

Bill No. 45-10
Concerning: Personnel - Disability
Retirement - Eligibility - Total and
Partial Incapacity
Revised: June 22, 2011 Draft No. 7
Introduced: July 27, 2010
Enacted: June 28, 2011
Executive: _____
Effective: _____
Sunset Date: None
Ch. , Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Trachtenberg, Andrews, Berliner, and Council Vice President Ervin

AN ACT to:

- (1) create a partial incapacity disability retirement benefit for certain employees;
- (2) create a total incapacity disability retirement benefit for certain employees;
- (3) prohibit an employee who commits certain offenses from receiving a service connected disability retirement benefit; and
- (4) generally amend County law regarding disability retirement.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-43, 33-128, 33-129, and 33-131

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

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

2 **Sec. 1. Sections 33-43, 33-128, 33-129, and 33-131 are amended as**
3 **follows:**

4 **33-43. Disability retirement.**

5 * * *

6 (b) *Definitions.* In this Section, the following words and phrases have the
7 following meanings:

8 * * *

9 Partial incapacity means a member's inability to perform one or more
10 essential functions of the position the member holds because of
11 impairment that;

- 12 (1) is unlikely to resolve in the next 12 months;
- 13 (2) may be permanent; and
- 14 (3) does not prevent the member from performing any other
15 substantial gainful activity.

16 * * *

17 Total Incapacity means the member's inability to perform substantial
18 gainful activity because of an impairment that;

- 19 (1) is unlikely to resolve in the next 12 months; and
- 20 (2) may be permanent.

21 * * *

22 (f) *Service-connected disability retirement.*

23 (1) A member may be retired on a service-connected disability
24 retirement if:

- 25 (A) the member is totally or partially incapacitated [for duty
26 or partially and permanently incapacitated for duty] as
27 the natural and proximate result of an accident occurring,

- 28 or an occupational disease incurred or condition
29 aggravated, while in the actual performance of duty;
- 30 (B) the incapacity is not due to the member's willful
31 negligence;
- 32 (C) the incapacity is likely to be permanent; [and]
- 33 (D) the member is unable to perform the duties of either:
- 34 (i) the occupational classification to which the
35 member was assigned [at the time] when the
36 disability occurred; or
- 37 (ii) a position of comparable status [within] in the
38 same department for which the member is
39 qualified; and[.]
- 40 (E) the member has not committed an offense that would
41 justify removal for cause.
- 42 (F) For an accidental injury that does not cause mental
43 impairment, the member must:
- 44 (i) [reports] report the claimed accidental injury as
45 soon as practicable, but no later than one year after
46 the applicant knew or should have known that the
47 injury is likely to be disabling; or
- 48 (ii) [submits] submit a claim for Workers'
49 Compensation benefits for the accidental injury
50 that is not dismissed as untimely.
- 51 [(F)] (G) The time periods for reporting in subparagraphs (i)
52 and (ii) do not begin while the member is unable to report
53 because of incapacitating injuries.

54 ~~[(G)] (H)~~ For an accidental injury that occurs after July 1,
 55 2009, the member must apply for disability benefits:
 56 (i) within one year after separation from County
 57 service or before July 1, 2010, whichever is later;
 58 and
 59 (ii) if the applicant is a member of Group F, within 5
 60 years after the date of the accident causing the
 61 impairment or before July 1, 2014, whichever is
 62 later, unless the member is in a chronic incapacity
 63 duty assignment.

* * *

64

65 (i) *Amount of pension at service-connected disability retirement.*

66 (1) Total incapacity. The County must pay a member [, other than
 67 a Group G member,] who retires on service-connected
 68 disability retirement with total incapacity an annual pension
 69 calculated under Section 33-42(b)(1), [subject to the following
 70 exceptions] except that:

- 71 (A) the County must substitute final earnings for average
 72 final earnings; and
 73 (B) the pension must be at least [66 2/3 percent] 70% of the
 74 member's final earnings.

75 (2) [The County must pay a Group G member who retires on a
 76 service-connected disability retirement an annual pension
 77 calculated under Section 33-42(b)(1), except that the County
 78 must substitute final earnings for average final earnings.
 79 However, if this] If the benefit calculation under Section 33-
 80 42(b)(1) is greater than any other benefit under this subsection,

81 the County must pay a Group G member who retires on a
82 service-connected disability retirement between June 26, 2002,
83 and June 30, 2007, a pension based on the member's average
84 final earnings if that member's average final earnings result in a
85 greater benefit than final earnings.

