chief Administrative Officer, must maintain on a current basis in the Personnel Office work schedules of employee groups under their supervision and provide a copy of schedules to the Chief Administrative Officer.

12-2. Work Day and Work Week. The normal work day for full-time employees is not less than 8 hours, nor more than 10 hours, except where otherwise agreed under the terms of Section 9-9(d) of these Regulations. The normal work week for full-time employees is 40 hours (excluding all meal periods), Sunday through Saturday, or any 7 consecutive days approved by the Chief Administrative Officer. The normal work day and normal work week for employees assigned operational firefighter duties must be established by the Chief Administrative Officer. Whenever practicable, 2 consecutive days off should be granted employees. The Chief Administrative Officer may authorize the inclusion of a meal period (not in excess of 30 minutes) for each employee filling a position in an occupational class assigned around-the-clock shift schedules. Meal periods must not be included in any computations to determine the amount of compensation or compensatory time due an employee for overtime work.

12-3. Attendance of Employees.

- (a) Regular and punctual attendance at work is required of all fire and rescue service employees. Department heads are responsible and accountable for the punctual attendance of all employees under their administrative supervision. The Chief Administrative Officer must establish uniform attendance requirements and procedures for recording and reporting of attendance including leave and work substitution procedures.
- (b) It is the responsibility of each employee to be at work during scheduled work hours unless an absence is approved by the supervisor of the employee or other authorized individual in accordance with established procedures.

12-4. Disciplinary Action for Noncompliance with Attendance Requirements and Procedures. Employees who fail to observe attendance requirements and procedures for recording and reporting of attendance are subject to whatever disciplinary action their department head or the Chief Administrative Officer deems necessary, which may include a deduction from the employee's pay or accrued annual leave when appropriate.

## **SECTION 13. ANNUAL LEAVE.**

13-1. Definition. Annual leave is earned paid leave granted to eligible employees for vacations and other personal use.

13-2. Eligibility. All full-time and part-time employees are eligible to earn annual leave. A temporary employee who subsequently becomes a full-time or part-time employee without

a break in service must be credited on a prorated basis but not more than 60 hours annual leave retroactive to the date hired as a temporary employee.

13-3. Leave Year. The leave year begins with the first full payroll period of a calendar year and ends with the payroll period in which December 31 falls.

13-4. Leave Accounting Period. The leave accounting period must be established by the Chief Administrative Officer.

13-5. Accrual rates.

- (a) Full-time employees with less than 3 years of County or fire and rescue service earn annual leave at the rate of 120 hours per leave year. Full-time employees with 3 years, but less than 15 years of County or fire and rescue service earn annual leave at the rate of 160 hours per leave year. Full-time employees with 15 years or more of County or fire and rescue service earn annual leave at the rate of 208 hours per leave year. Part-time employees earn a pro rata amount of annual leave based on a schedule established by the Chief Administrative Officer.
- (b) Notwithstanding accrual rates established for full- and part-time employees under this Section, as of January 3, 1988, full-time operational firefighters assigned to a 2496-hour work year earn annual leave at the following rates:
  - (1) Less than 3 years County service, 144 hours per leave year;
  - (2) With 3 years but less than 15 years of County service, 192 hours per leave year;
  - (3) With 15 years or more of County service, 249 hours per leave year; and
  - (4) Part-time operational firefighters earn a pro rata amount of annual leave based on a schedule established by the Chief Administrative Officer.

13-6. Changes in Accrual Rates. Annual leave accrual rate changes are effective the first day of the leave accounting period in which the employee completes 3 years or 15 years of service.

13-7. Scheduling of Use of Annual Leave. Accrued annual leave may be used, if approved by an employee's supervisor in accordance with procedures established by the department head and approved by the Chief Administrative Officer. Every effort must be made to give each employee the opportunity to use annual leave earned. Whenever possible, requests for leave to attend to children during unscheduled changes in school hours should be favorably considered. The amount of leave granted should be commensurate with the school schedule.



13-8. Maximum Accumulation. Maximum accumulation amounts apply only to the amount of annual leave that may be carried over from one leave year to the next, and do not limit accumulated leave balances during the leave year.

- (a) An employee who began work on or before December 31, 1956, may accumulate annual leave up to a maximum of 560 hours provided the employee has been continuously employed since that date. An operational firefighter assigned to a 2496-hour work year and who meets this condition may accumulate annual leave up to a maximum of 672 hours. An employee who began work on or before December 31, 1956, who subsequently has used accumulated annual leave in excess of 320 hours for the purposes of purchasing retirement service credits may only accumulate annual leave up to a maximum of 320 hours. An operational firefighter assigned to a 2496-hour work year and who meets this condition may accumulate annual leave up to 384 hours.
- (b) An employee hired on or after January 1, 1957, but prior to July 1, 1972, may accumulate annual leave up to a maximum of 320 hours. An operational firefighter assigned to a 2496-hour work year and who meets this condition may accumulate annual leave up to 384 hours.
- (c) An employee hired on or after July 1, 1972, may accumulate annual leave up to a maximum of 240 hours. An operational firefighter assigned to a 2496-hour work year and who meets this condition may accumulate annual leave up to 288 hours.

13-9. Transfer of Annual Leave in Excess of Maximum Allowable Accumulation to Sick Leave. All accumulated leave in excess of the authorized maximum is forfeited at the end of leave year. All annual leave forfeited at the end of a leave year for being in excess of an employee's maximum allowable accumulation must be credited to that employee's accumulated sick leave. However, if management has denied an employee the opportunity to use leave in excess of the maximum allowable accumulation during that leave year, that amount may be carried over for a period of one year, even if in excess of the maximum allowable accumulation, but must be forfeited to sick leave if not used during that period.

13-10. Disposition of Accumulated Annual Leave at Separation from County Service. Upon leaving the fire and rescue service, an employee must receive a lump-sum payment, at the employee's current rate of pay, for the total accrued annual leave as of the date of separation, less any indebtedness to the County government or fire and rescue corporation. In the event of an employee's death, the employee's estate or designated beneficiary or beneficiaries, if permissible by law, must be paid for all accrued annual leave. The designated beneficiary must be as specified by the employee or as designated under the Employee's Retirement System of Montgomery County, if not named specifically.

13-11. Transfer of Annual Leave to Another Agency. An individual who resigns employment with one corporation, County or bi-County agency to accept employment with another corporation, County or bi-County agency, without a break in service, may transfer

accumulated annual leave to the new employing agency subject to any limitations that agency may have, provided there is a signed agreement of reciprocity between the two agencies.

13-12. Transfer of Annual Leave from one Corporation to Another. When an employee of the fire and rescue service transfers from one corporation to another, or between corporations and County government, all annual leave benefits, including accrual rates and accumulated leave, will be automatically credited to the new corporation or to the County.

13-13. Use of Annual Leave for Family and Medical Leave Act Purposes. Employees must be allowed to use accrued annual leave for Family and Medical Leave Act purposes in accordance with Section 20 of these Regulations and administrative procedures established by the Chief Administrative Officer.

#### **SECTION 14. SICK LEAVE.**

##### 14-1. Definition.

- (a) Sick leave is earned, paid leave granted to eligible employees for periods of absence because of personal illness, injury, medical quarantine, medical, dental or optical examinations and treatments, or any temporary disability caused or contributed to by pregnancy, miscarriage or childbirth.
- (b) An employee may also use sick leave for an illness, injury, medical quarantine, medical, dental or optical examinations and treatments in the immediate family or for the purpose of attending to the immediate family at the time of birth or adoption of a child, provided the time used is not for a period more than the amount of sick leave earned in any calendar year. An employee may request a waiver of this limitation from the Chief Administrative Officer or designee.
- (c) Parents of a newborn or newly adopted child may use a sick leave amount in excess of that which is earned in any calendar year when such leave is taken in connection with parental leave as provided in Section 17 of these Regulations.
- (d) Immediate family is defined in this Section as the employee's parent, stepparent, grandparent, legal guardian, spouse, brother or sister, child, stepchild, grandchild, spouse's parent or spouse's grandparent. In extenuating circumstances, the Chief Administrative Officer or designee may authorize extension of this definition to other relatives.

14-2. Eligibility. Full-time and part-time employees earn sick leave. A temporary employee, who becomes a full-time or part-time employee without a break in service, must be credited with sick leave on a prorated basis, but not more than 60 hours of sick leave retroactive to the date hired as a temporary employee.

14-3. Leave Year. The leave year begins with the first full payroll period of a calendar year and ends with the payroll period in which December 31 falls.

14-4. Leave Accounting Period. The leave accounting period must be established by the Chief Administrative Officer.

14-5. Accrual Rates. A full-time employee earns 120 hours of sick leave per leave year. A part-time employee earns a pro rata amount of sick leave based on a schedule established by the Chief Administrative Officer.

Notwithstanding the accrual rate provided for full-time employees in this Section, as of January 3, 1988, operational firefighters assigned to a 2496-hour work year earn 144 hours of sick leave per year. Part-time operational firefighters earn a pro rata amount of sick leave based on a schedule established by the Chief Administrative Officer.

14-6. Maximum Allowable Accumulation. Sick leave may be accumulated without limit.

14-7. Use of Sick Leave.

- (a) Accrued sick leave may be used for the reasons stated in Section 14-1 of these Regulations, if approved by an employee's supervisor, in accordance with established procedures.
- (b) Whenever employees are placed on sick leave restriction, notice must be given in writing to the employees. Employees must be given the opportunity to respond to the notice.
- (c) Whenever supervisors are not available for sick leave calls, the employee must be permitted to leave a message with a person designated by the supervisor to receive such calls.
- (d) Employees must be allowed to use accrued sick leave for the following Family and Medical Leave Act purposes in accordance with Section 20 of these Regulations and administrative procedures established by the Chief Administrative Officer:
  - (1) To care for the employee's newborn or newly adopted child, provided that the leave qualifies as parental leave under Section 17 of these Regulations;
  - (2) To care for the employee's newborn or newly adopted child, if the leave does not qualify as parental leave under Section 17 of these Regulations, subject to the limitations on family sick leave in Section 14-1;
  - (3) To obtain prenatal care for the employee;

- (4) To care for, or arrange care for, any of the following with a serious health condition: the employee's spouse, minor child, adult son or daughter incapable of self care, or parent, subject to the limitations on family sick leave in Section 14-1; or
- (5) Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position.

14-8. Sick Leave Donor Program. The Chief Administrative Officer may establish a sick leave donor program and develop guidelines for employee participation in its administration so that employees who have exhausted all accrued leave may be eligible to receive an additional sick leave benefit. Membership must be optional for all employees eligible to earn sick leave. The granting of a benefit must be contingent on:

- (a) Sick leave amounts voluntarily donated or contributed by participating employees; and
- (b) Compliance with procedures for administration of such a program. Decisions on the granting or use of leave under such a program is not appealable to the Merit System Protection Board.

14-9. Alternative Sick Leave Donor Program. As an alternative to the sick leave donor program, an employee may contribute to the sick leave donor account. To participate in the account, an employee must contribute 24 hours of sick leave initially and 8 hours the first pay period after July 1 of each fiscal year. Following a 12-month waiting period, the employee may apply for sick leave from the account pursuant to all rules and procedures of the sick leave donor program. An employee may be a member of the sick leave donor program or the sick leave donor account, but not both. During the 12-month waiting period employees may participate in the sick leave donor program.

14-10. Subrogation. When the accident, injury, or illness for which sick leave is used was caused under circumstances creating a legal liability in a third party, the County has the right of subrogation and the right to enforce the legal liability of the third party. Whenever the employee is reimbursed for sick leave by the legally liable third party, the County must be repaid for all sick leave used, less attorney's fees. Upon repayment of monies, the sick leave used must be recredited to the employee's leave account.

14-11. Disposition of Accumulated Sick Leave at Separation from County Service. Accumulated sick leave must be forfeited upon separation for any purpose other than retirement. Accumulated sick leave is creditable for retirement purposes as provided in the Employees' Retirement System of Montgomery County.

14-12. Lump Sum Death Benefit. In the event of an employee's death, the designated beneficiary, beneficiaries or estate, if permissible by law, must receive a lump sum payment for accrued sick leave at the current pay rate, as follows:

- (a) If the death is the result of a non-service-connected accident or illness— 50 percent of the total value; or
- (b) If the death is the result of a service-connected accident or illness— 100 percent of the total value.

The designated beneficiary must be specified by the employee or as designated under the Employees' Retirement System of Montgomery County, if not named specifically.

**14-13. Reinstatement or Transfer of Accumulated Sick Leave.**

- (a) Reinstatement. Employees who return to County or fire and rescue service within 2 years must be recredited the accumulated sick leave forfeited at the time of separation.
- (b) Transfer. An individual who resigns employment with one corporation, County or bi-County agency to accept employment with another corporation, County or bi-County agency without a break in service may transfer all accumulated sick leave to the new employing agency, subject to limitations that agency may have and provided there is a signed agreement of reciprocity between the two agencies.

**14-14. Transfer of Sick Leave from one Corporation to Another.** When an employee of the fire and rescue service transfers from one corporation to another, or between corporations and County government, all sick leave benefits, including accrual rates and accumulated leave, will be automatically credited to the new corporation or to the County.

**SECTION 15. LEAVE WITHOUT PAY.**

**15-1. Definition.** Leave without pay is an approved absence during which time the employee is in a non-pay status.

**15-2. Eligibility.** Leave without pay is a privilege that may be granted to an employee at the discretion of the department head or other designated official. However, an employee must be allowed to use leave without pay for Family and Medical Leave Act (FMLA) purposes in accordance with Section 20 of these Regulations and administrative procedures established by the Chief Administrative Officer.

**15-3. Request for Leave Without Pay.**

- (a) Application for leave without pay must:
  - (1) Be submitted in writing in advance; and
  - (2) Show the employee's reason for requesting the leave.

- (b) In emergency situations, leave without pay may be granted by the department head or other designated official without prior application.

15-4. Limitation.

- (a) Leave without pay may be granted for a period not to exceed one year.
- (b) In grants exceeding 90 days, the department head may require the employee to waive reinstatement rights and privileges to the position vacated, unless the leave without pay qualifies as FMLA leave.

15-5. Effect on Other Actions.

- (a) If an employee is granted leave without pay for a period in excess of 4 consecutive weeks, the date the employee would have been eligible for a higher leave accrual rate must be deferred and reassigned to a later date.
- (b) The length of time the date is deferred must equal the period of time the employee was on approved leave without pay.
- (c) If an employee is granted leave without pay for a period in excess of 10 work days, the increment date for that employee must be reassigned pursuant to Section 10-6 of these Regulations.
- (d) Leave without pay may also affect:
  - (1) retirement credited service;
  - (2) health insurance coverage and payment of premiums; and
  - (3) salary reduction taken under any tax shelter benefit.

15-6. Absent Without Official Leave. An employee who fails to report for duty as scheduled or who leaves the work site prior to the end of the scheduled work day without the approval of a supervisor, will be:

- (a) considered absent without leave;
- (b) placed in a non-pay status for the period in question; and
- (c) subject to appropriate disciplinary action or termination.

15-7. Military Leave for Active Duty. A full-time or part-time employee who is on active duty in the armed forces of the United States or a state militia must be granted leave without pay for the period the employee is in the military service. If the total of the employee's periods of active duty does not exceed 5 years over the course of County employment, the

employee is entitled to reinstatement to the former position or one of comparable status upon separation from the armed forces, provided application for reinstatement is made within 90 days from date of separation. Periods of active duty for training or periods during which the employee was ordered to active duty during war, emergency, or in support of a critical mission are not included in the 5 year period.

## **SECTION 16. DISABILITY LEAVE.**

16-1. **Definition.** Disability leave is paid leave granted to an employee who is temporarily disabled as the result of an accidental injury or illness sustained directly in the performance of the employee's work, as provided for in the Workers' Compensation Law of the State of Maryland.

16-2. **Eligibility.**

- (a) An employee who is temporarily disabled in the line of duty and unable to perform normal duties or an alternate duty assignment, must be paid the difference between normal County salary and the amount received under the Workers' Compensation Law for a maximum period of 18 months of the temporary disability. After 18 months, if the employee remains temporarily disabled, he or she may use accrued sick leave, annual leave or compensatory time to make up the difference between Workers' Compensation benefits and full salary.

When incapacitated for regular work assignments, the employee must be required to accept other work assignments for the period of recuperation if found physically capable or be ineligible for disability leave. The ability of the employee to work will be determined in accordance with the provisions of Executive Regulations on Disability as required by Section 33-100 of the Montgomery County Code.

- (b) An application for disability retirement, prior to the end of the 18-month cap, extends disability leave until such time as the Chief Administrative Officer renders a final decision on the disability retirement application.

16-3. **Disability Leave as FMLA Leave.** Disability leave should be designated by the supervisor as FMLA leave if the leave is taken for an FMLA-qualifying reason as described in Section 20 of these Regulations. If the employee has not requested FMLA leave, the supervisor must notify the employee prior to the conclusion of the period of disability leave that the leave has been designated as FMLA leave.