86 (3) [The County must pay a Group G member who retires on a
87 service-connected disability retirement an annual pension
88 calculated under Section 33-42(b)(1), but the benefit must be at
89 least 70 percent of final earnings if the Chief Administrative
90 Officer finds, based on a recommendation from the Disability
91 Review Panel, that] The Disability Review Panel must
92 recommend a finding of total incapacity if the member's
93 service-connected disability is severe enough to meet the Social
94 Security Administration's requirements for disability, meaning
95 that the member is unable to engage in any substantial gainful
96 activity because of a medically determinable physical or mental
97 impairment that can be expected to end in death or has lasted,
98 or can be expected to last, for a continuous period of at least 12
99 months. The member does not have to qualify for Social
100 Security disability benefits to be eligible for benefits under this
101 subsection.

102 (A) The Panel must base its determination of whether [or not]
103 an individual is able to engage in any substantial gainful
104 activity on an assessment from an independent vocational
105 expert that considers the member's age, education, work
106 experience, transferable skills, and residual functional
107 capacity.

- 108 (B) The Panel must determine the member's residual
109 functional capacity and provide this information to the
110 independent vocational expert.
- 111 (C) A Panel determination that the member's service-
112 connected disability is severe enough to be considered a
113 disability by the Social Security Administration is not a
114 recommendation that the member is entitled to, or should
115 be granted, a disability benefit by the Social Security
116 Administration.
- 117 (D) If a member has already been granted disability benefits
118 by the [U.S.] Social Security Administration when the
119 member applies for a service-connected disability
120 pension, the County must pay the member a pension of at
121 least 70% [percent] if the Disability Review Panel finds
122 that the award of disability benefits from the Social
123 Security Administration was based primarily on the same
124 medically determinable physical or mental impairment
125 on which the Disability Review Panel awards the
126 member a service-connected disability benefit.
- 127 (4) The County must pay a [Group G] member who retires with
128 partial incapacity on a service-connected disability retirement
129 an annual pension calculated under Section 33-42(b)(1), but the
130 benefit must be at least 52½ % [percent] of final earnings if the
131 Chief Administrative Officer finds, based on a recommendation
132 from the Disability Review Panel, that:
- 133 (A) the member meets the standards to receive a service-
134 connected disability benefit under subsection (f); and

- 135 (B) the member is not eligible to receive a benefit for total
136 incapacity under subsection (i)(3).
- 137 (5) (A) The County must increase the partial incapacity service-
138 connected disability pension benefit of a [Group G]
139 member calculated under Section 33-42(b)(1), from a
140 benefit of at least 52 ½ % [percent] to a benefit of at least
141 70 % [percent], if:
- 142 (i) the [U.S.] Social Security Administration awards
143 disability benefits to the member;
- 144 (ii) the member submits all relevant information about
145 the award of disability benefits from the Social
146 Security Administration to the Disability Review
147 Panel within 60 days after the member receives the
148 award;
- 149 (iii) the Disability Review Panel finds that the award of
150 disability benefits from the Social Security
151 Administration was based primarily on the same
152 medically determinable physical or mental
153 impairment on which the Disability Review Panel
154 originally awarded the member a service-
155 connected disability benefit; and
- 156 [(a)] (iv) the member applies for disability benefits with
157 the Social Security Administration within 90 days
158 after the [date on which the] Chief Administrative
159 Officer notified the member that the [amount of
160 the] service-connected disability pension benefit
161 would be calculated [under Section 33-42(b)(1),

162 but at least 52 ½ percent; or] as a partial
 163 incapacity.

164 [(b) the Chief Administrative Officer awards a service-
 165 connected disability pension benefit calculated
 166 under Section (b)(1), but at least 52 ½ percent to
 167 the member between March 1, 2000, and
 168 December 1, 2003, and the member applies for
 169 disability benefits with the Social Security
 170 Administration no later than February 29, 2004.]

171 (B) [For] If a member [who] qualifies for an increased
 172 pension benefit under [subsection (5)] subparagraph (A)
 173 [above], the County must increase the member's service-
 174 connected pension retroactively to the date [on which]
 175 when the pension began.