16-4. **Managed Care for Job-related Injury or Illness.** Employees incurring a job-related injury or illness may obtain medical care through a managed care program provided by the County. The program will have the following components:

- (a) Employees will be permitted to select a doctor for treatment from a network of physicians.

- (b) Employees who do not select a physician from the established network will be eligible for disability leave for a maximum of 12 months.
- (c) Employees will receive initial care from a network physician at no cost, even if the claim is ultimately denied.
- (d) The managed care provider will coordinate benefits with group health providers to avoid confusion and duplication of filings.
- (e) The managed care provider will perform utilization review of treatment.

16-5. Subrogation. When the accident, injury or illness for which disability leave was granted was caused under circumstances creating a legal liability in a third party, the County has the right of subrogation and the right to enforce the legal liability of the third party. Whenever the employee is reimbursed for disability leave by a legally liable third party, the County must be repaid for all disability leave granted, less attorney's fees.

## **SECTION 17. PARENTAL LEAVE.**

17-1. Grants of Parental Leave. A merit system employee must be allowed to use up to 720 hours of any combination of sick, annual, or compensatory time and leave without pay during any 24-month period to care for:

- (a) A newborn child of the employee; or
- (b) A newly adopted child of the employee.

An operational firefighter assigned to a 2496-hour work year must be allowed to use up to 864 hours for the purposes prescribed under this Section.

17-2. Use of Parental Leave. All leave taken under this Section:

- (a) Must be used within 12 months of the birth of the child or placement with the employee for adoption;
- (b) At the election of the employee, may be used on a continuing basis;
- (c) With the approval of the supervisor, may be used:
  - (1) Under a method involving a reduced work day or workweek;
  - (2) On an intermittent basis; or
  - (3) Any combination thereof;
- (d) May be in addition to any other leave taken under these Regulations; and



- (e) Is subject to a 30-day advance notice requirement.
- (f) The use of parental leave under this Section for a Family and Medical Leave Act (FMLA) purpose will be considered to be FMLA leave and count towards the FMLA entitlement of 12 weeks of leave in a leave year. However, compensatory time used as parental leave cannot be counted as FMLA leave.
- (g) An employee who has exhausted the parental leave provided under this Section (720 to 864 hours in a 24-month period), may still be entitled to use up to 12 weeks of FMLA leave in a leave year in accordance with Section 20 of these Regulations and administrative procedures established by the Chief Administrative Officer.

17-3. Relation to Other Benefits. A merit system employee who uses leave without pay under this Section will not have the service increment date reassigned due to leave without pay and retain all health and life insurance benefits for the entire period of leave without pay.

17-4. Limitations on Sick Leave Usage.

- (a) Any use of sick leave for either medical reasons or for the purpose of attending the immediate family at the time of birth or adoption of a child must be deducted from the 720 or 864 hours, as applicable, authorized by Section 17-1.
- (b) Sick leave donations may not be used to cover absences occurring under this Section.

**SECTION 18. ADMINISTRATIVE LEAVE.**

18-1. Approval Authority. Administrative leave is paid leave which the Chief Administrative Officer, department head or designee may grant to:

- (a) An employee or groups of employees in cases of:
  - (1) General or public emergency; or
  - (2) An unhealthy or dangerous situation;
- (b) An employee who is relieved of duties pending:
  - (1) An investigation of incidents or charges;
  - (2) Removal; or
  - (3) A determination as to fitness for continued duty;

- (c) An employee for attendance at officially approved meetings or conferences;
- (d) An employee who is subpoenaed as a witness in a civil or criminal case, to appear in administrative proceedings before an administrative body, or is to serve on a jury;
- (e) An employee under other circumstances as the Chief Administrative Officer or department head determines necessary and in the best interest of the County government or fire and rescue service;
- (f) A full-time or part-time employee may be granted paid leave for a maximum of 3 consecutive days in the event of a death in the immediate family. Operational firefighters are entitled to 3 consecutive calendar days in the event of a death in the immediate family. Immediate family is defined as the employee's parent, stepparent, grandparent, legal guardian, spouse, brother or sister, child, stepchild, grandchild, spouse's parent, spouse's grandparent, or any other relative living with the employee at the time of death. In extenuating circumstances the Chief Administrative Officer may approve administrative leave for other relatives.
- (g) A full-time or part-time merit system employee who is a member of a reserve component of the armed forces of the United States for training purposes not to exceed 15 days (maximum of 120 hours) each calendar year. An operational firefighter assigned to a 2496-hour work year who is a member of a reserve component of the armed forces of the United States may be granted administrative leave for training purposes not to exceed a period of 15 days (maximum of 168 hours) per calendar year.
  - (1) Application for administrative leave for military training should be made immediately upon receipt of orders for active duty for training in accordance with procedures established by the Chief Administrative Officer.
  - (2) The department head may permit waiver of the 15-day limitation when 2 annual training periods are scheduled in one calendar year.

## **SECTION 19. HOLIDAY LEAVE**

Holiday leave is paid leave granted to each eligible employee on a full-day or part-day holiday.

### **19-1. Holidays.**

- (a) New Year's Day                      January 1
- (b) Martin Luther King, Jr. Day        Third Monday in January

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| (c) | United States Presidential Inauguration Day  | January 20  |
| (d) | President's Day  | Third Monday in February  |
| (e) | Memorial Day   | Last Monday in May  |
| (f) | Independence Day   | July 4  |
| (g) | Labor Day  | First Monday in September   |
| (h) | Columbus Day   | Second Monday in October  |
| (i) | General election day in United States Presidential and County Government elections | Ordinarily first Tuesday after the first Monday in November in even numbered calendar years                                 |
| (j) | Veteran's Day  | November 11   |
| (k) | Thanksgiving Day   | Fourth Thursday in November   |
| (l) | Christmas Day  | December 25   |
| (m) | Special holidays   | Other days designated by action of the Chief Administrative Officer as a full-day or part-day holiday or as a non-work day. |

Religious holidays shall not be designated as special holidays, as approved absences on these days may be obtained through annual leave or alternative work schedules.

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| (n) | Substitute holidays         | Other days designated by action of the Chief Administrative Officer or as specifically provided in these Regulations as a full-day or part-day holiday or as a non-work day. |
| (o) | Special substitute holidays | Other days designated by action of the Chief Administrative Officer for categories of County employees providing County services to other County or bi-County agencies       |

19-2. Substitute Holidays.

- (a) When a holiday falls on Sunday, the following Monday is a substitute holiday and observed as a holiday for that year for each eligible employee.
- (b) When a holiday falls on a Saturday, the preceding Friday is a substitute holiday and observed as a holiday for that year for each eligible employee.
- (c) The Chief Administrative Officer may require some or all employees of an agency which provides services on Saturday or Sunday to observe the actual holiday in lieu of a substitute holiday on the preceding Friday or following Monday, but this applies only to those employees who must work on the actual holiday.
- (d) When a holiday falls on an eligible employee's regular day off, a department head or designee should assign the employee an alternate day off within the same pay period in which the holiday occurs.
  - (1) The alternate day off for a part-time employee or operational firefighter assigned to a 2496-hour work year must be on a prorated basis.
  - (2) In lieu of the alternative day off, the employee must be credited with an equivalent amount of compensatory time and must be scheduled to use the compensatory time as soon as possible.
  - (3) An operational firefighter may receive pay in lieu of the prorated amount of compensatory time when it is determined by the department head or designee to be in the best interest of the government.
- (e) Whenever Christmas Day, December 25, New Year's Day, January 1, or Independence Day, July 4, falls on either a Sunday or Saturday, it will be considered a holiday for that year for an employee who has to work. The same rule must apply to an employee who may be off the holiday but who is required to work on the substitute holiday.

19-3. Employees Eligible for Holiday Leave and Special Substitute Holiday.

- (a) Each full- and part-time employee normally scheduled to work on a holiday is eligible to be granted paid holiday leave.
- (b) School-based employees working a 10-month schedule are eligible for those holidays falling within that 10-month period, provided the employees are in pay status the last regularly scheduled work day before, and the first regularly scheduled work day after, the holiday.

- (c) An eligible employee on paid authorized leave during a period in which a holiday falls will be considered on holiday leave for that day.
- (d) Holiday leave and compensation for part-time employees must be computed on a prorated basis.
- (e) The Chief Administrative Officer may authorize a merit system employee assigned to provide County services to another County or bi-County agency to work on a County holiday not observed by such agency and to be off from work on an agency's holiday not observed by the County Government.

19-4. Employees Not Eligible for Holiday Leave.

- (a) Temporary employees are not eligible for holiday leave or premium pay.
- (b) An employee on non-pay status on both the employee's last regular work day before and the first regular work day after a holiday, or an employee who is absent without leave on either or both days mentioned above will not be eligible for paid holiday leave for that holiday.
- (c) School-based employees working a ten-month schedule are not eligible for those holidays falling outside the ten-month period.