176 * * *

177 (7) The County must pay a Group F member who retires on a
 178 service-connected disability retirement on or after June 26,
 179 2002, an annual pension calculated under subsection (i) (1) or
 180 subsection (i) (4). However, if [the] a greater benefit results
 181 from the calculation under Section 33-42(b)(1), the County
 182 must pay a Group F member a pension based on the member's
 183 average final earnings if that member's average final earnings
 184 result in a greater benefit than final earnings.

185 (j) *Adjustment or cessation of disability pension payments.*

186 (1) If a member receiving service-connected disability pension
 187 payments reaches the first day of the month [following] after
 188 the member's normal retirement date, the amount of pension

189 then payable must not be less than the amount that would have
 190 been payable under [the provisions of] Section 33-45(c)[,] if the
 191 member had terminated service [on] when the [date] disability
 192 pension [commenced] began and had not elected a return of
 193 member contributions with credited interest.

194 (2) (A) The Chief Administrative Officer may reduce the amount
 195 of the disability pension payments of a member retired
 196 with total incapacity who:

- 197 (i) has not reached the normal retirement date; and
- 198 (ii) is engaged in, or is able to engage in, an
 199 occupation that pays more than the difference
 200 between the disability pension payments and the
 201 current maximum earnings of the occupational
 202 classification from which the member was
 203 disabled.

204 (B) If a member other than a Group F member meets the
 205 criteria in subparagraph (A), the Chief Administrative
 206 Officer may reduce the member's disability pension
 207 payments until the disability pension payments plus the
 208 amount that the employee earned or is able to earn equals
 209 the maximum earnings of the occupational class from
 210 which the member was disabled.

211 * * *

212 (3) If the earnings capacity of a disability retiree with a total
 213 incapacity changes, the Chief Administrative Officer may
 214 change the amount of the disability retirement pension. [For
 215 the purpose of] In this subsection, "disability pension" is the

216 amount of pension payable without election of a pension
217 payment option.

218 (A) For a disability retiree other than a group F member, the
219 Chief Administrative Officer must ensure that the amount
220 of the revised pension does not exceed:

221 (i) the original disability retirement pension plus cost-
222 of-living increases; or

223 (ii) an amount that, when added to the amount the
224 member earns or is able to earn, equals the
225 maximum earnings of the occupational
226 classification from which the member was
227 disabled.

228 (B) For a Group F member who receives a non-service
229 connected disability pension, the Chief Administrative
230 Officer must ensure that the amount of the revised
231 pension must not exceed:

232 (i) the original disability retirement pension plus cost-
233 of-living increases; or

234 (ii) an amount that, when added to the amount that the
235 member earns or is able to earn, equals 120 percent
236 of the maximum earnings of the occupational
237 classification from which the member was
238 disabled.

239 (4) A member who receives a disability retirement pension for a
240 total incapacity must submit to the Chief Administrative Officer
241 by May 30 of each year a copy of that portion of the member's
242 federal income tax return which shows the member's income.

243 If a member [receiving] who receives disability pension
 244 payments [fails or refuses to] does not supply the Chief
 245 Administrative Officer [whatever] any information [is
 246 determined necessary] the Chief Administrative Officer needs
 247 to [make a decision on] decide the amount of retirement pay
 248 legally due, the Chief Administrative Officer must suspend the
 249 member's pension payments [must be discontinued] until the
 250 member submits the [requested] needed information.

251 * * *

252 **33-128. Definitions.**

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

255 * * *

256 Partial incapacity means a member's inability to perform one or more
 257 essential functions of the position the member holds because of
 258 impairment that;

- 259 (1) is unlikely to resolve in the next 12 months;
- 260 (2) may be permanent; and
- 261 (3) does not prevent the member from performing any other
 262 substantial gainful activity.

263 * * *

264 *Residual functional capacity* means what the individual can still do,
 265 despite the individual's impairment. The County must give the term
 266 residual functional capacity the same meaning as the term is given by
 267 the Social Security Administration.