19-5. Holiday Leave and Premium Pay.

- (a) As far as practicable, each employee will be released from attendance on duty on a holiday, and eligible employees must receive regular pay for the holiday.
- (b) As fire and rescue services must be maintained, an employee may be required to work by a department head or designee on any day designated as a holiday.
  - (1) The Chief Administrative Officer will determine which County services must be maintained on a full or partial basis.
  - (2) The department head or designee must determine which employees must work and which employees will be off duty on a holiday.
- (c) In order to receive premium pay for work on a holiday, an employee must have worked on the last scheduled work day for that employee before and after the holiday.

19-6. Premium Pay for Holiday Work.

- (a) An employee is eligible to receive premium pay as specified below when the majority of the normal work day falls during the holiday period (12:00 a.m. to 11:59 p.m.)
- (b) A full-time employee who is required to work on a holiday must receive:
  - (1) Regular pay for the hours scheduled to be worked on the normal work day of 8 or more hours, as applicable;
  - (2) Premium pay at a rate of one-and-one-half times the regular hourly rate for each hour worked for the normal work day on which the holiday occurs; and
  - (3) Overtime compensation for each hour worked in excess of the normal work day of 8 or more hours, as applicable.
- (c) A part-time employee who is required to work on a holiday must receive:
  - (1) Regular pay for the prorated share of the hours scheduled to be worked on the normal work day;
  - (2) Premium pay at a rate of one-and-a-half times the regular rate of pay for the prorated share of the hours worked on the holiday; and
  - (3) Overtime compensation for each hour worked in excess of the normal work day of 8 or more hours, as applicable.

19-7. Premium Pay for Holiday Work on an Employee's Regular Day Off.

- (a) An employee is eligible to receive premium pay as specified below when the majority of the normal work day falls during the holiday period (12:00 a.m. to 11:59 p.m.).
- (b) A full-time employee who is required to work on a holiday which is the employee's regular day off must receive:
  - (1) Regular pay for the hours scheduled to be worked in the normal work day of 8 or more hours, as applicable, or a substitute holiday scheduled within the same pay period in which the holiday occurs;
  - (2) Premium pay at a rate of double the regular hourly rate for each hour worked for the normal work day on which the holiday occurs; and

- (3) Overtime compensation for each hour worked in excess of the normal work day of 8 or more hours, as applicable.
- (c) A part-time employee who is required to work on a holiday which is the employee's regular day off must receive:
  - (1) Regular pay for the prorated share of hours scheduled to be worked for the normal work day or a substitute holiday scheduled within the same pay period in which the holiday occurs;
  - (2) Premium pay at a rate double the regular hourly rate for the prorated share of hours worked on the holiday; and
  - (3) Overtime compensation for each hour worked in excess of the normal work day of 8 or more hours, as applicable.
- (d) In the event that a department head or designee determines that it does not serve the interests of the government for the employee to be off on the substitute holiday, the employee may receive an equivalent amount of compensatory time in lieu of the substitute holiday.

19-8. Premium Pay for Work on Actual and Substitute Holiday.

- (a) An employee is eligible to receive premium pay as specified below when the majority of the normal work day falls during the holiday period (12:00 a.m. to 11:59 p.m.).
- (b) A full-time employee who works both the actual and substitute holiday must receive:
  - (1) Regular pay for hours scheduled to be worked in the normal work day of 8 or more hours, on which the actual or substitute holiday occurs, as applicable;
  - (2) Premium pay at a rate of one-and-a-half times the regular rate of pay for each hour worked for the normal work day of 8 or more hours, as applicable, on either the actual or substitute holiday, but not for both days; and
  - (3) Overtime compensation for each hour worked in excess of the normal work day of 8 or more hours as, applicable, on which the holiday or substitute holiday occurs.
- (c) A part-time employee who works both the actual and substitute holiday must receive:

- (1) Regular pay for the prorated share of hours worked on the holiday or substitute holiday;
  - (2) Premium pay at a rate of one-and-a-half times the regular rate of pay for the prorated share of the hours worked on either the actual or substitute holiday, but not for both days; and
  - (3) Overtime compensation for each hour worked in excess of the normal work day of 8 or more hours, as applicable, on which the holiday or substitute holiday occurs.
- (d) The employee required to work both days may choose which day will be treated as the holiday for purposes of premium pay.

19-9. Compensatory Time Credits in Lieu of Premium Pay for Holiday Work. Whenever budgetary limitations preclude the payment of premium pay for holiday work, the employee must be credited with:

- (a) One-and-a-half hours of compensatory time for each hour of holiday work on the employee's regular work day; and
- (b) Two hours of compensatory time (double time) for each hour of holiday work on the employee's regular day off.

19-10. Basis for Computing Prorated Hours in Determining Pay and Leave Credits on a Holiday. A part-time employee must receive leave or compensation in connection with a holiday based upon a prorated share of the hours the employee is scheduled to work during the pay period in which the holiday falls in accordance with the following schedule.

Hours Normally Scheduled to Work in the  
Pay Period in Which the Holiday Falls = Prorated Hours

10

For operational firefighters assigned to a 2496-hour work year, compensation shall be based on a prorated share of a pay period of 96 hours, regardless of the actual hours worked in the pay period, subject to the provisions of Section 19-4, "Employees Not Eligible for Holiday Leave."

## SECTION 20. FAMILY AND MEDICAL LEAVE

20-1. Definition. Family and medical leave is paid or unpaid leave granted to eligible employees for the purposes stated in the Federal Family and Medical Leave Act (FMLA) of 1993.

20-2. Eligibility. An employee who has been employed by the County for a total of 12 months, and who has been in a work status for at least 1040 hours in the preceding 12 months, must be allowed to use 12 work weeks per leave year of any combination of annual



leave, sick leave, disability leave, parental leave, and leave without pay for any one or more of the following reasons:

- (a) To care for the employee's newborn or newly adopted child or to care for a foster child newly placed with the employee;
- (b) To obtain prenatal care for the employee or to arrange for the adoption or foster care placement of a child with the employee;
- (c) To care for, or arrange care for, any of the following with a serious health condition: the employee's spouse, minor child, adult son or daughter incapable of self-care, or parent;
- (d) Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position.

20-3. Leave Year. The leave year begins with the first full payroll period of a calendar year and ends with the payroll period in which December 31 falls.

20-4. Work Week. A work week for FMLA purposes consists of the average number of hours which the employee works in a week.

20-5. Use of FMLA Leave.

- (a) Leave taken to care for the employee's newborn child or child newly placed for adoption or foster care:
  - (1) Must be taken within 12 months of the birth, adoption, or foster care placement of the child;
  - (2) May be used on a continuing basis or, with the approval of the supervisor, may be used on an intermittent or reduced work week basis;
  - (3) At the employee's option, may be paid leave of the appropriate type, unpaid leave, or a combination of paid and unpaid leave;
  - (4) Is subject to a 30-day advance notice period;
  - (5) Will not qualify as parental leave under Section 17 of these Regulations if the leave is taken to care for a newly placed foster child, or if the employee has exhausted the 720 hours (up to 864 hours for an operational firefighter) of parental leave provided per 24-month period under Section 17.

- (b) FMLA leave which does not qualify as parental leave under Section 17 of these Regulations may not include sick leave beyond the limitations stated in Section 14-1 of these Regulations;
- (c) FMLA leave taken for medical purposes listed in Section 20-2(c) and (d):
  - (1) At the employee's option, may be paid leave of an appropriate type, unpaid leave, or a combination of paid and unpaid leave;
  - (2) Must be unpaid leave if the employee has exhausted all appropriate types of paid leave;
  - (3) May be used on a continuing or intermittent basis, as needed.
  - (4) May be subject to the requirement that the employee submit medical certifications to support requests for leave.
- (d) An employee may be temporarily transferred to another position with equivalent pay and benefits to accommodate an intermittent leave schedule.
- (e) Employees must apply for paid FMLA leave in accordance with applicable procedures for the granting of annual leave, sick leave, and parental leave and provide as much advance notice as possible to the supervisor so as not to disrupt the work unit unduly. When unforeseen events occur, notice of the need to use FMLA leave will be given as soon as practicable, ordinarily within one or 2 working days.
- (f) Employees must provide advance written notice of intent to use leave without pay for FMLA purposes when the need to use the leave is foreseeable. Employees must otherwise provide such notice as is practicable.
- (g) Either the employee or supervisor may designate leave as FMLA leave. The supervisor should designate leave as FMLA leave if the information available to the supervisor indicates that the leave is being taken for an FMLA purpose, and the employee has not requested or otherwise indicated that the leave is FMLA leave. The supervisor must advise the employee prior to the completion of the period of leave that it has been designated as FMLA leave and the reasons for the designation.
- (h) Periods of disability leave should be designated as FMLA leave by the supervisor if the leave is taken for an FMLA-qualifying reason.