268 *Substantial gainful activity* means a level of productive work that
 269 requires significant physical or mental duties, or a combination of

270 both, performed for pay or profit on a full- time or part-time basis. An
 271 individual is able to perform a substantial level of work if the
 272 individual is able to earn more than the Social Security
 273 Administration’s current monthly earnings limit for a disabled person.
 274 The County must give the term substantial gainful activity the same
 275 meaning as the term is given by the Social Security Administration.

276 Total Incapacity means the member’s inability to perform substantial
 277 gainful activity because of an impairment that;

- 278 (1) is unlikely to resolve in the next 12 months; and
- 279 (2) may be permanent.

280 **33-129. Disability benefits.**

281 * * *

282 (d) Initial service-connected disability benefits. An employee may receive
 283 disability benefits for a period of 36 consecutive months, subject to
 284 this plan, if the administrator finds that:

285 (A) the employee has incurred an initial service-connected
 286 disability; and

287 (B) for an accidental injury that does not cause mental
 288 impairment, the employee:

289 (i) reports the claimed accidental injury as soon as
 290 practicable, but no later than one year after the
 291 applicant knew or should have known that the
 292 injury is likely to be disabling; or

293 (ii) submits a claim for Workers’ Compensation
 294 benefits for the accidental injury that is not
 295 dismissed as untimely.

296 (C) The time periods for reporting in subparagraphs (i) and

297 (ii) do not begin while the applicant is unable to report
 298 because of incapacitating injuries.

299 (D) For an accidental injury that occurs after July 1, 2009, the
 300 applicant must apply for disability benefits within one
 301 year after separation from County service or before July
 302 1, 2010, whichever is later.

303 (E) An employee who has committed an offense that would
 304 justify removal for cause must not receive service-
 305 connected disability benefits.

306 * * *

307 (f) The Disability Review Panel must recommend a finding of total
 308 incapacity if the member's service-connected disability is severe
 309 enough to meet the Social Security Administration's requirements for
 310 disability, meaning that the member is unable to engage in any
 311 substantial gainful activity because of a medically determinable
 312 physical or mental impairment that can be expected to end in death or
 313 has lasted, or can be expected to last, for a continuous period of at
 314 least 12 months. The member does not have to qualify for Social
 315 Security disability benefits to be eligible for benefits under this
 316 subsection.

317 (1) The Panel must base its determination of whether an individual
 318 is able to engage in any substantial gainful activity on an
 319 assessment from an independent vocational expert that
 320 considers the member's age, education, work experience,
 321 transferable skills, and residual functional capacity.

- 322 (2) The Panel must determine the member's residual functional
323 capacity and provide this information to the independent
324 vocational expert.
- 325 (3) A Panel determination that the member's service-connected
326 disability is severe enough to be considered a disability by the
327 Social Security Administration is not a recommendation that
328 the member is entitled to, or should be granted, a disability
329 benefit by the Social Security Administration.
- 330 (4) If a member has already been granted disability benefits by the
331 Social Security Administration when the member applies for a
332 service-connected disability pension, the County must give the
333 member a total incapacity benefit if the Disability Review Panel
334 finds that the award of disability benefits from the Social
335 Security Administration was based primarily on the same
336 medically determinable physical or mental impairment on
337 which the Disability Review Panel awards the member a
338 service-connected disability benefit.
- 339 (g) The Disability Review Panel must recommend a finding of partial
340 incapacity if:
- 341 (1) the member meets the standards to receive a service-connected
342 disability benefit; and
- 343 (2) the member is not eligible to receive a benefit for total
344 incapacity under subsection (f).
- 345 (h) The County must increase the partial incapacity service-connected
346 disability pension benefit of a member to a total incapacity benefit if:
- 347 (1) the Social Security Administration awards disability benefits to
348 the member;

- 349 (2) the member submits all relevant information about the award of
 350 disability benefits from the Social Security Administration to
 351 the Disability Review Panel within 60 days after the member
 352 receives the award;
- 353 (3) the Disability Review Panel finds that the award of disability
 354 benefits from the Social Security Administration was based
 355 primarily on the same medically determinable physical or
 356 mental impairment on which the Disability Review Panel
 357 originally awarded the member a service-connected disability
 358 benefit; and
- 359 (4) the member applies for disability benefits with the Social
 360 Security Administration within 90 days after the Chief
 361 Administrative Officer notified the member that the service-
 362 connected disability pension benefit would be calculated as a
 363 partial incapacity.
- 364 (5) If a member qualifies for an increased pension benefit under
 365 subsection (h), the County must increase the member's service-
 366 connected pension retroactively to the date when the pension
 367 began.