20-6. Limitations on Sick Leave Usage. Sick leave may only be used for the following FMLA purposes:

- (a) To care for the employee's newborn or newly adopted child, provided that the leave qualifies as parental leave under Section 17 of these Regulations;
- (b) To care for the employee's newborn or newly adopted child, if the leave does not qualify as parental leave under Section 17 of these Regulations, subject to the limitations on family sick leave in Section 14-1;
- (c) To obtain prenatal care for the employee;
- (d) To care for, or arrange care for, any of the following with a serious health condition: the employee's spouse, minor child, adult son or daughter incapable of self care, or parent, subject to the limitations on family sick leave in Section 14-1;
- (e) Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position.

20-7. Recording of Family and Medical Leave. Leave used for FMLA purposes will be recorded as FMLA leave, and, as applicable, as annual leave, sick leave, disability leave or leave without pay. For exempt employees under the Fair Labor Standards Act, deductions of less than one full day of leave without pay may be made for FMLA leave without affecting the employees' exempt status.

20-8. Relation to Other Benefits. An employee who uses leave without pay under this Section must retain all health and life insurance benefits for the entire period of leave without pay. Upon return from FMLA leave, the employee must be restored to the same or an equivalent position with equivalent benefits.

20-9. Procedure. A procedure for the administration of FMLA leave will be established by the Chief Administrative Officer.

## **SECTION 21. OUTSIDE ACTIVITIES.**

Employees must not engage in any conduct, employment, private business, or conduct a profession that violates Article 4, "Merit System and Conflicts of Interest," of the Charter of Montgomery County, Maryland, or Chapter 19-A "Ethics," Montgomery County Code 1984, as amended. The Chief Administrative Officer may establish appropriate procedures regulating outside employment activities.

## **SECTION 22. TRANSFER.**

22-1. Definition. Transfer of employees is a prerogative of management and is the movement of an employee from one position or task assignment to another position or task assignment at the same grade and salary level either within a department/office/agency or between departments/offices/agencies. Transfers usually involve one or more of the following factors:

- (a) A change from one merit system position to another;
- (b) A change in physical location of the job or position;
- (c) A change in duty assignment but within the same occupational class; or
- (d) A change from a State/County position to a County merit system position.
- (e) Transfers also include the movement of an employee from one merit system to another between fire and rescue corporations, or between a fire and rescue corporation and the Montgomery County government. All transfers to County government positions must be authorized by the Montgomery County Personnel Regulations and County law. Transfers can occur only upon agreement of both employers involved.

22-2. Reasons for Transfer. An employee may be transferred on the basis of:

- (a) A voluntary request;
- (b) A lack of funding resulting from budgetary limitations or loss of Federal/State funds;
- (c) A change in the approved work program/plan/design;
- (d) An administrative reorganization;
- (e) A technological change or advancement that impacts on work force needs;
- (f) A change in an employee's physical or mental condition;
- (g) The resolution of a grievance or other problems affecting the operational efficiency of a unit or organization;
- (h) For training or development; or
- (i) The need for additional personnel at a specific work site.

22-3. Qualifications for Transfer. An employee must fully meet the minimum qualifications for the position to which transferred.

22-4. Temporary Transfers between Public Agencies. The Chief Administrative Officer may enter into reciprocal agreements with other public agencies to provide for temporary voluntary transfers not to exceed 12 months. Such transfers must provide for the maintenance of substantially equivalent salaries and benefits.

22-5. Permanent Transfers between County-funded Agencies. The Chief Administrative Officer may enter into reciprocal agreements providing for the permanent voluntary transfer of employees from one County-funded agency to another.

22-6. Appeal of Transfer. A merit system employee may appeal an involuntary transfer in accordance with Section 29 of these Regulations. The employee must show that the action was arbitrary and capricious or discriminatory.

### SECTION 23. PROMOTION.

23-1. Definition. Promotion is the movement of an employee from one merit system class to another with a higher grade level assignment.

23-2. Policy. Promotions must be made on a competitive basis. After an evaluation of each individual's qualifications as defined in Section 5-6 of these Regulations, the appointing authority will make the final selection in accordance with Section 6-3 of these Regulations. The fire and rescue service promotional program should provide:

- (a) Qualified employees an opportunity to receive fair and appropriate consideration for higher level positions;
- (b) Assurance of maximum utilization of employees;
- (c) An incentive for employees to improve performance and to develop skills, knowledge and abilities; and
- (d) Career advancement for qualified employees.

23-3. Noncompetitive Promotion. The Chief Administrative Officer may approve a noncompetitive promotion for a merit system employee:

- (a) Who has been notified of, or subject to, layoff;
- (b) Who is unable to perform the duties of his or her present position because of a disability, illness or injury, but is qualified and capable of continued employment in another capacity; or
- (c) Who has passed all required examinations and meets the requirements for advancement from an entry or training level class to the full performance

level class within the same occupational series. This is usually referred to as a proficiency advancement.

23-4. Temporary Promotion. On the recommendation of a department head, the Chief Administrative Officer may approve a temporary promotion on a noncompetitive basis, not to exceed 12 months without approval of the Merit System Protection Board, when it is determined to be in the best interest of the County. This must not give the employee a priority claim or competitive advantage when the position is announced as a promotional opportunity. Upon termination of the temporary promotion, the employee must be returned to the position previously occupied. Employees will not normally be reassigned to a higher classified job, unless required by workload as determined by the department head. However, employees who are temporarily reassigned to a higher classified job for a period of more than 45 days shall receive the rate of pay of the higher classified job, retroactive to the first day the employment was temporarily reassigned to the higher classified job, except employees covered by a Position and Career Education (PACE) contract.

23-5. Appeal. A merit system employee may appeal promotional action pursuant to Section 29 of these Regulations. The employee must show that the action was arbitrary and capricious or in violation of established procedures. However, an employee may not appeal a selection from the highest rating category of a properly established eligible list.

#### **SECTION 24. RESIGNATION.**

Resignation is an explicit act of an employee by the submission of a written notice of intent to leave County service, usually 2 weeks prior to the effective date. In extenuating circumstances, a supervisor may accept an oral resignation, and the date, time and nature of the communication must be noted on the separation forms. A resignation may be rescinded by an employee, provided it is done in writing within 5 work days from the date submitted, or a later date if approved by the Chief Administrative Officer. A resignation is not appealable unless it can be shown by the employee that it was involuntary or coerced. In such cases, the action will be considered the same as a dismissal, and the appeal handled as provided in Section 30 of these Regulations.

#### **SECTION 25. TERMINATION.**

25-1. Definition. Termination is a nondisciplinary act by management to conclude an employee's service with a fire and rescue corporation. Reasons for termination include, but are not necessarily limited to, the following:

- (a) An employee's abandonment of position as demonstrated by the failure to report for work as scheduled on 3 or more consecutive work days and failure to obtain approval for such absence. A position will not be considered to have been abandoned if the employee is able to demonstrate that the employee was physically or mentally unable to seek approval for the absence or to report for work due to facts and circumstances beyond the control of the employee.

- (b) A probationary employee's failure to achieve a satisfactory level of performance during the probationary period;
- (c) Excessive absences caused by on-going medical or personal problems that are not resolved within 3 calendar months after the date the employee exhausts all paid leave, including any grants of leave received from a sick leave donor program; and
- (d) Where the minimum qualifications for a class require members of the class to obtain and retain licenses or certifications (excluding medical fitness certifications), failure by an employee to obtain or maintain such licenses or certifications.

25-2. Management Responsibility. Prior to terminating an employee for the reasons stated in (c) above, management must inform the employee in writing of the problem, counsel the employee as to what corrective action to take, and allow the employee adequate time to improve or correct performance or attendance. Prior to terminating an employee for the reasons stated in (d) above, management must inform the employee of the problem and ensure that the employee has had adequate time and opportunity to obtain the required license or certification.

25-3. Appeals. A merit system employee who is terminated may appeal pursuant to Section 29 or 30 of these Regulations.

## **SECTION 26. REDUCTION-IN-FORCE.**

### 26-1. Definition.

- (a) Reduction-in-force is the elimination of a position or positions because of a lack of sufficient funds, a change in the approved work program/plan/design for a department/office/agency, administrative reorganization of a department/office/agency or a technological change or advancement that impacts on work force needs.
- (b) Furlough is a temporary, non-pay status and absence from normally scheduled duty required by the Chief Administrative Officer due to lack of sufficient funds or work.