368 (i) *Role of the Disability Review Panel.*

- 369 (1) The Disability Review Panel must consider an application for
 370 disability benefits to determine if the applicant is eligible for
 371 disability benefits under subsection (a), (b), (c), (d), [or] (e), (f),
 372 (g), or (h). The Panel may consider any information or material
 373 submitted by the applicant, the certified representative, or the
 374 County. Within 60 days after the application is filed, the Panel
 375 must meet in person, by telephone conference, or by video

376 conference, to review all evidence submitted to the Panel. [An
377 action by the Panel under this Section requires a majority vote of
378 3] A Panel must include either 2 or 3 members. At least 2
379 members must vote in favor of a decision to take any action
380 under this Section.

381 * * *

382 **33-131. Amount of benefits.**

383 (a) *Service-connected disability.* The annual amount of service-connected
384 disability payments payable for total incapacity equals [66 2/3
385 percent] 70% of the employee's final earnings, less any reductions
386 provided in section 33-134. The annual amount of service-connected
387 disability payments payable for partial incapacity equals 52½ % of the
388 employee's final earnings.

389 * * *

390 **Sec. 2. Implementation.** Notwithstanding any other provision of law,
391 including §33-80(a)(7) and §33-107(a)(7), the implementation of any amendment
392 to County Code Chapter 33 in Section 1 of this Act concerning disability
393 retirement is not subject to collective bargaining with a certified representative of
394 employees in any bargaining unit.

395 **Sec. 3. Effective Date.** This Act, other than Section 4, takes effect on
396 July 1, 2012. Section 4 takes effect 91 days after the Act becomes law. The
397 amendments to County Code Chapter 33 made in Section 1 of this Act apply to any
398 [[application for]] disability [[retirement filed]] occurring on or after the date this
399 Act takes effect.

400 **Sec. 4. Collective bargaining.**

- 401 (a) It is the policy of Montgomery County that all County employees
402 should have a multi-tier service-connected disability retirement
403 system which includes a:
- 404 (1) partial incapacity service-connected disability retirement
405 benefit for any injury or illness that prevents an employee from
406 continuing in the employee's current position but does not
407 prevent the employee from engaging in other substantial gainful
408 employment; and
- 409 (2) total incapacity service-connected disability retirement benefit
410 for any injury or illness that prevents an employee from
411 engaging in any other substantial gainful employment.
- 412 (b) It is also the policy of the County that disability benefits are a
413 mandatory subject of collective bargaining with each appropriate
414 certified employee representative.
- 415 (c) Notwithstanding any County law to the contrary, the County
416 Executive may separately negotiate the terms of an appropriate multi-
417 tier service-connected disability retirement system with the certified
418 employee representative for the police bargaining unit and the
419 certified representative for the OPT and SLT bargaining units, in each
420 case not later than March 1, 2012. If in either case the parties are
421 unable to reach agreement on an appropriate multi-tier system, the
422 parties may submit this issue for resolution through the applicable
423 impasse procedures under the County's police labor relations law and
424 the County collective bargaining law as a separate matter, not part of
425 or linked to any other collective bargaining procedure. The impasse
426 neutral for the police bargaining unit and the mediator/arbitrator for

427 the OPT and SLT bargaining units must choose the final offer of
428 either party after considering equally the following factors:

429 (1) service-connected disability retirement systems for similar
430 employees of other public employers in the Washington
431 Metropolitan Area and in Maryland;


432 (2) best practices for service-connected disability retirement
433 systems for similar employees in the United States;

434 (3) the interest and welfare of the public; and

435 (4) the long-term ability of the employer to finance a disability
436 retirement system, and the effect of the cost of the system on
437 the normal standard of public services provided by the
438 employer.

439 (d) The Executive must submit the results of any collective bargaining
440 process regarding this issue to the Council for legislative action not
441 later than April 1, 2012.

442
443 *Approved:*

444 
445 _____
Valerie Ervin, President, County Council

6/30/2011

Date

446 *Approved:*

447
448 _____
Isiah Leggett, County Executive

Date

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

450

451

Linda M. Lauer, Clerk of the Council

Date