### 26-2. Policy.

- (a) When a reduction-in-force becomes necessary, the resulting transfers, demotions and terminations must be based on one or more of the following factors:
  - (1) Service needs;
  - (2) Seniority; or

(3) Work performance.

Only employees in the same class and department as the eliminated position(s) are subject to the reduction-in-force. A merit system employee may not be laid off if there is a probationary or temporary employee in the same class in the same department/office/agency.

- (b) As an alternative to reductions-in-force, the Chief Administrative Officer may furlough some or all employees. The Chief Administrative Officer must establish procedures to implement employee furloughs.

26-3. Notification. An employee who is affected by a reduction-in-force must be given at least 30 days written notice. Whenever possible, a longer notice should be given.

26-4. Reinstatement. Except for those employees as defined in Sections 3-11 and 3-14 of these Regulations, a merit system employee who is terminated as the result of a reduction-in-force must be placed on a reemployment list for 2 years and given priority consideration for any position for which qualified at or below the grade the employee held when affected by reduction in force, subject to the provisions of Section 33-7(b)(4) of the Montgomery County Code. A new employee may not be hired for any vacant position as long as there is a qualified person for that position on the reemployment list. Voluntarily demoted employees are eligible for noncompetitive reappointment as defined in Section 6-5 of these Regulations.

26-5. Appeals. Except for those employees as defined in Sections 3-11 and 3-14 of these Regulations, a merit system employee who is demoted or terminated due to reduction-in-force may appeal in accordance with Section 29 or 30 of these Regulations. A furloughed employee may appeal in accordance with Section 29 of these Regulations.

## SECTION 27. DEMOTION.

27-1. Definition. Demotion is the movement of an employee from one merit system position or class to another with a lower grade level assignment.

27-2. Authority. A department head has the authority to demote an employee.

27-3. Voluntary demotion. Voluntary demotion may occur with the written consent of an employee. Such demotion must be without prejudice and may be used to retain an employee whose position has been abolished or reclassified downward or who, because of physical or mental incapacity, is unable to productively perform assigned duties and wishes to continue employment in a position for which qualified. Such demotion must not be detrimental to an employee's work record and must not adversely affect the employee's opportunity for future promotion to a position for which qualified.

27-4. Involuntary Demotion. A merit system employee who receives a less than satisfactory work performance evaluation after written warning, counseling and at least 3 months to improve, may be demoted involuntarily. Such employee must receive written notice at least 5 working days prior to the effective date of the demotion. The notice must



contain the reasons for the action with specific charges, or reasons, the effective date, and appeal rights.

27-5. Appeals. A merit system employee may appeal an involuntary demotion in accordance with Section 29 or 30 of these Regulations.

## **SECTION 28. DISCIPLINARY ACTIONS.**

28-1. Policy. A disciplinary action against an employee must be initiated promptly when it is evident that the action is necessary to maintain an orderly and productive work environment. Except in cases of theft or serious violations of policy or procedure that create a health or safety risk, disciplinary actions must be progressive in severity. The severity of the action should be determined after consideration of the nature and gravity of the offense, its relationship to the employee's assigned duties and responsibilities, the employee's work record, and other relevant factors.

28-2. Causes for disciplinary action. The following, while not all inclusive, may be cause for disciplinary action:

- (a) Abuse of sick leave;
- (b) Unauthorized absence or chronic tardiness;
- (c) Being under the influence of alcohol or unprescribed controlled dangerous substances while at work or when reporting to work;
- (d) Material falsification of information provided on application for employment or promotion;
- (e) Failure to perform duties in a competent or acceptable manner;
- (f) Refusal to take a medical examination or to provide medical records, as directed;
- (g) Insubordinate behavior by failure to obey lawful directions given by a supervisor;
- (h) Violation of an established policy or procedure;
- (i) Negligence or carelessness in the performance of duties;
- (j) Theft or misappropriation of County or fire and rescue corporation funds or property;
- (k) Failure to disclose a private interest or to disqualify oneself from participation in any decision or other action in which there is a conflict between official duties and private interest;

- (l) Directing an employee to perform any service or work outside of official duties;
- (m) Engaging in a private business or in a trade or occupation during official working hours in violation of County laws, regulations or administrative procedures;
- (n) Accepting, offering, giving or promising to give any money or valuable thing, or making a threat of force or disclosure of personal affairs, blackmail or extortion to exert pressure on any person in the performance of official duties;
- (o) Violation of any provision of the County Charter, County laws, ordinances, regulations, State or Federal laws, or conviction for a criminal offense, if such violation is related to County employment;
- (p) Knowingly making false statements or reports in the course of employment; or
- (q) Soliciting endorsement for employment or promotion from individuals who are or may be engaged in doing business for the County government.

28-3. Types of Disciplinary Actions.

- (a) Oral Admonishment. A spoken warning or indication of disapproval concerning a specific act, infraction, or violation of a policy or procedure that is usually given by the immediate supervisor and is noted for the record, but does not become part of an employee's personnel record.
- (b) Written Reprimand. A written statement concerning a specific act, infraction or violation of a policy or procedure that is made a part of the employee's personnel record.
- (c) Forfeiture of Annual Leave or Compensatory Time. Except where prohibited by the Fair Labor Standards Act, the removal of a specified number of hours from the annual leave or compensatory time balance of an employee. The amount forfeited may not be less than one day nor more than 10 days.
- (d) Within-Grade Reduction. The movement of an employee from a higher base salary to a lower base salary without a reduction in grade or change in position for a specified period of time not to exceed one year.
- (e) Suspension. The placing of an employee in leave without pay status for a specified period, not to exceed 5 work days, for a specific act, infraction or violation of a policy or procedure. The Chief Administrative Officer may

approve a suspension for more than 5 days, but under no circumstances may a suspension exceed one calendar month.

- (f) Suspension Pending Investigation of Charges or Trial. The placing of an employee in leave without pay status for an indefinite period pending investigation of charges or trial for job-related offenses. If found innocent, the employee must be reinstated without loss of pay. Any salary due for the period of suspension must equal the employee's normal earnings, less amount earned in other employment obtained and engaged in during the period.
- (g) Demotion. The movement of an employee from one merit system position or class to another with a lower grade level assignment. Any loss of pay caused by demotion shall not exceed 5 percent of the base salary for each grade the employee is demoted up to 20 percent of base salary.
- (h) Dismissal. The removal of an employee from the County service for cause.

28-4. Notification. In cases of within-grade reduction, demotion, suspension and dismissal, an employee must receive written notice of the disciplinary action at least 5 working days prior to the effective date, except in cases of theft of County or corporation property or serious violations of policy or procedure that create a health or safety risk. The Chief Administrative Officer must develop a standard charging document which must contain the reasons for the action with specific charges, the effective date and appeal rights.

28-5. Authority.

- (a) Supervisor. An immediate or higher level supervisor may be delegated the authority to immediately relieve an employee from duty if the retention of such employee will cause or continue a disruption of the work force. Within one work day, the supervisor must submit a recommendation for appropriate disciplinary action to the department head.
- (b) Department Head. A department head may take any disciplinary action provided for in these Regulations. Prior to taking any disciplinary action, the department head must provide the employee with a copy of the charges and allow such employee a reasonable period of time to respond, which must be not less than 10 work days.

28-6. Appeals. A merit system employee may appeal a written reprimand, forfeiture of annual leave or compensatory time, or within-grade reduction in accordance with Section 29 of these Regulations. A merit system employee may appeal a demotion, suspension or dismissal in accordance with Section 29 or 30 of these Regulations. Oral admonishments are not appealable under these Regulations. Employees, other than merit system employees, may appeal a disciplinary action in accordance with Section 29 of these Regulations.

## SECTION 29. GRIEVANCES.

29-1. Policy. Legitimate problems and differences of opinion may and will arise between an employer and its employees. It is the responsibility of all department heads, supervisors and administrators to establish and maintain a work climate within which an employee's grievance may be identified, presented, discussed and given fair, prompt consideration. In presenting a grievance, an employee must be assured freedom from restraint, interference, coercion, discrimination or reprisal. The Chief Administrative Officer may establish reasonable limits on amount of County time authorized for purposes of preparing and presenting a grievance.

Employees have the right to representation, of their own choosing and expense, at any level of review. However, a supervisor or other management official may not be represented by a labor organization or an official, employee or representative of a labor organization which is certified under County collective bargaining laws to represent any employees who are subject to the supervision or control of the supervisor or management official.

29-2. Definition. A grievance is a formal written complaint by an employee arising out of a misunderstanding or disagreement between a merit system employee and supervisor, which expresses the employee's dissatisfaction concerning a term or condition of employment or treatment by management, supervisors, or other employees. A grievance may be filed if an employee is adversely affected by an alleged:

- (a) Violation, misinterpretation or improper application of established laws, rules, regulations, procedures or policies;
- (b) Improper or unfair act by a supervisor or other employee, which may include coercion, restraint, reprisal, harassment or intimidation;
- (c) Improper, inequitable or unfair act in the administration of the merit system, which may include promotional opportunities, selection for training, duty assignments, work schedules, involuntary transfers and reductions-in-force;
- (d) Improper, inequitable or unfair application of the compensation policy and employee benefits, which may include salary, pay differentials, overtime pay, leave, insurance, retirement and holidays;
- (e) Disciplinary action, which includes written reprimands, forfeiture of annual leave or compensatory time and within-grade reductions; or
- (f) Improper or unfair resignation or termination of employment;

Special Note. Demotions, suspensions, terminations and dismissals affecting merit system employees may be appealed directly to the Merit System Protection Board under Section 30

of these Regulations. Temporary and probationary employees may grieve disciplinary actions through procedures established under this Section, but are limited to final review by the Chief Administrative Officer or designee.

29-3. Procedure. The Chief Administrative Officer must establish a procedure for reviewing and processing grievances to assure prompt, objective and impartial resolution at the lowest level of supervision possible. Such procedure must provide for:

- (a) Review of the grievance by the immediate supervisor, department head and Chief Administrative Officer or designee;
- (b) Specific and reasonable time limits for each level of review or step in the process, including a provision that a grievance may be dismissed by the Personnel Director or designee if it is not filed within 20 calendar days from the date the employee knew or should have known of the occurrence upon which the grievance is based;
- (c) Written decision or disposition at each level of review;
- (d) Employee representation at each level of review, if desired; and
- (e) Appeal to the Merit System Protection Board for merit system employees.

### SECTION 30. APPEALS AND HEARINGS.

30-1. Definitions.

- (a) Appeal. An appeal is the written request of an applicant or employee for review of an administrative decision on a grievance, disciplinary action or other personnel action which adversely affects employment or opportunity for employment or promotion for which appeal privileges are provided.
- (b) Hearing. A hearing is the opportunity given an employee to appear before two or more members of the Merit System Protection Board or designated hearing officer to be heard on an appeal.
- (c) Charging Party. The corporation is the charging party in all appeals from an administrative decision on a grievance which adversely affects employment, disciplinary actions or demotion. In cases involving transfers, terminations or promotions, the individual filing the appeal or making the allegations is the charging party.
- (d) Responding Party. The party against whom the charges have been brought.
- (e) Deposition. Testimony, under oath, before both parties, prior to a hearing, submitted in writing as evidence in lieu of requiring a witness to appear.

- (f) Rebuttal. The charging party's response to evidence submitted by the responding party.
- (g) Surrebuttal. The responding party's response to rebuttal evidence.
- (h) Working Days. For the purpose of this Section, working days includes all days except for Saturdays, Sundays and official County holidays.

30-2. Right of Appeal and Hearing. A merit system employee has the right of appeal and a hearing before the Merit System Protection Board from a demotion, suspension, dismissal or involuntary resignation. In all other cases, including grievances, after development of a written record, an employee's appeal must be reviewed and a hearing may be granted or referred to the hearing officer at the discretion of the Merit System Protection Board if it is believed that the record is incomplete or inconsistent and requires oral testimony to clarify the issues. If the Board denies the request for hearing, a decision on the appeal must be rendered based on the written record.

30-3. Hearing Officer. The Board may refer hearings as provided for in Section 33-12, "Appeals of Disciplinary Actions, Grievances and Procedures," Subsection (c), "Hearing Examiners," of the County's merit system law. The hearing officer has 15 working days in which to issue notice of hearing, and the notice must be issued at least 30 working days prior to date of hearing. Within 20 working days of completion of a hearing, the hearing officer must submit written findings and recommendations to the Board. Within 15 working days of receipt of the hearing officer's report, the Board may schedule oral arguments.

30-4. Appeal Period. An employee has 10 working days from receipt of a written decision of the Chief Administrative Officer or notice of a disciplinary action to note an appeal, in writing, with the Board. A notice of appeal is a simple statement that the individual wants the action reviewed by the Board. Within 10 working days from notice of appeal, the employee must submit the following information in writing:

- (a) Name and signature of the appellant (person noting the appeal);
- (b) Position title;
- (c) Department, office or agency (if applicable);
- (d) Home address and telephone number;
- (e) A concise description of the action or decision being appealed;
- (f) Reason(s) why the appellant disagrees with that action or decision; and
- (g) Relief requested, subject to subsequent modification by the appellant.

30-5. Dismissal of an Appeal. If an appeal is not noted or submitted within the specified time limits, the Board may dismiss the appeal. An appeal may also be dismissed by the

Board if the appellant, the corporation, or the County fails to comply with established appeal procedures.

30-6. Notification and Submission of Record. Upon receipt of an appeal, the Board must promptly notify the department head, the Chief Administrative Officer, the County Attorney, and the Personnel Director, in writing, and provide the County Attorney and Personnel Director with a copy of the appeal. The department head, Personnel Director and County Attorney must respond to the appeal within 15 working days and forward a copy of the action or decision appealed with all relevant reports, papers and documents to the Board. Extensions of the time limits for filing under this Section may be granted by the Board for good cause shown.

30-7. Stay of Action. The filing of an appeal does not act as a stay of the action appealed; except that the Board, after notice to the department head is given in accordance with Section 30-6, with or without a hearing, may grant a stay itself, or if requested by the appellant, upon such conditions as it may believe proper and just.

30-8. Scheduling of Hearings. Hearings must be held as soon as feasible and may be conducted by two or more members of the Board or the designated hearing officer. The appealing party, the department head, the Personnel Director and the County Attorney must be served with a written notice of the time, date and place of the prehearing conference and the hearing requirements as follows:

- (a) In cases of dismissal and suspension, at least 10 working days before the scheduled hearing date; and
- (b) In all other cases, at least 30 working days before the scheduled hearing date;

30-9. Rights of Appellant. The appellant may be represented by an individual of personal choice, and hearings must not be open to the public unless so requested in writing by the appellant at time of prehearing submissions.

30-10. Authorities and Duties of the Merit System Protection Board. The chairperson or vice-chairperson of the Board must preside at all disciplinary appeal hearings and have full authority at all times to maintain orderly procedure. Hearings are quasi-judicial in nature and must be conducted in accordance with recognized principles of administrative due process, but need not be governed by strict rules of evidence as applicable to judicial proceedings. The Board has the following authority:

- (a) To administer oaths;
- (b) To issue subpoenas for witnesses and documents. If privilege or confidentiality is claimed, the Personnel Board is authorized to apply to any court of competent jurisdiction for determination of the question. Subpoenas may be served by any person lawfully authorized to serve a subpoena in a civil case.

- (c) To rule on petitions to revoke subpoenas;
- (d) To rule upon motions and offers of proof; to receive or refuse evidence; to exclude incompetent, irrelevant, immaterial or unduly repetitious evidence and give effect to the rules of privilege recognized by law;
- (e) To dispose of procedural requests or similar matters, to amend prehearing statements, to order hearings reopened, or consolidated and to grant rehearings;
- (f) To call, examine and cross-examine witnesses and to obtain and introduce evidence into the record;
- (g) To accept evidence by stipulation of facts. The Board may take notice of judicially cognizable fact.
- (h) To take any action necessary to a fair disposition of the case; and
- (i) To assign a hearing officer to hear any case appealed to the Board and prepare a written summary for Board consideration prior to their final decision on the matter.

30-11. Prehearing Procedure. The charging party must submit the following information to the Board or hearing officer and to the responding party at least 20 working days before the hearing, except in cases of dismissal or suspension, which require it be submitted at least 10 working days before the hearing:

- (a) Complete list of charges;
- (b) A copy of all written reports, documents, photographs, charts, letters or any other material to be introduced or used at the hearing;
- (c) The names and addresses of all prospective witnesses and a summary of their anticipated testimony;
- (d) The names and addresses of witnesses and/or documents and records requiring service of a subpoena; and,
- (e) Estimated time required for presentation of the case.

The responding party must submit the same information to the Board or hearing officer and the charging party not less than 10 working days before the hearing, except in cases involving dismissal or suspension, which require it be submitted at least 5 working days before the hearing. The prehearing submissions indicate intent only, and neither party is bound to introduce witnesses or documentation at the hearing. 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.



30-12. Order of Hearing Procedure. The order of procedure in the conduct of a hearing is usually:

- (a) Disposition of preliminary motions and matters;
- (b) Opening statements, which must be a summary of case to be presented;
- (c) Presentation of factual case for the party making the charges and cross-examination of all witnesses;
- (d) Disposition of motions, if any;
- (e) Presentation of factual case for the responding party and cross-examination of all witnesses;
- (f) Rebuttal evidence of the charging party;
- (g) Surrebuttal evidence of the responding party; and
- (h) Closing arguments.

30-13. Continuances. Requests for continuance must be in writing with a copy to the opposing party and submitted to the Board or hearing officer at least 5 working days prior to the hearing date. The Board or hearing officer may grant the request only where good cause is shown.

30-14. Witnesses. All witnesses must testify under oath, and only witnesses having direct knowledge of the facts on which the charges are based will be heard. The Board or hearing officer will hear:

- (a) Testimony directly related to the charges;
- (b) Testimony indirectly related to the charges, provided a relevant relationship has been established; and
- (c) Testimony of past work record, but only for the purpose of determining degree of penalty, if any.

Every party must have a reasonable amount of time to examine and cross-examine witnesses and to submit evidence. The Board or hearing officer may examine witnesses as deemed appropriate.

Any witness who, under oath, intentionally falsifies material facts or willfully and falsely testifies in a hearing is subject to the penalties of perjury as provided under the laws of this State and, if a County employee, dismissal.

30-15. Interrogatories and Depositions. At the discretion of the Board or hearing officer, statements of witnesses may be taken by written interrogatories or depositions made under oath. This provision must not preclude the taking of any deposition or interrogatory of any witness prior to the hearing for impeachment or discovery purposes. A true copy of any interrogatories, answers, or depositions must be filed with the Board or hearing officer.

30-16. Record of Proceedings. All hearings of disciplinary appeals must be recorded, either verbatim or in summary. A party may be allowed to copy the transcript or summary upon request.

30-17. Length of Hearings. The Board or hearing officer may set time limits for a hearing or part of a hearing.

30-18. Decision of Merit System Protection Board. The Board may decide an appeal in any manner deemed necessary, appropriate, and in the best interest of the County in accordance with the Montgomery County Code, Section 33-14, "Hearing Authority of Board," Subsection (c), "Decisions," of the County's merit system law. The Board decisions must be in writing with a copy to the appellant, or appellant's representative of record, the department head, the Chief Administrative Officer, the Fire and Rescue Commission, the County Attorney, and the Personnel Director. Decisions of the Board are final and binding unless appealed to a court of competent jurisdiction, under Section 30-20 of these Regulations and are enforceable by a court of competent jurisdiction.

30-19. Request for Reconsideration. Either party may request reconsideration of the Board's decision within 10 working days from date of receipt. Thereafter, the Board may not reconsider its decision, except in the case of fraud, mistake or irregularity. Requests for reconsideration must be in writing and contain supporting reasons, with copies to any opposing party or opposing party's representative of record. A request for reconsideration stays the time for any further appeal until the Board makes a decision on the request. Reconsideration requests not granted within 10 working days of receipt are deemed denied.

30-20. Appeals to Court. Decisions of the Board may be presented for judicial review in the manner prescribed under Chapter 700 of the Maryland Rules.

30-21. Payment of Witnesses. A subpoenaed witness who is not a fire and rescue employee may be paid a reasonable fee as determined by the Board. Fire and rescue employees required to appear as a witness must be reimbursed by their department/office/agency at the regular rate of pay or by granting compensatory time on an hour-for-hour basis.

30-22. Penalties for Unauthorized Interference. Any person who tampers with, intimidates, bribes, or in any way attempts to coerce or influence any member of the Board, Board staff or hearing officer or a witness to Board proceedings, is subject to appropriate criminal charges under the laws of the State and, if a fire and rescue service employee, is subject to dismissal.

## **SECTION 31. DISCLOSURE OF ILLEGAL OR IMPROPER ACTS.**

31-1. General Policy. It is imperative that the fire and rescue service's business be conducted in an equitable and lawful manner. Therefore, fire and rescue service employees must not be expected or required to obey instructions that involve an illegal or improper action and may not be penalized for disclosure of such actions. Fire and rescue service employees are expected and authorized to report instances of alleged illegal or improper actions to the individual responsible for appropriate corrective action, or in unusual circumstances, such report may be filed directly with:

- (a) The Merit System Protection Board, if the individual involved in the alleged illegal or improper action is a merit system employee; or
- (b) The Ethics Commission, if the individual involved in the alleged illegal or improper action is not a merit system employee, or is an appointed or elected official, or a volunteer.

31-2. Prohibited Practices. It is unlawful for any person to coerce or attempt to coerce any merit system employee into taking an illegal or improper action or to retaliate or attempt to retaliate by taking or threatening to take a personnel action or withhold any action because of that employee's refusal to obey an illegal or improper instruction or disclosure of information related to an illegal or improper instruction.

31-3. Protection for Employee. Any merit system employee who refuses to obey an instruction involving an illegal or improper action, or who discloses information concerning the action with a reasonable good faith belief that the action would have been illegal or improper or that the disclosure was true and accurate, must be protected from any retaliatory or coercive action. However, the employee must not be protected if it is determined that:

- (a) The employee's actions were frivolous, unreasonable and without foundation, even though not brought in bad faith;
- (b) Without good cause, the employee failed to comply with administrative regulations concerning the making of such disclosures;
- (c) The employee was the subject of otherwise proper personnel actions taken for disciplinary reasons and not for retaliatory purposes.

31-4. Filing of Complaints. If an employee believes a retaliatory action or coercion has taken place or been attempted because of the employee's refusal to obey, or disclosure of, an illegal or improper instruction, the employee may file a written complaint with the Board. The complaint must be filed within 60 days of the alleged violation or action and must contain:

- (a) The employee's name and signature;

- (b) The employee's home address and telephone number;
- (c) Name of the individual who allegedly took the action; and
- (d) A concise description of the alleged coercion or retaliatory action and reasons for believing it to be so.

The identity of all parties must be kept confidential unless and until there is a finding of probable cause or all parties waive confidentiality in writing.

The Board may initiate an inquiry of any person suspected of taking retaliatory or coercive action, with or without a written complaint from an employee.

31-5. Investigation of Complaint. The staff of the Board may conduct an investigation to determine if there is probable cause to believe a retaliatory or coercive action has been taken or attempted. The investigation must be completed within 30 days of receipt of the complaint, and the staff must take one of the following actions:

- (a) If it is determined that the subject matter of the complaint involved allegations properly covered by the grievance process or other laws or regulations, the complainant must be so advised in writing, and the complaint dismissed;
- (b) If it is determined that no probable cause exists, the complaint must be dismissed, and the complainant notified in writing of the reasons for the finding and the fact that the action is final, unless reconsideration by the Board is requested; or
- (c) If it is determined that probable cause does exist, the complainant must be so notified, and a statement of charges fairly describing the alleged violation and the sanctions sought for the violation must be prepared and served on the person believed to have violated Section 33-10(c) of the County's merit system law. The charges must then be certified to the Board for a hearing in accordance with Section 30 of these Regulations, and the Board's staff is the charging party.

31-6. Penalties. If a County employee or fire and rescue service employee is found guilty of coercion, harassment or retaliation, pursuant to Section 33-10 of the merit system law or this Section of the Personnel Regulations, the Board may order one or more of the following penalties:

- (a) Any disciplinary action provided for in these Personnel Regulations up to and including dismissal;
- (b) A monetary fine up to \$2,000.00;
- (c) Reimbursement of expenses incurred by all parties; or



# EXECUTIVE REGULATION

## Montgomery County Fire and Rescue Commission

**FIRE AND RESCUE CORPORATION PERSONNEL REGULATIONS**

Number

**20-93**

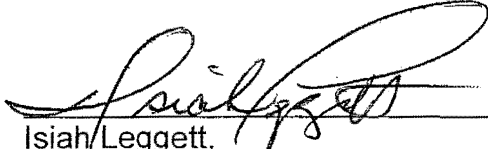
**MONTGOMERY COUNTY FIRE AND RESCUE COMMISSION**

Effective Date

(d) Other penalties deemed appropriate and consistent with the charter and laws of Montgomery County, Maryland.

31-7. Appeals.

An employee, subject to penalties based on the board's findings and decision, may appeal to a court of competent jurisdiction. [(Reso. No. 9-1072, sec. 24.)]

  
Isiah Leggett,  
County Executive

Oct 10, 2013  
Date

APPROVED AS TO FORM AND LEGALITY  
OFFICE OF COUNTY ATTORNEY  
BY Richard H. Melnick  
DATE 10/9/13